

**PENITENTIARY POLICY
AND SYSTEM
IN THE REPUBLIC OF BULGARIA**



**CENTER FOR
THE STUDY OF
DEMOCRACY**

The report explores to what extent Bulgaria has introduced the European standards in the legal regulation of the prison system and the execution of the penal sanction of imprisonment, how are they implemented in practice, what is the State's penal policy and strategy in this area in general and in respect to drug-addicted prisoners in particular, and what is the opinion of the people working in the penitentiary system and the non-governmental organizations monitoring the activities of penitentiary facilities.

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INTRODUCTION

Contemporary European studies and theoretical discussions address the need to adopt an up-to-date “European prison model”¹ as a way of overcoming the defects in the penitentiary institutions in Europe, and especially the flaws concerning the protection of the rights of imprisoned persons. The views of the prison model are loaded in favor of one of the two frequently opposed tendencies which are invariably present in theoretical discussions and penal policies: on the one hand, using the penal sanction of imprisonment as a means of denying the sentenced person the opportunity to reoffend, and, on the other hand, safeguarding the rights of imprisoned persons. The point, however, is not whether to exclude one of the two paradigms but how to achieve a correlation between them that would make it possible to guarantee public security and achieve the objectives of the penal sanction with maximum respect for the rights of sentenced persons and the conditions for their resocialization. This, in turn, presupposes seeking solutions to improve existing penal systems and increase the effectiveness of the execution of penal sanctions in respect of society as a whole, as well as to modernize and humanize States’ penitentiary systems and penal policies.

The issues of the costs and benefits of penal policy *vis-à-vis* the penal sanction of imprisonment are also raised in connection with the search for solutions. The governments of the Member States of the European Union usually publish estimates of the expenditures on crime control as GDP percentage but, as a rule, there are no developed and generally accepted methods for its calculation.² Despite the methodological problems and the lack of reliable and comparable data, these expenditures in all States are admittedly large and various ways are sought for their reduction.³ At the same time, European experts in criminal law and criminology are divided over the content of the notion of “expenditures on crime control”. A more liberal interpretation covers not only the penitentiary system maintenance costs but also ensuring the rights of sentenced persons,

¹ The main features of the European prison model include the possibility of accommodation in an individual cell, guaranteeing good material conditions, significance of activities for overcoming desocialization, abandonment of solitary confinement/segregation as a method of detention, strict respect for the prisoners’ right to health care, protection of their family life and personal relationships, etc.

² Latvia is an exception in this respect. Since 2004 the government there has been calculating the cost of crime by applying a special instruction approved by the Minister of Interior by an order of 2006.

³ In Portugal, for instance, reforms launched in 2007 in the Penal Code decreased substantially the term of imprisonment, as a result of which the prison population was tangibly reduced and, hence, the expenditures of the penitentiary system. In other countries, alternatives to imprisonment, including the penal sanction of probation, are introduced and applied for a number of offences.

implementing resocialization programs and even programs for crime prevention and for compensating damages sustained as a result of the offences for which custodial sentences have been imposed.

Surveys conducted in a number of EU Member States have found that, at the empirical level, the degree to which the sentenced person can successfully reintegrate in society and in the labor market after serving the sentence is perceived as the most important indicator of the benefit of the penal sanction, whereas reoffending is seen as the principal risk. A large part of the staff of the penitentiary systems of the EU Member States see prevention, resocialization and implementation of education and vocational training programs for sentenced persons in prison as the top priority of their work. The effect of such programs arguably often exceeds their costs in economic terms proper. At the same time, notice is taken of the unequal access of sentenced persons to such programs and to the discrimination existing in prisons.

The experience of the individual EU Member States reveals a number of common problems, as well as certain specificities. This is relevant to the elaboration of common models and the development of the existing standards in future.

The present publication explores the extent to which the effective European standards have been introduced in the legal framework of the system of prisons and execution of the penal sanction of imprisonment in Bulgaria, the implementation of these standards in practice, the penal policy and strategy of the State on these problems at large and, in particular, regarding drug-dependent prisoners, as well as the views of penitentiary system professionals and of the organizations monitoring the operation of prison facilities. The study has used official statistics and other information provided by the Ministry of Justice of the Republic of Bulgaria, as well as materials from a series of interviews conducted by the authors with representatives of a number of penitentiary institutions, which we gratefully acknowledge.

I. BULGARIAN PRISON SYSTEM AND EUROPEAN STANDARDS: LEGAL FRAMEWORK, STATE, PROBLEMS AND RECOMMENDATIONS

1. LEGAL FRAMEWORK

The statutory framework governing the operation of prison facilities in Bulgaria is part of Bulgarian penitentiary law⁴ and is most closely related to the legal regulation of the penal sanction of imprisonment and all aspects of its execution. This sphere is defined by the effective statutory instruments of primary and secondary legislation: the Penal Code (PC), **the Penal Procedure Code (PPC), the Law on Execution of Penal Sanctions and Detention in Custody (LEPSDC), the Regulations for Application of the LEPSDC (RALEPSDC)** and the rest of the instruments of secondary legislation issued in pursuance of the LEPSDC.⁵ International instruments, which have been ratified by Bulgaria and have entered into force, have binding and non-binding effect. They include **the Universal Declaration of Human Rights⁶, the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),⁷ the Convention concerning Forced or Compulsory Labour⁸, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or**

⁴ Contemporary researchers regard penal sanction execution law as a branch of law in its own right within the system of effective law of the Republic of Bulgaria, as a third, separate branch in the field of criminal law, along with criminal and criminal procedural law. The notions of penitentiary institutions as a synonym of prison facilities and of penitentiary law as a synonym of penal sanction execution law are gaining increasing currency in literature. This approach has been adopted in the present study as well. For details see: Паликарски, М., Наказателно-изпълнително право [Palikarski, M., Penal Sanction Execution Law], Sofia, 1997, p. 9; Трайков, З., Наказателно-изпълнително (пенитенциарно) право [Трайков, Z., Penal Sanction Execution (Penitentiary) Law], Sofia, 2007, p. 15 (available in Bulgarian only).

⁵ Ordinance No. 15 on Electronic Monitoring of the Behaviour of Sentenced Persons, promulgated in the State Gazette (SG) No. 102 of 22 December 2009; Rules of Organization and Operation of the Council on Execution of Penal Sanctions, promulgated in the SG No. 97 of 8 December 2009; Ordinance No. 1 on the Complement and Tasks of the Educational Board with the Reformatory, promulgated in the SG No. 16 of 26 February 2010; Ordinance No. 2 Establishing the Terms and Procedure for Medical Services at Places of Deprivation of Liberty, promulgated in the SG No. 31 of 23 April 2010; and Rules of Organization and Operation of the Prison Service Fund State-Owned Enterprise, adopted by Council of Ministers Decree No. 225 of 5 October 2010, promulgated in the SG No. 80 of 12 October 2010, effective 12 October 2010.

⁶ Adopted by the UN General Assembly on 10 December 1948.

⁷ Signed in Rome on 4 November 1950. In force for Bulgaria as from 7 October 1992 (promulgated in the SG No. 80 of 2 October 1992).

⁸ Adopted on 28 June 1930 by the General Conference of the International Labour Organisation at its Fourteenth Session. In force as from 1 May 1932 in accordance with Article 28. Ratified by Decree No. 14 of 7 July 1932, promulgated in the SG No. 91 of 26 July 1932.

Punishment,⁹ the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPTIDTP),¹⁰ the United Nations Standard Minimum Rules for the Treatment of Prisoners,¹¹ the European Prison Rules (EPR) contained in the appendix to Recommendation Rec(2006)2 of the Committee of Ministers to member states of the Council of Europe,¹² etc.

The national legal framework traces its beginnings to the first standards established in post-Liberation Bulgaria and has gradually evolved (Interim Rules for the Institution of Prisons, introduced by the Russian Administration, the *Penal Law* of 1896, the Regulations for Prisoners' Work of 1904, the *Law on Prisoners' Work* and the *Regulations for Application of the Law on Prisoners' Work* of 1922 etc.). Despite the shaping of this initial legal framework, because of the political instability caused by internal strife, regional military conflicts in the early 20th century and the country's embroilment in both world wars with disastrous consequences for it, as well as the domination of undemocratic political regimes during prolonged historical periods, the penitentiary system was often used for political purposes and repression. The gradual establishment of supranational standards in the field of penitentiary law and Bulgaria's membership of international and European organizations have had a favorable impact on the process of creation of a modern legal framework based on democratic and humanist principles of the execution of the penal sanction of imprisonment and of a greater commitment of the State to the problems and condition of the prison system.

The start of democratic changes in Bulgaria since the early 1990s and above all the country's accession, first, to the Council of Europe in 1992 and, later on, to the European Union as well, on 1 January 2007, have been important prerequisites for the development of legislation towards adoption of modern European approaches. The 1990 – 1992 period saw the beginning of a process of deideologization, demilitarization and humanization of penitentiary treatment, as well as of reforming correctional education work and the training of penitentiary staff. Harmonization of Bulgarian legislation with the *acquis communautaire* made gradual progress, but the reforms in the penitentiary system were practically unfinished in the process of Bulgaria's accession to the European Union. Unsolved problems built up as they were invariably excluded from the priorities of ruling majorities and, with minor exceptions, never attracted public notice and concern.

⁹ Adopted by UN General Assembly resolution 39/46 of 10 December 1984. In force as from 26 June 1987. Ratified by State Council Decree No. 3384 of 9 October 1985, SG No. 80 of 1986. In force for Bulgaria as from 26 June 1987 (published by the Ministry of Foreign Affairs, promulgated in the SG No. 42 of 30 June 1988, amended and supplemented, SG No. 19 of 24 February 1995).

¹⁰ Adopted on 26 November 1987. Ratified by a law passed by the National Assembly on 16 March 1994, promulgated in the SG No. 25 of 1994. In force for Bulgaria as from 1 September 1994 (published by the Ministry of Foreign Affairs, promulgated in the SG No. 71 of 2 September 1994).

¹¹ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved and recommended to the UN Member States by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

¹² Adopted by Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules on 11 January 2006.

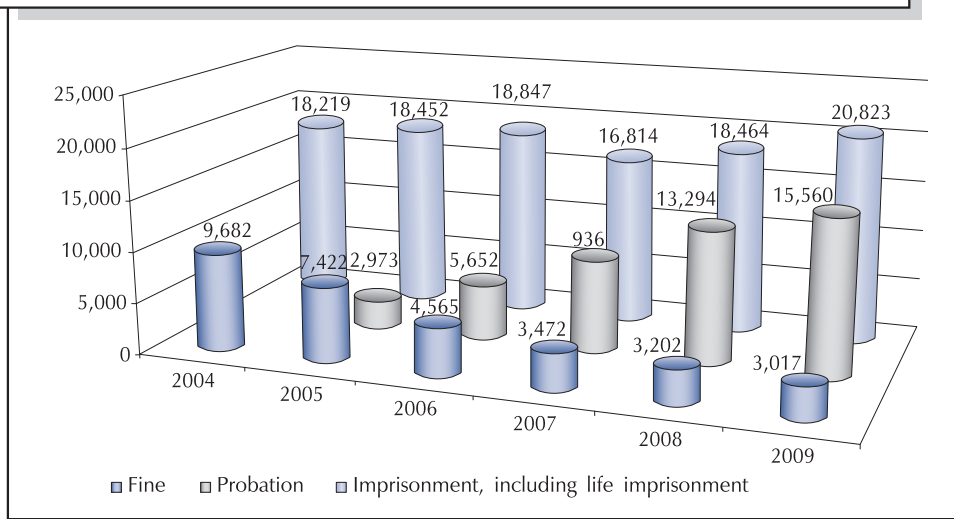
This logically led to periodic prison riots and protests: in the 1990s, 2001, 2005 and 2007. The situation threatens to become critical yet again for lack of available financing for the planned construction of new prisons, the unchanged size of the prison population and the risk of its increase due to the return of over 1,000 Bulgarians sentenced to imprisonment in other EU Member States, expected in 2012, to serve the remainder of their sentences in their country of origin.

The mechanisms of external monitoring (and especially the visits to Bulgarian prisons and investigation detention facilities by delegations of the **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT)**¹³ and the reports published by the CPT¹³ and of protecting the rights of imprisoned and detained persons before the European Court of Human Rights in Strasbourg (the numerous violation judgments rendered against Bulgaria on account of the poor material conditions in prisons and investigation detention facilities), as well as the opportunities for independent oversight on the part of the national Ombudsman and non-governmental organizations, detect not only certain shortcomings or omissions in Bulgarian penitentiary law but above all diagnose the actual situation in the penitentiary system. Without automatically leading to the necessary reforms, this makes the problems public and exerts pressure for change.

1.1. THE PENAL SANCTION OF IMPRISONMENT AND THE PLACES OF ITS EXECUTION

The penal sanction of **imprisonment** is central to almost all contemporary penal systems. In Bulgaria, it is the penal sanction that is provided for in the most

Figure 1. Penal sanctions imposed by the Bulgarian courts in the 2004 – 2009 period



Source: National Statistical Institute

¹³ On the visits and reports, see: <http://www.cpt.coe.int/en/states/bgr.htm>. The latest report after the visit of 15 – 19 December 2008 was published in September 2010, see <http://www.cpt.coe.int/documents/bgr/2010-29-inf-eng.pdf>.

Table 1. Growth of penal sanctions imposed other than effective and suspended deprivation of liberty

Types of penal sanctions imposed	2009	2008	2007
Life imprisonment	10	15	15
Effective deprivation of liberty	8,891	9,463	9,726
Suspended deprivation of liberty	13,771	14,483	12,270
Probation	16,565	15,737	13,356
Other	13,975	13,660	11,759
Administrative sanctions under Article 78a of the PC	5,419	5,557	8,808
Total	58,631	58,915	55,934

Source: Supreme Prosecutor's Office of Cassation

numerous clauses of the *Penal Code* (PC)¹⁴ and is most often imposed by the courts.¹⁵ National Statistical Institute (NSI) data for the 2004 – 2009 period show that, on the whole, this tendency has persisted even after the introduction of the penal sanction of probation in 2004, despite a manifold increase of its imposition in recent years.¹⁶ At the same time, the application of the other non-custodial measures, such as fines, is apparently tending downward.

The Supreme Prosecutor's Office of Cassation also reports a steadily increasing number of penal sanctions of probation since 2006. That Prosecutor's Office, however, disaggregates the penal sanctions imposed by type: life imprisonment, effective and suspended imprisonment.

On the basis of these statistics and extrapolating the tendencies presented in the Prosecutor's Office Report for 2009,¹⁷ the information on the first half of 2010 concludes that **probation and suspended sentences¹⁸ are the most frequently imposed penal sanctions.** The large number of "other penal sanctions" imposed

¹⁴ Even though just three of a total of eleven penal sanctions provided for in the PC are custodial: imprisonment, life imprisonment and life imprisonment without parole, they are provided for a broad range of offences, whether separately, cumulatively or alternatively.

¹⁵ See Стоянов, Е., Наказателно-изпълнително право [Stoyanov, E., Penal Sanction Execution Law], Sofia, 2008, p. 62 (available in Bulgarian only).

¹⁶ Despite this general tendency, certain prisons are an exception. Interviewed in early 2009, the Plovdiv Prison Director said that his prison's population had decreased since the introduction of probation.

¹⁷ See Доклад за прилагането на закона и за дейността на прокуратурата и разследващите органи през 2009 г. [Report on the Application of the Law and on the Operation of the Prosecutor's Office and the Investigating Authorities in 2009] (www.prb.bg) (available in Bulgarian only).

¹⁸ See Обобщена информация за образуването, движението и приключването на преписките и делата в прокуратурата на Република България за първото шестмесечие на 2010 г. [Summary Information on the Institution, Progress and Closing of Case Files and Cases at the Prosecutor's Office of the Republic of Bulgaria for the First Half of 2010] (www.prb.bg) (available in Bulgarian only).

Box 1. Penal sanctions imposed for the first half of 2010

“Judgments of conviction and sanction became enforceable against 22,740 (18,687) persons.* Probation was imposed on 7,830 (7,412) persons, and suspended deprivation of liberty on 6,461 (6,078) persons. A total of 4,424 (4,092) persons were sentenced to effective deprivation of liberty. Life imprisonment was imposed on eight persons. Fines were imposed on 3,561 persons. Other penal sanctions were imposed on 4,672 (8,440) persons.”

* The figures in parenthesis refer to the same period of 2009.

Source: *Summary Information on the Institution, Progress and Closing of Case Files and Cases at the Prosecutor's Office of the Republic of Bulgaria for the First Half of 2010*

(fine, deprivation of the right to hold a specific office/to practice a specific activity, and public censure) is explained by the circumstance that a large part of them are imposed cumulatively, i.e. together with the principal penal sanction, which is most often imprisonment. This state of affairs shows that the understanding of the need to impose penal sanctions alternative to imprisonment in their own right on a more massive scale has yet to establish itself.

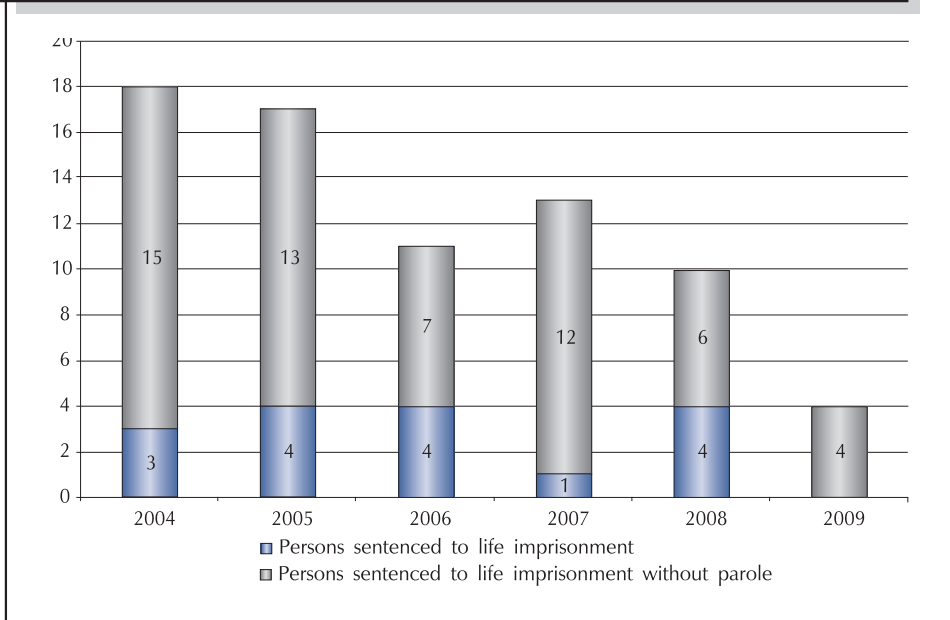
Apart from imprisonment, two other penal sanctions have an immediate bearing on the prison system: the penal sanction of **life imprisonment**, introduced in 1995 (Item 1 of Article 37 (1) of the PC), and the penal sanction of **life imprisonment without parole**, introduced after the abolition of the death penalty in 1998 for the most serious crimes which endanger the foundations of the Republic, as well as for other especially dangerous willful offences as a provisional and extraordinary measure.

Bulgaria is among the few European countries where the penal sanction of life imprisonment without parole exists. Although defined in the PC as a provisional and extraordinary measure imposed in a very small number of cases, it draws strong criticism from researchers, experts and observers for its inhumanity and excessive cruelty, running counter to the objectives of the execution of penal sanctions. For these reasons, it is not reproduced in the draft of a new *Penal Code* which is being prepared.

In respect of the penal sanction of life imprisonment, the PC provides a possibility for its commutation to imprisonment for a term of 30 years if the sentenced person has served not less than 20 years, with the portion of the life sentence served counting as imprisonment.¹⁹ No data are available, however, of prosecutors recommending or of courts rendering judgments on such commutation, even though some 100 persons are currently serving life sentences and penitentiary staff make systematic efforts for the development of diagnostics, counseling and offering meaningful occupational activities to sentenced persons of this category.

¹⁹ See Article 38a (3) and (5) of the PC.

Figure 2. Number of persons sentenced to life imprisonment and to life imprisonment without parole in the 2004 – 2009 period



Source: National Statistical Institute

Imprisonment may be of a duration ranging **from three months to twenty years** (Article 39 (1) of the PC). 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 PC.

Custodial sentences are served at prisons and reformatories, as well as at prison hostels with them (Article 40 (1) of the PC). The legal framework of the places of execution of the penal sanction of imprisonment is basically contained in *the Law on Execution of Penal Sanctions and Detention in Custody* (LEPSDC), effective as from 1 June 2009,²⁰ which superseded the previous *Law on Execution of Penal Sanctions* (LEPS),²¹ which had been effective since 1969 and was repeatedly amended, and in the *Regulations for Application of the Law on Execution of Penal Sanctions and Detention in Custody* (RALEPSDC), issued by the Ministry of Justice (promulgated in the SG No. 9 of 2 February 2010).

²⁰ Law on Execution of Penal Sanctions and Detention in Custody, promulgated in the SG No. 25 of 3 April 2009, amended in the SG No. 74 of 15 September 2009, amended in the SG No. 82 of 16 October 2009, amended in the SG No. 32 of 27 April 2010, supplemented in the SG No. 73 of 17 September 2010.

²¹ The adoption of the LEPS in 1969 ushered in a detailed regulation of penitentiary activity in Bulgaria, inter alia enshrining a differentiated approach to the execution of the penal sanction of imprisonment. Until 2009 the LEPS was amended on 27 occasions, with fundamental and most numerous revisions being adopted after the start of democratic changes in Bulgaria and the introduction of new European requirements to penitentiary law. A new framework of secondary legislation was adopted in the 1990 – 1992 period. The last major amendments to the LEPS date from 2002, and they were followed by further revisions in 2004, 2005 and 2006. Preparation of a draft of a new law began in 2008.

Box 2. Basic principles and means for achievement of the objectives of execution of penal sanctions according to the LEPSDC

- Exercising control over the behavior of sentenced persons and limiting the possibility of reoffending and of inflicting detriment on society.
- **Differentiating and individualizing** the effect of the execution of penal sanctions for correction and re-education of sentenced persons depending on their behavior.²²
- **Humanism:** ensuring conditions to sustain the physical and mental health of sentenced persons and to respect their rights and dignity.
- Prohibition of all forms of **torture, cruel and inhuman treatment**, including acts or omissions which deliberately cause physical pain or suffering, intentional placing in unfavorable conditions of service of the sentence (deprivation of sufficient living floor space, food, clothing, heating, lighting, ventilation, medical services, conditions for exercise, continued incommunicado segregation etc.), degrading treatment, which diminishes the human dignity of the sentenced person, forces him or her to act or to suffer any acts against his or her will, arouses in him or her a feeling of fear, defenselessness or inferiority.
- **Publicity, openness and independent control** over the activities of the authorities executing penal sanctions, exercised by state bodies and not-for-profit legal entities registered for pursuit of public-benefit activities in cooperation with intergovernmental bodies and international non-governmental organizations²³ and making public the findings of the checks conducted.
- **Interaction between state bodies and non-governmental organizations.**
- Obligation of the authorities executing penal sanctions to extend **full cooperation:** to the Prosecutor's Office, in the exercise of supervision as to compliance with legality and in the exercise of its right to familiarize itself with the overall work comprehended in execution of penal sanctions and to make proposals for improvement of this work; to judges: in the exercise of their right to familiarize themselves with the work comprehended in execution of penal sanctions; to the Ombudsman: upon performance of his or her functions under the *Law on the Ombudsman*.
- **Entry into contractual relations with legal persons** for the financing, construction, remodeling or maintenance of the physical assets or the provision of vital public interest services.
- **Facilitation** by the central and local government authorities, as well as by the non-governmental organizations, of the attainment of the objectives of the penal sanction.

²² The principles of a **differentiated approach** (adjusting the execution of the penal sanction to the specificities of the different categories of sentenced persons) and an **individualized approach** (reckoning with the peculiarities of the sentenced individual and flexibility during the execution of the penal sanction as an extension of the individualization of the penal sanction by the court) are combined in this case to a certain extent with the principle of the progressive system of execution of penal sanctions: the behavior of the imprisoned persons should be taken into account upon execution of the penal sanction (for a change of the regime, transfer, early release etc.).

²³ This is the tenor of two of the fundamental principles of the European Prison Rules: Rule 7: "Co-operation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged", and Rule 9: "All prisons shall be subject to regular government inspection and independent monitoring."

The new law reproduces a number of tenets of principle contained in the old one and, at the same time, includes new solutions and provisions. It builds on some of the amendments to the old law, introduced in connection with the standards set by the **Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)** and the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPTIDTP)**.

As a positive development in the legal framework of the execution of penal sanctions, the general provisions of the new law in Chapter One formulate the basic **principles and means** for achievement of the objectives of the execution of penal sanctions.

Seeking to create better conditions and to enhance opportunities for prisoners to enjoy their legally established rights and to resocialize, the LEPSDC reduced the types of places of execution of the penal sanction of imprisonment. The closed prison hostels for recidivists and non-recidivists and the transitory hostels were abolished, and provisions were made for the establishment of only open hostels with the reformatories. Thus, the following places of execution of the penal sanction of imprisonment exist in Bulgaria at present, as defined in the LEPSDC:

- **prisons** and **closed and open prison hostels** established with them;
- **reformatories** and **open hostels** established with them.

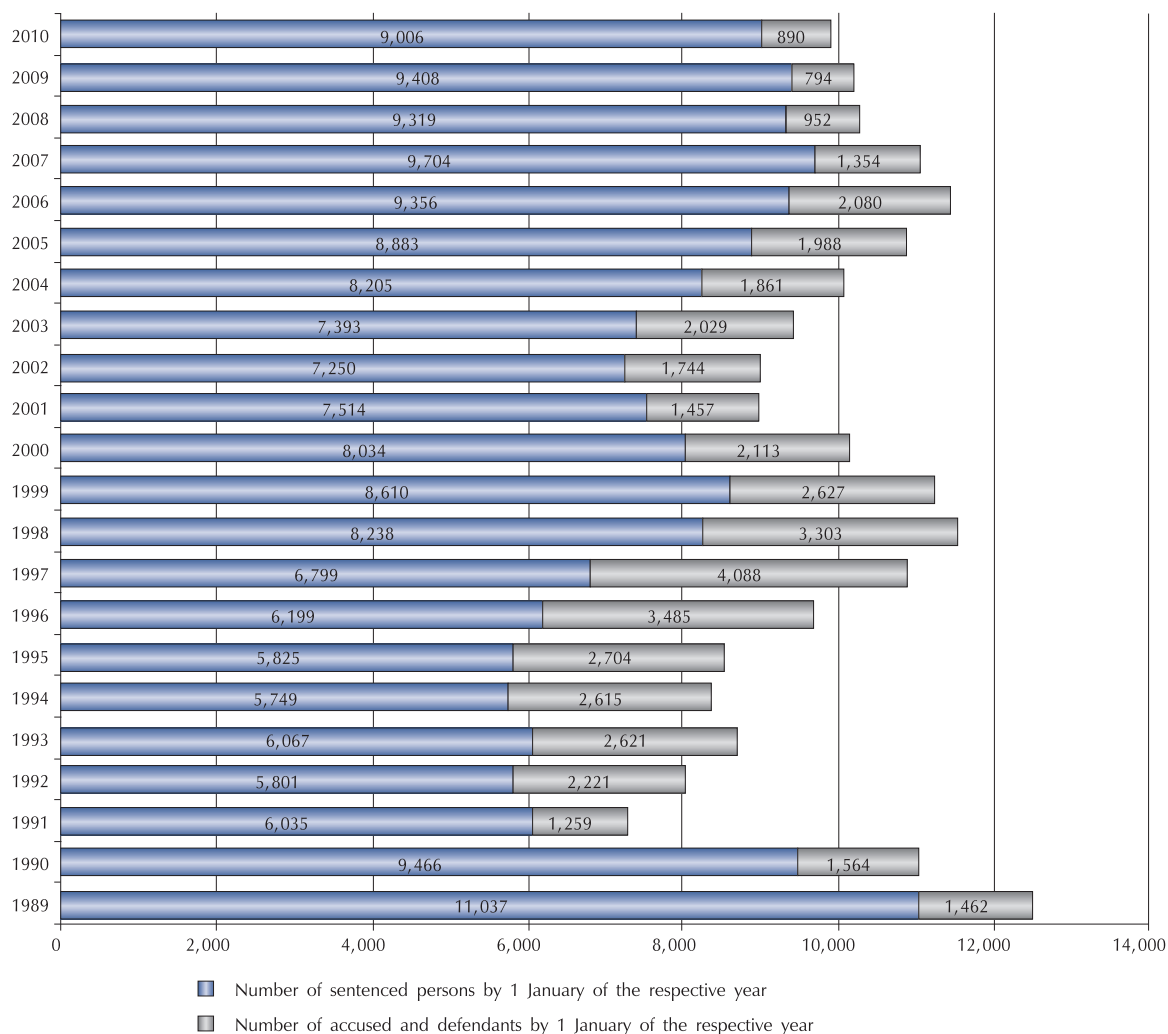
Penitentiary facilities are established and closed down by order of the Minister of Justice, issued on his or her own initiative or on a proposal by the Director General of the Directorate General "Execution of Penal Sanctions". The law provides that the conditions for establishment and closure of penitentiary facilities be assessed by a commission appointed by the Minister of Justice, with the complement of the commission being proposed by the Director General of the Directorate General "Execution of Penal Sanctions" and including experts in the field of construction, security and security equipment, medical services, communal feeding and material conditions of detention.

Along with that, by virtue of the LEPSDC, the **Ombudsman** has the right to recommend to the Minister of Justice the closure, redevelopment or extension of a particular prison, prison hostel or detention facility where, owing to severe overcrowding or poor hygiene and material conditions of detention, it is impossible to implement correctional intervention or there is a risk of impairment of the physical or mental health of the detainees (Article 46 (1) of the LEPSDC). This right of the Ombudsman is matched by a corresponding obligation of the executive branch of government. The Minister of Justice is obligated to lay the Ombudsman's recommendation before the Council of Ministers within one month. In turn, the Council of Ministers has three months to announce the measures taken to address the problems. This tangibly broadens the powers to exercise independent supervision, which were vested in the Ombudsman by the *Law on the Ombudsman* (effective as from 1 January 2004), and creates an additional statutory guarantee of respect for the rights and freedoms of sentenced persons

in the process of execution of the penal sanction of imprisonment and of a more effective application of European standards.²⁴

The LEPSDC provides that only **persons sentenced to imprisonment by an enforceable sentence** be placed in prisons and reformatories, as well as in prison hostels with them. Persons detained according to the procedure established by

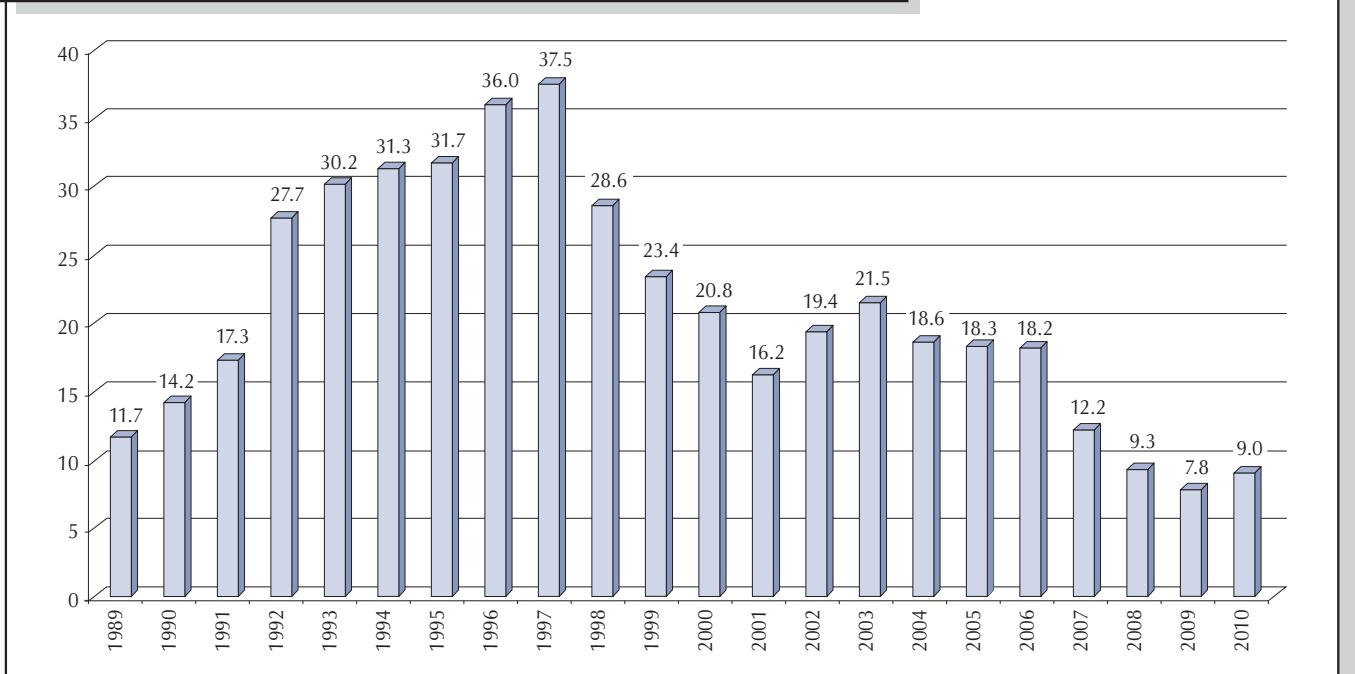
Figure 3. Number of persons held at prisons for the 1989 – 2010 period



Source: Ministry of Justice

²⁴ For their more effective application, the Bulgarian Helsinki Committee experts recommend that the Bulgarian Ombudsman obtain accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and that the legal framework of the independent monitoring of the penitentiary facilities be brought into conformity with the Optional Protocol to the United Nations Convention against Torture – <http://www.bghelsinki.org/index.php?module=pages&lg=bg&page=obektiv15913> (available in Bulgarian only).

Figure 4. Defendants and accused as a percentage of the total number of persons held at prisons for the 1989 – 2010 period



Source: Ministry of Justice

the PPC (i.e. persons whose detention in custody has been ordered by the court as a precautionary measure to secure their appearance) are placed in investigation detention facilities and may be placed in prisons, closed prison hostels and reformatories only in the cases provided for in the law according to a procedure provided for in the law. According to Ministry of Justice data, the number of accused and defendants held at prisons has decreased by nearly two-thirds over the last 20 years. The downward tendency has been particularly tangible since the beginning of 2007, and they accounted for 9 per cent of the total prison population by 1 January 2010. At the same time, the number of persons committed to detention facilities has risen steeply,²⁵ with 1,083 accused and defendants being held at investigation detention facilities by 31 December 2009, up from 723 by 31 December 2008. This brings to the foreground the issue of overcrowding at investigation detention facilities, along with the issue of the poor material conditions of detention there.

1.2. SERVICE OF CUSTODIAL SENTENCES

The defining factors in service of custodial sentences are the standards and steps concerning: in the first place, *the assignment of the place* for accommodation of the

²⁵ There are investigation detention facilities in the 28 regional capitals, as well as in other, smaller settlements. The predominant part of them does not conform to international and European standards.

persons deprived of their liberty and *of the regime* of service of the sentence and, in the second place, the possibilities for *an alteration of the regime* and for *transfer* from one prison facility to another.

The court assigns the initial regime of service of the sentence and the type of prison facility: prison, prison hostel or reformatory, at which the sentenced person must be placed initially.²⁶

1.2.1. Assignment of place for service of a custodial sentence, accommodation, allocation, transfer

- *Accommodation and stay*

The LEPSDC and the Regulations for Application of the LEPSDC provide that each prison or reformatory should have a separate **reception unit**, where the newly admitted persons deprived of their liberty are accommodated for a period of 14 days to one month²⁷ (for persons detained according to the procedure established by the PPC 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, which also existed in the superseded LEPS, is to enable the sentenced persons to prepare for service of the sentence imposed and, to this end: in the first place, 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; in the second place, to make possible the completion of all formalities 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. The RALEPSDC sets a requirement to store the information on the newly admitted inmates in **electronic form** as well (Article 31 (4) of the RALEPSDC).

With the adoption of the new framework, the requirements for admission to a prison, contained in Rules 14 to 16 of the **European Prison Rules**, were largely transposed at the level of primary and secondary legislation.

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 (Article 55 (2) of the LEPSDC).

²⁶ See Article 41 (6) of the PC, amended in the SG No. 89 of 1974, renumbered from Paragraph (7) in the SG No. 89 of 1986, amended in the SG No. 27 of 2009, effective 1 June 2009. "The initial regime of service of a custodial sentence and the type of prison facility whereat the sentenced person must be placed initially shall be assigned by the court in conformity with the provisions of this Code and of the special law."

²⁷ See Article 47 of the LEPSDC and Article 26 et seq. of the RALEPSDC.

- *Allocation*

After the stay at the reception unit, depending on the type of prison facility assigned in the judicial act for initial placing of the sentenced person, the imprisoned persons are allocated to prisons (reformatories) or prison hostels, for which the general rules are defined in the LEPSDC, and the specific allocation follows a procedure established by the Minister of Justice.²⁸ The general rules contain **two basic principles** which should be implemented in assigning the place where the custodial sentence is to be served.

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**”²⁹ (Article 56 (2) of the LEPSDC), which corresponds to Rule 17.1 of the European Prison Rules. At the same time, the condition of the Bulgarian penitentiary system does not allow the practical application of this principle in part of the cases. Attention to this is called not only in the critical materials of Bulgarian human rights activists and foreign observers, but in official government documents as well.

Box 3. Consequences of the lack of strategy for development of the penitentiary system

“As a result of the lack of a national strategy for the development of the penitentiary system, large regions in the country: Ruse, Razgrad, Silistra, Shumen and Veliko Tarnovo in Northern Bulgaria and Haskovo, Smolyan and Kardzhali in Southern Bulgaria, have been left without places of deprivation of liberty, which has serious adverse consequences: lax security, costly justice, restricted contacts with families, and exclusion of the local public from participation in the penitentiary and post-penitentiary process.”

Source: *Program for Improvement of Conditions at Places of Deprivation of Liberty, adopted by the Council of Ministers on 8 September 2010*

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 following rules are binding on the court:

²⁸ By an Order dated 30 May 2009, juveniles from across the country are detained and serve custodial sentences at the reformatory in the town of Boychinovtsi, applicable to boys, and at the reformatory in the city of Sliven, applicable to girls. Women are committed to the prison in the city of Sliven or, respectively, to the Ramanusha Prison Hostel and the Sliven Prison Hostel with the prison in the city of Sliven.

²⁹ According to Article 93 (1) of the Law on Civil Registration, “permanent address” is the address in the nucleated settlement in whose population registers the person chooses to be entered.

- **any persons sentenced for the first time** to a term of imprisonment **not exceeding five years for willful offences** and **any persons sentenced for negligent offences** serve their sentences at **open prison hostels**;
- **any sentenced recidivists³⁰ and any other sentenced non-recidivists** serve their sentences at **prisons and closed prison hostels**.³¹

Departing from the rules above, the court may decree that sentenced persons of the first group serve their sentence at prisons and closed prison hostels instead of at open prison hostels in the following three cases:

- where the sentenced person has gone into hiding from the criminal procedure authorities and has been put on a national wanted list;
- where the sentenced person suffers from alcoholism or narcotic addiction;
- where the sentenced person suffers from a disorienting mental illness.

In these three cases, by order of the director of the prison, separate **units** may be designated at the closed prison hostels for accommodation of these groups of prisoners, as well as of vulnerable persons with a view to ensuring their safety. This provision is not mandatory, probably because the appropriate conditions are not available at the prisons, but its observance should be monitored in future considering the planned remodeling, new construction etc. envisaged in the Government's Program. All the more so since in two of the cases above the PC expressly requires the provision of "appropriate medical care" of sentenced persons with severe psychopathy or suffering from a mental disorder which does not preclude sanity, as well as of sentenced persons who are dependent on narcotic drugs (Article 40 (4) of the PC), which would be facilitated if such persons are accommodated in separate units.

Women serve custodial sentences at **separate prisons and prison hostels**.

Juveniles deprived of their liberty are placed at reformatories, separately for boys and girls.

³⁰ § 3 (1) of the Supplementary Provisions of the LEPSDC contains a legal definition of the notion of "recidivists": 1. any persons previously sentenced on two or more than two occasions to imprisonment for willful offences for which a cumulative penal sanction does not have to be assigned according to Articles 23 to 25 of the Penal Code, if having served a custodial sentence; 2. any persons sentenced for a criminal offence constituting dangerous recidivism. § 3 (2) regulates two hypotheticals in which previously convicted persons do not qualify as recidivists: 1. if the offence for which they are sentenced was committed five or more years after service of the previous custodial sentence, provided they were previously sentenced on a single occasion; 2. if the offence for which they are sentenced was committed ten or more years after service of the latest custodial sentence, provided they were sentenced on two or more than two occasions.

³¹ Opinions are divided regarding the pros and cons of differentiating between recidivists and non-recidivists with a view to achieving the objectives of the penal sanction. Owing to the circumstance that there is no separate prison for recidivists in Bulgaria, as well as because of their large number, comparable or even greater than the number of non-recidivists, the possibilities for separation and differentiation remain limited.

Aliens who do not hold a permanent residence permit for the Republic of Bulgaria must serve custodial sentences at prisons and prison hostels designated by order of the Minister of Justice (Article 58 (3) of the LEPSDC). At the same time, the law requires that the Ministry of Foreign Affairs be notified immediately of the admission to prison facilities of any persons deprived of their liberty who are not Bulgarian citizens (Article 51 (2) of the LEPSDC).

The penal sanction of **life imprisonment** is supposed to be executed **in separate prisons³² or in segregated units at the other prisons.**

The LEPSDC and the RALEPSDC conform to a large part of the requirements of the European Prison Rules for the **allocation and accommodation** of the persons deprived of their liberty. Regarding the fulfillment of these requirements and the application of the principles of differentiation and individualization, it is important to note that certain rights and responsibilities are conferred on the prison administration. This administration is vested with a right to notify immediately the district prosecutor exercising jurisdiction over the place of execution of the sanction and the prosecution office which carried the judicial act into execution when the administration believes that the type of prison facility or the initial regime of service of the sentence imposed were misassigned by the court.

1.2.2. Regime at prison facilities

Regime in the prison facilities is an element of the penal sanction of imprisonment and part of the content of the sentence. In this connection, the contemporary Bulgarian penitentiary doctrine views regime as an essential means to achieve the objectives of execution of penal sanctions: to correct and re-educate the sentenced persons to comply with laws and good morals; to exert a warning impact on such persons; to deny them the opportunity to reoffend and to have an educational and deterrent effect on the rest of the members of society. The reasoning to the draft of the LEPSDC argues that **regime is an essential means of subjecting the sentenced person to correctional intervention.**

The doctrine defines regime as a totality of rules which regulate the differentiated accommodation and segregation, the conditions and lifestyle of imprisoned persons, the subjective rights they enjoy, the restrictions to which they are subjected etc.³³ The separate types of regime at the prison facilities differ in the degree of segregation, the nature of physical security and movement within the perimeter of the prison facilities, the entitlement to leave and rest etc. These variations are regulated in the LEPSDC (Articles 71 and 72) and in the Regulations for Application of the LEPSDC (Articles 50 to 54), and the new legal framework has abolished the maximum-security regime.

³² In Bulgaria, there is no separate prison for execution of the penal sanction of life imprisonment, and a large part of penitentiary experts oppose the pooling of persons sentenced to such penal sanction in a single prison.

³³ For further details, see Паликарски, М., Наказателно-изпълнително право [Palikarski, M., Penal Sanction Execution Law], Sofia, 1997, p. 89; Трайков, З., Наказателно-изпълнително (пенитенциарно) право [Traykov, Z., Penal Sanction Execution (Penitentiary) Law], Sofia, 2007, p. 168.

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 (Article 61 of the LEPSDC). The minimum-security regime may not be assigned as an initial regime (Article 70 (1) of the LEPSDC).

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 (Article 66 (1) and (3) of the LEPSDC).

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. Having been replaced by a regime of a higher security level, the regime may be replaced by a regime of a lower security level after the lapse of six calendar months from the placement of the prisoner under a regime of a higher security level (Article 67 (1) and (2) of the LEPSDC). An exception to this rule, as an expression of humanism as a principle of the service of the sentence, is allowed in respect of seriously sick persons who have been assigned a special security regime or a medium-security regime, as well as of pregnant and breast-feeding women who have been assigned a medium-security regime. These groups of persons are placed under a low-security regime by order of the director of the prison or reformatory for the duration of their condition (Article 67 (3) of the LEPSDC).

Another exception to the general rules for assignment and alteration of the regime exists in respect of **women**, who may be assigned a special security regime solely as an initial regime. This exception reckons with women's specific physique and needs and is also allowed as an expression of humanism.

On a proposal by the penal **sanctions execution board**,³⁴ the district court exercising jurisdiction over the penitentiary facility may assign a **special security regime** to prisoners who are placed at a prison or at a closed prison hostel where they grossly or systematically breach the established order, exert a bad influence on the rest of the inmates, and pose a credible risk to their safety (Article 68 (1) of the LEPSDC). In such cases, with the assignment of a special security regime, a sanction for bad behavior is imposed on the prisoners concerned. Provisions are also made for a hypothetical for the transfer of prisoners from an open prison hostel to a prison or to a closed prison hostel with two possible solutions: first, acting on a motion by the penal sanctions execution board (under Article 73 of the LEPSDC), the court may decree that the sentenced person serve the sentence under a **medium-security regime** (Article 69 (1) of the LEPSDC); secondly, if the penal sanctions execution board has not entered a motion for replacement of the regime by a medium-security regime or the court refuses to grant such a motion, upon the transfer the prisoner is placed under a **low-security regime** (Article 69 (2) of the LEPSDC).

The replacement of a medium-security regime by a low-security regime does not automatically entail a transfer of the sentenced person: he or she continues to serve the sentence at a prison or at a closed prison hostel unless the court has rendered an express judgment on his or her transfer to an open prison hostel (Article 69 (3) of the LEPSDC). On the other hand, the transfer from a prison facility of one type to a prison facility of another type is rigorously bound to the assigned regime. If the sentenced person is serving a sentence at an open prison hostel under a minimum-security regime, he or she may be transferred to a prison or to a closed prison hostel solely if his or her regime is replaced by a low-security regime (Article 70 (2) of the LEPSDC).

The specific parameters of the types of regime are defined at the level of secondary legislation (Articles 51 to 54 of the RALEPSDC).

Under a **minimum-security regime**, prisoners serve their sentence at open prison hostels, are accommodated on premises with corridors locked at night, are

³⁴ A penal sanctions execution board is established at each prison and reformatory, 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 furthermore includes a representative of the district board for control of juvenile anti-social behavior. The prosecutor of the district prosecutor's office, who exercises supervision as to legality at the relevant prison or reformatory, attends the meetings of the board. Other staff members as well, designated by the director of the prison or of the reformatory, may attend the meetings of the board in a non-voting capacity. The boards adopt decisions regarding a replacement of the regime of service of the penal sanction by a regime of a lower or a higher security level within the limits of the regime assigned by the court; they motion the court: to alter the regime to a regime of a higher security level than the initially assigned regime of execution of the penal sanction; to grant unconditional and conditional release on parole with or without imposition of probation measures; to transfer persons sentenced to life imprisonment to premises shared with the rest of the imprisoned persons. Any decisions of the boards by which the regime initially assigned by the court is replaced by a regime of a higher security level are appealable before the district court exercising jurisdiction over the place of the prison or reformatory. The court must pronounce on the merits in the cases when it revokes the decision of the board.

entitled to a monthly home leave of up to two days, are eligible for a privilege in the form of using the annual rest or part of it outside the prison hostel, and may work in service operations and on work sites outside the perimeter of the hostel unguarded.

Under a **low-security regime**, prisoners serve their sentence at prisons and open and closed prison hostels, are accommodated on premises which are locked at night with the exception of open hostels, where the corridors are locked, and may work in service operations and, applicable to those placed in open prison hotels, on sites outside the perimeter of the hotel as well.

Under a **medium-security regime**, prisoners serve their sentence at prisons and closed prison hostels, are accommodated on premises which are locked at night, may work in service operations on work sites within the perimeter of the prison or prison hostel and, as an exception, on stand-alone sites outside that perimeter under guard.

Under a **special security regime**, prisoners serve their sentence at closed prisons, are accommodated on permanently locked premises under close supervision and security, are excluded from association with other prisoners placed under a low-security regime and under a medium-security regime, and may perform suitable work on separate premises under close supervision and security.

Prisoners who serve a sentence at open hostels under a minimum-security or low-security regime are furthermore entitled to additional rights (Article 72 of the LEPSDC and Article 37 of the RALEPSDC):

- to use medical care at medical-treatment facilities outside the hostel, including in-patient treatment unguarded;
- to attend sports, religious and other events taking place in the nucleated settlement where the hostel is located, according to a procedure established by the director of the hostel;
- to study at schools located at the same place as the hostel, including to be enrolled in courses for attainment of specialist qualifications or for upgrading the qualification together with the free citizens;
- to move freely within the perimeter of the hostel, whether individually or in groups, unescorted;
- to use their own clothing and footwear according to a procedure established by the administration.

Along with that, by order of the Director General of the Directorate General "Execution of Penal Sanctions", particular prisoners may be allowed to spend the night at the work sites outside the hostel, with control and verification in such cases being the responsibility of the director of the relevant hostel.

Persons sentenced to life imprisonment and to life imprisonment without parole are assigned by the court an **initial special security regime** of service of the sentence. The initial regime may be replaced by a regime of a lower security level if the sentenced person exhibits good behavior and has served not less than five years of the sentence imposed. Persons sentenced to life imprisonment

are not placed under minimum-security and low-security regime and are not entitled to privileges which are used outside the perimeter of the prison.

By decision of the **penal sanctions execution board** at the prison, persons sentenced to life imprisonment who are placed under a **medium-security regime** may be accommodated on premises shared with the rest of the prisoners without exclusion from association in work, correctional-education, educational, sports and other activities on the basis of an assessment of their personality.

Persons sentenced to life imprisonment may be transferred to open prison hostels if the court decrees commutation of the life imprisonment to a penal sanction of imprisonment, and in such cases the restrictions incidental to the service of a life sentence no longer apply (Article 199 (2) of the LEPSDC).

1.2.3. Correctional intervention

The subjection of sentenced persons to correctional intervention is an important element of the execution of the penal sanction of imprisonment. The law (Article 40 (2) of the LEPSDC) provides that correctional intervention be executed *vis-à-vis* the separate categories of sentenced persons committed to the penitentiary facilities in a **differentiated** manner by means of:

- ensuring conditions to sustain the physical and mental health and to respect the human dignity of the sentenced persons;
- implementing the restrictions included in the content of the penal sanction;
- containing the adverse consequences of the effect of the sentence and the harmful influence of the community on the sentenced persons;
- ensuring the exercise of the rights of the sentenced person;
- organizing work, correctional-education, educational, sports and other activities (participation in work activity is encouraged and is taken into consideration in determining the degree of correction and re-education – Article 77 (3) of the LEPSDC).

The text about correctional intervention (Article 40 (2) of the LEPSDC) entirely reproduces the text of the superseded *Law on Execution of Penal Sanctions*, but Chapter Eleven “Social and Correctional-Education Work” contains new, noteworthy points. Social work and correctional-education work are regulated in detail for the first time at the legislative level 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 (Article 152 of the LEPSDC). 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 (regulated in greater detail in a separate Section I, Articles 153 to 158 of the LEPSDC);
- education, training and qualification activities (regulated in Section II, Articles 159 to 162 of the LEPSDC);

- creative, cultural and sports pursuits and religious support (elaborated in Section III, Articles 163 to 167 of the LEPSDC).

All forms of social and correctional-education work as provided for should be carried out with the active and organized participation of the prisoners and, to this end; they may elect autonomous bodies, may organize and hold meetings and other common actions with the permission of the competent director of a prison, prison hostel or reformatory. The number of members and the structure of the autonomous bodies are endorsed by the director of the prison, prison hostel or reformatory, but the members themselves represent the inmates in dealings with the administration and are elected by secret ballot.

The law provides that work on the resocialization of persons deprived of their liberty be assisted by representatives of **supervisory boards**, established with the municipal councils,³⁵ boards for control of juvenile anti-social behavior, territorial structures of the Ministry of Labor and Social Policy, civil society and religious associations and non-governmental organizations.

The law abandons certain ineffective and obsolete forms of facilitating correction and re-education, previously provided for in the *Law on Execution of Penal Sanctions*, such as enlisting the public, adoption by enterprises and organizations, holding meetings with prominent scientists and artists and other similar forms. The new forms, however, have yet to be implemented and developed, and the question is whether and how far the necessary prerequisites exist and will be created. All the more so that application of these activities is also bound to the effect of other laws and instruments.

Thus, in respect of the programs for intervention, for reduction of recidivism and of the risk of material damage, provisions are made for a **compulsory specialized program for adaptation** to the conditions for service of the sentence, an **individual plan** for execution of the sentence, and **specialized programs for**

³⁵ The complement of the supervisory boards includes a probation officer and a representative of the prison or reformatory. The maintenance of the boards is provided by the municipal councils, and their complement is endorsed by the chairperson of the municipal council, who directs the activity of the board either immediately or through a representative. Supervisory boards are vested with a definite range of powers, including the exercise of public control over the operation of the penitentiary facilities, assistance to the resocialization of prisoners, including through the initiation of social services within the territory of the municipality, making proposals for an alteration of the treatment regime, transfer of prisoners to prison facilities of a lower or higher security type or for release on parole, making proposals and giving opinions on requests for pardon, supporting the families of prisoners, and facilitation of the job placement and housing arrangements of persons released from prison. The proposals and recommendations of the supervisory boards are mandatory for the director of the prison and reformatory. Upon failure to act on any such proposal or recommendation, the supervisory board has the right to refer the matter to the Director General of the Directorate General "Execution of Penal Sanctions". To implement their powers, the members of the supervisory boards have the right to visit the penitentiary facilities, interview prisoners, familiarize themselves with the documents they need, request and receive information from the administration of the penitentiary facility etc. The prevailing assessment of the ineffectiveness of supervisory boards is already giving way to expectations of their invigoration, especially in respect of their functions after service of the custodial sentence and upon early release of the sentenced persons, in finding work, housing etc.

individual and group work. After completion of the adaptation program, an initial report and an individual plan for execution of the sentence are prepared for each sentenced person. The initial report makes an **assessment of the risk of recidivism and the risk of material damage, the causative factors of the risk of recidivism, and proposals for containment of these factors.** Rules for evaluation of the sentenced person should be endorsed by the Minister of Justice. The evaluation is crucial for the fate of each sentenced person because it is on its basis that proposals are made for alteration of the regime of service of the sentences, for transfer to another prison facility and release on parole. The specialized programs for individual and group work should be endorsed by the Director General of the Directorate General “Execution of Penal Sanctions” on a proposal by the Council on Execution of Penal Sanctions.

The productive implementation of this process requires an expansion of the guarantees of independent control and monitoring, especially on the part of non-governmental organizations. The law regulates in detail only the rights of supervisory boards, including their right to visit penitentiary facilities, to interview prisoners, to familiarize themselves with the documents they need, to request and receive information from the administration of the penitentiary facilities, to make mandatory recommendations to the director of the prison and reformatory etc. At the same time, there are no regulations for most of the rest of the structures which, by virtue of the law, are supposed to facilitate the resocialization effort. Nor is it clear why the law uses the terms “civil society associations and non-governmental organizations” when the reference is apparently to not-for-profit legal entities, and neither of the terms used is legal.

For its part, the conduct of **educational, training and qualifying activities** is governed by instruments issued by the Minister of Education, Youth and Science and by the provisions of the *Law on Public Education*, which, too, necessitates independent monitoring. It would at least guarantee publicity of the processes unfolding in this sphere of social and correctional-education work. The same applies to creative, cultural and sports pursuits.

1.3. LEGAL STATUS OF IMPRISONED PERSONS

The legislative regulation of the rights and obligations in the new law is more detailed and reckons to a greater extent with the principles of humane treatment and respect for human dignity, compared to the old legislation.

1.3.1. Rights of imprisoned persons

Prisoners may enjoy all rights established by the laws with the exception of:

- the rights from which they are deprived by a sentence;
- the rights which are withdrawn from them or which are expressly restricted by a law only;
- the rights whose exercise is incompatible with the execution of the penal sanction.

The exercise of the rights is bound with the creation of appropriate conditions for this. Otherwise, such rights would be a matter of wishful thinking and good on paper only. Within this context, notice should be taken of an **Ordinance Determining the Standard of Annual Budget Maintenance per Person Deprived of His or Her Liberty**,³⁶ adopted in implementation of the LEPSDC, which applies to the persons committed to all penitentiary facilities, including detainees at detention facilities according to the procedure established by the PPC. The Ordinance lists exhaustively the elements of the standard of annual budget maintenance also contained in the LEPSDC: free food, sufficient in chemical and caloric composition; a separate bed, free clothing, footwear and bedding; supplies for the maintenance of personal cleanliness and hygiene; preventive care; medical services and medicines; maintenance of hygiene and health control; culture, information and religious activities; sports pursuits; creative pursuits; specialized programs for individual and group work for interaction and resocialization; professional qualification and practical training courses, work, educational, training and correctional-education programs; supplies for current repairs etc.; water, fuels, electricity; hired services. Additional elements are provided for certain categories of prisoners (pregnant women and mothers, sick persons entitled to dietetic food): an increased food ration or, respectively, dietetic food.

The annual maintenance standards must provide a **basis** for the annual determination of the financial resources on the budget of the Ministry of Justice, which are necessary for the maintenance of imprisoned persons, accused and defendants detained in custody as a precautionary measure to secure their appearance, whereupon these resources must **be adjusted annually** in physical and value terms for the intervening changes in the average number of these persons, in the building stock, in the type of heating and other specific factors,³⁷ and the variation of the officially announced producer price index in the current year must be taken into account when determining the maintenance for each successive year.

The Directorate General "Execution of Penal Sanctions" is obligated to ensure the annual budget maintenance of these persons, including the allocation of the resources determined according to the annual standard. The overall responsibility rests with the **Ministry of Justice**, which is the institution supposed to guarantee the application of the adopted standard, as well as to ensure publicity of the entire process. Quality of life at the prison facilities, the range of rights which prisoners will exercise will depend directly on this, and it will indirectly determine the creation of better conditions for achievement of the objectives of the penal sanction.

³⁶ Ordinance Determining Standards of Annual Budget Maintenance per Person Deprived of His or Her Liberty, adopted by Council of Ministers Decree No. 321 of 28 December 2009, promulgated in the SG No. 1 of 5 January 2010.

³⁷ The Supplementary Provisions (Item 2 of § 1) of the Ordinance define specific factors as: the number of imprisoned persons who are engaged in socially useful labor; the number of imprisoned women, juveniles and aliens; the availability of medical-treatment facilities for hospital care and centers for training and qualification upgrading at the penitentiary facilities, as well as other factors.

- *Right to information and legal advice*

According to the provisions of the law, imprisoned persons have the right to request information on questions concerning the execution of the sentence, the length of the served portion of the sentence, the possibilities for relaxation of the conditions of service of the sentence and early release (Article 76 (1) of the LEPSDC). Regarding legal advice, under the law prisoners may consult with a lawyer of their own choice, meet the lawyers in private (such meetings may be watched but may not be listened and recorded), correspond without restrictions and use telephone communications at any time of the day. The matter of free legal aid, however, is not regulated, and this places prisoners at a disadvantage. One possible solution is contained in a proposal by experts of the Bulgarian Helsinki Committee (BHC) **for the appointment of legal advisers at the prisons** to provide free legal aid to the inmates.³⁸ Other solutions may be sought in terms of amending and supplementing the *Law on Legal Aid*,³⁹ expanding the existing scope of legal aid and including a new form: “advice and representation in court by legal counsel so that persons deprived of their liberty can exercise their rights”, with the director of the relevant penitentiary facility being entrusted with the assessment as to whether the prisoner is unable to pay a lawyer’s fee (on the basis of the person’s property and financial status, his or her employment, health status etc.). The prisoner should have the right to appeal a refusal to make such an assessment, as well as a negative assessment, before the Director General of the Directorate General “Execution of Penal Sanctions”. Solutions are also possible in terms of **broadening the rights of a specified range of non-governmental organizations** (such engaged in human rights activities) to meet and interview prisoners in private.

- *Right to work and rest (Article 77 et seq. of the LEPSDC)*

Performance of paid publicly useful labor is provided for as a means of re-educating sentenced persons and of providing and upgrading their professional qualification (Article 41 (1) of the PC). There is also a rule, according to which the work performed is allowed towards reduction of the term of the sentence, with two working days counting as three days of imprisonment. In case a sentenced person systematically absents himself or herself from socially useful labor (along with the cases when the person commits a willful offence or grave violations of the established order) and thus demonstrates that he or she is not reforming, the court has the right to cancel in whole or in part the allowance for the working days of the last two years preceding the commission of the latest violation (Article 41 (4) of the PC). The broadening of the range of activities qualifying as labor and suitable work: enrolment in education and training programs, individual and group involvement in intellectual and creative activities, in other useful

³⁸ See <http://www.bghelsinki.org/index.php?module=pages&lg=bg&page=obektiv15913> (available in Bulgarian only).

³⁹ Law on Legal Aid, effective 1 January 2006, promulgated in the SG No. 79 of 4 October 2005, amended in the SG No. 105 of 29 December 2005, amended in the SG No. 17 of 24 February 2006, amended in the SG No. 30 of 11 April 2006, amended in the SG No. 42 of 5 June 2009, amended in the SG No. 32 of 27 April 2010, amended in the SG No. 97 of 10 December 2010, amended in the SG No. 99 of 17 December 2010.

pursuits etc., is assessed as an improvement in the new law with a view to achieving the objectives of the penal sanction.⁴⁰

Prisoners have the right to suitable work, and, as far as possible, their preferences for a particular kind of work are taken into consideration. They are entitled to be paid a fixed portion (but not less than 30 per cent) of the remuneration earned, and this portion is fixed by order of the Minister of Justice. The duration of the working day is fixed in conformity with the effective national labor legislation, and performance of overtime work requires permission of the Director General of the Directorate General "Execution of Penal Sanctions" up to the length established in labor legislation. With the consent of the prisoners, the Director General of the Directorate General "Execution of Penal Sanctions" may allow specific groups of prisoners to work a six-day working week, with work during the sixth working day not being considered overtime work. The uninterrupted daily rest period may not be shorter than 12 hours, the uninterrupted weekly rest period may not be less than 38 hours or, in uninterruptible production processes or when the pattern of shift work changes, less than 24 hours.

The law provides additional rights in respect of the work performed and the right to rest of prisoners who attend school, those engaged in especially detrimental and hazardous production processes, as well as women in case of pregnancy and child-birth. Noted experts may be allowed to engage in creative pursuits only, according to a procedure established by the Minister of Justice, and this time is allowed as working days.

Prisoners may create and publish their original works of authorship, and in respect of their inventions, innovations, literary and artistic works, they receive royalties in full amount and also enjoy the rest of the rights provided for in the relevant laws.

The law regulates the cases of voluntary unpaid work, which may be assigned solely with the express written consent of the prisoners, and the time during which such work is performed is allowed towards reduction of the term of the sentence.

- *Right to medical services*

The right to medical services is associated with the creation of conditions to protect the physical and mental health of prisoners and its regulation is detailed for the first time in the LEPSDC. Medical services are dealt with in Chapter Ten of the Law and an express ordinance issued by the Minister of Health and the Minister of Justice (Ordinance No. 2 on the Terms and Procedure for Medical Services at the Places of Deprivation of Liberty).

⁴⁰ Карагьозова, М., 'Новият закон за изпълнение на наказанията – прогресивни идеи и нови разрешения' [Karagyozova, M. 'The New Law on Execution of Penal Sanctions: Progressive Ideas and New Solutions'], Правен свят [Legal World], No. 12, 2009, p. 130 (available in Bulgarian only).

The law expressly provides that health insurance contributions are paid for all prisoners as from the time of detention, and these contributions are for the account of the state budget and are remitted through the Ministry of Justice. Medical services to prisoners are provided by the medical centers and specialized hospitals for active treatment opened with the prisons. The law defines these facilities as **part of the national health care system**, and the medical care provided at them must conform to the general medical standards. The law, however, adopts a **dualistic approach** in respect of the control over the medical-treatment facilities: on the one hand, the **Minister of Health** exercises methodological guidance and control over the medical activity of these medical-treatment facilities and facilitates the provision of medical and dental care to prisoners, and on the other hand, the **Minister of Justice** controls and coordinates the activity of the medical-treatment facilities. The question is whether the required coordination and distribution of roles between them will be achieved and whether there is a risk of responsibilities being shifted and blurred.

Where there are no conditions for provision of the required medical treatment at the medical-treatment facilities with the prisons, where infectious diseases have to be treated, or where consultative examinations or specialized tests are required, prisoners are sent to medical-treatment facilities outside the prisons respecting the segregation and security requirements of the regime.

Provisions are also made for preventive care of prisoners, medical care in specific cases (upon solitary confinement to a disciplinary cell, following the use of physical force, auxiliary means or weapons, for women and juveniles, for persons suffering from mental disorders), the supply of medicines and the receipt of medicines from outside. The medical specialists of the medical-treatment facilities at the prisons are responsible for health control and hygiene at the prisons. It is provided that these specialists perform the duties of health inspectors who, upon ascertainment of breaches, give directions which are binding upon the directors of the penitentiary facilities.

Provisions are made for the establishment of a **medical board** with the Directorate General "Execution of Penal Sanctions", vested with powers to make proposals for pardon, for a suspension of the implementation of the sanction or modification on health grounds of the detention in custody as a precautionary measure to secure the appearance of a person.

- *Right to lodge requests and complaints, to visits, to correspondence and other forms of contact with the outside world*

Prisoners have the right to lodge requests and complains, as well as to present themselves in person before the director of the prison, reformatory or prison hostel. The requests and complaints are sent immediately to the authorities to which they are addressed. The postage expenses on the requests and complains related to the execution of the penal sanction are for the account of the prison or reformatory. Acting on an **express written authorization**, lawyers and non-governmental organizations may lodge requests and complains on behalf of prisoners (Article 90 (2) of the LEPSDC). Prisoners have the right to lodge requests and complains to print and electronic media and to meet with journalists.

Members of such media are admitted with the permission of the director of the prison or reformatory, and any denials of such permission are appealable before the Director General of the Directorate General "Execution of Penal Sanctions".

The framework for the right to receive visits is relatively liberal and differentiated. Everybody are entitled to visits not less frequently than twice every month, each visit lasting for up to 40 minutes, and visits may be aggregated at the request of the prisoner and with the permission of the director of the penitentiary facility concerned. Visits must take place on days appointed in advance and on expressly furnished premises in the presence of an administration official. Along with that, the system of encouragement measures for various types of commendable performance furthermore provides for categories of prisoners specified in the law: an extended visit for a period of up to four hours, a visit with relatives outside the penitentiary facility for a period of up to 12 hours, a monthly home leave of up to two days, a home leave of up to five days, and use of the annual rest outside the open prison hostels. The time during which prisoners use a home leave or an annual rest is allowed against the service of the sentence.

The LEPSDC introduces the right to telephone communications and obligates the administration to ensure the exercise of this right.

Prisoners have the right to correspondence, the right to receive and read newspapers, magazines and books, and to study foreign languages. They may listen to radio transmissions and watch television according to a procedure established by the director of the relevant prison facility.

The arrangements for contacts of prisoners with the outside world are regulated in accordance with the twelve paragraphs of Rule 24 of the European Prison Rules, but exercise of the rights granted requires cooperation on the part of the penitentiary administration. The rights which are granted as an encouragement require an instrument (order) issued by the director of the relevant penitentiary facility or by the Director General of the Directorate General "Execution of Penal Sanctions".

- *Education, training and qualification*

The framework on education, training and qualification is contained in the LEPSDC chapter on social and correctional-education work. The law actually regulates the equal access of prisoners to these activities, whereas the RALEPSDC provide for their right to enroll in general-education, vocational and social training and literacy courses, and establish the terms and procedure according to which participation in such activities is allowed towards reduction of the terms of the sentence. Persons who have not attained the age of 16 years are subject to compulsory schooling at the schools with the places of deprivation of liberty.

Under the law, schools at the penitentiary facilities are opened, transformed and closed by the Minister of Education, Youth and Science on a proposal by the Minister of Justice. The Minister of Education, Youth and Science appoints the

school principals in consultation with the Director General of the Directorate General "Execution of Penal Sanctions". The teachers are appointed by the school principal after consultation with the director of the prison. Financing of the activity of the schools, as well as of all activities in the sphere of education, training and qualification, is provided by the state budget through the Ministry of Justice.

The requirements of Rule 28 of the European Prison Rules regarding education are largely reckoned with in the new framework. Closer attention, however, should be paid to the requirement of Rule 28.2 to give priority to prisoners with literacy and numeracy needs and those who lack basic or vocational education. This is of great importance, considering that the share of illiterates among prisoners in Bulgaria approximates 30 per cent, and the share of those who lack any vocational skills is about 35 per cent.⁴¹ As the Director of the Sliven Prison said in an interview in early 2009, even though there is a 12-grade school at the prison, 41 per cent of the inmates are illiterate and 17 per cent claim to have elementary education but are practically illiterate. At the same time, according to data of the Directorate General "Execution of Penal Sanctions", the number of sentenced persons who have refused enrolment at school decreased substantially in 2009, and the number of those attending school increased by one-third in 2010. An increase in literacy courses is reported as well. Persons serving custodial sentences will be able shortly to avail themselves of the opportunities for training and professional qualification provided under EU programs and projects.

- *Guarantees*

Judicial review of the instruments issued by the penitentiary administration is one of the most important guarantees of respect for the rights of imprisoned persons. Judicial review applies to the orders imposing the disciplinary punishment of solitary confinement to a disciplinary cell,⁴² the orders for placing in solitary confinement for a period of two months with removal from association, the orders for confiscation and forfeiture in favor of the Prison Service Fund of articles and money whose holding is not authorized, and the orders enforcing pecuniary liability. The decisions of the penal sanctions execution boards by which the regime initially assigned by the court is replaced by a regime of a higher security level are also appealable before the district court exercising jurisdiction over the place of the prison or reformatory, and when revoking the decision of the board, the court pronounces on the merits.

⁴¹ See '9000 затворници ще се учат с европейски пари' ['9,000 Prisoners to Get Training on EU Money'], an interview of Sonya Galabrova with Krasimir Popov, *Trud* daily, 5 January 2011, <http://www.trud.bg/Article.asp?ArticleId=730607> (available in Bulgarian only).

⁴² This possibility was introduced by an amendment of the LEPS back in 2002. For details, see Трендафилова, Е., 'Някои въпроси, които чл. 5 ЕКПЧ поставя относно изпълнение на наказанията' [Trendafilova, E., 'Certain Issues Raised by Article 5 of the ECHR Regarding the Execution of Penal Sanctions'], *Правата на човека* [Human Rights], No. 4/2002, published by the Bulgarian Lawyers for Human Rights Foundation (available in Bulgarian only).

In the opinion of judges, the new law standardizes the procedure and manner for implementation of judicial review, which facilitates prisoners in the exercise of their right of appeal⁴³.

For the purpose of protecting their rights, the law provides that prisoners may be transferred from one prison to another only by order of the Director General of the Directorate General "Execution of Penal Sanctions" in cases expressly listed in the law (Article 62 (1) of the LEPSDC), with the orders on transfer, as well as the refusals to grant a request for transfer, being appealable before the Minister of Justice. In the same cases, prisoners may be transferred from a prison to a closed prison hostel functioning as a division of the prison and back by order of the director of the prison, with the order or the refusal of a transfer in such cases being appealable before the Director General of the Directorate General "Execution of Penal Sanctions".

Prisoners may not be transferred if there is a risk of a serious deterioration of their health status.

In accordance with the requirements of the European Prison Rules, Bulgarian legislation also regulates a number of other rights which prisoners may exercise: in the sphere of freedom of religion, exercise and recreation, cultural, creative and sports pursuits, health and hygiene at penitentiary facilities etc.

1.3.2. Restrictions and prohibitions

Part of the rights and freedoms of prisoners are restricted by law and by the specifically assigned treatment regime. The restricted legal status includes definite **duties** (such as to perform the work assigned to them by the administration; to comply with the rules established for them; to fulfill strictly the directions and orders of the competent officials etc.), as well as a number of **restrictions and prohibitions**, which are general and differentiated depending on the regime. A large part of these restrictions and prohibitions are related to the security and safety measures and to ensuring internal order and discipline. The prohibitions include, say, the possession of weapons, ammunition, explosives, pyrotechnic articles, a mobile telephone, a still camera, audio and video recording devices or their parts, engagement in violence, use of alcoholic beverages and narcotic drugs, receipt and possession of printed and other materials of pornographic content or such professing national, ethnic, racial or religious hatred, staging of rallies and group protests, holding of meetings which are not authorized by the administration, playing of games which breach the internal order, infringe the rights of the rest of the prisoners or good morals or which are organized for the purpose of obtaining onerous services, etc.

The director of the prison or of the prison hostel may refuse permission for visits, correspondence or telephone communications to persons who exert a bad

⁴³ Карагъзова, М., 'Новият закон за изпълнение на наказанията – прогресивни идеи и нови разрешения' [Karagyozova, M., 'The New Law on Execution of Penal Sanctions: Progressive Ideas and New Solutions'], Правен свят [Legal World], No. 12, 2009, p. 130 (available in Bulgarian only).

influence on the sentenced person, with the exception of such contacts with descendants, ascendants, spouses, or siblings.

The Minister of Justice endorses a list of the authorized objects and articles which prisoners may keep and use (Article 122 of the LEPSDC). Any articles and money whose holding is not authorized are confiscated by order of the director of the prison or reformatory, and ownership of them is forfeited in favor of the Prison Service Fund. The order must be brought to the notice of the inmate upon signed acknowledgement of service, and the inmate may appeal any such order within 14 days before the regional court exercising jurisdiction over the place of the prison or reformatory. The procedure is the same as the one applicable to an appeal of an order imposing a disciplinary punishment of solitary confinement to a disciplinary cell.

- *Search of persons and premises*

Following the requirements of Rule 54 of the European Prison Rules regarding searching and controls, the Bulgarian legislation provides for a similar procedure and for the cases in which prisoners are mandatorily searched: upon entry into and exit from the prison, upon leaving for and returning from the work sites, upon confinement to and release from a disciplinary cell, upon going to and returning from a visit, upon admission to and discharge from a hospital facility, upon going on leave and returning from leave or from suspension of the service of the sentence. Beyond these cases, prisoners may be searched with the permission of the director of the prison or of the reformatory for prevention of criminal offences or of other violations. Dormitories, work premises and other premises at the prison facilities may be searched by security staff in the presence of inmates or of their representative. The law requires the drawing up of memorandums on the searches of persons and premises as carried out, which should be signed by the official and by the inmate.

- *Disciplinary punishments, restraints*

As required by Rule 57.2 of the European Prison Rules, Article 100 (1) of the LEPSDC defines a disciplinary offence as “any act or omission performed culpably by persons deprived of their liberty, whereby internal order is breached, property is damaged, or staff members or persons deprived of their liberty are physically injured or insulted”. The second paragraph of the same article specifies the separate cases of disciplinary offences, for which eight types of disciplinary punishments, listed in Article 101 of the Law, are provided. The punishments are imposed by the director of the prison or reformatory, as well as by the directors of the prison hostels. The latter, though, may impose the two most severe punishments (solitary confinement to a disciplinary cell for a period of up to 14 days and solitary confinement to a disciplinary cell outside working time, on non-working days and holidays for an aggregate period of up to 14 days in the course of three months) only for 24 hours. An extension of this period requires approval by the director of the relevant prison. The Director General of the Directorate General “Execution of Penal Sanctions” may impose all punishments.

The orders imposing a disciplinary punishment are **appealable** before the Director General of the Directorate General “Execution of Penal Sanctions”, and in the

cases where the punishments are imposed by the Director General, the orders are appealable before the Minister of Justice, within seven days after the order is brought to the notice of the prisoner. An order imposing a disciplinary punishment of solitary confinement to a disciplinary cell is appealable before the regional court exercising jurisdiction over the place of the prison or reformatory within three days after the publication of the order. The appeal is lodged care of the authority who imposed the disciplinary punishment and who may revoke the order on his or her own initiative. If the authority does not revoke the order, the authority must transmit the order to the court within three days. The court must examine the appeal immediately but not later than three days after receipt of the records. The authority who issued the order and the appellant or his or her defense counsel are entitled to appear at the hearing. The ruling of the court is unappealable.

At the same time, the European Prison Rules set requirements in principle which must be complied with in defining disciplinary offences and imposing disciplinary punishments. According to Rule 57.1, only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence, and Rule 56 prescribes that disciplinary procedures be mechanisms of last resort and that, whenever possible, prison authorities use **mechanisms of restoration and mediation to resolve disputes** with and among prisoners. Such measures should be provided for in Bulgarian legislation and should be appropriately applied in practice.

- *Restraints, use of force, auxiliary means and weapons*

Technical and other security and surveillance equipment is used at penitentiary facilities for the prevention of escapes, other criminal offences and violations. The law requires that prisoners be warned of the possibility of use of security and technical equipment, including audiovisual systems, for surveillance of their behavior (Article 44 of the LEPSDC).

The law, however, also provides for a range of restraints where observance of order and discipline cannot be achieved otherwise. The LEPSDC regulates the cases of use of physical force, including martial art techniques, and where a result cannot be achieved by use of physical force, also the use of auxiliary means: handcuffs, restraint belts, various types of batons, blank cartridges, various devices and machines, police dogs and other approved by the Minister of Interior, as well as various chemical substances endorsed by the Minister of Health. Article 116 of the LEPSDC admits the use of weapons as a last resort to frustrate an escape, in defense against an attack involving use of deadly or non-deadly force, as well as in the release of a hostage, to repel a group attack or an armed attack. Regardless of the detailed regulation of the terms and procedure for use of restraints, the specific situation, the nature of the offence and the personality of the offender must always be taken into consideration. It is also debatable whether the law should have at all admitted the use of weapons to frustrate an escape. All the more so since, according to Rule 69.1 of the European Prison Rules, lethal weapons may be *carried* (not used) only in an operational emergency.

Whenever necessary, as a precaution against escape, use of deadly or non-deadly force against other persons, as well as against other criminal offences, by order of

the Director General of the Directorate General “Execution of Penal Sanctions” a prisoner may **be placed in solitary confinement** for a period of up to two months with removal from association. Any such order is appealable before the district court exercising jurisdiction over the place of the prison within three days after the order has been brought to the notice of the prisoner, and the competent prosecutor must be notified of the commencement of the solitary confinement and of the release.

1.4. DIRECTION, CONTROL, AND INDEPENDENT MONITORING OF THE ACTIVITY COMPREHENDED IN EXECUTION OF PENAL SANCTIONS

The LEPSDC assigns the **Minister of Justice** to carry out the state policy in the area of execution of penal sanctions and to implement **overall direction and control** over the activity comprehended in execution of penal sanctions. In this connection, the Minister of Justice is vested with a broad range of organizational powers and managerial functions in the sphere of:

- interaction with state bodies, bodies of local self-government and non-governmental organizations whose activity is concerned with the execution of penal sanctions;
- contractual relations with legal persons;
- indicators and criteria for allocation of the resources for maintenance of the penitentiary facilities and the probation services;
- classification of the positions in the system of the Directorate General “Execution of Penal Sanctions”, the structures and the staffing schedules and the legal relationships with the civil servants and with the persons working under an employment relationship in the Directorate General;
- management of the state-owned properties allocated to the Directorate General “Execution of Penal Sanctions”, formation of state-owned commercial corporations in connection with the manufacturing operations and economic activity at the penitentiary facilities;
- determination of the terms and procedure for performance of work by imprisoned persons.

The Minister of Justice may delegate a part of his or her powers, specified by the law, to a Deputy Minister, as well as assign the performance of particular powers to the Director General of the Directorate General “Execution of Penal Sanctions”.

The direct management of and control over the operation of the penitentiary facilities is implemented by the **Directorate General “Execution of Penal Sanctions”**, which is a **legal person** under the Minister of Justice with a head office in Sofia and a second-level spending unit. The prisons, the reformatories and the Regional Services of Execution of Penal Sanctions (with a Probation Sector and a Detention Facilities Sector) are territorial services of the Directorate General. The law provides a detailed regulation of the eligibility requirements for appointment of the **Director General** of the Directorate General “Execution of Penal Sanctions”, of the **directors** of prisons, prison hostels and reformatories, their powers, as well as the powers of **staff members** in the Directorate General “Execution of Penal Sanctions” and in its territorial directorates as civil servants

or persons employed under an employment relationship (Articles 12 to 31 of the LEPSDC). The introduction of and compliance with these requirements in practice would lead to a better and professional management of the penitentiary system and an improvement of its effectiveness.

To ensure better management and limit the possibilities for undesirable dependence and corruption, the new law makes express provisions for **cases of incompatibility** with the service of civil servants. Along with that, it should be noted that the LEPSDC provides for **perquisites** for all staff members (food, clothing, transport costs, insurance, and various types of benefits) reckoned with the specific conditions and nature of the work done which involves great responsibilities and risks. The law defines the **general framework of the system of general training, qualification and vocational training of the staff**, as well as a **system of incentive awards** for achieving remarkable performance in and contribution to work, which are conferred by the competent superiors: a letter of commendation, a merit citation with additional paid leave of up to five working days per calendar year, a cash prize or merchandise award, and conferment of an honorary distinction or badge of honor designated by the Minister of Justice.

Box 4. Territorial services of the Directorate General “Execution of Penal Sanctions”

The territorial services of the Directorate General “Execution of Penal Sanctions” are:

- 12 prisons with 22 open and closed prison hostels;
- 1 reformatory for male juveniles in the town of Boychinovtsi;
- 1 reformatory for female juveniles with the prison in the city of Sliven;
- 27 Regional Services of Execution of Penal Sanctions with a Detention Facilities Sector and a Probation Sector.

Source: Directorate General “Execution of Penal Sanctions”

The LEPSDC provides for the establishment of a **Council on Execution of Penal Sanctions** with the Ministry of Justice, chaired by the Deputy Minister of Justice who is in charge of the operation of the Directorate General “Execution of Penal Sanctions”. This new auxiliary body is similar to the Scientific and Methodological Council for Prison Studies which existed under the previous legislation. Similar to the erstwhile Council, this one, too, consists of tenured staff members and of a plenary complement. The plenary complement includes representatives of the Ministry of Justice, the Ministry of Interior, the Ministry of Education, Youth and Science, the Ministry of Health, the Supreme Bar Council,⁴⁴ magistrates, public

⁴⁴ There was no such provision for the erstwhile council which, however, included representatives of the Supreme Administrative Court and of the Supreme Court of Cassation, the prosecuting and the investigating magistracy. In the current version, they are replaced by the blanket term ‘magistrates’, which expands the possibility for participation of judges other than those from the supreme courts.

figures and representatives of non-governmental organizations engaged in activities related to execution of penal sanctions. The Council is vested with powers to organize and carry out scientific research in connection with the execution of penal sanctions, to develop methodological guidelines for the operation of the penitentiary facilities and the probation services, to draft statutory instruments in connection with the execution of penal sanctions, to direct the initial training and the upgrading of the professional qualification of the staff of the Directorate General "Execution of Penal Sanctions" and its territorial services etc. Jointly with the Directorate General "Execution of Penal Sanctions", the Council on Implementation of Penal Sanctions publishes a *Zatvorno Delo* [Prison Service] bulletin for applied research on the problems related to the execution of penal sanctions and for support to the training of the staff of penitentiary facilities and probation services.

Unlike the procedure established by secondary legislation for identification of the staff members' "psychological suitability for work" under the old legislation, the LEPSDC introduces mandatory psychological evaluation for applicants for civil servant positions in the Directorate General "Execution of Penal Sanctions" and its territorial services, as well as for incumbent staff members upon change of the category and the field of activity (Article 35 of the LEPSDC). To this end, a **psychological laboratory** is established with the Directorate General "Execution of Penal Sanctions". Jointly with and under the direction of a Deputy Chairperson of the Council on Execution of Penal Sanctions, the laboratory is empowered to develop scientific and methodological guidelines for the work of psychologists at the penitentiary facilities and at the probation services. This power is exceedingly important, considering the problems of psychological nature experienced by the persons servicing sentences at such facilities, as well as the hard work of the psychologists employed there.

The Prosecutor's Office exercises supervision as to compliance with legality upon execution of penal sanctions according to the *Constitution of the Republic of Bulgaria*, the *Law on the Judiciary* and the *LEPSDC*. The prosecutor has the right to familiarize himself or herself with the overall work comprehended in the execution of penal sanctions and to make proposals for its improvement. Within these powers, in 2005 prosecutors of the Supreme Prosecutor's Office of Cassation, of military and district prosecutor's offices conducted inspections at all investigation detention facilities in the country and of the groups of accused and defendants in the prisons. Some of the checks also involved teams of the Bulgarian Helsinki Committee.⁴⁵ The inspections concluded that, with minor exceptions, most detention facilities did not conform to the European standards and were unusable. A number of specific recommendations were made. By consistently executing all powers vested in it, the Prosecutor's Office could contribute to an improvement of the effort to achieve the objectives of penal sanctions, the functioning of the penitentiary administration and the development of sanction policy and penal legislation.

⁴⁵ See Human Rights in Bulgaria in 2005. Annual Report of the Bulgarian Helsinki Committee, Sofia, 2006, http://www.bghelsinki.org/upload/resources/hr2005_en.doc.

Judges have the right to familiarize themselves with the work comprehended in execution of penal sanctions and with detention in custody as a precautionary measure to secure a person's appearance.

The authorities executing penal sanctions are obligated by virtue of the law to extend full cooperation to prosecutors and judges in the performance of their activities listed above, to afford them access to the penitentiary facilities and an opportunity to interview imprisoned persons. These authorities are under the same obligation in respect of the **Ombudsman** upon discharge of his or her functions according to the *Law on the Ombudsman*.

The powers of the **Ombudsman** (the institution was established by a law in force as from 1 January 2004, and the first Ombudsman was elected in April 2005) include seeing to respect for human rights, including of prisoners, and monitoring the operation of the administration, including the administration of the penitentiary facilities. Ever since his first Annual Report, presented in 2006, the Ombudsman has been regularly addressing human rights in the penitentiary facilities. A **Protocol on Interaction between the Ombudsman and the Minister of Justice**, signed in February 2006, created a number of specific opportunities and mechanisms for control on the part of the Ombudsman institution which were not provided for directly and in certain respects even went beyond the framework in the LIPS, such as:

- the Ombudsman's right to interview sentenced persons or persons detained in custody at any time in the absence of other persons;
- exemption of the complaints and alerts submitted by imprisoned persons to the Ombudsman in sealed envelopes from a check by the administration;
- arrangement of inspections and reception centers of the Ombudsman institution at the penitentiary facilities;
- circulation of the publications of the Ombudsman in the penitentiary facilities.

In 2007, the Ombudsman launched an operational program for conduct of initial checks at the penitentiary facilities and the state psychiatric establishments (in connection with which, a **methodology for implementation of independent external control over the penitentiary system**⁴⁶ was developed) and started conducting inspections. The findings of the inspections conducted at the prisons in Pazardzhik, Sofia and Stara Zagora, the reformatory in Boychinovtsi and the women's prison in Sliven in the February-May 2007 period are presented and analyzed in a special report.⁴⁷ Besides this, since 2006 the Ombudsman has

⁴⁶ The methodology conforms to the domestic and international instruments and standards in the sphere of monitoring of the penitentiary system, inter alia with the Methodology for Monitoring Places of Detention of the Association for the Prevention of Torture and the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

⁴⁷ See Доклад на омбудсмана относно извършени проверки в местата за лишаване от свобода в периода февруари – май 2007 [Ombudsman's Report Regarding Checks Conducted at Places of Deprivation of Liberty in the February – May 2007 Period], <http://www.ombudsman.bg/reports/360#middleWrapper> (available in Bulgarian only).

been considering complaints and requests submitted by prisoners and has been conducting regular inspections at the penitentiary facilities (until the end of 2009, inspections were conducted at eleven prisons and eight prison hostels), and the results of these inspections are included in the separate sections of the regular annual report of the institution to the National Assembly. To this end, a specialized directorate and expert teams have been set up in the Ombudsman's administration to conduct the checks and to draft the reports and proposals.

With the adoption of the LEPSDC, the Ombudsman's specific powers in connection with independent control over the penitentiary system and respect for the rights of prisoners were legislatively enshrined: access at any time to the penitentiary facilities and the probation services and a possibility to interview sentenced persons in private (Article 7 (2) of the LEPSDC).

Non-profit organizations have a particularly important part to play in the implementation of independent external monitoring and control over the activity comprehended in execution of penal sanctions. The new law, albeit formally acknowledging this role (by including it among the principles and means of attainment of the objectives of the penal sanction), does not provide for specific powers and matching obligations for the authorities executing penal sanctions as the ones provided for judges and prosecutors, for the Ombudsman and ministers of the religious communities registered in Bulgaria: guaranteed access and private interviews with persons deprived of their liberty.

Despite this inconsistency of the framework, typical of the new law as well, a number of non-profit organizations in Bulgaria consistently explore and make public the problems of penitentiary law and system.

Since 1993, the **Bulgarian Helsinki Committee (BHC)** has been monitoring conditions at the places of detention in Bulgaria and has been presenting the results in its annual reports, as well as in special reports on the prisons and the places of detention.⁴⁸

A number of other non-governmental organizations also carry out research, analysis and monitoring. They include the **Bulgarian Lawyers for Human Rights Foundation, the Crime Prevention Fund – IGA**, etc.

⁴⁸ See Петров, С. и Г. Банков, Затворите в България: изследване на системата на местата за лишаване от свобода [Petrov, S. and G. Bankov, Bulgarian Prisons: a Report on Places of Detention], Bulgarian Helsinki Committee, Sofia, 2008 (available in Bulgarian only); Петров, С. и Г. Банков, Правата на човека в българските затворени институции [Petrov, S. and G. Bankov, Human Rights in Bulgaria's Closed Institutions], Sofia, 2006 (available in English); Петров, С. и Г. Банков, Стационарната психиатрична помощ и правата на човека в България през 2005 г. [Petrov, S. and G. Bankov, Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005], Sofia, 2005 (available in English); Петров, С. и Г. Банков, В името на институцията: поправителни училища в България [Petrov, S. and G. Bankov, In the Name of the Institution: Juvenile Reformatory Schools in Bulgaria], Sofia, 2005 (available in English); Петров, С. и Г. Банков, Дисциплинарната практика в местата за лишаване от свобода в България [Petrov, S. and G. Bankov, The Disciplinary Practice in Places of Detention in Bulgaria], Sofia, 2003 (English summary available) etc.

Recently, the media, too, have been carrying serious investigative reports and news items in connection with the problems of penal policy and the penitentiary system.⁴⁹

The results of independent monitoring and external control are among the vital sources of information on the changes in the penitentiary system in Bulgaria.

2. STATE OF THE PRISON SYSTEM: PROBLEMS AND RECOMMENDATIONS

A basic premise of effective Bulgarian legislation is that execution of penal sanctions may not have as an objective the infliction of physical suffering or infringing the human dignity of the sentenced persons (Article 36 (2) of the PC). This legislation, as presented above, regulates extensively the penitentiary facilities and the regimes of service of the sentence, the rights of imprisoned persons, expressly indicating the possible restrictions of these rights and the manners in which these restrictions are imposed. The framework regulates direction and control, as well as the obligations of the competent authorities to ensure appropriate conditions for application of the provisions of the law.

The review of the regulatory framework and the information gathered on the actual state of the penitentiary system,⁵⁰ however, reveal difficulties and problems in the application of the legal provisions, inconsistency and a number of other imperfections in legislation and, in a number of cases, a discrepancy between the law and practice.

Studies and surveys identify the **depreciated physical assets and poor material conditions of detention**,⁵¹ 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.

2.1. MATERIAL CONDITIONS OF DETENTION AND OVERCROWDING

The low quality of life of imprisoned persons in Bulgaria is a result above all of the poor material conditions of detention and the lack of modern infrastructure.

⁴⁹ See Босев, Р., 'Ненужните затворници' [Bosev, R., 'The Prisoners that Nobody Needs'], Kapital weekly, 2-8 October 2010 (available in Bulgarian only).

⁵⁰ Part of the information was gathered by means of a series of interviews and discussions with prison administration representatives and other competent professionals (psychologists, social workers, medical officers, teachers, security guards etc.), conducted in early 2009.

⁵¹ The latest report of the Council of Europe Committee for the Prevention of Torture, published on 30 September 2010 after a visit to Bulgaria carried out from 15 to 19 December 2008, again notes the poor material conditions of detention, <http://www.cpt.coe.int/documents/bgr/2010-29-inf-eng.htm>.

This problem remains relevant despite the new legal framework that has been adopted. The LEPSDC introduces minimum requirements regarding material conditions. According to these requirements, penitentiary facilities must have the requisite premises for accommodation, association and other premises for implementation of correctional intervention, and detention facilities must have the requisite premises to sustain the physical and mental health and to respect the human dignity of the detainees. A **minimum living floorspace** is legislatively regulated for the first time, at 4 square meters per person (Article 43 (3) of the LEPSDC) which, although at the lower limit of the recommended range (from 4 to 6 square meters), is nevertheless a step forward compared to the present situation. The RALEPSDC determine the amount of daylight, the degree of artificial lighting, heating and ventilation, the access to lavatories and running water, as well as the minimum furnishings of the dormitories. Thus, national legislation meets the first part of the requirements of the European Prison Rules (Rule 18.1 and 2) regarding the material conditions of prisoners' detention, viz. to set specific minimum requirements. Before the passage of the LEPSDC, at the end of 2008 the Council of Ministers adopted a **Strategy for Development of the Places of Deprivation of Liberty (2009 – 2015)** and an **Investment Program for Construction**, in accordance with which overhauls and redevelopments are performed.

Table 2. Capacity of penitentiary facilities at 1 January 2010

Penitentiary facility	Number of places available, based on surface area of 4 sq m per prisoner	Number of sentenced persons, defendants and accused held	Occupancy level (number of persons held per 100 places available)
Burgas Prison	442	990	223.0
Varna Prison	700	923	131.9
Vratsa Prison	607	560	92.3
Lovech Prison	964	985	102.2
Pazardzhik Prison	731	620	84.8
Plovdiv Prison	578	1,087	188.1
Sliven Prison	542	263	48.5
Sofia Prison	1,418	1,787	126.0
Stara Zagora Prison	891	948	106.4
Bobov Dol Prison	526	510	97.0
Boychinovtsi Reformatory	358	72	20.1
Pleven Prison	416	567	136.3
Belene Prison	567	584	103.0
Total	8,740	9,896	113.2

Source: Ministry of Justice

Various inspections, observations and checks bear witness to the actual conditions at penitentiary facilities: old and depreciated prison buildings,⁵² living floorspace of some 2 square meters per person,⁵³ predominance of cells without lavatories, lack of sufficient access to natural light and fresh air, frequent unavailability of places for outdoor time and various socializing pursuits, accommodation in shared cells of a large number of inmates (sometimes reaching as many as 20-25 persons)

Box 5. Program for Improvement of Conditions at Places of Deprivation of Liberty

The Program for Improvement of Conditions at Places of Deprivation of Liberty, adopted by the Council of Ministers on 8 September 2010, envisages specific measures under two priorities: improvement of the material conditions of detention and reduction of overcrowding:

- On the first priority, it is planned: to prepare a concept for the construction of new penitentiary facilities in the area comprehending the administrative regions of Ruse, Razgrad, Silistra, Shumen and Veliko Tarnovo, and in the area comprehending the administrative regions of Haskovo, Smolyan and Kardzhali, to complete negotiations with Sofia Municipality on the provision of a land tract for the construction of a new prison in the area of Sofia and prepare technical terms of references for its construction, which should begin in 2011; specific measures for remodeling, redevelopment and modernization of the existing prisons.
- In respect of overcrowding, it is planned to introduce a standard for “minimum living floorspace per person deprived of his or liberty” of 4 sq m until the end of 2011 at five penitentiary facilities and at all places until the end of 2012 and a standard for the material conditions and specifications of cleanliness and hygiene, increase of the share of imprisoned persons who serve sentences at open facilities compared to the total number of sentenced persons, etc.
- The BGN 20 million required for the implementation of the Program over the three-year period will be allocated annually under the budget of the Ministry of Justice.

Source: Ministry of Justice

⁵² The oldest buildings house the prisons in Sofia (constructed over 100 years ago), in Lovech, Pazardzhik, Vratsa, Stara Zagora, Varna and Burgas (dating from the 1920s and 1930s). Most of these buildings are in a state of disrepair. Bulgaria is the only EU Member State which has not built a single prison in 50 years and has not invested substantially in redevelopment and modernization. The newest buildings are those of the prison in Sliven, dating from 1962, and of the reformatory in Boychinovtsi, from 1956.

⁵³ The Ombudsman’s report regarding checks conducted at penitentiary facilities in the February-May 2007 period says that at the time of the check at the women’s prison in the city of Sliven and the boys’ reformatory in the town of Boychinovtsi, the international standards for minimum floorspace were complied with, and this is attributed to the specific category of persons committed to those places. In the rest of the cases, in most of the prisons overcrowding is identified as a reason for daily disciplinary offences, related mainly to inter-personal conflicts and attempts to smuggle in unauthorized articles. The report found that due to overcrowding, most “hobby clubs” in a number of prisons had been closed and converted into cells, that the prison compounds are within the regulation-plan limits of settlements and extending their areas is impossible or difficult to execute. The Ombudsman’s inspecting team further ascertained that prison food was of deficient caloric composition and low nutritive value, that the daily food allowance per prisoner was BGN 1.36, which is absolutely insufficient; that, contrary to the requirements of the regime, a number of prisoners used clothing and footwear of their own because clothing and footwear had not been supplied for years, etc.

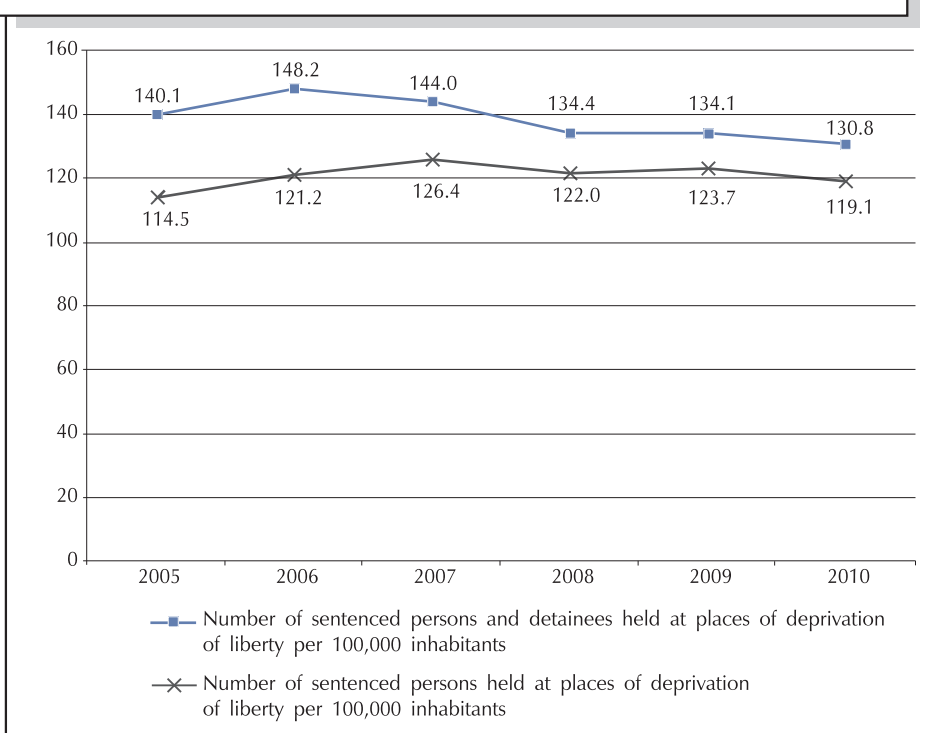
etc. Even though penitentiary staff have adapted to the difficult conditions of overcrowding and have developed skills to control the resulting conflicts, a sustained improvement of the existing situation requires strategic decisions from the State and provision of planned financing.

With the state of the penitentiary system in Bulgaria, a large part of the legislatively fixed requirements are unfeasible at present and require major repairs, redevelopment and construction of new prisons. Therefore, their entry into force has been deferred. The LEPSDC, the RALEPSDC, the Government Program for Improvement of Conditions at Places of Deprivation of Liberty and the Action Plan for the 2011 – 2013 Period specify deadlines for their implementation, the responsible institutions, and the expected results.

Thus, despite the lack of a mechanism which, as required by Rule 18.4 of the European Prison Rules, should ensure that these minimum requirements are not breached by the overcrowding of prisons, the Program adopted by the Government envisages benchmarks for monitoring and evaluation of the implementation of the actions planned in it, and a plan for implementation of these actions has been adopted as well, with personalization of responsibilities and fixed deadlines for compliance.

Data from various sources and checks show that **overcrowding** at Bulgaria's penitentiary facilities is among the worst in Europe. One reason for this is the relatively large number of persons held at prisons and reformatories. According to

Figure 5. Number of persons held at penitentiary facilities per 100,000 inhabitants for the 2004 – 2009 period



Source: Ministry of Justice, National Statistical Institute

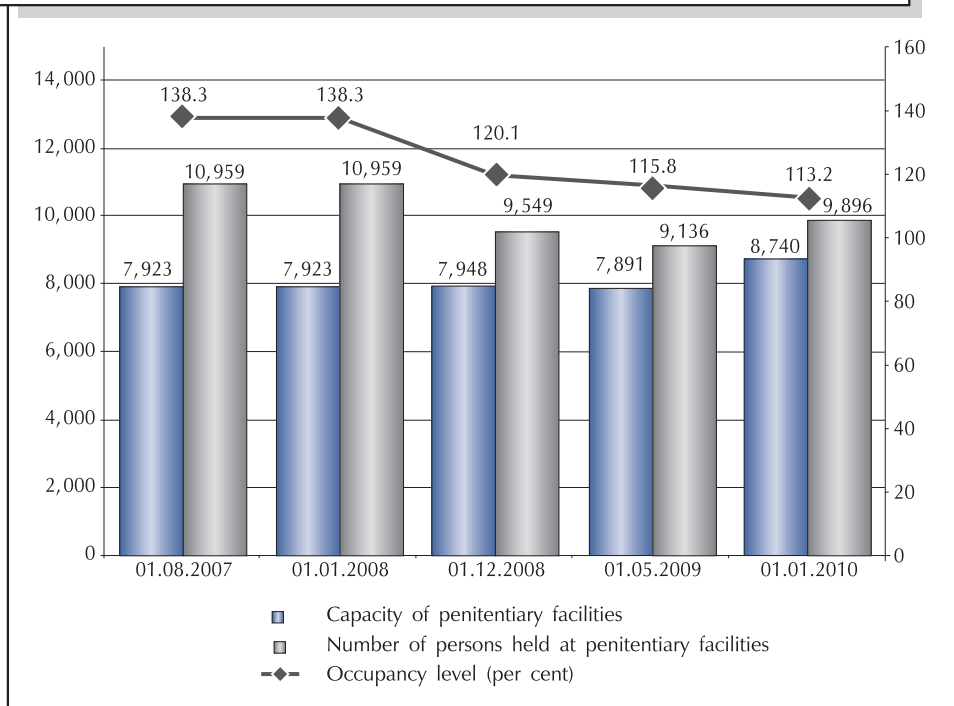
figures provided by the Ministry of Justice, the number of sentenced persons held at the places of deprivation of liberty per 100,000 inhabitants in 2010 was 119.1, and together with the accused and defendants held at the prisons, the number reaches 130.8. In this indicator, Bulgaria ranks among the top in Europe. By comparison, the European median prison population rate per 100,000 inhabitants in 2008 was 109.23.⁵⁴

It should be acknowledged, though, that overcrowding at the penitentiary facilities has been tending downward in recent years (since 2006 – 2007).

The main reason for the reduction of overcrowding at penitentiary facilities in recent years has been the decreased number of persons newly admitted to the prisons and reformatories. This applies both to persons sentenced to imprisonment and to accused and defendants detained in custody as a precautionary measure to secure their appearance.

This tendency is attributed to the operation of various factors. On the one hand, the reduction of overcrowding has been affected favorably by legislative amendments which introduced transitory prison hostels in 2002, which have led to a gradual relocation of persons deprived of their liberty exhibiting good behavior from prisons to hostels (at the end of 2008, a total of 2,253 persons

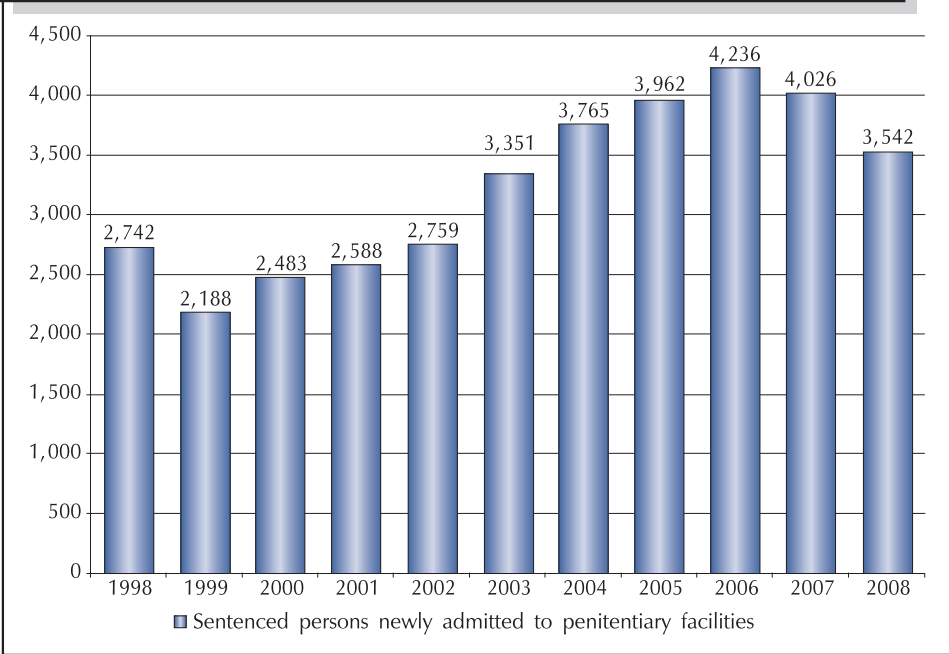
Figure 6. Occupancy level of penitentiary facilities for the 2007 – 2010 period



Source: Ministry of Justice

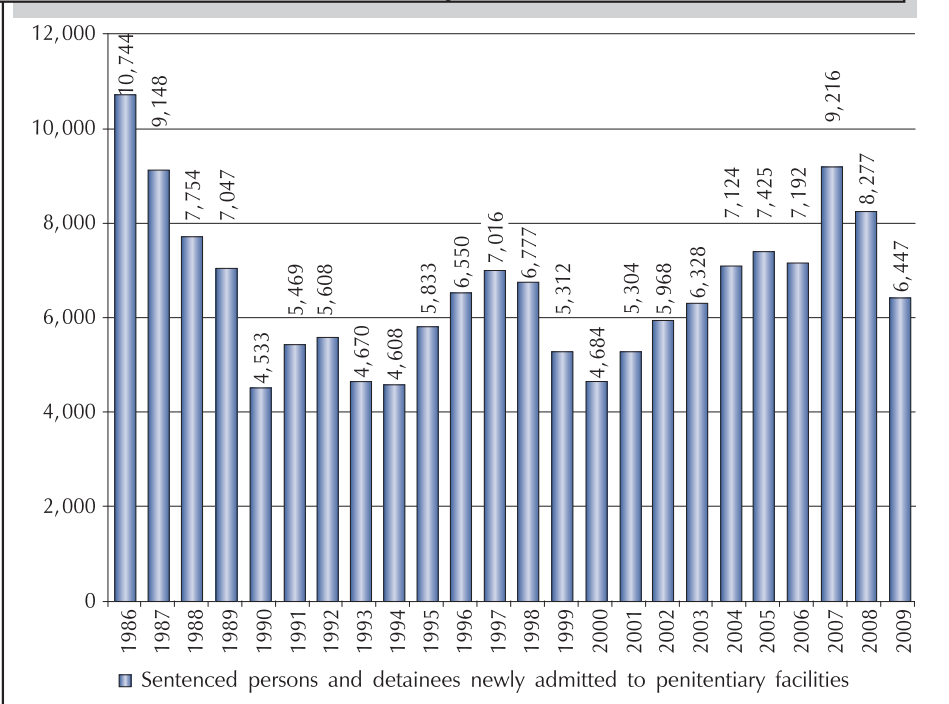
⁵⁴ See Council of Europe Annual Penal Statistics – SPACE, 2008, p. 31.

Figure 7. Sentenced persons newly admitted to penitentiary facilities for the 1998 – 2008 period



Source: Ministry of Justice

Figure 8. Sentenced persons and persons detained in custody as a precautionary measure to secure their appearance, newly admitted to penitentiary facilities for the 1986 – 2009 period



Source: Ministry of Justice

were held at hostels). With the entry into force of the LEPSDC on 1 June 2009, these hostels were abolished, but their functions were taken over by the open hostels, and 1,853 sentenced persons were held at such hostels at 31 December 2010, compared to 905 held at closed hostels.⁵⁵

On the other hand, account is also taken of the introduction in 2004 of the penal sanction of probation for certain criminal offences. The effective application of this penal sanction, even though it did not lead to a steep reduction, did prevent a further increase of the prison population.

2.2. EMPLOYMENT. EDUCATION AND QUALIFICATION

Despite the relatively detailed regulation of the right to work of imprisoned persons and the incorporation of, or cross-reference to, a number of labor legislation standards, their work is not equivalent to work outside the penitentiary system, it does not count as length of employment service and does not qualify prisoners for enjoyment of a number of rights under the *Labor Code*, including entitlement to compensation for employment injury. Prisoners are also excluded from the social insurance system. The LEPSDC regulates the right to work as merely a right, without a matching obligation of the administration to ensure its exercise. Besides this, there are no remedies for disrespect of this right, and the decisions of the administration in this sphere are not subject to judicial review. This represents a major problem, considering the low rate of employment at penitentiary institutions. The checks conducted by the Ombudsman in 2007 found the lowest rate of employment in the Sofia Prison (with the exception of the Kazichene Hostel) and in the Pazardzhik Prison and, at the same time, noted the favorable impact of work on the behavior of prisoners in prisons with a high rate of employment (Stara Zagora and Sliven): fewer disciplinary offences and better inter-personal relations and relations with the prison administration.⁵⁶

The lack of sufficient employment opportunities at the penitentiary facilities is a subject of **complaints and alerts** submitted by prisoners to the Ombudsman. In this connection, in 2009 the Ombudsman approached the directors of the Sofia Prison and of the Vratsa Prison with recommendations to consider opportunities for performance of work within the limits of the established statutory requirements. Noting the significance of employment for the effective resocialization of prisoners, the Ombudsman further recommended the inclusion of inmates in the training, qualification and retraining programs and in employment programs and greater transparency of the eligibility requirements, as well as that refusals be reasoned. The report on the Ombudsman's checks in 2007 concludes that the severe overcrowding and the low rate of employment are among the reasons for an increase in disciplinary offences.

Penitentiary system professionals blame the low rate of employment on overcrowding, lack of interest in private companies to hire prisoners, illiteracy and

⁵⁵ See Human Rights in Bulgaria in 2009, Annual Report of the Bulgarian Helsinki Committee, Sofia, 2010, p. 28, <http://www.bghelsinki.org/upload/resources/Human-Rights-in-Bulgaria-en-2009.pdf>.

⁵⁶ For details, see <http://www.ombudsman.bg/reports/360#middleWrapper> (available in Bulgarian only).

lack of professional qualification. Arguably, work performed during service of a custodial sentence is not of the nature of economic activity proper and should not be treated on an equal footing as equivalent economic activities. Such work is viewed as part of correctional education and, therefore, should be subsidized by the State.

Despite the large number of illiterates among the prisoners – according to information of penitentiary staff, they exceed 50 per cent in some prisons (e.g. in Sliven), education, qualification and literacy training remain an open problem. And it has a direct bearing on the employability of prisoners and on their preparation for reintegration after serving the sentence. Illiteracy and especially lack of vocational training usually reduce their chances of finding suitable work. At the same time, to qualify for a professional qualification certificate, inmates are commonly required to have basic education, and they thus find themselves in a vicious circle. The problem is aggravated by the unwillingness of a large number of prisoners to be educated and trained. Representatives of the Plovdiv Prison administration said that they are unable to fill up the classes for training and qualification for lack of candidates. Other prisons say that inmates are attracted to education only by the possibility to have their sentence reduced, whereas genuine interest is a mere exception.

2.3. MEDICAL SERVICES

Criticisms in this sphere most often note that medical services in part of the prisons remain more or less isolated from the national health insurance system and, on the whole, do not conform to national health care standards. There are specialized hospitals in only two prisons, Sofia and Lovech, and the rest usually have just one medical doctor and one nurse. According to data from the beginning of 2009, the Sliven Prison has one medical doctor, one paramedic, one dentist and one part-time gynecologist, and 50 and more examinations are carried out daily. There is no psychiatrist, even though such is obviously needed, and one psychologist services a staff of 150 and 200 imprisoned women. The nature of the work, the low pay, the lack of a system for career development of the medical staff⁵⁷ and other specialists are identified as the principal reasons for the shortage of staff.

Medical centers at the prisons do not conform to the requirements of the *Law on Medical-Treatment Facilities*, the medical equipment at the consulting rooms is insufficient or obsolete, and medical staff are appointed by the Ministry of Justice and are subordinate to the Directorate General “Execution of Penal Sanctions”. Besides this, an emphasis is laid on the impossibility to provide an adequate volume of specialist care, and the lack of independent control over medical procedures.⁵⁸ The use of health-care facilities outside the prison system is expensive, it involves incurring costs of transport, security etc. Applications against

⁵⁷ Prison doctors interviewed note that by Ministry of Justice decision they have to self-finance even post-graduate study courses and the duration of these courses is deducted from their annual leave.

⁵⁸ See Human Rights in Bulgaria in 2009, Annual Report of the Bulgarian Helsinki Committee, Sofia, 2010, <http://www.bghelsinki.org/upload/resources/Human-Rights-in-Bulgaria-en-2009.pdf>.

Bulgaria have been lodged with the European Court of Human Rights over the unavailability of timely medical services.

During his checks in 2007, the Ombudsman found that many prison doctors did not have contractual relations with the National Health Insurance Fund. This is the reason why an individual contract for the package of medical activities, provided for in the National Framework Agreement, is not concluded, and this leads to provision of preventive care and outpatient observation of the chronically ill under dramatically substandard criteria. The lack of health records of the compulsorily health insured persons impedes a subsequent follow-up of the health status of prisoners.

The prison doctors interviewed say that all persons who come to see them are provided with health services on a non-discriminatory basis, and the expenditures on those who do not have health insurance are met by the relevant prison. The doctors say that these expenditures are large because the persons without health insurance are often in a poor health condition, which gives rise to the need of examinations by specialists and treatment carried out without referrals. The women's prison incurs large extra expenditures upon admission of pregnant women without health insurance, when the delivery itself, too, is paid for by the prison. Besides this, upon suspension of the execution of the penal sanction the predominant number of sentenced persons do not pay their health and social insurance contributions and thus forfeit their insurance entitlement yet again, and when they return the prisons resume payment for these services. The problems related to health insurance are common to all penitentiary facilities, whose difficulties are compounded by inability to plan their expenditures on medical services which, in turn, impedes the distribution of their budget that, as a rule, is too small to cover these expenditures.

The facilities also have common problems with prisoners with mental problems, which usually predate incarceration. Since they often refuse to give the informed consent required for placement at a psychiatric facility (the specialized hospital in the Lovech Prison), they usually remain in the prison where they cannot be treated, disrupt internal order, and cause extra expenditures without having their problem solved. Another problem is the large percentage of prisoners suffering from infectious diseases: hepatitis B and C, HIV/AIDS and tuberculosis which, in turn, spells a risk of infecting other inmates and the staff.

2.4. QUALITY OF MANAGEMENT OF THE PENITENTIARY SYSTEM

Even after the adoption of the new legal framework, the prison system in Bulgaria remains overcentralized in respect of the management of financial and human resources. The prisons and reformatories are under the orders of the Directorate General "Execution of Penal Sanctions", which is a legal person under the Ministry of Justice, and have the status of territorial services of the Directorate General. The Directorate General, as a second-level spending unit, manages the budget of the penitentiary facilities. According to data on 2009, nearly one-fifth of that budget was allocated to the Directorate General and the remainder was allocated to the 12 prisons and the Boychinovtzi Reformatory.

Table 3. Budget of penitentiary facilities for 2009

Penitentiary facility	Budget (BGN)
Head Office	11,165,221.00
Burgas Prison	4,341,879.00
Varna Prison	4,440,467.00
Vratsa Prison	3,875,910.00
Lovech Prison	6,137,442.00
Pazardzhik Prison	3,836,688.00
Plovdiv Prison	3,894,057.00
Sliven Prison	2,542,766.00
Sofia Prison	9,061,585.00
Stara Zagora Prison	4,966,657.00
Bobov Dol Prison	3,034,912.00
Boychinovtsi Reformatory	2,230,284.00
Pleven Prison	3,618,238.00
Belene Prison	3,096,518.00
Total	66,224,624.00

Source: Ministry of Justice

At the same time, the LEPSDC retains the Penal Service Fund State-Owned Enterprise established by the LEPS (Rules of Organization and Operation of the Penal Service Fund State-Owned Enterprise of 2003), which manages “the activities related to improvement of the conditions for execution of penal sanctions.” The enterprise is a legal person with a registered office in Sofia, with territorial divisions at the prisons and the reformatories, and is managed by the Minister of Justice, a Management Board and an Executive Director. The law regulates the sources from which the Prison Service Fund raises its resources (including income accruing from the economic activity and from other activities implemented at the penitentiary facilities, the unappertaining portion of the labor remuneration of persons deprived of their liberty, the confiscated money and articles which the prisoners have no right to keep and use etc.) and the spending of these resources: on construction, remodeling and repair of penitentiary facilities, improvement of the material and manufacturing conditions there, procurement of security and technical facilities for these places, improvement of medical services, professional qualification, cultural and sports pursuits, incentives etc.

Some of the disadvantages of centralization were identified in the Ombudsman’s checks in 2007. They include the economic unprofitability of public procurements and the centralization of supplies, which leads to the paradox of food procured from the outside being more expensive than food grown and cooked at penitentiary facilities themselves, or of Stara Zagora Prison, which makes the largest contributions to the Prison Service Fund State-Owned Enterprise, being allocated

less resources than it has contributed. The prisons have relied on money from the Fund for various improvements (such as the crèche in Sliven) and programs for the prisoners, e.g. for vocational courses, but this depends on the financial result, and it was at break-even point in 2008.

Until 1990 the penitentiary facilities were self-supporting economic enterprises, placed in identical conditions with the rest of the economic enterprises. Analysts opine that they generated substantial revenues, sufficient to cover their expenditures and to contribute the balance to the Exchequer.⁵⁹ By a Council of Ministers decree of 1990, penitentiary facilities became public-financed entities. Since then, the lack of adequate state financing of these facilities and the centralized financing and spending of budget resources have been blocking the finding of prompt and flexible solutions to the problems of the penitentiary system in Bulgaria.

Other problems in management, identified by penitentiary system professionals, are a tight budget, scarce human resources and limited opportunities for career development, lack of modern information technologies and communications and of modern technical means for security, safety and protection, lack of a scientific basis of management, etc. Various examples are cited to illustrate the existence of these problems.

The staff size is regarded, first and foremost, as insufficient. The optimum ratio between staff and prisoners is considered to be 1:1.3-1.5. With the exception of the Sliven Prison and the Boychinovtsi Reformatory, where this ratio is a fact, it stands at 1:4-4.5 in the rest of the prisons, i.e. the officers are one-third of the necessary number. Along with that, people lacking the required professional background join the system because there are no schools or courses for preliminary training of such personnel. Under the system applicable at present, newly appointed staff go through an eight-week initial training, after which they sit for an examination in theory and practice. Parallel to that, each staff member on active duty has to undergo training for at least five days a year within the framework of planned classes of the prison service training year. According to data of the Directorate General "Execution of Penal Sanctions", 200 staff members annually attend various seminars, training sessions and conferences.

Labor turnover is high (job leavers being increasingly interested in probation service positions) because work at prison has multiple aspects (taking care of the prisoners and administering sanctions against them, if and when necessary to manage difficult situations) and involves a lot of risks and stress. At the same time, pay is low, there are no stress management programs for staff members, there is no career development policy and career progress happens on a random basis.

Judging by practice, the computerization of the operation of prison administration improves management, but this process began only recently and is still in progress. Another problem that is apparently affecting management activities is the lack of an electronic surveillance system, as well as the lack of arrangements for gathering information on the prisoners outside the prison, for which a state policy and

⁵⁹ Паликарски, М., Наказателно-изпълнително право [Palikarski, M., Penal Sanction Execution Law], Sofia, 1997, p. 64 (available in Bulgarian only).

financing are unavailable. Not infrequently, for lack of information or due to the late arrival of such information, detention in custody is not allowed in calculating the length of the sentence, as a result of which a longer sentence is served which, even though not through the fault of the prison, violates the rights of the persons. For lack of an interface with probation services, persons who have not served a penal sanction of probation may find themselves in prison. Timely information is also needed when a prisoner is considered for early release.

Regarding protection and security, a number of prisons until recently used or still use mechanical barriers and human guards and are only starting to apply surveillance cameras and other modern methods.

Penitentiary system professionals realize the need of having their work placed on a broader scientific basis, as well as the need of new forms of professional discussion of problems and achievements, sharing experience and information.⁶⁰ They stress the need of broadening the scope and increasing the depth of studies and research analyses of the practice and of elaborating scientific approaches to address the problems for improvement of the management of the penitentiary system.⁶¹

2.5. SELECTIVITY IN CRIMINAL JUSTICE AND THE PENITENTIARY SYSTEM AND THE RISK OF RECIDIVISM

The presence or absence of a so-called “selectivity” in the criminal justice system is discussed in a number of European countries. Criminal justice is designated as “selective” when different categories of persons are treated differently because of their origin, socio-economic status or other criteria. When the system is selective, persons in a less favorable position in society tend to be treated more harshly and, conversely, the consequences are less serious for persons of a higher socio-economic standing. Thus, with a high degree of selectivity and other things being equal, the more socially excluded persons (members of minorities, emigrants, indigents and other such) are more likely to be convicted than to be exempted from criminal liability with imposition of an administrative sanction, to get an effective rather than a suspended sentence, to be sentenced to imprisonment instead of a non-custodial measure etc. The concept of selectivity does not imply that people on the fringe of society more often commit criminal offences, it means that when they do commit an offence they will suffer more adverse consequences compared to people of a higher social standing who have committed the same offence.

Regarding the existence of a **correlation between social marginalization and the imposition of the penal sanction of imprisonment**, Bulgarian penitentiary system professionals are divided. Prison staff share the view that there is **selectivity** in criminal justice, which is reflected in the penitentiary system as well. This view is not shared by part of probation staff. Another part of the interviewees say

⁶⁰ Thus, the last professional gathering of prison psychologists took place in 2003.

⁶¹ Such studies and analyses are now found mainly in the Затворно Дело [Prison Service] applied research bulletin (published on a quarterly basis), in the reports of the Chief Directorate and its structures, and in very few research publications outside the system.

that owing to the frequent amendments to criminal law they find it difficult to assess whether and to what extent criminal justice is selective. In their opinion, the readier imposition of the penal sanction of probation instead of imprisonment may be regarded as a measure to reduce prison overcrowding rather than as a lack of selectivity.

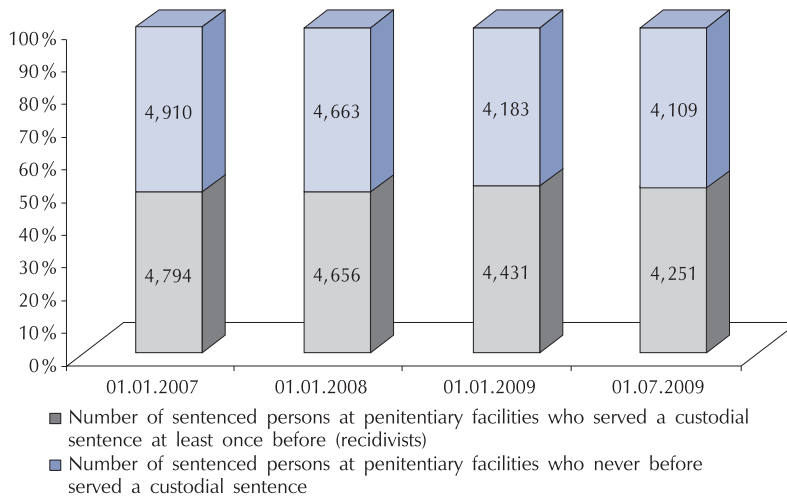
Those who assume that criminal justice in Bulgaria is selective vary in their views about the criteria of selectivity. Still, these criteria are more or less associated with the perpetrator's economic status. According to some of the interviewees, socially disadvantaged persons (for lack of education and qualification, most often linked to lack of employment as well) more frequently commit criminal offences and incur criminal prosecution. The same interviewees further argue that socially marginalized persons face an increased risk of being sentenced to effective imprisonment because, for lack of financial resources, they cannot afford good lawyers and better defense. To others, the spread of corruption in the judicial system enables more affluent people and people of a higher social standing to exert undue influence on a prosecutor or a judge and to avoid imprisonment. Some argue that even without corrupt acts, the higher social standing in itself favors a suspended sentence or imposition of probation.

Even without conduct of special comparative analyses, one cannot fail to be impressed by the actual situation in a large part of prisons: the persons who more often end up there are socially disadvantaged, less literate, unemployed and unused to work. This is definitely important for the work of the penitentiary administration. Penitentiary professionals emphasize that even though they adhere to the principle of equal treatment, they implement special measures necessary for the integration of the socially marginalized prisoners. They cite numerous examples of the measures applied in respect of marginalized prisoners: more frequent inclusion in group activities, literacy courses, special training for development of communication skills, learning rudimentary work habits, they are often helped to find their friends and relations and to establish or re-establish contacts with them.

The problems of **recidivism and the risk of recidivism** are linked to selectivity and are of material significance, considering the large number of recidivists in prisons and the high social cost of this phenomenon. Penitentiary institution professionals estimate recidivists at about one-third of the prison population, and statistics show that their share reaches nearly a half of all prisoners.

Opinions are divided as to whether imprisonment correlates with **recidivism**. Some penitentiary system professionals argue that such correlation is difficult to prove. Those who are convinced that such correlation exists disagree on the emphasis. Some of them assume that the risk of recidivism is higher for sentenced persons under suspended sentences or probation than for those who serve an effective custodial sentence in prison (even though, according to other opinions, the risk of recidivism with probation is comparable to the risk with imprisonment). Some say the risk of recidivism is particularly high with the so-called career criminals and with socially marginalized groups. Others believe that the highest risk is posed by **long-term imprisonment**, because it leads to a total loss of the ability for social integration. They cite the science of deviant behavior, according to which personality change takes at least six months and personality degradation occurs

Figure 9. Number of recidivists at penitentiary facilities for the 2007 – 2009 period



Source: Ministry of Justice

after five years. In the latter case, as one prison psychologist stressed, “the penal sanction works as general prevention, but it becomes meaningless and does not achieve its objectives as individual prevention.” He argued that staying in prison for a period longer than five years usually generates recidivism because prisoners lose the habit of living in a normal environment. This view is shared by others as well, who attribute recidivism to the conflict between the orderly environment in prison and the disorganized environment outside prison, which gives rise to fears and insecurity and drives released prisoners to reoffending.

Other opinions stress that a **higher degree of segregation** during imprisonment leads to a **higher risk of recidivism**, and part of them note that even before being sentenced many of the persons were socially excluded. Some of the interviewees observe that marginalized persons (and especially members of minorities) often find in prison better living conditions than outside prison, that prison is often a solution to their problems and they prefer being in prison because outside prison they lack income, social insurance, medical services etc.

Along with that, some prison administration representatives have noticed that the more often a person reoffends, the more socially excluded he or she becomes.

In this connection, an interviewee holding a senior position identifies reduction of segregation as an important goal of penitentiary policy and cites examples of ways of limiting the conditions of segregation and isolation in prisons: applying a methodology for assessment of offenders’ pre-incarceration social exclusion, of self-assessment and psychological diagnostics, on the basis of which the accommodation of the person concerned should be determined; identifying the needs of each individual prisoner and, on this basis, planning the administration’s course of action to satisfy these needs as far as possible; making wider use of

the possibilities for transfer of prisoners from closed hostels to open hostels, for release on parole etc.

Along with that, many interviewees emphasize that, in order to prevent recidivism, it is essential to explore the dynamics of reoffending and the causes of this behavior, to assess the risk of recidivism immediately after the admission of each prisoner (investigating the personality traits and the factors which would induce the person to commit an offence if at large), and to prepare prisoners for life after serving the sentence. A recidivism risk assessment program based on a points-score system, which has been developed, makes it possible to perform such an assessment upon admission, upon early release, and upon suspension of the service of the sentence.

The overwhelming majority of system professionals, though, admit that imprisonment in itself cannot make up for the failure of society and of all its other institutions to cope with the problems. Taking the opportunities available (correctional programs etc.) is a matter of personal choice and attitude. The interviewees conclude that no adequate mechanism and ramified networks are available for integration of prisoners outside prison – either before or after incarceration.

2.6. PROBLEMS IN CONNECTION WITH SPECIFIC CATEGORIES OF PRISONERS

Certain categories of prisoners have specific problems, which are indicative of the state of the penitentiary system and require particular attention. These categories include Roma, aliens, drug addicts and other substance dependents, women, juveniles and recidivists.

The survey of penitentiary system employees gives an idea of the state and gravity of these problems.

Regarding **aliens**, the interviewees are unanimous that they enjoy the same status as the Bulgarian citizens. Aliens held at regional prisons are accused or defendants, whereas placement of sentenced aliens is limited to the Sofia Prison. At regional prisons, efforts are made to accommodate aliens in individual cells, but they are accommodated in a separate unit only at the Sofia Prison. Prison administration professionals argue that aliens are offered special treatment: they are facilitated in contacting interpreters and embassies, they are helped to retain lawyers, to familiarize themselves with Bulgarian legislation, with the local customs and habits, to make arrangements for accommodation and employment. Examples are cited even of a certain preferential treatment of aliens in prisons, such as permitting them to watch cable television and, applicable to certain groups of aliens (mainly Turks) also to watch newscasts in their native language, supplying them with native-language newspapers (through the consulates), arranging meetings with interpreters. Some of the penitentiary professionals interviewed also note the authorization of extended visits, the help to contact family members by telephone, and the differentiated approach applied depending on whether the person will be serving a custodial sentence or will be extradited. In the latter case, aliens are not included in longer-term programs and the efforts are focused on establishing contacts with their next of kin. Quite of a few of the aliens who find themselves in prison hold

permanent residence permits for Bulgaria, and many of the problems affecting the rest of the aliens usually do not apply to them.

As a rule, the principal difficulties cited are the aliens' inability to speak Bulgarian and the staff's inability to speak foreign languages (other than English, German and French), the insufficient financial resources for interpretation etc. On the whole, however, the interviewees do not see any serious problems with aliens, and their number is moreover relatively small compared to the total prison population.

Imprisoned **women** also have specific problems and needs of their own, which is why they have to be accommodated separately and treated differently from the men. Within the group of women, pregnant women and mothers with small children in turn qualify for special treatment and extra care. According to penitentiary system staff, women's specific characteristics, such as lesser aggressiveness and a lower degree of social danger, should be taken into consideration upon execution of the penal sanction, as women therefore do not require close security, even though sometimes women plan and commit more brutal offences than men. Some of the interviewees argue that prison is contraindicated for women in physiological, psychological and even reproductive terms.

A number of problems and difficulties in addressing them are outlined regarding **Roma** who serve custodial sentences. All the more since an overwhelming proportion of the prison population are of Roma origin. As official statistics about their number are not available, the estimates of penitentiary system professionals are definitive in this respect. According to a senior official of the Ministry of Justice, Roma account for approximately 45 per cent of the prison population – with the reservation that these data are based on self-identification. In some prisons, their share is far larger. A proportion of up to 65 per cent was indicated for the Plovdiv Prison in early 2009. According to a survey conducted at the Sliven Prison under the Phare Programme, cited by prison administration representatives, 98 Bulgarian women, 100 Roma women, and 60 women who identify themselves as Turks but whom the prison administration describes as "Roma who claim to be Turks" were held there at 31 December 2008. There is an obvious disproportion between the share of Roma in the prison population and their share in Bulgaria's resident population, which is set at some 5 per cent according to official statistics and at some 10 per cent according to unofficial data. This, however, is not a phenomenon specific to Bulgaria but a common tendency: in a number of countries various minority groups constitute a majority of the prison population, and they also exhibit a higher degree of **recidivism**. The reasons for these are commonly sought in the lower social standing and the marginalization of these minorities, on the one hand, and in the selectivity of criminal justice and penitentiary systems, on the other.

Roma are most often sentenced for "career crimes": pickpocketing, procuring, dealing in drugs, whose commission is related to their specific cultural and other communal traits. Different types of criminal offences are typical of the different sub-groups within that minority group.

Bulgarian prison staff single out the following **specificities** of Roma inmates: a lower literacy rate, indiscipline, lack of work habits and professional qualification,

social, health and other security, tensions between separate Roma clans, reluctance to be accommodated in individual cells, but also inability to integrate in a large community. Some describe them as more impulsive and prone to aggression, but also as more eager to establish contacts, manifest themselves and take the initiative. Apart from certain peculiarities of the ethnic group, notice is also taken of the fact that the Roma have been among the worst affected by unemployment and the crisis in education since the inception of democratic changes.

In the prevailing opinion, Roma prisoners are not accommodated in isolation from the rest, and for many of them (especially the women and the mothers) the conditions in prison are better than the conditions in which they lived before incarceration, they are treated equally, and efforts are made to respect their specific customs and traditions. At the same time, an emphasis is laid on the need of a differentiated albeit not discriminatory approach to persons of Roma origin, considering the specificities cited above.

The problems of the Roma presuppose more serious research into the causes of criminality and recidivism in this population group with a view to implementing integral programs to address its social problems and to prevent crime both outside prison and during service of custodial sentences. The penitentiary system professionals interviewed insist on the need of invigorated efforts of government institutions and non-governmental organizations, of a radical change in the pattern of their work, focusing on Roma's pre-sentencing problems. They also stress the need to teach them skills and occupations, to develop programs for post-incarceration housing arrangements and job placement.

The growing use of narcotics and the substantial number of persons dependent on narcotics who are held at penitentiary facilities raise a whole range of issues. In most general terms, they concern penal policy and legislation regarding drug use and **drug-related** offences, and more specifically they are related to the treatment regime, including the medical services required for drug-dependent persons serving custodial sentences. Because of their specificity and complexity, these issues are discussed separately in the second part of this study.

2.7. RECOMMENDATIONS

2.7.1. *General recommendations to penal and penitentiary policy*

- Ensure the systematic conduct of **criminological and empirical studies** as a basis for identification of the long-term and short-term policy priorities, explore and start applying the experience of EU Member States which have good practices in this sphere; place the studies within the appropriate institutional framework through the establishment of a **research unit** similar to the Ministry of Interior Institute of Psychology or reopening of the Ministry of Justice closed-down Centre for Criminology and Forensic Science.
- Elaborate a **methodology to calculate the expenditures on crime control**, taking into account, apart from the resources for annual budget maintenance of imprisoned persons (according to the already adopted standard) and the penitentiary administration maintenance budget, the costs of a specified part of the maintenance of the entire criminal justice system and its operation,

including pre-trial proceedings, compensation of the damages inflicted by criminal offences and the costs of recidivism; reckon with the results of the calculations and the analysis of the effectiveness of criminal justice and penitentiary policy for their development.

- Elaborate a **system for assessment of the expenditures** on crime control through imposition of the penal sanction of imprisonment and for correlating these expenditures to the effectiveness of crime control through an investigation and analysis of the reintegration of persons who have served custodial sentences and the cases of reoffending, including the risk of recidivism.
- Elaborate a concept and effect **changes in the system of penal sanctions**: regarding the terms of custodial sentences, narrowing the scope of application of life imprisonment without parole, broadening the scope of application of non-custodial measures, the opportunities for deferral of the execution of the penal sanction (suspended sentence), the opportunities for release on parole, etc.
- Parallel to acting on the recommendations above, elaborate and start applying a **system for qualification and training of penitentiary system staff** with a view to improving the effectiveness of the execution of the penal sanction of imprisonment; take measures for enhanced protection (job security, social security, physical security), as well as a regulated **system of incentives** to motivate people working in this sphere and of various perquisites for good performance.
- Introduce, without any delay whatsoever, the **Integrated Information System** which, in addition to the courts, the prosecution offices and the Ministry of Interior, should include **the prisons and the probation services** as well.
- Evaluate and analyze periodically the results of the application of the **quality and security management standard** that has been introduced in Bulgarian prisons.
- Pay attention to the need to ensure **publicity, accountability and transparency** of compliance with the measures and deadlines set in the programs, strategies, investment plans etc. as adopted; non-compliance or departures from them can result only in hypothetical political responsibility, whereas control mechanisms are essential not only because the success or failure of a particular policy, a particular cabinet or individual politicians depends on this but because core principles and provisions of the new *Law on Execution of Penal Sanctions and Detention in Custody* cannot otherwise be implemented.

2.7.2. Recommendations to the authorities executing penal sanctions

- Elaborate **public-private partnership programs** for faster modernization of the penitentiary system and start applying them on a transparent and corruption-free basis.
- Develop a broader range of **activities for resocialization** of prisoners and assert an expanded **use of the system of encouragement measures and incentives**, based on a differentiated approach and individualization, as already introduced on the basis of the good practices in EU Member States which are more advanced in this respect.
- Ensure **tightened internal control** over the use of physical force and auxiliary means.

- Apply **risk assessment** within a broader scope, using the international and European standards.
- Expand cooperation with non-governmental organizations, tapping their potential to plan and implement educational, training and qualification programs.

2.7.3. To criminal justice

- Refine and differentiate assessment in awarding the penal sanction of imprisonment and make wider use of non-custodial measures.
- Reduce to a minimum selectivity in imposition of the penal sanction of imprisonment.

2.7.4. To the legislator

- Accelerate the adoption of a **new Penal Code** with changes in the system of penal sanctions in accordance with the concept referred to in the recommendation to penal policy.
- Adopt provisions for applicability of the general rules of labor legislation to employment at penitentiary facilities, including the rules for employment contracts, labor remuneration, occupational safety and social insurance; adopt provisions for tax relief for employers who provide work to prisoners and contribute to an increase of employment.
- Take further measures for **integration of medical services** at penitentiary facilities into the national system of medical services.
- Provide for **greater differentiation** in awarding the types of disciplinary punishments to prisoners, taking into consideration the specificities of the various categories of persons: e.g. reconsider the punishment of solitary confinement to a disciplinary cell in respect of juveniles.
- Broaden opportunities for **independent control and monitoring** of the penitentiary facilities and the operation of the authorities executing penal sanctions by independent non-governmental organizations, including for access of not-for-profit legal entities, for interviewing prisoners and detainees, in connection with the objects of their activity to implement independent monitoring and control.
- Provide for the availability of free legal aid to imprisoned persons.

II. PENAL POLICY REGARDING DRUG-RELATED OFFENCES

1. GENERAL REMARKS

The distribution and use of narcotic drugs remain among the most serious social problems on a global scale. The prevention and suppression of drug production, distribution and use pose a number of challenges, including to the national penal systems. In defining and implementing national penal policies, governments confront intricate issues: what should be the correlation between preventive measures and penal repression; is drug use a crime or a health problem; should drug-using or drug-dependent persons be subjected to punishment or to medical treatment; what are the advantages and disadvantages of deprivation of liberty compared to non-custodial measures, where the sentenced persons are drug-dependent, etc.

States vary in the measures they take to combat drug-related crime. On the whole, however, two more common approaches stand out.

The first approach, often referred to as the “law and order approach”, prioritizes punishment. With this approach, the broadest possible range of drug-related acts is criminalized, including the consumption and/or possession of drugs for personal use. Offenders are liable to severe sanctions, mainly imprisonment. The idea is basically to protect the rest of society by segregating offenders at places of deprivation of liberty. With this approach, segregation takes priority over medical treatment, and treatment, if at all administered, is limited to the therapies that the relevant prison can offer.

The second approach, also known as “harm reduction”, lays the emphasis on medical treatment at the expense of segregation. With this approach, drug use is not considered a crime, and non-custodial measures combined with therapy and/or social intervention programs are imposed on drug-using or drug-dependent offenders.

At present neither of the two approaches can be described as dominant, whether in Europe or in the rest of the world. Moreover, a number of countries apply separate elements of both approaches. Thus, the “harm reduction approach” is used in respect of dependent persons, whereas the “law and order approach” is reserved for those who merely use drugs.

At the European Union level, too, there is no clear and categorical adherence to either of the two approaches. On the contrary, the EU strategic documents in the

field of drugs stress the need to introduce alternatives to imprisonment for drug-using offenders, as well as the improvement of care of drug-using prisoners.

Even the EU Drugs Action Plan (2005 – 2008) listed as separate actions further development of alternatives to imprisonment for drug abusers, as well as development of prevention, treatment and harm reduction services for people in prison and reintegration services on release from prison, as well as methods to monitor and analyze drug use among prisoners.⁶²

The next EU Drugs Action Plan for 2009 – 2012 again requires from Member States to further develop effective alternatives to prison for drug-using offenders, as well as to increase the use and monitor implementation of existing alternatives. Another separate action listed in the Plan is provision of access to health care for drug users in prison, with the services for people in prison being equivalent to services available outside prison, and requiring particular emphasis to be placed on follow-up care after release from prison.⁶³

2. LEGAL FRAMEWORK OF DRUG-RELATED OFFENCES

2.1. DRUG-RELATED OFFENCES ACCORDING TO BULGARIAN CRIMINAL LAW

According to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), drug-related crime encompasses four types of criminal acts:

- **psychopharmacological crimes:** crimes committed under the influence of a psychoactive substance, as a result of its acute or chronic use;
- **economic-compulsive crimes:** crimes committed in order to obtain money (or drugs) to support drug use;
- **systemic crimes:** crimes (e.g. homicides, abductions, assaults) committed within the functioning of illicit drug markets, as part of the business of drug supply, distribution and use;
- **drug law offences:** crimes committed in violation of drug (and other related) legislations, including all illicit acts involving narcotic drugs (manufacture, distribution, transportation, trafficking etc.).⁶⁴

With the exception of two cases, the Bulgarian *Penal Code* does not provide for 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:

⁶² EU Drugs Action Plan (2005 – 2008), Council of the European Union, OJ C 168 of 8.7.2005.

⁶³ EU Drugs Action Plan for 2009 – 2012, Council of the European Union, OJ C 326 of 20.12.2008.

⁶⁴ Drugs in Focus No 16: Drugs and crime – a complex relationship, European Monitoring Centre for Drugs and Drug Addiction, Lisbon, 2007.

- 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 fifteen years and a fine ranging from BGN 10,000 to BGN 50,000, or 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 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).⁶⁵

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.⁶⁶

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

⁶⁵ Another relevant exception is the provision of Article 343 (3) of the PC, which deals with penal sanctions for negligent infliction of medium or severe bodily injury or death as a result of violation of road traffic regulations. In principle, when the act is committed negligently, the offender is not held criminally liable, but in this particular case the law provides for criminal liability as an exception if the act was committed in a state of alcoholic intoxication or after use of narcotic drugs or analogues thereof.

⁶⁶ The legal framework of these offences dates from 1975, when several acts related to the production and distribution of narcotic drugs were criminalized for the first time in the Penal Code. Since then, the legal framework has been amended on several occasions, with the range of drug-related offences being considerably expanded.

is 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.⁶⁷

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

⁶⁷ "Dangerous recidivism" applies when a person commits an offence after having been sentenced for a serious wilful offence to imprisonment for a term of not less than one year and the execution of this penal sanction has not been deferred, or when a person commits an offence after having been sentenced on two or more occasions to imprisonment for wilful publicly indictable offences if the execution of the penal sanction for at least one of these offences has not been deferred (Article 29 of the PC).

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).

2.2. EVOLUTION OF THE LEGAL FRAMEWORK

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, and some human rights non-governmental organizations described it as “one of the most repressive provisions of the Bulgarian *Penal Code*” by which the law “yet again distanced itself from the modern tendencies of European legislation”.⁶⁸

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.

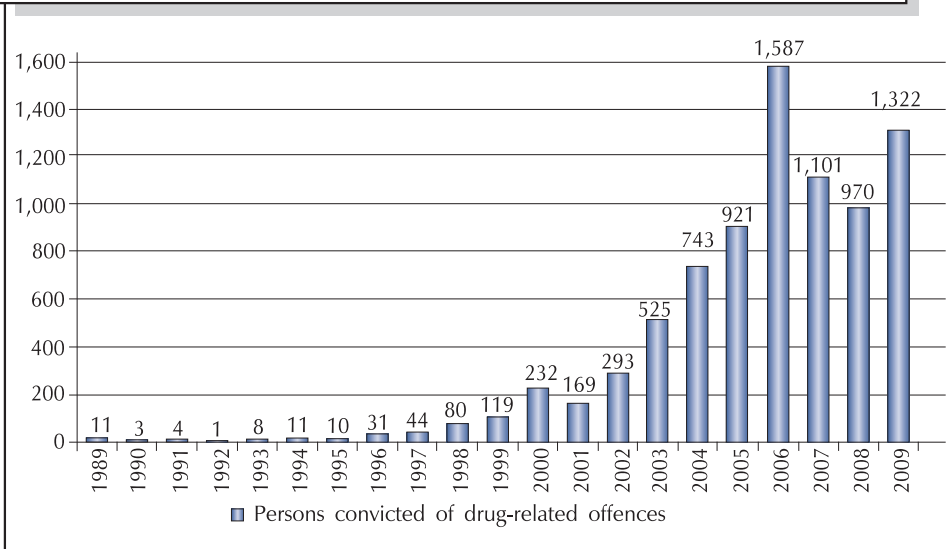
Nor did the criminalization of the single dose live up to the expectation of leading to a drastic increase in the number of persons convicted of this type of offences as a huge number of drug users would be convicted. This effect never materialized, on the one hand, because of the objective impossibility 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).⁶⁹

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

⁶⁸ Наркотици, престъпления и наказания [Drugs, Crimes and Punishments], Bulgarian Helsinki Committee, Sofia, 2007, p. 17 (available in Bulgarian only).

⁶⁹ Наркотици, престъпления и наказания [Drugs, Crimes and Punishments], Bulgarian Helsinki Committee, Sofia, 2007, p. 18 (available in Bulgarian only).

Figure 10. Persons convicted of drug-related offences (1989 – 2009)



Source: National Statistical Institute

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.⁷⁰

The last revision of the legal framework for the time being was adopted in April 2010, but it was of an emendatory nature and did not affect the substance of the provisions.

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.⁷¹ 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.**

⁷⁰ The reasoning further states that the proposal to reduce the penal sanctions is prompted by the fact that their extreme severity most often justifies the application, contrary to the meaning of the law, of the provision of Article 55 of the PC, which gives the court discretion to impose a penal sanction below the statutory minimum if there are extraordinary or numerous mitigating circumstances.

⁷¹ Some experts attribute the drastic increase in the number of persons convicted of drugs offences in 2006 to the introduction of the possibility to dispose of the cases instituted in connection with such offences by a plea bargain agreement. With the entry into force of the new Penal Procedure Code on 29 April 2006, the applicability of plea bargaining was extended to drugs offence cases which, until then, had been excluded from the scope of application of that institute. According to data of the National Statistical Institute, before the end of 2006 itself nearly half (48.8 per cent) of the cases instituted in connection with drug-related offences were concluded by a plea bargain.

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.

2.3. PENAL SANCTIONS FOR DRUG-RELATED OFFENCES

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.

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 re-

education. 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.

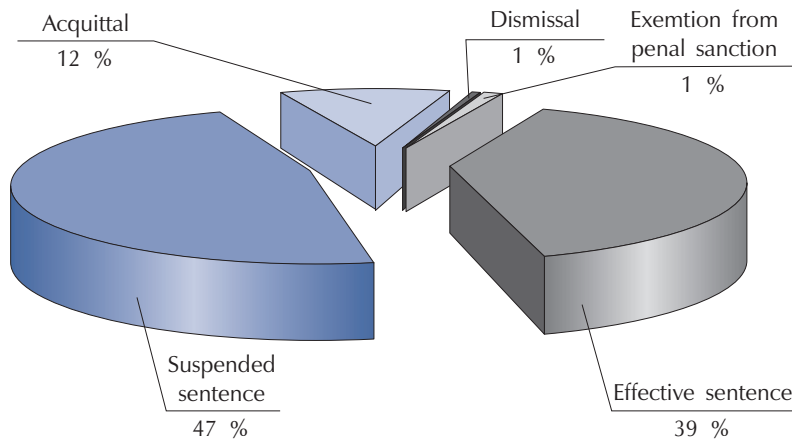
The need to review the system of penal sanctions provided for drug-related offences is furthermore confirmed by the case-law and more specifically by the substantial **discrepancy between the sanctions provided for in the law and the actual sanctions imposed by the courts**. Despite the severe sanctions provided for *de jure*, Bulgarian courts frequently pass suspended sentences or give penal sanctions below the statutory minimum.

Over the last five years, in the cases instituted in connection with drug-related offences, **suspended sentences have outnumbered effective custodial sentences**, with nearly half of such cases being concluded without an effective custodial sentence. According to the provisions of the *Penal Code*, suspended sentencing is possible only if the court imposes a penal sanction of imprisonment for a term not exceeding three years, the offender has not been sentenced to imprisonment for a publicly indictable offence before, and the court finds that service of the sentence is not necessary for attainment of the objectives of the penal sanction and above all for the correction of the sentenced person (Article 66 (1) of the PC). The large number of suspended sentences shows that in nearly half of the cases, the offences are of a low degree of social danger, perpetrated by persons without previous convictions, in respect of which the court has determined that the offender can reform even without serving an effective custodial sentence. These data clearly point to the need of introducing probation as an alternative to imprisonment for this category of offences, and depending on the circumstances of each particular case the court will have discretion to determine whether the perpetrator can reform without serving his or her sentence in prison.

In addition to the large number of suspended sentences, in cases instituted in connection with drug-related offences the court very often imposes a **penal sanction below the statutory minimum** or replaces **imprisonment by probation**, even though probation is not among the penal sanctions provided for the respective type of offence.⁷² This is done on the grounds of the possibilities provided for

⁷² Наркотици, престъпления и наказания [Drugs, Crimes and Punishments], Bulgarian Helsinki Committee, Sofia, 2007, p. 41 (available in Bulgarian only). According to the report, in 85 per cent of the cases instituted in connection with drug-related offences, the court has imposed a penal sanction below the minimum fixed in the law.

Figure 11. Outcome of cases instituted in connection with drug-related offences (2004 – 2009)



Source: National Statistical Institute

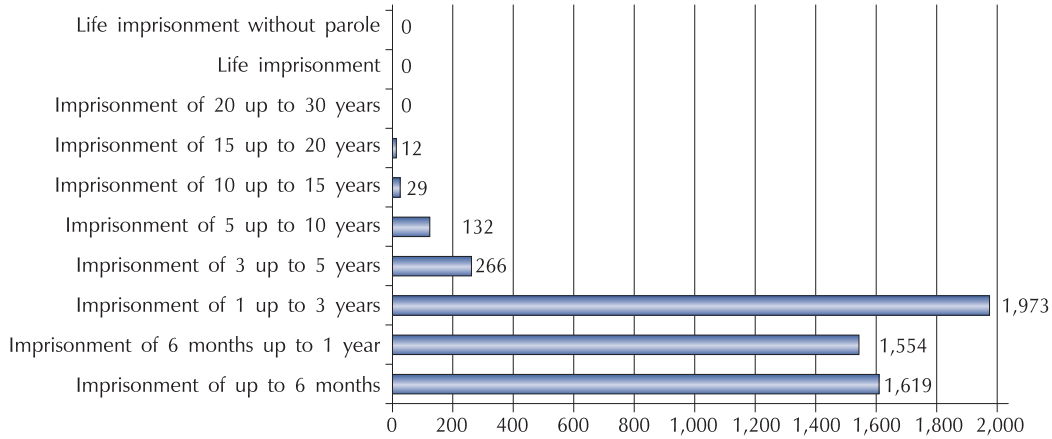
in the law to impose a penal sanction below the lower limit or to replace the penal sanction provided for by a penal sanction of a lighter type. At present, this possibility is available in two cases: if the court determines that due to extraordinary or numerous mitigating circumstances even the lightest penal sanction provided for in the law proves to be disproportionately severe (Article 55 (1) of the PC) or if the case is disposed of by a plea bargain agreement between the prosecutor and the defense counsel of the accused (Article 381 (4) of the PPC). Besides this, upon conduct of the so-called “expedited judicial inquiry”, where the accused has made a confession which is corroborated by the evidence in the case, the court is bound to assign the length of the custodial sentence according to the standard rules but must then reduce this length by one-third (Article 58a of the PC).⁷³

Despite the comparatively severe penal sanctions provided for in the *Penal Code*, during the last five years the courts have imposed imprisonment for a term exceeding five years on relatively rare occasions, which shows yet again that the less serious cases reach the trial phase and the strict sanctioning system needs to be reconsidered. Over the last five years, imprisonment has been most often decreed for terms ranging from one to three years (35.3 per cent), from six months to one year (27.8 per cent), or up to six months (28.9 per cent).

Besides assigning a penal sanction below the statutory minimum, in about 2 per cent of the cases the court has straightway replaced imprisonment by probation as a penal sanction of a lighter type.

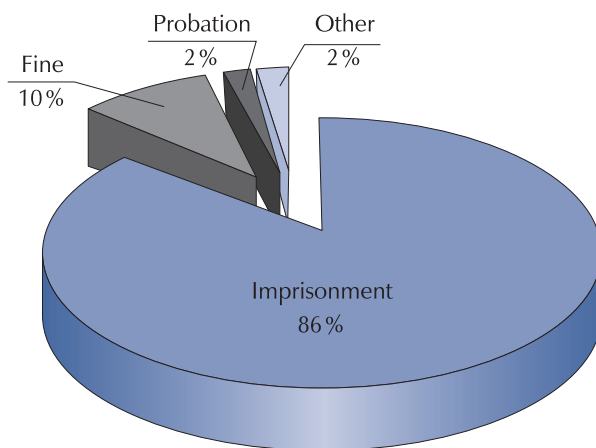
⁷³ The reduction by one-third of the term of imprisonment, where the accused has pleaded guilty as charged and his or her confession is corroborated by the evidence collected in the case, is not unanimously supported by the expert community and often draws serious criticism, especially because the scope of application of this provision is unlimited and in practice it can be applied in respect of each and any offence regardless of the degree of its social danger

Figure 12. Length of custodial sentences imposed for drug-related offences (2004 – 2009)



Source: National Statistical Institute

Figure 13. Penal sanctions imposed for drug-related offences (2004 – 2009)



Source: National Statistical Institute

On the whole, the overview of the penal sanctions imposed by the court for drug-related offences invites several conclusions. Above all, judging from the penal sanctions imposed, the predominant number of cases involved relatively less serious offences and/or offenders without previous convictions. Besides this, in a relatively large number of cases the court determined that the doer can reform even without being effectively imprisoned and, accordingly, passed a suspended sentence or replaced imprisonment by probation.

Just as notably, in relatively few cases the offenders have been punished by a fine. The fact that the court has rarely imposed fines in cases instituted in connection with drugs offences, as well as the serious problems presented by the collection of the fines from the sentenced persons, yet again confirm the need of revising the system of penal sanctions applicable to this type of offences.⁷⁴

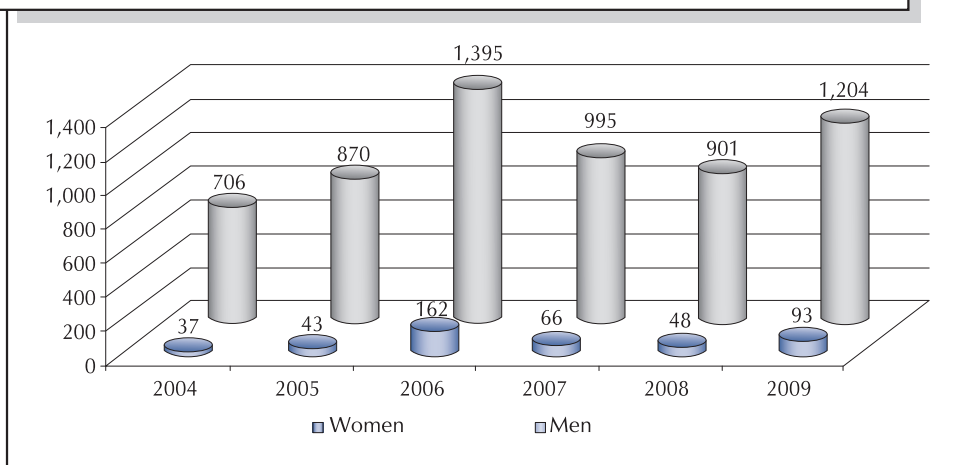
On the other hand, the infrequent imposition of the penal sanction of disqualification of other rights shows that the defendants in cases instituted in connection with drugs offences have very rarely belonged to some of the specific category of persons warranting the imposition of this penal sanction (physician, pharmacist, cover supervisor, teacher, headmaster of an educational establishment or official at the places of deprivation of liberty etc.).

2.4. PROFILE OF THE PERSONS CONVICTED OF DRUG-RELATED OFFENCES

To maximize its effectiveness, penal policy with regard to the perpetrators of drug-related offences must reckon with the principal characteristics (gender, age, educational attainment etc.) of the sentenced persons. There is something more to the penal sanction assigned by the sentence than adverse consequences for the perpetrator. The objective of this penal sanction is to facilitate the sentenced person's correction and re-education, which is only possible if the sanction adequately reckons with his or her personality.

The predominant number of persons convicted of drugs offences are **men aged under 25**. Traditionally, men by far outnumber women in this category, and in 2009 merely 7.1 per cent of the persons convicted of drugs offences were women.

Figure 14. Gender distribution of persons convicted of drug-related offences (2004 – 2009)

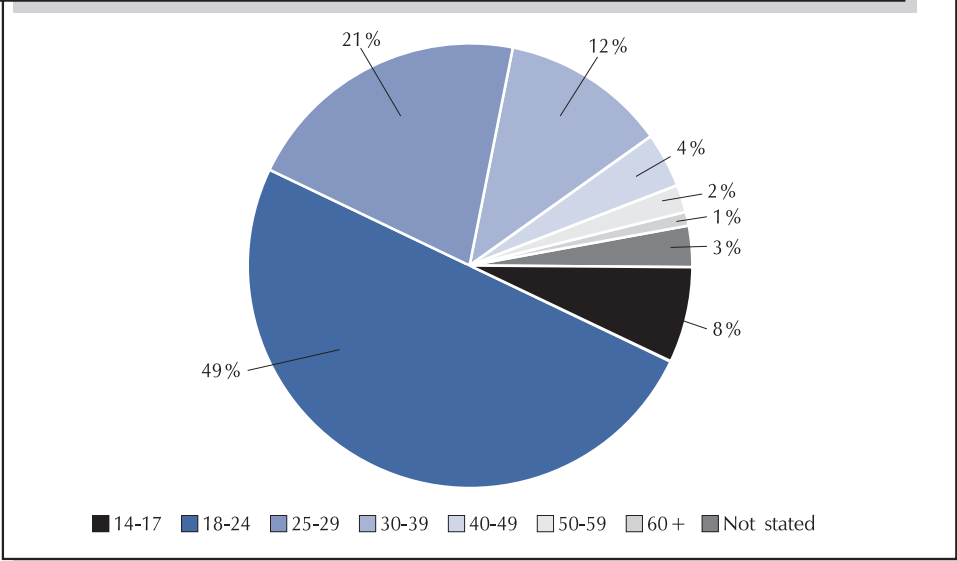


Source: National Statistical Institute

⁷⁴ Наркотици, престъпления и наказания [Drugs, Crimes and Punishments], Bulgarian Helsinki Committee, Sofia, 2007, p. 41 (available in Bulgarian only). According to the report, 92.4 per cent of the persons convicted of drugs offence on whom the court has imposed a fine have not paid it at all, 4.3 per cent have made a partial payment, and just 3.3 per cent have paid the entire amount.

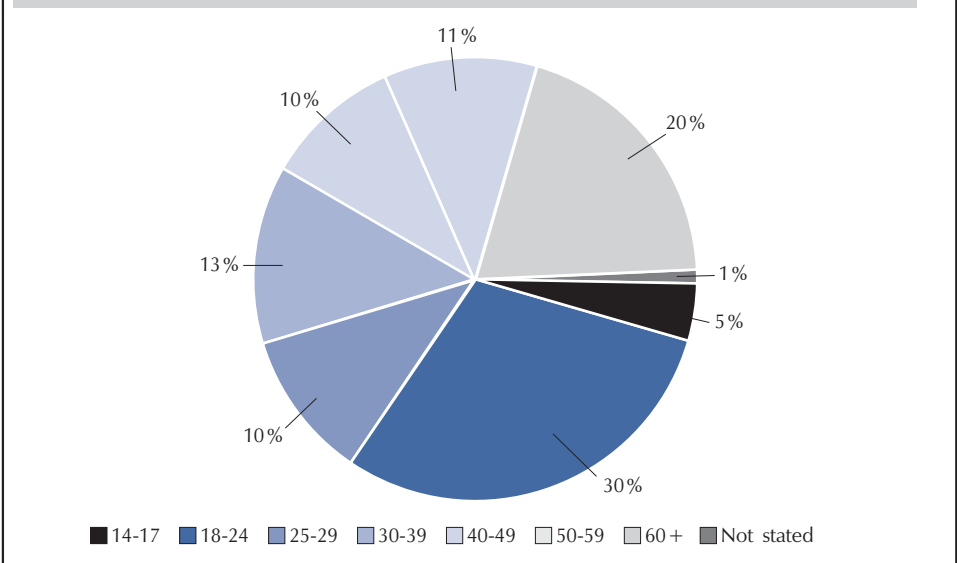
Just as with the men, with the women, too, the average age of the sentenced persons is relatively low. Almost half of the men and approximately one-third of the women convicted of drug-related offences over the last five years have been aged between 18 and 24. These are persons with relatively greater susceptibility to bad influence, and sending them to prison may have a negative rather than a positive effect.

Figure 15. Age distribution of men convicted of drug-related offences (2004 – 2009)



Source: National Statistical Institute

Figure 16. Age distribution of women convicted of drug-related offences (2004 – 2009)



Source: National Statistical Institute

According to a survey of the Bulgarian Helsinki Committee, published in 2007, the socio-demographic profile of persons imprisoned for drug-related offences differs materially from the profile of the rest of the prisoners. Persons imprisoned for drugs offences are **younger** and **better educated** than the average prisoner, and a larger percentage of them are **unmarried** and **childless**. At the same time, the proportion of ethnic minority members is smaller among persons sentenced for drug-related offences, and the share of recidivists is lower as well.⁷⁵ Persons convicted of drug-related offences are predominantly Bulgarian citizens, and the aliens are mainly citizens of the other Balkan countries, convicted of trafficking in drugs.

The survey also provides information about drug dependence among persons convicted of drug-related offences. According to the report, 38 per cent of the convicted persons were dependent at the time of committing the offence, 25 per cent used drugs but were not dependent, and 37 per cent did not use drugs. Persons with lower education, out of work and members of ethnic minorities take up a larger proportion of dependent convicted persons (this is particularly true of the Roma, where as many as 61 per cent are dependent).

3. EXECUTION OF PENAL SANCTIONS IN RESPECT OF PERSONS DEPENDENT ON NARCOTIC DRUGS

3.1. DRUG DEPENDENCE AMONG IMPRISONED PERSONS

According to official data, in recent years prisoners who are dependent on narcotic drugs have accounted for 10 to 15 per cent of the total prison population countrywide.⁷⁶

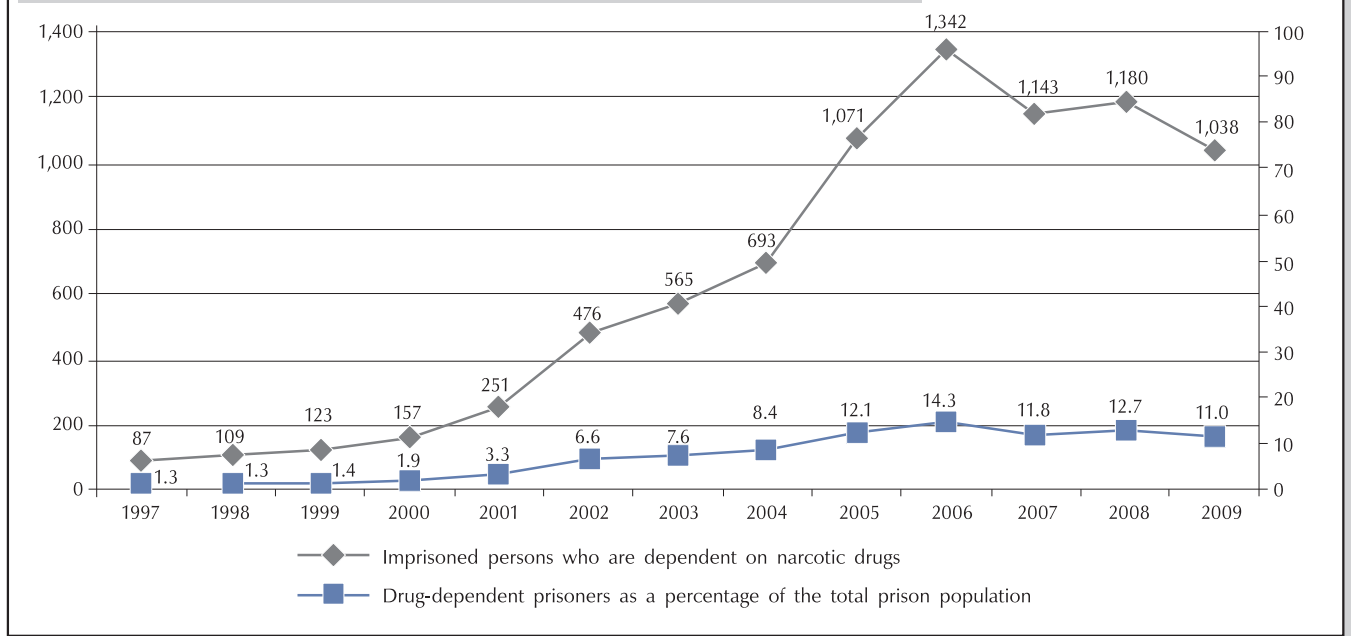
The official statistics largely concur with the results of various sociological surveys on the subject of drug dependence at the penitentiary facilities. According to data of 2008, cited by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 15 per cent of the imprisoned persons reported at admission to the prison lifetime drug use prior to imprisonment, and 11 per cent reported drug use within the last year prior to imprisonment. The most commonly used drug was heroin, followed by cannabis and amphetamines.

The data cited by the EMCDDA show that the number of prisoners who were lifetime drug users prior to imprisonment increased tangibly in the 2004 – 2008 period (from 7 per cent to 15 per cent). Nevertheless, Bulgaria ranks among the last in the European Union in this indicator, far behind Member States like the United Kingdom (79 per cent), the Netherlands (79 per cent), Spain (65 per cent),

⁷⁵ Наркотици, престъпления и наказания [Drugs, Crimes and Punishments], Bulgarian Helsinki Committee, Sofia, 2007, pp. 28-30 (available in Bulgarian only).

⁷⁶ According to information provided by the Director General of the Directorate General "Execution of Penal Sanctions" with the Ministry of Justice at the 2nd International Prisoner Health Conference "Meeting the Needs of Vulnerable Groups" (Varna, 24-25 September 2007), the largest number of drug-dependent persons are held in the prisons in Sofia, Varna, Burgas, Plovdiv and Stara Zagora, and the most commonly used drugs are heroin, cocaine and cannabis. Albeit on a smaller scale, a drug use problem also exists in the women's prison in Sliven.

Figure 17. Imprisoned persons who are dependent on narcotic drugs (1997 – 2009)



Source: Ministry of Justice

Greece (60 per cent) etc. One possible explanation is that the actual share of drug users is under-reported as, due to fear of sanctions, such persons do not disclose their lifetime prevalence of drug use at admission to prison.

This conclusion is corroborated by the drastically higher values of the same indicators in studies based on a sociological survey of attitudes, profiles and characteristics rather than on routine collection of information from the prison administration. One such study is the National Representative Study entitled “Drug Use among Prisoners in Bulgaria: General Status and Trends,” carried out in 2006 among 1,257 persons deprived of their liberty at ten prisons in eight Bulgarian towns and cities.⁷⁷

⁷⁷ 2006 National Report (2005 data) to the EMCDDA by the REITOX National Focal Point “BULGARIA. New Development, Trends and In-depth Information on Selected Issues, National Focal Point on Drugs and Drug Addictions, Sofia, 2006. The national study covered ten prisons and prison hostels of different types in eight towns and cities (the prisons in Pazardzhik, Lovech, Varna, Sliven and Plovdiv, the reformatory in Boychinovtsi, the Atlant Prison Hostel in Troyan, the Smolyan Prison Hostel in Smolyan, and the Kazichene and Kremikovtsi prison hostels in Sofia). A two-tier random proportional sample was used. On the first tier, six out of 13 prisons in Bulgaria were chosen through a combination of random and proportional selection (they hold 57 per cent of the country’s total prison population). Four randomly selected prisons were added to the first-tier sample. Only persons serving a custodial sentence were surveyed, without limitation as to gender, age, type and length of the sentences.

Table 4. Persons who used drugs prior to imprisonment (2006 – 2008) (per cent)⁷⁸

	Any illicit drug	Cannabis	Cocaine	Heroin	Amphetamines	Ecstasy
National survey in 17 prisons and investigation detention facilities, 2008 (n = 9,983)						
Persons reporting lifetime drug use	15	3	0.8	8	3	1
Persons reporting drug use within the last year	11	2	0.6	7	0	0.5
National survey in 17 prisons and investigation detention facilities, 2007 (n = 7,780)						
Persons registered as lifetime drug users	10	n/a	n/a	n/a	n/a	n/a
Persons registered as drug users within the last year	8	2	1	6	2	1
Persons registered as drug users within the last month	1	n/a	n/a	n/a	n/a	n/a
National survey in 17 prisons and investigation detention facilities, 2006 (n = 11,400)						
Persons registered as lifetime drug users	18	3	2	10	3	2
National survey in 6 prisons, 2006 (n = 3,733)						
Persons registered as lifetime drug users	11	n/a	n/a	n/a	n/a	n/a
Persons registered as drug users within the last year	6	n/a	n/a	n/a	n/a	n/a
Persons registered as drug users within the last month	3	n/a	n/a	n/a	n/a	n/a
Persons registered as regular drug users	8	n/a	n/a	n/a	n/a	n/a
Persons registered as injecting drug users	7	n/a	n/a	n/a	n/a	n/a
National survey in 17 prisons, January – April 2006 (n = 7,274)						
Persons registered as lifetime drug users	n/a	7	1	9	2	2
Persons registered as drug users within the last year	n/a	5	0.7	6	1	1
Persons registered as drug users within the last month	n/a	1	0.3	1	0.5	0.5
Persons registered as regular drug users	n/a	0.8	0.3	5	0.1	0.3
Persons registered as injecting drug users	n/a	n/a	0.04	4	0.03	0.01
National survey in 17 investigation detention facilities, January – April 2006 (n = 3,567)						
Persons registered as lifetime drug users	8	1	0.3	5	0.3	0.8
Persons registered as drug users within the last year	2	0.6	0	1	0.1	0.1

⁷⁸ The data on 2008 are based on what the persons reported at admission to the prison, the data on 2007 and 2006 are based on the self-report of the persons registered in the judicial and medical files, and the data on 2004 are based on what the persons reported in contact with health services, psychologists and social workers in prison. Further information on the methods used and results of the surveys is accessible at http://www.emcdda.europa.eu/html.cfm/index104166EN.html?type=stats&stat_category=w97&stat_type=w87&order=stat_reference

Table 4. Persons who used drugs prior to imprisonment (2006 – 2008) (per cent) (Continuation)

	Any illicit drug	Cannabis	Cocaine	Heroin	Amphetamines	Ecstasy
Persons registered as drug users within the last month	0.4	0.1	0	0.3	0	0
Persons registered as regular drug users	3	0.5	0.1	2	0.1	0
Persons registered as injecting drug users	3	n/a	0	3	0	0
National survey of the persons held at the places of deprivation of liberty who contacted health services, psychologists and social workers, 2004 (n = 11,521)						
Persons reporting lifetime drug use	7	1	0.8	3	0.5	0.8
Persons reporting drug use in the last year	4	0.8	0.4	2	0.6	0.6
Persons reporting drug use in the last month	2	1	0.2	1	0.5	0.2
Persons reporting lifetime injecting drug use	2	n/a	n/a	1	n/a	n/a

Source: European Monitoring Centre for Drugs and Drug Addiction

Table 5. Persons who used a drug prior to imprisonment/in prison (per cent)

	Any illicit drug	Cannabis	Cocaine	Heroin	Amphetamines	Ecstasy	Other
National survey in 10 prisons in 8 towns and cities, 2006 (n = 1,257)							
Lifetime drug users	37.1	31.4	22.5	23.4	19.4	18.0	14.6
Drug users within the last year	14.6	11.3	5.2	7.0	7.0	5.3	3.7
Drug users within the last month	9.4	4.8	1.5	2.6	2.1	5.1	1.3
Regular drug users (more than five times within the 30 days)	4.1	2.1	0.6	1.4	0.7	2.0	0.7
Injecting drug users at least once within the last 12 months	4.1	n/a	n/a	n/a	n/a	n/a	n/a

Source: National Focal Point on Drugs and Drug Addictions

3.2. COMPULSORY TREATMENT

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 (OTPMSPDL)* 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 deducted from the term of imprisonment (Article 92 (2) and (3) of the PC). 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 (Article 31 (1) of the OTPMSPDL).⁷⁹ 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 (Article 92 (5) of the PC). 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.

⁷⁹ Prisoners suffering from drug dependence, in respect of whom the court has not ordered compulsory treatment, may be transferred for treatment to the specialized hospital with the Lovech Prison at their express request (Article 31 (2) of the OTPMSPDL).

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.

3.3. EXECUTION OF THE PENAL SANCTION OF IMPRISONMENT IN RESPECT OF PERSONS DEPENDENT ON DRUGS

3.3.1. Accommodation at penitentiary facilities and regime

The accommodation of drug-dependent persons at the penitentiary facilities is important both for their correction and re-education and for the prevention of the distribution of drugs among the rest of the prisoners.

In Bulgaria, drug dependence is taken into consideration upon allocation of imprisoned persons to prisons, prison hostels and reformatories and may be grounds for **placement of the sentenced person at a more closely guarded prison facility**. Thus, even when the sentenced person satisfies the criteria for placement at an open prison hostel, if that person suffers from a narcotic addiction, the court may decree that the sentence be served in a prison facility of another type (Item 2 of Article 59 (2) of the LEPSDC).⁸⁰

Besides this, the law makes it possible, at the discretion of the director of the prison concerned, the designation of separate **units for placement of inmates who suffer from alcoholism** or narcotic addiction at the closed prison hostels (Article 60 (2) of the LEPSDC).⁸¹

⁸⁰ The type of prison facility at which the sentenced person is placed initially is determined by the court when the sentence is decreed, conforming to the criteria specified in the law. In principle, persons sentenced for the first time to a term of imprisonment not exceeding five years for wilful offences and persons sentenced for negligent offences are placed at open prison hostels (Article 59 (1) of the LEPSDC).

⁸¹ Placement of sentenced persons in these units requires an order of the director of the prison on the basis of a written report by a psychologist inspector, a social and correctional-education work inspector and a psychiatrist or the director of the medical center (Article 38 (1) of the RALEPSDC), and the social and correctional-education work with the persons placed there is carried out according to an individual plan (Article 38 (4) of the RALEPSDC). Once every three months, the competent officials are supposed to prepare a written report regarding the stay of the person in such a unit with an opinion as to whether this stay should continue or should be discontinued. On the basis of this report, the director of the prison issues a new order, whereby the director continues or discontinues the person's stay in the unit (Article 38 (5) of the LEPSDC). The stay in such a unit must be discontinued immediately after the grounds for this cease to apply (Article 38 (6) of the RALEPSDC).

Apart from the initial placement, the presence of drug dependence may also be taken into consideration upon the transfer of the sentenced person from one prison facility to another. The law expressly states that the use of narcotic drugs or other intoxicating substances is noted in the information sheet issued upon the transfer of an inmate from one prison or reformatory to another (Item 4 of Article 39 of the RALEPSDC).

At the discretion of the prison or reformatory administration, the presence of drug dependence may furthermore be taken into consideration **upon allocation of the inmates to dormitories**. This is not expressly provided for in the law but follows from the general provision, according to which accommodation at the dormitories is based on the personality characteristics of the inmates and their capability to exert and to be susceptible to bad influence (Article 27 (1) of the RALEPSDC).

In practice, in most prison facilities the inmates suffering from drug dependence are not accommodated separately from the rest of the prisoners. In some places attempts have been made to designate separate sectors for drug dependents but, on the whole, these are isolated cases.⁸² Most experts argue that accommodating drug dependents together with the rest of the prisoners is a shortcoming rather than an advantage. The segregation of drug dependents from the rest of the prisoners would presumably help a more concentrated intervention and deny them the opportunity to encourage other inmates to use such substances.⁸³

3.3.2. Medical control and medical services

Under the *Penal Code*, **sentenced persons who are dependent upon narcotic drugs are provided with appropriate medical care** (Article 40 (2) of the PC).⁸⁴ The provision is part of the framework of execution of the penal sanction of imprisonment, which invites the conclusion that the rule refers only to the execution of this sanction and does not cover the persons sentenced to probation or another non-custodial measure.

Right upon **admission to the relevant prison facility**, each sentenced person is subjected to a medical examination, psychological evaluation and check of cleanliness and hygiene. This is done during the person's stay at the "reception unit", where the newly admitted are initially accommodated (Article 26 (4) of the RALEPSDC).⁸⁵

⁸² Наркотици, престъпления и наказания [Drugs, Crimes and Punishments], Bulgarian Helsinki Committee, Sofia, 2007, pp. 72-73 (available in Bulgarian only). According to the report, the prisons in Stara Zagora and Burgas have separate sectors for drug dependents using the therapeutic community approach.

⁸³ According to some views, accommodating drug dependents together with other prisoners who do not use drugs rather has a positive effect and may facilitate the overcoming of the addiction, especially for persons who started using drugs recently.

⁸⁴ Drug-dependent persons were added to the sentenced persons entitled to special medical care by the amendments to the Penal Code of September 2006. Before that, entitlement to provision of appropriate medical care under the law was limited to sentenced persons with severe psychopathy or suffering from a mental disorder which does not preclude sanity.

⁸⁵ Newly admitted prisoners are accommodated at a reception unit for a period of not less than 14 days and not more than one month, and persons admitted from the detention facilities are accommodated at the reception unit for a period of five days (Article 47 (1) and (3) of the LEPSDC).

The symptoms of drug dependence are identified by the psychiatrist or psychologist during a mandatory consult held after the primary medical examination. The psychiatrist or psychologist also gives an opinion regarding the measures which must be taken during service of the sentence, when the sentenced person is dependent upon narcotic drugs. Drug dependence, as part of the assessment of the health status of the sentenced person, is entered into the person's medical record and is kept at the medical center of the relevant prison or reformatory (Article 11 of the OTPMSPDL). The particulars are recorded by a medical specialist respecting the requirements for confidentiality (Item 6 of Article 48 (1) of the LEPSDC and Article 28 (6) of the RALEPSDC).

Newly admitted prisoners are obligated to cooperate upon the conduct of the initial medical examination and the accompanying psychological evaluation (Article 55 (1) of the LEPSDC).

The presence of drug dependence should also be noted in the assessment of the personality traits, health status and working capacity of the inmate which is prepared by the competent social work inspector, the medical officer of the prison and the psychologist during the person's stay in the reception unit, and which includes recommendations for future group or individual work (Article 55 (2) of the LEPSDC).

Drug-dependent prisoners are under observation and are **kept on special record** by the psychiatrist and the psychologist inspector who, together with the social work inspector, are obligated to prepare **special programs** for their treatment (Article 148 of the LEPSDC and Article 30 (2) of the RALEPSDC).

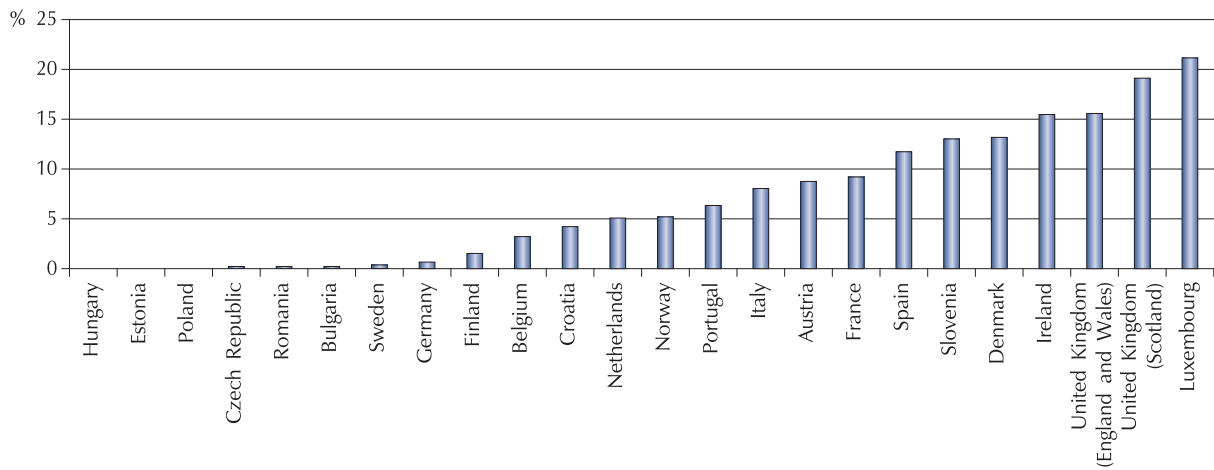
Imprisoned persons, who abuse narcotic drugs, are subject to an **HIV screening test** because they are among the groups facing a higher risk of HIV infection.⁸⁶ HIV tests, however, are conducted respecting the principles of voluntary compliance and informed consent, which means that the inmates may be tested only if they have given their advance consent after being informed, in a language which they understand, of the essence, objectives and manner of conduct of the test (Article 34 of the OTPMSPDL). Prisoners may not be obligated to take an HIV test and may always refuse to submit to such a test.⁸⁷

One major problem related to medical services to inmates who suffer from drug dependence is the fact that, in practice, a **very small part of them submit to specialized treatment** during the service of their sentences. According to data of the Directorate General "Execution of Penal Sanctions", in 2006 just 26 prisoners were treated for drug dependence at the Specialized Hospital for Active Treatment of Persons Deprived of their Liberty with the Lovech Prison and another

⁸⁶ The Ordinance on the Terms and Procedure for Medical Services at the Places of Deprivation of Liberty refers only to persons who "abuse" narcotic drugs without specifying when such abuse is the case. It would be more accurate if the provision covered all persons who are known intravenous drug users because it is precisely persons of this category who incur a higher risk of HIV infection.

⁸⁷ Intravenous drug-using prisoners are furthermore subject to microscopic and cultural test of sputum (Article 36 of the OTPMSPDL).

Figure 18. Proportion of prison population receiving opioid substitution treatment



Source: European Monitoring Centre for Drugs and Drug Addiction⁸⁸

70 inmates received methadone therapy (out of a total of 1,342 drug-dependent prisoners according to official statistics).⁸⁹ This ranks Bulgaria among the Member States of the European Union with the lowest proportion of the prison population receiving substitution treatment.

The problem with the shortage of specialized medical therapies is also confirmed by sociological surveys among prisoners. In a survey conducted in 2006 – 2007, the Bulgarian Helsinki Committee found that 28.3 per cent of the drug-dependent prisoners surveyed said they had not received any specialized therapy in prison, 5.2 per cent had seen a psychologist only once, 3.1 per cent had participated in a therapeutic group, 1.2 per cent had received a medical prescription for other medicines, and just 0.4 per cent had participated in a methadone program. On the whole, merely one-fifth of the respondents were pleased with the measures and therapies in which they had participated.⁹⁰

Unsatisfactory medical services to inmates who suffer from drug dependence are due to the **lack of a consistent state policy** in respect of drug-dependent

⁸⁸ 2010 Annual report on the state of the drugs problem in Europe, European Monitoring Centre for Drugs and Drug Addiction, Lisbon, 2010, p. 38. Data are presented for all countries where substitution treatment is available in prisons, except Malta. Data are for 2008, except for Austria and Scotland (2007) and Belgium and the Netherlands (2009).

⁸⁹ A year earlier, in 2005, 20 drug dependents were treated at the Specialized Hospital for Active Treatment of Persons Deprived of their Liberty with the Lovech Prison, and 69 underwent methadone therapy (out of a total of 1,071 drug-dependent prisoners).

⁹⁰ Наркотици, престъпления и наказания [Drugs, Crimes and Punishments], Bulgarian Helsinki Committee, Sofia, 2007, p. 72 (available in Bulgarian only).

persons. Specialized treatment, if at all available, is in practice the result of isolated initiatives on the part of the administration of individual prisons or of non-governmental organizations.

The lack of a comprehensive policy addressing drug dependence among prisoners is compounded by a **shortage of financial and human resources**. Specialists adequately trained to work with drug-dependent persons are scarce at the prison facilities. Drug tests, which could be used to find whether the inmates use drugs and, if so, what drugs they use, are also unavailable for lack of funding.⁹¹

Persons working at prison facilities are thoroughly familiar with the modern treatment and rehabilitation methods but admit that these methods are rarely applied for lack of financial resources and of staff members specifically trained to apply them. Thus, most of the intervention programs implemented for drug dependents are on a psychological basis and do not include medical therapy.

Even though the British-designed twelve-step program is perceived as just right for application in the prisons because under that program drug-dependent persons are placed in an everyday sheltered environment and are under constant observation by an outside expert (say, three hours with a doctor, followed by three hours with a psychologist, three hours with a social work inspector, etc.), its application is impeded by the lack of resources, the understaffing and the difficulties encountered in the establishment of isolated sheltered zones in the prisons. The program is applied in some prisons (Sofia, Burgas, Stara Zagora) mainly on the initiative of the competent prison administration or under projects implemented by or jointly with non-governmental organizations.

Persons working at prisons admit that short-term programs are preferred in most prisons. Parallel to that, the inmates are offered an opportunity to join "Say No to Drugs" groups, where specifically trained social work inspectors, doctors and psychologists work with them.

Since medical tests of prisoners are fully based on voluntary compliance, inmates may not be obligated to submit to tests for drug use (such as blood and urine tests). This poses a serious obstacle to the efforts of the prison administration to identify the drug users, which is why a number of drug dependents are left out of the programs implemented. In some prisons there are reports even of isolated cases of a breach of the voluntary compliance principle, with inmates being compelled to submit to a test and any refusal being presumed as an admission to using drugs and leading to the imposition of a punishment.⁹²

Some prisons, such as the one in Plovdiv, have centers for treatment of prisoners suffering from drug dependence, and most of the persons who receive treatment at those centers have already undergone methadone therapy, most often abroad

⁹¹ Наркотици, престъпления и наказания [Drugs, Crimes and Punishments], Bulgarian Helsinki Committee, Sofia, 2007, pp. 72-73 (available in Bulgarian only).

⁹² Петров, С. и Г. Банков, Затворите в България: изследване на системата на местата за лишаване от свобода [Petrov, S. and G. Bankov, Bulgarian Prisons: a Report on Places of Detention], Bulgarian Helsinki Committee, Sofia, 2008, p. 48 (available in Bulgarian only).

(Spain, Portugal and the Scandinavian countries). On the whole, though, the methadone therapy is applied rarely, and in most cases the medicine is provided by outside doctors. Some prisons limit themselves to allowing the persons, who have already started such a therapy before admission to prison, to continue the ongoing treatment.

According to most of the medical staff employed at prison facilities, the medical services to persons suffering from drug dependence is not based on an established scientific methodology, which dramatically limits its effectiveness. The application of such methodology, however, is practically impossible because it would cost double the amount of the resources available to the prisons. The State does not allocate extra financing for the implementation of such programs in the prisons, and including prisoners in existing programs outside the prison is greatly impeded. Thus, prisons in Bulgaria in practice become surrogate therapeutic communities.

The need to improve medical services to prisoners suffering from drug dependence is acknowledged in the *National Anti-Drug Strategy 2009 – 2013*. The Strategy ascertains that “substitution and maintenance treatment programs and programs for rehabilitation and re-socialization of dependent persons have not been opened at the places of deprivation of liberty” and defines improvement of access to program for prevention, treatment, rehabilitation and harm reduction of drug use in the prisons as one of the strategic tasks in drug demand reduction.⁹³

Several specific actions are planned for the implementation of this strategic task, and they are described in detail in the *Action Plan for Implementation of the National Anti-Drug Strategy 2009 – 2013*. They include increase methadone treatment programs in all prisons countrywide, as well as optimizing the detoxification of drug dependents admitted to prison hospitals and medical centers.⁹⁴

Last but not least, the health status of drug-using inmates is considerably worse than the health status of the rest of the prisoners. According to prison staff, the proportion of prisoners infected with HIV or with hepatitis B or C is larger among the drug users.⁹⁵ This is due above all to the sharing of implements (syringes, needles), as well as to the extremely poor hygiene (the implements are not disinfected before use). The measures for prevention and raising the awareness of prisoners of the health hazards they incur by using drugs in this way are not sufficiently effective, either.

⁹³ Национална стратегия за борба с наркотиците 2009 – 2013 [National Anti-Drug Strategy 2009 – 2013], Council of Ministers, Sofia, 2009, p. 32 (available in Bulgarian only).

⁹⁴ План за действие за изпълнение на Националната стратегия за борба с наркотиците 2009 – 2013 [Action Plan for Implementation of the National Anti-Drug Strategy 2009 – 2013], Council of Ministers, Sofia, 2009, pp. 14-15 (available in Bulgarian only).

⁹⁵ According to the medical officer of one of the prison, in early 2009 a total of eleven persons were infected with HIV, and all of them were identified as drug users at the primary medical examination.

Table 6. Actions to implement the strategic task of improving access to programs for prevention, treatment, rehabilitation and harm reduction of drug use in the places of deprivation of liberty

Task	Sub-task	Objective	Indicators	Time-frame	Responsible party
Increase preventive and correctional therapeutic activities	Invigorate cooperation with NGOs for implementation of prevention-oriented information and awareness events	Increase number of prevention events at Sofia, Plovdiv, Varna and Burgas prisons to contain the influence of drug abusers' subculture on the prison population	Number of prevention events Number of participants in events per month	2009	Minister of Justice
	Implement the short-term 20-day program for group work with drug dependents in the investigation detention facilities in Sofia, Plovdiv, Varna, Burgas and Ruse	Invigorate correctional and therapeutic work with drug-dependent persons during their stay at the largest investigation detention facilities	Number of persons who successfully completed the program Recorded alerts of drug use at the largest investigation detention facilities	2011	Minister of Justice
	Implement the twelve-step program at all prisons countrywide	Ensure serious and sustained intervention for drug-dependent persons at closed penitentiary facilities	Number of twelve-step programs implemented in prisons Number of participants who successfully completed the program	2012	Ministry of Justice
Contain the distribution of drugs in prisons and investigation detention facilities	Install luggage checking scanners	Detect drugs concealed in food products	Quantity and type of drugs detected per month	2010	Minister of Justice
	Optimize detoxification of drug-dependent sentenced persons at prison medical centers and hospitals	Improve effectiveness of this type of medical intervention	Number of detoxified persons per month	2011	Minister of Justice
	Increase number of drug-dependent prisoners on methadone treatment	More active treatment of drug dependent persons during their stay in penitentiary facilities	Number of persons cured per year in all prisons	2013	Minister of Justice

Source: Action Plan for Implementation of the National Anti-Drug Strategy 2009 – 2013

3.3.3. Social and correctional-education work

Apart from medical care, social and correctional-education work is the other method of intervention for persons dependent on narcotic drugs. *The Law on Execution of Penal Sanctions and Detention in Custody* and the Regulations for Application of that Law, however, do not contain a special framework for work with such persons and instead make few provisions on this count, most of which are of the nature of wishful thinking.

On the whole, **the legal framework of social and correctional-education work focuses on the risk of recidivism and material damage**, and the use of or dependence on narcotic drugs is taken into consideration above all as a factor determining this risk rather than as a circumstance of its own significance in the work with the inmates. This conclusion is invited by an analysis of most of the provisions regulating social and correctional-education work in prison facilities.

Thus, the law does not list drug dependence as a separate circumstance which should be taken into consideration upon the initial evaluation of the prisoners and the individual plan for service of the sentence, which are prepared for each sentenced person after completion of a compulsory adaptation program.⁹⁶ The initial evaluation of the sentenced person, which is subject to subsequent modification depending on the behavior of that person, concerns mainly the risk of recidivism and material damage. According to the law, this evaluation includes an assessment of the risk of recidivism and the risk of material damage, causative factors of the risk of recidivism, and proposals for remedying personality deficiencies and containing the causative factors of the risk of recidivism and the risk of material damage (Article 155 of the LEPSDC). The only special provision in connection with the risk assessment in respect of drug dependents says that if “abuse of narcotic drugs and/or abuse of alcohol” is identified as a problem in the initial evaluation, this warrants in its own right the performance of a subsequent evaluation (Item 4 of Article 130 (1) of the RALEPSDC).

The individual plan for execution of the sentence is prepared on the basis of the type and nature of the criminal offence committed, the length of the penal sanction imposed, the evaluation of the sentenced person and the causative factors of the risk of recidivism, and the initial place assigned by the court for service of the custodial sentence as imposed (Article 156 (2) of the LEPSDC). The framework of the specialized programs for individual and group work is the only place where the law specifies that one of the objectives of these programs is “to overcome dependences” (Item 3 of Article 157 (2) of the LEPSDC).⁹⁷ These programs, however, are not mandatory for the prisoners, and even though the sentenced

⁹⁶ Immediately after admission to the places of deprivation of liberty, prisoners are enrolled in a compulsory specialized program for adaptation to the conditions for service of the sentence as imposed. The adaptation program is of a duration not exceeding three months and upon its implementation, the inmates are provided with information in a language which they understand regarding the objectives and forms of social and correctional-education work at the prison (Article 153 of the LEPSDC).

⁹⁷ Besides this, the law provides that upon specialized group work with drug dependents, the inmates who participate in the program are accommodated on separate premises (Article 125 of the RALEPSDC).

persons are encouraged to join them, participation remains completely voluntary and depending solely on the choice of the person concerned (Article 157 (3) of the LEPSDC).

Without being expressly mentioned in the law, the use and, respectively, the abstention from use of narcotic drugs, may and should be taken into consideration upon the **replacement of the regime by a regime of a higher or a lower security level**. Where the inmates exhibit good behavior and demonstrate that they are reforming, their regime may be replaced by the regime of the next lower security level (Article 66 of the LEPSDC). Conversely, if 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 (Article 67 of the LEPSDC). In both cases the penal sanctions execution board at the relevant prison, when making a decision on a replacement of the regime, may take into consideration the use or, respectively, the abstention from use of narcotic drugs. The same applies to the cases of transfer of prisoners from a prison facility of one type to a prison facility of another type (Article 64 of the LEPSDC).

The use or, respectively, the abstention from use of narcotic drugs may furthermore be taken into consideration upon encouragement of, and imposition of disciplinary punishments on, inmates. As grounds for encouragement, the law lists markedly disciplined behavior, cooperation exhibited in the performance of social and correction-education actions, success achieved in work, sports, morale support activities, as well as other commendable performance (Article 98 (1) of the LEPSDC). The abstention from use of narcotic drugs, especially by persons who are known drug users, may be viewed as commendable performance and constitute grounds for encouragement of the prisoner concerned. On the other hand, being expressly prohibited by the law, the use of narcotic drugs by inmates in any case constitutes a disciplinary offence and is grounds for imposition of a disciplinary punishment (Item 5 of Article 100 (1) in conjunction with Item 5 of Article 97 of the LEPSDC).

Under the law, staff members who handle special groups of inmates must undergo **specialized training** (Article 31 (6) of the LEPSDC). Drug-dependent prisoners are not expressly mentioned among the special groups listed in this provision (foreign nationals, women, juveniles, persons suffering from mental disorders and others). This is no obstacle for staff members handling drug-dependent persons to undergo specialized training, too, but the Directorate General "Execution of Penal Sanctions" has discretion to determine the need of such training. Considering the large number of drug-using or drug-dependent prisoners, as well as the gravity of the drug use problem in prisons, the staff members handling such persons need specialized training and its mandatory provision should be legislatively enshrined.⁹⁸

⁹⁸ The initial vocational training programmes for staff members at places of deprivation of liberty mandatorily include lectures on the participation of non-medical specialists in the preparation of programs for persons dependent on narcotic drugs and/or alcohol (Item 4 of Article 6 (2) of the OTPMSPDL).

3.3.4. Prevention and suppression of drug distribution in prisons

Security and control for the prevention of the smuggling of drugs into prisons are key components of the suppression of drug use and distribution in such places. The *Law on Execution of Penal Sanctions and Detention in Custody* and the Regulations for Application of that Law contain a number of provisions in connection with security at prison facilities which are relevant to the prevention of the smuggling of drugs.

During visits, inmates may receive food and articles which they have the right to use and to keep (Article 86 (3) of the LEPSDC), but **prisoners and their visitors are prohibited from directly delivering and accepting any articles whatsoever between them** (Article 73 (5) of the RALEPSDC). Only defense counsel and representing counsel are allowed to deliver case records to inmates, but they may not deliver food products, articles, objects and money (Article 74 (5) and (6) of the RALEPSDC).

Prisoners are subjected to a **mandatory search** upon entry and exit from the prison, upon leaving for and returning from the work sites, upon confinement to and release from a disciplinary cell, upon going to and returning from a visit, upon admission to and discharge from a hospital facility, upon going on leave or returning from leave or from suspension of the service of the sentence, as well as after completion of the meetings between prisoners and their defense counsel or representing counsel. Prisoners may be searched on other occasions as well with the permission of the director of the prison or of the reformatory (or of the chief of the on-duty unit, if the director is absent), where this is necessary for the prevention of a criminal offence or another violation (Article 92 (1) to (3) of the LEPSDC and Article 74 (8) of the RALEPSDC).

Security staff members may **search dormitories, work premises and other premises** at the places of deprivation of liberty in the presence of inmates or of a representative of the inmates who are accommodated on the premises concerned or use them (Article 95 (1) of the LEPSDC). The premises are mandatorily searched at least once monthly according to a plan endorsed in advance by the director of the prison or reformatory (Article 86 (1) of the RALEPSDC) and, where necessary, additional searches are possible as well by order of the director of the penitentiary facility, of the deputy director for regime, supervision and security, of the supervision and security inspector or, in their absence, of the chief of the on-duty unit (Article 86 (2) of the RALEPSDC).

The letters to prisoners are controlled in the interests of security and are received in the presence of a supervision and security staff member, and the envelope is unsealed in a manner satisfying the staff member that it does not contain unauthorized objects (Article 75 (2) and (3) of the RALEPSDC).

The use of alcoholic beverages and narcotic drugs in penitentiary facilities is expressly prohibited (Item 5 of Article 97 of the LEPSDC). Inmates are obligated to cooperate upon **checks for use of alcohol, narcotic drugs and intoxicating substances** (Item 5 of Article 96 of the LEPSDC).

The visitors of inmates are also subject to restrictions. Visitors may not carry personal luggage and are subject to check by technical detection devices (Article 73 (4) of the RALEPSDC). By an express order of the director of the prison or reformatory, members of the public and staff members who enter the prison or reformatory may be searched as well, where there is reason to believe that they bring in prohibited articles (Article 94 of the LEPSCD).

Despite the various security measures, the prevention and suppression of drug distribution and drug use in the prisons does not produce the desired results.

According to surveys of 2008, cited by the EMCDDA, 4 per cent of the inmates reported drug use in prison within the last year, and 0.6 per cent reported such drug use within the last month. Just as with the data on drug use prior to imprisonment, here, too, Bulgaria ranks among the last in the European Union. Assessing these data, however, it should be borne in mind that they are based on an analysis of information voluntarily reported by the persons at admission to the prison, i.e. the low levels are attributable to non-disclosure of the prevalence of drug use due to fear of sanctions.

Table 7. Prevalence (percentage) of drug use among prisoners⁹⁹

	Any illicit drug	Cannabis	Cocaine	Heroin	Amphetamines	Ecstasy
National survey in 17 prisons and investigation detention facilities, 2008 (n = 9,983)						
Persons reporting drug use within the last year	4	0.7	0.4	1	1	0.05
Persons reporting drug use within the last month	0.6	0	0	0.05	0	0.05
National survey in 17 prisons and investigation detention facilities, January – April 2006 (n = 2,562)						
Persons registered as lifetime drug users	1	0.5	0	0.6	0	0
Persons registered as drug users within the last year	1	0.2	0	0.4	0.1	0
Persons registered as drug users within the last month	0.1	0.04	0	0.04	0	0
Persons registered as injecting drug users	8	n/a	n/a	8	n/a	n/a

Source: European Monitoring Centre for Drugs and Drug Addiction

⁹⁹ The data on 2008 are based on what the persons reported at admission to the prison, and the data on 2006 are based on the self-report of the persons registered in the judicial and medical files. Further information on the surveys is accessible on the EMCDDA website, at http://www.emcdda.europa.eu/html.cfm/index104166EN.html?type=stats&stat_category=w97&stat_type=w87&order=stat_reference

By comparison, according to the results of a survey conducted in 2004, 15.2 per cent of the injecting drug users have been in prison (3.9 per cent have even been behind bars more than once), and 36.8 per cent of the respondents said they had used drugs while being in prison. Recalculated against all survey respondents, 5.6 per cent had experience using psychoactive substances inside prisons.¹⁰⁰

In the opinion of persons working at prison facilities, the number of drug-using or drug-dependent prisoners is exceedingly large and has surged over the last decade, with the proportion of drug users reaching between one-third and one-half of the prison population in some prisons.

According to the observations of prison staff, the majority of persons convicted of drugs offences are drug users. This applies to both men and women.

At the same time, persons working at prison facilities are unanimous that the number of drug-using prisoners cannot be adequately established because **periodic and reliable examinations and medical tests are not carried out**. In practice, the only compulsory medical test for presence of narcotic drugs (a urine test) is carried out within the framework of the initial medical examination upon admission of the sentenced person to the prison. Some prisons have a practice of conducting incidental medical tests as well, when the behavior of the prisoner concerned is manifestly inadequate, and attempts have also been made to introduce medical tests for cocaine, morphine and codeine and to impose punishments if the tests come positive. On the whole, though, the law prohibits coerced medical testing without the prior informed consent of test subject.

For the same reason, it is impossible to identify the proportion of drug dependents among the drug users. This substantially impedes the taking of a **differentiated approach, geared to the degree of dependence**, despite the insistence of prison administration representatives that such an approach is essential and would exert a positive effect.

Persons working at prison facilities admit that despite the security measures, drugs are smuggled into the prisons on numerous occasions. In a large part of these cases, the **drugs are smuggled in by inmates who have the opportunity to work outside the prison perimeter**. According to prison staff, the outside environment is the principal source of the drugs distributed in the prisons. Next come the **food parcels** which the prisoners receive from outside.¹⁰¹ This is possible because of the insufficiently effective control over the content of the food parcel which, in turn, is due to the **lack of up-to-date devices to check the parcels** for the presence of narcotic drugs.¹⁰² Persons working at prison facilities see the fact that **drug users are not accommodated separately** from the rest

¹⁰⁰ Bezlov, T., C. Barendregt, *Injecting Drug Users in Bulgaria: Profile and Risks*, Initiative for Health Foundation, Sofia, 2004, p. 46.

¹⁰¹ The attempts at smuggling drugs into the prisons through food parcels are getting ever more ingenious. One example is inserting the substance in walnuts whose kernel has been removed and gluing the shell halves back with silicone adhesive.

¹⁰² The prison administration uses trained drug-sniffing dogs, but this method is too expensive.

of the prison population as yet another significant factor contributing to drug distribution in prisons.

3.3.5. Post-release intervention for persons suffering from drug dependence

The effectiveness of imprisonment largely depends on the sentenced person's successful reintegration after his or her release from prison. A large part of the intervention for prisoners is focused precisely on preparing them for return to life in society after release. In all cases, however, the administration of prisons is not authorized to intervene after the moment of release. From then on, the future behavior of the sentenced person largely depends on the existing mechanisms for his or her social reintegration.

The period immediately following the release from prison is crucial for the future of drug-dependent persons and for the effect of the sentence served, especially in the case of persons who have gone through definite programs and have discontinued the use of drugs.

The *Law on Execution of Penal Sanctions and Detention in Custody* limits itself to the provision that upon the release of a prisoner who suffers from alcoholism or narcotic addiction, a letter of notification, which the prison administration sends a month earlier to the municipal council or mayoralty exercising jurisdiction over the inmate's permanent address and to the relevant supervisory board, must specify the results achieved during the service of the sentence and make recommendations for reinforcement of these results in the post-release period (Article 183 (3) of the LEPSDC).

In practice, though, there are no programs and initiatives for intervention for drug-dependent persons released from prison. Thus, the persons who participated in various programs for drug dependents during their stay in prison do not continue their therapy after release and easily fall prey to the drug dealers whose customers they used to be prior to the sentencing.

In the opinion of a large part of persons working at prison facilities, there is a complete lack of mechanisms for intervention for drug-dependent persons released from prison. Thus, even the small proportion of the prisoners who succeeded in temporarily overcoming their dependence during their stay in prison relatively soon relapse into drug use.¹⁰³

3.4. EXECUTION OF THE PENAL SANCTION OF PROBATION IN RESPECT OF DRUG-DEPENDENT PERSONS

Where a drug-dependent person is sentenced to probation, the penal sanction may include, as a probation measure, **inclusion of the sentenced person in a special program for drug-dependent persons**. The *Penal Code* expressly provides, as a possible probation measure, the inclusion of the sentenced person in a social intervention program (Item 4 of Article 42a (2) of the PC), and the *Law on*

¹⁰³ According to prison staff, the success rate of the various programs for drug-dependent persons is as low as 10-12 per cent.

Execution of Penal Sanctions and Detention in Custody specifies that these programs may be developmental and correctional, and the correctional programs may target overcoming dependences (Article 217 (1) to (3) of the LEPSDC).¹⁰⁴

Social intervention programs are organized and paid for by the regional probation service, but the law makes it possible to recruit non-governmental organizations and volunteers upon their elaboration and arrangement, as well as to resort to specialized services of natural and legal persons for work with sentenced persons (Article 218 (1) to (3) of the LEPSDC).¹⁰⁵

Social intervention programs, including correctional programs targeting the overcoming of dependences, most often are not medical programs and do not include medical treatment of the sentenced person. These are above all programs intended to encourage drug-dependent persons to discontinue the drug use on their own.

Upon assignment of probation measures, probation services play a substantial role. On the one hand, when the court decides to impose probation, the court may request the competent probation service to prepare the so-called “pre-sentence report”. It contains information about the accused and is intended to assist the court in the choice of effective probation measures (Article 226 of the RALEPSDC). When the accused has a drug use problem or is drug-dependent, the probation service may specify this in the pre-sentence report, so that the court would reckon with it in assigning the probation measures. On the other hand, probation services have an important part in particularizing the probation measures assigned by the sentence. When the court has assigned inclusion of the sentenced person in a social intervention program as a probation measure, the probation officer selects a suitable program for the sentenced person and is obligated to take into consideration objective factors, such as the evaluation of the sentenced person and the registered zones of need, as well as the wish of the sentenced person himself or herself (Article 215 of the LEPSDC).

When the court has not assigned inclusion in a social intervention program as a probation measure, the sentenced person may request inclusion in such a program on his or her own initiative by submitting a declaration in writing to the probation service (Article 251 (3) of the LEPSDC).

One of the major problems encountered by probation services in work with drug-dependent persons is the lack of an adequate mechanism to ascertain

¹⁰⁴ Inclusion in a social intervention program may be assigned as a probation measure for the time of the probation period and upon release on parole from service of the unserved portion of the sentence (Article 70 (6) of the PC in conjunction with Item 4 of Article 42a (2) of the PC).

¹⁰⁵ All social intervention programs are endorsed by the Director General of the Directorate General “Execution of Penal Sanctions”, and the resources for implementation of such programs are endorsed by the Minister of Justice on a motion of the Director General of the Directorate General “Execution of Penal Sanctions”. A contractor is selected by the Regional Service of Implementation of Penal Sanctions according to the procedure established by the Ordinance on the Award of Small Public Procurements. When the implementation of a particular program presupposes possession of specialized knowledge and skills, say, in the sphere of drug dependence, the services of specialized centers, non-governmental organizations or medical-treatment facilities may be resorted to (Article 250 of the LEPSDC).

whether the sentenced person is a drug user. In practice, the only tool available to the probation officer for this purpose is the interview conducted with the sentenced person immediately after commencement of the execution of the penal sanction. During that interview, the probation officer must identify the needs of the sentenced person and the so-called “deficiencies to be addressed by correctional work”. An evaluation of the sentenced person and an individual plan for execution of the probation measures are prepared after conduct of the interview (Article 242 of the LEPSDC). This process, however, is impeded by the fact that the sentenced persons are quite often reluctant to discuss their drug use problems with the probation officer or even deliberately conceal the existence of such problems. For this reason, probation services do not have at their disposal accurate statistics either about the number of drug users or about the proportion of drug dependents among them.¹⁰⁶

When a sentenced person is assigned a probation measure of inclusion in a program for drug-dependent persons, the person is obligated to participate in that program. Failure to participate in the program in which the person is included is punishable by a verbal caution or a caution in writing, and the probation may even be replaced by imprisonment. Conversely, if the sentenced person regularly and actively participates in the program, this may be taken into consideration upon evaluation of his or her behavior, and if this behavior is found to be exemplary, the sentenced person may be encouraged (say, by a lift of the ban on leaving the residence after 22:00 hours on non-working days and holidays or a lift of the ban on leaving without permission the nucleated settlement where the place of residence is located on non-working days and holidays).

The lack of sufficient human and financial resources for the elaboration and implementation of programs for drug dependents faces probation services with a serious problem in the execution of the penal sanction of probation in respect of drug-dependent persons. In practice, probation officers focus on merely helping the sentenced persons realize the essence of the problem and motivating them to do something to overcome it or join specialized programs for drug dependents. Besides this, probation officers refer the sentenced persons to various outside programs, including methadone programs and therapeutic communities. Most of these, however, are either state-financed and filled up, or are paid and the sentenced persons cannot afford the expenses of joining them. The number of non-governmental organizations offering free-of-charge programs, to which the probation services can refer the drug-dependent sentenced persons, is still insufficient. At the same time, the existing programs are not particularly effective, either, and the participants in these programs quite often continue to use drugs or quit attending them.

3.5. EFFECTIVENESS OF IMPRISONMENT COMPARED TO PROBATION

Persons working at prison facilities are divided in their opinions as to whether imprisonment or probation is the more effective penal sanction in respect of drug-

¹⁰⁶ A probation inspector of the Sofia Regional Probation Service, interviewed in the course of this study, said that seven of the 63 sentenced persons of whom the inspector in question was in charge were known drug users.

using persons. Strong arguments are advanced both in favor of imprisonment and in favor of a non-custodial measure.

Imprisonment is perceived as more effective in respect of long-term drug users. Prisons and reformatories provide better conditions for segregation of drug-using persons and, accordingly, for a more concentrated and sustained intervention. Thus, in prison facilities the sentenced persons are under constant observation (at least 8 hours daily) by a social worker, a doctor and/or a psychologist. On the other hand, a non-custodial measure is perceived as more effective and better suited to persons who have recently started using drugs.

Some penitentiary system professionals take the opposite view as well: that in most cases probation is a more suitable penal sanction for drug users. Moreover, some of the prison staff members see the taking of a uniform approach to all drug-using sentenced persons as a fundamental shortcoming of imprisonment. More specifically, no sufficient attention is attached to the distinction between cases when the sentenced person has committed the offence under the influence of drugs, in an attempt to obtain drugs, or without immediate relation to drugs. In principle, such a distinction should be drawn as early as when the initial evaluation of prisoners is prepared and the initial plan for execution of the sentence is formulated.

Another convincing argument in favor of probation is the poor condition of prisons in Bulgaria which, in most cases, makes it impossible to take adequate and effective measures or to provide medical treatment to drug-dependent prisoners. The taking of effective measures is furthermore impeded by the lack of reliable methods to detect drug use or drug dependence, as well as by the resistance on the part of the inmates themselves, who quite often argue that drug use is a matter of their personal choice or that it cannot harm them, which is why they refuse to submit to therapy or other measures.

As far as probation is concerned, the fact that it does not require segregation of drug users in closed communities is seen as one of its principal advantages, since the risk of proselytizing others to drug use is reduced in this way. The probation officers themselves assess probation as a penal sanction which, even if it is not more effective in respect of drug users and drug dependents, at least impedes the active distribution of drugs which is typical of closed communities like prisons.

4. RECOMMENDATIONS

Several recommendations can be made on the basis of the analysis of the State's penal policy with regard to drug-related crime:

- Review the system of penal sanctions provided for criminal offences having narcotic drugs as their object, and add probation as an alternative to imprisonment for the acts of a lower degree of social danger.

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- Decriminalize the possession of small quantities of narcotic drugs intended for a single use; alternatively, replace the existing criminal liability for minor cases by a sanction imposed according to an administrative procedure.
 - Improve medical services to prisoners suffering from drug dependence through introduction of more substitution treatment programs, including in partnership with non-governmental organizations active in this sphere.
 - Introduce encouragement measures for drug-dependent prisoners who voluntarily submit to treatment, including allowance of the time of the treatment towards a reduction of the term of the sentence, similar to the allowance of the work performed.
 - Establish separate units at the prisons for accommodation of drug-dependent persons.
 - Upgrade the qualification of penitentiary system professionals to handle drug-using or drug-dependent persons.
 - Introduce compulsory periodic medical tests for drug use for prisoners who are known drug users or drug dependents.
 - Improve control at the prisons so as to be able to prevent the smuggling of drugs more effectively, including through upgrading the qualification of security staff and modernizing the security detection equipment.

CONCLUSION

The analysis of the legal framework of the prison system, of the state and specific problems of that system, as well as the empirical studies conducted, demonstrate the need of further development of the penitentiary reform as part of the reform of penal legislation and of criminal justice. This implies continued alignment of national legislation with European standards, accompanied by comprehensive practical modernization and humanization of the penitentiary system. The recommendations outline some important guidelines in this respect. In principle, such reforms require considerable costs which, however, can be optimized by introducing a balanced complex of measures, including abolition of the penal sanction of imprisonment for less serious offences and expanding the scope of application of non-custodial measures, shortening the term of custodial sentences, a broader reasoned application of the mechanisms of suspended sentencing, release on parole etc. On the other hand, the costs of “investments” in the reform must match the “benefits” they are supposed to generate. The most important indicators of the benefits of the reforms and of the effectiveness of the penitentiary system are reduction of crime at large and of recidivism in particular, successful reintegration of prisoners after service of the sentence, as well as enhancement of public security.

Special attention must be paid to intervention for drug-using or drug-dependent prisoners. Drug distribution and drug use are a serious problem not only for criminal justice and the penitentiary system but a serious social problem in its own right. There is a pressing need of an integral and consistent State policy in this area, including, among other things, a complex of measures *vis-à-vis* drug-dependent prisoners, applicable both while such persons serve their sentence and after their release.

Inspections, monitoring and independent civic oversight, as well as the publicity of their results, are and will continue to be an important guarantee of control over the further progress of the penitentiary reform and over the all-round functioning of the penitentiary system.

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