

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

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Country Report Romania



Preface

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

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

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

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

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

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

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

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

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

Country Report Romania

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

Courts by Andrea Păroșanu¹, Ioana Maria Stoica²

1. National legislative policy on drugs

1.1. Drug legislative policy and the most important legal instruments that regulate suppression of abuse of narcotic drugs

In Romania, the drug legislative policy is based on special laws, stipulating the way in which drug consumption, trafficking and use of psychoactive substances is sanctioned. Of further importance is the National Anti-drug Strategy, a document adopted by the Government, detailing the national objectives for the reduction of drug consumption.³

In the process of drafting all of these documents that form the drug legislative policy of Romania, multiple actors of the society took part, both important national institutions (the Ministry of Justice, the Ministry of Administration and Interior and the Ministry of Health) and various actors of the civil society (various NGOs like UNICEF Romania and CIADO Romania, and also representatives of the Romanian Patriarchate)⁴.

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³ . National Anti-drug Strategy 2013-2020, published in the Official Gazette No 702 of 15.11.2013, available at http://www.mai.gov.ro/Documente/Transparenta%20decizionala/Strategie%20_SNA%202013-2020.pdf

⁴ . National Anti-drug Strategy 2013-2020, published in the Official Gazette No 702 of 15.11.2013, available at

Presently, the most important law on drugs in Romania is Law No 143/2000

*on preventing and combating illicit drug trafficking and consumption*⁵. This law has been amended and modified several times. Most notably, the *Government Emergency Ordinances* and the *Government Decisions* came to complete the provisions of this initial law (see below).

Law No 339/2005 *on the judicial regime of plants, substances and products with narcotic or psychoactive effect*⁶ and Law No 194/2011 *on counteracting operations with products suspected to have psychoactive effects, other than those stipulated by the legislation in force*⁷, are two of the laws that regulate the production and use of illegal substances in Romania.

The current National Anti-drug Strategy was adopted in November 2013⁸ and consists of two action plans, one for the period 2013-2016 and one for the period 2016-2020⁹. The general objectives of the National Anti-drug Strategy for the upcoming years include the following:

- “To reduce drug consumption and drug addiction, as well as the consequences that these facts have on health, order and public safety;
- To reduce the availability of drugs on the market;
- To increase knowledge about consumption phenomena through systematic evaluations of the trends and challenges in this area, so as to ensure an adequate response of the institutions and civil society;

⁵. Law No 143/2000, further amended and modified, published in the Official Gazette No 362 of 3.8.2000, republished in the Official Gazette No 163 of 06.03.2014.

⁶. Law No 339/2005, further amended and modified, published in the Official Gazette No 1095 of 05.12.2005, available at <http://legeaz.net/legea-339-2005-stupefiante/>.

⁷. Law No 194/2011, further amended and modified, published in the Official Gazette No 796 of 10.11.2011, republished in the Official Gazette No 140 of 26.02.2014, available at <http://legeaz.net/text-integral/legea-194-2011-produse-efecte-psihoactive>.

⁸. Government Decision No 784/2013 concerning the approval of the National Anti drug Strategy 2013-2020 and the National Action Plan for 2013-2016 for the implementation of the National Anti-drug Strategy 2013-2020, published in the Official Gazette No 702 of 15.11.2013.

⁹. National Anti-drug Strategy 2013-2020, published in the Official Gazette No 702 of 15.11.2013, available at http://www.mai.gov.ro/Documente/Transparenta%20decizionala/Strategie%20_SNA%202013-2020.pdf

- To ensure a proper framework for dialogue and cooperation between the institutions involved in this area and the structures of the civil society.”¹⁰

1.2. Compliance of legal instruments with basic international conventions on drugs

When Romania entered the European Union in 2007, it entered a new era of law-making. Every country that aims at becoming a member of the European Union has to satisfy certain conditions imposed by EU institutions. In other words, it has to adjust all of its legislation to the principles, standards and values of the EU. As a *sine qua non* condition for accession, Romania, just like other Member States, had to ensure to some extent that its laws and policies are in accordance with the European Union's trends and values in all domains, including drug legislative policy.

Some of the important international conventions on drugs that Romania has ratified are:

- The 1961 Single Convention on Narcotic Drugs, adopted in 1972;
- The 1971 United Nations Convention on Psychotropic Substances, adopted in 1992;
- The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in 1992;
- The 2003 WHO Framework Convention on Tobacco Control, adopted in 2005;
- The 2006 Police Cooperation Convention for South Eastern Europe, adopted in 2007.¹¹

Additionally, Romania has also adopted other international strategic plans, such as:

- The EU Drugs Strategy for the period 2005- 2012;

¹⁰. National Anti-drug Strategy 2013-2020, published in the Official Gazette No 702 of 15.11.2013, available at http://www.mai.gov.ro/Documente/Transparenta%20decizionala/Strategie%20_SNA%202013-2020.pdf

¹¹. As indicated on the NAA website http://www.ana.gov.ro/documente_strategice.php.

- The EU Drugs Action Plan for the period 2009-2012;
- The Multiannual Stockholm Programme for 2010-2014;
- The EU Internal Security Strategy.¹²

1.3. Practical application of the legal instruments

The above-mentioned laws concerning drug-related offences (Law No 143/2000 *on preventing and combating illicit drug trafficking and consumption*, Law No 339/2005 *on the judicial regime of plants, substances and products with narcotic or psychoactive effect*, Law No 194/2011 *on counteracting operations with products suspected to have psychoactive effects, other than those stipulated by the legislation in force*) are adequately applied in practice, since the relevant institutions have been established. According to the National Anti-drug Strategy 2013-2020, the drug control legal framework will be further evaluated in order to clarify the responsibilities of the parties concerned and harmonise structures within interrelated fields.¹³

1.4. Important drug issues left unregulated

Regarding the criminal legal framework of drug-related offences, the existing laws are detailed and cover all of the problems in this area.

Nevertheless, probably one of the most common problems in drug abuse suppression in every country is the speed at which new substances, or combinations of substances, with psychoactive effect appear on the market. One of the persistent problems that Romania has to address is the emergence of new substances on the market. Despite the fact that the laws regulating the production and use of psychoactive substances (Law No 339/2005 *on the judicial regime of plants, substances and products with narcotic or psychoactive effect*¹⁴ and Law No 194/2011 *on counteracting operations with products suspected to have psychoactive effects, other than those stipulated*

¹² . As indicated on the NAA website http://www.ana.gov.ro/documente_strategice.php

¹³ . National Anti-drug Strategy 2013-2020, p. 29.

¹⁴ . Law No 339/2005, further amended and modified, published in the Official Gazette No 1095 of 05.12.2005, available at <http://legeaz.net/legea-339-2005-stupefiante/>

by the legislation in force¹⁵) are amended and modified continuously, a gap between the law and reality still exists. The legislator has to respect a certain protocol before adding new substances to the drug control laws. Hence, this delay between the appearance of a new substance and the classification of this substance as “illegal” results in gaps between the drug legislative policy and the actual situation of drug consumption.

1.5. Role of criminal legal regulations in national legislative policy on drugs

As mentioned in point 1.1, the national drug legislation is based on two pillars: the first is the special drug-related laws and the second is the National Antidrug Strategy. The latter is a multi-year strategic plan, aimed at satisfying and keeping up with national and international trends.

The most important criminal law concerning the consumption of and trafficking in drugs in Romania is Law no 143/2000 *on preventing and combating illicit drug trafficking and consumption*.

In the context of drug abuse eradication, the criminal legal regulation –Law No 143/2000– is the only instrument that provides for sanctions for drug consumption and trafficking offences. This law endorses the objectives of the National Anti-drug Strategy, in particular “the reduction of drug consumption and drug addiction”¹⁶ and the reduction of “the availability of drugs on the market”¹⁷. By setting out sanctions for drug offences, the law aims at ensuring and increasing public safety and society’s confidence in the justice system.

¹⁵. Law No 194/2011, further amended and modified, published in the Official Gazette No 796 of 10.11.2011, republished in the Official Gazette No 140 of 26.02.2014, available at <http://legeaz.net/text-integral/legea-194-2011-produse-efecte-psihoactive>

¹⁶. National Anti-drug Strategy 2013-2020, published in the Official Gazette No 702 of 15.11.2013, available at http://www.mai.gov.ro/Documente/Transparenta%20decizionala/Strategie%20_SNA%202013-2020.pdf

¹⁷. National Anti-drug Strategy 2013-2020, published in the Official Gazette No 702 of 15.11.2013, available at http://www.mai.gov.ro/Documente/Transparenta%20decizionala/Strategie%20_SNA%202013-2020.pdf

2. Criminal legislative policy on drug offences

2.1. Laws in force according to which drug abuse is an offence punishable with a criminal sanction

The legal framework governing drug-related offences is provided by Law No 143 *on preventing and combating illicit drug trafficking and consumption*¹⁸, which came into effect in the year 2000.^{19, 20} This law includes provisions concerning drug use and trafficking. Important amendments to it were brought by Law No 187/2012 and Law No 255/2013, which came into effect on February 1st, 2014 (see more details under 2.5.).

Furthermore, Government Emergency Ordinance No 121/2006 *on the legal regime of drug precursors*^{21, 22} regulates the sanctioning system for drug precursor activities. Government Emergency Ordinance was further amended in 2007 by Law No 186²³ *on approving Government Emergency Ordinance No 121/2006*, providing for the responsibilities of the National Anti-drug Agency (NAA) concerning drug precursors. Law No 194/2011 *on counteracting operations with products suspected to have psychoactive effects, other than those stipulated by the legislation in force*²⁴ provides for the legal framework of operations concerning these substances.

2.2. Court practice with respect to the *ne bis in idem* principle

Prohibited acts stipulated by the law are not qualified as both a criminal offence and a misdemeanour. Certain laws provide for administrative sanctions and criminal penalties, but not for the same type of conduct.

¹⁸ . Law No 143/2000, further amended and modified, published in the Official Gazette No 362 of 3.8.2000, republished in the Official Gazette No 163 of 06.03.2014.

¹⁹ . Until 2000, the Criminal Code (Art. 312) regulated drug use and trafficking offences.

²⁰ . See furthermore *Balica/Păroşanu* 2013, p. 249 ff. for an overview on drug laws in Romania.

²¹ . Government Emergency Ordinance No 121/2006, published in the Official Gazette No

²² .039 of 28.12.2006.

²³ . Law No 186/2007, further amended and modified, published in the Official Gazette No 425 of 26.6.2007.

²⁴ . Law No 194/2011, further amended and modified, published in the Official Gazette No 796 of 10.11.2011, republished in the Official Gazette No 140 of 26.02.2014.

Government Emergency Ordinance No 121/2006 concerning drug precursors provides for administrative sanctions for violation of certain obligations of authorised operators, such as not communicating or forwarding certain information and data to the authorities, whereas acts such as import, export, offering etc. of classified substances without authorisation are categorised as criminal offences. Also, Law No 194/2011 refers to criminal penalties and administrative sanctions in case of products suspected to have psychoactive effects, but not for the same type of behaviour. Acts such as obstructing officers in performance of their duty to control entail an administrative sanction. Other behaviours, such as carrying out operations with products that are known or suspected to have psychoactive effects, without a legal licence, are sanctioned with a criminal penalty (see below 2.3.).

2.3. Description of drug-related offences prescribed by the Criminal Code and other relevant legal acts

Law No 143/2000 sets out the following provisions concerning drug offences:

Art. 2(1) defines the illicit acts, including cultivation, production, manufacture, experimentation, extraction, preparation, processing, offering, offering for sale, sale, distribution, delivery under any title, transmitting, transportation, procurement, purchase, possession or other operations related to the circulation of risk drugs. Any such conduct, without legal right, is punishable with imprisonment of 2 to 7 years and deprivation of certain rights. If the prohibited conduct involves high-risk drugs, the penalty shall be imprisonment of 5 to 12 years and deprivation of certain rights, Art. 2(2).²⁵ The differentiation between risk and high-risk drugs is provided for by the annex to Law No 143/2000. High-risk drugs are listed in schedules I and II, and risk drugs in schedule III of the annex.

Smuggling risk drugs in or out of the country, as well as import and export, without legal right, are punished by imprisonment of 3 to 10 years and deprivation of certain rights, Art. 3(1). If the acts involve high-risk drugs, the

²⁵ . Until the latest amendment on February 1st, 2014, the range of sentences was significantly higher. The penalty for such acts was imprisonment of 3 to 15 years when they involved risk drugs, and imprisonment of 10 to 20 years when they involved high-risk drugs.

law provides for imprisonment of 7 to 15 years and deprivation of certain rights, Art. 3(2).²⁶

The cultivation, production, manufacture, experimentation, extraction, preparation, processing, purchase or possession of risk drugs for personal use is punished with imprisonment of 3 months to 2 years, or a fine, Art. 4(1). If the acts involve high-risk drugs, the penalty ranges from 6 months' to 3 years' imprisonment, Art. 4(2).²⁷

Making available a place of residence or a place that is accessible to the public for illicit drug use or illicit drug use in such spaces is punishable with imprisonment of 2 to 7 years and deprivation of certain rights (Art. 5).²⁸ The prescription with intent of high-risk drugs by a physician without medical reason is punished with one to 5 years' imprisonment and deprivation of certain rights, Art. 6(1). The same penalty applies in case high-risk drugs are dispensed with intent on the basis of a medical prescription without medical reason or a falsified medical prescription, Art. 6(2). For procurement of high-risk drugs under the aforementioned conditions, the law provides for an imprisonment term of one to 3 years, Art. 6(3).²⁹

Administering high-risk drugs to a person carries a sentence of imprisonment of one to 5 years (Art. 7).

Supplying toxic chemical inhalants to a minor, in view of use, is punished with imprisonment of 6 months to 2 years (Art. 8).³⁰

²⁶ . Previously, the acts involving risk drugs were punished by imprisonment of 10 to 20 years, and those involving high-risk drugs by imprisonment of 15 to 25 to years.

²⁷ . Again, the previous law stipulated higher penalties: the listed acts were punished by imprisonment of 6 months to 2 years when they involved risk drugs and by imprisonment of 2 to 5 years when they involved high-risk drugs.

²⁸ . Under the previous law, such a conduct was punishable by imprisonment of 3 to 10 years.

²⁹ . Previously, the penalty for procurement was also one to 5 years of imprisonment.

³⁰ . The range of punishment under the previous law was 6 months to 3 years.

Financing the acts set out in Articles 2 to 5 is punished with the penalties provided for by the law. The special limits of the penalties shall be increased by one third (Art. 9).³¹

Inducing illicit high-risk drug use is punishable with imprisonment for a term of 6 months to 3 years (Art. 10).³² If the acts stipulated in Articles 2, 6-8 and 10 resulted in the victim's death, the offender is sentenced to imprisonment of 10 to 20 years and deprivation of certain rights (Art.11). The attempted offences are regulated by Art. 2, 3, 4(2), 6(2)-(3), 7 and 9, and are punishable, Art. 12(1). Producing or purchasing any means or instruments, as well as taking any measures aimed at committing the above-mentioned offences, is considered an attempt.

Law No 143/2000 does not criminalise drug use, but the possession of drugs. Art. 22(1) stipulates that the use of nationally-controlled substances without medical prescription is prohibited, but the law does not provide for a penalty. Instead, persons using drugs can be admitted to integrated care programmes, Art. 22(2).

Government Emergency Ordinance No 121/2006 *on the legal regime of drug precursors*³³ regulates offences such as marketing of classified substances, import, export and intermediary activities, as well as possession without legal licence or registration, which result in imprisonment from 6 months to 5 years or a fine, Art. 22(1).³⁴ Furthermore, trade of classified substances with unauthorised or unregistered trade agents or natural persons is punished with imprisonment from 3 months to 3 years or a fine, Art. 22(2).³⁵

³¹ . Previously, the law stipulated that, in addition to financing, the organisation and management of the acts provided for in articles 2 to 8 were punishable. The maximum limits of the penalties had to be increased by 3 years.

³² . The penalty for inducing illicit drug use up to now was imprisonment of 6 months to 5 years. In case no act followed, the penalty was 6 months' to 2 years' imprisonment or a fine.

³³ . The latest amendments and modifications are based on Law No 187/2012 on implementing Law No 286/2009 concerning the Criminal Code.

³⁴ . Previously, the sentence was one to 5 years of imprisonment.

³⁵ . The previous law provided for a penalty of imprisonment of one to 5 years.

Law No 194/2011 *on counteracting operations with products suspected to have psychoactive effects, other than those stipulated by the legislation in force* regulates operations concerning these substances. In accordance with Art. 16(1) of the law, persons carrying out operations with products that are known or suspected to have psychoactive effects without a legal licence are sentenced to imprisonment from 6 months to 3 years or a fine.³⁶ If the act is committed by a person who should or could have foreseen that the products are suspected to have psychoactive effects, the penalty is imprisonment from 3 months to 2 years or a fine, Art. 16(2).³⁷ Persons who intentionally perform operations with these products and pretend that they are, or disguise them into, legally authorised products or products whose trade is legally authorised, are sentenced to imprisonment from one to 5 years and deprivation of certain rights, Art. 17.³⁸ Making publicity of any products by credibly claiming that their use entails psychoactive effects is punished with imprisonment from one month to one year or a fine, Art. 19.³⁹

In summary, the sentencing range for most offences has been lowered (see comparison in the respective footnotes) in order to align the sanctioning system with the provisions of the new Criminal Code (see 2.5.).

2.4. Severity of prescribed penalties for drug offenders compared to sanctions prescribed for other crimes and accordance with the principle of proportionality

The legislator differentiates the sanctioning system between drug-related offences involving high-risk and risk drugs. Prior to the latest amendments and modifications in the field of drug law, which came into effect on February 1st, 2014, the sentencing range concerning most risk- and high-risk drug-related offences was significantly higher. In some cases, the term of imprisonment was twice as high compared to the current one, after the criminal law reforms. For instance, the penalty for offences such as

³⁶ . Previously, the penalty was imprisonment from 2 to 8 years and deprivation of certain rights.

³⁷ . The former law provided for an imprisonment term from one to 3 years.

³⁸ . Prior to the amendment, the sentence was imprisonment from 3 to 10 years and deprivation of certain rights.

³⁹ . Previously, the law provided for a penalty of imprisonment from one to 3 years and deprivation of certain rights (Art. 20).

cultivation, production, sale, purchase, etc. of risk drugs was imprisonment up to 15 years and concerning high-risk drugs up to 20 years. The highest sentence was for smuggling drugs in or out of the country, as well as import and export; in these cases, the penalty of imprisonment regarding risk drugs and high-risk drugs was up to 20 and 25 years, respectively.

These sentences were comparable with the penalties for very serious offences such as murder and homicide or assault causing the death of the victim, as well as other serious offences, e.g. aggravated theft. It must be noted, however, that the sanctioning framework prior to the reforms in general was characterised by relatively high sentences for a range of offences. After the reforms, the sentences were significantly reduced and are now in accordance with the principle of proportionality.

2.5. Amendments to drug-related offences

Law No 143/2000 has been amended and modified several times. In 2002, Law No 169³⁹ modified Art. 5, 7 and 8 and introduced Art. 14(2)⁴⁰ into Law No 143. Art. 12 of Law No 143/2000 was modified by Law No 39/2003⁴¹. An important amendment took place in 2004, when Law No 522 modified a wide range of articles, including Art. 4 and 14. The law altered definitions⁴², introduced new terms and differentiated sanctions depending on the category of risk.⁴³

The reform aimed at providing enhanced therapeutic programmes for drug users, including medical, psychological and social assistance, and at promoting user care measures. Furthermore, the amendment focused on drug use prevention and supply reduction.

⁴⁰. Art. 14 stipulates aggravating circumstances in addition to the Criminal Code.

⁴¹. Law No 39/2003 on preventing and combating organised crime.

⁴². Instead of “*toxicoman*” the terms “drug user” (“*consummator*”) and “dependent drug user” (“*consummator dependent*”) are used, Art. 1 h), h¹) amended Law No 143/2000.

⁴³. See Government’s Explanatory Statement on the Draft Law amending and modifying Law No 143/2000, available at <http://www.camera-deputatilor.ro/proiecte/2004/500/50/5/em555.pdf> (20.12.2013).

Several Government Emergency Ordinances in 2006⁴⁴, 2010⁴⁵ and 2011⁴⁶ and a Government Decision in 2010⁴⁷ led to further modifications of Law No 143. Furthermore, Law No 187/2012⁴⁸ and Law No 255/2013⁴⁹ brought significant changes within the reform process of criminal law. These laws

39. Law No 169/2002 modifying and amending the Criminal Code, the Code of Criminal Procedure and certain special laws.

provided that with the entering into force of the new Criminal Code and the new Code of Criminal Procedure on February 1st, 2014, several articles of Law No 143 would be modified or even abrogated. The modifications refer mostly to the sentencing system and only in a few cases to the criminal acts (see the modifications of penalties under 2.3.). For most offences, the limits of the penalties were decreased, in some cases significantly. This shows the high maximum penalties until the latest reform of the law.

In the Explanatory Statement of Law No 187/2012 for implementing the Criminal Code, the government referred to the fact that drug-related offences are often tried concurrently with other offences. Therefore Criminal Code provisions regarding the concurrence of offences shall also be applicable to drug-related offences (Art. 2-8 of Law No 143/2000) in order to align the provisions when passing a sentence.⁵⁰ Law No 187/2012 aimed at ensuring a coherent framework with regard to the new Criminal Code, the special laws in the area of criminal law and the sanctioning system.

⁴⁴ . Government Emergency Ordinance No 121/2006 on the judicial regime of precursors abrogated Art. 9.

⁴⁵ . Government Emergency Ordinance No 6/2010 modified Art. 1 a) and completed schedules I-IV of Law No 143.

⁴⁶ . Government Emergency Ordinance No 105/2011 modified Art. 1 of Law No 143.

⁴⁷ . Government Decision No 575/2010 modified and completed the annex of Law No 143.

⁴⁸ . Law No 187/2012 for implementing Law No 286/2009 – the Criminal Code. Modifications are brought to Art. 2-6, 8, 10, 11, 13 (1), 15, 19¹ and 19².

⁴⁹ . Law No 255/2013 for implementing Law No 135/2010 on the Code of Criminal Procedure, modifying Art. 18 (1)-(3) and abrogating several articles.

⁵⁰ . See Government's Explanatory Statement on the Draft Law No 187/2012, available at http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=11812 (20.12.2013).

Furthermore, with the entry into force of the new Criminal Code, Law No 143 was amended regarding the treatment of drug users for offences related to possession for use (Art. 4). Art. 19 of Law No 143 provides that public prosecutors shall order evaluation of drug consumers within 24 hours from the initiation of preliminary proceedings by the responsible centre for drug addiction prevention, evaluation and counselling, in order to check the possibility of integration in a care programme. After evaluation, the public prosecutor shall arrange, with the consent of the consumer, for admission to an integrated care program for drug consumers.⁵¹ If the accused complies with the conditions of the care program, the court may waive or postpone the application of the penalty, Art. 20 Law No 143/2000.

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

3.1. Prevalence of drug crimes committed by adult offenders with respect to total crime according to official state statistics

According to statistical data provided by the police⁵², the total number of drug-related offences registered by the police more than doubled from 1,462 in 2003 to 3,045 in 2006. Until 2010, the number of registered offences was steadily rising, peaking at 3,856. Subsequently, it decreased by 25.5% to 2,871 in 2012. From 2003 to 2012, the number of drug-related offences investigated by the police almost doubled. During the same period, the number of total offences investigated by the police increased by 11.4%. From 2003 to 2012, the share

⁵¹ . The integrated care programme includes all health services and all services of psychological and social assistance targeting drug consumers and drug-addicted consumers, delivered through medical, psychological and social, public, private or mixed units, Art. 1 j) Law No 143/2000. Furthermore, Law No 143/2000 provides that all drugaddicted persons and drug consumers can be admitted with their consent to an integrated care programme, including integrated care circuits, therapeutic programmes and individualised psychological and social programmes, Art. 22. This opportunity was provided before the 2014 amendment. Further amendments regarding the elaboration, evaluation and implementation of prevention and treatment programmes were brought by Law No. 51/2014, published in the Official Gazette No 322 of 5.5.2014.

⁵² . The data, provided by the General Inspectorate of Romanian Police within the Ministry of Interior, Directorate of Criminal Records, Statistics and Operational Evidence, refer to total offences including minors and adults. Data concerning only adult offenders were not available.

of drug-related offences investigated by the police was very small, representing only 1.1% of all (drug-related and non-drug related) offences. In relation to demographic data, the drug-related offence rate (drug-related offences investigated by the police per 100,000 inhabitants) more than doubled from 6.7 in 2003 to 14.1 in 2006, further increasing to 18 in 2010. A decrease was noted in 2012, with the rate falling to 13.4.⁵³

Table 1
Evolution of drug-related offences investigated by the police, 2003-2012

Offences	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Total offences investigated by the police	276,841	231,637	208,239	232,659	281,457	289,331	299,889	292,682	258,895	308,468
Total drug-related offences	1,462	2,151	2,303	3,045	2,811	3,622	3,257	3,856	3,461	2,871
Share of drug-related offences	0.53%	0.93%	1.11%	1.31%	1.0%	1.25%	1.09%	1.32%	1.34%	0.93%
Offences related to drug trafficking and drug use*	1,462	2,151	2,173	2,956	2,796	3,621	3,254	3,852	3,456	2,871

⁵³. Calculation of the drug-related offence rate on the basis of population data provided by the National Institute of Statistics (on January 1st of the year), <https://statistici.inse.ro/shop/>.

Thereof possession for use (Art. 4)	-	292 (13.6%)	208 (9.6%)	1,495 (50.6%)	1,553 (55.5%)	2,003 (55.3%)	1,728 (53.1%)	1,867 (48.5%)	1,652 (47.8%)	1,491 (51.9%)
Thereof other offences	-	1,859 (86.4%)	1,965 (90.4%)	1,461 (49.4%)	1,243 (44.5%)	1,618 (44.7%)	1,526 (46.9%)	1,985 (51.5%)	1,804 (52.2%)	1,380 (48.1%)
Offences related to drug precursors**	-	-	130	89	15	1	3	4	5	0

Source: General Inspectorate of Romanian Police within the Ministry of Interior, Directorate of Criminal Records, Statistics and Operational Evidence. Offences include total offences committed by adults and juveniles.

* Offences under Law No 143/2000.

** Offences under Law No 300/2000, Government Emergency Ordinance No 121/2006.

Cases solved at the prosecution level more than tripled, increasing from 1,134 in 2003 to 4,087 in 2011.⁵⁴ From 2011 to 2012, the number of solved cases dropped by 7.6%. Concerning the type of decision, it can be observed that indictments decreased significantly, from 28.7% of all decisions in 2003 to 11.1% in 2012. The proportion of diversion (discharge or dispensing with prosecution without diversion based on Art. 18¹ Criminal Code) fell from 60.4% in 2003 to 35.7% in 2008/2009. A strong increase was then observed in 2012, rising to 79.4%.

The share of diverted cases on the basis of Art. 18¹ Criminal Code, which refers to the lack of social danger of the offence (e.g. petty offences), grew from 10.8% in 2003 to 50.2% in 2009. In 2012, a large decrease was observed to only 9.5% of cases. During the same period, the rates of diversion based on other grounds grew. It can be observed that, after 2006, public prosecutors placed more emphasis on diversion of criminal proceedings. Non-prosecution

⁵⁴. Please note that only data on the total number of offences were available, not on the number of offences committed by adults.

of petty drug-related offences made up about one half of all cases in 2008 and 2009.

Table 2
Evolution of cases solved by prosecutor's offices, by type of decision, 2003-2012

Type of decision	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Solved cases	1,134	1,756	1,344	1,076	2,960	2,575	2,906	3,360	4,087	3,775
Indictment	326	441	394	305	344	395	411	432	436	420
%	28.7	25.1	29.3	28.3	11.6	15.3	14.1	12.9	10.7	11.1
Diversion	685	777	668	549	1,558	919	1,036	1,717	3,048	2,997
%	60.4	44.2	49.7	51	52.6	35.7	35.7	51.1	74.6	79.4
Diversion Art. 18 ¹ CC	123	395	282	222	1,058	1,261	1,459	1,211	603	358
%	10.8	22.5	21	20.6	35.7	49	50.2	36	14.8	9.5

Source: Prosecutor's Office attached to the High Court of Cassation and Justice, DIICOT (Directorate for Investigating Organised Crime and Terrorism), 2013 National Report on Drugs, p. 161 ff. Cases refer to offences committed by adults and juveniles.

3.2. Statistical prevalence of various drug law offences committed by adult offenders

According to table 1, drug trafficking offences committed by adults and juveniles represented the highest share of all drug-related offences registered by the police, at 86.4% in 2004 and 90.4% in 2005, declining to about 50% until 2012.⁵⁵

The share of offences related to drug precursors was very small, ranging from 5.6% in 2006 to 0.1% in 2011.

⁵⁵. The data provided by the police do not differentiate further between categories of offences. Furthermore, the 2013 National Report on Drugs does not provide data at prosecution level by category of offence.

3.3. Proportion of drug possession offences committed by adults over all drug offences

As shown on Table 1, offences related to possession for personal use (adults and minors) make up only a small proportion of all drug-related offences under Law 143/2000, ranging from 13.6% in 2004 to 9.6% in 2015. From 2006 to 2012, the share is significantly higher, at about half of all drug-related offences.⁵⁶

3.4. Sanctions pronounced against adult drug offenders

According to statistical data provided by the Superior Council of Magistracy, the number of adults convicted of drug-related offences rose from 589 in 2005 to 1,064 in 2012, representing an 80.6% increase (Table 3).⁵⁷

The sanctions imposed on adults convicted of drug-related offences were: fine, imprisonment, conditional suspension of imprisonment, suspension under supervision or community work.

As shown on Table 3, the predominant sanction from 2005 to 2007 was imprisonment. From 2008 to 2012, the penalty of imprisonment represented about half of all sanctions. However, from 2005 to 2012, the share of imprisonment penalties decreased by 36.4%. During the same period, a rise of conditional suspension and suspension under supervision could be observed. The share of conditional suspension of imprisonment almost doubled, from 11.9% in 2005 to 21.6% in 2012. The proportion of courtordered suspension

⁵⁶. The high rise of registered drug use offences in the year 2006 is probably due to legal modifications: In 2005, Law No 522/2004 came into effect, which modified the criminal framework regarding drug possession for own consumption (Art. 4). Thenceforth, the law distinguished between risk and high-risk drugs and provided that possession of risk drugs for own consumption shall be punished with imprisonment from 6 months to 2 years or a fine, whereas possession of high-risk drugs shall be punished with imprisonment from 2 to 5 years (which was the general criminal framework concerning drug use for all types of drugs before the modification).

⁵⁷. The Superior Council of Magistracy was established in 2005 and therefore did provide data since then. Data for previous years were not available at the Superior Council of Magistracy or the Ministry of Justice.

under supervision increased significantly, leaping from 3.6% in 2005 to 29% in 2012.⁵⁸

Table 3
Adults convicted of drug-related offences,
by type of sanction (2005-2012)

Type of sanction	2005	2006	2007	2008	2009	2010	2011	2012
Total	589	629	503	432	644	721	840	1,064
Fine	1	21	6	3	16	13	5	9
%	0.2%	3.3%	1.2%	0.7%	2.5%	1.8%	0.6%	0.8%
Imprisonment	497	457	322	219	353	385	423	511
%	84.4%	72.7%	64.0%	50.7%	54.8%	53.4%	50.4%	48.0%
Conditional suspension	70	80	85	71	84	114	168	230
%	11.9%	12.7%	16.9%	16.4%	13.0%	15.8%	20.0%	21.6%
Suspension under supervision	21	71	89	134	190	209	243	309
%	3.6%	11.3%	17.7%	31.0%	29.5%	29.0%	28.9%	29.0%
Community work	0	0	1	5	0	0	1	5
%			0.2%	1.2%			0.1%	0.5%

Source: Superior Council of Magistracy.

Looking at the prison sentences in respect of the length of imprisonment (Table 4), it can be observed that adult drug offenders were most often sentenced to imprisonment for 1 to 5 years, followed by imprisonment for 5 to 10 years. In 2012, 56.6% of the offenders were convicted to imprisonment ranging from 1 to 5 years. In the same year, about one quarter (26.8%) were

⁵⁸. Law No 278/2006 modified, *inter alia*, provisions related to the suspension of the execution of the penalty under supervision.

sentenced to imprisonment for 5 to 10 years. The sanctions of imprisonment for up to 6 months, from 6 to 12 months, and over 15 years, represented a small proportion.

Table 4
Adults sentenced to imprisonment for drug-related offences,
by length of penalty (2005-2012)

Imprisonment by length	2005	2006	2007	2008	2009	2010	2011	2012
Imprisonment total	497	457	322	219	353	385	423	511
Imprisonment 0-6 months	2	7	3	1	1	3	7	4
Imprisonment 6-12 months	13	7	4	2	4	11	23	7
Imprisonment 1-5 years	240	236	172	114	152	188	239	289
Imprisonment 5-10 years	182	172	108	90	147	143	112	137
Imprisonment 10-15 years	52	28	28	11	43	34	40	49
Imprisonment over 15 years	8	7	7	1	1	6	2	25

Source: Superior Council of Magistracy.

3.5. Proportion of prison sentences imposed on adult drug offenders over all prison sentences

From 2005-2012, the total number of adults sentenced to imprisonment in Romania significantly decreased by 33.1%. The number of drug offenders sentenced to prison dropped by more than a half from 2005 to 2008 (Table 5). This decrease in prison sentences is partly explained by the increase in conditionally suspended sentences and suspensions under supervision. From 2008 (n=219), imprisonment for drug offences grew continuously, reaching a maximum in 2012 (n=511). The share of drug-related imprisonments among all prison sentences was low, ranging between 2% in 2008 and 3.9% in 2010.

During the entire period from 2005 to 2012, the share increased by 1.3%.

Table 5
Number of adult offenders sentenced to prison for drug-related crime, 2003-2012

Persons sentenced to imprisonment	2005	2006	2007	2008	2009	2010	2011	2012
Total prison sentences	20,798	17,044	13,608	10,883	9,759	12,992	13,435	13,905
Imprisoned for drug-related offences	497	457	322	219	353	385	423	511
%	2.4%	2.7%	2.5%	2.0%	3.6%	3.9%	3.1%	3.7%

Sources: Superior Council of Magistracy for the number of persons imprisoned for drug-related offences, National Institute of Statistics for the number of total prison sentences for adults.

3.6. Proportion of adult drug offenders sentenced to prison by type of drug-related offence

As shown on Table 6, the total number of adults imprisoned for drug-related offences decreased by 55.9%, from 497 in 2005 to 219 in 2008. Between 2008 and 2012, adult drug offenders more than doubled. During this period, indictments by public prosecutors grew by 6.3%. The overwhelming majority of offenders (about 90%) were sentenced to prison for high-risk drug trafficking offences (including cultivation, production, etc.), international drug trafficking offences, and organisation, management and financing of drug use.⁵⁹ Regarding adults convicted of drug possession for use, the number decreased from 2005 (n=33) to 2012 (n=17) by about one half, with oscillating tendencies. The proportion of adults imprisoned for possession for use grew by one third, from 6.6% in 2005 to 9.9% in 2010, only to decrease to 3.3% in

⁵⁹. Please note that from 2005 to 2008 the statistics provided by the Superior Council of Magistracy distinguished between convicts of drug trafficking and convicts of drug use. From 2009 to 2012, the data refer to convicts of trafficking in high-risk drugs (including cultivation, production, preparation, etc.), convicts of international trafficking,

2012. There were no convictions of offences under Law No 300/2002 on drug precursors.

Table 6
Adults drug offenders sentenced to prison, by type of offence, 2005-2012

Type of offence	2005	2006	2007	2008	2009	2010	2011	2012
Imprisoned adults	497	457	322	219	353	385	423	511
Drug trafficking	464	436	314	207				
%	93.4	95.4	97.5	94.5				
Trafficking in high-risk drugs					262	255	259	408
%					74.2	66.2	61.2	79.8
International drug trafficking					67	91	96	79
%					19.0	23.6	22.7	15.5
Organisation, management or financing of drug use					6	1	7	0
%					1.7	0.3	1.7	0
Possession for use	33	21	8	11	19	38	34	17
%	6.6	4.6	2.5	5.0	5.4	9.9	8.0	3.3
Other	-	-	-	-	-	-	27	7
%							6.4	1.4

Source: Superior Council of Magistracy. From 2009 to 2012, drug trafficking categories were further differentiated.

convicts of organisation, management or financing of drug use, and convicts of drug use (possession for own consumption).

3.7. Influence of legislative amendments to drug offences on drug-related crime rates

In the research period, there were very few relevant legislative amendments concerning the criminal framework or sanctioning system of drug-related offences. Worth mentioning is the modification of Art. 4 Law No 143/2000 by Law No 522/2004, in effect since 2005, setting out different sanctions for drug possession for personal use (see above 3.3.). Following this amendment, there was an upward trend in the number of use-related offences investigated by the police (see Table 1). From 2005 to 2006, the share of offences concerning possession for use increased by 41%.

3.8. Statistical deviations with respect to recidivism rates of drug offenders following the legislative amendments

There were no statistical deviations regarding recidivism rates of drug offenders following the legislative amendment mentioned above.

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

4.1. Details of the research sample

This research is related to the analysis of 50 final court decisions of the County Court Bucharest⁶⁰, the Court of Appeal Bucharest and the High Court of Cassation and Justice.⁶¹ The judgements were delivered by the penal sections

⁶⁰. The County Court is competent as a court of first instance in case of more serious and complex offences, including serious offences against the person or drug-related offences. Prior to the penal reform in 2014, the County Court also provided competence as a court of second instance in cases stipulated by the law. The majority of offences are dealt with by the Local Courts as courts of first instance. After the penal reform, the Court of Appeal is competent to decide on appeals against decisions of both the Local and the County Courts.

⁶¹. Court decisions were selected through a search engine of the County Court's website, where information concerning a final judgement could be obtained. During the analysis of the decisions of the County Court, it became obvious that the selected judgements of the County Court also included final decisions of the Court of Appeal

of the courts from January 2010 to September 2013 and included 28 final judgements of the County Court, 19 final judgements of the Court of Appeal and three final decisions of the High Court of Cassation and Justice. All the information needed was processed on a data collection form.

4.2. Statistical prevalence of various drug law offences committed by adult offenders

Regarding the type of offences, among the analysed cases are offences related to drug trafficking (Art. 2), possession of drugs for personal use (Art. 4) and international drug trafficking (Art. 3), or a combination thereof, all set out by Law 143/2000. The sanctioning system depends on whether there are risk drugs or high-risk drugs involved. There were no offences under the law on drug precursors.

Almost half of the adult offenders, 22 out of 50, were convicted of drug trafficking. Out of these 22 convicted, 15 offenders committed trafficking in high-risk drugs, Art. 2(2). Seven offenders were convicted of trafficking in risk drugs, Art. 2(1). Furthermore, 14 offenders received sanctions for committing drug trafficking and possession for use (Art. 2 and 4). Of these, eight were convicted of committing these offences involving high-risk drugs, Art. 2(2), 4(2), and six involving risk drugs, Art. 2(1), 4(1). One offender was convicted of instigation of trafficking and possession for use of high-risk drugs.

Regarding possession for use, eight individuals received sentences for drug possession for own consumption, all of which were related only to high-risk drugs, Art. 4(2).

Five cases were related to international drug trafficking. Three individuals were convicted of international trafficking in high-risk drugs, Art. 3 (2), one individual of international trafficking and trafficking in high-risk drugs, Art. 2(2), 3(2), and one individual of international trafficking and possession for use of high-risk drugs, Art. 3(2), 4(2).

In most cases, high-risk drugs included heroin. In a few cases, these drugs included cocaine, PMMA (Paramethoxyamphetamin), MDMA

and a few decisions of the High Court of Cassation and Justice. Due to administrative challenges, a broader inclusion of further final judgements of the County Court was not possible

(Methylenedioxymetamphetamin), LSD, methadone and MBDB (Abutilon). All risk drugs were cannabis.

within the timeframe provided. Therefore the sample consists of final decisions taken by the County Court Bucharest, the Court of Appeal Bucharest and the High Court of Cassation and Justice, also located in Bucharest.

4.3. Difference in the court's sentencing practice for the same criminal offences in non-suspended and suspended sentences

When sentencing, judges take into consideration all the circumstances of the case, both mitigating and aggravating, as well as the personal characteristics of the offenders. Regarding drug-related offences, judges also take into account the type and quantity of drugs. Therefore, the final decision of the court for the same criminal offence often differs.

In our sample, drug trafficking as well as use-related offences were in some cases given suspended sentences, in other cases non-suspended sentences. In 25 of the analysed cases, courts ordered suspended sentences. Thirteen of those cases involved risk drugs, while the remaining 12 cases involved high-risk drugs. In high-risk drug cases, the courts ordered the conditional suspension of the execution of the penalty when the quantities of the drugs were very small. Regarding the category of offence, suspended sentences were given for the following offences: trafficking in high-risk drugs (eight cases), trafficking in risk drugs (seven cases), trafficking and possession for use of risk drugs (six cases), trafficking and possession for use of high-risk drugs (two cases), international trafficking and trafficking in high-risk drugs (one case), international trafficking and possession for use of high-risk drugs (one case).

The criminal background of the offender is the most important aspect judges consider. More specifically, they are interested in knowing the existence or lack of criminal records, and whether the past offence was drug-related or not. Suspended sentences were given when the offender had no criminal record. Sentences were harsher and non-suspended in case of drug-related recidivism. In most suspended cases, the offender's confession was taken into consideration.

4.4. Extent to which the court uses the range of punishment between the special minimum and maximum prescribed for a specific drug-related offence

In nearly all cases, the court decided for a punishment that was directed towards the special minimum, or even below the special minimum prescribed for the specific drug offence. Hereby, mitigating circumstances, especially the offender's confession, were taken into consideration and, consequently, the prescribed limits were reduced significantly. Of importance is Art. 320¹ Code of Criminal Procedure, which sets out that in case of confession the special limits of the penalty of imprisonment are to be reduced by one third (see below 4.5.).

Furthermore, the special limits were reduced by one half if the offender denounced another drug offender or facilitated his/her identification. It cannot be concluded that the legal frameworks are not too low, taking into consideration the comparison with other offences and the fact that the special limits of the offences were considerably lowered by the criminal law reform in February 2014.

4.5. Application of the Criminal Code provisions on mitigation of punishment, grounds for mitigation and prevalence of mitigated punishments

As can be observed in the analysis, judges often applied provisions on mitigation of punishment. Besides the mitigating circumstances of Art. 74 Criminal Code, when individualising the cases in accordance with Art. 72 Criminal Code, the courts refer to personal characteristics, prior convictions, the social dangerousness of the offence and further aspects that can be considered as mitigating circumstances.

Courts took into consideration the mitigating circumstances of Art. 74 CC, relating to the offender's behaviour before offending, the attitude during criminal proceedings, the offender's confession (Art. 320¹ Code of Criminal Procedure) or a denouncement (Art. 16 Law No 143/2000 or Art. 19 Law No 682/2002) (see more details below).

In 43 cases, provisions on mitigation of punishment were applied, based on Art. 74 CC, Art. 320¹ Code of Criminal Procedure, Art. 16 Law No 143/2000 or Art. 19 Law No 686/2002, or a combination thereof.

4.6. Amendments to the prescribed criminal frameworks of punishment for drug offences and their implementation by the court

If the prescribed criminal frameworks of punishment for a drug offence were amended, did the court follow the newly-prescribed sentencing policy?

During the research period, the criminal frameworks of punishment were not amended. The legal frameworks were considerably modified by the criminal law reform on February 1st, 2014 (see above). These amendments have no impact on the analysed court files.

Concerning the mitigation of sentences, an amendment to the Code of Criminal Procedure which came into effect during the research period is worth mentioning. The so-called “small legal reform” (Law No 202/2010), aimed at accelerating legal proceedings, introduced Art. 320¹ in the Code of Criminal Procedure. In accordance with this provision, in case of confession of the offender, the special limits of the punishment are reduced by one third regarding imprisonment. In the cases in which the offender confessed to the offences, the courts applied this special provision. Even before this provision was introduced, judges took into consideration the offender’s confession as a mitigating circumstance.

5. Individualisation of imposed sanctions

5.1. Methods used by judges to individualise a sanction imposed on an individual drug offender

The individualisation of sanctions in the court files is based on Art. 72 of the previous Criminal Code, which was in effect until February 1st, 2014. The provision lays down the general criteria of individualisation, among which provisions of the general part of the Criminal Code, the special prescribed limits of the penalty, the degree of social danger of the offence, the personality of the offender and circumstances that mitigate or aggravate the offender’s criminal responsibility. Furthermore, the law explicitly refers to mitigating and aggravating circumstances, Art. 73 ff. (see below).

Judges determined the special limits of the offences by taking into consideration the degree of social danger (e.g. whether high-risk drugs were involved), the offender’s personal characteristics (e.g. workplace, family status, age), recidivism and other mitigating or aggravating aspects. The

decisions were based on the impression of the offender, on technical expertise concerning the type and quantity of drugs, on witnesses' declarations, as well as on characterisations of the offender made by friends, colleagues and neighbours. In most cases, the judges provided sufficient explanation on the selection, type and range of sanction.

5.2. Mitigating and aggravating circumstances relevant for the choice of the type and range of punishment and circumstances mostly relied on when deciding about the punishment

Mitigating factors included in the general criteria in Art. 72 Criminal Code concerning the personal characteristics of the offender, the social degree of danger of the offence and other circumstances that can be regarded as mitigating, were considered by the courts in the decisions. Further, mitigating circumstances as provided for in Art. 74 Criminal Code (discretionary) were also relied upon when sentencing.

Concerning the general criteria, with regard to the offender, aspects such as age, physical condition, moral and intellectual development, work and family status, as well as criminal records were of importance. As can be noted, judges considered as mitigating factors the young age of the offender, any health problems, whether an offender had (underage) children and had to care for family members, whether an offender was working (and had stable income) or had a professional qualification, whether the family supported the offender (which was considered as facilitating social reintegration), and whether the offender had good social relationships. Furthermore, the absence of criminal record was considered favourable. Another aspect judges took positively into consideration was the small quantity of drugs.

The courts referred in many cases to circumstances that can be considered by the court as mitigating and depend on the discretion of judges. These are exemplified by the previous Criminal Code (Art. 74) and include: 1) the offender's good conduct before committing the offence, 2) the offender's efforts to remove the results of the offence or repair the harm caused by the offence, and 3) the offender's attitude after committing the offence, including presentation before the authorities, a sincere attitude during the criminal proceedings, and facilitating the identification or arrest of other participants.

As it was observed, in many cases judges regarded the offenders' sincere attitude during the criminal proceedings (preliminary and court proceedings), collaboration with the authorities and a good behaviour before committing the offence as mitigating factors. Mitigating circumstances in accordance with Art. 74 Criminal Code were accorded in 29 cases.

Furthermore, a mitigating aspect was considered if an offender denounced, during preliminary proceedings, another person who committed a drug-related offence, facilitated their identification and held them accountable, Art. 16 Law 143/2000. This was applied in 6 cases. This provision sets out that the prescribed limits of the penalty are to be reduced by half. The same applies if an offender denounces, before or during preliminary or court proceedings, another person who committed a serious offence, Art. 19 Law No 682/2002 on the protection of witnesses.⁶² This provision was accorded in two cases.

Another mitigating aspect that was important in our analysis, also leading to lowering the prescribed limits of punishment, is the offender's confession, Art. 320¹ previous Code of Criminal Procedure (see also 4.6.). This provision was applied in 30 of the 35 cases in which sentences were pronounced after the entry into effect of Art. 320¹.

Regarding the aggravating circumstances, judges most often invoked drug or criminal recidivism, the high degree of social danger of the offence and the large quantity of drugs. Further aggravating factors included: the lack of an organised life, i.e. lack of job, lack of professional qualification/school education or lack of housing. Additional factors included: the concrete danger for the public order; the negative impact on the health of the society, of the offenders themselves and of the victims of crime; history of drug addiction; risk of recidivism; and history of drug trafficking. In addition to the circumstances set out in Art. 72 Criminal Code (general criteria of individualisation), special aggravating factors are provided for in Art. 14 Law No 143/2000. In two cases, the offences of high-risk drug trafficking were committed in a prison, Art. 14(1)

c). In another case, the offender involved a minor in the criminal activities; this was considered as an aggravating circumstance according to Art. 14(1)d).

⁶² . Law No 682 of 19.12.2002, published in the Official Gazette No 964 of 28.12.2002.

5.3. Analysis of the personal characteristics of the offenders (age, sex, family status, education, employment, health condition, etc.)

Concerning the personal characteristics of the perpetrators, in the 50 analysed files we encountered more male offenders (38 males) than female offenders (12 female), all of them Romanians.

In terms of age distribution, it is interesting to note that most of the offenders belonged to the 20-29 age group (25 offenders), followed by individuals aged between 30 and 39 (16 offenders). The next age group comprised individuals aged between 40 and 50 (7 offenders). The least represented age group was the under 20 (2 offenders). The youngest offender was 18 years old and the oldest 44 *tempore delicti*.

Regarding the family status of the 50 offenders, we found that most of them were not married (39), one was divorced and three were living in partnership. Out of the 50 individuals included in the research, 14 had at least one minor child and four had at least one adult child.

The analysis of the offenders' education and working status shows that most of the offenders are unemployed (33) and some of them are working without a legal contract (4). On the other hand, we also found five offenders out of a total 50 that were working in an administrative/managerial position.

The statistical analysis of the offenders' education status shows that they can be broken down into two main categories: those with only eight grades of school (13 offenders) or those with 12 grades of school (12 offenders). We also found offenders who never went to school (3), some who attended 10 grades (6), as well as some who have university studies (5).

As for the health condition of the offenders, many offenders are drug addicted consumers and drug recidivists, and the files that we analysed did mention many health problems. Indeed, one individual suffered from chronic hepatitis, one suffered from chronic bronchitis, and two had health problems which were not further specified.

5.4 Proportion of drug addicted offenders: drug addiction recidivism and criminal recidivism as a prevalent contributing circumstance to offending and their influence on judges' decision about the type and range of sanction

Among the 50 adult offenders, 27 were drug addicts. Some 19 offenders were addicted to heroin, of whom five had been addicted for 10 years or longer. Furthermore, there was one offender addicted to methadone, one to ecstasy and one to MDMA. The rest of the offenders reported cannabis use, some of them only occasionally.

There were 13 cases of drug recidivism and nine cases of criminal recidivism.

Drug recidivism and criminal recidivism were considered as aggravating circumstances in the judgments in respect of the type and range of sanction when individualising the sentence.

5.5. Irregularities or patterns in judicial selection of sanction and accordance of imposed sanctions with the principle of proportionality and the principle of equality before the law (likesituated offenders who commit similar offences should receive similar punishment)

In general, it can be considered that the decisions are based on the principles of proportionality and equality before the law. Bearing in mind the relatively high limits of penalties for drug-related offences at the time of the research, judges in many cases took into consideration mitigating circumstances and consequently pronounced sentences that were close to or below the special minimum.

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

On a legislative level, the sanctioning system for drug-related offences has recently undergone changes, considerably lowering the special limits of the offences (see above). This is due to a comprehensive criminal law reform, which came into effect on February 1st, 2014 and modified the criminal framework for several offences. After the amendment of the provisions on drug-related offences, new ranges of punishment were prescribed, which can be considered as adequate. However, with regard to drug possession for personal use, the legislator should take into consideration the decriminalisation of risk drugs in order to prevent criminal careers of drug users and to more effectively combat organised crime. As revealed by the analysis of sentencing practice at the micro level, there were no sentences for possession of risk drugs for personal use. Furthermore, the extension of the use of therapeutic measures for all drug addicted offenders should be taken

into consideration, in order to apply the suspension of the execution of the penalty (Art. 19 Law No 143/2000), which is restricted to offences under Art. 4 Law No 143/2000 (drug possession for own consumption).

Regarding sentencing practices, the research revealed that courts rarely applied drug addiction treatment measures, even for long-term consumers (especially those addicted to heroin). Such measures should be preferred over libertydepriving sanctions, or be combined with liberty- and non-liberty depriving measures, as drug users need adequate treatment and assistance. With the entry into effect of the provision that public prosecutors shall order the assessment of drug consumers in an integrated care programme with their consent (for offences under Art. 4 Law No 143/2000), the wider use of treatment measures is to be expected. In this regard, a well-functioning interinstitutional network is of importance. Furthermore, the wider use of alternatives to prison in appropriate cases should be considered.

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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