



Drug Policy Dialogue in South East Europe

# Drug Policy and Drug Legislation in South East Europe

Montenegro



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# Country Report Montenegro



## 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 Europe<sup>1</sup> 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 Europe<sup>2</sup> and the researchers affiliated with research institutes and universities in the countries in South East Europe<sup>3</sup>.

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

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

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

#### *Discrepancy between strategies and practice*

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

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

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

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

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

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

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

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

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

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

*Social re-integration programmes almost absent*

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

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

#### *Support for alternative measures to incarceration, reservations to decriminalization*

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

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

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

#### *Unbalanced Spending of Financial resources*

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

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

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

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

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# Country Report Montenegro

by Vlado Dedovic<sup>1</sup>

## I. The current national drug strategy and drug legislation in Montenegro

### 1. National Strategy on Drugs

In 2008 the Government of Montenegro adopted the Strategy: National Strategic Response to Drugs which covers the period from 2008 to 2012. Now, the first phase of drafting the new Strategy with Action plan is in process - as well as the process of evaluation of the previous one, which is implemented in close cooperation with UNODC and EU experts. Montenegro also has a school programs targeting consumption of drugs by youth.

Montenegro has a National Council for the Prevention of Drug Abuse. The Council is chaired by the President of the State and the Minister of Health. Other ministers and representatives of the municipalities participate in the Council's meetings.

At a working level, a network of contact persons exists, with representatives of the central government, municipalities and civil society. Individual authorities responsible for this area have also concluded a range of agreements and memoranda of understanding.

Montenegrin drug policy institutional framework also consists of:

1. Department for Drugs at the Ministry of health;
2. Department for fight against drugs at the police directorate;
3. Ministry of Interior of Montenegro;
4. Ministry of Finance of Montenegro;
5. Customs Administration of Montenegro;
6. Bureau for Education of Montenegro;
7. Capital City Podgorica - Institution for rehabilitation;

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1. Teaching Assistant, Faculty of Law, University of Montenegro.

8. Offices for Drug Prevention in local communities - 21 offices in 21 local communities;

9. Ministry of Justice - Institute for execution of criminal sanctions.

Montenegro is party to the main international and Council of Europe conventions on drugs. In the field of the fight against narcotic drugs, Montenegro has acceded to the relevant UN conventions: the 1961 Single Convention on Narcotic Drugs, the 1972 Protocol Amending the Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, the 1988 United Nations Convention on the Fight against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the UN Convention against Transnational Organized Crime and Protocols thereto, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Financing of Terrorism.

Montenegrin legislation is aligned with Joint Action 96/750/JHA concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking. Legislation is also aligned with the Council recommendations on improving investigation methods in the fight against organised crime linked to organised drug trafficking (2002/C 114/01), and on the prevention and reduction of health-related harm associated with drug dependence (2003/488/EC).

Social aid services are included in the current Drug Strategy framework. Firstly, in the National Strategy there is one of the main principles on which the Strategy is based - the Principle on protection of human rights. This principle means that the right of every person to decent, fair and professional treatment and help in case of illness or any other threatening social situation is guaranteed. This principle is elaborated in details through the Strategy.

NGOs that work in area of drug prevention and other issues related to drugs were fully involved in the process of the creation of the Strategy. Besides that, there is a continuity of involvement of the NGO sector in the consultation process, during the preparation process of the legal framework and the activities related to the prevention of drugs.

Every key issue in the current Strategy is considered, bearing in mind that in the process of its creation all stakeholders from Government to civil society were included. The process of evaluation of the implementation of the Strategy is in progress, after which it will be concluded if there are some missing issues, which will be recognized in the new Strategy.

## 2. National Substantive Criminal Law

A Misdemeanor is a violation of public order for which the penalty prescribed is determined by the Law of misdemeanors. A Criminal offence is an act laid down by law as a criminal offence, which is unlawful and which has been committed with a guilty mind. An act committed in legitimate self-defense is not deemed a criminal offence. Legitimate self-defense is such defense which is absolutely necessary for a perpetrator in order to avert a concurrent or imminent unlawful attack on his/her or someone else's asset. An offender who has exceeded the limits of legitimate self-defense may be punished more leniently and if s/he has exceeded the limits due to strong excitement or fear caused by an assault, and s/he may also be remitted of penalty.

**Criminal sanctions** are:

1. Sentences;
2. Warning measures;
3. Security measures and
4. Corrective measures.

Types of sentences envisaged by the Criminal Code are:

1. A forty-year imprisonment;
2. An imprisonment sentence;
3. A fine;
4. Work in public interest.

Custodial sentences are served in prisons according to the Law on the Execution of Criminal sanctions. **Conditional release:** A Convicted person who has served two thirds and exceptionally half of the imprisonment sentence or of the forty-year imprisonment sentence may be released if in the course of serving the sentence there-of s/he has improved so that it is reasonable to expect that s/he will behave well while at liberty and, particularly that s/he will refrain from committing criminal offences until the end of the time the imprisonment sentence had been imposed. While assessing whether to release the convicted person, his/her conduct during the period of serving the sentence, performance of work tasks appropriate to his/her working abilities, as well as other circumstances indicating that the purpose of sentence has been achieved shall be taken into consideration.

A **fine sentence** can not be less than two hundred euros and more than twenty thousand euros, and for criminal offences committed out of greed it may not exceed one hundred thousand euros.

A **fine imposed** as the principal sentence shall be imposed in the following amounts:

1. Up to two thousand euros for criminal offences punishable by an imprisonment sentence not exceeding three months;
2. From four hundred euros to four thousand euros for criminal offences punishable by an imprisonment sentence not exceeding six months;
3. From six hundred euros to eight thousand euros for criminal offences punishable by an imprisonment sentence not exceeding one year;
4. From eight hundred euros to sixteen thousand euros for criminal offences punishable by an imprisonment sentence not exceeding two years;
5. At least one thousand two hundred euros for criminal offences punishable by an imprisonment sentence not exceeding four years;
6. At least one thousand two hundred euros for criminal offences for which a fine is envisaged as the sole sentence.

If a convicted person fails to pay a fine within the deadline set thereof, the court shall replace the fine by an imprisonment sentence by converting each initiated twenty-five euros of the fine into one day of imprisonment provided that the imprisonment sentence may not last longer than six months, and if the fine imposed exceeds the amount of nine thousand euros, the imprisonment sentence may not be longer than one year.

Instead of an imprisonment sentence, an unpaid fine that does not exceed the amount of two thousand euros may be replaced by a sentence of work in public interest, with the consent of the sentenced person, so that eight hours of community service shall be imposed for each initiated twenty-five euros of the fine, provided that the community service may not be longer than three hundred and sixty hours.

If a convicted person pays only one part of the fine, the court shall replace the remaining part by proportionally converting it into an imprisonment sentence, and if a convicted person pays the remaining part of the fine, the enforcement of the imprisonment sentence shall be discontinued.

By implementing the commitments taken from international instruments, generally accepted international standards and solutions in the field of drugs were incorporated by Montenegro into its national system. In terms of criminal law, Title



24 - Crimes against Human Health, the Criminal Code of Montenegro provides for two criminal offenses: unauthorized production, keeping and releasing into circulation of narcotic drugs (Article 300) and enabling the use of narcotic drugs (Article 301).

The criminal offence of unauthorized production, keeping and releasing into circulation of narcotic drugs referred to in Article 300 is committed by anyone who unlawfully produces, processes, sells or offers for sale, or who for the purpose of selling buys, keeps or transports or mediates in the selling or buying, or in some other manner unlawfully releases into circulation substances proclaimed to be narcotic drugs or plants containing such substances. The imprisonment sentence stipulated for this criminal offence ranges from two to ten years. Anyone who brings into Montenegro substances proclaimed to be narcotic drugs or plants containing such substances with the intention to commit the offence referred to in paragraph 1 of this Article, shall be punished by an imprisonment sentence for a term of two to twelve years. Where the perpetrator of the offence referred to in paras. 1 and 2 of this Article organized a network of dealers and middlemen, s/he shall be punished by an imprisonment sentence for a term of three to fifteen years. That sentence shall also be imposed on the one who sells, offers for sale or gives narcotic drugs without fee for further release into circulation to a minor, mentally ill person, a person who has a temporary mental alienation, a person having severe intellectual disabilities or a person getting treatment for narcotic drugs addiction, or who releases into circulation a narcotic drug mixed with a substance which may lead to serious impairment of health, or who performs an act referred to in paragraph 1 of this Article in an educational institution or in its immediate vicinity, or in an institution for the enforcement of criminal sanctions or public facility or at a public event, or if the offence referred to in paras. 1 and 2 of this Article is committed by a person in an official capacity, physician, social worker, priest, teacher or instructor by abusing their position or anyone who uses a minor for the commission of that act.

Article 300 paragraph 5 stipulates that the perpetrator of the offence referred to in paras. 1 to 4 of this Article who reveals who s/he gets the drugs from may be released from the penalty.

Anyone who unlawfully makes, acquires, possesses, transports or gives for use equipment, material or substances knowing they are intended for producing narcotic drugs shall be punished by an imprisonment sentence for a term of six months to five years. In this Article the Code also stipulates the measure of mandatory confiscation and seizure of narcotic drugs and the means used for their production.

The criminal offence of enabling the use of narcotic drugs (Article 301) is committed by a person who instigates another person to take narcotic drugs or gives narcotic drugs to another for his/her or someone else's use, or places at someone's disposal premises for taking narcotic drugs, or in some other manner enables another to take narcotic drugs. The sentence stipulated for this offence ranges from six months to five years. Where an offence referred to in paragraph 1 of this Article was committed against a juvenile, mentally ill person, person with temporary mental alienation, person having severe intellectual disabilities or a person getting treatment for narcotic drugs addiction or against a number of persons, or where it is committed in an educational institution or in its immediate vicinity, or in an institution for the enforcement of criminal sanctions or in a public facility or at a public event, or if the offence in question is committed by a person in an official capacity, physician, social worker, priest, teacher or instructor by abusing their position, the offender shall be punished by an imprisonment sentence for a term of two to ten years. In this Article as well, the Code stipulates the measure of mandatory confiscation and destruction of narcotic drugs.

### 3. National Drug Laws and Institutions

Criminal Code of Montenegro, under Chapter 24, prescribes criminal offences against human health. This chapter of the Criminal Code provided for the two criminal offences related to drug abuse include: unauthorized production, keeping and releasing for circulation of narcotics (Article 300 of the Criminal Code), and the facilitation of consumption of narcotics (Article 301 of the Criminal Code). Amendments to the Criminal Code of May 2010 prescribe seven paragraphs to Article 300. The main form refers to a number of alternative sets of actions which may comprise unauthorized production, processing, selling or offering for sale the substances or preparations pronounced to be narcotics, or actions of anyone who for the purpose of selling buys, keeps or transports the substances or preparations pronounced to be narcotics. Mediation in selling or buying drugs, and any other unauthorized distribution of drugs is also criminalized. The concept of most of the above mentioned acts of offence is not in dispute. Most problems in practice refer to the act of keeping drugs for sale that has to be distinguished from the act of keeping drugs for one's own use. The most important criterion in practice is the amount and type of the drug, the way of keeping and packaging it, which may indicate the fact whether the person who keeps it is a drug addict or not.

Objects of such criminal acts are substances or preparations proclaimed to be narcotics. Narcotics are substances which may have natural or synthetic origin. Drug use may create a state of dependence that can cause damage to health or otherwise jeopardize the integrity of the individual in physical, psychological and social terms.

As a result of an act referred to in Article 300 Paragraph 1, the offender shall be punished by an imprisonment sentence of two to ten years.

Paragraph 2 refers to a qualified form of a criminal act. Until the entry into force of Amendments to the Criminal Code of May 2010, whether the unlawful bringing of narcotics into Montenegro should refer to the basic offence from Paragraph 1 or it should be treated as a grave offence was in dispute. However, it is clear now that the criminal act which refers to the basic offence- unlawful bringing into Montenegro of substances or preparations pronounced to be narcotics- is qualified as a grave offence referred to in paragraph 2 only if it is performed in order to commit an offence referred to in paragraph 1.

As a result of an act referred to in Article 300 Paragraph 2, the offender shall be punished by an imprisonment sentence of two to twelve years.

If an act as of Paragraph 1 of this Article is committed by the offender who organized a network of dealers and mediators, which is qualified as a grave offence referred to in Paragraph 3, the perpetrator shall be punished by an imprisonment sentence of three to fifteen years.

A Grave offence, referred to in Paragraph 4 is introduced by the Amendments to the Criminal Code of 2010. Actually, it has several forms. The first form of this criminal act refers to anyone who sells, offers for sale or in some other way releases for circulation without compensation the substances or preparations pronounced to be narcotics in relation to anyone especially vulnerable when it comes to narcotic drugs- a minor, mentally ill person, person suffering from a temporary mental disorder, a severely mentally retarded person or person treated for drug addiction. Furthermore, a grave offence also refers to anyone who unlawfully releases for circulation narcotics mixed with substances that can cause severe health damage. A place where the offence was committed may serve as a qualifying circumstance. If an act referred to in Paragraph 1 is committed within a correctional or educational institution, or in the vicinity of such Institution, or within institutions for the execution of criminal sanctions, or in a public facility or during public events, it will be qualified as a grave offence. Finally, the qualifying circumstance which will determine whether the criminal act committed is a grave offence or not is related to the personal role of the perpetrator. If an act referred to in Paragraphs 1 and 2 is committed by an official, a doctor, a social worker, a priest, a teacher or an educator by using their authority, or a person who uses minors for the commitment of a certain criminal act, it shall be considered as a grave offence.

As a result of an act referred to in Paragraphs 1 and 2, the offender shall be punished by an imprisonment sentence of three to fifteen years.

A perpetrator of acts referred to in Paragraphs 1 to 4 who disclose the person from whom h/she obtains the drugs may be released from punishment, according to Paragraph 5 of this Article.

Certain preparations for an act referred to in Paragraph 1 are incriminated in Paragraph 6, which says that anyone who unlawfully makes, acquires, possesses or gives for use equipment, materials or substances which are known to be intended for producing narcotics, shall be punished by an imprisonment sentence of six months to five years.

Paragraph 7 refers to the obligatory imposition of security measures including confiscation of narcotics and substances used for their production, as well as liability for the destruction of narcotic drugs.

The legal characteristics of a criminal offence from Article 301 of the Criminal Code, referring to anyone who enables another to take narcotics, incriminate several criminal acts.

The act of commission refers to inducing another to take narcotics, which means that this is an act of incitement. Other forms of this criminal act refer to: anyone who gives narcotics to another for his/her or someone else's use, or places at someone's disposal premises for taking the narcotics, or in some other way enables another to take narcotics.

For the basic form of this offence, the perpetrator shall be punished by an imprisonment sentence of six months to five years.

Before the entry into force of the Amendments to the Criminal Code of May 2010, the qualified form of the criminal act existed in three cases: if an act is committed against a minor, or more persons, or has caused extremely harmful consequences. However, instead of vague formulation that the act "has caused extremely harmful consequences", Amendments to the Criminal Code of May 2010 provide a number of qualifying circumstances that are the same as for the criminal offence referred to in Article 300 Paragraph 4. Except against a minor or more persons, the qualified form of a criminal act also includes cases if it is committed against a mentally ill person, a person suffering from a temporary mental disorder, a severely mentally retarded person or a person treated for drug addiction. If an act is committed within a correctional or educational institution, or in the vicinity of such Institution, or within institutions for the execution of criminal sanctions, or in a public facility or during public events, it will be qualified as a grave offence. If a criminal act is committed by an official, a doctor, a social worker, a priest, a teacher or an educator by using their authority, or a person who uses minors for the commitment of a certain criminal act, it shall be considered as a grave offense. As a result of this act, the offender shall be punished by an imprisonment sentence of two to ten years.

Paragraph 3 refers to obligatory confiscation and destruction of narcotics and substances used for their production.

Personal drug use is not sanctioned by the Criminal code of Montenegro, nor is drug possession for personal consumption.

In the framework of the description of criminal acts related to drug misuse, the Criminal Code of Montenegro does not classify individual drugs.

It is forbidden to use, produce, circulate or possess drugs for personal use or other means for drugs production, as well as growing plants that can be used for drug production, unless it is stated differently by the Law on combating drugs abuse.

It is strictly forbidden to issue any medications that contain drugs to persons younger than the age of 18.

*The Law on precursors for narcotic drugs (Official Gazette of Montenegro, 83/09).* This Law regulates the monitoring and control of manufacturing and placing on the market of Substances which can be used in the manufacture of narcotic drugs and psychotropic substances in order to discourage their diversion or use for illicit purposes, as well as to protect people's lives and health and environment from the harmful effects of precursors.

*The Law on combating narcotic drugs, which was adopted by the Parliament of Montenegro (Official Gazette of Montenegro 28/11.).* This Law sets out the measures for preventing the use of illicit drugs and for dealing with users of illicit drugs. The measures cover informational, medical, educational and consulting activities, medical treatment, measures for rehabilitation, social security services and programs for the resolution of social problems related to the use of illicit drugs and monitoring of the consumption of illicit drugs which will be carried out by the competent ministries. The Act set out the conditions under which the production of and trade in illicit drugs are permitted, and the possession of illicit drugs. By the adoption of this Law the national legal framework for the field of drugs was completed.

The Criminal Code of Montenegro does not proclaim drug addiction as a mitigating or an aggravating circumstance.

It often happens that drug addicts, except for criminal offenses related to drug abuse, are perpetrators of other crimes, mostly in the area of crimes against property, theft and grand theft, which they use as a source for buying drugs. The Criminal Code does not recognize drug addiction as a mitigating or an aggravating circumstance. The Court takes addiction into account in the context of the personal characteristics of the offender. If addiction is founded *in concreto*, the court shall pronounce mandatory treatment to an offender who has committed a criminal of-

fence because of addiction to narcotic drugs and if there is a serious danger that s/he might continue committing criminal offences due to this addiction. If this measure is pronounced alongside the imprisonment sentence, it can last longer than the pronounced sentence but its total duration cannot be more than three years.

There is no difference between 'soft' and 'hard' drugs in regards to the offences in the Criminal Code of Montenegro.

Criminal acts in the area of drugs are defined in articles 300 and 301 of the Criminal Code of Montenegro, and the actions that are sanctioned by Article 300 are the manufacturing and marketing of drugs. For the basic offense under this section a sentence of 2-10 years in prison is prescribed, for paragraph 2 - the importing of drugs into Montenegro in order to continue selling stipulates a sentence of 2-12 years, and paragraph 3 - selling drugs to a group of dealers and brokers or for organizing such groups stipulates a sentence of 3-15 years.

Article 301 refers to the crime of allowing consumption of drugs which means it is punishable to give drugs to another person for use or enjoyment or to facilitate drug use in some different way (by providing drug paraphernalia, giving a space for drug use or other ways of allowing the enjoyment of drugs). For this offense the charge is punishable by 6 months to 5 years, or if it is a particularly serious case, when the drug is given for the enjoyment of a minor, or when extremely serious consequences arise for the person who uses drugs concerning his life and health, or it results in the death of a person, they may face a charge - imprisonment of 2-10 years. When it comes to the height of punishment, it can be concluded that Montenegrin legislation complies with European legislation, as well as the recommendations and guidelines of EU.

There is no difference between small and big drug dealers. Article 300, paragraph 3, provides a qualified form of primary offense, which is related to the organizers, middleman or agent in the production and sale of drugs.

The division could be made if it comes to crime in the area of narcotics abuse committed in an organized manner as in the creation of a criminal organization, where the responsibility of the organizer of a criminal organization and members of criminal organizations is clearly articulated. Otherwise, for underlying crime a wide range of prescribed sentences is available, which leaves the possibility that the court, having found all the circumstances of the offense, individualizes a criminal sanction, as a sentence is from 2 to 10 years of prison.

Articles 300 and 301 of the Criminal Code, prescribe that the crime perpetrators are responsible for committing an offense. In principle, drug related offences fall within the jurisdiction of Higher Courts (First instance) and Appellate Court (Sec-

ond instance). If there is information about the execution of related offenses in another country, it could be treated as an aggravating circumstance.

#### 4. Drug Law Enforcement in Practice

For the basic offense under article 300 in this section a sentence of 2-10 years of imprisonment is prescribed. For the criminal offence from paragraph 2 - the importing of drugs into Montenegro in order to continue selling a sentence from 2-12 years of imprisonment is stipulated, and for paragraph 3 - selling drugs to a group of dealers and brokers or for organizing such groups stipulates a sentence of 3-15 years of imprisonment.

For the basic offense under article 301 a punishment from 6 months to 5 years of imprisonment is prescribed.

The Police gather information and evidence on persons who have committed offenses under articles 300 and 301. Drug users are not arrested and are not criminally prosecuted because drug use or possession of drugs for personal use is not a criminal offense.

Of all the plants that can be used for drug production, poppy and hemp are allowed to be grown, for special purposes and under conditions described by this law. Plants cultivated by individuals that can be used for drug production, have to be destroyed. Any person, who is under any circumstances the owner of land with personally cultivated plants, is obliged to destroy them. According to the Law if a person does not destroy the personally cultivated plants, the state administration unit which is in charge of sanitary measures, will destroy these plants at the owner's expense. The police have no big problems with unauthorized cultivation because it is a rare case in Montenegro, because the drugs are smuggled in from other countries, and production in Montenegro is almost negligible.

Article 30 of the Constitution of Montenegro envisages the basic principles related to deprivation of liberty such as the requirement of a judicial decision, the duration of detention and the right for appeal. Basic grounds for deprivation of a person's liberty as mentioned in the European Convention are also contained in the Criminal Procedure Code (CPC). Among the measures that can be taken against the defendant to ensure his/her presence in the criminal proceeding and its undisturbed conduct is detention, which is, however, the most severe measure foreseen by the CPC. Namely, according to Article 147 of the CPC, detention can be ordered only if the same purpose of the procedure cannot be achieved by any other measure and it is necessary for the undisturbed conduct of the criminal procedure.

Additionally, it is the duty of the authorities involved in the criminal procedure to proceed with exceptional urgency when the person is in detention. According to the mentioned Article of the CPC, in the course of the procedure, detention shall be terminated as soon as the reasons for which it has been ordered cease to exist.

While deciding on ordering detention, each reason foreseen by the law has to be explained and justified by facts. Further, the evolution of the situation has to be considered and as a result the reasons originally used to justify the detention may change. Therefore, depending on the circumstances, the detention may be extended or cancelled. In any way, it is necessary to review periodically the reasons for ordering detention, and terminating or prolonging it, in accordance with the facts and evolution of the situation.

When it comes to mandatory treatment, detention can also be used as a security measure imposed by the court.

According to the Criminal Procedure Code the police may only collect information, and the Prosecutor may question and converse with the suspect. The police can only make an evaluation, if it is asked for by the Prosecutor, but up until now this has not happened in practice. When collecting information the police are not able to accurately determine whether there is dependence on drugs and the degree of dependence, except on the basis of the testimony of the person and his/her behaviour. When there is a need for a precise determination of the fact whether the person uses drugs, an analysis of a sample of blood can be made, but on a voluntary basis.

The Police have the authority to deprive the offender of freedom and keep him/her for not longer than 12 hours, after which the person must be handed over to the competent public prosecutor, with the criminal charge.

Under the Criminal Code, the drug is prescribed as a criminal offense in Article 300, and the struggle to combat this crime is associated with measures for combating organized crime, through the prosecution of criminal offenses, if there are qualifying conditions.

According to article 300 of Criminal Code of Montenegro - unofficial production, possession and trafficking of drugs, in 2011, resulted in 219 verdicts.

According to article 301 of Criminal Code of Montenegro - facilitating the use of drugs, in 2011, resulted in 15 verdicts.

As punishment, the offender may be imposed with the measure of mandatory treatment of drug addicts if the crime was committed due to dependence on the use of narcotic drugs and if there is a serious risk that he will commit a crime in a future period.



A security measure is always implemented first - medical treatment or other measure, which is included in the length of the penalty for a crime, and only after that person is sent to prison during the period that is eventually left after the treatment, or other security measure.

## 5. Sentencing Levels and the Prison Situation

According to the official Report of the Ministry of Justice, 1,328 persons are incarcerated within the prisons in Montenegro. This number represent 0,21% from total number of citizens of Montenegro.

Organizational units of the Institute for execution of criminal sanctions are the prisons in Podgorica and Bijelo Polje and the Prison for short sentences in Podgorica.

By the end of last year 17,4% of the total number of prisoners were incarcerated for drug-related offences.

In 2009: 222 - 23%

In 2010: 206 - 20%

In 2011: 174 - 17,4%

In 2012: 159 - 20%

In 2011, according to Article 300 of Criminal Code of Montenegro - unofficial production, possession and trafficking of drugs - there were 219 verdicts.

According to article 301 of Criminal Code of Montenegro - facilitating the use of drugs - in 2011, there were 15 verdicts.

Two prosecution offices are in charge of the criminal prosecution of drug-related law offenders - the Higher State Prosecutor in Podgorica and the Higher State Prosecutor in Bijelo Polje. In these two institutions, evidence (such as evidence on criminal charges, investigative procedures, sentences) is kept on individuals reported by the police to the prosecutor's office. This data is collected both electronically and on paper.

In 2010 we can speak of a downward trend in terms of drug related criminal offences, such as - unauthorized production, the keeping and releasing for circulation of narcotics and the facilitation of consumption of narcotics. The total number of reported persons for the alleged criminal offences in 2010 was 26.8% lower than in 2009, while the number of reported persons in 2009 compared to 2008 was 23.8% lower. The total number of reported persons in 2008 was 10.2% lower in comparison to 2007.

In 2010 the total number of reported offences was 10,033, of which 262 were reported for offences under Article 300 and Article 301 of the Criminal Code. Requests for the investigation were initiated against 2,923 persons, of which 259 were for offences according to Article 300 and Article 301 of the Criminal Code. 5,588 persons were convicted, of which 272 persons were convicted according to the Article 300 and Article 301. Judicial decisions have been made against 7,014 persons, of which 343 are for offences under the Article 300 and Article 301 of the Criminal Code.

The number of prisoners has decreased by approximately 160 people compared to the previous year (2011 compared to 2010). Also, spatial capacity to accommodate prisoners has increased by about 100 places, and the previous problem of the inability to receive all of the prisoners, in 2011 was almost solved. In 2011, only 42 prisoners were awaiting execution of criminal sanctions due to the inability of prisons to accommodate them. It is expected that they will be called on to execute their criminal sanctions very soon.

A survey was conducted on a voluntary basis for HIV testing and the results are pending. Persons infected with HIV or HCV can receive treatment at the Clinic for Infectious Diseases in the Clinical Centre of Montenegro.

The Health Centre provides a substitution therapy with methadone.

The Institute for Execution of Criminal Sanctions (IECS) has treated 37 convicted persons who were drug users in the year 2009, or 10% of the total number of treated persons. There were 6 prisoners on methadone treatment during the year 2009, and 8 in 2010. During the detention of persons, or at the time of their coming to serve the sentence, in the first mandatory medical examination by the physician from the Institute for Execution of Criminal Sanctions, those persons indicated in the history of allegations that they were undergoing methadone treatment. Users have an obligation to put their signature after extending therapy, under the presence of a physician. IESC is open for cooperation with the civil sector, and therefore this Institution is cooperating with some NGOs.

After serving sentence, drug users may be sent to an institute for rehabilitation. A Strategy for social reintegration doesn't exist in Montenegro. There are no available statistical data for recidivism of offenders sentenced for drug-related crimes.

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

Montenegro became an independent state on May 21, 2006. In December 2010 the European Council agreed to grant Montenegro the status of a candidate country

for membership of the European Union. The accession negotiations with Montenegro started in Brussels on 29th June 2012. After the European Council had endorsed the decision of the General Affairs Council, the Intergovernmental conference with Montenegro took place in Brussels under the Danish Presidency and the process was officially launched. Most of the initiatives in the period before independence have been undertaken by the Government of Serbia and Montenegro. In the last couple of years (after independence), Montenegro has made huge efforts to establish new policy and legislative frameworks in the field of drugs. In the forthcoming period of negotiations in the process of EU integration, Montenegrin legal and institutional frameworks in the field of drugs will be completely aligned with EU standards and criteria.

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

During research and numerous meetings with relevant stakeholders the following recommendations for further policy improvement and advocacy work were proposed:

1. The compliance of Montenegrin legislation (Law on prevention of drug abuse) with the Recommendation No. 419 of the European Council from 2001 in the area of sample exchange of controlled substances;
2. The adoption of a new National strategy, as well as the Action plan for its implementation, and afterwards, the conducting of continuous monitoring of planned measures;
3. The strengthening of the capacities of police and prosecutorial departments dealing with drug supply reduction, especially in international investigations. It is necessary to sign an operational agreement with Europol that would provide for an exchange of all types of data and determine the representation of Montenegro in EUROPOL;
4. The establishment of a Commission for drugs as an expert body gathering representatives of state institutions. The Commission would examine the issue of drugs in the area of prevention and supply reduction, and produce reports and direct the work of state institutions that are in charge;
5. The further strengthening and supporting of prevention mechanisms through the activities of local offices dealing with the prevention of drug abuse, state institutions and NGOs and working on raising awareness of citizens on the risks of drug abuse, especially among minors and parents;

6. The continuous implementation of activities on the strengthening of the rehabilitation system of addicts, as well as persons that have served their sentences for criminal acts related to drugs, with the aim of their re-socialization and reintegration in the society.
7. The encouragement of NGOs to realize programs of free legal aid for drug addicts in the field of protection of their basic human rights and freedoms in judicial and administrative proceedings in Montenegro.
8. The consideration of possibilities of lowering the financial participation of the clients in rehabilitation and re-socialization centres for users of psychoactive substances.

The Drug Law reform Project in South East Europe aims to promote policies based on respect for human rights, scientific evidence and best practices which would provide a framework for a more balanced approach and will result in a more effective policy and practice. A major aim of our activities is to encourage open debate on drug policy reform and raise public awareness regarding the current drug policies, their ineffectiveness and their adverse consequences for individuals and society.

Το Πρόγραμμα Μεταρρύθμιση της Νομοθεσίας για τα Ναρκωτικά στη Νοτιοανατολική Ευρώπη στοχεύει στην προώθηση πολιτικών που βασίζονται στο σεβασμό των ανθρωπίνων δικαιωμάτων, την επιστημονική τεκμηρίωση και τις βέλτιστες πρακτικές που θα προσφέρουν ένα πλαίσιο για μια περισσότερο ισορροπημένη προσέγγιση και θα οδηγήσουν σε αποτελεσματικότερες πολιτικές και πρακτικές. Ιδιαίτερα σημαντική επιδίωξή μας είναι να ενθαρρύνουμε την ανοιχτή συζήτηση για μεταρρύθμιση της πολιτικής των ναρκωτικών και να ευαισθητοποιήσουμε την κοινή γνώμη για τις δυσμενείς επιπτώσεις και την αναποτελεσματικότητα της ισχύουσας πολιτικής των ναρκωτικών για τα άτομα και την κοινωνία.

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