

Drug Policy and Drug Legislation in South East Europe

Croatia



NOMIKI BIBLIOTHIKI

Country Report Croatia

Preface

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

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

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

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

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

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

Bojan Dobovsek Ph. D.

Introduction

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

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

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1. The countries of South East Europe participating in this project are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Greece, Montenegro, Romania, Serbia, Slovenia.
 2. The following organisations participate in the Drug Policy Network in SEE: Aksion Plus, Albania; NGO Victorija, Banja Luka, Bosnia Herzegovina; Association Margina, Bosnia and Herzegovina; Initiative for Health Foundation (IHF), Bulgaria; Udruga Terra Association, Croatia; Healthy Options Project Skopje (HOPS), Former Yugoslav Republic of Macedonia; Association DIOGENIS, Drug Policy Dialogue in SEE, Greece; Kentro Zois, Greece; Positive Voice, Greece Juventas, Montenegro; Romanian Harm Reduction Network (RHRN), Romania; NGO Veza, Serbia; Association Prevent, Novi Sad, Serbia; The “South Eastern European and Adriatic Addiction Network” (SEEAN), Slovenia; Harm Reduction Association, Slovenia.
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The volume contains separate reports per country which describe the current National Strategy on Drugs, the national substantive criminal law, the national drug laws and institutions, Drug law enforcement in practice, sentencing levels and the prison situation, initiatives for drug law reform undertaken by the government and/or parliament in recent years and proposals and recommendations for further research and advocacy work.

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

Discrepancy between strategies and practice

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

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

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

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

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

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

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

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

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

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

Social re-integration programmes almost absent

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

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

Support for alternative measures to incarceration, reservations to decriminalization

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

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

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

Unbalanced Spending of Financial resources

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

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

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

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

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Country Report Croatia

by Dalida Rittossa¹

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

1. National Strategy on Drugs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. National Substantive Criminal Law

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

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

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

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

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

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

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

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

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

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

21. Art. 8 of the 1997 Criminal Code.

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

23. Art. 64 of the 1997 Criminal Code.

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

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

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

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

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

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

27. Art. 57 of the 2011 Criminal Code.

28. Art. 79 of the 2011 Criminal Code.

29. Art. 65 of the 2011 Criminal Code.

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

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

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

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

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

33. Art. 67 of the 1997 Criminal Code.

34. Art. 69 of the 1997 Criminal Code.

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

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

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

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

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

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

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

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

37. Art. 56 of the 2011 Criminal Code.

38. Art. 64 of the 2011 Criminal Code.

39. Art. 57 of the 2011 Criminal Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49. Art. 55 of the 1997 Criminal Code.

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

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

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

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

3. National Drug Laws and Institutions

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

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

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

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

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

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

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

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

53. Art. 173 of the 1997 Criminal Code.

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

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

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

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

Table 1

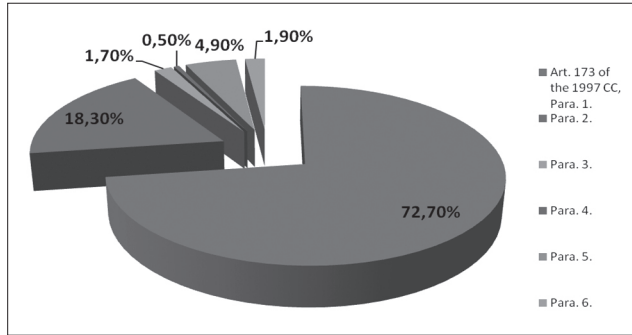
Number of cases prosecuted for the abuse of narcotic drugs in Croatia in the period in which the 1997 Criminal Code has been in force⁵⁸

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

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

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

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



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

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

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

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

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

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

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

63. Art. 56 of the 1997 Criminal Code.

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

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

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

65. Art. 40 of the 1997 Criminal Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

72. Art. 173 of the 1997 Criminal Code.

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

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

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

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

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

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

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

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

73. Art. 190 of the 2011 Criminal Code.

74. Art. 191 of the 2011 Criminal Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The **principle of universal jurisdiction** applies to drug related offences committed by an alien outside the territory of the Republic of Croatia, if, under the law in force in the place of the crime, a punishment of five years of imprisonment or a more severe penalty may be applied.⁸⁹

If a **prior conviction** was issued for the same offense in another country, the principle of universality cannot be applied. A prior conviction also has an effect in cases in which criminal legislation of the Republic of Croatia is applied according to the principle of territoriality. When the offender, who had committed a drug related offense within the territory of the Republic of Croatia or aboard its vessel or aircraft, was sentenced for it in another country, criminal proceedings in Croatia may be instituted only upon approval of the Public Prosecutor of the Republic of Croatia.⁹⁰ If the perpetrator is an alien, criminal proceedings may, under conditions of reciprocity, be ceded to the foreign state.⁹¹ Moreover, the prosecution according to the principle of active and passive legality cannot be instigated when the offender has served in full the sentence imposed on him in a foreign state.⁹² In the cases of the application of the criminal legislation of the Republic of Croatia, when the perpetrator has been deprived of his liberty in a foreign state due to a drug related offense, the time spent in pre-trial detention or imprisonment, or any other deprivation of liberty, has to be

88. Cvjetko, B., *Criminal Legislation and Criminal Legal Reaction on Criminal Offence of the Abuse of Narcotic Drugs in the Republic of Croatia*, op. cit., pp. 915-916.

89. Art. 14, para. 4 of the 1997 Criminal Code; Art. 17, para. 1 of the 2011 Criminal Code.

90. Art. 15, para. 1 of the 1997 Criminal Code. The identical provision exists in the 2011 Criminal Code (art. 12, para 1.).

91. Art. 15, para. 2 of the 1997 Criminal Code.

92. Art. 16, para. 1 of the 1997 Criminal Code. The solution accepted in the 2011 Criminal Code is more precise. Criminal prosecution shall not be commenced in Croatia if the punishment has been executed in full, or is in the process of execution or cannot longer be executed according to the law of the country of its execution (art. 18, para. 1 of the 2011 Criminal Code).

included in the sentence pronounced by the domestic court for the same criminal offense, and if the sentences are not of the same type, the inclusion shall be made in accordance with an equitable assessment of the court.⁹³

4. Drug Law Enforcement in Practice

There are no official data which would reveal police practices towards drug users. No research has been done on this issue. However, at the court's hearings, the accused sometimes complain about police actions during investigation.

Both of the Criminal Codes, the one enacted in 1997 and the other in 2011, criminalise the cultivation of plants from which drugs can be extracted. According to court practice and police reports offenders mostly plant cannabis. In most cases cultivators are juveniles or young persons who cultivate cannabis for their personal use and for their friends, or if they are experimenting with drugs, out of curiosity.⁹⁴ Due to that fact, the 2011 Criminal Code has a new provision according to which production of drugs and substances prohibited in sports without intent to put them in circulation is a more lenient offense than distribution of drugs (*see* 3.6.). Except for young cultivators, court practice reveals a significant percentage of adult offenders who cultivate cannabis in rural areas for monetary gain or some other purposes. In one County Court in a case in Rijeka, the offender, while presenting his defence in front of the court, stated that he was cultivating the cannabis for medical purposes trying to improve his and his wife's medical conditions.⁹⁵ In quite a number of cases, offenders defended themselves by invoking the institute of mistake of the fact. According to their testimony, they did not know that the plant they were growing was a drug. Their only intention was to grow seeds which would be used for feeding birds.⁹⁶ Croatian courts highly exceptionally accept the offender's mistake of fact defence and render a judgment of acquittal.⁹⁷ Therefore, it is no surprise that in the last twenty years criminal drug offenders who stated in their appeal, submitted to the Supreme Court of the Republic of Croatia, that they had not known that cannabis is a drug were pronounced guilty and convicted.

93. Art. 17 of the 1997 Criminal Code. Art. 19 of the 2011 Criminal Code.

94. Comparative researches show that the predominant cannabis users are 15 - 24 years old. Hyshka, E., Erickson, P. G., Hathaway, A.: *The Time for Marijuana Decriminalization Has Come Again ... and Again*, Criminal Law Bulletin, 2011, vol. 47, no. 2, p. 262.

95. The County Court in Rijeka, K-75/1999, 27th of June, 2000.

96. The Supreme Court of the Republic of Croatia, I Kž 236/1998-3 15th of December 1998; The Supreme Court of the Republic of Croatia, I Kž 146/2004-3, 17th of November, 2004.

97. Rittossa, D.: *Pojam zablude u Kaznenom pravu / Notion of Mistakes in the Criminal Law*, University of Zagreb, Faculty of Law doctoral thesis, Zagreb, 2012, pp. 193-194.

Pre-trial detention of drug offenders, as well as any other offenders, can be ordered under the strict conditions prescribed by the Criminal Procedure Code. A public prosecutor issues a pre-trial order against the accused person when he has a reasonable suspicion that the accused committed an offence subject to public prosecution and when there is one of the conditions for investigatory prison and the public prosecutor believes that detention is necessary to establish the offender's identity, check his alibi and collect information on evidence.⁹⁸ The pre-trial detention described in this way cannot be replaced by any other measure. On the other hand, the replacement by more lenient measures is possible for the investigatory prison which resembles the classic pre-trial detention as it is defined in most other countries (*see* the Article 123 of the Criminal Procedural Code and the footnote 73). However, the replacement cannot be made with mandatory/voluntary treatment. The public prosecutor issues compulsory treatment as a measure when he acts implementing the principle of opportunity (*see* 3.2 and 3.3).

The Criminal Procedural Code does not contain rules on how to treat an offender's potential substance dependence during interrogation performed by the police. Nevertheless, there are few rules on an offender's ability to take part in criminal proceedings due to his medical condition. For example, the public prosecutor is obliged to recess the investigation by a ruling if the defendant is not able to take part in the proceedings due to health problems. When obstacles (for example offender's addiction crisis) leading to recess cease to exist, the investigation will continue.⁹⁹ If suspicion arises that the defendant has committed a criminal offence due to his addiction to alcohol or drugs or that the defendant is unfit to stand trial due to such addiction, the expert witness testimony on the basis of the psychiatric examination of the defendant shall be ordered. By a court ruling, the defendant may be committed to a relevant medical institution by force if it is in the opinion of the expert witness necessary for the purpose of the expert witness testimony to conclude whether the defendant is fit

98. Art. 123, para 1, of the 2011 Criminal Procedural Code: If there exists reasonable suspicion that a person committed an offence, investigatory prison against this person may be ordered:

- 1) if there are special circumstances indicating a danger of flight (the person is in hiding, his identity cannot be established, etc.);
- 2) if there are special circumstances indicating that he shall destroy, hide, change or forge items of evidence and traces of importance for criminal proceedings or that he shall impede the investigation by influencing witnesses, co-principals or accessories after the fact;
- 3) if special circumstances support the concern that he shall repeat the offence, or complete the attempted one, or perpetrate the offence punishable with imprisonment not less than five years he threatens to commit;
- 4) if this is necessary not to obstruct criminal proceedings due to the particularly grave circumstances of the offence punishable by long-term imprisonment.

99. Art. 223, para 1 and 7 of the 2011 Criminal Procedural Code.

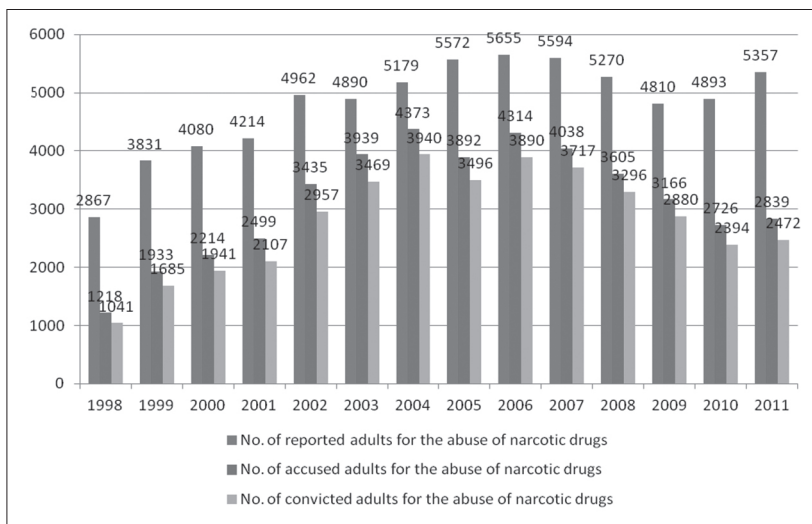
to stand trial. Before the charges are confirmed, the ruling on the commitment is rendered by the investigating judge, whereas after the charges have been confirmed, it shall be rendered by the court conducting the trial. The commitment cannot exceed the period of one month. In the case that a new expert witness testimony is needed, the commitment may be repeatedly ordered only once.¹⁰⁰

There are no special rules for “police entrapment”, nevertheless, the Criminal Procedural Code regulates special investigatory measures conducted by the undercover investigators who may be interrogated as witnesses about the course of the implementation of the measures. The undercover investigators act to investigate, under conditions prescribed by the law, heavier criminal offences enumerated under the Article 334 of the Criminal Procedural Code. The drug abuse of narcotic drugs is enlisted as well as criminal offenses committed by a group or criminal organization.¹⁰¹

The Central Bureau of Statistics collects data on perpetrators of criminal offenses on a regular basis. Data presented in Graph 2 are annually published in Statistical Reports available at the Central Bureau’s official website.

Graph 2

Reported, accused and convicted adult persons for criminal offense of abuse of narcotic drugs in Croatia in the period of 1998-2011¹⁰²

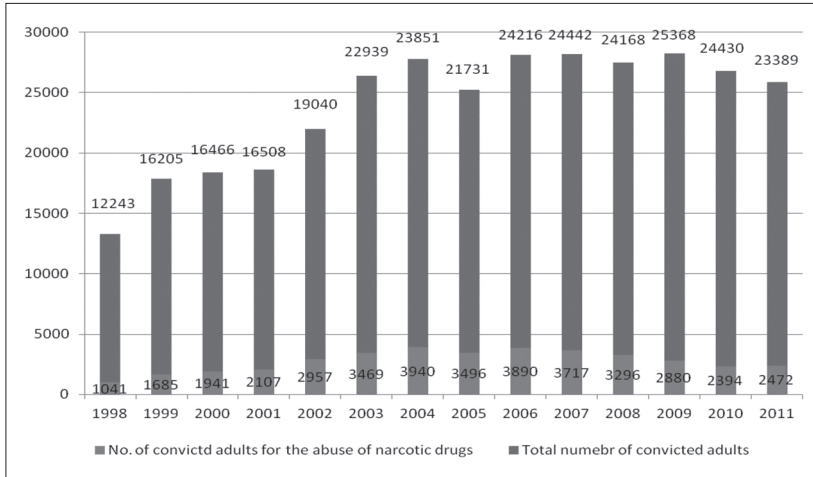


100. Art. 325, para 1 and 2 of the 2011 Criminal Procedural Code.

101. Art. 334 of the 2011 Criminal Procedural Code.

102. Statistical Reports, The Central Bureau of Statistics, <http://www.dzs.hr/default_e.htm> (visited Aug. 20, 2012)

Graph 3
Proportion of drug abuse offences within the total number of criminal offences in Croatia in the period of 1998-2011¹⁰³



5. Sentencing Levels and the Prison Situation

In 2011 there were 18,088 persons deprived of their liberty in one of the penal institutions in Croatia. The basis for liberty deprivation varied: imprisonment due to a final judgment delivered by a criminal court, imprisonment due to a final judgment delivered by a misdemeanour court, substitution of a fine by imprisonment, detention, provisional confinement, deprivation of liberty in educational institutions for juvenile offenders. The prison population rate has been stable during the past years. For example, there were 413 prisoners per 100.000 inhabitants in 2007, 409 in 2008, 420 in 2009, 419 in 2010 and 422 in 2011.¹⁰⁴

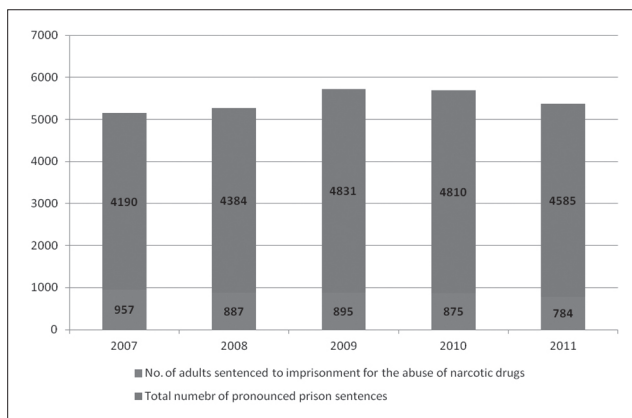
Within the Croatian penal system 14 prisons are organised (Bjelovar, Dubrovnik, Gospic, Karlovac, Osijek, Pozega, Pula, Rijeka, Sisak, Split, Sibenik, Varazdin, Zadar, Zagreb), 6 penitentiaries (Glina, Lepoglava, Lipovica-Popovaca, Pozega, Turpolje, Valtura), 1 prison hospital (Zagreb) and 2 educational institutions for juvenile offenders (Pozega, Turopolje).

103. Statistical Reports, The Central Bureau of Statistics, *op. cit.*

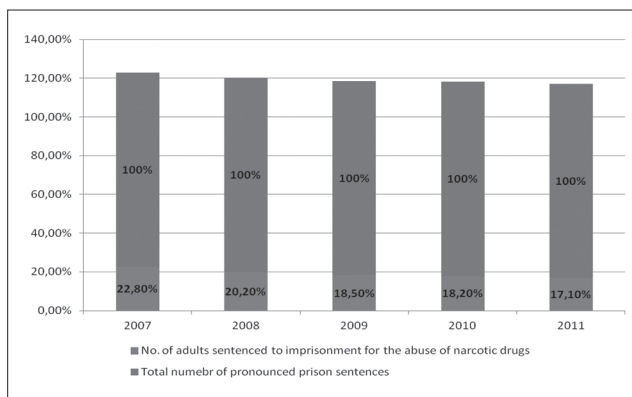
104. The Report on Situation and Work Carried on in Prisons, Penitentiaries and Educational Institutions in Croatia for the period 2007-2011, <<http://www.mprh.hr/Default.aspx?sec=288>> (visited Dec. 28, 2012)

Graph 3

Proportion of adult offenders sentenced to imprisonment for abuse of narcotic drugs within the total number of prison sentences pronounced in Croatia in the period of 2007-2011¹⁰⁵

**Graph 4**

Percentage of prison sentence for abuse of narcotic drugs within the total number of prison sentences in Croatia in the period of 2007-2011¹⁰⁶



Trafficking in drugs as an offence violating the international criminal law has not been proscribed by the Criminal Code. There was no need to criminalise it separately due to the fact that actions of drug abuse from the Article 173 also cover

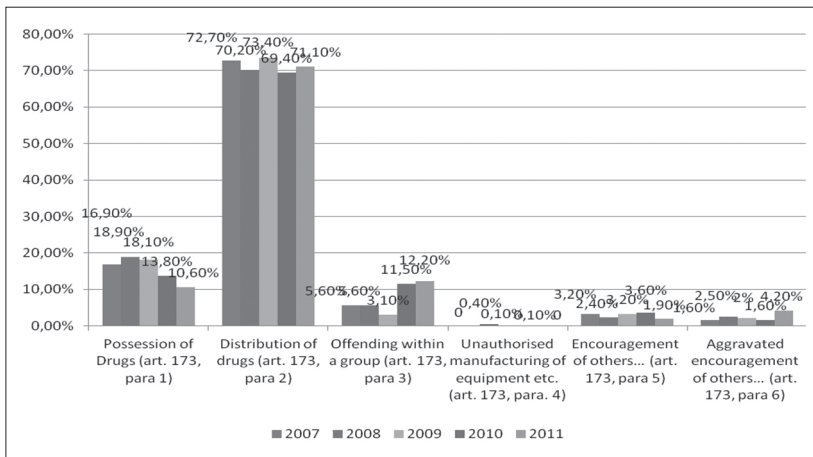
105. Statistical Reports, The Central Bureau of Statistics, *op. cit.*

106. Statistical Reports, The Central Bureau of Statistics, *op. cit.*

drug trafficking.¹⁰⁷ If the criminal offence is committed by a group or criminal organisation, it may constitute the offence from Article 173, para. 3. In other cases this circumstance can be taken into consideration when deciding upon the type and range of punishment.

Graph 5

Proportion of adult drug abuse offenders sentenced to prison according to the type of drug abuse in Croatia in the period of 2007-2011¹⁰⁸



A problem of overcrowded prisons does exist in Croatia.¹⁰⁹ The phenomenon has been partially caused by use of prisons to suppress criminal behaviour. The ratio for this policy is the belief that prolonged incarceration can have a deterrent effect on future reoffending, and therefore that it increases public safety.¹¹⁰ Lately, some measures have been taken by the government to ease the situation. However, the penitentiary system is still struggling with it. The Law on the Execution of Prison Sentence imposes standards for prisoners' accommodation. According to the Law,

107. Turković, K., *Kaznena djela protiv vrijednosti zaštićenih međunarodnim pravom / Criminal Offenses against Values Protected by International Law*, published in: Novoselec, P. (ed.), *Posebni dio kaznenog prava / A Special Part of the Criminal Law*, University of Zagreb, Zagreb, 2007, p. 127.

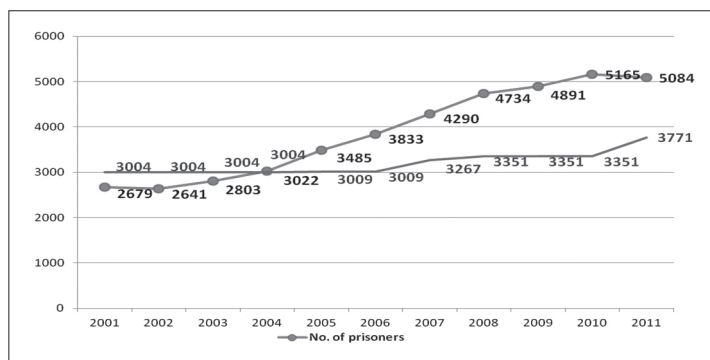
108. Statistical Reports, The Central Bureau of Statistics, *op. cit.*

109. An insufficient accommodation due to prison overcrowding and inadequate health care within prisons are the main problems burdening the Croatian penal system. Sušić, E.: *Strategija organizacije zdravstvene zaštite zatvorenika / Strategy for Organisn Healthcare for Prisoners*, Croatian Annual of Criminal Law and Practice, vol. 16, no. 1, 2009, p. 101.

110. Oleson, J. C.: *The Punitive Coma*, California Law Review, vol. 90, 2002, p. 849.

each prisoner has to have 4 square meters and 10 cubic meters of space for himself.¹¹¹ In 2011, the penal institutions in Croatia could accommodate 3771 inmates, however, there were 5084 of them housed within the prison walls. In the last ten years the accommodative capacity has been around 3000 prisoners. The quota was exceeded in 2004 leading to the general trend for prison overcrowding.

Graph 6
Capacity of Croatian prisons and actual number of inmates
in the period of 2001-2011¹¹²



In 2011 there were 3033 drug addicted persons deprived of liberty within the prison system in Croatia (16.8% of all imprisoned persons, regardless of their legal status of imprisonment). Among 8038 prisoners who were serving their prison sentence pronounced in the criminal proceedings, 25% of them were drug addicted. To follow up prisoners' progress regarding their therapy or measure of compulsory treatment of addiction, prisoners have been regularly tested for drugs in accordance with the Protocol for Testing Inmates and Minors on the Presence of Addiction Substance in Their Body, which was introduced in 2006. Testing is also done when the condemned person enters the prison for the first time (preliminary testing) or the prisoner returns to prison after spending a weekend out of prison or a longer period of time because of his good behaviour or other privileges. In 2011

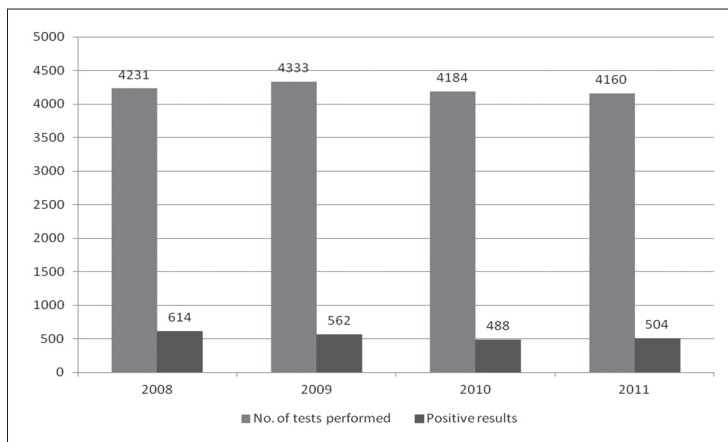
111. Damjanović, I., Butorac, K.: *Politika suzbijanja kriminaliteta: perspektive izvršenja kaznenopravnih sankcija* / The Policy of Fighting Criminal Behaviour: Prospects for the Enforcement of Criminal Law Sanctions, Croatian Annual of Criminal Law and Practice, vol. 13, no. 2, 2006, p. 664.

112. The Report on Situation and Work Carried on in Prisons, Penitentiaries and Educational Institutions in Croatia in 2011, <<http://www.mprh.hr/Default.aspx?sec=288>> (visited Dec. 28, 2011)

prisoners were tested 4160 times and results showed that 504 tests were positive which augments to a 0.5% increase with respect to 2010.¹¹³

Inmates in Croatian prisons have an opportunity to be tested for Hepatitis and HIV. They freely decide whether to be tested maintaining the anonymity. The testing started in 2004 and has been implemented within the “Programme of Anonymous and Free Testing of Prisoners for Hepatitis and HIV” organised and run by the Prison Hospital in Zagreb and the Infections Clinic “Fran Mihaljević”. According to the official data, 3460 prisoners were tested by the end of 2007. Results showed that 22% of prisoners who took testing were found to be positive for Hepatitis B and C and 2 prisoners (0.14%) were HIV positive.¹¹⁴ In 2011, 79 prisoners were tested for Hepatitis B and C and HIV, however, the outcome of test results are not officially published.¹¹⁵

Graph 7
Drug testing in Croatian prisons in 2008-2011¹¹⁶



If the court has found the accused to be guilty and sentenced him to prison and compulsory treatment of addiction, the offender will undergo the treatment while being incarcerated. The treatment can also be carried out within the prison if the

113. The Report on Situation and Work Carried on in Prisons, Penitentiaries and Educational Institutions in Croatia in 2011, *op. cit.*

114. Trautmann, F., Braam, R., Keizer, B., Lap, M., *op. cit.*, p. 101.

115. The Report on Situation and Work Carried on in Prisons, Penitentiaries and Educational Institutions in Croatia in 2011, *op. cit.*

116. The Report on Situation and Work Carried on in Prisons, Penitentiaries and Educational Institutions in Croatia in 2011, *op. cit.*

need for it has been established upon psychosocial diagnostics. Inmates are included in group and individual psychosocial treatment to cure and prevent their addiction and reoffending. They receive training and psychosocial help in the form of individual or group work by an expert treatment staff (including a therapist, psychiatrist, psychologist, social worker, social educator, doctor as well as a professional teacher and prison guard depending on program aims and conditions in prison). Group work is preferred. In most prisons and penitentiaries the Clubs of Treated Addicts have been set up as a therapeutic community method if the prison conditions allow.

Health care services are regularly provided in prison. In Lepoglava, which is a closed-type penal institution, an inmate may sign a therapeutic contract and may be placed in a special prison ward. Similar programs are established in Lipovica-Popovača, Požega and Turopolje, the semi-open penitentiaries, and in Valtura, the penitentiary with an open regime, where prisoners with addiction are treated in so-called “drug-free” wards. Before a prisoner enters into this specific “drug-free regime”, he has to sign a contract and to take an obligation to abstain from drugs. Regular abstinence controls are carried out, counselling assistance is offered, work therapy organised as well as prisoners free time together with other general treatment methods. Except for “drug free treatment”, persons with addiction who serve a prison sentence have a right to be examined by a doctor, right to counselling, psychiatric help, testing for hepatitis and HIV and substitution treatment.

When there is a necessity for detoxification, the prisoner undergoes the opiate agonist treatment. In the past, methadone (heptanon) prevailed as a means of quick detoxification in the prison system. In 2007 methadone was gradually substituted by buprenorphine (subutex, suboxon) which has been used for detoxification of opiate addicts, but also as maintenance therapy ever since. Methadone has been eventually administered to those who serve a short prison sentence, who are in detention or provisional confinement or to those who are in prison due to substitution of fine by imprisonment.¹¹⁷

As a special preventive measure, educational programs concerning drugs are organised for prisoners. Having in mind the significance of treatment and other special programs, the **Special Programmes Department (SPD)**, as a new department was established within the Treatment Service in the Central Office in 2009. The SPD assesses the need to introduce special programs in prisons, develops the new programs, supervises the quality of their implementation and takes measures, for-

117. Methadone therapy was introduced in Croatia in 1991. During the same year three times more persons with heroin addiction applied for treatment in Vinogradska hospital in Zagreb than the year before. Sakoman, S, Pavišić, B., Cvjetko B., *op. cit.*, pp. 278-279.

mulates criteria and priorities for the dissemination of these programs. Although positive steps have been taken with respect to harm reduction services and offenders' treatment within the penal system, previous researches show that there is a need to introduce quality standards, guidelines and examples of good practice for treatment of drug users in prison and to increase human resources and treatment options for drug users in detention.¹¹⁸

The 1997 Criminal Code already prescribes a possibility of diverting drug users from prison into community based treatment. The compulsory treatment of addiction, as a security measure, can be ordered together with a prison sentence, community service and a suspended sentence. If the offender is sentenced to prison, this special measure is carried out within the prison. If the court has chosen to pronounce a non-custodial sanction, the sentenced addict can undergo drug addiction treatment in one of the public health institutions or other specialised institutions for addiction outside the penal system, or, under the conditions prescribed by special regulations, in a therapeutic community if this is sufficient to eliminate the danger of the offender repeating the offence due to his addiction.^{119, 120}

At least on the normative level, a comprehensive strategy for social reintegration of prisoners after serving their sentence does exist. At least three months prior to a prisoner's release, the penitentiary institution has an obligation to include him in individual or group counselling for preparing prisoners for their release. Pursuant to legal norms on probation, upon the request of the execution judge, the Office for Probation prepares acceptance of the prisoner after the execution of his sentence. The prisoner himself has a right to ask for help and support from the execution judge. The execution judge works with social health centres and he is entitled to order the execution of necessary measures to help the prisoner to prepare himself for life in freedom (securing accommodation and food, providing advice to select a residence, helping with family relations, employment and professional education, securing monetary help for essential expenses, providing adequate health treatment etc.).

118. Trautmann, F., Braam, R., Keizer, B., Lap, M., *op. cit.*, p. 40.

119. Art. 76, para 1 and 2 of the 1997 Criminal Code; The same possibility to divert drug offenders from prison into community based treatment is prescribed by the Article 69, paragraph 2 of the 2011 Criminal Code with one small difference. From 1st of January, 2013, the compulsory treatment of addiction, except with already enumerated sanctions, may be also carried out together with a fine.

120. 8 therapeutic communities with 32 therapeutic houses are organised in Croatia offering treatment and psychosocial rehabilitation to drug addicts.

Bearing in mind that drug addiction is a chronic recurring disease and a complex social phenomenon, the National Strategy and the Action Plan contain special provisions on re-inclusion of addicts into society. A complex mechanism for resocialisation has been set, and to put it into motion, **the Drug Addicts Resocialisation Project** was adopted at the session of the Government of the Republic of Croatia held on 19 April 2007. To implement the Resocialisation Project, the Government also **adopted the Protocol of Cooperation and Acting of Competent State Bodies, Institutions and Civil Society Organisations in the Implementation of the Project of Resocialisation of Drug Addicts** on 27 September 2007. According to the Resocialisation Project and complementary Protocol, the OCDA is a coordinator of Project implementation. Except for general inclusive strategies and measures for drug addicts, the Resocialisation Project emphasises special measures to initiate post-penal care for addicted prisoners. The former imprisoned addicts who were in treatment have an opportunity to finish their already started secondary school education at the expense of the Ministry of Science, Education and Sport.¹²¹ Financial means are secured by the Government to co-finance their employment.¹²²

There was a great need to develop the Resocialisation Project due to the fact that prisoners with addiction find it harder to integrate into society being stigmatised not only as addicts, but also as former prisoners. In addition, data collected by the Croatian National Institute of Public Health and the OCDA pointed out a lack of support of state institutions and civil society organisations towards the resocialisation process.¹²³ Regardless of the strategic documents (the National Strategy, Action Plans, Resocialisation Project and Protocol), the recent research has pointed out that significant limitations and omissions in the resocialisation system of addicted prisoners exist in practice. For example, in some regions in Croatia social welfare centres only provide short-term material support (financial support, housing, etc) having no mechanisms to provide longer-term (psycho-social) follow-up support. Probation services for drug users being released from prisons do not

121. In the period 2007-2010, 120 drug addicts have been included in training conducted by social welfare centres and therapeutic communities and financed by the Ministry of Science, Education and Sport. Reports lack information on percentage of educated addicts who were previously imprisoned.

122. The official data shows that from the day of the adoption of the Resocialisation Project up to 31st December, 2010, the Croatian Employment Service conducted professional orientation and working skills evaluation on 231 addicts. 95 treated addicts have been included in educational programmes and 59 of them found employment or used employment incentives. However, there is no information how many of them were previously imprisoned.

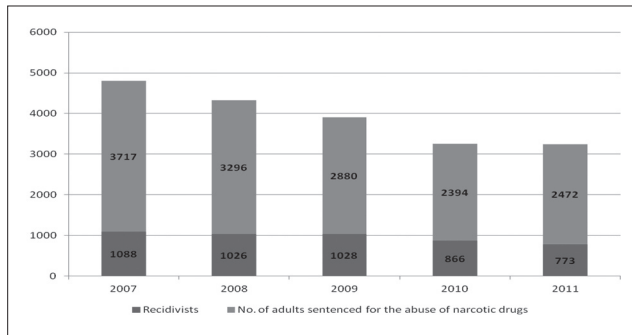
123. Action Plan for the Suppression of Drugs Abuse for the Period of 2009 -2012, op. cit., p. 20.

function well. However, an improvement is expected because plans to improve and strengthen these services have already been made.¹²⁴

The rates on previous conviction are exceptionally high among drug offenders. In 2007 the percentage of recidivists among offenders sentenced for the abuse of narcotic drugs was the lowest (29.20%) within the research period. In following years the proportion of recidivists gradually increased reaching the highest number in 2010 (36.20%). A slight decrease was noted in 2011. According to the official data 31.30% of convicted drug offenders had already been sentenced for a crime by Croatian criminal courts.

Graph 8

Recidivism of adult offenders sentenced to imprisonment for abuse of narcotic drugs in Croatia in the period of 2007-2011¹²⁵



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

A major drug policy issue in Croatia in the last 10 years has been the (de)criminalisation of possession of drugs. General public, drug policy practitioners as well as the scientific community have been engaged in discussions whether possessing drugs should be a criminal offence or not. In 1996 the legislator decided positively imposing a fine or one year imprisonment over a drug possessor who has no intention to sell drugs or put them in circulation.¹²⁶ Although the criminal offence was considered a minor one due to its sanction, it was not unanimously accepted. The

124. Trautmann, F., Braam, R., Keizer, B., Lap, M., *op. cit.*, p. 40.

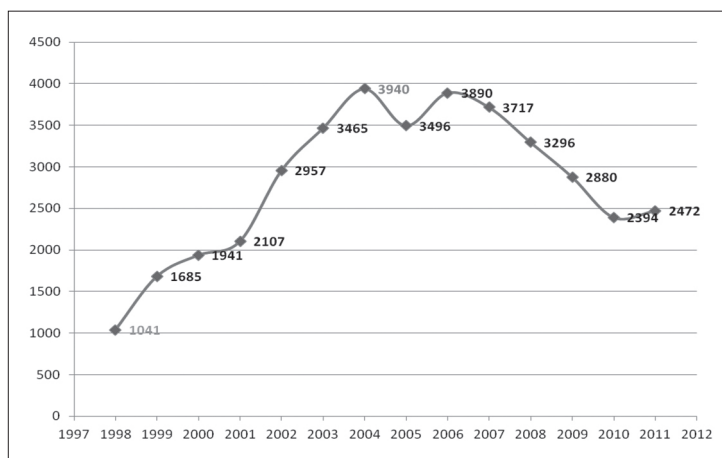
125. Statistical Reports, The Central Bureau of Statistics, *op. cit.*

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

negative effects of such a decision immediately followed. As it can be seen from the Table 1 (p. 15), only three years after the 1996 Basic Criminal Code Amendments introduction, the Croatian criminal courts started to struggle with drug cases overflow. The highest number of drug possession cases was reached in 2004 (3122 cases) which is almost four times higher than in 1998 (784 cases). Due to the fact that drug possession offences are the highest drug related offences, the same growth can be seen in the total number of drug offences.

Graph 9

Total number of drug related offences in Croatia in the period of 1998-2011



The statistical extremity was reached eight years after the criminalisation of possession of drugs probably because, on the one hand, Croatian courts had to adjust to applying the new Criminal Court provisions, and on the other, criminal proceedings do take considerable time until the final court judgment is reached. A negative trend for drug offences in following years was a product of the public prosecutors' decision to apply the principle of opportunity in drug possession cases especially when the criminal action consisted of possessing minor quantities of marijuana. However, even in the last two years the total number of drug offences is extremely high if being compared with statistical data for 1998.

The overload of cases has not been the only negative consequence of criminalisation of drug possession. Once a drug possessor is prosecuted, he is stigmatised as a drug addict and as a criminal too. Being isolated from his closest environment, he is treated as the outcast, unwelcomed, not worthy, dangerous or doomed. Although in most cases the drug possessor is sentenced by a suspended sentence, he is a convicted person and for him a court ruling has certain consequences. The convicted drug possessor has a criminal record, and as a result, he cannot apply

to any of the state or local self-government jobs. Even though the convicted has a right to rehabilitation, according to the Criminal Code, he will acquire all citizens' rights determined by the Constitution only after the expiry of three years from the expiry of probation within the suspended sentence.¹²⁷ The additional problem imposes a rule that rehabilitation cannot be achieved during the execution of security measures. It is unlikely however, technically speaking, that a court may impose a security measure of compulsory treatment for addiction on a convicted drug possessor for five years if this is the probation period from his suspended sentence. Therefore, although the pronounced sentence is a suspended one, the offender will not be rehabilitated after three but after five years due to the fact that this was the time during which he was mandatorily treated for addiction.

The Legislator's decision to criminally prosecute drug possessors has been firmly determined within the last 15 years.¹²⁸ Its negative consequences regarding the offender and the criminal justice system were barely taken into consideration. This strict attitude is confirmed by the 2011 Criminal Code Amendments according to which the possession of drugs or substances prohibited in sports constitutes a criminal offense. Finally, two months ago the Working Group for Criminal Code Amendments made a proposal to completely decriminalise drug possession except if for selling or putting it into circulation. The proposal has not yet been made official and it is up to the Government to decide whether to propose it to the Parliament or not.¹²⁹

The civil society sector in Croatia has pointed out another crucial issue within the field of drug policy. According to the Criminal Code, encouraging someone else to

127. To obtain rehabilitation, the same time period has to expire from the day of a served, expired or a remitted sentence, in the case of a sentence to one year of imprisonment, imprisonment of juveniles or a fine, and from the finality of the decision on admonition or remission of sentence. Art. 85, para. 5 of the 1997 Criminal Code.

128. In 2003 the Criminal Code Amendments were introduced and according to the Art. 63, para. 1, the possession of drugs was a criminal offense only if a perpetrator possessed drugs in order to sell or circulate them in some other way. In other words, the possession of drugs without such specific intent was decriminalised, however, this lessened legislator's prosecuting policy only for a bit due to the fact that the proposed sentences for possession of drugs for selling was imprisonment for one to twelve years. The described provision has never come into force because the whole Amendments were declared unconstitutional by the Constitutional Court on 27th of November, 2003.

129. "Robust experimentation with decriminalisation" is one of the Global Commission on Drug Policy proposals to end, as O'Connor stated, one of the most disastrous public policy fiascos in modern history. O'Connor, M., P.: *Market Solutions to Global Narcotics Trafficking and Addiction*, Phoenix Law Review, vol. 5, 2011, p. 124.

use a narcotic drug, or giving a person a narcotic drug to use it, is a criminal offense punishable by imprisonment for one to five years. If the aggravating circumstances exist, the punishment is imprisonment for one to ten years.¹³⁰ Due to this provision, there have been a significant number of cases of leaving overdosed persons without help which resulted in their death. The NGOs have called for the reform of the Article 173 lowering the punishment for these perpetrators who secure medical help for overdosed persons or excluding unlawfulness in such special cases. The proposal was not accepted by the competent government bodies due to the fact that encouragement to use narcotic drugs is considered a highly dangerous offence against people's health. Mitigation of the punishment or exclusion of lawfulness could be seen as an encouragement for drug dealers. The aim of the provision in question is to prevent giving drugs in every single case and the official judgment is that general prevention is a more suitable means to fulfilling this aim than allowing exceptions in certain cases.

In the last fifteen years official government initiatives to suppress the abuse of narcotic drugs have been taken on a legislative level and implemented by specific actions in practice:

- The major step was taken in 1996 when the National Drug Supervision and Control Strategy and Assistance to Drug Addicts in the Republic of Croatia was enacted by the Croatian Parliament. The Strategy became a basis for action in the field of drug abuse control.
- In 2001 the Drug Abuse Prevention Act was enacted as a basic legal document to regulate drug use and abuse in Croatia.¹³¹ The Act was based on the above mentioned National Strategy, and since its enactment, it has been considered to be the principal legal instrument for regulation of manufacturing, possession and trafficking of drugs and other substances used for making drugs, control over the cultivation of plants used for drug manufacturing, drug abuse control measures, addiction prevention system and the system for helping addicts and occasional drug users.
- Criminal sanctions for drug abusers are proscribed by the Article 173 of the 1997 Criminal Code. The present provision is directly related to the 2001 Drug Abuse Prevention Act due to the fact that it is an uncompleted criminal norm (*blanket norm*) which acquires the complete meaning after the interpretation of the terms “drugs” and “abuse of drugs” provided by the Drug Abuse Prevention Act. The same legislative nature was given to the Article 190 and 191 of the 2011 Criminal

130. Art. 173, para. 5 and 6 of the 1997 Criminal Code.

131. The 2001 Drug Abuse Prevention Act, *op. cit.*

Code which will come into force on 1st of January, 2013. Furthermore, drugs, prohibited substances and plants are enumerated within the List of Narcotic Drugs, Psychotropic Substances and Plants from which Drugs Can be Obtained and Substances which Could Be Used to Manufacture Narcotic Drugs.¹³²

- In 2002 the Office for Combating Narcotic Drug Abuse was established.
- In 2003 the system for addiction prevention and out-of-hospital treatment became a part of the Institution of Public Health. The shift within the drug prevention system was brought by the 2003 Health Protection Law and 2003 Amendments to the Narcotic Drugs Abuse Control Act.¹³³
- The organisation of an institutional framework for drug abuse control was planned by the Narcotic Drug Abuse Control Action Plan for the Period of 2004-2005.¹³⁴ The second Action Plan covered the period of 2006-2009,¹³⁵ and the one which has been currently implemented, the period of 2009-2012.¹³⁶
- In 2006 the new National Drug Control Strategy in the Republic of Croatia for the period of 2006-2012 was drafted by OCDA and brought into effect by the Croatian Parliament.¹³⁷

III. Standpoints of relevant stakeholders on drug law reform

More than half a century after the enactment of the UN Single Convention on Narcotic Drugs, Croatia has taken considerable steps to create and implement in practice a coherent, meaningful and effective national drug strategy, however, as research results indicate, significant gaps and insufficiencies are still present.

As it was mentioned before, the main issue of the future drug law reform concerns the decriminalisation of drug possession in case a possessor has no intent to sell the

132. The 2009 List of Narcotic Drugs, Psychotropic Substances and Plants from which Drugs Can be Obtained and Substances which Could Be Used to Manufacture Narcotic Drugs, Official Gazette no. 50/2009, 2/2010.

133. The 2003 Health Protection Law, Official Gazette no. 121/2003; The 2003 Amendments to the Narcotic Drugs Abuse Control Act, Official Gazette no. 163/2003;

134. Narcotic Drug Abuse Control Action Plan for the Period of 2004-2005, <http://www.uredzadroge.hr/archive/84/akcijski_plan_za_2005_godinu.pdf> (visited Aug. 18, 2012) (in Croatian)

135. Action Plan on Drug Abuse Control for the Period of 2006 -2009, <<http://www.uredzadroge.hr/upload/File/English/Documents/Action%20plan%20on%20drug%20abuse%20control%20for%20the%20period%202006-2009.doc.pdf>> (visited Aug. 18, 2012)

136. Action Plan for the Suppression of Drugs Abuse for the Period of 2009 -2012, *op. cit.*

137. National Drug Control Strategy in the Republic of Croatia, *op. cit.*

possessed drugs or to put them into circulation. The scientific community and civil society sector in Croatia almost unanimously support such a decision. Having in mind that the working group to reform the Criminal Code at the Ministry of Justice has made a proposal to decriminalise possession under the mentioned circumstances, it will be seen in the near future whether the legislator will accept it or not.

According to the general stakeholders' assessment the future measures prescribed by the 2011 Criminal Code to substitute incarceration are seen as positive. Their implementation will reduce incarceration and minimise the negative consequences of criminal prosecution and short-term prison sentences to drug addicted persons. Positive views have been expressed with respect to the principle of opportunity as a public prosecutor's tool to persuade a drug addicted offender to undergo treatment as a condition not to instigate criminal proceedings against him.

On the normative level, the treatment programs within and outside the prison system are qualitatively defined, however, there is a general acknowledgment that it is hard to grasp the magnitude of various treatments impact in practice. Lack of human resources and financial support for treatment programs is a significant issue. Post-release programs should be improved with respect to ex-prisoners' treatment and support.

Prevention continues to be a weak point of Croatian drug policy being predominantly based on the ineffective legal deterrent through punishment. Evaluation mechanisms of treatment, prevention and reintegration programs are insufficiently developed especially for drug offenders after serving their sentence. There is a strong feeling that the probation system should respond better to drug addicted offenders' needs. Employing skilled professionals is essential. Due to OCDA efforts and National Strategy, the harm reduction services have become more visible; however, there is an almost mutual understanding that this aspect of drug policy can be improved too.

According to the present analysis, a considerable number of different drug policy issues have to be addressed in the near future. Therefore, there is a strong need to conduct additional scientific studies in order to make further critical evaluations of current drug policy and legislative solutions as well as to adopt, with respect to the obtained results, the most efficient measures which would curb the problems associated with drug abuse and prevent future re-offending.

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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.

ISBN: 978-960-562-142-1



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