

REPORT ON RAISED ISSUES
AT THE CONFERENCE "EUROPEAN PERSPECTIEN IN DRUG COURTS" –
STRASBOURG (27-28 MARCH 2003)
CRIMINAL JUSTICE SYSTEM OF THE REPUBLIC OF CROATIA

- Our criminal justice system does not provide for special treatment of persons who commit criminal offences, including those against property, because of drug addiction.

- Perpetrators of drug-induced criminal offences may have diminished mental capacity at the time of committing the crime, and that is the legal grounds for mitigating the punishment (Article 42 of the Penal Law).

- The new Article 264 of the Law on Criminal Procedure anticipates psychiatric analysis if suspected that the accused has committed a criminal offense, because of drug (or alcohol) addiction.

- According to Article 76 of the Penal Law, the security measure of mandatory treatment of drug (or alcohol) addiction, which is issued jointly with the punishment of imprisonment or probational sentence, is issued when the treatment is performed outside prison. It should be mentioned that involuntary treatment of addiction in prison conditions is questionable and causes difficulties, while the confines of a prison are generally an inappropriate place for treatment, given the frequently insufficient qualifications of prison staff, as well as the lack of other equipment for performing medical treatment.

- For the criminal offence from Article 173, paragraph 2 of the Penal Law, probational sentence is not applicable, but only the special minimum of imprisonment of one year under Article 57 of the Penal Law may be reduced.

- The replacement of imprisonment of up to six months with community service is anticipated by Article 54 of the Penal Law, but the consent of the convicted person is mandatory for such replacement, and as far as I know the said legal provision is very seldomly applied in practice.

- There is a number of sanctions for minors or young adults who commit criminal offences under the specific conditions anticipated by the Law on Youth Courts. According to Article 9 of the Law on Youth Courts, the disciplinary measure – special obligations – under Article 109 of the Law on Youth Courts, may be issued against a minor, but also a young adult. One of the special obligations is to subject the perpetrator of the criminal offense to professional medical treatment or drug-addiction rehabilitation process or the rehabilitation process against some other addiction, but the consent of the minor's legal representative is required, while naturally such consent is not required for the young adult. Such special obligation (there is a number of other special obligations, as well) may be issued with the reservation to issue the sentence of juvenile imprisonment from Article 27 of the Law on Youth Courts (basically the same as probational sentence), or with the correctional measure of increased care and supervision (Article 11 of the Law on Youth Courts). It needs to be mentioned that such special obligation is issued against perpetrators of criminal offences who are still not drug addicts in the medical sense of the word, but who use drugs from time to

time and are on their way to becoming addicts. In the case of true drug addicts, the security measure of mandatory addiction rehabilitation treatment may also be issued against this category of perpetrators of criminal offences – minors and young adults (Article 30 of the Law on Youth Courts).

- Sanctions do not include the possibility of avoiding imprisonment, while parole means that the convicted person has served a part of the prison sentence, as anticipated in Article 55 of the Penal Law and Articles 157 through 162 of the Law on Serving the Prison Sentence. The institute of pardon does exist, but it is outside the system of the judiciary.

- The imprisonment of a person who commits a serious criminal offence is unavoidable, unless the legal conditions for probational sentence are satisfied and if the offence is committed to finance the person's drug addiction.

- Bodies (institutions) providing treatment are separate from courts, except in the case of implementation of the security measure of mandatory drug-addiction rehabilitation treatment, which is issued by the court and executed by medical institutions. In that case, institutions performing the treatment (therapy) of the addict pursuant to the said security measure inform the court about the results of enforcement of that measure, and if issued with a probational sentence, under specific conditions the probational sentence may be revoked, and in that case the prison sentence has to be served (Article 76, paragraph 3 in relation to Article 69, paragraph 5 of the Penal Law).

- The integration of medical services into the judicial system is not feasible under the present conditions, because there is no ground for that in the existing regulations. The organisation and the manner of financing the bodies performing the treatment would definitely have to be changed by amending the existing regulations in the field of criminal justice and health care system.

- Our government is currently not exploring alternative methods of sentencing or sanctioning persons who commit criminal offences, because of drug addiction, so that the present proposal of the Law on Amendments to the Criminal Law does not include such alternative.

- In any case, it would be justifiable to seriously review the possibility of avoiding imprisonment in the case of certain drug-induced criminal offences and replacing it with mandatory treatment in therapeutic communities or the so-called communes or associations for prevention of drug abuse, which are non-governmental, that is, outside the state system. That would be particularly justified for perpetrators of criminal offences who are in detention during the criminal procedure, so after the adoption of the non-final first-instance sentence, by which they are sentenced to imprisonment, their detention is terminated and they are issued the security measure of mandatory treatment of drug addiction. The convicted addict is not obligated to undergo mandatory drug addiction treatment while free, because the security measure is issued with the sentence of imprisonment, so he is free and on his own, and exposed to the dangers of drug abuse both against himself and others, for the entire duration of the appellate procedure until the adoption of a final decision. If the second-instance decision confirms the first-instance decision, the convict is to be retained for the remaining part of the unserved prison sentence, because the time spent in detention is calculated as part of his punishment. If the person convicted by a non-final first-instance judgement decides to undergo treatment in a commune, which happens in certain cases, then it is a very

handicapping experience when one day all of a sudden he has to serve the remaining part of his prison sentence. As during treatment in the communes such persons change their personality and value-system in a positive way, it is counterproductive to send them after the finality and enforceability of the judgement to serve their prison sentence, that is, the remaining part of their prison sentence after counting in the detention.

- For such persons, who are almost always young persons between 20 and 30 years of age, it would be opportune to anticipate the possibility of the assuming the obligation to continue treatment in the commune until the end of therapy instead of serving the remaining part of the prison sentence.

- Although formally the entire policy is aimed at preventing drug abuse in all its forms, the results both in prevention and rehabilitation are not satisfactory. The reason, amongst others, is the absence of any alternative form of criminal sanctions, other than imprisonment, available to the courts conducting procedures for drug-induced criminal offences for such category of perpetrators – drug addicts, for example the replacement of imprisonment with some other sanction or measure that does not have substantially repressive, but a least potentially encouraging effect on the rehabilitation from drug addiction.

Report prepared by Lidija Grubić-Radaković judge of the County court in Zagreb
Croatia