



European Monitoring Centre
for Drugs and Drug Addiction

Drug law offences in the Western Balkan region: from definition to monitoring

A report based on the Reitox Academy 'Drug law offences in the Western Balkan region: from definition to monitoring', organised on 2–3 April 2014 in Podgorica, Montenegro

Authors

Brendan Hughes, Cécile Martel, Luis Royuela, Orsolya Varga

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(*) This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence. Applies to every mention of Kosovo in this report.

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The views expressed herein can in no way be taken to reflect the official opinion of the European Union.

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1. Introduction

This Reitox Academy 'Drug law offences in the Western Balkan region: from definition to monitoring' was organised by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) as part of its project '[Preparation of IPA Beneficiaries for their participation in the EMCDDA](#)' (IPA4).

The EMCDDA provides the European Union (EU) and its Member States with a factual overview of European drug problems and a solid evidence base to support the drugs debate. Understanding commonalities and differences on how drug laws are defined and implemented across the EU Member States is one of the Centre's key areas for action, and this is closely linked with presenting and interpreting data on drug law offences and drug-related crime.

Over the last decade, the EMCDDA has gradually increased cooperation with Candidate and Potential Candidate Countries and is supporting them to establish comprehensive and comparable drug monitoring systems at national level. The Centre has collected some data on drug laws and drug law offences in these countries through ad hoc reports and data submissions. The objectives of this two-day seminar were to further discuss national drug laws (what the laws say and how they are implemented); control of new psychoactive substances; and exchange information on how drug laws and drug law offences are monitored and how data are collected and reported.

A total of 26 participants from Albania, Bosnia and Herzegovina (BIH), The former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia attended the Reitox Academy.

2. Opening statements

The meeting started with a welcome from Mr Ivan Ivanišević from the Ministry of the Interior of Montenegro and from Mrs Jasna Sekulić, Head of the Department for Drugs from the Ministry of Health of Montenegro. Both emphasised the on-going work undertaken by Montenegro and the EU in opening chapters of negotiation, particularly [Chapter 24](#), which considers the drugs issue. Mrs Sekulić highlighted the discussion of the new laws and the need to meet any European standards, and the general approach and efforts of Montenegro to join the EMCDDA and submit data to the required standards. Mr Andre Lys, from the EU Delegation in Montenegro also emphasised the need to bring the cooperation closer, particularly in the field of drug trafficking and money laundering. It was said that the recently [adopted Strategy of Montenegro for prevention of drug abuse 2013-2020](#) has been aligned with the new [EU Drug strategy 2013–2020](#). He referred to the recent report of the United Nations Office on Drugs and Crime (UNODC) on [the illicit drug trade through south-eastern Europe](#), which looked at the increase in trafficking of cannabis from Albanian, and recent reports of cocaine trafficking from South America.

Ms Cécile Martel, EMCDDA, thanked the Montenegrin authorities for their welcome and particularly Mr Ivanišević and Mrs Sekulić, as well as the EU Delegation in Montenegro for their help in organising the Reitox Academy. She reminded the participants of the role and tasks of the EMCDDA, and highlighted the importance of a technical project funded through the Instrument for Pre-Accession Assistance (IPA) to support Candidate and Potential Candidate Countries in the adoption of the EMCDDA methodologies for drug-related data collection and analysis.

3. Drug laws: the EU perspective

Mr Brendan Hughes, EMCDDA, concentrated on three main types of drug law offence: use, possession for personal use and supply. He explained how the definitions of drug law offences were grounded in the three UN drug control Conventions of 1961, 1971 and 1988, and the rather limited EU legislation applicable. He considered the different ways in which European countries classify drugs and whether these classifications are linked to offence penalties. He reviewed which countries in Europe provide for prison penalties for the personal possession of drugs; which provide the legal basis for alternatives to punishment, (distinct from the term 'alternatives to imprisonment'). He also explained the different approaches used and how countries establish small or large quantities in their laws, and how these could be used to identify and compare penalty ranges for defined scenarios for drug trafficking, to understand the likely difference in penalties awarded across Europe. Finally, he outlined the results of the EMCDDA's 2009 Selected issue entitled '[Drug offences: sentencing and other outcomes](#)', to show how European countries most commonly punished use-related and trafficking-related offences.

Brendan Hughes also introduced participants to the work by the EMCDDA to establish a drug law index. This composite index, which assigns numerical scores to core aspects of the legislation punishing use and supply-related offences and sums them to a total, would allow the legal systems to be easily grouped or compared according to the score. It is based on the type of response provided in the legislation (mandatory or discretionary length prison sentences, non-incarcerative punishments, non-punitive offences or no reaction from the law) and whether there is any variation in the response according to any of four factors (type and quantity of drug, addiction or recidivism of the offender). The presentation started with an explanation of the methodology, leading up to a graph of the preliminary results for Member States. Using the same methodology, the countries present in the meeting were scored, resulting in a simple graphical comparison of their legislative frameworks to those within the EU. This was only an illustrative exercise as the methodology and score weighting of the index had not yet been finalised, and some data checking would be required, but it visually contextualised the aspects of national drug legislation discussed.

4. Drug laws in the Western Balkans

Each country was asked to present their national drug laws, concentrating on three common drug law offences: use/consumption; possession for personal use (or possession without intention to supply) and supply (or possession not for personal use). Presenters were asked to highlight the minimum and maximum penalties; existence of police or prosecutor guidelines which 'moderate' the law; and also any 'alternatives to punishment' for each of respective offences and the stage of the criminal justice system at which they could be applied. They were also asked to analyse if there are distinctions in penalties by drug (for example, lower penalty ranges for 'lower risk' drugs); by quantity (how is the quantity defined, if at all; grams, doses, monetary value...); by status of addiction (sometimes there are lower penalty ranges for addicts); by recidivism (sometimes a repeat offence has a higher penalty). Outlines of each country's legal frameworks are given in Annex 1.

Finally, presenters were asked to reflect on the implementation of drug laws in practice (Do you know what sentences users and suppliers actually receive? How many are fined, how many get suspended prison sentences, how many go straight to prison? Do you know the usual size of the fine, or the usual length of the prison sentence? Do you know how many people are allowed alternatives to punishment / how many cases are closed as they have successfully completed treatment?).

In general, it was found that consumption of drugs in the region was specified as a non-criminal offence if in a public place, in laws against public order or drug control, punishable by a fine (though in Montenegro this could be replaced by a 30 day prison sentence). In Albania and Serbia consumption itself was not specified as an offence. In the Federation of Bosnia and Herzegovina (FBiH, one of the entities of BiH), use was not specified as an offence at entity level, but it would often be defined as an offence at canton level within the Federation. This is quite similar to the situation in the EU Member States.

There was a variety of legal responses to laws governing possession for personal use. In Montenegro and two entities of BiH, it was punishable by a fine; in one entity of BiH, Kosovo and Serbia it was punishable by prison. In Albania the courts have decided that punishment for possession of one dose is not punishable, while in Kosovo possession of less than 3g by a first time offender is punishable by a lower maximum prison sentence. In the former Yugoslav Republic of Macedonia, the law only provides for punishment as a fine for a legal entity, rather than an individual. In comparison to the EU Member States, this was quite similar in terms of responses, though it seemed that the definitions of personal use in the Western Balkans were sometimes limited to a much smaller quantity of drugs than in some EU countries.

Drug supply was invariably punished by mandatory minimum sentences, usually of at least three years. In contrast to several of the EU Member States, at first sight no legal framework appeared to provide for discretionary prison sentences for any drug supply offence that could allow the judge to give no prison in very minor supply cases (example, sharing a cannabis cigarette with friends) or a few months in prison if it was considered appropriate or proportionate. For this reason, the limited definitions of possession for personal use were quite significant, as they implied a major jump between the two possible sentences available to the judiciary; either very small, such as a fine, or very large, with most countries starting with a minimum sentence of three years. This might reflect a strong political signal against drug supply or it may be a consequence of the countries' experiences of being on major trafficking routes, rather than having the problems of low-level street dealing found in the EU Member States with notable levels of drug use. Nevertheless, one judge from Montenegro clarified that minor supply offences could be prosecuted as 'enabling drug use' which would give the opportunity for a lower penalty.

Alternatives to punishment were available in some countries, though these appeared to be usually awarded at the sentencing stage, minimising any possible effect of reducing burden on the courts that is sometimes the motivation for applying them (by comparison, in several EU Member States these may be applied at the prosecution or pre-verdict stage). Several of alternatives to punishment were described as mandatory treatment orders, but it was not clear from the discussion in the Academy whether these would usually require consent of the offender or not. There was also no time to discuss whether a successful treatment programme would have an effect on the conviction record of the offender, as can often be the case in EU Member States.

No country stated that the penalties varied by drug involved, with some participants commenting that even the judiciary would not vary the penalties by drug, in contrast to knowledge of judicial practice in the EU Member States. Only Kosovo and the former Yugoslav Republic of Macedonia had the legal definitions of small or large quantities that would vary the sentence range. There were no variations of penalty reported for an addicted offender, and only the law in Kosovo would specify higher penalties for recidivists, both for use-related and supply-related offences.

In discussions, participants expressed particular interest in the topics of how quantities were determined and established: whether a 'small' quantity should be defined in any way, how much constitutes a 'dose', whether the weight of the substance should measure only the active principle or the entire substance found. There was also a question about the implications of having a law that gives one maximum penalty, while directives to police or prosecutors gave instructions to close the case with a much lower penalty. Linked to the measurement of potency, there was also some interest in how the EU permitted, or even subsidised, cultivation of low (0.2%) tetrahydrocannabinol (THC) hemp for industrial fibre.

5. Reporting on drug law offences

Mr Luis Royuela, EMCDDA, gave a presentation regarding drug law offences (DLO). He introduced the methodological background and conceptual framework for this, and moved on to describe the EMCDDA's monitoring system regarding drug law offences, leading to the current lines of work and a detailed description of the EMCDDA's reporting tool for this sub-indicator, standard table 11 (ST11). He described the different sections and frames of ST11: introduction and rules on how to fill in the table, identification data, the data section with the three data frames — data by type of drug and offence, data by type of offence and total offences and offenders — and the metadata section. He continued by explaining the next step for developing DLO reporting and the cooperation with Eurostat regarding criminal drug law offences.

Each country was advised to bring their data on drug law offences to the meeting, and they tried to populate the ST11 with the data available. The feedback after the trial indicated that some countries experience certain problems when they try to fill one or more of the frames, due to a lack of data. In most countries, data from initial reports from the police were available, however, not all of them had the breakdown by drug and type of offence. All in all, the exercise was very useful and gave a good picture of the DLO data available in the participating countries.

A participant from Montenegro explained that the courts have their own judicial information system (PRIS) which records the offenders and penalties, as well as the type and quantity of drugs for proceedings which come to court. The information recorded in PRIS differs from police data due to several procedural reasons. When charges are suspended due to a lack of evidence, the police evidence is entered instead. She also noted that there were few large seizures in the records as often these were the result of controlled deliveries that would be recorded in the country of seizure.

6. Controlling new psychoactive substances

Mr Brendan Hughes, EMCDDA, gave a presentation explaining the different legal mechanisms normally used by countries to bring new psychoactive substances (NPS) under control and how the combination of globalisation and the Internet had challenged these mechanisms by accelerating the development of substances to a speed at which many of the traditional classification mechanisms could not keep up. He then described the various legal responses that different EU Member States apply since 2009, broadly classed into: use of existing, non-drug control laws such as medicines or consumer safety legislation; modification of drug laws, often by introducing group controls as well as the individual listing of substances; and specialist legislation designed to address the issue of open sale of substances that were psychoactive and may cause public harm. (more information available in [legal approaches to controlling new psychoactive substances](#).)

Mrs Orsolya Varga, the Hungarian national focal point, presented the Hungarian perspective. She started by giving a brief overview of the three step approach of [the Council Decision 2005/387/JHA](#) on the information exchange, risk assessment and control of NPS. After presenting some statistics regarding the situation with NPS, she told the participants about the existing regulation in Hungary, presenting the relevant legal background and the aims of the regulation. The Act 95 of 2005 on pharmaceutical preparations for human use and on the amendment of the acts regulating the pharmaceutical market gives the frame for the scheduling mechanism in the country. Description of the rapid assessment and the risk assessment of NPS and criminal consequences were shown through examples from recent years in Hungary. She highlighted the role of the national focal point in the procedure as data collectors and providers both for national and international assessment systems. The problems regarding the NPS phenomenon (lack of information, missing legal background, low capacities) were presented as starting point for discussions between the Western Balkan countries.

In Serbia, a new list of forbidden compounds has been created, including some synthetic cannabinoids. To add a substance to the list from the Law on Controlled Psychoactive Substances from January 2012, replacing the old law on narcotics, established a 15-person Commission of Psychoactive Controlled Substances, elected by government decision for four years. It is currently presided by the Ministry of Health but could also be independent. Experts on the Commission are from medicine, pharmacy and chemistry, also from the Ministries of the Interior, Justice, Education, Agriculture, Defence, Sport and Youth. These experts discuss whether a substance should be on the list, whether it can already be found in the country or is likely to be found there in the future. Laboratories in different cities find different substances, which indicate that the markets are diverse.

In Kosovo, the national law is under amendment to add an article on the control of NPS as there is no such article there currently, probably using temporary control.

In BiH, the law on Prevention and Abuse from 2006 includes a list of narcotics, plants, precursors, etc. There is also a commission of experts to propose changes which must be approved by government. The list has been amended three to four times since its establishment, e.g. with mephedrone.

In Montenegro, the list of controlled substances is updated by the Ministry of Health. Since about 2008, they have a legal procedure called the 'Rulebook on Forming the List of Drugs and Plants' that includes procedures for adding to the separate list for NPS made with the police forensic centre and the Montenegrin Agency for Medicines and Medical Devices; then it will be an offence to sell or distribute these. The main problem substances are found during the summer tourist season, but in seven years there has been little need to change the list. They have identified MDPV (with external assistance) and used Article 21 of the drug law to add this as a new substance. Nevertheless Montenegro showed a lot of interest in learning about the practicalities of establishing an early warning system and whether it needed a written protocol to enforce information exchange between the different bodies.

7. Concluding remarks

In conclusion, Cécile Martel, EMCDDA, thanked the presenters, the participants, and the organisers from the Montenegrin authorities. Mrs Sekulic, Montenegro Ministry of Health, thanked all participants and experts, and proposed to cooperate further on the exchange of information on drug law offences and the drug law index, as well as on strengthening forensic chemistry expertise developing early warning systems.

Annex 1. Summaries of countries' drug control legislation

Albania

In Albania, use is not specified as a distinct offence, while possession for personal use of small quantities is not punishable (Criminal Code art 283). In 2008, the Supreme Court decided that a small quantity is a single dose for that individual, not a standardised amount. Above this, offenders will be charged with a trafficking offence. Following a conviction for drug possession, if the offender is addicted to drugs, probation may include an order for treatment (Criminal Code, Art 60/12). In general, depending on the quantity of drug, the age of the offender and sometimes the type of drug, in practice, alternatives to punishment may be applied (Criminal Code arts. 59, 60). Penalties in the legal framework for personal possession do not vary by drug, by addiction or recidivism of the offender.

Selling, offering for sale, giving or receiving in any form, distribution, transportation, delivery, and keeping, except for personal use and in small doses, narcotic and psychotropic substances, as well as seeds of drug plants, in violation of the law or in excess of their content, is punishable by five to ten years in prison. The same act, if committed in collaboration or more than once, is punishable by imprisonment from seven to 15 years. Organising, managing or financing of this activity is punishable with imprisonment from 10 to 20 years (Criminal Code, art.283, 283a, 284, 284c.). Penalties for supply do not vary by type or quantity of drug. Following conviction for supply, probation may include an order for treatment (Criminal Code, Art 60).

Bosnia and Herzegovina

In Bosnia and Herzegovina (BiH), use-related offences are regulated at the level of the three entities, the Federation of Bosnia and Herzegovina (FBiH), the Republika Srpska, and Brcko District. Supply-related offences are punished by a law at the state level if they involve international crimes, and at the entity level if they involve supply offences within the country (State Law on Prevention and Combating Abuse of narcotic Drugs in BiH, art. 85). Possession is a minor offence punishable by a fine of about Euro 500–1 500.

In the Federation of BiH, use is not prohibited at Federation level, but at the lower (canton) level, several cantons prohibit use in public. Personal possession is punishable by up to one year of imprisonment (Criminal Code of FBiH (CCFBiH) art 238; State Law on Prevention and Combating Abuse of narcotic Drugs in BiH, art. 85). These penalties in the legal framework do not vary by drug, by addiction or recidivism of the offender.

In Republika Srpska, use of narcotic drugs in a public place and possession for personal use is a minor offence punishable by a fine of about EUR 250–75 (Law on Public Order and Peace of Republika Srpska; State Law on Prevention and Combating Abuse of narcotic Drugs in BiH, art. 85). Laws on misdemeanour offences provide for a security measure of outpatient treatment, suspending or reducing sanctions, for someone who has committed an offence under the influence of drugs. Penalties in the legal framework for personal possession do not vary by drug, by addiction or recidivism of the offender.

In the Brcko District, use of narcotic drugs in a public place and possession for personal use is a minor offence punishable by a fine of about EUR 250–750 (Law on Public Order and Peace of Brcko District, art 31). These penalties in the legal framework do not vary by drug, by quantity, or recidivism of the offender. As in Republika Srpska, laws on misdemeanour offences provide for a security

measure of outpatient treatment, suspending or reducing sanctions, for someone who has committed an offence under the influence of drugs.

Across the territory of Bosnia and Herzegovina, international supply is punishable by not less than three years in prison; if by organised crime, not less than five years (Criminal Code of BiH, art. 195).

Production and sale is punishable by one to ten years, with a minimum of three years if by an organised group (Criminal Code of the Federation of BiH, art 238; Criminal Code of Brcko District, art 232); and by three to ten years, rising to up to 15 years if organised or involving minors (Criminal Code Republika Srpska, art 224).

Laws on misdemeanour offences provide for a security measure of outpatient treatment, suspending or reducing sanctions, for someone who has committed an offence under the influence of drugs (Criminal Code of BiH art 72.; CCFBiH art 75., CCRS art 59.,; CC Brcko District art 75). Penalties for supply do not vary by drug, quantity, or recidivism of the offender.

Kosovo

Use or personal possession of narcotic medication without prescription is an administrative violation and is punishable by a fine of EUR 150–300 (Narcotic and precursors Law 02/L-128). Possession of drugs which are prohibited in Kosovo for personal use is considered a crime, and is punished by one to three years in prison. Possession of less than 3g by a first time offender is punishable up to one year (Criminal code, Art 272-281). The court may impose a suspended sentence with an order for mandatory rehabilitation treatment, where the convicted person is a first time offender and a drug addict or alcoholic (Criminal code, Article 57).

With regard to supply, import or export of drugs is punishable by three to ten year of imprisonment. Cultivation or supply is punishable by two to eight years. In aggravated circumstances (such as crimes involving distribution and trafficking, or those within 350 m of an educational institution) the punishment may increase up to 12 years. Drug production may be penalised by a fine and imprisonment for six months to 10 years. If large amounts of substances are involved, the punishment may increase to 15 years. If there is involvement of organised crime, the penalty is at least seven years and at least 10 years for the organiser (Criminal Code Art 272-281). Supply of narcotics which are allowed in Kosovo, not according to the provisions of the law, is a punishable offence (Narcotic and precursors Law 02/L-128).

The former Yugoslav Republic of Macedonia

Use of drugs in a public place is a misdemeanour which will be fined EUR 200–500 (Law on misdemeanours against public order and peace, Art 20). Regarding possession for personal use, a legal entity may be fined EUR 15 000 to 30 000 in denars if there is possession of narcotic drugs, psychotropic substances or plants that can be used to get narcotic drugs; as the law does not specify a penalty for individuals, but this may change in the near future. According to the wording of the provisions of the Criminal Code, possession for personal use should not be sanctioned. This is in accordance with the Supreme Court decision from 1993 which states that mere possession without intention to sell is not considered a crime. It is possible to have an alternative measure or security measure. For these use-related offences, there is no specified variation of penalty by drug, addiction or recidivism, but according to the general rules for punishment, recidivism should be considered as an aggravating circumstance.

Production or possession for supply is punishable by three to ten years of imprisonment. If committed by several persons, the penalty is at least five years. Offences involving a smaller amount of drugs (defined by prosecutor directive 16/2010) are punished by six months to up to three years (Criminal Code, Art 215). The Public prosecutor adopted an internal compulsory directive that prescribes the smaller amount e.g. 5 g of marijuana, 2 g of heroin and 2 g of cocaine. This directive is compulsory only for the prosecutors and not for other law enforcement bodies. There are alternative measures (Criminal Code, Art 48), which may include probation; probation with supervision; termination of the criminal proceedings; community service; judicial reprimand and house arrest. The court can also issue the security measure of compulsory treatment of alcoholics and people who use drugs. Otherwise, there is no variation of penalty for the different types of drug, an addicted offender committing a supply offence, or a repeat supply offence.

Montenegro

Use, possession of drugs for personal use, as well as cultivating drugs for personal use, is a misdemeanour offence, punishable by a fine of EUR 30–2 000 that may be replaced with up to 30 days in prison ((Law on Combating Drugs Abuse, art 52); before the law changed in 2011 this was not punishable. Penalties in the legal framework for personal possession do not vary by drug, by any addiction or recidivism of the offender, though general rules on punishment include considering issues such as recidivism when sentencing.

Production or possession for supply is punishable by two to ten years of imprisonment, and two to twelve years if importing. If organising a network, using a vulnerable person (as listed) for supply, or if taking place in designated locations, or if committed by certain public officials abusing their position, the penalty is three to 15 years (Criminal Code, Art 300). Enabling of drug use is prosecuted in a lower court, which is then punishable by a sentence of six months to five years, though this can also be substituted by probation (Criminal Code, Art 301). As punishment, an offender may receive mandatory treatment if the crime was committed due to dependence and there is a serious risk of committing crime in the future. Penalties in the legal framework for supply do not vary by drug, by any addiction or recidivism of the offender.

Serbia

Use itself is not punishable in Serbia. Possession for personal use of small quantities is punishable by up to three years in prison, but punishment may be remitted in minor cases (Criminal Code, Art 246a). It was reported at the meeting that this offence may soon revert once again to being classed as a misdemeanour in the Law on Peace and Order, rather than a crime, as its classification as a crime has not had the desired effect of allowing police to get information about the supply chain. Penalties in the legal framework for personal possession do not vary by drug, by any addiction or recidivism of the offender.

With regard to supply offences, cultivation is punishable by six months to five years. Supply or production is punishable by three to 12 years in prison, or five to 15 years if committed by a group, and at least 10 years if committed by an organised group (Criminal Code, art.246). Penalties in the legal framework for supply offences do not vary by drug, by any addiction or recidivism of the offender.