

## **“Sentencing of drug offenders, the legislator’s policy and the practice of the courts in South East Europe.”**

This note presents a short summary of the results of the empirical research conducted by the Association Diogenis on “Sentencing of drug offenders, the legislator’s policy and the practice of the courts in SEE”. The survey was conducted between mid-2013 and early 2014 by researchers from NGOs and the academia, aiming to inspect the existing regulatory framework and latest legislative reforms, analyse court cases for violations of the applicable drug legislation, and finally clarify whether it is possible to solve the drug problem by repression. The countries surveyed were Bosnia & Herzegovina, Bulgaria, Greece, Croatia, Montenegro, Former Yugoslav Republic of Macedonia, Romania, Serbia, and Slovenia. Inter alia, approximately 50 appeal decisions from these legal orders issued between 2009 and 2012 were assessed. According to the analysis, in most SEE countries drug users comprise a significant percentage of convicts. Most are prosecuted and convicted for illegal drug manufacturing and dealing. The statistical occurrence of different drug offenses in the surveyed countries is almost identical for Bosnia & Herzegovina and Former Yugoslav Republic of Macedonia, and quite similar between Croatia, Montenegro, Slovenia, and Serbia.

Most perpetrators are prosecuted and convicted for possession of drugs for personal use. This offense has a statistically prevailing rate in juridical criminal statistics, which tends to confirm that the SEE criminal justice systems are much encumbered due to the criminal handling of such conduct. Consequently, governments have taken various measures in recent years to reduce the number of such cases to finally reach courtrooms. Additionally, the vast majority of drug manufacturers or cultivators are dependent individuals who grow cannabis for own consumption or otherwise manufacture drugs for personal use. Statistics also showed that a significantly smaller number of offenders are sentenced for drug trafficking, with an equally minor contribution to general crime rates (1.6% in Bulgaria and Croatia, 3.76% in Greece). In almost all surveyed countries, most convicts are imposed an imprisonment of up to three years, and the vast majority get suspended sentences. In Croatia, this represented 48.6% of convictions between 2002 and 2012, with 52.7% for Greece and 57.4% for Slovenia. In Bulgaria, on the other hand, fines are very frequent imprisonment alternatives.

In determining and deciding upon the type and extent of imposable sanction against an offender, judges consider a diverse range of criminological factors associated with both the perpetrator and the crime itself. The research showed that in all surveyed countries, a key contributor to suspension of sentence was the absence of prior conviction, while in most cases courts imposed sentences that border the legal minimum, or up to one third of the drug law sanctioning range. The research also revealed that juridical punitive policies in SEE countries vary, and do not generally adhere to the respective legislative provisions and amendments. Apart from courts limiting themselves to a 30% of the penalty range or tending to “breach” the minimum threshold via mitigation, this interesting correlation is proven when examining sanctioning trends following critical legislative reforms. Although limited, the research sample showed that regardless of sanctions being decreased or increased by law, courts tend to not follow through.

According to the -more or less- anticipated findings, the vast majority of offenders are male, with Romania differentiating: according to the surveyed sample of court decisions, 24% of perpetrators were female. As to the age of offenders, most are between 20 and 30, followed by those between 30 and 40 (32.4%). Therefore, drug offenses are committed by individuals of the most criminally active age groups, as they require the energy and planning most

commonly associated therein. For the large part -and with the exception of Romania- offenders have a high school degree, are unemployed, single, and childless.

Scrutiny of research data showed a substantial inconsistency between legislative and juridical punitive policy for drug offenders in SEE. While legislative measures gear towards protecting public health, intensified criminalization of drug-associated behaviours, and harsh sanctioning, courts tend to treat perpetrators as individuals in need of treatment, considering their delinquent behaviour an outcome of specific conditions and factors. The analysis of the case sample in SEE countries reveals that courts do not adhere to the changes sought through legislative punitive policy, and stick to trend often criticized as mild. Additionally, the sample revealed homogeneity as to the imposed penalties and the concession on aggravating and mitigating circumstances, triggering reservations as to the application of the principles of proportionality and equality before the law. However, despite these limitations, practical litigation has sparked a debate on the suitability of current legislative drug policy in SEE countries. Analysis of court practice in association with recent legislative reforms confirms that policies promoting harm reduction that gradually marginalize and eliminate prior measures have progressively been introduced in the criminal justice system. A significant reduction of sanctions in Greece and Romania together with the decriminalization of drug possession for own consumption in Croatia and Brcko District of Bosnia and Herzegovina are good examples of such modern policies.

Research has evidently exposed the need for further reassessment of criminal law, with emphasis on alternatives to incarceration for small-time perpetrators. Given that, the requirements for imposing therapeutic measures should be amended to include alternatives to imprisonment for those undergoing treatment. In general, the tendency for a less punitive and more therapeutic approach needs more reinforcement. An effective monitoring system for new alternatives would be fitting in SEE, together with emphasis on the training of judges, prosecutors, and the police. Research in the field should also be encouraged, to obtain data for a deep analysis of the criminal justice system in the context of drug offenses.