



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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Country Report Slovenia





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

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 possession 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. Diogenes 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.

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Country Report Slovenia

Sentencing of Drug Offenders: Legislators' Policy and the Practice of the Courts

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Ma.³

The current national drug strategy and drug legislation in Slovenia

Slovenia as a transition country recently adopted many crucial documents and legislation according to EU standards. In July 2012, the Government of the Republic of Slovenia adopted the **National Crime Prevention and Crime Control Strategy** (ReNPPZK12-16), which pays a great deal of attention to drugs. It is a strategic document which plans to involve governmental and non-governmental (NGO) institutions in the field of illicit drugs. The solutions set out in the Strategy include the prevention of illicit drug supply, drug use prevention, and treatment and social rehabilitation of drug users. As the competent institution responsible for coordination in the field of illicit drugs in Slovenia, the Ministry of Health (jointly with other competent ministries and non-governmental organisations) is responsible for the implementation of the aforementioned strategy and its chapters on illicit drugs, in particular (<http://www.ivz.si>). The Strategy highlights the following specific objectives in the field of illicit drugs:

- ensure successful detection of criminal acts and offences in the field of illicit drugs;
- reduce the number of all illicit drug users;
- ensure and strengthen universal, selective and indicated prevention activities aimed at preventing drug use and reducing drug-related crime.

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The following measures and activities are to be carried out to achieve the aforementioned specific objectives:

The roles of individual organised crime groups, both those active in Slovenia and those operating in larger areas, must be permanently monitored and defined. This requires the strengthening of intelligence activities, establishment of analytics for the field of illicit drugs, measures to direct and plan activities, effective fight against organised crime in the field of illicit drugs, centrally managed approach to working in the field of drugs, fight against cross-border trafficking in drugs and precursors, and more complex treatment of offenders and perpetrators.

Efforts to reduce the demand for illicit drugs involve creating living environments that enable and support decisions against using drugs, and carrying out activities at different levels of prevention, including reducing the negative health and social consequences of drug use, providing treatment, social care and social reintegration of former drug addicts and persons released from prison. Special emphasis should be placed on mental health promotion, provision of care to adolescents and women –especially pregnant drug users– and prevention of HIV infections and other infectious diseases. Comprehensiveness and coordination of the various programmes and activities are ensured at the national level.

Universal prevention is broadly targeted at the entire population or a large group of people. Its aim is to prevent or delay drug use through messaging and programmes. Its advantage is that it targets and reaches out to a large number of people. Selective prevention targets specific populations: vulnerable groups and communities the members of which are at risk for substance abuse due to various risk factors. Focusing intervention efforts on specific groups increases the possibility of meeting the needs of these groups, as well as the likelihood that the intervention will be successful. Indicated prevention is aimed at individuals who are at high risk for developing an addiction later in life. The purpose of indicated prevention is to identify individuals with the aforementioned problems and provide them with treatment. Prevention programmes are implemented at the local and national level.

In April 2013, the National Assembly of the Republic of Slovenia adopted the **Resolution on the National Social Assistance Programme for 2013–2020** (ReNPSV13–20), which establishes, *inter alia*, a network of programmes in the field of addiction intended for illicit drug users as well. The National Social Assistance Programme specifies the scope of the programmes and their

accessibility and availability to all citizens. The aforementioned programmes include: prevention programmes, information and counselling programmes, telephone counselling programmes, coordination programmes, support programmes, assistance and self-help programmes, harm reduction programmes, day centres carrying out fieldwork, housing programmes, therapy programmes, reintegration programmes and activation programmes aimed at increasing employment opportunities. The Resolution states, *inter alia*, that the aim of developing activities in the field of illicit drugs in the aforementioned period is to establish 12 counselling services for various forms of addiction and ensure their operation, and to ensure that low-threshold programmes have the total capacity to admit 2,000 users and high-threshold programmes 300 users (<https://www.ivz.si>).

In June 2013, a proposal for the first **National Youth Programme for 2013–2022**

(http://www.ursm.gov.si/nc/si/medijsko_sredisce/novica/article/10404/5544/), which also covers illicit drugs, was submitted for adoption to the National Assembly of the Republic of Slovenia. As a regulatory umbrella in the field of youth policy in Slovenia, the Public Interest in Youth Sector Act, adopted in 2010, forms the legal basis for preparing the first National Youth Programme for the period 2013-2022. The Office of the Republic of Slovenia for Youth, which is part of the Ministry of Education, Science and Sport, is responsible for preparing the Programme. Based on various analyses and research, a document was drafted in cooperation with other ministries and youth representatives and approved on June 6th, 2013 by the Slovenian Government, which submitted it for adoption to the National Assembly. The Resolution was adopted on October 24th, 2013. In the resolution, priority subsection 6 is: reducing the demand for illicit drugs as well as preventing the supply of illicit drugs.

The National Youth Programme states that the primary objective of prevention in the field of illicit drugs is to create social conditions that give individuals the opportunity to develop a lifestyle that does not involve drug use. At the same time, it stresses the need to develop all measures and activities aimed at reducing illicit drug supply and educating young people about the effects of all kinds of drugs.

In the Republic of Slovenia, the field of illicit drugs is regulated by the following acts, decrees and regulations:

- **The Penal Code** (KZ-1, 2008; 2009; 2011), (Official Gazette RS, Nos 55/08, 66/08 – amended, and 39/09, 91/2011) regulates two (major) criminal offences related to illicit drugs in the chapter on criminal offences against human health, i.e. the illicit production of and trafficking in illicit drugs, illicit substances in sports and precursor substances for manufacturing illicit drugs, and the criminal offence of enabling consumption of illicit drugs or illicit substances in sports;
- **The Production of and Trade in Illicit Drugs Act** (ZPPPD) (Official Gazette RS, Nos 108/99, 44/00, 2/04 – ZZdrI-A, and 47/04 – ZdZPZ) defines illicit drugs as plants or substances of natural or synthetic origin which have psychotropic effects and which can influence a person's physical or mental health or threaten a person's rightful social status. Article 3 of the Act classifies illicit drugs into three groups according to the degree of risk to health in the event of abuse, and according to their use in medicine. The Government of the Republic of Slovenia set out the classification of illicit drugs in the Decree on the Scheduling of Illicit Drugs adopted in 2000;
- **The Act Regulating the Prevention of the Use of Illicit Drugs and the Treatment of Drug Users** (ZPUPD), (Official Gazette RS, No 98/99) defines, *inter alia*, drug-related treatment and measures for solving social problems related to drug use;
- **The Act on Precursors for Illicit Drugs** (ZPSPD-UPB1), (Official Gazette RS, No 110/2003), regulates the production, distribution, use and control of substances which may be precursors for illicit drug production, in order to prevent misuse or use for unauthorised purposes, is replaced in 2007 by three EU regulations which cover the area of precursors; it regulates the production of, trade in, use of, and control over substances that can serve as precursors for illicit drug production, thus preventing their abuse or use for illicit purposes;
- Regulation on the classification of illicit drugs;
- Regulation on the treatment of seized and confiscated illicit drugs;
- Rule book on the form and method of keeping records and reports of illicit drugs;
- Regulation on the implementation of Regulations (EC) on precursors for illicit drugs;

- Regulation of the European Parliament and of the Council on drug precursors;
- Council Regulation laying down rules for the monitoring of trade in drug precursors between the Community and third countries;
- Commission Regulation laying down implementing rules for the Regulation of the European Parliament and of the Council on drug precursors;
- Council Regulation laying down rules for the monitoring of trade in drug precursors between the Community and third countries.

In the field of international law, Slovenia signed the following international treaties (only some of them are listed): International Opium Convention (1925), Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs (1931), Convention for the Suppression of the Illicit Traffic in Dangerous Drugs (1936), Declaration on the Control of Drug Trafficking and Drug Abuse (1984), Declaration on the Guiding Principles of Drug Demand Reduction (1998), Single Convention on Narcotic Drugs (1961), Convention on Psychotropic Substances (1971), Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990), Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005), Protocol (1946) - (1948) - (1953), Protocol amending the Single Convention on Narcotic Drugs (1972), Resolution 59/160: Control of Cultivation of and Trafficking in Cannabis (UN, General Assembly, 2005), EU Drugs Strategy 2005-2012 (2004), EU Drugs Action Plan, Declaration of European Cities on Drug Policy (1998), Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors (2004), Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors (2005).

Coordination mechanism in the field of drugs

Drug policy in the Republic of Slovenia is coordinated and implemented by government, ministries and their organisational units, public and other institutions. Coordination in the field of drugs at the government level is the responsibility of the Commission on Narcotic Drugs of the Slovenian

Government and the Ministry of Health. At the local level, local action groups remain the main coordinators of activities in local communities.

The highest coordinating body in the field of drugs is the **Commission on Narcotic Drugs of the Slovenian Government**, which is an inter-ministerial body at the government level. The Commission is in charge of promotion, monitoring and coordination of government policies, measures and the national program. The Commission is one of the two bodies at the strategic level (the second one is the Ministry of Health) which develop, modify and coordinate the drug policy. It is composed of representatives of ministries (Ministry of Health, Ministry of Interior, Ministry of Education, Science, Culture and Sport, Ministry of Labour, Family and Social Affairs, Ministry of Justice and Public Administration, Ministry of Finance, Ministry of Defence, Ministry of Agriculture and the Environment, Ministry of Foreign Affairs) and chaired by a representative of the Ministry of Health. Among other things, it discusses the annual national report on the drug situation, reports on the implementation of harm reduction programmes in Slovenia, as well as the report and proposal on the operation of Local Action Groups.

The **Ministry of Health** ensures that the Commission on Narcotic Drugs stays operational by preparing materials for its meetings and arranging for the implementation of the Commission decisions. With the abolition of the Office on Drugs in 2004, the Ministry of Health took over a leading role in the coordination of drug policy. The Ministry of Health coordinates the work of all professional bodies, NGOs, governmental organisations and all other persons or entities involved in making or changing the drug policy. It is responsible for the preparation, financing and implementation of the national programme on drugs, the coordination of other programmes with the national programme, the inter-ministerial coordination of policymaking and the provision of estimates and proposals for specific programmes. It also encourages re- search work, monitors international issues on drugs and cooperates with international organisations. In addition to leadership on drug policy, the main task of the Ministry of Health is providing health care by means of a wide range of programmes, treatments and other forms of assistance. Health care is implemented in public institutions and other organisations under the Ministry of Health. There are two organisational units within the Ministry which play a special role in the field of illicit drugs. The first organisational unit is the **Directorate for Public Health**, which prevents diseases in the population by working on a strategic level and thus reducing

the disease burden both for individuals and for society as a whole. Such protection and enhancement of mental and physical health is carried out through organised social activities. Those tasks include the design and implementation of health policies at the population level, including drug policy. The second important organisational unit is the **Health Promotion and Healthy Lifestyle Division**, an organisational unit of the Directorate for Public Health. Monitoring living habits of the population is the basis for the preparation of strategic documents on health promotion and promoting a healthy lifestyle –without drugs. The division cooperates with other governmental and non-governmental organisations in the coordination and implementation of policies and measures that affect the improvement and promotion of health.

The **National Chemicals Bureau** is an agency within the Ministry of Health that performs technical and administrative functions and tasks of inspection on the basis of the Chemicals Act and other acts. Its work also relates to the production, distribution and use of substances that may be precursors for illicit drugs, in order to prevent their misuse or use for unauthorised purposes.

The **Institute of Public Health** (IPH) plays a central role in public health activities, as it carries out such activities at a national level. As a central national institution, it studies, protects and increases the level of health of Slovenia's population by raising public awareness and taking other preventive measures. In addition to the central role in public health activities in Slovenia, the IPH actively participates in international projects, which cover different areas of health and public health problems in the general population. The IPH represents an expert level in supporting decisions taken by the state at a national and local level that have a direct or indirect impact on health. It is also responsible for the preparation of national reports on the drug situation, which are then forwarded to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). It performs the duties under the Reitox and EWS programmes and also participates in the preparation of action plans in the area of illicit drugs, risk assessments and professional development, training and field coordination. In 2010, the IPH drafted a strategic development plan for the period 2010-2015. The document sets out the strategic development areas for IPH in 2010-2015 and develops strategic objectives and actions to achieve its goals: to provide quality data and information, evidence-based policy planning and programming, participation in health policy and programme development, cooperation in the practical implementation of policies and programmes, and monitoring the effectiveness of measures taken. The IPH

has a well-developed area of prevention, addiction treatment and harm reduction.

The **Information Unit for Illicit Drugs** is a part of the IPH, tasked with providing a national information network, interagency-coordinated data collection and information sharing at the national and international level (one of the conditions for cooperation with the EMCDDA). The Information Unit collects and analyses information on illicit drugs, illicit drug users and the consequences of their use for national and international needs and sends data to the EMCDDA. In carrying out its tasks, the Information Unit includes all the relevant ministries, government departments, public institutions and NGOs.

The **Ministry of Interior** deals with the tasks of drug supply reduction and prevention. Plans and objectives are implemented through the Police, while the Ministry of Interior has the task of setting up international cooperation (EUROPOL, EMCDDA, INTERPOL), coordinating national bodies, training and education of law enforcement agencies working in the field of illicit drugs, leadership of law enforcement, as well as analytical and intelligence activities for the detection of drug-related offences.

The **Police** carry out different duties: protection of lives, personal safety and property, prevention, detection and investigation of crimes and offences, arresting the perpetrators, maintaining law and order, protection of national borders, supervision and regulation of the traffic, etc. The tasks performed by uniformed police, criminal police and other specialised police units also include work in the field of illicit drugs, in which the **Criminal Police Directorate** plays an important role. Within the Criminal Police Directorate – specifically, within the **Organised Crime Division**– operates the **Illicit Drugs Section**, specialised in operational and tactical tasks involving the detection and prosecution of drug-related crime. Its duties include planning, directing, implementation and supervision of investigative activities and other tasks. In addition to the Criminal Police Directorate (Illicit Drugs Section), there is the **National Bureau of Investigation**, a specialised criminal investigation unit of the Criminal Police which investigates particularly difficult crimes, especially white collar crime, financial crime, corruption and organised crime – crimes which require special skills, organisation and equipment for investigation or specifically directed operation of state bodies and institutions in the areas of taxes, customs, financial management, security, money laundering, corruption, other crimes, and also illicit drugs.

Within the **Ministry of Finance** are two bodies which perform some tasks in the field of illicit drugs: Customs Administration and the Office for Money Laundering Prevention.

In the field of illicit drugs, the **Customs Administration** takes measures in order to prevent the trade in illicit drugs and precursors, which represent a significant threat to public health. Customs established a system of e-learning for the control of drug precursors, which in 2011 included 336 employees of mobile divisions, departments for investigation, inspectors and customs officers at border crossings. Customs can only detect and search for illicit drugs (illicit drugs can only be seized by the police).

The **Office for Money Laundering Prevention** detects money laundering and terrorist financing. The office plays an important role in the detection of suspicious and illegal transactions or exchanges or transfers of money or other assets derived from criminal activity (including in cases of trade in illicit drugs).

The **Prison Administration of the Republic of Slovenia** within the Ministry of Justice and Public Administration performs administrative and professional assignments concerning the enforcement of prison sanctions, the organisation and management of prisons and the correctional facility, the provision of financial, material, human and other resources for the functioning of prisons and the correctional facility, and the enforcement of rights and obligations of the persons who have been deprived of liberty. In performing its tasks in the field of illicit drugs, the Prison Administration cooperates with external health organisations and NGOs.

The **Ministry of Labour, Family and Social Affairs** organises programmes for the social rehabilitation of addicts, including prevention of risks and problems associated with drug use and other addictions, reduction of social harm caused by illicit drugs and reduction of the number of addicts. The activities are conducted in day care centres, therapeutic communities, communes, or offices for advice and information. Personal assistance, social assistance and family support are provided specifically to people with drug problems. It cooperates with NGOs in the field of prevention, harm reduction, risk reduction and reintegration.

The **Ministry of Education, Science, Culture and Sport** works on drug prevention, especially in the field of education.

Substantive Criminal Law

The Slovenian criminal law makes a distinction between misdemeanours and felonies. **Misdemeanour** is any act that violates the law, a government regulation or a local community regulation designated as a misdemeanour for which a penalty is prescribed. **Felony** is any unlawful act committed by a person and designated as a crime by the Criminal Code, in order to protect the legal values set by the law.

Felonies are divided into minor and major felonies: minor felonies are those for which the Criminal Code prescribes a fine or a prison sentence of up to 3 years, while major felonies are those for which the Criminal Code prescribes a prison sentence of 5 years or more.

The sanctions for misdemeanours are: fine, warning, termination of driver's licence, ban from driving a motor vehicle, expulsion from the country, confiscation, exclusion from public procurement procedures and disciplinary actions. If the fine is not fully paid, compliance detention can be used against the offender in order to force him/her to pay. Compliance detention may not exceed 30 days and the enforcement of compliance detention does not stop the obligation to pay the fine.

Article 3 of the Criminal Code specifies the types of sanctions for felonies or attempted felonies: warnings, penalties and security measures:

- a) **Warnings** include conditional sentence, supervision (assistance, supervision or protection) and judicial warning.
- b) **Penalties** are divided into main and collateral penalties. The main penalty is imprisonment (fine can also be the main penalty), and the fine and ban from driving a motor vehicle represent collateral penalties.
- c) **Security measures** imposed by the court set guidance which the offender must abide to. When determining appropriate security measures, the court takes into consideration the offender's age, psychological characteristics, the motives for committing the act, personal situation, past life, the circumstances in which the act was committed, and the offender's behaviour after committing the act. The guidance of the court may also include the task of rehabilitation in an appropriate medical facility; however, for alcohol and/or drug addiction treatment the offender's consent is required.

A conditional sentence may be imposed if the offender is sentenced to a fine or a prison term of up to two years, but it cannot be imposed on offenders

sentenced to prison for at least three years. The court can impose a conditional sentence if the personality of the perpetrator, his/her earlier life, his/her behaviour after committing the offence, the degree of culpability and other circumstances in which the offence was committed show that it can be expected that s/he will not reoffend. The offender is sentenced to prison, but the sentence will not be enforced if the convict, during a period of time (determined by the court) which shall be no less than one year and no more than five years ('conditional sentence period'), does not commit other crimes. The court may determine that the sentence will be enforced if the convict fails to return money or other assets gained from the offence, pay the damage caused by the offence or comply with other penal obligations. Instead of imprisonment the convict may also be given other forms of sentences prescribed by the Criminal Code. A prison sentence up to nine months may be replaced by serving the sentence at home (house arrest), and a prison sentence up to two years can be replaced by work in the general interest of the public of no less than 80 and no more than 480 hours over a maximum period of two years. The Enforcement of Criminal Sanctions Act provides that the penalty of imprisonment up to three months may be replaced by work for humanitarian organisations and local communities; such work is directed and supervised by the administration of the prison in collaboration with the Centre for Community Work. The Slovenian criminal law recognises 'conditional release'. A convict may be released conditionally if it can be reasonably expected that s/he will not repeat the crime. In assessing conditional release, recidivism is a primary consideration, followed by any criminal proceedings pending against the offender for crimes committed before the onset of imprisonment, the offender's relation to the committed crime and the victim, the offender's behaviour while serving the sentence, success in drug treatment and conditions for integration in life outside. Conditional release is possible if the person has served 1) half the sentence, 2) three quarters of the sentence if convicted to more than 15 years' imprisonment, and 3) 25 years if sentenced to life imprisonment. Exceptionally, the convict may be conditionally released if s/ he has served only one-third of the sentence and it can be reasonably expected that s/he will not repeat the crime, and if special circumstances relating to his/ her personality show that s/he will not reoffend. The court may (along with conditional release) also impose the task of treatment in an appropriate medical facility; however, for alcohol and/or drug addiction treatment the convict's consent is required.

The Criminal Code contains two articles (Article 186 and 187) concerning drug-related offences. Both articles belong to the category of 'Criminal offences against public health'. Article 186 refers to the unlawful production of and trade in illicit drugs, illicit substances in sport and precursors for illicit drugs, while Article 187 refers to inducing others to use illicit drugs or illicit substances in sport. The penalties provided for by both articles are listed in the following section.

Criminal legislative policy on drug offences

Drug use is not penalised in the Republic of Slovenia, but possession, production of and trade in illicit drugs and inducing other persons to use illicit drugs are illegal. The classification of drugs and the conditions for the production of and trade in illicit drugs are set by the Production of and Trade in Illicit Drugs Act.

Illicit drugs are divided into three groups:

- Group I: plants and substances which are very dangerous to human health due to the severe consequences that can be caused by their abuse, and are not used in medicine;
- Group II: plants and substances which are very dangerous due to the severe consequences that can be caused by their abuse, and can be used in medicine;
- Group III: plants and substances which are hazardous due to secondary effects that can be caused by their abuse, and can be used in medicine.

The division of illicit drugs into "soft" and "hard" drugs is practically no longer in use in Slovenia (only occasionally in the media and the public). Instead, the classification of United Nations and the World Health Organisation is used: stimulants, depressants of the central nervous system, hallucinogens and cannabis. However, classification by law is different: plants and substances are divided into groups I, II and III. In criminal law all the drugs are listed in a single group (illicit drugs), regardless of their impact on health.

Production, trade and possession of Group I illicit drugs is only allowed for scientific research and teaching purposes. Production, trade and possession of Group II and III illicit drugs is only allowed for medical, veterinary, educational and scientific research purposes. Licence for these activities can be given only by the Minister of Health.

The term “production of illicit drugs” encompasses all the processes through which illicit drugs can be obtained (including cultivation, processing and final preparation).

Illicit drugs can be produced only by individuals and legal entities that qualify for production, but only under a licence obtained from the Minister of Health. The requirements and conditions for production are provided for in a special law. Persons convicted of unlawful production of and trade in illicit drugs (Articles 186 and 187 of Criminal Code) cannot obtain a licence for the production of drugs for five years, starting from the date of final judgment of the court. Illicit drugs may be traded in only under licence from the Minister of Health. In order to legally trade in illicit drugs, individuals and legal entities must fulfil the following conditions: 1) they must have adequate facilities and equipment for the storage and dispensing of drugs that meet technical and sanitary conditions, and 2) drugs must be kept in special rooms in which there may not be other products; such premises must be secured against unauthorised access. Imports and exports are permitted only if the drugs are intended for medical, veterinary, educational or scientific research purposes, if the quantity of drugs is in accordance with the estimated annual needs (imports) or if the application is accompanied by an import permit from the competent authority of the importing country (exports).

Any production or trade in breach of the provisions on legal production of and trade in illicit drugs and without the required licence from the Minister of Health is punishable under Article 186 of the Criminal Code. The penalties for drug-related misdemeanours and felonies are prescribed by the Production of and Trade in Illicit Drugs Act and the Criminal Code.

The **Production of and Trade in Illicit Drugs Act** prescribes the penalties for the following misdemeanours:

- possession of a small quantity of illicit drugs for personal use: € 41.73 - 208.65 (offender may be punished less severely if s/he voluntarily enters a drug treatment programme or other social security programmes);
- possession of illicit drugs in breach of the Production of and Trade in Illicit Drugs Act: € 208.65 - 625.94
- if an individual produces or trades in illicit drugs without a licence from the Minister of Health: € 417.29 - 20,864.63 (legal entity: € 4,172.93 - 41,729.26; responsible person of a legal entity: € 417.29 - 2,086.46)

- if an individual who produces and trades in drugs:
- does not keep the drugs in specific areas and does not protect those areas from unauthorised persons: € 417.29 - 12,518.78 (legal entity: € 1,251.88 - 20,864.63, responsible person of a legal entity: € 208.65 - 2,086.46);
- has not sent the copies of drug import or export permits to the Ministry of Health within 15 days: € 417.29 - 12,518.78 (legal entity: € 1,251.88 - 20,864.63, responsible person of a legal entity: € 208.65 - 2,086.46);
- does not keep the required records or fails to keep them properly: € 417.29 - 12,518.78 (legal entity: € 1,251.88 - 20,864.63, responsible person of a legal entity: € 208.65 - 2,086.46);
- does not send the reports or other prescribed information to the Ministry of Health within the prescribed period, or if the information is incorrect: € 417.29 - 12,518.78 (legal entity: € 1,251.88 - 20,864.63, responsible person of a legal entity: € 208.65 - 2,086.46);
- does not allow supervision of the authorities or access to records and documents, or fails to submit all the information and materials which are necessary to perform inspection: € 417.29 - 12,518.78 (legal entity: € 1,251.88 - 20,864.63, responsible person of a legal entity: € 208.65 - 2,086.46). In accordance with Article 56.a of the Misdemeanours Act, any offender who does not file a request for a judicial review against the decision of the misdemeanour court shall only pay **half of the fine** if the fine is **paid within eight days** after the finality of the decision.

The sanctions for drug-related felonies are prescribed by Articles 186 and 187 of the Criminal Code:

Article 186 (Unlawful Manufacture of and Trade in Illicit Drugs, Illicit Substances in Sport and Precursors to Manufacture Illicit Drugs):

- 1) 1-10 years of imprisonment for unlawfully manufacturing, processing, selling or offering for sale; or purchasing, keeping or transferring with a view to resell; or negotiating for buying or selling; or otherwise unduly putting in circulation plants or substances classified as drugs, illicit substances in sport, or precursors used to manufacture illicit drugs.
- 2) 3-15 years of imprisonment:

- for selling, offering for sale or handing out free of charge illicit drugs or precursors to manufacture illicit drugs to a minor, mentally disabled person, person with a temporary mental disturbance, person with severe mental retardation or a person who is in rehabilitation, **or**
 - if the offence is committed in educational institutions or in their immediate vicinity, in prisons, military units, public places or public events, **or**
 - if the felony under point 1) is committed by a civil servant, priest, doctor, social worker, teacher or educator by exploiting his position, **or**
 - if for the felony under point 1) minors are used
- 3) 5-15 years of imprisonment if any of the above mentioned felonies is committed within a criminal organisation, or if the offender organised a network of drug resellers or drug agents
- 4) 6 months to 5 years of imprisonment for manufacturing, buying, possession of or furnishing other persons with the equipment, substances or precursors for the production of illicit drugs or illicit substances in sport without the licence of the Ministry of Health.

Article 187 (Enabling the Use of Illicit Drugs or Illicit Substances in Sport):

- 1) 6 months' to 8 years' imprisonment for inducing a person to use illicit drugs/illicit substances in sport; providing illicit drugs/illicit substances in sport to others, making available a place or other facility for the use of illicit drugs/ illicit substances in sport
- 2) 1-12 years of imprisonment if felony under point 1) is committed:
- against a minor, a mentally disabled person, a temporarily disturbed person, a person with severe mental retardation or a person who is in rehabilitation, **or**
 - in educational institutions or in their immediate vicinity, in prisons, military units, public places or public events, **or**
 - by a civil servant, priest, doctor, social worker, teacher or educator who exploits his/her position
- 3) the act is not against the law if the offender commits it within a drug treatment programme or a controlled drug use programme which is lawful, approved and implemented within the framework or under the supervision of public health institutions.

The penalty for a felony under Article 186 of the Criminal Code is more or less the same or slightly less severe than the penalty for manslaughter (5-15 years' imprisonment). The difference between manslaughter and trade in illicit drugs (not committed within a criminal organisation) is small, so opinions among the public and experts are divided. Some question the effectiveness of strict sentences, while others argue that the sentences are appropriate or too low.

The Slovenian law has no provisions concerning the impact of dependence on the sanctions. The court has the right to make independent decisions, taking into consideration all the evidence, the offender's personal characteristics, the aggravating and mitigating circumstances and any other factors that may affect the judicial decision. The offender's drug dependence may or may not be considered as a mitigating factor, but it may have a great impact on the court's decision to send the offender for alcohol or drug treatment in an appropriate medical facility. The law does not make provisions for special treatment of secondary offences ("cravings to use") –secondary offenders are treated the same as offenders of all other crimes not committed by addicts. There is no difference in the law between small and big drug dealers. The only distinction between "types" of dealers is between those involved in organised criminal groups and those who are not. For those involved in an organised criminal group, a higher penalty is prescribed. The law does not specify what quantity of illicit drugs is considered to be small. The Production of and Trade in Illicit Drugs Act does not lay down limits in respect of the minimum permissible quantity of illicit drugs in possession nor does it specify the quantity of drugs for personal use. It is at the discretion of the police and the court to decide in a particular situation how much the "small quantity" of illicit drugs is. There are differences in practice: some police officers and judges punish offenders for possession of a very small quantity of illicit drugs very strictly, while others do not view possession of a certain quantity of illicit drugs as a misdemeanour or as an offence. Misdemeanours and felonies are dealt with by different courts. District courts deal with misdemeanours; therefore, violations of the Production of and Trade in Illicit Drugs Act are processed by district courts. District courts also deal with crimes for which the maximum sentence would not exceed three years of imprisonment, while offences punishable with imprisonment of over three years fall under the jurisdiction of county courts. All offences under Articles 186 and 187 are punishable with imprisonment of more than three years; therefore, the county

courts deal with drug-related crimes. There are no specialised courts in Slovenia dealing with drug-related felonies.

The principle of universality in the Slovenian judicial system does not apply to drug-related crimes; it only applies to certain serious crimes against humanity known to the international community, which are prosecuted in all countries, regardless of where they were committed. The Criminal Code of the Republic of Slovenia also applies to aliens who committed a crime against a foreign country or a national thereof, if they are caught in the territory of the Republic of Slovenia and are not extradited to a foreign country. In that case, the court is not allowed to impose more severe penalties than those prescribed by the law of the country where the offence was committed. If the offender has already served the sentence for a crime committed abroad or it has been decided by virtue of an international treaty to execute the sentence in the Republic of Slovenia **or** the offender abroad was found not guilty or the execution of the sentence was barred **or** the offence was prosecuted under foreign law at the request of the victim and such request was not filed or was withdrawn, the offender cannot be prosecuted for the same crime (*ne bis in idem* principle).

Drug Law Enforcement in Practice

In combating drug-related crime, the police and its organisational units (uniformed and criminal police, National Bureau of Investigation) play a major role. The police act in accordance with the law, strategies, plans and guidelines.

Control over production, possession and trade in illicit drugs is carried out on a regular basis, especially in areas where presence of illicit drugs is expected. The police also send patrols to areas frequented by drug dealers and drug users. Harassment of drug users is not the practice of police, because drug use is not illegal.

The police can, in cases and under conditions laid down by law, use covert investigative measures (secret surveillance, monitoring of electronic communications, control of letters and other parcels, wiretapping and recording of conversations, secret pursuit, etc.) against a person who commits certain crimes (including felonies under Articles 186 and 187 of the Criminal Code). Such measures also include feigned purchase, feigned acceptance of or giving gifts, or feigned acceptance of or giving bribes, but the police and their

collaborators must not induce criminal activity with the implementation of the aforementioned measures (“police entrapment”). If criminal activity is induced, the initiation of criminal proceedings for the committed felonies is ruled out. Other than that, there are no specific provisions for crimes related, *inter alia*, to illicit drugs.

One of the police tasks is also detection of cannabis farms and laboratories for the production of other illicit drugs. Recently, there has been a rapid increase in the discovery of a number of cannabis farms and drug laboratories (more often than not cannabis farms). The equipment of such farms depends on the purpose of growing cannabis: if the cultivation of cannabis is meant for personal use or small-scale distribution, the farms are poorly equipped; if it is meant for larger-scale trafficking with the involvement of organised crime, the farms are professionally equipped with expensive equipment. The police also use covert investigation measures and information of police informers to find farms and laboratories.

Another source of information are citizens who help notify the police about suspicious activities in their area/neighbourhood (frequent and unusual power cuts, the smell of cannabis, discovered illegal connections to the public power supply, suspicious activity in and around abandoned buildings, etc.).

Police detention and pre-trial detention are not dependent on drug use/addiction. Article 43 of the Police Act provides that a police officer may detain a person who disrupts or threatens public order, if public order cannot be established otherwise or if the threat cannot be averted in any other way. In that case, police detention can last up to 48 hours. Pre-trial detention can be ordered only by the court: 1) if the person is hiding, if it is not possible to determine the person’s identity, or if other circumstances indicate a risk of absconding, or 2) if there is a legitimate fear that the person will destroy traces or evidence related to the crime or if special circumstances indicate that the person will interfere with the conduct of criminal proceedings and so affect the witnesses, or 3) if the weight, method or circumstances in which the felony was committed and the offender’s personal characteristics, past life, environment and living conditions or any other special circumstances make it likely that the offender will repeat the offence, complete the offence or attempt to commit the offence which the offender threatens. Pre-trial detention may last up to 48 hours (the law allows for prolongation if the conditions are met and there are reasons for it). A detained person has the right to appeal against the detention. Alternative forms of detention are the promise of the person not

to leave home, restraining order, reporting to the police station, bail and house arrest. The Slovenian law contains no compulsory or voluntary treatment at this stage to compensate for pre-trial detention or any mild form of ensuring the presence of the accused.

The law does not regulate the status of drug addicts during the hearing. The perpetrator's drug dependence does not affect the imposition of pre-trial detention or other actions of the court and law enforcement in the criminal proceedings. If the offender is under the influence of alcohol or illicit drugs, the hearing must not be conducted. If the hearing is conducted while the offender is under the influence of alcohol or illicit drugs, the court may not base its decision on testimony from the accused.

Any confession of the offender under the influence of alcohol, illicit drugs or other psychotropic substances, is regarded as a violation of the privilege against self-incrimination.

Police officers and the investigating judge are not allowed to enable the offender/addicted drug user at the hearing, as this would be contrary to the Article 187 of the Criminal Code. In addition, the Criminal Procedure Act forbids the use of force, threat or other similar resources (medical procedures or substances) against a defendant in order to achieve his/her statement or confession. If these provisions are violated, the court may not base its decision on testimony from the accused and the testimony must be eliminated from the court file.

In November 2011, the National Assembly of the Republic of Slovenia adopted an **amendment** to the Penal Code (91/2011) which provides that facilitating illicit drug use is not punishable if it is in the context of a lawful drug addiction treatment or controlled drug use programme, approved and implemented within the framework or under the supervision of public health authorities, e.g. in a safe injecting room.

In principle, this new amendment creates an enabling legal environment for the establishment of safe injecting rooms in Slovenia.

Crime rates of drug-related offences on state (macro) level

The fundamental legal basis for the police and courts to implement repressive action against illicit drugs is set out in the Criminal Code of the Republic of Slovenia and in the Production of and Trade in Illicit Drugs Act. The Criminal

Code specifies two criminal offences involving illicit drugs, i.e. Article 186 prohibits and sanctions unlawful manufacture of and trade in illicit drugs and Article 187 incriminates enabling consumption of narcotic drugs. Article 33 of the Production of and Trade in Illicit Drugs Act sets out a penalty for possessing small quantities of illicit drugs (single dose) for personal use.

Police

The tasks performed by uniformed police, criminal police and other specialised police units also include work in the field of illicit drugs. They are the first link in the chain of justice who deal with drug-related offences and, for this reason, they have a very important role in the whole process.

Table 1 shows the number of all cases dealt with by the police in the period 2003-2012, and Table 2 presents the number of drug-related cases dealt with by the police.

Table 1
Number of all cases dealt with by the police (2003-2012)
(Source: Police)

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total sum
Offences	76,643	86,568	84,379	90,354	88,197	81,917	87,465	89,489	88,722	91,430	865,164

Table 2
Number of drug-related cases dealt with by the police
(Source: Police)

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total sum
Article 186	775	997	1,026	1,590	1,429	1,434	2,096	1,756	1,505	1,760	14,368
Article 187	271	234	215	204	183	247	235	213	183	180	2,165
Total Offences	1,046	1,231	1,241	1,794	1,612	1,681	2,331	1,969	1,688	1,940	16,533

Courts

As it is known, not all offences dealt with by the police end up in courts.

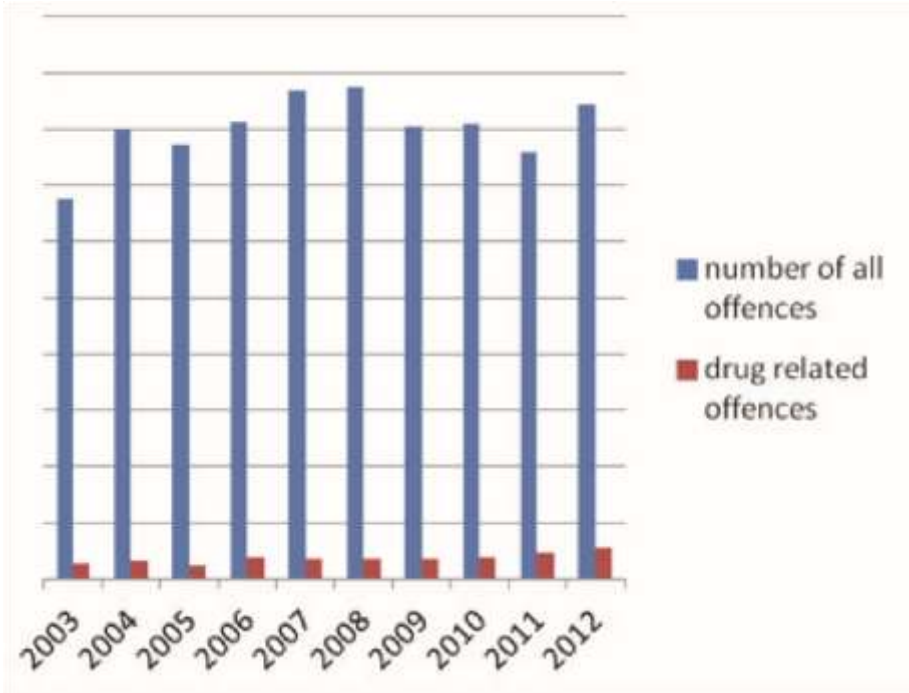
Table 3 and Graph 1 show the relation between all offences and drug-related offences in the period 2003-2012. This number does not include offences that got a conditional sentence. There is no available data on recidivism of offenders who have already served time for drug-related crimes. Graph 2 shows the increased number of sentences for drug-related crime in the period 2003-2012.

Table 3
Relation between all offences and drug-related offences in Slovenia
(2003-2012) (Source: Statistical Office)

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
All offences	6769	7974	7718	8119	8685	8739	8035	8093	7596	8427
Drug-related offences	272	332	250	383	354	342	364	393	470	553
(%)	4.0%	4.2%	3.2%	4.7%	4.1%	3.9%	4.5%	4.9%	6.2%	6.6%

Graph 1

Relation between all offences and drug-related offences in Slovenia (2003-2012)



Graph 2
Total number of offences (2003-2012)

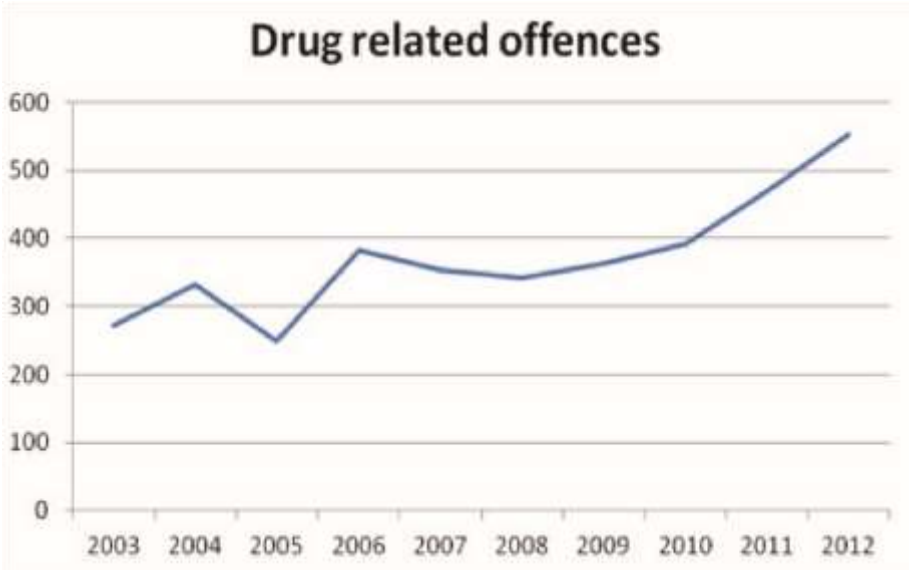


Table 4 presents the penalties imposed by the court on convicts of drug-related offences. We can see that in most of the cases the court sentenced them to a conditional sentence (unfortunately statistical data on conditional sentences for 2003, 2004 and 2005 were not available). The second most common sentence is imprisonment. Others penalties are very rare.

Table 4
Main penalties for drug-related offences
 (Source: Statistical Office)

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Imprisonment	271	331	250	374	353	342	363	391	469	553
Fine	-	-	-	-	-	-	-	-	-	-
Judicial warning	-	-	-	-	-	-	-	-	-	-
Penalty forgiven	-	-	-	-	-	-	1	-	-	-
Custodial measures	-	1	-	-	-	-	-	2	-	-
Security measures	1	-	-	9	1	-	-	-	1	-
Conditional sentence	missing	missing	missing	482	472	488	556	530	634	696

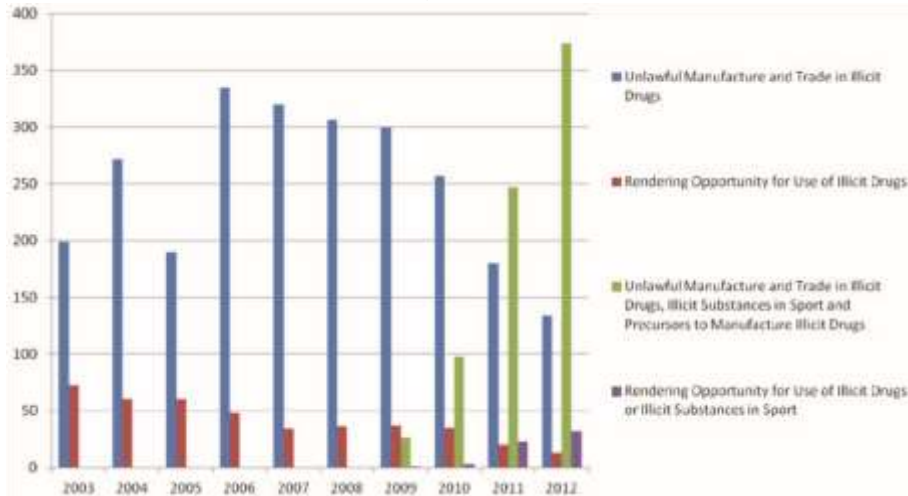
Table 5 and Graph 3 present the prevalence of each drug-related offence for every year from 2003 to 2012. The increase in *Unlawful Manufacture of and Trade in Illicit Drugs, Illicit Substance in Sport and Precursors to Manufacture Illicit Drugs* and *Enabling the Use of Illicit Drugs or Illicit Substances in Sport* can be explained by the adoption of a new criminal law on November 1st, 2008, which prescribed these two new amended forms of criminal offences. Earlier the criminal law prescribed *Unlawful Manufacture of and Trade in Illicit Drugs and Enabling the Use of Illicit Drugs*. As a final court decision usually takes a long time, after the adoption of the new law the courts had to apply the old one on old cases if it was milder for the offender. Thus, Table 5 and Graph 3 apparently present four offences, in essence however the offences are two.

Table 5
Prevalence of drug-related offences
(2003-2012) (Source: Statistical Office)

Type of offence	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Unlawful Manufacture of and Trade in Illicit Drugs	199	272	190	335	320	306	300	257	180	134
Enabling the Use of Illicit Drugs	73	60	60	48	34	36	37	35	20	13
Unlawful Manufacture of and Trade in Illicit Drugs, Illicit Substances in Sport and Precursors to Manufacture Illicit Drugs	-	-	-	-	-	-	26	98	247	374
Enabling the Use of Illicit Drugs or Illicit Substances in Sport	-	-	-	-	-	-	1	3	23	32

Graph 3

Prevalence of each drug-related offence (2003-2012)



The number of recorded criminal offences involving illicit drugs in 2012 is about the same as the one for the years 2011 and 2010, which means that the situation in this field has not deteriorated in Slovenia. Also, the number of people suspected of committing drug-related criminal offences did not change significantly compared to 2011. However, the number of drug-related minor offences as well as the number of drug offenders decreased slightly in 2012. Nonetheless, compared to older data (2003) it is clear that there was an increase in drug-related criminality.

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

The sources of our research sample are drug-related case files from Ljubljana County court. All offences that violate Articles 186 and 187 are punishable with imprisonment of more than three years; therefore, the county courts deal with drug-related crimes. There are no specialised courts in Slovenia dealing with drug-related felonies. We analysed 52 final court decisions during the period from 23th January to 20th February 2014.

There were only 2 final court decisions about *Enabling the Use of Illicit Drugs or Illicit Substances in Sport (Article 187)*. In the remaining 50 cases the offenders were sentenced for *Unlawful Manufacture of and Trade in Illicit Drugs, Illicit Substances in Sport and Precursors to Manufacture Illicit Drugs (Article 186)*.

Based on our research sample, there is no difference in sentencing practice in respect of non-suspended and suspended sentences. In most cases, the circumstance that affected the court's decision was the defendant's criminal record. If s/he didn't have any, s/he got a conditional sentence (of course, depending on the severity of the crime and the sanction provided by law). If the defendant had a prior conviction, especially for offences of the same category, s/he got imprisonment. Thus, in similar cases the judges made similar decisions.

During the research we realised that the prescribed legal frameworks are not too low. The judges do not use harsh penalties for drug-related offences. In most cases the sanction imposed was the prescribed minimum. Only in cases of large amounts of drugs and if felonies were committed within a criminal organisation, or if the offender organised a network of drug resellers or drug agents, were the penalties harsher.

The grounds for mitigation are based on the Penal Code. Article 50 stipulates the exact conditions under which the sentence can be reduced and Article 51 the limits of reduction of the sentence.

Article 50 (Reduction of Sentence):

The court may fix the sentence of the perpetrator within the limits of statutory terms or may apply a less severe type of sentence under the following conditions:

- If the possibility of a reduced sentence for the perpetrator is provided for by statute;
- If the court ascertains that special mitigating circumstances are present, which justify the imposition of a reduced sentence.

Article 51 (Limits of the Reduction of Sentence):

When the conditions for the reduction of a sentence, as outlined in the preceding Article, are met, the sentence shall be reduced within the following limits:

- 1) If a prison sentence for a term of fifteen years is prescribed as the lowest limit for a specific offence, such a limit may be lowered by up to ten years of imprisonment;

- 2) If a prison sentence for a term of three or more years is prescribed as the lowest limit for a specific offence, such a limit may be lowered by up to one year of imprisonment;
- 3) If a prison sentence for a term of one year is prescribed as the lowest limit for a specific offence, such a limit may be lowered by up to three months of imprisonment;
- 4) If a prison sentence for a term of less than one year is prescribed as the lowest limit for a specific offence, such a limit may be lowered by up to fifteen days of imprisonment;
- 5) If a prison sentence is prescribed as the lowest limit without the statutory terms being determined, a fine may be imposed in lieu of the prison sentence;
- 6) If a fine is imposed as the principal sentence, it may be reduced by up to fifteen daily amounts.

The Criminal Code provisions on mitigation of punishment were applied in 40 cases (76.9% of all files). Special mitigating circumstances were present in 3 cases. In 25 cases the mitigating circumstance was that the offender had no criminal record. Confession of guilt was the mitigating circumstance in 13 cases. In 12 cases the mitigating circumstance was that the object of the offence was a small amount of drugs. In 11 cases the mitigating circumstance was the organised personality. Other mitigating circumstances included the age of the offender (in 3 cases) and in 2 cases his behaviour after committing the crime (the offender stopped using drugs).

As already mentioned, in November 2011 the National Assembly of the Republic of Slovenia adopted an amendment to the Penal Code which provides that facilitating illicit drug use is not punishable if it is in the context of a lawful drug addiction treatment or controlled drug use programme, approved and implemented within the framework or under the supervision of public health authorities.

The files in our research sample did not include this kind of offence.

Individualisation of imposed sanctions

The court has the right to conduct independent decision-making, taking into account all the evidence, the offender's personal characteristics, the

aggravating and mitigating circumstances and any other factors that may affect the judicial decision.

The judges have many options to individualise sanction for drug offenders. The Penal Code gives them plenty of room for sentencing offenders. The penalty is individualised in respect of the circumstances in which the crime was committed and the offender's personal situation. The judges have to apply the mitigating and aggravating circumstances in determining the sentence or imposing a conditional sentence.

The most commonly used aggravating circumstance was that the offender had a criminal record (in 12 cases), the seriousness of the offence (in 4 cases), and large amounts of drugs as the object of the offence (in 6 cases).

The mitigating and aggravating circumstances

As already mentioned, the judges applied mitigating circumstances in 40 cases (76.9%). The main circumstances for mitigation were: no criminal record, confession of guilt, abstinence from drug use, and small amount of drugs as the object of the offence.

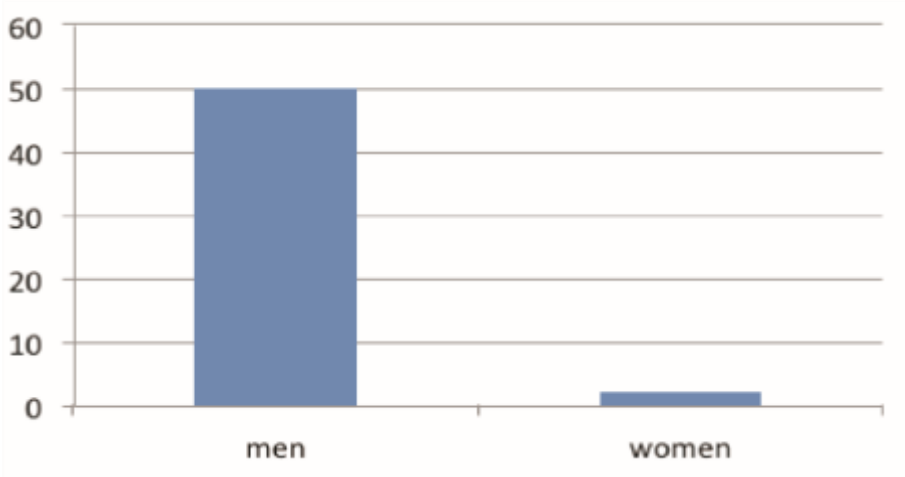
The judges applied aggravating circumstances in 21 cases (40.4%). The most commonly used aggravating circumstances were: the offender's criminal record, prior conviction of drug-related offences, the seriousness of the offence, and large amount of drugs as the object of the offence.

Information about the perpetrators

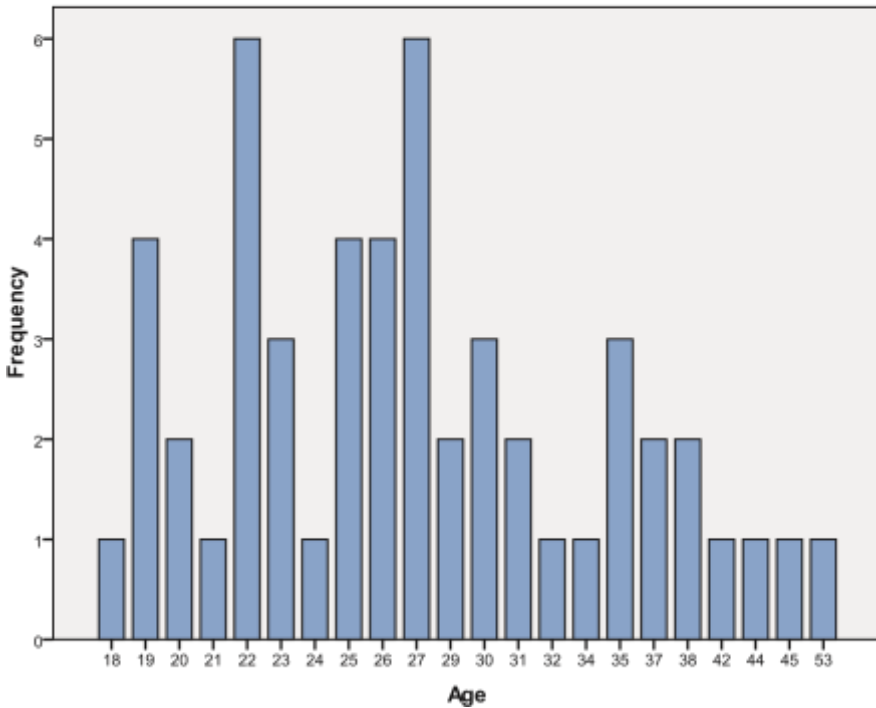
The research sample included 52 court cases. Only in 2 cases were the offenders female (Graph 4).

The average age of the perpetrators was 28.1 years. The youngest perpetrator was 18 years old and the oldest 53 (Graph 5).

Graph 4 Sex of the offender

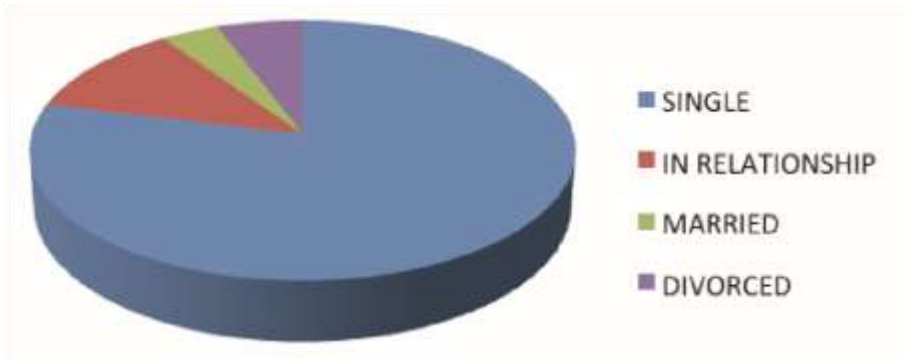


Graph 5
Age of the offender



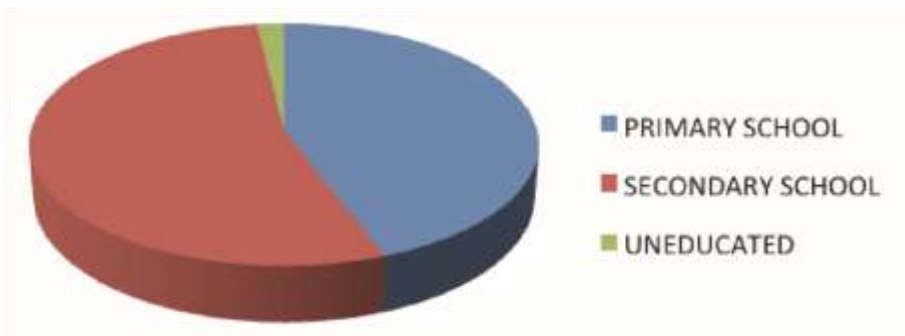
The family status of 41 offenders was single, in 6 cases the offender was in relationship, 2 offenders were married and 3 were divorced (Graph 6).

Graph 6
Family status of the offenders



The offenders' educational level is very low (Graph 7): 23 of them (44.2%) only finished primary school, 28 offenders (53.8%) had secondary education and one of them did not have any education.

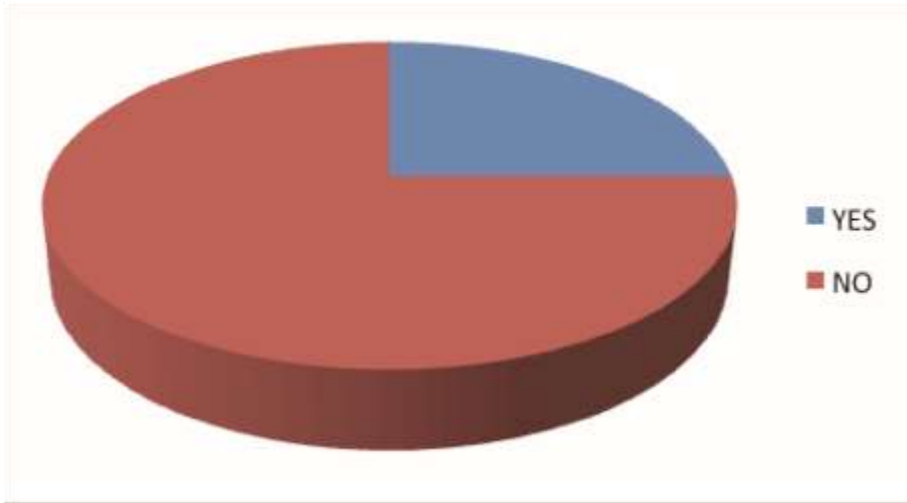
Graph 7
Education of the offenders



The health condition of 41 offenders was good. Two offenders had Hepatitis C, three had mental health problems (psychosis, schizophrenia, manic depression, bipolar disorder), one had a problem with headaches, one had tuberculous meningitis, one had a heart attack, one did not have a spleen, one had dermatological problems and one had an ischaemic stroke (cerebral infarction).

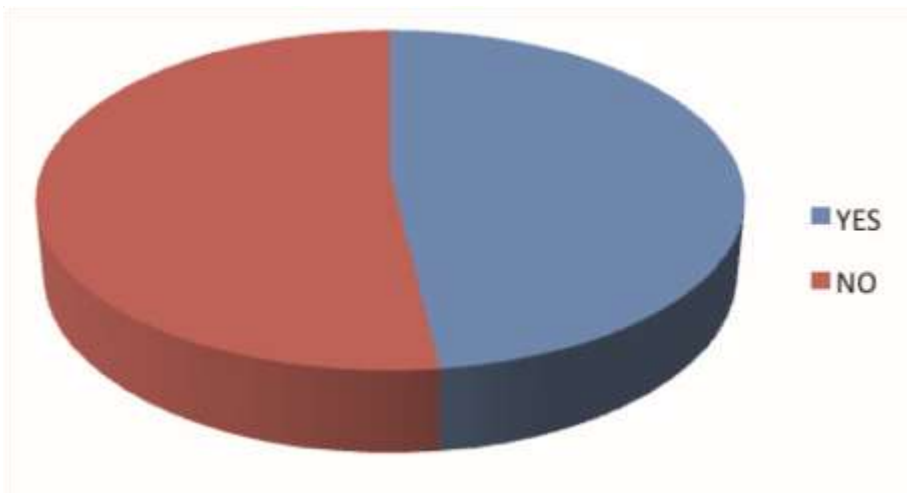
Only 25% of the offenders (13 of them) were employed, and 39 offenders were unemployed (Graph 8).

Graph 8 Is the offender employed?



25 offenders (48.1) had a prior conviction, 9 of them for the same kind of offence (Graph 9).

**Graph 9
Prior conviction**



The proportion of drug-addicted offenders in our research was 78.8% (41 offenders), while 21.2% (11 offenders) were not drug users (Graph 10).

The circumstances surrounding drug addiction did influence the judge's decision about the type and range of sanction. The offender's decision to stop using drugs during the criminal proceedings was a mitigating circumstance.

Graph 10
Offender is a drug user

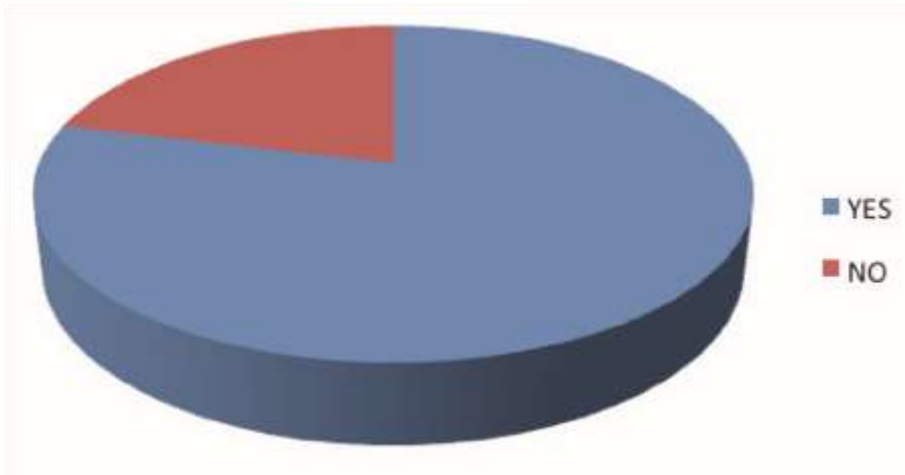


Table 6
Main penalties for drug-related offences in our research

	Imprisonment	Fine	Judicial warning	Penalty forgiven	Custodial measures	Safety measures	Conditional sentence
Number of files	9	/	/	1	/	2	40

Only in 8 cases did the offenders lodge an appeal to a higher court. In 5 cases the judgment at second instance was the same as the judgment at first instance, in two cases the high court imposed a lower sentence than the County Court, and in one case the appeal was rejected.

Although the law seems strict (e.g.: the police seized two cannabis plants and the offender was accused of Unlawful Manufacture of and Trade in Illicit Drugs), the courts try to interpret the law flexibly in accordance with the circumstances of each case.

Proposals for future amendments of legislative drug policy and court sentencing practice

Solutions should be sought that would allow judges to focus on big drug-related cases, instead of being overloaded with a large number of cases that could have been solved with an appropriate legislative policy. The main problem is that, according to statistics and researches, the courts are overloaded with cases of drug possession for personal use. Either the prosecutors should act as gatekeepers or systemic solutions should be proposed to minimise the number of cases coming to courts, especially cases involving small amounts of drugs. On the other hand, prisons are also full and not enough resources are available to cater for the prison population and address problems with drugs in prisons. As a result, in times of crises, states seek ways to ensure more funding for courts and prisons. Public-private partnerships and other solutions are proposed, experience suggests, however, that the results are scant.

The Slovenian legislation has no provisions concerning the impact of drug dependence on the sanctions. The court has the right to conduct independent decision-making, taking into account all the evidence, the offender's personal characteristics, the aggravating and mitigating circumstances and any other factors that may affect the judicial decision. The offender's drug dependence may or may not be considered as a mitigating factor; however, it may especially influence the court's decision to order the offender's alcohol or drug dependence treatment in an appropriate medical facility. The offender's drug dependence should be treated as mitigating circumstance in any case.

The law does not distinguish between small and big drug dealers. The only distinction which refers to the "type" of dealer is between those involved in organised criminal groups and those who are not. For those involved in an organised criminal group a higher penalty is prescribed.

In most cases in our research sample, the offences committed and the offenders prosecuted involved a small amount of drugs. This leads to an overburdened judicial system, especially County Courts that have jurisdiction over criminal

offences under Articles 186 and 187 of the Criminal Code. The law does not specify which quantity of illicit drugs is considered to be small. The Production of and Trade in Illicit Drugs Act does not lay down limits in respect of the minimum permissible quantity of illicit drugs in possession nor does it specify the quantity of drugs for personal use. It is at the discretion of the police and the court to decide in a particular situation how much the 'small quantity' of illicit drugs is. This means that prosecutors and judges have the discretion to bring charges of either misdemeanour or felony. It is necessary to amend the legislation related to the amount of drugs. The legislative drug policy must specify the small, medium and large amounts of drugs. Offenders prosecuted for small amounts of drugs could be tried at District Courts and not at County Courts.

The option of determining non-violent, minor drug offences as misdemeanours rather than felonies would provide more flexibility to avoid sentencing people to long prison terms when what they really need is drug treatment.

It would be necessary to introduce legislation in order to help more people convicted of a minor drug offence. Non-violent drug offenders should be diverted to treatment. This would reduce the number of people sent to Slovenian prisons, which are already overcrowded, without altering any penalties for distribution or manufacturing of an illicit substance. Minor laws would also remain unchanged.

The goal is to stop labelling people as felons, filling up our prisons and ruining their lives in the process, for possessing a small amount of an illicit substance.

Turning an eye to the future, the legislative measures should focus on the new emerging drugs and on regulation of the grey market of medicines, which will cause problems in court proceedings. The drug policy should be futureoriented, so we ought to look for answers in risk analyses of the drug markets. On the other hand, we should look for alternatives to sentencing, since the system we have is too expensive for society.

If we want to solve our nation's drug problems, we need to focus less on obtaining convictions and more on preventing addictions. We should be treating people with addictions, not handcuffing them.

References

1. National Crime Prevention and Crime Control Strategy, Official Gazette RS, No 83/2012, (ReNPPZK12-16), accessed on February 17th, 2014, at <https://www.uradni-list.si/1/content?id=110390>.
2. National Youth Programme for 2013–2022, more information on the official website of the Ministry of Education, Science and Sport, accessed on February 20th, 2014, at http://www.ursm.gov.si/nc/si/medijsko_sredisce/novica/article/10404/5544/.
3. Police. Official police statistics for Slovenia (2003-2012). Accessed on January 22nd, 2014, at <http://www.policija.si/index.php/statistika/letna-poroila?lang=>.
4. Resolution on the National Social Assistance Programme for 2013–2020 (ReNPSV13–20), (Official Gazette, No 39/2013), accessed on February 17th, 2014, at <https://www.uradni-list.si/1/content?id=113130>.
5. Slovenia: New Developments and Trends, 2013 National Report (2012 data) to the EMCCDA, accessed on February 20th, 2014, at <http://www.ivz.si/>.
6. Statistical Office of the Republic of Slovenia (2003-2012). Accessed in December 2013, at http://pxweb.stat.si/pxweb/Database/Dem_soc/Dem_soc.asp.
7. The Act on Precursors for Illicit Drugs (ZPSPD-UPB1), (Official Gazette RS, No 110/2003), accessed on February 20th, 2014, at <http://www.uradni-list.si/1/content?id=46004>.
8. The Act Regulating the Prevention of the Use of Illicit Drugs and the Treatment of Drug Users (ZPUPD), (Official Gazette RS, No 98/99), accessed on February 20th, 2014, at <https://www.uradni-list.si/1/content?id=22994>.
9. The Production of and Trade in Illicit Drugs Act, (ZPPPD), (Official Gazette RS, Nos 108/99, 44/00, 2/04 – ZZdrI-A, and 47/04 – ZdZPZ), accessed on February 20th, 2014, at <https://www.uradni-list.si/1/content?id=23256>.
10. The Penal Code [KZ-1B]. (2011). Official Gazette RS, No 91/2011. Accessed on February 17th, 2014, at <http://www.uradni-list.si/1/objava.jsp?urlurid=20082296>.

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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