Policies on drugs in Bulgarian prisons

Background report

Bulgaria

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Background information on Bulgaria

The Republic of Bulgaria is a unitary state on the Balkan Peninsula bordering the Black Sea in east and Greece and Turkey in the south, the Republic of Macedonia and Serbia in the west and Romania in the north. Bulgaria has a population of 7.2 million people. The capital and largest city is Sofia with 1.3 million inhabitants.[1]

With its independence from the Ottoman Empire in 1878, Bulgaria initiated the formation of its contemporary political and economic system based on the democratic values. Constituted as a monarchy until the end of the World War II when the Communist regime was established in the country and it was declared a republic.

The Communist regime fell in 1989, initiating a long period of transition from totalitarism to democracy.

The modern Bulgarian political system is influenced by the efforts for democratisation and liberalisation of the country's economy after the fall of the Communist regime. Some 10 years after the end of communism the country was dominated by political instability, unprecedented inflation and bankruptcies, high unemployment rate and poverty. Bulgaria's democratic and market economy transformation after 1989 has been slow as the communist political elite transformed into an economic elite by redistribution and by establishing indirect control over state property. "At the same time the intertwined political and economic elite showed no genuine interest in establishing a functioning or truly impartial judiciary. This created the basis for a stable symbiosis between the state and private economic interests."[2]

Democracy and civil rights had a high cost for the average Bulgarian and many of the older people are still nostalgic about socialism when they had a simple, secure life with less freedom and opportunities for development.[3]

Another factor influencing to a significant extent country's development is its accession to the EU. In the years preceding Bulgaria's accession to the European Union in 2007, its legal system evolved through a profound and strictly-monitored alteration in order to achieve coherence with the acquis communautaire. The EU is viewed by predominantly the younger people as one of the external guarantees for securing the rule of law. Instruments, such as the Cooperation and Verification Mechanism of the European Commission, assessing the country's progress in the areas of judicial reform, the fight against corruption and the fight against organised crime, which aimed at improving shortcomings in the mentioned areas, are seen as a means for imposing

Despite its efforts, in 2016 Bulgaria remains a relatively poor country. It suffered badly in the recession of 2009 slowly recovering since then.

The criminal justice system

Bulgaria's government is divided into three – legislative, executive and judicial branch. The criminal justice system encompasses the judicial and part of the executive branch. The judiciary consists of three autonomous sections – court, prosecutors and investigative authorities. The police (Ministry of the Interior) the Ministry of Justice and its subordinate prison system belong to the executive branch despite the police has investigative powers.

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[1] National Statistical Institute, data as of 31.12.2014.

[2] Bertelsmann Stiftung's Transformation Index (BTI) 2014, p. 3, http://www.bti-project.org/fileadmin/Inhalte/reports/2014/pdf/BTI%202014%20Bulgaria.pdf

[3] UNDP (2015) A short history of Bulgaria – part 5 – Modern History, http://undp.bg/a-short-history-of-bulgaria-part-5-modern-history/

The criminal case undergoes two phases, set by the law:[4] 1) a pre-trial phase, led by the police and the prosecutors and 2) trial phase where the case is considered by court.

1. **The pre-trial phase**. Bulgaria's police is the main investigative authority. It is a part of the Ministry of the Interior. The Ministry's directorates of "Countering organised crime" and "National Police", as well as Ministry's local branches register criminal acts, initiate and carry out investigations and collect evidence.
   The prosecutors supervise police investigations, press charges and plead in court. The Prosecutor's Office is a strongly centralised institution. It is structured as follows - the Prosecutor General, the Supreme Prosecutor's Office of Cassation, Prosecutors' Offices of Appeals, Military Prosecutors' Offices of Appeals, District Prosecutors' Offices, Military District Prosecutors' Offices and Regional Prosecutors' Offices. Prosecutor's offices follow the district division of the courts.
   A criminal act is investigated and prosecuted by the police department and the prosecutor's office at which jurisdiction fall the crime location.
2. **Criminal trial**. Criminal cases are brought to the court at which jurisdiction falls the crime location. Bulgaria's court system is generally a three-instance. There are three types of courts – district, regional and appellate courts. There is also a Supreme Court of Cassation. A criminal case's first instance can be either the district or the regional court, the third instance is always the Supreme Court of Cassation.
   As an effort to effectively fight organised crime, in 2011 the Parliament voted an introduction of a Specialised Criminal Court and Appellate Specialised Criminal Court. These courts were specially designed to consider organized crime cases, however they are widely criticized for being inefficient.[5]

After the court decisions, convicts fall within the authority of the Ministry of Justice which General Directorate "Execution of Penalties" is responsible for all sentenced to prison and probation, as well as for a system of pre-trial detention facilities.

The system of prisons consists of 12 prisons with an open and closed hostel within each of them, 1 reformatory for male juveniles and 1 reformatory for female juveniles. Of these, the only prison facilities which host female offenders are located in the town of Sliven – a prison with open and closed hostel, and reformatory.

Studies and surveys identify the depreciated physical assets and poor material conditions of detention, the persistent overcrowding, especially in some of the prisons, the low level of employment, the problems in ensuring medical services and education, in the quality of management (a high degree of centralization, understaffing of the penitentiary facilities, inadequate security, internal order and safety), the problems of selectivity and recidivism, the problems of specific categories of persons deprived of their liberty etc., as the principal shortcomings of the Bulgarian penitentiary system.[6]

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[4] Criminal Procedure Code, Art. 7.

[5] See for example: Report from the Commission to the European Parliament and the Council on progress in Bulgaria under the Cooperation and Verification Mechanism, {SWD(2015) 9 final}, p. 9, http://ec.europa.eu/cvm/docs/com_2015_36_en.pdf

[6] CSD (2011) Penitentiary Policy And System in the Republic Of Bulgaria, Sofia: CSD, p. 42

Although the prison population is gradually decreasing, some 10,000 people are detained in Bulgaria every year.[7] Of these, some 65% serve their first sentence. Men significantly outnumber women with 97% to 3%.[8] Prisoners of between 25 and 39 years old form 57% of the prison population.[9]

The 27 Regional Services of Execution of Penal Sanctions follow the country's administrative territorial division. Each of these services manages a Detention Facilities Sector and a Probation Sector.

Statistics on crime and punishment

Bulgarian criminal law does not make a distinction between misdemeanors and felonies. There are, however, two other distinctions between crimes in Bulgaria.

- Some offences are regarded as 'serious offences'. According to the Penal Code (Art. 93), a 'serious offence' is a criminal offence for which the law envisages a penalty of imprisonment for more than five years, life imprisonment or life imprisonment without parole. Some provisions apply only to serious offences (e.g. use of special intelligence means) while some concepts are not applicable for such offences (e.g. plea bargaining).
- Also, there are several minor offences (e.g. defamation or insult) for which the criminal prosecution is not initiated and performed by the public prosecutor but by the victim. For crimes prosecuted by the victim there is no pre-trial investigation.

Bulgarian Penal Code envisages eleven types of criminal sanctions. For each criminal offence the law provides for both the type and the amount (or length) of the applicable sanction. The penalties are as follows:

- imprisonment;
- life imprisonment;
- life imprisonment without parole;
- probation;
- confiscation of property;
- fine;
- deprivation of right to occupy a certain state or public position;
- deprivation of right to exercise certain professions or activities;
- disqualification from the received orders, honorary titles and distinctions;
- deprivation of military rank;
- public reprimand.

Custodial sentences are served in prisons according to the rules and procedures specified in the Law on Execution of Penal Sanctions and Detention in Custody.

Probation is a separate penalty and can be imposed by the court if it is among the sanctions provided for the specific offence. For some offences probation and imprisonment are provided for in the law as alternatives and it is up to the court to decide which one to impose. In exceptional cases, where there are multiple mitigating circumstances, the court can substitute imprisonment with probation even if probation is not provided for the committed offence. This can be done only for offences for which the

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[7] The 2003 – 2013 prison population average is 10,209. Source: Манчева, М. и др. (2014) Социологически и демографски анализ на избрани уязвими групи, София: ЦИД, стр. 6.

[8] Манчева, М. и др. (2014) Социологически и демографски анализ на избрани уязвими групи, София: ЦИД, стр. 6.

[9] Ibid.

law does not specify the minimum length of imprisonment. Once imposed through an enforceable sentence, the penalty can no longer be changed.

When imposing the penalty of imprisonment the court can issue the so-called 'suspended sentence'. Suspended sentence means that the offender is sentenced to imprisonment but does not go to prison directly. Instead, the court suspends the sentence for a certain period of time (called 'probation period') during which the offender is obliged to study, work or undergo medical treatment (depending on the case). If the offender does not commit another crime punishable by imprisonment during the probation period he or she does not go to prison. If the offender commits another offence during that time he or she has to serve both sentences. Suspended sentences apply only if: (1) the offender is sentenced to imprisonment of up to three years; (2) the offender has not been sentenced to imprisonment before; and (3) if the court believes that to achieve the objectives of the penalty in general and the re-education of the offender in particular the latter does not need to serve the sentence. Suspended sentences, however, are entered in the criminal record of the convicted person in the same way as effective custodial sentences.

An offender serving a prison sentence could be released from prison earlier. This is called 'conditional release' and is possible only if the offender has already served at least half of the penalty and has demonstrated his or her correction through exemplary conduct and honest attitude to work. Conditional release applies to recidivists as well provided that they have served at least two-thirds of their sentences and the remaining time is not more than three years. Conditional release can be applied only once. Offenders granted conditional release are given a probation period (equal to the remaining time of their sentence but not shorter than six months) during which they have to perform certain obligations and refrain from committing another crime. If they fail to do this they have to go to prison for the period they have been conditionally released for.

In certain cases the offender can be sanctioned by an administrative penalty (fine) instead of a criminal sanction. This option applies if: (1) the penalty envisaged for the crime is imprisonment of up to three years or a less severe penalty (for intentional offences) or imprisonment of up to five years or a less severe penalty (for negligent offences); (2) the offender has not been sentenced for an offence prosecuted ex officio and has not been released from criminal responsibility through this procedure before; and (3) pecuniary damages caused by the crime have been fully compensated.

Crime rate by type of trial outcome:

	2014	**2013**	**2012**	**2011**	**2010**
Sentenced effectively	46,4%	48,2%	48,9%	51,8%	53,0%
Sentenced conditionally	38,1%	36,1%	35,9%	34,7%	28,8%
Acquitted	2,6%	2,7%	3,0%	2,5%	3,1%
Trial terminated	0,2%	0,3%	0,6%	0,5%	0,4%
Released from criminal liability	12,7%	12,7%	11,6%	10,5%	14,7%
Total number of crimes	**34 182**	**37 130**	**40 400**	**42 460**	**43 278**

Source: NSI.

Policies on drug use

Bulgaria's policy towards drug use is dominated by repressive measures. It is a twofold policy - first, it imposes a licensing regime that sets which substances are illegal or forbidden to be produced, owned and used, and also defines the regimes under which some of them can be used and in which occasions as for example the pharmaceutical industry. The second side is the repressive one – prosecution of those violating these rules.

The overall responsibility for the coordination and the implementation of the national drug policies is carried out by the National Drug Council (NDC), which is an interdepartmental body established under the *Act on Control of Narcotic Substances and Precursors* – the piece of legislation which regulates which substances are illegal and defines the licensing procedure for owning them. The council is chaired by the Minister of Health and his deputies are the General Secretary of the Ministry of Interior, the Deputy Chairman of the State Agency 'National Security' and the deputy Minister of Justice. The other members of NDC are representatives of the Presidency of the Republic of Bulgaria; the Supreme Cassation Court; the Supreme Administrative Court; the Supreme Cassation Prosecution Office; the National Investigation Service, as well as all other concerned Ministries and institutions. NDC has established 27 Regional Drug councils, which are responsible for the coordination and implementation of the drug policy at a regional level.

The National Drug Addictions Centre is a body responsible for coordinating and providing methodical guidance on prevention, treatment, reduction of medical harm and rehabilitation of drug users and addicts. The Centre acts as a body exercising specialized control of treatment and as a drug addictions expert body. It is also designated as a National Focal Point on Drugs and Drugs Addictions, which reports to the European Monitoring Centre for Drugs and Drug Addictions.

Criminal law provisions on drug-related crime

Historical overview

The State's penal policy with regard to drug-related offences is inconsistent and not based on a clear strategy of the expected results and the way to achieve them. Most legislative amendments made over the last ten years suggest a lack of long-term priorities, as well as a failure to reckon with the specificities of this type of crime, especially regarding the different treatment of drug distribution and possession for personal use.

The legal framework of drug-related offences dates from 1975, when several acts having narcotic drugs as their object were criminalized for the first time: preparing, acquiring, holding, transporting or carrying narcotic drugs without due authorization (with penal sanctions varying depending on whether the narcotic drugs are intended for sale or other alienation); sale or other manner of alienation of narcotic drugs; breach of rules established for the producing, acquiring, safekeeping, accounting for, dispensing, transporting or carrying narcotic drugs; inducing another to use narcotic drugs; systematically providing a premise to various persons for use of narcotic drugs or organizing the use of such drugs; knowingly prescribing by a physician of narcotic drugs or medicines containing such drugs without this being necessary; and planting or growing opium poppy or another plant without due authorization or in breach of the established rules, for the purpose of producing narcotic drugs.

Since its introduction, the legal framework of drug-related offences has been amended on eight occasions (1982, 1993, 1997, 2000, 2004, 2006 and 2010). The first three amendments did not affect the offences themselves but merely revised the type and the length and amount of the penal sanctions.

The first revisions in the substance of the legal framework were made in 2000. Several aspects were affected:

- New acts were criminalized, such as producing, processing and distributing narcotic drugs, giving another person a narcotic drug or an analogue thereof in quantities likely to cause death and death ensues, organizing, leading, financing and/or participating in a criminal group for cultivation of opium poppy plants or plants of the genus Cannabis or for the extraction, production, preparation, manufacture or processing of narcotic drugs etc.

- The scope of the object of the offence was broadened with the addition of the analogues of narcotic drugs, precursors and materials and facilities for the production of narcotic drugs.
- For the first time, narcotic drugs were classified as 'high-risk' and 'risk' (the high-risk and risk substances are listed in schedules appended to the Law on Narcotic Substances and Precursors Control).
- New, more severely punishable cases were introduced for certain offences, such as acts committed by a physician, a pharmacist, a cover supervisor, a teacher, a headmaster of an educational establishment, etc.
- The lengths and amounts of the penal sanctions for most of the acts were increased but, at the same time, the acquiring, storing, holding and carrying of narcotic drugs or analogues thereof by a person who is dependent upon such substances, where the quantity is in amounts indicating that the said quantity is intended for a single use, was decriminalized.

The amendments of 2000 are the only ones which create an impression of being somewhat consistent and purposeful. On the one hand, they met the necessity to create a more precise framework for the various types of drug-related offences by introducing the requisite variation of the length and amount of penal sanctions according to the degree of social danger of the acts. The framework was aligned with the newly adopted Law on Narcotic Substances and Precursor Control, inter alia through the introduction of penal sanctions varying in length and amount with the object of the offence. On the other hand, the amendments decriminalized the so-called "single dose", which clearly showed the legislator's understanding that drug use in itself should not be treated as a criminal offence and that penal policy should target only the producers and distributors of such substances.

The legal framework created in 2000 lasted for a just a couple of years. The ensuing series of controversial and conflicting amendments radically changed both the priorities and the results of the State's penal policy in this sphere.

The Penal Code was amended as early as in 2004, and the provision decriminalizing the single dose was repealed. The sponsors of the bill argued that the revision was imperative due to the appearance of conflicting case-law regarding the interpretation of the term "quantity intended for a single use" and the increased frequency of cases of exculpating drug dealers apprehended with kilograms of narcotic drugs which the court held were a quantity intended for personal use. The reasoning to the bill points out that "considering the avalanche growth of the number of drug dependents, the State must prosecute the possession and distribution of drugs to the full extent of the law," which should be combined with a "State policy and treatment programs targeted at the drug dependents and prevention".

With the amendment of 2004, all drug-related acts were re-criminalized, regardless of the quantity of narcotic drug involved and the hypothetical of the offender's dependence. Worse yet, the heavy sanctions introduced by the preceding amendments were not modified, and the applicability of the severe penalties was thus automatically extended to the persons possessing small quantities of narcotic drugs for personal use. In this way, the State's penal policy was entirely retargeted from drug distributors to end users even though, according to a number of experts, users are the victims of the offence rather than its perpetrators.

The revision drew strong criticism both before and after its adoption.

The amendment found almost immediate reflection in the case-law on drug-related offences. The number of persons convicted of this type of offences more than doubled in the following two years. According to expert estimates, the increase was due mainly to the large number of cases against persons possessing a minimum quantity of a narcotic drug. At the same time, the pre-declared main goal of the revision – intensified penal repression of drug producers and distributors – was not achieved.

Nor did the criminalization of the single dose live up to the expectation of leading to a drastic increase in the number of persons convicted of this type of offences as a huge number of drug users would be

convicted. This effect never materialized, on the one hand, because of the objective impossibility of police instituting criminal proceedings against all drug users and, on the other, because of the frequent refusals of the Prosecutor's Office to bring charges in minor cases on the grounds of a lack of a criminal offence because of the insignificance of the case (Article 9 (2) of the PC).[10]

The ambivalent results of the amendments to the Penal Code of 2004 and the ever stronger arguments against the criminalization of the single dose compelled the legislator to revise the legal framework yet again. This happened just two years later, in 2006, when the latest in a series of amendments reduced substantially the length and amount of the penal sanctions for most drug-related offences, the distinction between distribution and personal use was reintroduced and, even though the single dose was not expressly decriminalized, a provision was added providing a very light penalty (maximum fine of BGN 1,000) for minor cases. The reasoning to the bill expressly stated that by minor cases the legislator means possession of small quantities of narcotic drugs by drug-dependent persons.

The relaxation of the sanctioning regime in 2006 logically led to a certain decrease in the criminal cases instituted in connection with drug-related offences. Nevertheless, the number of persons convicted of such offences remained relatively large in the ensuing years. One possible reason for this was the fact that despite the reduced sanctions, Bulgarian criminal law in practice continued to treat the possession of a single dose as a criminal offence.

The provision for a considerably lighter penalty of a maximum fine of BGN 1,000 for minor cases does not decriminalize but merely relaxes, albeit substantially, the sanctioning regime. All other consequences arising from the penal sanction, however, are retained, including the impact of the sentencing on the conviction status of the sentenced person. Regardless of the amount of the sanction, after sentencing the person will be on record as having been convicted and this could entail a number of negative consequences for that person, ranging from consequences at criminal law proper (such as disqualification from exemption from criminal liability upon commission of a subsequent act) to consequences related to the person's social integration, such as encountering greater difficulties in finding work. Even though the penal sanctions for most drug-related offences were substantially reduced after the amendments of 2006, Bulgarian criminal law continues to provide relatively severe penalties for perpetrators of such offences. The main penal sanctions specified in the law are imprisonment and a fine, most often provided for cumulatively. Imprisonment may be of a maximum length of 20 years, and the fine may be of a maximum amount of BGN 300,000 for the most serious offences. In specified cases, the court may furthermore disqualify the offender from holding a particular government or public office, from practicing a particular profession or from carrying out a particular activity. These are the cases where a person in a particular capacity (physician, pharmacist, cover supervisor, teacher, headmaster of an educational establishment, official at the places of deprivation of liberty etc.) committed the offence, and the disqualification usually affects precisely this capacity of the offender and is intended to prevent a repeat offence.

The system of penal sanctions applicable to drug-related offences unambiguously shows that the State's penal policy in this sphere is exclusively focused on deprivation of liberty and financial penalties and entirely ignores probation as a non-custodial measure. Probation is not provided for as a penal sanction for any of the drug-related offences, including for acts of a lower degree of social danger, such as the minor cases of holding narcotic drugs without the purpose of distribution (for personal use). This solution clearly indicates that the Bulgarian legislator perceives imprisonment as the only effective method for the correction and re-education of the perpetrators of any drug-related offences, regardless of the specificities of this particular case.

[10] Наркотици, престъпления и наказания [Drugs, Crimes and Punishments], Bulgarian Helsinki Committee, Sofia, 2007, p. 18 (available in Bulgarian only).

Such an approach seems justified with regard to the graver cases of drugs offences (trafficking, distribution, inducing other persons to use). The imprisonment of the perpetrators of such offences denies them the opportunity to reoffend and really contributes to the effective suppression of the distribution of drugs. The same applies to the fine, insofar as some of these offences (trafficking, distribution) generate substantial income for the perpetrators, which justifies the applicability of financial penalties.

The less serious cases and especially the holding of drugs for personal use are a different matter altogether. With an offender suffering from drug dependence, neither imprisonment nor a fine seems sufficiently effective for his or her correction and reeducation. In respect of these cases, the legislator should reconsider the applicable penal sanctions and must add probation as an alternative to imprisonment and to the fine, giving the court discretion to determine, in each particular case, whether imposition of a custodial sentence is warranted or the person can reform even without segregation from society. In the less serious cases, probation may be more effective than imprisonment because the offender will be obligated to observe a definite pattern of behavior (including participation in intervention programs) but, along with that, the possibility of intervention by his or her close ones will be retained, which is impossible with imprisonment. Bearing in mind that the less serious cases often involve persons without previous convictions, the possibility of intervention on the part of friends and relations should not be automatically ignored. Last but not least, it should be borne in mind that the poor conditions in Bulgarian prisons and the serious problems with the distribution of drugs there may exert a negative rather than a positive effect on such persons.

Drug-related offences today

With the exception of two cases, the Bulgarian Penal Code does not provide or a differentiation of punishability of offences depending on whether the offender or the victim was under the influence of narcotic drugs, whether the offender's motive was obtaining such drugs and whether the offence is related to the drug market. The only cases in which the use of drugs has a specific significance are:

- Inducing or forcing another to use narcotic drugs or analogues thereof for the purpose of prostitution, copulation, molestation, or engaging in sexual intercourse or acts of sexual gratification with a person of the same sex (Article 155 (4) and (5) of the PC). The penal sanction provided for this offence is imprisonment for a term of five to 15 years and a fine ranging from BGN 10,000 to BGN 50,000, or imprisonment for a term of 10 to 20 years and a fine ranging from BGN 100,000 to BGN 300,000 if the act was committed: by a person hired by, or implementing a decision of, an organized criminal group; against a person who has not attained the age of 18 years or who is insane; against two or more persons; as a repeat offence; or under conditions of dangerous recidivism.
- Operating a motor vehicle after use of narcotic drugs or analogues thereof, which carries a penal sanction of imprisonment for a maximum term of two years (Article 343b (3) of the PC). If as a result of driving under the influence of drugs there is an incident, the perpetrator is sentenced to one to six years of imprisonment in cases of causing mils or severe bodily injury, 3 to 15 years in cases of death, and 5 to 20 years of imprisonment in cases of injury and death of more than one person (Art. 343 (3)). These sanctions can be reduced if the perpetrators have done their best to help their victims.

In all other cases, determination of the relation of the offence to the use of narcotic drugs is left to the discretion of the court for each particular case together with all other circumstances of the case.

As to drug law offences, the Penal Code covers several groups of such acts.

The first group encompasses acts related to the distribution of drugs. This group includes the unauthorized production, processing, acquisition or holding of narcotic drugs or analogues thereof for the purpose of distribution, as well as the distribution of such drugs itself. The penal sanctions provided for such offences are imprisonment and a fine, and the length and amount of the sanction vary with the object of the offence. For high-risk narcotic drugs or analogues thereof, the penal sanction is imprisonment for a term of two to eight years and a fine ranging from BGN 5,000 to BGN 20,000; for risk narcotic drugs or analogues thereof, the sanction is imprisonment for a term of one to six years and a fine ranging from BGN 2,000 to BGN 10,000; and for precursors and facilities or materials for the production of narcotic drugs or analogues thereof, the sanction is imprisonment for a term of three to twelve years and a fine ranging from BGN 20,000 to BGN 100,000 (Article 354a (1) of the PC). Where the narcotic drugs or the analogues thereof are in large quantities, the penal sanction is imprisonment for a term of three to twelve years and a fine ranging from BGN 10,000 to BGN 50,000, and when they are in particularly large quantities, the sanction is imprisonment for a term of five to fifteen years and a fine ranging from BGN 20,000 to BGN 100,000 (Article 354a (2) of the PC). If the unauthorized distribution, acquisition or holding for the purpose of distribution of narcotic drugs s carried out in a public place, the penal sanction is imprisonment for a term of five to fifteen years and a fine ranging from BGN 20,000 to BGN 100,000. Heavier penal sanctions (imprisonment for a term of five to fifteen years and a fine ranging from BGN 20,000 to BGN 100,000) also apply in respect of acts committed by a person hired by, or implementing a decision of, an organized criminal group, by a physician or a pharmacist, by a cover supervisor, teacher or headmaster of an educational establishment, or by an official in the course of or in connection with the discharge of his or her official duties, as well as by a person acting under conditions of dangerous recidivism.

The second group of offences includes the unauthorized acquisition or holding of narcotic drugs and analogues thereof. These are the cases of possession of drugs for personal use and not for the purpose of distribution. The applicable penal sanctions are less severe and again vary with the object of the offence: imprisonment for a term of one to six years and a fine ranging from BGN 2,000 to BGN 10,000 for high-risk narcotic drugs or analogues thereof; imprisonment for a maximum term of one year and a fine ranging from BGN 1,000 to BGN 5,000 for risk narcotic drugs or analogues thereof (Article 354a (3) of the PC); and a maximum fine of BGN 1,000 if the offence constitutes a minor case (Article 354a (5) of the PC).

The third group of offences involves breach of rules established for the handling of narcotic drugs. This group covers the breach or rules established for the producing, acquiring, safekeeping, accounting for, dispensing, transporting or carrying of narcotic drugs. The applicable penal sanction is imprisonment for up to five years, a maximum fine of BGN 5,000 and, at the discretion of the court, disqualification of the offender from holding a particular government or public office, from practicing a particular profession or from carrying out a particular activity (Article 354a (4) of the PC). If the offence constitutes a minor case, the sanction is a fine of up to BGN 1,000 (Article 354a (5) of the PC). A physician who, in breach of the established procedure, knowingly prescribes any narcotic drugs or analogues thereof or any medicines which contain such substances, is guilty of an offence which, too, can be subsumed under this heading. This offence carries a penal sanction of imprisonment for a maximum term of five years and a fine of up to BGN 3,000 or, for a repeat offence, imprisonment for a term of one to six years and a fine of up to BGN 5,000. The court may or, in case of a repeat offence, must, furthermore disqualify the offender from holding a particular government or public office, from practicing a particular profession or from carrying out a particular activity (Article 354b (5) and (6) of the PC).

The fourth group of offences concerns the encouragement of others to use drugs. Inducing or aiding another person to use narcotic drugs or analogues thereof falls under this group, and the applicable penal sanction is imprisonment for a term of one to eight years and a fine ranging from BGN 5,000 to BGN 10,000. A heavier sanction (imprisonment for a term of three to ten years and a fine ranging from BGN

20,000 to BGN 50,000) is provided for the cases where the act was committed against an infant, a minor or an insane person; against more than two persons; by a physician, pharmacist, cover supervisor, teacher or headmaster of an educational establishment, or an official at a penitentiary facility in the course of or in connection with the discharge of his or her official duties (in such case, the sanction is complemented by disqualification from holding a particular government or public office, from practicing a particular profession or from carrying out a particular activity); in a public place; through the mass communication media; under conditions of dangerous recidivism (Article 354b (2) of the PC). Inducing or forcing another to use narcotic drugs or analogues thereof for the purpose of prostitution, copulation, molestation, or engaging in sexual intercourse or acts of sexual gratification with a person of the same sex, is an offence which, too, can be subsumed under this heading. The penal sanction provided for this offence is imprisonment for a term of five to fifteen years and a fine ranging from BGN 10,000 to BGN 50,000, and increased sanctions apply (imprisonment for a term of ten to twenty years and a fine ranging from BGN 100,000 to BGN 300,000) if the act was committed: by a person hired by, or implementing a decision of, an organized criminal group; against a person who has not attained the age of 18 years, or an insane person; against two or more persons; as a repeat offence; or under conditions of dangerous recidivism.

The fifth group of offences covers giving a lethal dose of a narcotic drug to another. The offence is defined as giving another person a narcotic drug or an analogue thereof “in quantities likely to cause death and death ensues”. The penal sanction is imprisonment for a term of fifteen to twenty years and a fine ranging from BGN 100,000 to BGN 300,000 (Article 354b (3) of the PC).

The sixth group of offences involves the creation of conditions for use of narcotic drugs. This group comprises two acts: systematically providing a premise to various persons for use of narcotic drugs, and organizing the use of such drugs. The applicable penal sanction is imprisonment for a term of one to ten years and a fine ranging from BGN 5,000 to BGN 20,000 (Article 354b (4) of the PC).

The seventh group of offences encompasses various cases of cultivation of plants for the purpose of production of narcotic drugs. This includes the planting or growing of opium poppy and coca bush plants or plants of the genus Cannabis in breach of the rules established in the Law on Narcotic Substances and Precursors Control. The applicable penal sanction is imprisonment for a term of two to five years and a fine ranging from BGN 5,000 to BGN 10,000 (Article 354c (1) of the PC) or, if the offence constitutes a minor case, imprisonment for a maximum term of one year and a fine of up to BGN 1,000 (Article 354c (5) of the PC). Any person who organizes, leads or finances an organized criminal group for the cultivation of such plants or for the manufacture, production or processing of narcotic drugs is criminally liable as well, and the penal sanction is imprisonment for a term of ten to twenty years and a fine ranging from BGN 50,000 to BGN 200,000 (Article 354c (2) of the PC). Participation in such a group is punishable by imprisonment for a term of three to ten years and a fine ranging from BGN 5,000 to BGN 10,000, and the law exempts from penal sanction any member of the group who has voluntarily disclosed to the authorities all facts and circumstances about the activity of the organized criminal group which are known thereto (Article 354c (3) and (4) of the PC).

The last group of offences covers trafficking in narcotic drugs. The principal elements of these offences are carrying narcotic drugs across the border of Bulgaria without due authorization. Penal sanctions vary with the object of the offence: for high-risk narcotic drugs and/or analogues thereof, it is imprisonment for a term of ten to fifteen years and a fine ranging from BGN 100,000 and BGN 200,000; for risk narcotic drugs and/or analogues thereof, the sanction is imprisonment for a term of three to fifteen years and a fine ranging from BGN 10,000 to BGN 100,000; and for precursors or facilities and materials for the production of narcotic drugs, the sanction is imprisonment for a term of two to ten years and a fine ranging from BGN 50,000 to BGN 100,000 (Article 242 (2) and (3) of the PC). When the narcotic drugs trafficked are in particularly large quantities and the offence constitutes a particularly grave case, the penal sanction is imprisonment for a term of fifteen to twenty years and a fine ranging from BGN 200,000 to BGN 300,000 (Article 242 (4) of the PC), and if the offence constitutes a minor case, a

maximum fine of BGN 1,000 is imposed according to an administrative procedure (Article 242 (6) of the PC).

The law gives the court an option to impose confiscation of all or part of the offender's property in lieu of a fine (Article 242 (5) of the PC). Preparation for trafficking in narcotic drugs is also punishable, by imprisonment for a maximum term of five years (Article 242 (9) of the PC).

In most cases discussed above, the object of the offence and the instrumentalities of crime are subject to forfeiture (Article 354a (6) of the PC).

Case law on drug-related crime

Drug addiction appears in a number of criminal offences in Bulgaria. Practically, drug users and drug-dependent persons can be found among perpetrators of both drug-related crime as possession, dealing, smuggling, growing, etc., and other types of crime as crimes against the person or property.[11]

Some behavioural scientists assume links between the use of specific substance and particular forms of criminal acts – use of cocaine is linked to violent offences, property crime is usually committed to buy heroin. Others assume that substance use and delinquency have the same causes within a personality which makes them always manifest together.[12] In any of these cases, dependent on various types of drugs people have cravings which urge them to intentionally break the law.[13]

The most common drugs in Bulgaria estimated by both the amount captured by police and by treatment entrants[14] are cannabis, heroin, cocaine, and amphetamine-type drugs (amphetamine, methamphetamine, ecstasy). Each of these causes specific effect when used and leading to own level of dependence.[15]

Under the results of the criminal activity of narcotic abusers studies, both a higher prevalence and higher rates of crime are associated with more frequent use of heroin and/or cocaine, although addicts vary with regard to the type, amount, and severity of crime they commit.[16]

How does court look upon the variety and complexity of the drug-use aspect of crimes in Bulgaria?

In Bulgaria, the drug addiction and/or use is a factor in a criminal case mainly in two aspects – 1) whether the accused has been under the influence of drugs when committing a crime and 2) how does the fact that the accused uses or is dependent on drugs relate to the crime in terms of motives. Both aspects influence court decisions in different ways.

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[11] There are numerous criminology research works on the relation between substance addiction and crime rate. Scientists have gone further drawing the patterns of crime levels associated with each stage of the addiction career. See for example: Nglin, M. D. and Speckart, G. (1988), Narcotics Use and Crime: A Multisample, Multimethod Analysis. In: *Criminology*, 26: 197–233.

[12] Ribeaud, D. and M. Eisner (2006) "The 'Drug-Crime Link' from a Self-Control Perspective". In: European Journal of Criminology, Volume 3/Number 1/ January 2006: 33-67, p. 34

[13] Ball, J. C, J. W. Shaffer and D.N. Nurco (1983) „The day to-day criminality of heroin addicts in Baltimore — A study in the continuity of offence rates". In: Drug and Alcohol Dependence, Volume 12, Issue 2, October 1983, pp. 119–142, http://www.sciencedirect.com/science/article/pii/0376871683900376

[14] EMCDDA. European Drug Report 2015. Lisbon: June 2015, pp. 74-82, http://www.emcdda.europa.eu/publications/edr/trends-developments/2015

[15] Some of the effects of the most wide-spread substances are described in: "Medical Consequences of Drug Use". In: Jordan, D. (1999) Drug Politics: Dirty Money and Democracies. Norman: University of Oklahoma Press. pp. 227-229.

[16] Dr. David N. Nurco Thomas E. Hanlon Timothy W. Kinlock (1991) "Recent research on the relationship between illicit drug use and crime". In: Behavioral Sciences & the Law, Volume 9, Issue 3, pp. 221–242, Summer 1991.

If the drug addiction is formulated in the *Criminal Code* as a part of the offence, such as the driving under influence of drugs,[17] the addiction cannot be used neither as aggravating nor as mitigating circumstance.

The degree of public danger has a significant impact on a case's outcome. For example, Bulgarian court classifies the possession of drugs – a criminal act itself, as of lower degree of public danger as the doers do harm to themselves only. If possession is combined with low quantity of drug found and if it is the accused's first offence, it falls within the hypothesis of a minor case. Bulgaria's *Penal Code* defines the minor case also as the lack or the insignificance of the harmful consequences of an offence in combination with other mitigating circumstances. [18]

Drug use and/or addiction can, on the other hand influence the size of the sanction. In order to fulfil the aim of the penal sanction, namely:

- to convert the convict toward observing the laws and morals;
- to warn him and deprive him from the opportunity to commit other crimes; and
- to influence the other members of society in an educational and depriving way,[19]

when regarding a drug-addicted offender, court can order compulsory treatment, which, however is not an alternative to the effective sanction.[20]

Bulgarian courts usually differentiate between drug addiction, substance abuse problem and occasional usage. Although marijuana health and psychological effects are not well understood and remain the subject of much debate,[21] marijuana dependence is addressed as all other drug dependencies in Bulgarian case-law.

Drug addiction and intoxication at the time of a crime are established most often within a forensic psychological examination, forensic psychiatric examination, or a complex combined forensic psychological psychiatric examination (FPPE). These are expert examinations which aim at validating convict's sanity and his/her ability to understand the consequences of his/her deeds. They also give evidence of the accused's mental and emotional condition during the time of the crime. These examinations, appointed by the court, also help to clarify motives, reveal the peculiarities of perpetrator's personality and the degree of public danger. Under statistical data for 1996 – 2006 period, in an average of 1,9% of the drug-related cases crimes have been committed under the influence of a narcotic substance. A total of 35.1% of all persons sentenced for drug crime were not drug users over the same period.[22]

Drug crime cases

- **Drug possession, processing, buying, and holding for the purpose of distribution (Art. 354a).**

The composition of this article constitutes the vast majority of all registered drug-related crimes in Bulgaria. For the period of 1998 – 2006, an average of 96.3% drug crimes were prosecuted under this

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[17] Art.343b, para. 3 of the *Criminal Code*.
[18] Article 104 of the Penal Code.
[19] Article 31 of the Penal Code.
[20] Article 91 of the Penal Code.
[21] Hall, W. and N. Solowij (1998)"Adverse effects of cannabis". In: The Lancet, Volume 352, Issue 9140, 14 November 1998, Pages 1611–1616.
[22] Китанов, К. (2008) Организираната наркопрестъпност: криминологична характеристика и полицейска превенция. София: МВР. стр. 64

article.[23] After the possession of single dose for personal use is a criminal offence in Bulgaria, all drug users once captured with any amount of drug are prosecuted under this article.

The *Criminal Code* allows for cases where multiple or extraordinary mitigating circumstances are available, the court to define a sanction below the minimum set for this offence.[24] The court is then free to list such circumstances in the motives for its decision. Quite often one of these circumstances is the offender's addiction. Addiction was not found to be the single circumstance to influence court decision.

That said, in the course of the investigation and trial of most often met drug-related cases, the main conflict between the prosecution and the defense aims to clear whether the apprehended quantity of drug is held for personal use or for the purpose of drug dealing. In such cases, the accused often put forward their dependency to prove their version. In one of these cases,[25] an accused for possessing for the purpose of dealing of 40 doses of heroin, states that he uses 10 doses daily – a quantity which by the medical experts questioned would lead to intoxication at a minimum. The court considered such statement as untrustworthy.

As the first-line or low-level dealers are predominantly drug-addicted,[26] and they are not captured with a significantly higher quantity of drugs than those who are prosecuted for just possession, court differentiates by the level of public danger both offences pose. Thus, the burden to prove the drug trade falls within the prosecution.

In such a case, the Supreme Court of Cassation states that, although defined by a forensic psychiatric examination, the drug dependency cannot be interpreted as a grounds for possessing the quantity for personal use if a number of other evidence proves that the drug was held for the purpose of distribution which lifts the level of the criminal act's public danger.[27]

The Supreme Court of Cassation, which supervises all courts in Bulgaria and makes sure all courts apply the law equally, has set clear benchmark for cases of drug possession and distribution. Its decisions are considered as models for application of the law in biased cases.

An offence's degree of public danger is determined by the social relations it affects. The value of the object of the crime is only one of the features that characterise it, without being of critical weight. The subject of the crime is high-risk narcotic substance placed under special authorization regime in accordance with the serious negative consequences for the life and health of users. The legislator has decided to formulate as crimes both the acquisition and the distribution of drugs to others, and they were given equal importance in view of the penalty provided. It could be assumed that the holding of the drug is a less objectionable act as being for personal use it only damages the health of the holder. Its distribution to others may affect the others' health which makes such an offense more objectionable. The quantity of the distributed [in the respective case] drugs does not deviate from the usual amount sold to end users and therefore it is not grounds for mitigation of the penalty situation.

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Drug addiction itself is not a factor which mitigates the penalty situation. The accused cannot be tolerated by imposing lighter penalty because he is dependent on narcotic drugs after the court had accepted that he had sold the drug to a third party.

[23] Китанов, К. (2008) Организираната наркопрестъпност: криминологична характеристика и полицейска превенция. София: МВР. стр. 64.
[24] Art. 55 of the Criminal Code.
[25] Решение № 340 от 14.10.2014 г. на САС по в. н. о. х. д. № 511/2014 г.
[26] Китанов, К. (2008) Организираната наркопрестъпност: криминологична характеристика и полицейска превенция. София: МВР. стр. 147.
[27] Р Е Ш Е Н И Е № 147 от 30 април 2015 г ВКС.

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The offense is committed during the probation period for which a custodial sentence for a previous conviction has been postponed. This sanction, and other three convictions, including two of imprisonment for the acquisition and possession of drugs have clearly not proven sufficient to perform the curative and deterrent purposes of art. 36 of the *Criminal Code*. The size of the imposed sanction is necessary above all to achieve the objective of the special prevention. The argument that this type and size of penalty will have a punitive effect in terms of forcing a sick man instead of being treated for a minimum amount of drug will be put to spend his youth in prison. There is no evidence for any attempts of the accused to join a programme and abandon his dependency. Drug treatment is an expression of perceived need. It depends entirely on the will of the dependent and could be successfully held in conditions of isolation from society if so desired.

Source: Supreme Court of Cassation, 2013.[28]

In cases of drug possession for the purpose of dealing, the addiction of the offender is generally irrelevant. A number of cases, even such with an insignificant commercial effect, such as the case of a heroin-addicted person buying opiates for himself and for another heroin user for the purpose of getting a discount when buying double amount,[29] the drug addiction is touched upon by adding that the accused has committed a criminal act with the clear intention to use the benefits of this crime to satisfy his own needs. The Supreme Court of Cassation states that regardless of whether a drug-addicted dealer receives money or in-kind benefits (as drugs or services in return) by delivering drugs, the composition of this criminal offence is fulfilled.[30]

When it comes to only possession, things go differently. The low quantity and the low public danger when no dealing is available, result in lighter sanctions, sometimes below the minimum envisaged. In a marijuana possession case,[31] an accused for holding of some 0.26 grams is charged for the third time, including for drug dealing. In its effort to prove that the offence constitutes a minor case, the defense uses the argument of offender's addiction to marijuana. Furthermore, the forensic psychiatric examination finds that the offender has a personality disorder as a result of his dependence on psychoactive substances and alcohol which, together with the small amount found, the long-year drug usage and addiction, as well as his poor social and family status and his disability are the mitigating circumstances which override the argument of his previous convictions and the fact that the offence is committed during the probation period of his previous sentence.

In another type of cases, both drug dealing and use together with the client are present. These usually fall within the described in criminological literature practices of drug addicts who engage with dealing in order to assure their daily dose.[32] These are the lowest level of single (working on their own) street dealers who are usually recidivists of multiple crimes. These are considered the weakest and most vulnerable part of the drug market in Bulgaria posing significant threat to compromise the entire drug supply chain. Police officers consider them easiest to catch and neutralise.[33] Simultaneously, as seen above, they are sanctioned more strictly in court by being unable to use their dependency as mitigating.

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[28] ВКС, Решение № 236, 10 юни 2013 г., гр. София,
http://domino.vks.bg/bcap/scc/webdata.nsf/Keywords/4B47E973FDE4AC1BC2257B86004D5A7A

[29] Присъда № 30 от 26.03.2014 г. на ОС - Пловдив по н. о. х. д. № 267/2014 г.

[30] Решение № 487/12.11.2010 г., постановено по н.д.№ 505/2010 г., 3 н.о. на ВКС.

[31] Присъда № 150 от 31.08.2015 г. на РС - Сандански по н. о. х. д. № 332/2014 г.

[32] Китанов, К. (2008) Организираната наркопрестъпност: криминологична характеристика и полицейска превенция. София: МВР. стр. 146, 240.

[33] Китанов, К. (2008) Организираната наркопрестъпност: криминологична характеристика и полицейска превенция. София: МВР. стр. 164.

This, together with their marginalisation and lack of opportunities to fund their daily dose, can explain the high level of recidivism among them.

The share of drug dealers and holders who are simultaneously dependent on drugs account for 96,2 % of all registered by police cases between 1998 and 2006.[34] Other estimates say that over 50% of long-term heroin addicts[35] have dealt drugs at some point of their history.[36] Drug market researchers are positive that drug distributing dealers in Bulgaria (average level in the hierarchy) use drug dependent people for placement due to the fact that they are well known in the communities, with a relevant to the clients' level of subculture, and experienced in communicating with the police. Higher-level dealers do not allow for street dealers in abstinence to do the fieldwork so they assure a minimum free daily dose in order to prevent compromising the whole supply network by an abstinent dealer. This fact naturally pushes heroin problem users to engage with dealing. Organised drug market researchers[37] consider drug addicted persons almost excluded from the drug production and trafficking "business" – a fact that is confirmed by the present case-law review.

At the same time, drug addicted dealers much more often fall in the scope of the authorities and their recidivism rate is much higher. That is why they often get higher sanctions as court considers that their previous sanction "have clearly not proven sufficient to perform the curative and deterrent purposes of art. 36 of the *Penal Code*."[38] In prison, such persons do not receive relevant treatment and once they are out, they go back to their previous life.

Although also falling into the hypothesis of this offence, the trade of prescription pills is not researched and identified among drug-related crime and no prescription pills dependency of perpetrators was found to be prosecuted.

From another perspective in some of the drug distribution cases where necessary to clear all circumstances, the court seeks to find the level of intoxication during the time the crime was committed. The decision on a case for possession with the aim of distribution of a significant amount of drug, the Sofia Court of Appeal uses the FPPE to decide whether the convict's drug addiction was preventing him to understand the nature and the weight of his deeds. For that reason, the expertise evaluates the level of intoxication and drug craving at the moment of committing the crime.[39] In this particular case, the expertise testifies that there was no abstinence or intoxication and he can be responsible for his deeds.

- **Incitement for the use of drugs (354b)**

In the cases where there is incitement for the use of drugs, the offender has most often offered a space (his/her property) to other people for the purpose of use of drugs. This offence often goes together with drug dealing to minors. In the majority of cases under this article, the dependency on drugs is falls out of the scope of the court unless the defendants explicitly point out that fact. The addiction of the perpetrator, usually to heroine, results in imposing of compulsory treatment during the time of the sentence.[40] The profile of the narcotics-dependent offenders, as put in the court decision can lead to the

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[34] Китанов, К. (2008) Организираната наркопрестъпност: криминологична характеристика и полицейска превенция. София: МВР. стр. 240.

[35] Heroin market in Bulgaria is by far more significant than any other drug market. CSD (2003) The Drug Market in Bulgaria. Sofia: CSD

[36] CSD (2003) The Drug Market in Bulgaria. Sofia: CSD. p.22

[37] Китанов, К. (2008) Организираната наркопрестъпност: криминологична характеристика и полицейска превенция. София: МВР. стр. 241

[38] ВКС, Решение № 236, 10 юни 2013 г., гр. София, http://domino.vks.bg/bcap/scc/webdata.nsf/Keywords/4B47E973FDE4AC1BC2257B86004D5A7A

[39] Решение № 340 от 14.10.2014 г. на САС по в. н. о. х. д. № 511/2014 г.

[40] Such a case is: Споразумение № 19 от 15.05.2015 г. на Специализиран наказателен съд по н. о. х. д. № 1099/2014 г.

conclusion that they fall within the already described group of lowest level drug-addicted dealers, and they are prosecuted for incitement due to the lack of sufficient prove for dealing. Some 0.7% of all drug crime cases are prosecuted under this article between 1998 and 2004.[41]

- **Growing of plants used for extraction of narcotic substances. (354c)**

The cases under the article incriminating the growing of illicit crops. The most often met cases of this kind concern growing of marijuana-type plants for personal use. This type of crime is generally underprosecuted in Bulgaria as the ratio between the reported to police and brought to court cases between 1998 and 2004 is 3:1.[42] The share of drug crimes related to growing such plants among all drug crimes is and average of 4.6% over the same period.[43] The majority of these cases end up with an agreement as the perpetrators confess the crime and the drugs are not in significant amount. In some of these cases, when it comes to a first offence, the clean criminal record and the small amount of drug are the main extenuating circumstances used as grounds for defining the case as minor.

- **Drug trafficking (Art. 242, para. 3 and 4)**

The prosecution of the supply of a significant share of the domestic drug market falls within this article. It concerns trans-border supply channels and usually the amount of drug captured and prosecuted for are significant. Together with drug processing and illicit crop growing, drug trafficking is evaluated by researchers as crimes of high latency.[44] Moreover, drug trafficking is associated with a higher-rank offenders than the described above first-line dealers. The case-law research did not identify court cases against drug-dependent offenders.

Other type of crime in which perpetrators are drug users

As the hypotheses for committing a crime in any relation to drugs are numerous, these crimes will be divided into two general groups based on the motivation of a drug user to break the law. This approach will identify those types of offences in which drug usage is not an exception.

- **Economic-related crimes**[45] are crimes which an individual commits in order to fund a drug habit. These include theft and prostitution.

The crime committed **for the general purpose of securing a dose** is usually not a single case, rather a lifestyle.[46] The accused of such crimes against the property are rarely first offenders as robberies, together with lowest level drug dealing (see above), are among the most often-met offences among heroin-addicts in Bulgaria. Despite the two options that some socially marginalised and unemployed addicts turn to committing a crime in order to obtain their daily dose are quite similar, the court treats them differently. The court cannot consider mitigating the addiction of dependent persons charged for drug dealing (as seen above). In the case of crime against the property, the courts often credit the craving as being mitigating. This fact can, however, hardly weight enough to reduce the sentence.

In such a case, a dependent offender has stolen and later sold two bicycles. Being one in the row of his offences, including more than two sentences to imprisonment, the court found availability of "dangerous

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[41] Китанов, К. (2008) Организираната наркопрестъпност: криминологична характеристика и полицейска превенция. София: МВР. стр. 101
[42] Китанов, К. (2008) Организираната наркопрестъпност: криминологична характеристика и полицейска превенция. София: МВР. стр. 101
[43] Китанов, К. (2008) Организираната наркопрестъпност: криминологична характеристика и полицейска превенция. София: МВР. стр. 100.
[44] Китанов, К. (2008) Организираната наркопрестъпност: криминологична характеристика и полицейска превенция. София: МВР. стр. 53-56.
[45] As defined by the National Council on Alcoholism and Drug Dependence at: https://ncadd.org/about-addiction/alcohol-drugs-and-crime
[46] Кунчев, К. (2007) Теоретичен обзор на криминологическите и психологическите изследвания на извършителите на кражби. В: Затворно дело, бр. 1/2007, 78-112, с. 78.

recidivism". The addiction, together with the low value of the stolen items, are considered mitigating circumstances, however they are not considered enough to fall within the provision for a minor case (Art. 55 of the *Criminal Code*).[47]

In another case, where one of the two accused of domestic burglary is a heroin-addicted, although dependency was identified by a forensic psychiatric examination and the court says that "the drug dependency has influenced over the accused's decision to commit the act",[48] it was considered neither mitigating nor aggravating.

The drug-prostitution link is missing in Bulgaria. Under the Bulgarian *Criminal Code* prostitution itself is not an offence unlike the incitement for prostitution or unlike using the services of a minor prostitute. Art. 155, para 4 of the *Criminal Code* envisages 5 to 15 years of imprisonment and a fine for incitement to use of drug with the purpose of prostitution or sexual abuse. As the use of drug is formulated in the offence, it cannot be considered mitigating or aggravating and thus falls outside the scope of this research.

- **Use-related crimes** involve individuals who commit crimes as a result of the effect the drug has on their thought processes and behavior.

Other types of crimes against the person or property are related to drug usage from a different angle – being committed under the influence of drugs, or intoxication. This means that the offenders, regardless of the fact that they use drugs regularly or occasionally, have committed a crime which they would or wouldn't have committed without being intoxicated. This hypotheses are checked by the forensic psychological and/or forensic psychiatric examination which evaluate the level of sanity during the time the crime was committed.

Some of the use-related offences, such as causing injury or death by car accident after drug usage,[49] deliberately include the usage of drugs in their composition and foresee stricter sanctions. In such cases, drug usage cannot be used either for aggravating or mitigating circumstance.[50] These stricter sanctions for such offences, however, say that the lawmaker always considers drug usage aggravating and thus deprives the court from deciding case-by-case.

Violent crimes, as for example cases of hooliganism, bodily injury, or homicide, can also be a result of intoxication. In these cases, when it concerns occasional use of drugs, it is usually taken by court as aggravating. [51]

Alternative sanctions for drug users

(up to 5 pages): what are the alternative sanctions (sanctions without imprisonment), when can they apply and what are the consequences in case of non-compliance (e.g. can the offender go to prison if he/she does not observe the alternative measures)

Alternative to imprisonment sanctions are generally available for drug crimes in smaller scale. Persons of under 18 years old who have committed drug crimes can be imposed disciplinary measures and thus be exempted from criminal responsibility. [52]

Drug users who have committed another type of crime, being it against the person, against the property or other type, can take advantage of the alternative measures if or when such are proposed by the *Penal*

[47] Присъда от 22.07.2014 г. на СРС по н. о. х. д. № 8960/2014 г.
[48] Присъда № 67 от 9.07.2015 г. на РС - Велико Търново по н. о. х. д. № 847/2015 г.
[49] Art. 343 of the Penal Code.
[50] Art. 56 of the Penal Code.
[51] Such as in this sentence for homicide: Присъда № 32 от 17.12.2014 г. на ОС - София по н. о. х. д. № 115/2014 г.
[52] Art. 24 of the Penal Procedure Code.

Code, however, imposing such measure does not relate to perpetrator's addiction but rather depends on other factors set in the law as previous offences, degree of public danger, etc.

Here are some alternative measures available to drug crime convicts:

Diversion to nothing

In this option the criminal proceedings are terminated at any stage without further measures or conditions. This approach is taken in Bulgaria towards minor offences, which are not defined as a crime, and thus, they do not appear in the criminal records. As all drug-related activities are completely criminalized in Bulgaria, this option is not applied.

Amnesties are an approach similar to diversion, restricted to a specified number of cases. In Bulgaria, amnesty was applied by parliament concerning crimes against the communist regime (prior to 1990) and under a deliberate law of 2009.[53] This law amnesties negligent crimes committed prior to 1 July 2008 punishable by up to five years of imprisonment (excluding cases where the perpetrator had used excessive quantity of alcohol, or had caused serious bodily injury or death), and several kinds of drug crimes. This amnesty follows the line of the legislative amendments between 2000 and 2006 liberating the regime for prosecution of drug crime described above. It concerns prisoners serving sentence for drug dealing, Incitement to drug use and organizing a criminal group for growing or processing narcotic substances reducing the term of their sentence.

Fine

Bulgaria's *Penal Code* imposes fine for drug crimes in addition to the custodial sentence, except for misuse of narcotic or poisonous substances which are not subjected to the licensing regime. There is an option, however, when multiple mitigating circumstances are available and if the lightest envisaged sanction is disproportionally heavy, the court to impose a sanction below the envisaged minimum.[54] This option is widely used for cases of drug crime. As mitigating are usually considered the low public danger, often related for possession for personal use, first offence and explicitly expressed will of the offender to rehabilitate.[55] In such cases, the court usually imposes only fine without any custodial sentence.

Postponing the decision on sanctions/suspended sentence

Even if a person found guilty of a crime the decision about whether a custodial sanction will be imposed is left open for a certain time. The sanctioning process will depend upon the behavior in the time in between. A necessary condition for suspending a custodial sanction is that it can be imposed to only people who have not been sentenced to imprisonment for a publicly prosecuted crime. Following the condition of no reoffending, a person's sentence can be suspended by between three and five years if the Penal Code envisages up to three years of imprisonment for the respective offence. During the term of the suspension, the convict should work, study or undergo treatment.[56] If the convict, without a good reason, discontinues his/her treatment, which has been imposed by the court, the court should rule the serving of the entire suspended prison sentence.

At that time, upon court's decision, the convicted person is placed under the supervision of an organisation or a person, or can be imposed a probation measure.

[53] Law on the Amnesty of 2009, Prom. State Gazette No. 26 of 7 April 2009. In force as of 22 April 2009. http://www.lex.bg/laws/ldoc/2135627422

[54] Art. 55 of the Penal Code.

[55] For more information, please see chapter on caselaw.

[56] Article 66 of the Penal Code.

If the convicted persons do not reoffend by the time the suspension period expires, they are exonerated. [57]

Probation

Although available in Bulgaria since 2004, probation cannot be imposed for drug-related crime, except for producing, acquiring, holding, reporting, prescribing or freighting narcotic or poisonous substances which are not under the licensing regime[58] when probation is an alternative to the fine and to the imprisonment of up to two years. Drug users, however, can be sentenced to probation if they commit another type of crime for which the law foresees alternative sanction. In such cases, their dependency is taken in mind if it comes to the knowledge of the court.

The duration of probation in Bulgaria is three to five years. If the probationee, without a good reason, commits another crime of general nature (a crime prosecuted ex officio) before the expiry of the probationary period and is again sentenced to imprisonment, s/he must serve both the suspended sentence and the new one. If the probationee commits a negligent crime, the court may order the suspended sentence not to be served in whole or in part. If the probationee, without good reason, discontinues his/her treatment, which has been imposed by the court, the court shall rule the serving of the entire suspended prison sentence.

In Bulgaria drug treatment seems to be an additional measure only, with the possibility to be applied under probation.

According to the Bulgarian *Criminal Code* probation is a set of six measures. Two of them are obligatory – compulsory registration by current address and mandatory meetings with a probation officer. The other four are imposed at the discretion of the court. Those four measures are restriction of free movement, inclusion in vocational training courses and/or programmes for social impact, corrective labour and community service.

- Compulsory registration by current address means that the offender should visit the probation officer and sign an attendance list on a regular basis as prescribed by the court, but not less than twice a week. The probation officer, together with the offender, sets the dates for the registration. The offender is obliged to personally attend on the appointed dates. Upon request, offenders can temporarily be allowed to miss registration for a maximum period of 10 days. The measure can be imposed for a period of between six months and three years.
- Mandatory meetings with a probation officer take place in the probation services in the area of which is the current address of the convict. Exceptionally, these meetings may be held at other suitable places designated by the probation officers upon emergency needs. Meetings can be planned or extraordinary (upon request of the probation officer or the convicted person). The probation officer and the offender set up a schedule for the mandatory meetings with a minimum of one meeting per month. The meetings have different topics in accordance with the personal and general assessment of the offender. The measure can be imposed for a period of between six months and three years.
- Restriction of free movement includes one or more of the following bans: (1) to attend sites, areas or bars/pubs specified in the sentence; (2) to leave the settlement for more than 24 hours without prior permission from the probation officer or the prosecutor; (3) to leave the home that the convict inhabits during a certain period of the day. The probation officer and/or a police officer control the restriction of free movement following a schedule developed in advance. The offender can get a permission to leave the location of probation under a special procedure. The law allows for the supervision of the restriction of free movement through an electronic

[57] Art. 86 (1) of the Penal Code.
[58] Article 354 (4) of the Penal Code.

observation system, but so far such a system has been implemented only as a pilot project. The ban for visiting specific places is presented to the owners of these places who sign a special document obliging them to report about any violation of the ban. The measure can be imposed for a period of between six months and three years.

- Inclusion in vocational training courses and/or programmes for social impact aims at employment integration or building social skills for lawful conduct. Probation officers should recommend that measure after taking into account the assessment of the offender, deficits in behaviour, personal characteristics, level of education, the need to reduce the risk of recidivism and the will of the convicted person. The probation officer prepares the programmes for public impact as individual plans aiming to lower the risk of recidivism and to limit significant damage caused by the offence. The measure can be imposed for a period of between six months and three years.
- Corrective labour is performed at the offender's workplace and includes deductions on wages of 10 to 25 per cent in favour of the state. If the convict loses his/her job, the measure is substituted by community service. The time during which this measure is served does not count for the calculation of the offender's overall length of employment (a factor taken into account when determining the time retirement and the amount of the pension). Within 7 days, the probation officer should inform the offender's employer about the sentence. The measure can be imposed for a period of between three months and two years.
- Community service is labour, which is performed to the benefit of society without restricting the freedom of the convict. It is organised by the probation officer and can be performed at the State-Owned Enterprise 'Prison Service Fund' or at another enterprise, suggested by the probation council. Community service could not be performed in favour of individuals, sole proprietors or entirely private companies (companies without any state or municipal participation). Community service can be in favour of victims of crime only upon explicitly stated consent by both sides. Community service can last for three hours during working days or eight hours during non-working days. The supervision of the measure can be performed either by the probation officer or by a representative of the entity/person in whose favour the service is performed. In case of non-compliance, the probation officer can suggest either the replacement of community service by another measure, if there is a good reason for the failure to comply, or the replacement of probation by imprisonment. The measure can be imposed for between 100 and 320 hours per year for up to three consecutive years.

Probation is imposed by the court and enforced by the probation offices. The system of probation offices is part of the Directorate General 'Execution of Penalties' of the Ministry of Justice. There are 28 district offices 'Execution of Penalties' and in each of them there is a probation service.

If the offender fails to comply with the imposed measures, the court may, upon proposal of the local probation council, replace them with other measures or replace probation with imprisonment. Probation is replaced with imprisonment in line with the following rule – two days of probation are replaced by one day of imprisonment. In that case the duration of imprisonment can fall below the statutory minimum of 3 months. In January 2014, the Supreme Court of Cassation approached the Constitutional Court with a request for interpretation whether the imposition of imprisonment for non-compliance with probation corresponds to the international conventions ratified by Bulgaria. In its decision of 27 March 2014, the Constitutional Court ruled that this provision of the Criminal Code does not contradict the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms.

Open prisons

In Bulgaria, open prison dormitories exist, but they merely are prisons with a lighter security regime and do not represent an alternative to imprisonment.

Parole/ Shortening the sentence

In Bulgaria, measures within the prison to shorten the prison term prevail. Voluntary work in prison has been described as a real alternative to imprisonment, since it is used to shorten the prison sentence. This can motivate prisoners to do voluntary work. It is also beneficial to the prison as the prisoners do construction and cleaning jobs. Moreover, society profits from prisoners, e.g. countering the consequences of natural disasters as prisoners recently worked to support the clean-up process after floods.

The other noteworthy practice is studying, vocational training or taking part in professional qualification courses, which lead to a reduction of prison time as well. Attending 16 school classes reduces the sentence by three days. If an inmate misses three or more classes per week, or violates the discipline in class, the weekly reduction of the sentence can be cancelled. Successfully passed biannual, annual or qualification degree exams equal five working days each (to honour the time for preparation). Inmates going to school can simultaneously work in the school workshops for up to four hours a day. For the prisoners who are both studying and working, the days are added together but cannot exceed 22 days per month. In the school year of 2013 – 2014, there are seven schools and four school branches in the Bulgarian prison system. [59]As of September 2013, the total number of inmates attending school was 1,744 (102 inmates more than the previous year). For each exam, there is an additional five days reduction. As a high share of prisoners have a low level of education, the reduction possibility heightens the level of education and motivates the prisoners to educate themselves.

Prisoners can apply for early release if they have served at least half of their sentence. Recidivists obtain the right to apply for early release after serving two thirds of the sentence provided that the remaining part of the sentence is not longer than three years. Early release can be granted only once, except for persons who have been legally redeemed.

The penal sanctions execution board[60] and the district prosecutor are authorised to submit proposals to the court for the early release of prisoners. Proposals should be based on the annual evaluation reports, which are prepared for each prisoner and estimate the risk of re-offending and the risk of damage.[61] A judge from the respective district court (the court with territorial jurisdiction over the prison's location) decides on the proposal in the presence of a prosecutor, the chairperson of the respective penal sanctions execution board and the inmate.

There are two types of early release:

- Early conditional release. In that case the court specifies a probation period, which should be equal to the remaining part of the sentence but could not be shorter than six months. The court may also impose one of the following probation measures: 1) registration by current address, 2) mandatory regular meetings with a probation officer, 3) restriction of free movement, or 4)

[59] Министерство на правосъдието, Отчет за степента на изпълнение на утвърдените политики и програми на Министерство на правосъдието за периода от 01.01.2013 г. до 31.12.2013 г. [Report on the level of implementation of approved policies and programmes of the Ministry of Justice for the period from 01.01.2013 to 31.12.2013], Sofia, 2014.

[60] A penal sanctions execution board is established at each prison or reformatory. It is composed of a chairperson (the director of the prison or reformatory) and members (a representative of the supervisory board, the deputy director of the prison in charge of regime and security, the head of the social and correctional-education work sector, and the psychologist of the prison or reformatory). The board at each reformatory includes also a representative of the district board for control of juvenile anti-social behaviour. The prosecutor of the district prosecutor's office, who exercises supervision for legality over the respective prison or reformatory, attends the meetings of the board. Other staff members, designated by the director of the prison or the reformatory, may also attend the meetings of the board but without having the right to vote.

[61] The evaluation is performed according to special rules, approved by the Minister of Justice, and methodological guidelines for the risk assessment of prisoners and the planning of their sentence. Both documents are not publicly available.

attendance of public impact programmes or qualification courses. In this case the prison authorities notify the probation office closest to convict's current address. The selection of probation measures depends on the expert report developed by the probation officer. If the early released prisoner commits another crime during the probation period or violates his/her probation measure, the court sends him/her back to prisons to serve the remaining term of the sentence. If the convict commits a negligent crime, the court may exempt him/her from serving the remaining term or part of it.

- Early (unconditional) release. Juvenile prisoners (under 18 years of age) who have served one third of their sentence can be released without a probation period. Adult offenders who have committed a crime as juveniles are subject to early conditional release as adults. Juveniles, who were granted early release, are entrusted to the respective regional Commission for Countering Anti-Social Behaviour of Minors and Juveniles. Public organisations or individuals can also be assigned with the supervision of early released inmates.

As to drug users, expers say that generally inmates with an established drug dependency which is left untreated, the urge is not rehabilitated, they rather are not eligible for inclusion with positive opinion on the change of the sentence, especially for change of regime and early release.[62]

Overview of the Bulgarian prison system

Bulgaria does not sustain rich traditions in the development of policies based on public debate and cost and benefit analysis. The serious situation of overcrowding and the poor conditions in prisons due to both the gradual rise of the number of prisoners over the last decades and the economic crisis which obstructed the allocation of sufficient funds for the renovation and maintenance of prison facilities resulted in the common understanding of the necessity of alternative measures. Probation was the most widely discussed alternative. Penitentiary researchers and experts focused primarily on reviewing the foreign experience rather than doing their own cost-benefit analysis.

Imprisonment may be of a duration ranging from three months to twenty years.[63] As an exception, the penal sanction of imprisonment may be imposed for a term of up to thirty years upon commutation of life imprisonment, as well as for certain particularly serious willful offences in the cases defined in the Special Part of the Penal Code.

The first principle formulated by the law is that sentenced persons should be allocated to and placed at penitentiary facility "reckoning with the possibilities for sentenced persons to serve the sentence at the prison or reformatory nearest to the permanent address thereof".[64]

Custodial sentences are served at prisons and reformatories, as well as at prison hostels with them. Each prison or reformatory has a separate reception unit, where the newly admitted persons are accommodated for a period of 14 days to one month (for persons detained according to the procedure established by the Penal Procedure Code and admitted from detention facilities, this period is up to five days, and they must be accommodated separately from the sentenced persons). The idea of this requirement is to enable the sentenced persons to prepare for service of the sentence imposed and, to this end: to be informed, in a language which they understand, about the internal order and discipline regulations, about their basic rights and duties, to submit to a medical examination, a psychological evaluation and a check of cleanliness and hygiene; to make possible the completion of all formalities

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[62] Василева, И. (2015) Резултати, изводи и препоръки: влияние на програмите за психосоциална рехабилитация и за намаляване на вредите върху изпълнението на наказанията на участвалите лица. В: *Намаляване на вредите от наркотиците в затвора: ефективни решения, устойчиво развитие: изводи и препоръки от проект „Швейцарско-българско сътрудничество за намаляване на проблема с употребата на наркотици и ХИВ в затвора"*. София: 2015, стр. 9

[63] Article 39 (1) of the Penal Code.

[64] Art. 57 of the Law on Execution of Penalties and Detention in Custody.

related to the service of the sentence, such as recording particulars about the identity of the newly admitted inmates, inventorying their personal belongings, photographing, seizing their identity documents, opening a personal record on each newly admitted inmate within two days after admission etc.

An important prerequisite for application of the principles of differentiating and individualizing the effect of the execution of penal sanctions is the obligation of the prison administration (in the person of the relevant social worker, the medical officer of the prison and the psychologist) to prepare, before expiration of the period for stay at the reception unit, an assessment of the personality traits, health status and working capacity, as well as recommendations for future group or individual work, for each newly admitted inmate.

The type of regime closely correlates to the type of the penitentiary facility, which is expressly regulated in the law. Thus, prisons and closed prison hostels apply low-security, medium-security and special security regime. At such prison facilities, the inmates are placed under close supervision and security, work solely within the perimeter of the relevant prison or prison hostel and, as an exception, at stand-alone secured sites outside that perimeter. Open prison hostels may apply only two types of regime: minimum-security and low-security.

The initial regime of service of the sentence, assigned by the court, may be: low security regime: to sentenced persons who are placed at open prison hostels; medium-security regime: to sentenced persons who are placed at a prison or at closed prison hostels; and special security regime: to persons sentenced to life imprisonment and to life imprisonment without parole.

The minimum-security regime may not be assigned as an initial regime. The law makes it possible to alter the regime in the course of execution of the penal sanction if certain prerequisites are in place. Thus, the initial regime may be replaced by the regime of the next lower security level after service, inclusive of allowance for the working days, of one-fourth of the sentence as imposed or as reduced by a pardon but not less than six months, subject to the condition that the imprisoned person exhibits good behavior and demonstrates that he or she is reforming. A further replacement of the regime by the regime of the next lower security level is admissible only after service of not less than six months after the last preceding replacement.

The law provides for terms and a procedure for replacement of the regime by a regime of a higher security level. Where the prisoner grossly or systematically breaches the established order, systematically absents himself or herself from work, or exerts a bad influence on the rest, the regime may be replaced by the regime of the next higher security level.

The second basic principle is the application of an approach of differentiation and individualization depending on the gender, age, the nature of the offence committed and previous convictions.

The subjection of sentenced persons to correctional intervention is an important element of the execution of the penal sanction of imprisonment.

Social work and correctional-education work are put in the legislation as essential tools for resocialization of persons deprived of their liberty, intended to assist the personality change of sentenced persons and the building of skills and ability for a law-abiding lifestyle in the community; individual and group social and correctional-education work is implemented.[65] The content of social and correctional education work includes:

- diagnostic and individual correctional work;
- programs for intervention, for reduction of recidivism and of the risk of material damage;
- education, training and qualification activities;

[65] Article 152 of the Law on Execution of Penalties and Detention in Custody.

- creative, cultural and sports pursuits and religious support.

Measures for drug users in prison

Drug users are significantly overrepresented in prison – as their number forms 1% of Bulgaria's population the number of drug users in prisons is estimated at 20%. [66] A significant number of them fall in the circle of reoffending in effort to satisfy their craving.

Bulgaria has not yet responded to the recommendations of internatonal organisations[67] to assure access to people in prison access to the same programmes which assist persons with addictions in the society.

Measures for drug users provided by prison authorities

Drug usage or dependancy can become known to prison authorities either by the tests run by the social workers, the medical officers and the psychologists of the prison, if the newcomer decides to share such information or by the court decision. Those for whom court has ordered compulsory treatment and those who wish to undergo such treatment are transferred to the Specialized Hospital for Active Treatment of Persons Deprived of their Liberty within the Lovech prison. Those drug users who remain among the general prison population fall under the supervision of the prison psychiatrist who together with the psychologist inspector and the social worker develops a personal treatment programme.

Drug users in prison are accommodated together with all other inmates unless court orders or a prisoner expresses deliberate wish to undergo treatment in the Lovetch prison's psychiatric hospital. This hospital accommodates inmates with mental problems or addictions, but it is a detention facility and it does not offer an alternative sanction. The term of the treatment is considered as a part of the custodial sanction.[68] The court can terminate the compulsory treatment or it can order it to be prolonged after the sentence and in such cases the person is accommodated in such a facility outside prison.

The *Penal Code* provides that when the perpetrator of the offence suffers from alcoholism or another addiction, the court may, along with the penal sanction, also order the so-called "compulsory treatment" (Article 92 (1) of the PC). This is a coercive measure which the court decrees by the sentence. It does not replace the penal sanction but is applied together with the sanction. The court also usually assigns the duration of the compulsory treatment, as well as the type of medical facility where it should be carried out (e.g. compulsory treatment for a term of eight months at a medical facility specialized in the treatment of alcoholism and addictions).

The procedure and terms for delivery of compulsory treatment are established in *Ordinance No. 2 of 22 March 2010 on the Terms and Procedure for Medical Services at the Places of Deprivation of Liberty* and Instruction No. 1 on the *Activity of the Health Authorities upon Commitment of Persons to In-patient Psychiatric Wards according to a Compulsory Procedure*, issued by the Ministry of Health in 1981.

Delivery of compulsory treatment varies with the type of penal sanction imposed. Where a non-custodial measure is imposed, compulsory treatment is implemented at "medical facilities with a special therapeutic and work regime". Where the person has been sentenced to imprisonment, compulsory treatment is delivered during execution of the penal sanction, and the duration of the treatment is

[66] Любенова, А. (2015) Въведение. В: *Намаляване на вредите от наркотиците в затвора: ефективни решения, устойчиво развитие: изводи и препоръки от проект „Швейцарско-българско сътрудничество за намаляване на проблема с употребата на наркотици и ХИВ в затвора“*. София: 2015, стр. 9

[67] Койл, А. (2015) Управление на местата за лишаване от свобода в контекста на правата на човека: Наръчнк за пенитенциарни служители. Второ издание. Дирекция „Процесуално представителство на Република България пред Европейския съд по правата на човека“, Министерство на правосъдието, http://www.justice.government.bg/files/nps_635836145683204597.pdf

[68] Art. 92 (3) of the Penal Code.

deducted from the term of imprisonment.[69] Persons sentenced to imprisonment, for whom the court has ordered compulsory treatment by reason of drug dependence, are transferred to the Lovech Prison and are committed for treatment at the Specialized Hospital for Active Treatment of Persons Deprived of their Liberty, which is located in that prison. If, however, the person leaves the area of the hospital without permission, the time of his or her absence is not included in the duration of the treatment assigned by the court (Article 13 of Instruction No. 1).

Compulsory treatment lasts as long as necessary. When it is no longer necessary, the court decrees its discontinuance. To this end, the sentenced persons committed for compulsory treatment are subject to a periodic evaluation of their condition, depending on which it is determined whether the treatment should be proceeded with or discontinued. The evaluation is performed 15 days before the lapse of every six months after the commitment of the sentenced person by means of a forensic psychiatric expert examination. On the basis of the results of the expert examination, the head doctor approaches the court with a reasoned motion to discontinue, proceed with, or replace the compulsory treatment (Article 15 of Instruction No. 1). If a considerable improvement, which no longer necessitates compulsory treatment, takes place in the condition of the sentenced person before the lapse of the first six months, the head doctor immediately sends the competent regional prosecutor a motion to discontinue the treatment, accompanied by the relevant forensic psychiatric expert examination. The duration of compulsory treatment is not bound to the term of imprisonment, and the law gives the court discretion to extend the duration of the treatment even after the release of the person from the prison. In such cases, the treatment continues at the medical facilities with a special therapeutic and work regime, where persons sentenced to a non-custodial measure are treated as well (Article 92 (4) of the PC).

The principal problem of the delivery of compulsory treatment of sentenced persons suffering from drug dependence is that it is delivered at psychiatric establishments which are not specialized in the treatment of dependences. The same applies to the specialized hospital with the Lovech Prison where, moreover, the drug-dependent persons are not accommodated separately from the rest of the prisoners.

Those of drug users in prison, who remain among the general prison population similarly to all other inmates are subjected to correctional intervention. A deliberate part of this intervention targets their addiction. Some of them, upon their wish and upon availability in the prison region, can undergo a substitution or any other type of therapy. Such a therapy, however, does not engage prison authorities in activities as substitutions delivery, but rather inmates depend on NGOs or relatives.

The parts of the correctional intervention that targets drug addiction are called programmes. There are two programmes used in Bulgarian prisons – the so called Short-term Programme and Long-term Programme. These programmes are prepared by Sharon Walker and Gail Styles of the UK's HM Prison Service and adapted to the Bulgarian environment.

Short-term programme

This programme targets adult inmates who have 6 months or less of their sentence to serve and have sufficient verbal and written communication skills to udergo the programme.

Program's target group is selected under a methodology comprised of a questionnaire which inmates fill themselves answering questions to define the degree of their addiction – misuse, such as in what situations they take drugs – to extent they are unable to perform their daily duties in school, work, etc.; in occasions related to problems, despite the effects leading repeatedly to intrapersonal or social conflicts. Dependency availability indicators for addictions such as waker effect of using the same dose; as well as indicators to prove availability of abstinention.

[69] Article 92 (2) and (3) of the Penal Code.

The Short-term Programme comprises of 20 group conversation sessions of two and a half hours each as well as independent work in the cell. It is a cognitive-behavioral program with emphasis on harm reduction. It aims at reducing substance abuse and related crimes, assisting prisoners in awareness of the risks associated with the misuse of drugs and prepared prisoners for further care in prison and outside after their sentence expires.

At the beginning of the programme each participant signs an agreement conceding to share personal information related with the programme, to undergo drug test, to attend all sessions including practicing exercises alone in the cell, to restrain from the use of narcotic substances and from violent behavior, even verbal, and to allow programme results to be used for research or monitoring.

The programme covers three prison staff members – facilitators, one of whom is responsible for treatment work and is called "an observer". The facilitators also hold at least four personal sessions with each inmate to consider personal issues or problems related to the programme and observes progress.

In terms of contents, the programme introduces the harms that drug use poses to them as well as the risks they take by taking drugs. The participants also learn about where and how they can get support in reducing the harm of opiates usage – which are the threats of blood-transmitted diseases and Hepatitis and HIV, and what options for dependency treatment are offered in prison – the 12-step programme or the Long Term Programme; medical service; psychological department; detoxification; condoms; confidentialiy for HIV positive inmates. The programme also provides information about the options for treatment after freed from prison. In different sessions it also offers means for self-analysis and basics for planning of life change.

Mid-term Programme

The mid-term programme is an extended version of the Short-term Programme. It aims at providing means for inmates to cope high-risk drug-related situations in order to avoid reoffending. It covers a term of 36 sessions held twice a week for two hours each. The Programme, besides the already described in the Short-term Programme components, includes presentation of the most often used narcotic subbstances and their effect over the user. It also introduces the notions of "circle of change", „collapse and relapse" as well as the principles of assertive behavior.

The more progressive approaches towards drug users in prisons are born by Bulgarian non-government organisations. Their initiatives to implement modern and more open programmes have the disadvantage to be of limited term and dependent on project financing. They still need the support of authorities at political level which to back promising practices and implement them at national level.

The basic principle that differentiates the NGO-proposed methodologies for treatment of drug users is voluntarity – compliance with their wish to deal their dependency. Therapy or consultancy services are offered to only highly motivated inmates while the rest are offered harm reduction. Such organisations are Project "Peperuda" Associaltion, Initiative for Health Foundation and other organisations working with drug users on local level.

Harm reduction

Harm reduction, although a part of the short-term program, providing intervention among drug users in prison, can hardly be described as adequate or effective.

A project implemented by Initiative for Health Foundation between 2014 and 2015 offered a new harm reduction model and implemented it in the Sofia prison and the Kremikovtsi prison hostel. The model was based on non-judgmental attitude and trusted contact between the leaders and the inmates.[70] The

[70] Любенова, А. (2015) Програма за намаляване на вредите от употребата на наркотици сред лишени от свобода: Описание на модела. В*: Намаляване на вредите от наркотиците в затвора: ефективни*

program aims not only to provide knowledge about the risks practices of taking drugs to participants and also to encourage leadership skills and to provoke secondary spread health message among prisoners. In this process, the desired effect is the formal and informal "training among equals", which has the potential to reach more people and immediately change group's culture.

Initiative for Health Foundation also prepared a concept for a pilot implementation of needle exchange programme in Bulgarian prisons. This can be described as a revolutionary as prison administration has enied the availability of drugs in prison and thus the need of needle exchange.

решения, устойчиво развитие: изводи и препоръки от проект „Швейцарско-българско сътрудничество за намаляване на проблема с употребата на наркотици и ХИВ в затвора“. София: 2015, стр. 36