



European Monitoring Centre
for Drugs and Drug Addiction

TECHNICAL REPORT

Drug trafficking penalties across the European Union

a survey of expert opinion

EMCDDA

January 2017

About this report

The results of a study on national drug trafficking laws and their application in the Member States of the European Union are presented in this report. It is based on an analysis of the national laws and on the opinions of legal practitioners — judges, prosecutors and defence lawyers — from 26 countries. The penalties set out in national laws for trafficking cannabis, amphetamine, cocaine and heroin are compared with the sentencing outcomes expected by the legal practitioners, including penalties imposed and the estimated time likely to be spent in prison.

About this series

Technical reports provide readers interested in specialised issues in the drugs field with some of the latest findings related to illicit drugs in Europe. These publications may cover any drug-related topic and range in size and content from short reports of expert meetings to longer studies on specific research questions. Technical reports are published online and in English.

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The EMCDDA's publications are a prime source of information for a wide range of audiences including policymakers and their advisors; professionals and researchers working in the drugs field; and, more broadly, the media and general public. Based in Lisbon, the EMCDDA is one of the decentralised agencies of the European Union.

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Recommended citation: European Monitoring Centre for Drugs and Drug Addiction (2017), *Drug trafficking penalties across the European Union: a survey of expert opinion*, Technical report (available at: emcdda.europa.eu/publications/technical-reports/trafficking-penalties).

Acknowledgements

This report was written by Robert Kert, Andrea Lehner, Brendan Hughes and Olga Dalbinoë.

Thanks to Jane Mounteney, Russell Webster, Eoghan Quigley and André Noor.



European Monitoring Centre
for Drugs and Drug Addiction

Praça Europa 1, Cais do Sodré, 1249-289 Lisbon, Portugal

info@emcdda.europa.eu | www.emcdda.europa.eu

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Drug trafficking penalties — an introduction

Since 1961, three United Nations conventions have recommended that the unauthorised supply of narcotic drugs and psychotropic substances should be treated as a criminal offence, punishable by sanctions including imprisonment. As the conventions were not more specific, a wide variation exists in the possible penalties for drug trafficking offences across Europe. The European Union attempted to reduce this diversity through the Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking (Böse, 2011; Kert and Lehner, 2013). However, two evaluations by the European Commission (European Commission, 2009, 2013) found that these minimum rules had ‘no significant impacts’ on the practice of prosecutions, convictions and sentencing in Member States.

Recent research into the laws of 11 EU Member States on five serious crimes, including drug trafficking, found that considerable differences exist between the maximum penalties in their laws. The countries tended to view the setting of maximum penalties as a national, rather than EU, level issue. Additionally, in these countries maximum penalties were rarely used and sentences tended to be at the low end of possible sentencing ranges (European Commission, 2014). In line with the findings of earlier studies by the EMCDDA (e.g., 2009), it was found that differences in the statistical reporting between countries, and in particular the lack of complete, multi-level and time-series data, greatly hindered any comparison of sentencing practices.

There has been some convergence in the way that EU Member States respond to illicit drugs over the last decade, including in the legal penalties applied to drug use offences. However, countries still tend to pursue individual approaches in the area of drug trafficking. This paper describes the different legal penalties applied to drug trafficking offences in EU Member States. The aim of this study is to explore the extent to which there are differences between (and within) countries in drug trafficking legislation and sentencing. Through this, the paper contributes to discussion on judicial cooperation on this issue. It also aims to provide researchers working in the area with a European overview that can contribute to comparative work on different national systems.

Method

Data was collected through a survey of judges, prosecutors and defence lawyers from the 28 EU Member States. Using a questionnaire, information was gathered on the views of the practitioners on different sentencing scenarios focused on penalties prescribed in laws, the expected sentence length and the expected period of incarceration. Given the highly specialised knowledge required to complete the questionnaire, a purposive sample of respondents was generated. This provided a means of obtaining an insight into national sentencing practices, albeit one with certain limitations. First, the samples are not statistically representative of legal practitioners' opinions or practices in the countries; for example, in three countries no judges were interviewed. In addition, the scenarios and the assumptions needed to generate answers were hypothetical and not reflective of typical cases. The scenarios specify certain factors that may affect sentencing practice, but others may also be relevant. Nonetheless, the approach taken provided a first step towards observing what cannot be otherwise seen because of the challenges that remain in the national level criminal justice statistical reporting systems in EU Member States. The findings from these questionnaires form the basis of the national legislative context and case scenarios in the following sections.

The research in Member States was carried out within the framework of the European Criminal Law Academic Network (ECLAN). The network's national experts were asked to select at least five respondents (judges, prosecutors, defence lawyers). Most questionnaires were completed between November 2013 and April 2014. Questionnaires were received from all EU Member States, except Malta and the United Kingdom. Nevertheless, key legislative examples sourced from these countries' national statute books were included at relevant points in the text. A breakdown of the profiles can be seen in Annex 2.

There are substantial variations in national definitions of drug supply offences in the European Union. Consequently, this report is based on the definitions and categorisation set out in the EU Framework Decision 2004/757/JHA on drug trafficking (1). It recommends that states adopt a minimum length of maximum sentence for drug trafficking offences. Since the framework decision only provides for minimum standards, the Member States are allowed to set higher penalties; and most do so (European Commission, 2013).

Respondents were asked to estimate the length of prison sentences expected to be passed by their country's courts and the length of time actually spent incarcerated. This scenario methodology was used in a study of outcomes for drug users (EMCDDA, 2002), and piloted for traffickers in the 2009 evaluation of the Framework Decision 2004/757/JHA. Respondents were also asked to describe the rules governing early release in the countries, and to give their opinion on whether such rules would be 'very likely', 'probable', or 'very unlikely' to be applied in the scenarios. Legal practitioners' answers provide the basis for the comparison of how drug trafficking laws are actually implemented in different countries (2). The national experts were also asked to write short country profiles on drug trafficking penalties in a standardised format. The country profiles form the basis for this report and can be found in Annex 3.

Notes

(1) According to this provision the 'basic' offence of drug trafficking comprises the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs; the cultivation of opium poppy, coca bush or cannabis plant and the possession or purchase of drugs with a view to conducting one of the activities listed above (Article 2(1) (a)-(c)).

(2) There have been several changes in criminal codes with notable penalty changes since the 2013 European Commission study. As a result of research period for the present study, the older laws and penalties were considered in Italy, while the newer laws and penalties were considered in Hungary and Romania.

The findings are presented in two parts: the national legislative context and the expected practice case scenarios. The first part establishes the context with an analysis of the legal statutes in all Member States, considering the different penalties for the basic offences of drug supply and whether there are maximum or minimum sentences. It goes on to explore the different aggravating and mitigating circumstances and how they affect the penalties before looking at prosecution and sentencing guidelines, which may complement or interpret the legislation. It then considers the applicable legislation on early release of offenders. Once these differences are set out, the second part of the paper addresses the question of implementation by using a case scenario methodology. Eight specific case scenarios were defined and approximately five legal practitioners (namely judges, prosecutors and defence lawyers) from each country were asked to give their opinion on the expected penalty in each case, together with the likelihood and effect of early release, allowing comparison of expected duration of incarceration.

National legislative context

This section outlines the commonalities and differences in the laws of all 28 EU Member States in the following: penalties for trafficking offences; minimum and maximum penalties; definitions and effects of aggravating and mitigating circumstances. For the 26 Member States for which country reports were submitted, it then outlines differences in sentencing guidelines, and legislation on early release applicable to those convicted of drug supply.

Established penalty limits for drug trafficking offences

Basic offences

The first topic for comparison is the penalties for those drug trafficking offences where there are no aggravating circumstances; the evaluation of the framework decision referred to these as ‘basic offences’ (European Commission, 2013). The framework decision does not recommend a specific sanction for basic offences but, rather, provides for maximum penalties of at least 1 to 3 years. In fact, the countries’ provisions for maximum sentences for basic offences vary between 1 year and life imprisonment.

In several countries there is not just one maximum penalty, since there are different penalties for different categories of drugs, which are often classified according to the harm they are likely to cause to individuals and wider society. There are also different offences and penalties relating to the scale of supply activity. In some countries, the penalty is linked to the level of court at which an offence is prosecuted, which is itself typically linked to the seriousness of the offence. This is the case in Bulgaria, Ireland, Cyprus, Malta and the United Kingdom. In eight countries, the maximum penalty for the basic offence is 3 years or less in prison. By contrast, in four countries (Ireland, Cyprus, Malta, United Kingdom), life imprisonment is already specified for the basic offences, depending on the type of drug involved or the court in which the case is prosecuted. This represents a sanctioning system which gives far-reaching discretion to judges. In a few countries such as Italy, Poland and Portugal, a sentence range is given for a ‘basic’ offence, and a lower sentence range is given in case the offence is considered ‘minor’.

Maximum penalties

Life imprisonment is available for the most severe cases in 12 countries. Excluding the ‘basic’ offence, above, according to the texts of the drug laws there are five different types of cases in which life imprisonment can be imposed, with one or more applying in different countries:

- Offences are committed as part of a criminal organisation (Estonia, Greece, France, Austria, Slovakia)
- Supply of drugs that cause most harm to health (Ireland, Greece, Cyprus, United Kingdom)
- Supply of large quantities of drugs (Greece, Hungary, Slovakia)
- Resulting in death (Greece, Slovakia) of a minor (Luxembourg)
- Significant financial gain (Estonia, Greece)

In the other 16 Member States, maximum penalties for drug supply range from 10 years (Finland, Sweden) to over 20 years (Italy, Portugal).

Minimum penalties

Since maximum penalties are rarely imposed, in most countries minimum penalties have more impact on actual sentences imposed. Minimum penalties are the lower limits for the determination of the sentence and should be adhered to except when exceptional circumstances apply. Nineteen countries stipulate minimum penalties for some basic offences of drug supply. In some countries different minimum penalties apply to different offences, depending on various factors. Minimum penalties range from 1 year or less in nine Member States ⁽¹⁾ to 8 years in Greece. In nine countries there are no minimum penalties; however, some countries' criminal laws stipulate a minimum length for any prison sentence, such as one or two months. This factor is not considered here.

In summary, Member States have very different approaches to setting maximum and minimum penalties for drug supply offences. Most countries have maximum penalties and over half have minimum penalties. The different combinations of factors in each legal framework mean that neither measure is a suitable indicator for comparing the severity of the sanction imposed by countries for any particular offence.

Aggravating circumstances

General aspects

Aggravating circumstances for drug supply offences are common in most countries' legal systems. Most of these circumstances are found in the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Article 3). However, the drafting styles of the laws vary. Some countries provide for a comprehensive catalogue of additional circumstances which lead to higher penalties. Other legal systems provide for only a few additional aggravating circumstances, which change the range of penalties (e.g. Lithuania, Hungary, Netherlands, Poland, Sweden).

The most frequently found aggravating circumstances for drug supply offences are the following:

- involvement of large quantities of drugs;
- involvement of drugs which cause the most harm to health, or which have resulted in significant damage to the health of a number of persons; and
- trafficking drugs as part of a criminal organisation.

In countries where these criteria are not prescribed in legal statutes, they are often included in guidance which influences the judges' discretion when passing sentence.

Quantity of drugs

Nineteen European countries ⁽²⁾ specify the quantity of drugs as an aggravating circumstance that influences the range of penalties. However, there is no common understanding as to what is a 'large' quantity. Various ways of defining a large quantity are applied in different countries (EMCDDA, 2015).

⁽¹⁾ Belgium, Germany, Estonia, Spain, Croatia, Luxembourg, Malta, Slovenia, Finland.

⁽²⁾ Bulgaria, Czech Republic, Denmark, Germany, Estonia, Ireland, Spain, Greece, Hungary, Italy, Latvia, Lithuania, Austria, Netherlands, Poland, Slovakia, Finland, Sweden, United Kingdom.

In these 19 countries, the maximum penalties for the aggravating circumstance of a large quantity of drugs range from 4 years (Netherlands) to life imprisonment (Hungary). Since the definition of a large quantity is different in each country, these figures are difficult to compare. There are countries with several levels of large quantities for which different penalty ranges are specified.

Harm to health

The aspect of harm to health as an aggravating circumstance is contained in the drug trafficking legislation of 19 countries ⁽³⁾. Some countries classify drugs into different legal categories based on their relative risk to health (Cyprus, Netherlands, United Kingdom), which are linked to different levels of penalties for each category.

Where harm to health is specified as an aggravating circumstance, there is still a wide range of maximum penalties, ranging from 9 years in Spain, to life imprisonment in Ireland, Greece, Cyprus, Slovakia and the United Kingdom.

Trafficking as part of a criminal organisation

Trafficking drugs as part of a criminal organisation is clearly specified as an aggravating circumstance in 25 countries ⁽⁴⁾. In those countries, there are marked differences between the maximum penalties, ranging from 8 years to life imprisonment.

Other aggravating circumstances

Besides the three most common types above, other aggravating circumstances are reported:

- Distribution of drugs targeted at certain vulnerable groups, including pregnant women, minors, prisoners and people with learning disabilities, people undergoing treatment for addiction, or people who are susceptible to persuasion or coercion (17 countries).
- When the offence has caused death, or serious bodily or mental injury (Germany, Greece, Spain, Croatia, Latvia, Luxembourg, Malta, Portugal, Romania, Slovakia).
- Offence committed in specific places, such as prisons or police detention centres, welfare centres, schools, universities, military establishments, rehab centres or near such places (Estonia, Spain, France, Italy, Cyprus, Malta, Portugal, Slovenia, United Kingdom), restaurants, discotheques or similar places frequented by children or young people (Denmark), establishments open to the public (Spain, Slovenia) or in public places (Bulgaria).
- Offence committed by a specific offender who may be abusing their position — particularly professionals in a position of trust such as teachers, doctors, pharmacists or postal workers, or those such as prison or probation staff (Bulgaria, Greece, Spain, Croatia, Cyprus, Portugal, Slovenia).
- The possession or use of weapons (United Kingdom) or the use of violence, force, firearms or offensive weapons (Germany, Greece, Spain, Italy, Cyprus, Latvia).
- Offences committed repeatedly with the intent to earn money (ongoing commercial operation) (Czech Republic, Germany, Estonia, Austria, Portugal, Finland).

⁽³⁾ Belgium, Bulgaria, Czech Republic, Denmark, Germany, Ireland, Spain, Greece, Croatia, Italy, Cyprus, Latvia, Luxembourg, Netherlands, Portugal, Romania, Slovakia, Finland, United Kingdom.

⁽⁴⁾ All EU Member States except Denmark, Ireland and Romania.

- Commission of a drug supply offence together with other offences (Denmark, Estonia, Cyprus, Luxembourg).
- Repeat offending (Belgium, Bulgaria, Czech Republic, Austria, Portugal, Slovakia).
- Offences committed by a criminal gang (Germany, Austria, Portugal), a group (Latvia), or substances were distributed by a large number of persons (Portugal).
- The exploitation of persons under the age of 18 or who suffer from a mental illness to execute drug supply offences (Spain, Slovenia, United Kingdom).

In summary, although there are numerous aggravating circumstances, most countries highlight factors relating to the quantity of drugs involved, the harmful nature of the substance or the involvement of criminal organisations as reasons to impose more severe penalties. Nevertheless, as with conditions attached to maximum and minimum penalties, different countries give different weight to these aggravating circumstances.

Mitigating circumstances

Among the national laws on drug trafficking in the EU Member States, there are far fewer mitigating circumstances than aggravating ones. There is little consistency between countries.

The drug laws of eight countries (Belgium, Germany, Greece, Spain, Italy, Malta, Portugal, Romania) specifically stipulate that an offender may receive a more lenient sentence if they cooperate with the authorities by providing information which helps to bring other drug traffickers to justice. The exact requirements and the extent of mitigation differ between countries, but all involve a reduction in the penalty (e.g. in Italy a prison sentence is reduced by between half and two thirds); in some countries there is even the possibility for the prosecutor to dismiss proceedings against the offender. Five countries apply additional mitigating circumstances when the offender supplies drugs to finance his or her own addiction (Belgium, Greece, Hungary, Austria, Portugal), while Italy may consider an offence minor due to the means, characters or circumstances of the action or quantity or quality of the narcotic substances.

As with aggravating factors, some countries prescribe mitigating factors in legal statutes, while in others the judges will consider them when sentencing.

Sentencing guidelines

Most Member States did not report specific sentencing guidelines for drug supply offences. In some countries, this may be because the laws are already quite detailed in their penalties for different offences. Nevertheless, guidance for sentencing drug supply offences does exist in seven European countries. The guidance is provided for prosecutors and judges, and in some cases comes from supreme courts.

Sentencing guidelines for prosecutors

Sentencing guidelines for prosecutors were reported from Denmark and the Netherlands.

In Denmark, the Director of Public Prosecutions has issued detailed guidelines for sentencing pleas by prosecutors, stipulating criteria regarding the distinction between possession for personal use and sale and delimiting quantities of each specific type of drug for supply offences.

In the Netherlands there are guidelines for the prosecution on the intensity of the investigation and prosecution and directions for the sentence plea. The guidelines are binding on prosecutors, who are only permitted to deviate in exceptional circumstances, which must be explained to the court or it must declare the prosecution inadmissible. In sentencing, judges often follow the prosecution's recommendations, or tend not to deviate much from them. These guidelines were most recently revised in 2012.

Sentencing guidelines for judges

Sentencing guidelines for judges for drug supply offences were reported from the Netherlands, Sweden, Finland and the United Kingdom.

In the Netherlands sentencing guidelines are used by the courts as a non-binding starting point in the determination of penalties. The actual penalty in a specific case depends on its individual circumstances. The sentencing guidelines for drug offences differentiate three types of drugs supplier: 'mule', 'standard' and 'organisation', with different sentencing tariffs. The category of the offender has a greater impact on the penalty than the amount of drugs involved.

In the United Kingdom a new definitive guideline for all drug offences committed by adults came into effect in 2012. Similar to the Netherlands, the court is required first to determine the offender's culpability (their role in the case) and the harm caused. Then the court should use the corresponding starting point to reach a sentence within one of the defined categories. Finally the court is advised to consider further adjustment within the category range for aggravating or mitigating features.

In Finland there are no official sentencing guidelines, but a report written by experts in 2006 has aimed to harmonise sentencing for drug-related offences. These guidelines provide for certain sentences depending on the type and quantity of drugs. The guidelines are not an official tool for judges, and courts are not bound to them, but they are widely used as a starting point for sentencing.

In Sweden the Supreme Court issues principles of sentencing which emphasise that, in addition to the type and quantity of the narcotics involved, all circumstances surrounding the individual case must be taken into account. Tables for standard sentences for narcotic offences have been published; they are not legally binding, but are highly indicative of the likely outcome of a case.

Even where sentencing guidelines exist, they are not legally binding on the sentencing judge who typically may modify the expected penalty in the light of the circumstances of an individual case.

Other guidance for sentencing

In countries where the law defines penalty ranges linked to different quantities, there may be guidance as to the quantities. For example, in Bulgaria a decision of the Supreme Court of Cassation, combined with a government ordinance, defines the prices of drugs and thus the threshold quantities. In Lithuania sentencing guidelines approved by order of the Minister of Health provide

definitions of different quantities of substances supplied. There are also some binding precedents of the Supreme Court of Lithuania.

In countries without sentencing guidelines for drug supply offences, and when Supreme Court decisions are not binding, such decisions still tend to influence sentencing decisions in lower courts (e.g. Germany, Spain, Hungary, Austria).

Early release legislation relevant to drug trafficking cases

When comparing sentence lengths for drug trafficking offences it is important to remember that all EU Member States have rules and regulations governing the early release of prisoners. These legal provisions apply to all prisoners, and so they may apply to the drug traffickers in the scenarios in this study.

In many countries there are similar regulations relating to the time after which a prisoner may be released from jail. Several have minimum requirements for time to be incarcerated before these can be applied (e.g. in Austria and Hungary this is a minimum of three months).

There are two types of early release mechanism:

- Automatic — provided a prisoner does not commit further offences in prison and complies with prison rules and regulations regarding acceptable behaviour, he or she is released at different points between one third and two thirds through their sentence, depending on the legislation in each country.
- Conditional — prisoners may be released early if they meet specific criteria, discussed below.

The rules on conditional release vary between Member States, and may be applied after one third, one half, two thirds, or three quarters of the sentence has been served, depending on the country and on various conditions set out in the different laws. Countries will also establish more than one opportunity for early release, so for example a prisoner not qualifying for release after one half of the sentence may be considered under additional criteria after two thirds has been served. Details can be found in the individual country reports, but the most common conditions are as follows:

- The prisoner demonstrates commitment to social reintegration and rehabilitation (e.g. participation in educational and treatment programmes, demonstrating an honest attitude towards work, paying damages to the victims).
- The prisoner is a first-time offender.
- The prisoner is of good behaviour.
- The imposed prison sentence is less than a certain amount of time.
- There is a low possibility of re-offence or a substantial effect on specific deterrence.
- The personality of the prisoner and the circumstances of the offence are appropriate.

There may also be certain conditions which have to be observed after the release.

Expected practice in drug trafficking scenarios

Case scenario approach

Eight case scenarios were designed in order to estimate and compare their elements: penalties provided for by law in these specific scenarios; length of prison sentences expected to be imposed by criminal courts; and time expected to be spent incarcerated.

The scenario

For each case scenario it was assumed that the offender had been found guilty of trafficking ('possession with intent to distribute or supply') a specific amount of a specific substance, namely:

Substance (purity)	Smaller amount	Larger amount
Cannabis resin (10 % THC)	1 kg	10 kg
Amphetamine (20 %)	100 g	1 kg
Cocaine (33 %)	100 g	1 kg
Heroin (25 %)	100 g	1 kg

The following facts — usually relevant for the determination of penalties — were assumed for all scenarios:

- The offender is a first-time offender (no previous convictions) and has committed only one criminal offence. The offender has not committed several (similar) offences.
- There is no involvement of an organised crime group.
- The offender is not considered a drug 'mule' (badly paid international courier) and the offence was not committed under duress.
- The offender is not addicted to drugs and has not committed the offence for her or his personal use.
- There were no dangerous means (e.g. weapons) involved and the offence did not cause serious consequences of any kind.
- The offence did not involve any location (e.g. school, prison) or vulnerable people (e.g. minors, addicts) that the law might address specifically.
- The offender did not admit the offence.

Data collection and analysis

Responses were received from practitioners in 26 Member States. Some respondents answered with ranges, others with discrete values. Using the discrete values or the mid-point of each range, the median expected penalty for the scenario was calculated (the median was chosen in order to compensate for outlying estimates). If less than 80 % of the sentences were for immediate imprisonment, the median was considered not calculable, to avoid conflation of immediate and suspended sentences. All individual estimates can be found in the relevant country profile, in annex.

Regarding the application of early release rules, practitioners in the majority of countries felt that, where a sentence of immediate imprisonment was expected, it was very likely that some early release provisions would be applied in the scenarios. However, answers could depend on the particular early release rule in question (e.g. release after half the sentence was served was considered very unlikely, while release after two thirds was very likely). If there was a consensus as to the proportion of time spent before early release, that proportion was then applied to the median expected penalty to indicate the (median) time spent incarcerated. In a few countries, there was no consensus between the practitioners questioned as to the likelihood of application of any particular rule. In these countries, no expected time of early release has been calculated.

It is important to remember that the opinions of these legal practitioners cannot be considered representative of a situation in a country. Not only is there a small number of opinions from each country, but also there was no statistically representative sample of practitioners that would balance the sample for attributes such as age, gender, seniority, degree of specialism, urban or rural court setting.

Graphics in the following section summarise the findings for the 26 Member States from which data were received. In some cases, the estimated range lies outside the sentencing range, which is hard to understand. There are a number of possible reasons for this, including changes in law at the time of the research and different interpretations of the appropriate range for the scenario. Future studies based on the current methodology should take these possibilities into account.

Cannabis

The maximum penalties provided for by law for supply of 1 kg of cannabis resin vary between 2 years (Denmark, Poland) and life imprisonment (Ireland, Cyprus, Hungary). Eighteen countries provide for minimum penalties in such cases, eight do not. These minimum penalties range from 3 months (Belgium) to 10 years (Slovakia). This means that in some countries the minimum penalties are higher than the maximum penalties in other countries (Figure 1).

In 10 countries, there were some expectations of suspended prison sentences for supply of 1 kg of cannabis resin, so no median sentence could be calculated. Where calculable, median estimates of penalties expected range from less than 1 year in prison in Denmark and Sweden to 9 years in Lithuania and 10 years in Greece. In three countries (Italy, Romania, Slovakia) the median penalties expected to be imposed are — sometimes notably — under the minimum penalty provided by the law. Based on these findings, for the supply of 1 kg of cannabis, the expected period of incarceration ranges from no time (where penalties may be suspended) to 6 years in Greece and Slovakia.

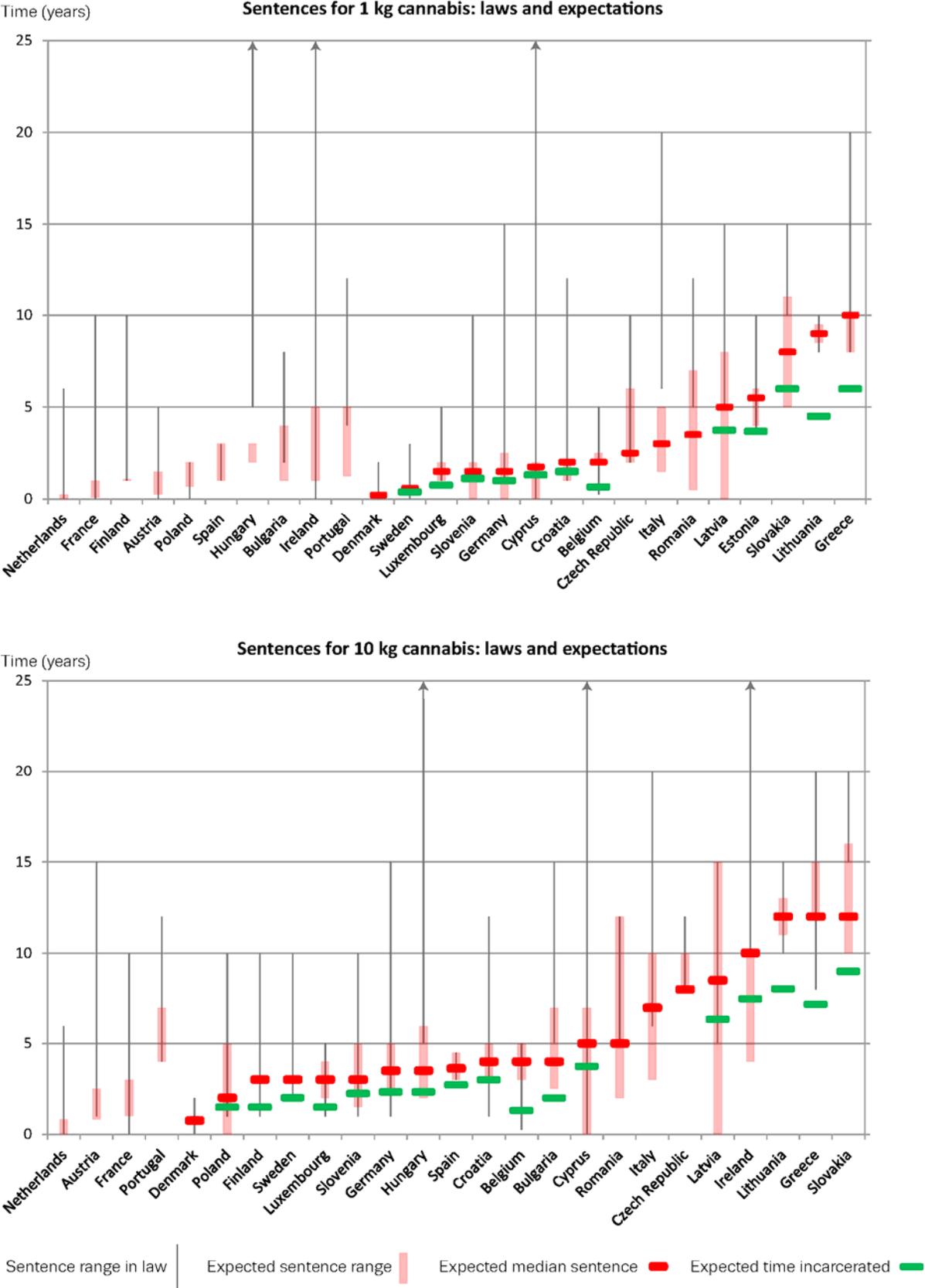
With regard to supply of 10 kg of cannabis resin, laws stipulate maximum penalties of 5 years or less in Belgium, Denmark, Spain and Luxembourg, while life imprisonment is possible in Ireland, Cyprus and Hungary. Minimum penalties are established in 21 countries, with a range extending from 3 months (Belgium) to 15 years (Slovakia), broader than for the smaller amount of cannabis.

In terms of penalties expected, there are enormous differences between the countries. In this case scenario, in four countries there were some expectations of suspended prison sentences, so no median sentence could be calculated. In Denmark, the median expected penalty is less than 1 year, whereas in Greece, Lithuania and Slovakia the median expected penalty is 12 years' imprisonment. It can be seen that expected penalties are not consistently related to penalties provided for by law. For example Luxembourg provides for a penalty of 1 to 5 years by law, and the median expected penalty is 3 years. In Poland, where penalties of 1 to 10 years are provided for by law, the median expected penalty is 2 years.

The time expected to be spent incarcerated differs greatly between countries. Where incarceration is expected, offenders are likely to spend less than 1 year in prison in Denmark, while the time incarcerated can be 7.5 years in Ireland, 8 years in Lithuania and 9 in Slovakia.

In two thirds of the countries the maximum penalty in the law does not differentiate between supply of 1 kg or 10 kg of cannabis. However, when it comes to penalties expected to be imposed, in all countries those for 10 kg are considerably higher, and the possibility of a suspended sentence is lower.

Figure 1: Sentences for supply of a given quantity of cannabis resin in EU Member States



Note: Where the sentence range in law starts at 0, this excludes any general minimum duration of prison sentence in a country. Expected median sentences were only calculated when immediate imprisonment was expected in 80 % or more of responses; see country profiles for details.

Amphetamine

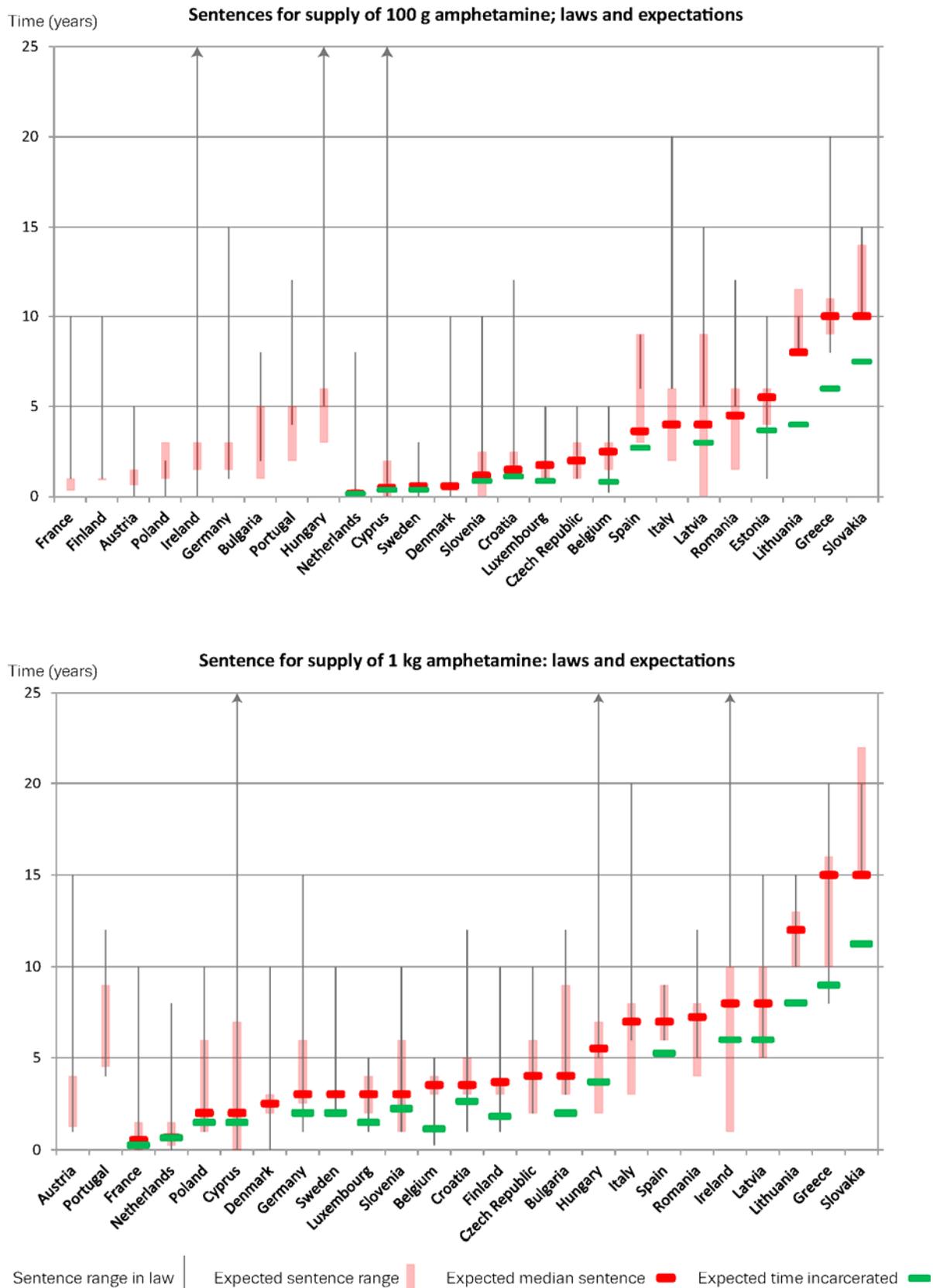
The maximum penalties provided for by law for supply of 100 g of amphetamine range from up to 5 years (Belgium, Czech Republic, Luxembourg, Austria, Poland, Sweden) to life imprisonment (Ireland, Cyprus, Hungary). Eight countries have no minimum penalty, in contrast to Slovakia where the minimum penalty is 10 years' imprisonment (Figure 2).

In nine countries, there were some expectations of suspended prison sentences for supply of 100 g of amphetamine, so no median sentence could be calculated. Where calculable, median expected penalties range from less than 1 year in Denmark, Cyprus, the Netherlands and Sweden, to 10 years in Greece and Slovakia. In the majority of the countries, practitioners expect the penalties to be roughly within the lowest third of the penalty range prescribed by law. Some countries with life imprisonment are expected to impose sentences between 1 and 3 years (Ireland) and up to 6 years (Hungary). However, in some countries where high penalties are provided for by law, high penalties are expected to be imposed (Slovakia). Based on these findings, for the supply of 100 g of amphetamine, the expected period of incarceration ranges from no time (where sentences may be suspended) to 6 years in Greece and 7.5 years in Slovakia.

For supply of 1 kg of amphetamine, maximum penalties in law range from 5 years in Belgium and Luxembourg to life imprisonment in Ireland, Cyprus and Hungary. Four countries have no minimum penalties, while the highest minimum penalty of 15 years is found in Slovakia. Where calculable, the median expected sentence ranges from less than 1 year in France and the Netherlands to 15 years in Greece and Slovakia. In some countries, the views of respondents diverged widely; for example, in Ireland, the different practitioners expected penalties between 1 and 10 years of imprisonment. Based on these findings, the expected time spent incarcerated ranges from less than 1 year in France and the Netherlands, to 8 years in Lithuania, 9 years in Greece and 11 years in Slovakia.

In most countries, the penalties prescribed by law for supply of 1 kg of amphetamine are the same as for supply of 100 g of amphetamine. However, the penalties expected to be imposed for supply of 1 kg of amphetamine are often twice as high as those for supply of 100 g of amphetamine, and there is much less expectation of imprisonment being suspended.

Figure 2: Sentences for supply of a given quantity of amphetamine in EU Member States



Note: Where the sentence range in law starts at 0, this excludes any general minimum duration of prison sentence in a country. Expected median sentences were only calculated when immediate imprisonment was expected in 80 % or more of responses; see country profiles for details.

Cocaine

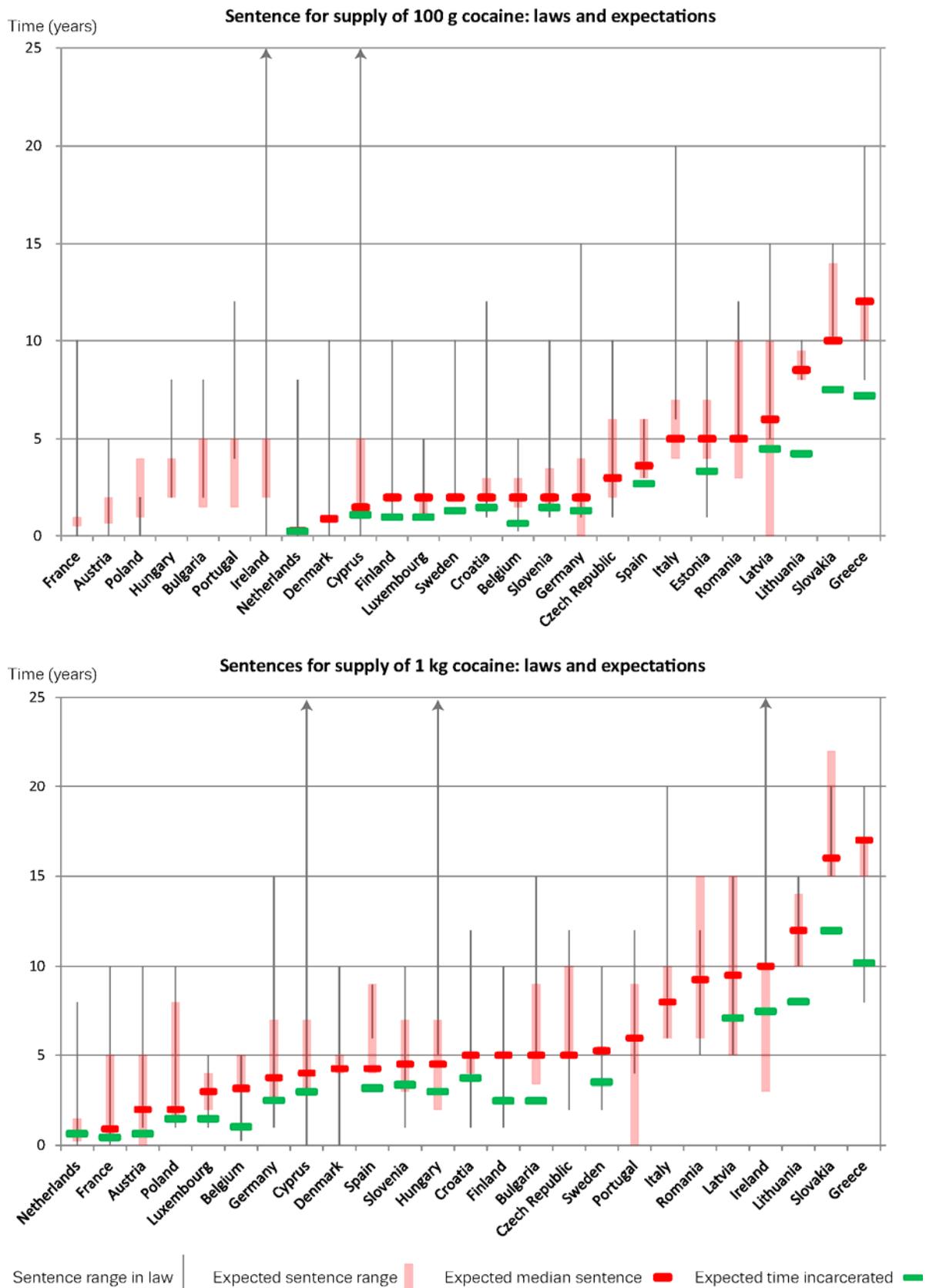
The maximum penalties for supply of 100 g of cocaine laid down in law range from up to 5 years (Belgium, Luxembourg, Austria, Poland) to life imprisonment (Ireland, Cyprus). Seven countries have no minimum penalty, in contrast to Slovakia where the minimum penalty is 10 years' imprisonment. Three countries provide for higher minimum penalties (8–10 years) than the maximum penalties of five countries (Figure 3).

In seven countries, there were some expectations of suspended prison sentences for supply of 100 g of cocaine, so no median sentence could be calculated. Where calculable, median expected penalties range from less than 1 year (Denmark and the Netherlands) to 10 and 12 years (Slovakia and Greece, respectively). Once again, high maximum penalties prescribed by law do not necessarily indicate that high penalties are expected by practitioners. In Croatia the penalties expected range from 2 to 3 years (penalties prescribed by law: 1 to 12 years) and in Ireland from 2 to 5 years (penalties prescribed by law: up to life imprisonment). Based on these findings, for the supply of 100 g of cocaine, the expected period of incarceration ranges from no time (where the sentence is suspended) to over 7 years in Greece and Slovakia.

The maximum penalties provided for by law for supply of 1 kg of cocaine range from 5 years (Belgium, Luxembourg) to up to life imprisonment (Ireland, Cyprus, Hungary). Four countries have no minimum penalty, while Lithuania and Ireland have a minimum penalty of 10 years and Slovakia has a minimum penalty of 15 years. Suspension of sentence is not expected by practitioners in any country. Median penalties expected to be imposed range from less than 1 year in France and the Netherlands to 16 years in Slovakia and 17 years in Greece. Based on these findings, the expected time spent incarcerated ranges from less than 1 year in prison in France, the Netherlands and Austria, to 10 years in Greece and 12 years in Slovakia.

As with cannabis and amphetamine, in most countries, the penalties prescribed by law for supply offences are the same for the larger and the smaller amounts of cocaine. Again, the expected penalties expected for supply of the larger amount (1 kg of cocaine) are often twice as high as those for supply of the smaller amount (100 g). Unlike cannabis and amphetamine, there is no expectation of the sentence being suspended for offences involving the larger amount.

Figure 3: Sentences for supply of a given quantity of cocaine in EU Member States



Note: Where the sentence range in law starts at 0, this excludes any general minimum duration of prison sentence in a country. Expected median sentences were only calculated when immediate imprisonment was expected in 80 % or more of responses; see country profiles for details.

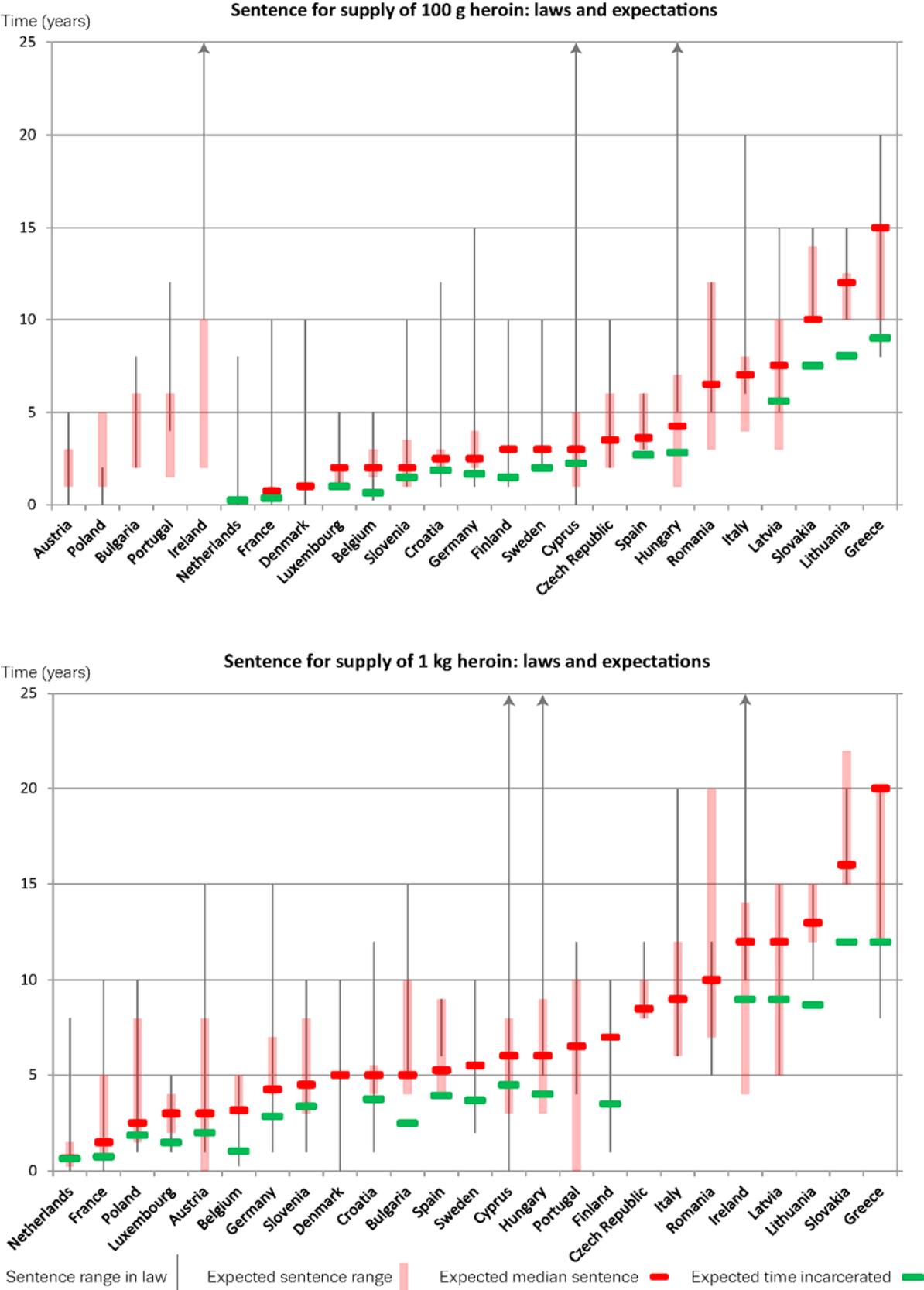
Heroin

For supply of 100 g of heroin the maximum penalties laid down in national laws vary between up to 5 years (Belgium, Luxembourg, Austria, Poland) and life imprisonment (Ireland, Cyprus, Hungary). Six countries have no minimum penalty, six have a minimum penalty of 1 year or less, and elsewhere in Europe the minimum prison sentence ranges from 2 years (Bulgaria, Czech Republic) to 10 years (Ireland, Lithuania, Slovakia). The median prison penalties expected to be imposed in this scenario range from 1 year or less in Denmark, France and the Netherlands, to 12 years in Lithuania and 15 years in Greece (Figure 4). In the 20 countries where practitioners do not report the possibility of the sentence being suspended, the expected time spent incarcerated ranges from 3 months in the Netherlands to 8 years in Lithuania and 9 years in Greece.

For supply of 1 kg of heroin, maximum penalties in laws range from 5 years (Belgium, Luxembourg) to life imprisonment (Ireland, Cyprus, Hungary). Four countries have no minimum penalty, while Ireland and Lithuania have a minimum penalty of 10 years and in Slovakia the minimum penalty is 15 years. Median penalties expected to be imposed range from less than 2 years in the Netherlands and France to 16 years in Slovakia and 20 years in Greece. In the 20 countries where imprisonment is expected, the time likely to be spent incarcerated ranges from less than 1 year in France and the Netherlands to 12 years in Greece and Slovakia.

In most countries the penalties provided for by law for supply of 1 kg of heroin are the same as for supply of 100 g of heroin. In all countries, however, the expected penalty for supply of 1 kg of heroin is substantially higher, often twice as high, than that for supply of 100 g of heroin. While there appears to be some expectation of a suspended sentence for the smaller amount, there is no expectation of suspension for the larger amount.

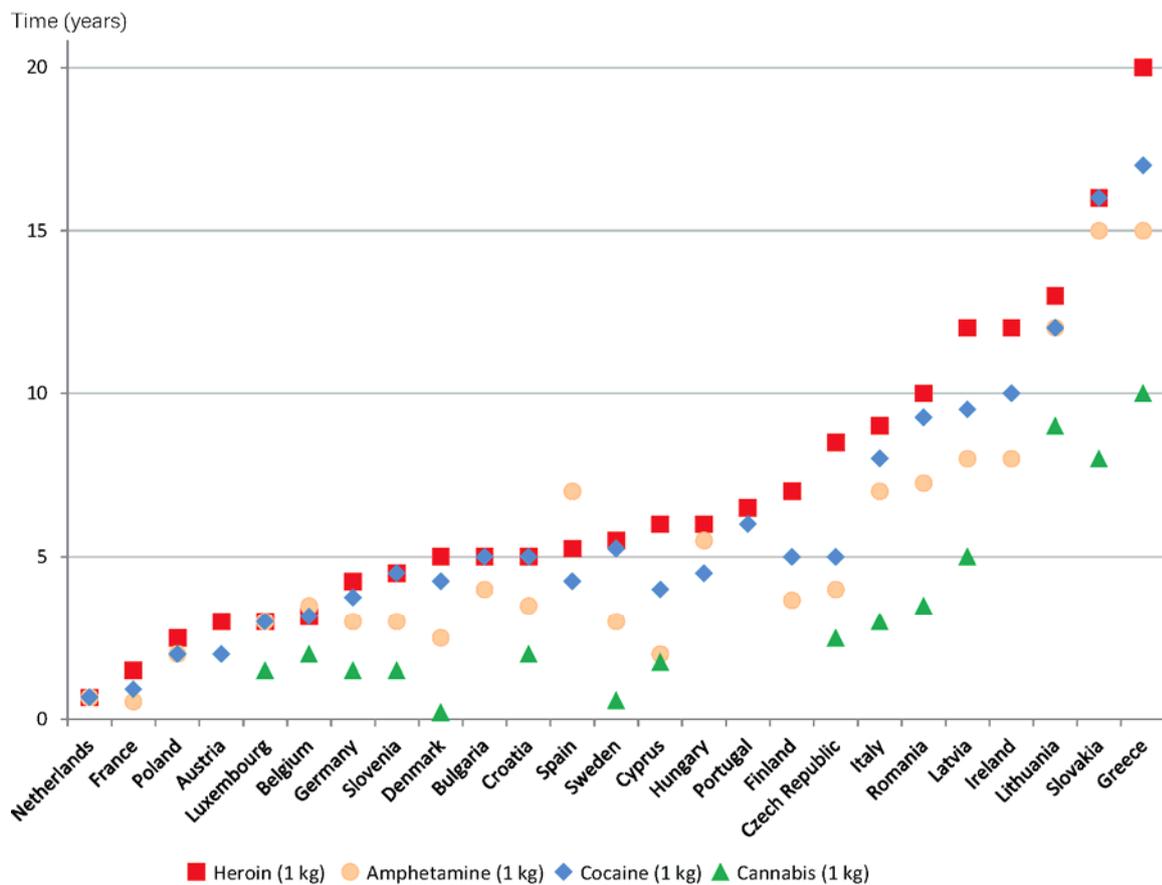
Figure 4: Sentences for supply of a given quantity of heroin in EU Member States



Note: Where the sentence range in law starts at 0, this excludes any general minimum duration of prison sentence in a country. Expected median sentences were only calculated when immediate imprisonment was expected in 80 % or more of responses; see country profiles for details.

When comparing all the substances together, the range of expected prison sentences underlines the extent to which national variation exists in Europe across the four drugs. In some countries, relatively similar penalties are expected for 1 kg of cannabis resin or heroin, while in others there is a clear difference (Figure 5). This can be seen both for countries that give generally shorter sentences and for those that give longer sentences.

Figure 5: Expected prison sentences for supply of 1 kg of a drug in EU Member States



Note: Median expected prison sentences, where immediate prison is highly likely: first offence, no organised crime. Where suspension of sentence was considered possible, median sentence is not presented. Estonia is not represented in the figure because of missing data for some drugs.

Discussion

Although this exercise relies largely on the opinions of experts rather than recorded data, it sheds light on a facet of the drugs phenomenon for which comparable and reliable national data remain unavailable across much of the European Union. The findings suggest that, for any given country, it would be inaccurate simply to read the legislation and assume that the penalties in the law are reflected in practice. For this reason, sentencing practices may provide a more useful indicator of legislation in force than the maximum penalties in the legal framework. For example, the penalties prescribed by law for supply of smaller and larger quantities of the same substance are usually identical. However, the penalties expected by the practitioners are markedly different in most countries, with prison sentences often twice as long for the larger quantities compared to those for smaller quantities. In countries where the law makes no distinction between drugs, the expected penalties vary according to the drug type, implying that judges take into account aspects such as perceived harm to society caused by the different drugs. A broader aspect of this comparative study is that the penalties expected by the practitioners, when compared to those set in the laws, illustrate the range and powers of judges' discretion around Europe.

The extent to which countries both request and provide assistance and judicial cooperation in a case that crosses national borders can be influenced by the relative significance of a particular supply offence in different countries. Yet this study suggests that there are big differences in the legal penalties for drug supply offences across the European Union. For example, in all scenarios examined here, some countries set minimum penalties in the law that are higher than the maximum penalties in other countries. In some cases, the maximum penalty for the larger quantity in one country is even lower than the minimum penalty for the smaller quantity in another. This supports the comparison of prescribed sentences for these scenarios in 2013 (EMCDDA and Europol, 2013).

In practice, expected penalties vary between countries from less than 1 year in prison to 10 years or more for the same offence. When the difference is substantial, national prosecutors in the different countries may choose to prioritise their response to this crime accordingly.

Following the analysis in the first section of this report, it is not surprising that the predicted range of sentences and time likely to be spent incarcerated varied very widely between countries and had little relation to maximum or minimum sentences.

The criteria for aggravating circumstances are not always the same. Most countries mention involvement of organised crime, and many mention the quantity of drugs or the harm caused.

The penalties expected by the practitioners illustrate the range and powers of judges' discretion. For example, the penalties prescribed by law for supply of small and large quantities of the same substance are often identical. However, the expected penalties are markedly different in most countries, with prison sentences in many countries often twice as long for large quantities compared to small quantities.

Likewise, although penalties in the legislation may be similar for different substances, practitioners in most countries predicted that penalties would vary by substance, suggesting that judges view supply of some drugs as more serious than others. It appears that the consensus, although not unanimous, is that heroin is viewed as the most serious, followed by cocaine and then amphetamine.

The sentence expectations of the practitioners often varied considerably within the same country. In a number of countries the predictions of sentence for one scenario covered a range of several years, especially in cases of supply of large quantities of cannabis or amphetamine. It appears that experts from the same country were more likely to predict similar penalties when detailed sentencing guidelines were available.

More generally, the data indicate that penalties provided by law are a broad framework, which is applied in different ways in different countries. The maximum penalties provided by law are not reliable indicators of the expected length of sentence. In some countries with high maximum penalties in law, practitioners expect courts to impose low sentences; in others with the same high maximum penalties, high penalties are, indeed, expected. For first-time offenders, minimum penalty levels are a better indicator of probable sentence length than maximum penalty levels.

Legal experts expressed the most divergent views about likely sentence length in the countries with the highest penalties prescribed in law. There were also several estimates of penalties that were below the minimum penalty in law. This is an unexpected outcome of the study, as minimum penalties are generally mandatory for the judges and can, in theory, only be ignored under specific circumstances which are prescribed by law. It may be partially due to the profile of the offender, being a first-time offender with no links to organised crime.

Early release was reported in most countries, and may reduce a sentence by as much as 67 %. However, when taking the European Union as a whole, even allowing for early release the range of sentence sizes expected was still very wide.

The present study's analysis corresponds with the conclusion of earlier research, which noted that 'the criminal policies of the Member States, concerning the penalties, differ considerably' (European Commission, 2014, p. 308). There are a number of reasons for the differences, including different sentencing structures and practices.

With regard to structure, some Member States use their laws to differentiate penalties on the basis of the seriousness of the offences, frequently defined by the quantity of drugs involved. In this way, the power of differentiation is reserved to the legislature. Other countries provide broad penalty ranges in the laws, which give more discretion to the judiciary to determine the sentence, based on the individual circumstances of each case. These countries often stipulate similar maximum or minimum sentences for the different quantities of drugs in the scenarios.

With regard to sentencing practices Member States can be grouped into three categories:

1. Those which stipulate relatively low penalties for drug supply offences in the laws, which typically lead to low penalties imposed by the courts.
2. Those which stipulate relatively high penalties in the laws, which typically lead to high penalties imposed by the courts.
3. Those which stipulate medium or high penalties in the laws, but where the judge's decision typically leads to the imposition of relatively low penalties.

These differences may be based in the history and culture of individual criminal law systems and their interaction with drug policy. Some Member States prescribe higher penalties for a broad range

of criminal offences, while others prescribe lower penalties. However, as we are seeing, there is not always a direct correlation between the sentences prescribed in law and actual sentencing practice.

An important question is whether variation in national legislation and sentencing practices can impact on the behaviour of traffickers, in which the relative severity of the punishment is carefully considered by transnational organised crime groups. It could be the case that traffickers would opt to transit through areas where they would be subjected to the less severe penalties in courts. However, other factors such as comparative calculations of profit maximisation, risk of detection, and the presence of trusted collaborators and favourable infrastructure may all play a role. Further research in this area is needed.

Similarly, drug policy, drug laws and penalties are also influenced by wider political and practical factors. This includes, for example, the prevalence of different drugs and their associated harms, and different beliefs in proportionality or effectiveness of sentencing as a general deterrent. For example, in some countries short, immediate prison sentences are expected whereas in others the tendency is to give longer prison sentences that may well be suspended. These considerations run alongside concerns about the costs of incarceration in the current context of prison overcrowding and reduced public spending in many countries. At present, there is no clear evidence base to indicate whether higher penalties are consistently more effective or less effective in deterring drug trafficking. This adds an additional layer of complexity to the issue of whether the penalties of EU Member States should move in one direction or another in terms of striving to create a united front against traffickers, but this is a crucial area of research for the future.

Monitoring lies at the core of designing and updating effective drug policy tools, such as national drug laws or drug strategies. The role played by evaluation is recognised by the EU drug strategy (2013–20) and the EU policy cycle on serious and organised crime. In the area of drug trafficking offences, considerable challenges remain in the development of adequate indicators and collection of data for monitoring purposes. This is a consequence of the limited availability of data at the national level, where statistical reporting systems are largely unable to allow easy extraction of the level of detail necessary for a meaningful comparison of data across countries. More robust drug supply indicators are being developed for monitoring and evaluation purposes in this respect by the European Union. However, constructing more comprehensive data collection systems remains a significant issue. This study used a qualitative method to work around the lack of data from administrative reporting systems on trafficking penalties. In this respect, it has provided an insight from front line practitioners around Europe into the realities of how laws are being applied. Given the replicability of the method, it might be regarded as a useful tool while statistical systems are being strengthened.

Conclusion

Drug trafficking remains a significant challenge for EU Member States. It threatens the security and health of European citizens and undermines the rule of law, and so all countries have established prison penalties for this crime. For the first time, this study has taken a comparative look at the legal consequences that drug traffickers are expected to face across the European Union. It is no surprise to find that variation exists between EU Member States, in the penalties for drug supply that they establish in law and are expected to apply in sentencing practices, but this study highlights the considerable extent of this variation. The experience and findings of this exploratory study suggests that developing a more detailed understanding of sentencing practice is feasible. In turn, this information and future work may inform issues related to judicial cooperation, the operation of trafficking routes, and the monitoring and improvement of Member States' supply reduction tools.

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Annex 1. Questionnaire sent to practitioners

Study on drug trafficking penalties

Questionnaire for Practitioners

Dear Madam, dear Sir!

The European Monitoring Centre on Drugs and Drug Addiction (EMCDDA) carries out a study on penalties in drug trafficking cases in the EU Member States. The purpose of this study is to investigate (1) the length of prison sentence most likely to be awarded by a criminal court, and (2+3) the time likely to be spent incarcerated, when an offender is found guilty of trafficking ('possession with intent to distribute or supply') a defined amount of a defined substance for each Member State. Therefore, interviewees are asked which sentences they would expect to be imposed in several specific cases. Please answer the following questions briefly! Please do not tell us the penalties foreseen by law (we know this), but the sentences you would expect to be imposed in such a concrete case, if the offender is found guilty. Your cooperation is very much appreciated. Thank you very much!

Please return this questionnaire to EMCDDA [...].

Please state your name, role, and the country you work in (e.g. Defence lawyer, Czech Republic). Your name will not be published:

.....

1. Which sentences would you **expect to be imposed** in **each of** the following eight scenarios:

The offender (**adult**) is found guilty of supplying or possessing with the intent to supply:

- a. Cannabis resin
 - i. 1 kilogram (kg)¹: ...
 - ii. 10 kg²: ...

- b. Amphetamine
 - i. 100 grams (g)³:
 - ii. 1 kg⁴:

- c. Cocaine
 - i. 100 g⁵: ...
 - ii. 1 kg⁶:

- d. Heroin
 - i. 100 g⁷:
 - ii. 1 kg⁸:

¹ This amount is the total weight of the seizure. The degree of purity for cannabis is 10 % THC.
² See Fn 1.
³ This amount is the total weight of the seizure. The degree of purity for amphetamine is 20 %.
⁴ See Fn 3.
⁵ This amount is the total weight of the seizure. The degree of purity for cocaine is 33 %.
⁶ See Fn 5.
⁷ This amount is the total weight of the seizure. The degree of purity for heroin is 25 %.

Please assume the following facts for all scenarios:

- The perpetrator is a **first-time offender** (no previous convictions) and s/he has committed only **one criminal offence**. S/he has not committed several (similar) offences.
- S/he is **not addicted** to drugs and **has not** committed the offence for her/his **personal use**.
- The perpetrator is **not considered a drug ‘mule’** (badly paid international courier) and the offence was **not committed under duress**.
- There were **no dangerous means** (e.g. weapons) involved and the offence **did not cause serious consequences** of any kind.
- There is **no** involvement of an **organised crime** group.
- The offence **did not involve any location** (e.g. school, prison) or **vulnerable people** (e.g. minors, addicts) that your law might address specifically.
- The perpetrator **does not confess** the offence.

2. a) Are any rules permitting some sort of **early release** theoretically applicable in the above mentioned scenarios of drug trafficking?

...

b) How **likely** is it that these early release rules would actually be applied in the above cases? Very likely, probable, very unlikely?

...

c) Please state how the imposed time in prison will reduce due to these rules. E.g. perpetrator released after 50 %, 75 %, 90 % of sentence served.

...

3. Based on your answers to 1 and 2, please estimate the total **time spent incarcerated** for the different scenarios specified above:

ai) ...

aii) ...

bi) ...

bii) ...

ci) ...

cii) ...

di) ...

dii) ...

⁸ See Fn 7.

Annex 2. Profiles of practitioners responding

Country	Judges	Prosecutors	Defence	Total
Belgium	0	1	3	4
Bulgaria	7	1	1	9
Czech Republic	0	3	0	3
Denmark	0	7	0	7
Germany	2	2	1	5
Estonia	2	1	0	3
Ireland	1	1	3	5
Greece	2	1	0	3
Spain	2	0	2	4
France	1	2	3	6
Croatia	2	1	2	5
Italy	3	1	1	5
Cyprus	2	1	2	5
Latvia	2	3	2	7
Lithuania	7	3	1	11
Luxembourg	2	1	2	5
Hungary	2	0	2	4
Austria	2	2	1	5
Netherlands	3	1	1	5
Poland	5	2	0	7
Portugal	3	2	1	6
Romania	3	9	2	14
Slovenia	4	2	1	7
Slovakia	2	2	1	5
Finland	2	2	1	5
Sweden	3	1	1	5
Total	64	52	34	150

Annex 3. Country profiles

BELGIUM 33

BULGARIA 36

CZECH REPUBLIC..... 42

DENMARK 45

GERMANY 48

ESTONIA..... 53

IRELAND 56

GREECE 60

SPAIN 64

FRANCE 68

CROATIA 71

ITALY 74

CYPRUS 77

LATVIA 80

LITHUANIA 84

LUXEMBOURG..... 89

HUNGARY 93

NETHERLANDS..... 97

AUSTRIA..... 102

POLAND 106

PORTUGAL 111

ROMANIA..... 114

SLOVENIA..... 118

SLOVAKIA..... 122

FINLAND..... 126

SWEDEN 129

Belgium

Country profile on penalties in drug trafficking cases in Belgium

Written by Paul De Hert and Barbara Huylebroek, Vrije Universiteit Brussels

General information on penalties in drug trafficking cases

In Belgium, the drug trafficking offences and their different penalties are set out in the 1921 Law on Drug Trafficking ⁽⁹⁾. The legal provisions already take into account aggravating circumstances and criteria such as 'health age', the individual's age, etc. However, quantity is not an aggravating factor according to the law. Article 2*bis* determines the following sanctions:

- Imprisonment for 3 months–5 years and a fine of EUR 1 000–100 000 for the offences mentioned in the Royal Decree of 31 December 1930.
- Imprisonment for 5–10 years when the offences mentioned in the Royal Decree of 31 December 1930 are committed in relation to a minor above 16 years, if the substances have caused an incurable disease, a permanent incapacity for work, the complete loss of an organ or a severe disfigurement. A fine of EUR 1 000–100 000 can also be imposed, but this is not automatically applied.
- Imprisonment for 10–15 years when the offences mentioned in the Royal Decree of 31 December 1930 are committed in relation to a minor aged 12–16 years; if the offences form the main or ancillary activity of an association of criminals; or if the use of substances caused death. A fine of EUR 1 000–100 000 can also be imposed, but this is not automatically applied.
- Imprisonment for 15–20 years when the offences mentioned in the Royal Decree of 31 December 1930 are committed in relation to a minor under 12 years and if the offences form the main or ancillary activity of an association of which the offender is a leading figure. A fine EUR 1 000–100 000 can also be imposed, but this is not automatically applied.

Article 9 of the law of 1921 regulates the possibility for a less harsh sentence in cases of personal use.

In cases of repeated convictions in a period of five years, the sentences mentioned above can be doubled (art. 5 1921 Law on Drug Trafficking).

Article 6 § 3 and § 4 determine that a reduced penalty for a crime (or exclusion for a misdemeanour) is to be imposed when the accused has reported, before the prosecution, to the government the identities of the perpetrators of the crimes, defined in the 1921 Law on Drug Trafficking or, if the perpetrators are unknown, the existence of such crimes are revealed. These revelations have to be made before the prosecution was instigated. Other mitigating circumstances can only have an influence on the decision of the judge, since the law itself does not provide for other specific mitigating circumstances.

In Belgium there are no prosecutor or sentencing guidelines for drug trafficking offences.

⁽⁹⁾ Law of 24 February 1921, published in The Belgian State Gazette on 6 March 1921.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentencing ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances.

One prosecutor and three defence lawyers were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

In Belgium, the rules regarding early release in cases such as these are laid down in the law of 2006 concerning the execution of sentences. Different rules apply and an early release will always depend on recurrence, residential status, having a permanent address, etc.

In Belgium, there is a difference between a conviction of less than three years and one of more than three years. For those who are convicted for more than three years, the *tribunal d'application des peines*, a court responsible for the implementation of the sentence, decides whether someone can be released early under conditions or not.

In general, an individual who has been convicted for the first time and who has a permanent address will be released (or will be able to submit a request to the court) after serving 33 % of their sentence. In other cases, an individual will have to serve at least 67 % of the sentence.

Applying this proportion of 33 % to the median expected penalty, subject to the various conditions outlined above, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	3 months–5 years' imprisonment and fine of EUR 1 000–100 000	2 years + EUR 2 000 (prosecutor) 2 years 6 months (defence lawyer 1) 2 years + EUR 1 000 (defence lawyer 2) 2 years (defence lawyer 3)	2 years	8 months
	10 kg	3 months–5 years' imprisonment and fine of EUR 1 000–100 000	4 years + EUR 4 000 (prosecutor) 5 years (defence lawyer 1) 3 years + EUR 3 000 (defence lawyer 2) 4 years (defence lawyer 3)	4 years	1 year 4 months

EMCDDA Technical report — Drug trafficking penalties across the European Union

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Amphetamine (20 % purity)	0.1 kg	3 months–5 years' imprisonment and fine of EUR 1 000–100 000	1 year 6 months + EUR 1 000 (prosecutor) 3 years (defence lawyer 1) 2 years + EUR 1 000 (defence lawyer 2) 3 years (defence lawyer 3)	2 years 6 months	10 months
	1 kg	3 months–5 years' imprisonment and fine of EUR 1 000–100 000	3 years + EUR 3 000 (prosecutor) 4 years (defence lawyer 1) 3 years + EUR 2000 (defence lawyer 2) 4 years (defence lawyer 3)	3 years 6 months	1 year 2 months
Cocaine (33 % purity)	0.1 kg	3 months–5 years' imprisonment and fine of EUR 1 000–100 000	1 year 6 months + EUR 1 000 (prosecutor) 3 years (defence lawyer 1) 2 years + EUR 1 000 (defence lawyer 2) 2 years (defence lawyer 3)	2 years	8 months
	1 kg	3 months–5 years' imprisonment and fine of EUR 1 000–100 000	3 years + EUR 3 000 (prosecutor) 5 years (defence lawyer 1) 3 years + EUR 2 000 (defence lawyer 2) 3 years 4 months (defence lawyer 3)	3 years 2 months	12.5 months
Heroin (25 % purity)	0.1 kg	3 months–5 years' imprisonment and fine of EUR 1 000–100 000	1 year 6 months + EUR 1 000 (prosecutor) 3 years (defence lawyer 1) 2 years + EUR 1 000 (defence lawyer 2) 2 years (defence lawyer 3)	2 years	8 months
	1 kg	3 months–5 years' imprisonment and fine of EUR 1 000–100 000	3 years + EUR 3 000 (prosecutor) 5 years (defence lawyer 1) 3 years + EUR 2 000 (defence lawyer 2) 3 years 4 months (defence lawyer 3)	3 years 2 months	12.5 months

Bulgaria

Country profile on penalties in drug trafficking cases in Bulgaria

Written by Pavlina Panova, judge at the Supreme Court of Cassation, and Miroslava Manolova, lecturer in criminal law at Sofia University 'St Kliment Ohridski', Faculty of Law and legal adviser in the National Assembly of the Republic of Bulgaria

General information on penalties in drug trafficking cases

The offences linked to trafficking in narcotics substances and precursors, apart from that of smuggling, are provided for in Chapter 11 Generally Dangerous Crimes, Section III Crimes against Public Health and Environment of the Bulgarian Penal Code. They can be divided into several groups, for which the Bulgarian Penal Code sets out both custodial and pecuniary penalties, namely imprisonment and fines. In the case of smuggling of drugs and precursors the court may impose confiscation of part or all of the property of the convicted person instead of a fine. In addition to these three types of penalties, the Bulgarian Penal Code allows for a special pecuniary measure to be imposed with them, which consists of forfeiture in favour of the State of objects and instruments of the crime.

The main offence of drug trafficking is provided for in Article 354a, paragraph 1 of the Penal Code. According to this provision the production, processing, acquisition or possession of drugs or analogues thereof with the aim of distribution where they are carried out without due permission, and the distribution of drugs and their analogues, are punishable by a criminal penalty as follows:

- in cases that involve high-risk drugs or analogues thereof: by imprisonment for two to eight years and a fine of BGN 5 000–20 000 ⁽¹⁰⁾;
- in cases that involve risk drugs or analogues thereof: by imprisonment for 1–6 years and a fine of BGN 2 000–10 000 (Article 354a, paragraph 1 of the Penal Code).

The four substances in the scenarios below are all categorised as high-risk drugs.

Penalties for aggravating circumstances are as follows:

- In cases of large amount of drugs or analogues thereof: imprisonment from 3–12 years and a fine of BGN 10 000–50 000 (Article 354a, paragraph 2, proposition 1 of the Penal Code).

The provision of Article 354a, paragraph 2 of the Penal Code comprises several aggravating circumstances, in the presence of which the act is punishable by a more severe penalty, namely by imprisonment from 5–15 years and a fine of BGN 20 000–100 000. The aggravating factors are:

- a particularly large amount of drugs or analogues thereof (Article 354a, paragraph 2, proposition 2 of the Penal Code);
- acquisition or possession of drugs or analogues thereof with the aim of distribution, as well as distribution of drugs, at a public location (Article 354a, paragraph 2, proposition 2 of the Penal Code);

⁽¹⁰⁾ The Bulgarian lev is pegged to the euro at the rate of 1.95583 leva = 1 euro.

- the offence is committed within the framework of a criminal organisation by a person acting on commission or in the implementation of a decision by an organised criminal group (Article 354a, paragraph 2, point 1 of the Penal Code);
- the offence is committed by a specific subject: a medical doctor or pharmacist (Article 354a, paragraph 2, point 2 of the Penal Code); a trainer, teacher, headmaster of an education establishment; a public official in or on the occasion of the discharge of his/her office (Article 354a, paragraph 2, point 3 of the Penal Code); or
- the offence is committed under the conditions of dangerous recidivism (Article 354a, paragraph 2, point 4 of the Penal Code).

The Bulgarian Penal Code does not explicitly make provision for any mitigating circumstances for drug trafficking offences that change the penalties provided for by law. However, the court may take into account: confession; assistance to the investigative authorities and the court during evidence gathering; a relatively low quantity of narcotic drugs; age of the defendant; reasons for committing the offence (for example, a relative requiring expensive medical treatment); lack of previous convictions; aggravated family situation; employment status; data on good personal characteristics; deteriorated health of the defendant, including drug addiction; sincere regret expressed with regard to the committed offence; and, finally, the quantity and type of narcotic drug, within the framework of the legal qualification of the offence.

Regarding prosecuting or sentencing guidelines, or similar, the Bulgarian Supreme Court of Cassation is the sole jurisdiction to give, through interpretative decisions, binding law interpretations to the courts. This Court has adopted Interpretative Decision No. 1 of 1998 as regards the criteria 'large amount' and 'particularly large amount', defined in monetary equivalents of national minimum salaries; the national minimum salary is currently BGN 380. This then provides to all courts binding instructions. The Court has specified that the object of the crime is a 'large amount' when it has the monetary equivalent exceeding 70 national minimum salaries at the moment of its commitment (currently BGN 26 600). It is a 'particularly large amount' where it exceeds 140 national minimum salaries (currently BGN 53 200).

So far, no such interpretative decisions have been adopted with regard to drug trafficking. Nevertheless, the decisions of the Supreme Court of Cassation, rendered on individual cases, serve as guidance to the courts, though they are not binding.

In relation to the criteria mentioned above concerning drug trafficking offences, an important Ordinance No. 23 of 1998 on the pricing of drugs for the purposes of judicial proceedings has been adopted by the government (SG No. 15/1998). This Act defines the prices of different drugs such as cocaine, heroin, cannabis, etc., depending on the degree of purity of the active substance, as seen in the table ⁽¹¹⁾. Its rules are binding to the courts, the prosecutors and the investigative bodies. The penalties in the four case scenarios are defined by using these rules. As already mentioned, the criteria 'large amount' and 'particularly large amount' depend on the monetary equivalent of the national minimum salary at the moment when the crime was committed.

Substance	Value per kg
Cannabis	BGN 4 000
Amphetamine	BGN 30 000
Cocaine (31–45 % purity)	BGN 85 000
Heroin (16–30 % purity)	BGN 50 000

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentence ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances.

Seven judges, one prosecutor and one defence lawyer were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

The conditional early release of convicted persons does not depend on the type of crime for which they have been convicted. It is possible for a convicted prisoner to be released if he or she has served not less than half of the term of imprisonment imposed by the sentence. If the conviction is for a crime that is classed as 'dangerous recidivism' in accordance with Article 29 of the Penal Code, the term of imprisonment served should be two thirds of the sentenced term. In addition to these prerequisites for early release, a convicted person should have demonstrated good behaviour and an honest attitude towards his or her work (Article 70 of the Penal Code).

A convicted person does not have the right to request conditional early release. The early release should be proposed by the district prosecutor at the place where the person is serving their sentence, or by a commission composed of representatives of the prison administration. A person can be granted conditional early release only once, unless he/she has been rehabilitated for the crime for which he/she has already been granted conditional early release. If the court does not approve the conditional early release, new proposal may be put forward three months after the first application is rejected.

⁽¹¹⁾ For example, according to its annexes, 1 kg of heroin with 25 % degree of purity costs BGN 50 000.

Since conditional early release does not depend on the type of crime committed and its object, the facts about whether a person has been convicted for 1 kg of heroin and/or 10 kg of cannabis, or 10 kg of heroin and/or 100 kg of cannabis, for example, will not influence the court's decision provided all preconditions set out in law for conditional early release have been met. Therefore, the quantity of drugs and the form of the criminal act, although relevant to the legal qualification of the offence and the penalty imposed, do not determine the court's decision regarding conditional early release.

Where a person has committed previous crimes within an organised criminal group, this has an impact on the penalty imposed with the sentence and it also makes him/her ineligible for conditional early release, unless he/she has already been rehabilitated.

The practitioners interviewed generally felt that it was very likely ⁽¹²⁾ that a non-problematic first-time offender would be released after approximately 50 % of the sentence had been served.

Applying this proportion of 50 % to the median expected penalty, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	2–8 years' imprisonment	1 year 6 months (judge 1) 2 years, suspended (judges 2, 5, 6, 7) 2 years (judge 3) 3 years + BGN 7 000 (judge 4) 4 years + BGN 5 000 (prosecutor) 1 year, suspended (defence lawyer)	Median incalculable	–
	10 kg	5–15 years' imprisonment	3 years 6 months (judge 1) 4 years (judges 2, 6, 7) 6 years (judge 3) 4 years + BGN 11 000 (judge 4) 2 years 6 months (judge 5) 7 years + BGN 15 000 (prosecutor) 4 years (defence lawyer)	4 years	2 years

⁽¹²⁾ Seven of the interviewees stated that the application of these rules is 'very likely'; only two of the interviewees define their application as 'probable'.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Amphetamine (20 % purity)	0.1 kg	2–8 years' imprisonment	1 year (judge 1) 2 years, suspended (judges 2, 6) 3 years, suspended (judges 3, 7) 3 years + BGN 8 000 (judge 4) 2 years 6 months, suspended (judge 5) 5 years + BGN 12 000 (prosecutor) 2 years, suspended (defence lawyer)	Median incalculable	–
	1 kg	3–12 years' imprisonment	3 years (judges 1, 5) 4 years (judges 2, 3, 6) 4 years + BGN 12 000 (judge 4) 5 years (judge 7) 9 years + BGN 30 000 (prosecutor) 4 years (defence lawyer)	4 years	2 years
Cocaine (33 % purity)	0.1 kg	2–8 years' imprisonment	3 years (judges 1, 6, 7) 3 years, suspended (judge 2) 2 years, suspended (judge 3) 3 years + BGN 8 000 (judge 4) 2 years 6 months (judge 5) 5 years + BGN 12 000 (prosecutor) 1 year 6 months (defence lawyer)	Median incalculable	–
	1 kg	5–15 years' imprisonment	5.5–6 years (judge 1) 5 years (judges 2, 3, 6) 5 years + BGN 13 000 (judge 4) 6 years (judges 5, 7) 9 years + BGN 40 000 (prosecutor) 3 years 6 months (defence lawyer)	5 years	2.5 years

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Heroin (25 % purity)	0.1 kg	2–8 years' imprisonment	3 years (judge 1) 3 years, suspended (judges 2, 3) 3 years + BGN 9 000 (judge 4) 2 years (judge 5) 2 years 6 months, suspended (judge 6) 4 years (judge 7) 6 years + BGN 15 000 (prosecutor) 3 years 6 months (defence lawyer)	Median incalculable	–
	1 kg	5–15 years' imprisonment	5 years 6 months (judge 1) 5 years (judges 2, 3) 5 years + BGN 13 000 (judge 4) 4 years (judge 5) 4 years 6 months (judge 6) 7 years (judge 7) 10 years + BGN 50 000 (prosecutor) 8 years (defence lawyer)	5 years	2.5 years

Czech Republic

Country profile on penalties in drug trafficking cases in the Czech Republic

Written by Prof. JUDr. PhDr. Ivo Šlosarčík LL.M. Ph.D.

General information on penalties in drug trafficking cases

In the Czech Republic, drug trafficking is regulated by section 283 (formally described as ‘unauthorized production and other handling of narcotics and psychotropic substances and poisons’) of the Penal Code (‘Trestní zákoník’) no. 40/2009 Coll. (as amended), effective 1 January 2009. Other drug-related crimes are covered by sections 284–287 thereof. Section 283 of the Penal Code contains four subsections with increasing penalty ranges. Subsection 1 defines a ‘basic’ form of drug trafficking with a penalty range of 1–5 years’ imprisonment. Subsection 2 gives a penalty range of 2–10 years’ imprisonment for aggravated drug trafficking that is ‘in substantial extent/scale’. Subsection 3 covers cases of ‘large scale’ trafficking, which are punishable by 8–12 years’ imprisonment. Subsection 4 deals with most serious form of drug trafficking, punishable by 10–18 years’ imprisonment; the extended element of the crime is reflected only indirectly, by reference to the offender’s ‘intention of gaining a large scale benefit’. In addition to incarceration, the ‘basic’ form of drug trafficking covered by subsection 1 is also punishable by a fine (financial penalty), and aggravated versions under subsections 2–4 by confiscation of property. In general, in relation to trafficking the Penal Code does not distinguish between ‘soft’ and ‘hard’ drugs.

Some aggravating circumstances of drug trafficking are integrated in the aggravated forms of the offence under subsections 2–4 of section 283 of the Penal Code. A general (indicative) list of aggravating circumstances, including committing the crime ‘in greater extent’, is contained in section 42 of the Penal Code. General aggravating circumstances should be taken into consideration by judicial authorities in their sentencing practice, but the final punishment must be within the limits set by section 283 of the Penal Code and general rules on sentencing contained in the Penal Code. Section 41 of the Penal Code contains a general (indicative) list of mitigating circumstances; the same principles apply as regarding aggravating circumstances.

The Czech Penal Code does not explicitly define drug quantity thresholds for the purpose of sentencing those convicted of drug trafficking. However, the element of ‘quantity’ of drugs or finances involved plays a significant role in the sanction regime. ‘Quantity’ or ‘extent’ elements are incorporated into definitions of aggravated forms of drug trafficking and, consequently, they can be a decisive factor for the applicable penalty range.

A recent opinion of the Supreme Court (15 Tdo 1003/2013) declared that the specific ‘extent’ element of drug-related crimes (basic/substantial/large) is satisfied when cases involve tenfold multiplication(s) of the ‘larger than small’ amount of drugs required by the Penal Code to establish criminal liability for drug possession for individual use (under section 284 of the Penal Code). This opinion could provide a relatively helpful link between the ‘extent’ terminology used by the Penal Code and the quantitative element of drug trafficking.

However, the whole issue has been blurred by a recent decision of the Constitutional Court (259/2013 Coll.), which ruled that the governmental regulation that defined the ‘larger than small’ amount of different types of drugs was unconstitutional. Therefore, current sentencing practice is

less predictable than before the Constitutional Court's ruling. In 2014, the Constitutional Court's decision was followed by an opinion of the Supreme Court (Tjpn 301/2013) which intended to establish the 'larger than small' amount criterion regarding different types of drugs, diverging slightly from rules in the old governmental regulation.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentence ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances.

Three practitioners, one from the Police Presidium and two public prosecutors, were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

Based on the sentencing practice before changes in 2014, the interviewed experts estimated that the situations in the study (taking into consideration the purity of the substance) would be classified as follows:

- 1 kg cannabis resin: section 283 subsection 2 of the Penal Code
- 10 kg cannabis resin: section 283 subsection 3 of the Penal Code
- 100 g amphetamine: section 283 subsection 1 of the Penal Code
- 1 kg amphetamine: section 283 subsection 2 of the Penal Code
- 100 g cocaine: section 283 subsection 1 or 2 of the Penal Code
- 1 kg cocaine: section 283 subsection 2 or 3 of the Penal Code
- 100 g heroin: section 283 subsection 2 of the Penal Code
- 1 kg heroin: section 283 subsection 3 of the Penal Code

However, those interviewed stressed that some scenarios are 'borderline cases' that could be classified differently if other aspects of the case, such as price of the drugs involved, were taken into consideration.

The results are summarised in the table below.

Early release in drug trafficking cases

In the Czech Republic, the rules and conditions of early release are contained in section 88 of the Penal Code. The general rule is that the offender can be (conditionally) released after serving 50 % of the original sentence. Regarding less serious offences (punishable by less than five years' imprisonment), the offender can be released even earlier, typically after serving one third of the original sentence.

As there were only three practitioners who submitted estimates and it was observed that the quantities were often on the borderline of sentence ranges, which would then affect the applicable early release rule, no expected period of incarceration could be calculated.

Substance	Weight	Penalty range prescribed in law/ guidelines	Expected penalty range (sentence)	Median expected penalty (sentence)
Cannabis resin (10 % THC)	1 kg	2–10 years' imprisonment (subsection 2)	2–6 years (Police Presidium) 2 years 6 months (prosecutor 1) 2 years (prosecutor 2)	2 years 6 months
	10 kg	8–12 years' imprisonment	8–10 years (Police Presidium) 8 years (prosecutor 1) 8 years (prosecutor 2)	8 years
Amphetamine (20 % purity)	100 g	1–5 years' imprisonment	1–3 years (Police Presidium) 2 years (prosecutor 1) 2 years 6 months (prosecutor 2)	2 years
	1 kg	2–10 years' imprisonment	2–6 years (Police Presidium) 4 years (prosecutor 1) 4 years 6 months (prosecutor 2)	4 years
Cocaine (33 % pure)	100 g	1–5 years' imprisonment (subsection 1) or 2–10 years' imprisonment (subsection 2)	2–6 years (Police Presidium) 3 years (prosecutor 1) 3 years (prosecutor 2)	3 years
	1 kg	2–10 years' imprisonment (subsection 2) or 8–12 years' imprisonment (subsection 3)	8–10 years (Police Presidium) 5 years (prosecutor 1) 5 years (prosecutor 2)	5 years
Heroin (25 % pure)	100 g	2–10 years' imprisonment	2–6 years (Police Presidium) 3 years (prosecutor 1) 3 years 6 months (prosecutor 2)	3 years 6 months
	1 kg	8–12 years' imprisonment	8–10 years (Police Presidium) 8 years 6 months (prosecutor 1) 8 years 6 months (prosecutor 2)	8 years 6 months

Denmark

Country profile on penalties in drug trafficking cases in Denmark

Written by Jørn Vestergaard, Professor of Criminal Law, University of Copenhagen

General information on penalties in drug trafficking cases

In Denmark, drug offenders may be charged under the Euphoriant Substances Act (ESA) ⁽¹³⁾ or under the Penal Code (PC), ⁽¹⁴⁾ depending mainly on the quantity and type of drug involved. Drug offences are criminalised under the ESA. Serious drug offences are dealt with under PC § 191, which adds aggravating circumstances to the substantive prohibition in the ESA and provides for significantly enhanced sentencing ranges.

The penalty under the ESA is a fine or imprisonment of up to two years.

PC § 191 covers the supply of illegal drugs to a considerable number of people, either in return for a substantial payment or under other particularly aggravating circumstances. According to recent jurisprudence, the requirement is that the perpetration involves trafficking, or an intention to traffic, at least 25 g of heroin or cocaine, 50 g of amphetamine or 10 kg of cannabis.

The ordinary maximum sentence under § 191 is imprisonment for up to 10 years. Penalties often reach or are close to the maximum. An enhanced maximum term of imprisonment of up to 16 years is authorised if the supply relates to a considerable quantity of a particularly dangerous or harmful drug, or if the trafficking of such substances has otherwise been of a particularly dangerous character. If the perpetrator is found guilty of a multitude of counts, the penalty may exceed the ordinarily prescribed maximum by up to a half, cf. PC § 88(1).

The Director of Public Prosecutions has issued an instruction regarding sentencing pleas in drug cases ⁽¹⁵⁾. Particularly detailed guidelines are communicated to the prosecutors, stipulating criteria regarding the distinction between possession for personal use and sale and delimiting quantities of each specific type of drug. In accordance with the legislative preparatory works, the guidelines state that organised smuggling or sale of cannabis shall normally only be dealt with under PC § 191 when the amount exceeds 10–15 kg. The parallel criteria regarding khat is 500 kg, raw opium 500 g, morphine base 100 g, heroin 25 g, cocaine 25 g, amphetamine 50 g, and ecstasy 150–200 tablets.

With regard to the distinction between possession for personal use and possession for distribution, the criteria are stipulated to be: cannabis 10 g, marihuana 50 g, heroin/cocaine/morphine 0.2 g, raw opium 1 g, amphetamine 0.5 g, 5 morphine tablets, 1–2 ecstasy tablets.

Concerning trafficking and possession with regard to trafficking, it follows from the guidelines that an offence involving more than 50 g of cannabis or 10 tablets shall be punished by a prison sentence. Trafficking particularly dangerous drugs or distributing drugs at restaurants, discotheques, concerts,

⁽¹³⁾ In Danish, Lov om euforiserende stoffer. The Act was originally enacted in 1969.

⁽¹⁴⁾ In Danish, Straffeloven.

⁽¹⁵⁾ Rigsadvokatens Meddelelse 6/2006, consolidated December 2012. See also Rigsadvokaten Informerer 4/2011.

festivals, etc., are considered aggravating factors in sentencing, implying imprisonment for up to four months.

The quantity of drugs is also relevant with respect to the distinction between PC § 191(1) and (2). In the guidelines, the line is normally passed if the quantity exceeds: heroin/cocaine 1.3–1.5 kg, amphetamine 2 kg and ecstasy 2 kg (the equivalent of 8 000 tablets).

The penalty for selling small quantities of heroin or cocaine for a first-time offence will normally be:

- 1–2 deals: 10 days' imprisonment;
- 3–4 deals: 14–20 days' imprisonment;
- 5–10 deals: 30–60 days' imprisonment;
- 11 deals or more: minimum 3 months' imprisonment.

Amphetamine and ecstasy are considered to be somewhat less dangerous than heroin, implying that sentences will be set within approximately two thirds of these ranges.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentence ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances.

Seven prosecutors were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

Release on parole after serving two thirds of a prison sentence may be granted if at least two months of the sentence has elapsed, under PC § 38(1). Early release may be granted under PC § 38(2) or under PC § 40(a) after at least half the sentence and at least two months have been served, if particular circumstances make it appropriate or if the prisoner has demonstrated a particular effort to be rehabilitated by participating in an educational or vocational programme or in a treatment programme (cognitive skills, anger management, etc.). Release on parole shall depend upon such release not being inadvisable by reason of the prisoner's circumstances. Foreign citizens sentenced to deportation after serving a prison term will normally be released after having served half the sentence, if at least two months have been served.

Around 25 % of all eligible prisoners are denied parole after serving two thirds of their sentence. For prisoners serving longer sentences in closed institutions, around 50 % are denied early release. A substantial proportion of prisoners convicted of drug offences are among those who are denied early release.

There was no consensus among the practitioners interviewed as to how likely it was that an offender would be released, nor as to the proportion of a sentence that would be served. For this reason we cannot estimate the expected time spent incarcerated.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty (sentence)
Cannabis resin (10 % THC)	1 kg	Up to 2 years' imprisonment	3 months (prosecutors 1, 4) 2 months (prosecutors 2, 7) 2–3 months (prosecutors 3, 5, 6)	2.5 months
	10 kg	Up to 2 years' imprisonment	8–10 months (prosecutors 1, 4) 9 months (prosecutor 2) 8–9 months (prosecutors 3, 6) 10–12 months (prosecutors 5, 7)	9 months
Amphetamine (20 % purity)	100 g	Up to 10 years' imprisonment	6 months (prosecutors 1, 3) 8 months (prosecutors 2, 8) 6–8 months (prosecutors 5, 7) 5 months (prosecutor 6)	7 months
	1 kg	Up to 10 years' imprisonment	2 years 6 months (prosecutors 1, 4) 2 years (prosecutors 2, 3, 6) 3 years (prosecutors 5, 7)	2 years 6 months
Cocaine (33 % purity)	100 g	Up to 10 years' imprisonment	12 months (prosecutors 1, 5, 7) 9 months (prosecutor 2) 10 months (prosecutors 3, 4) 10–12 months (prosecutor 6)	11 months
	1 kg	Up to 10 years' imprisonment	4 years (prosecutors 1, 2, 4) 4–4.5 years (prosecutors 3, 6) 5 years (prosecutors 5, 7)	4 years 3 months
Heroin (25 % purity)	100 g	Up to 10 years' imprisonment	12 months (prosecutors 1, 2, 3, 4, 5, 7) 10–12 months (prosecutor 6)	1 year
	1 kg	Up to 10 years' imprisonment	5 years (prosecutors 1, 2, 3, 4, 5, 6, 7)	5 years

Germany

Country profile on penalties in drug trafficking cases in Germany

Written by Dominik Brodowski, LL.M. (UPenn) and Dr. Christoph Burchard, LL.M. (NYU)

General information on penalties in drug trafficking cases

The main criminal statutes prohibiting drug trafficking are found in §§ 29 ff. Gesetz über den Verkehr mit Betäubungsmitteln (Betäubungsmittelgesetz — BtMG) ⁽¹⁶⁾. While those involved in a criminal organisation that traffics in drugs may also be guilty of other offences, such as § 129 para. 1 StGB, the following analysis focuses on §§ 29 ff. BtMG.

The basic criminal statute prohibiting intentional ⁽¹⁷⁾ trafficking in drugs is § 29 I S. 1 Nr. 1 BtMG, which covers, inter alia, trafficking, importing, exporting, selling, supplying, distributing and production of drugs listed in Annexes I–III BtMG. Taking the general rules on sentencing into account (§§ 38 ff. Strafgesetzbuch – StGB), the penalty range for fully responsible offenders ⁽¹⁸⁾ is imprisonment of one month to five years and/or a fine of five to 360 day units, with a day unit representing the offender’s average net income per day. If the sentence is two years’ imprisonment or less, the offender may be put on parole (cf. §§ 56 ff. StGB).

The additional criminal provisions in §§ 29 ff. BtMG modify this penalty range for trafficking offences in aggravating and mitigating circumstances, and may be summarised as follows:

Provision	Aggravating or mitigating circumstances	Penalty range
§ 29 II	Intent to acquire a regular, substantial profit, causing specific risk to the health of several people, or otherwise especially serious case	1–15 years (with exceptions)
§ 29a	Offender is over 21 years old and hands over drugs to a minor (18 years or less), or trafficking involves a not-small quantity (see below for thresholds)	1–15 years In less serious cases: 3 months–5 years
§ 30	Member of a ‘gang’ (three or more criminals who intend to commit such offences on a regular basis); offender is over 21 years old and hands over drugs to a minor (18 years or less) with the intent of acquiring a regular, substantial profit; recklessly causing death; or importing a not-small quantity	2–15 years In less serious cases: 3 months–5 years
§ 30a	Member of a ‘gang’ commits trafficking with not-small quantity; offender is over 21 years old and incites a minor to participate in trafficking; or offender is trafficking a not-small quantity and carries a weapon or a similar object capable of injuring people	5–15 years In less serious cases: 6 months–10 years

⁽¹⁶⁾ The full text and reference can be found online at www.gesetze-im-internet.de/btmg_1981.

⁽¹⁷⁾ Negligent trafficking is covered by § 29 para. 4 BtMG (one month to one year of imprisonment and/or a fine).

⁽¹⁸⁾ Otherwise, the general rules on insanity (§ 20 StGB) and diminished responsibility (§ 21 StGB) apply.

Provision	Aggravating or mitigating circumstances	Penalty range
§ 31	Voluntary disclosure of information leading to the prevention or prosecution of other drug offences ('crown witness rule')	Penalty range reduction (§ 49 I StGB) or discharge
§§ 35 ff.	Drug rehabilitation and penalty incurred is not more than 2 years' imprisonment	Discharge or parole possible

In Germany there are no statutory or otherwise legally binding sentencing guidelines; case law does not set a binding precedent. However, court decisions — especially by the Bundesverfassungsgericht (German Federal Constitutional Court) and the Bundesgerichtshof (Federal Court of Appeals) — have a strong factual influence.

The grand chamber for criminal matters of the Bundesgerichtshof decided on 26 October 2005 — GSSt 1/05 - BGHSt 50, 252 — on the interpretation of 'trafficking' in §§ 29 ff. BtMG. Trafficking has occurred when the perpetrator enters into earnest negotiations with a potential seller and intends to re-sell these drugs for profit later on.

Several notable decisions of the Bundesgerichtshof concern the interpretation of a not-small quantity of drugs, which depends on the purity, how dangerous the substance is, the intoxication effect and the number of doses:

Substance	Judgment by the Bundesgerichtshof	Not-small quantity of pure substance
THC	18 July 1984: 3 StR 183/84 – BGHSt 33, 8 20 December 1995: 3 StR 245/95 – BGHSt 42, 1	7.5 g
Amphetamine base	11 April 1985: 1 StR 507/84 – BGHSt 33, 169	10 g
Cocaine	1 February 1985: 2 StR 685/85 – BGHSt 33, 133	5 g
Heroin	7 November 1983: 1 StR 721/83 – BGHSt 32, 162	1.5 g
MDEA ('ecstasy')	9 October 1996: 3 StR 220/96 – BGHSt 42, 255	30 g

Prosecutors at the state or regional level may rely on confidential and/or informal guidelines on what sentence to plead for in court. For larger quantities of drugs, however, these guidelines often only refer to the statutory limits.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentence ranges that are prescribed for supply of defined quantities of certain drugs in certain circumstances.

Two judges, four prosecutors (three giving one answer as a team) and one defence lawyer were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table on the following page.

Early release in drug trafficking cases

If the sentence is two years of imprisonment or less, the offender may be put on parole (cf. §§ 56 ff. StGB). Conditional early release (§ 57 StGB) may be available to drug offenders after at least half of the sentence (for first-time prisoners and in special circumstances only) or at least two thirds of the sentence — but not less than two months — has been served (on a sound evaluation, *inter alia*, of public security interests, the circumstances of the offence and the personality of the perpetrator). If the remaining sentence is two years or less and under further circumstances, §§ 35 ff. BtMG allows drug addicts to enter into drug rehabilitation programmes, which — if successful — may lead to the time spent in rehabilitation being calculated as a sentence, and/or the offender being put on parole for the remainder of the sentence.

Practitioners pointed out that several factors have to be taken into account when the court decides, during the execution of the sentence, on whether to grant early release, namely good conduct in prison, treatment of addiction, and whether the prisoner is a first-time offender. There are also regional differences within Germany in the application of these rules. A release after half of the sentence has been served was considered by all practitioners to be very to extremely unlikely. A release after at least two thirds of the sentence has been served was considered by most practitioners, as this case study relates to a first-time offender, to be probable or very likely; one practitioner considered it to be less likely, possibly because of the regional differences mentioned above. Early release after half of the sentence has been served and based on drug rehabilitation programmes was considered by one practitioner to be ‘uncommon’. Therefore, the practitioners interviewed generally felt that at least several non-problematic first-time offenders would be released after two thirds of the sentence had been served.

Applying this proportion of two thirds to the median expected penalty, and assuming the perpetrator in the case scenarios was not granted parole, subject to the conditions above, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	1–15 years' imprisonment	2 years 6 months (judge 1) 1 year 6 months (judge 2) 2 years 3 months (prosecutor 1) 1 year 6 months (prosecutor 2) 1 year 6 months, suspended (defence lawyer)	1 year 6 months	1 year
	10 kg	1–15 years' imprisonment	5 years (judge 1) 2 years 6 months (judge 2) 3 years 6 months (prosecutor 1) 4–5 years (prosecutor 2) 2.5–3 years (defence lawyer)	3 years 6 months	2 years 4 months
Amphetamine (20 % purity)	100 g	1–15 years' imprisonment	3 years (judge 1) 1 year 6 months (judge 2) 1 year 6 months, suspended (prosecutor 1) 1 year 6 months (prosecutor 2) 1 year 6 months, suspended (defence lawyer)	Median incalculable	–
	1 kg	1–15 years' imprisonment	6 years (judge 1) 2 years 6 months (judge 2) 2 years 6 months (prosecutor 1) 3 years (prosecutor 2) 3–4 years (defence lawyer)	3 years	2 years
Cocaine (33 % purity)	100 g	1–15 years' imprisonment	4 years (judge 1) 1 year 6 months (judge 2) 2 years 3 months (prosecutor 1) 2 years (prosecutor 2) 1 year 6 months, suspended (defence lawyer)	2 years	1 year 4 months
	1 kg	1–15 years' imprisonment	7 years (judge 1) 2 years 6 months (judge 2) 3 years 6 months (prosecutor 1) 5 years (prosecutor 2) 3.5–4 years (defence lawyer)	3 years 9 months	2 years 6 months

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Heroin (25 % purity)	100 g	1–15 years' imprisonment	4 years (judge 1) 2 years 6 months (judge 2) 2 years 9 months (prosecutor 1) 2 years 6 months (prosecutor 2) 2 years (defence lawyer)	2 years 6 months	1 year 8 months
	1 kg	1–15 years' imprisonment	7 years (judge 1) 4 years (judge 2) 4 years (prosecutor 1) 5 years (prosecutor 2) 4–4.5 years (defence lawyer)	4 years 3 months	2 years 10 months

Estonia

Country profile on penalties in drug trafficking cases in Estonia

Written by Jaan Ginter

General information on penalties in drug trafficking cases

In Estonia drug offences and their penalties are set out in the Penal Code of 2002. The main supply offences are described in §§ 183 and 184. The penalties depend initially on the quantity of drugs and whether the act was committed by a group or as a repeat drug offence. According to the Penal Code, there is no differentiation of offences according to the type of drug involved.

If a small quantity is involved (sufficient to cause drug intoxication in fewer than 10 people) the punishment is up to three years' imprisonment, which is increased to five years if a group of people or a repeated drug offence is involved.

If a large quantity is involved (sufficient to cause intoxication in at least 10 people) the punishment range is 1–10 years, rising to 3–15 years if a group or a repeated drug offence is involved and to 6–20 years or life imprisonment if the purpose is significant proprietary benefit (more than EUR 39 000).

Under the Estonian Penal Code pecuniary punishment may be imposed instead of (not together with) imprisonment if small quantities of drugs are involved.

The punishment for legal entities is pecuniary.

The Penal Code does not make a distinction between the crimes of illegal manufacture, acquisition, possession, trafficking, mediation, transportation, import, export, transit or other illegal handling of narcotic drugs. All these acts are criminalised by the same sections of the Penal Code.

A detailed (but still open) list of mitigating circumstances is provided in § 57. Other circumstances not specified in § 57 may also be taken into consideration when imposing a punishment.

Aggravating circumstances are listed conclusively in § 58.

However, the law does not specify any concrete details for the extent of increase or decrease in penalty when such circumstances are present; these lists are provided only to guide judges.

In Estonia there are no prosecutor or sentencing guidelines for drug trafficking offences. The Estonian Supreme Court has interpreted that large proprietary gain should be interpreted to be equal to major damage (Estonian Supreme Court, Case No 3-1-1-44-08, Official Gazette, RT III 2008, 48, 326; available in Estonian: <https://www.riigiteataja.ee/akt/13077466>), which is defined in the Penal Code Implementation Act as damage exceeding 100 times the established minimum monthly wage (i.e. exceeding EUR 39 000).

These court decisions are non-binding, but it is unlikely that any lower court would ignore the Supreme Court decision.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentence ranges that are prescribed for the supply of defined quantities of particular drugs with no aggravating or mitigating circumstances.

Two judges and one prosecutor were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

In Estonia, the rules regarding early release in cases such as these are laid down in § 76 of the Penal Code.

These establish that an offender can be released after serving half of a sentence (one third in cases of release with electronic surveillance) for drug offences involving small quantities (sufficient to cause drug intoxication in fewer than 10 people). Offenders convicted of offences involving large quantities (sufficient to cause drug intoxication in at least 10 people) can be released after serving two thirds of a sentence (half in cases of release with electronic surveillance).

In deciding to release a prisoner on parole, the court shall take into consideration the circumstances relating to the commission of the criminal offence, the personality of the convicted offender, their previous personal history and conduct during the service of the sentence, their living conditions and the consequences that release on parole may bring for the individual.

The practitioners interviewed generally felt that it was very likely that the non-problematic first-time offender would be released after approximately 67 % of the sentence had been served.

Applying this proportion of 67 % to the median expected penalty, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	1–10 years	4–5 years (judge 1) 5–6 years (judge 2) 5–6 years (prosecutor)	5 years 6 months	3 years 8 months
	10 kg	1–10 years	N/A		
Amphetamine (20 % purity)	100 g	1–10 years	4–5 years (judge 1) 5–6 years (judge 2) 5–6 years (prosecutor)	5 years 6 months	3 years 8 months
	1 kg	1–10 years	N/A		
Cocaine (33 % purity)	100 g	1–10 years	4–6 years (judge 1) 4–6 years (judge 2) 6–7 years (prosecutor)	5 years	3 years 4 months
	1 kg	1–10 years	N/A		
Heroin (25 % purity)	100 g	1–10 years	N/A		
	1 kg	1–10 years	N/A		

Ireland

Country profile on penalties in drug trafficking cases in Ireland

Written by Donall Johnston BL, Barrister-at-Law

General information on penalties in drug trafficking offences

In Ireland the different drug trafficking offences and their associated penalties are set out in sections 15, 15A and 15B of the Misuse of Drugs Act, 1977 ('the 1977 Act') (as amended), supplemented by Section 3(1) of the Criminal Justice Act, 1994 (as amended), as follows: *Any person who has in his possession, whether lawfully or not, a controlled drug for the purpose of selling or otherwise supplying it to another in contravention of the regulations made under section 5 of this Act, shall be guilty of an offence.* The penalty, under Section 27(3A), on summary conviction may be a fine not exceeding EUR 2 500 or up to 12 months' imprisonment or both, while the penalty for conviction on indictment may be a fine and/or imprisonment for life or both.

An offence under Section 15A (possession) and 15B (importation) of the 1977 Act is similar to that in Section 15, save that the value of the drug is in excess of EUR 13 000, in which case there is a presumptive mandatory minimum sentence of 10 years. Provision is made to allow a court in imposing sentence for a first offence under either section 15A or section 15B to impose a sentence of less than 10 years and the court determines that by reason of exceptional and specific circumstances. If, however, the accused has been convicted of a second or subsequent offence under either Section 15A or Section 15B, or is convicted of a first offence under one of those sections and has been convicted under the other of those sections, the court must impose a sentence of not less than 10 years.

There are a number of additional offences, but they are not relevant to this report. Thus the legislative provisions in Ireland relating to sentencing drug trafficking offences do not differentiate between the different types of drug or by weight, only by market value. There are varied and complex issues surrounding the determination of market value, but these are outside the scope of this report.

Section 27(3D) sets out a number of different mitigating and aggravating factors (in subsections (b) and (c) respectively) that a court must consider when imposing a sentence under Section 15A and when deciding whether or not to deviate from the mandatory minimum sentence. Aggravating factors include any previous drug trafficking convictions, other than Section 15A or Section 15B, and whether the public interest in preventing drug trafficking would be served by the imposition of a lesser sentence. Mitigating factors include any matters the court considers appropriate, with examples that include whether the person pleads guilty to the offence, and the stage at which he or she indicates the intention to plead guilty, the circumstances in which the indication was given, and whether the person materially assisted in the investigation of the offence. There are a large number of additional common law factors but these are outside the scope of this report.

Other than the issues described above, there are no official guidelines for sentencing or prosecuting the trafficking of illicit drugs.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentencing ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances ⁽¹⁹⁾.

One judge, one prosecutor and three defence lawyers were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

There is a general provision of 25 % remission for all persons sentenced to a determinative sentence, subject to being of good behaviour while in prison. It should be noted that early release does not apply in a situation where the value of the drugs subject to the conviction is over EUR 13 000; however, remission can apply. The power to grant early release to those convicted under Section 15A is restricted. Section 27(3H) of the 1977 Act provides that any sentence for an offence under Section 15A is subject to ordinary remission, which is currently one quarter of the total sentence.

Section 27(3G) of the 1977 Act states that the powers of commutation and remission cannot be exercised in respect of an offence under Section 15A but can for an offence under Section 15.

Section 27(3I) provides that the power to grant temporary release may not be exercised until such time as the power to grant commutation or remission has arisen, except for grave reasons of a humanitarian nature. Section 27(3J) of the 1977 Act provides that a court may list a sentence for review imposed under Section 15A or Section 15B after the expiry of not less than half of the term specified under Section 27(3C) or Section 23(3F).

The practitioners interviewed generally felt that early release does not apply beyond automatic remission of 25 % for good behaviour, if the value is over EUR 13 000, thus the non-problematic offender would be released after approximately 75 % of the sentence had been served. If the value is below EUR 13 000 it is very likely that there will be early release, and the expected time spent in prison would be around 75 %, though the judge interviewed felt that it would be 60 %.

Applying this proportion of 75 % to the median expected penalty, the expected time spent incarcerated can be estimated, and is shown in the table.

⁽¹⁹⁾ A detailed analysis of sentences actually given for drug supply was published in 2014:

<http://www.irishsentencing.ie/en/ISIS/Analysis%20of%20Sentencing%20for%20Drug%20Offences,%20Mar%202014.pdf/Files/Analysis%20of%20Sentencing%20for%20Drug%20Offences,%20Mar%202014.pdf>

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	On summary conviction: up to 12 months' imprisonment, fine up to EUR 2 500 Conviction on indictment: up to life imprisonment	2–3 years, suspended (judge) 5 years, 2 suspended (prosecutor) 4 years (defence lawyer 1) 1 year (defence lawyer 2) 3 years (defence lawyer 3)	Median incalculable	–
	10 kg	Presumptive mandatory minimum of 10 years' imprisonment, up to life imprisonment	4–5 years (judge) 10 years (prosecutor) 10 years (defence lawyer 1) 5 years (defence lawyer 2) 10 years (defence lawyer 3)	10 years	7 years 6 months
Amphetamine (20 % purity)	100 g	On summary conviction: up to 12 months' imprisonment, fine up to EUR 2 500 Conviction on indictment: up to life imprisonment	1–2 years, suspended (judge) n.a. (prosecutor) 3 years (defence lawyer 1) 1 year (defence lawyer 2) 3 years (defence lawyer 3)	Median incalculable	–
	1 kg	Presumptive mandatory minimum of 10 years' imprisonment, up to life imprisonment	1–2 years (judge) n.a. (prosecutor) 10 years (defence lawyer 1) 6 years (defence lawyer 2) 10 years (defence lawyer 3)	8 years	6 years
Cocaine (33 % purity)	100 g	On summary conviction: up to 12 months' imprisonment, fine up to EUR 2 500 Conviction on indictment: up to life imprisonment	2–3 years, suspended (judge) 5 years, 2 suspended (prosecutor) 5 years (defence lawyer 1) 2 years (defence lawyer 2) 2–3 years (defence lawyer 3)	Median incalculable	–
	1 kg	Presumptive mandatory minimum of 10 years' imprisonment, up to life imprisonment	3–4 years (judge) 10 years (prosecutor) 10 years (defence lawyer 1) 9 years (defence lawyer 2) 10 years (defence lawyer 3)	10 years	7 years 6 months

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Heroin (25 % purity)	100 g	Presumptive mandatory minimum of 10 years' imprisonment, up to life imprisonment	2–3 years, suspended (judge) 10 years, 2 suspended (prosecutor) 10 years (defence lawyer 1) 7 years (defence lawyer 2) 10 years (defence lawyer 3)	Median incalculable	–
	1 kg	Presumptive mandatory minimum of 10 years' imprisonment, up to life imprisonment	4–6 years (judge) 10 years (prosecutor) 12 years (defence lawyer 1) 14 years (defence lawyer 2) 14 years (defence lawyer 3)	12 years	9 years

Greece

Country profile on penalties in drug trafficking cases for Greece

Written by Dr. Spyridon Karanikolas

General information on penalties in drug trafficking cases

In Greece the criminal provisions in relation to drug trafficking are found in Law 4139/2013 'Addictive substances and other provisions'. According to art. 20(1), the 'basic' crime of drug trafficking is punished with a penalty of imprisonment of at least eight years (maximum 20 years) ⁽²⁰⁾, and a pecuniary penalty of up to EUR 300 000 is provided for. In addition, according to art. 24(1), the crime of instigation and advertisement relating to the preparation and supply of drugs incurs a penalty of imprisonment of at least six months (maximum five years) and a pecuniary penalty of EUR 500–50 000.

According to art. 36, the Court may also impose the penalty of prohibition of practice of the perpetrator's profession for 1–5 years, in cases where the violation is related to the individual's profession. Lastly, according to arts. 40 and 41, in cases of conviction, the Court also orders the confiscation of: (i) the drugs involved, (ii) the assets obtained from drug trafficking, and (iii) the vehicles and objects that were used or were intended to be used for committing the offences.

The Law provides for certain aggravating circumstances the change the established penalties. In particular, the following aggravating circumstances are provided for by Law 4139/2013:

- According to art. 22, imprisonment of at least 10 years (maximum 20 years) and a pecuniary penalty of EUR 50 000–500 000 are imposed, when:
 - i) the perpetrator is a public official whose duties involve handling drugs (e.g. safekeeping of drugs, prosecuting drug trafficking perpetrators, etc.);
 - ii) drug trafficking takes place in camps or other areas of the armed forces, police barracks, prison facilities, juvenile penitentiaries, schools at any level, educational institutions or other training modules, sport facilities, camps, coaching centres, places providing social services;
 - iii) the perpetrator is a member of a criminal organisation or a terrorist group;
 - iv) the perpetrator has prior convictions for felonies related to drug trafficking;
 - v) the perpetrator mixes drugs with food or beverages or other goods;
 - vi) the perpetrator is a doctor who issues medical prescriptions for obtaining drugs knowing that that there is no real and specific medical need;
 - vii) the perpetrator is a doctor who administers medicine that contains drug substances that will be used for producing drugs;

⁽²⁰⁾ It should be noted that the maximum duration of the penalty of confinement in a penitentiary is 20 years, and the maximum duration of the penalty of imprisonment is five years (arts 51–53 of the Greek Criminal Code), unless stated otherwise.

viii) the perpetrator is a pharmacist who administers drugs without lawful prescription;

ix) the perpetrator unlawfully administers substances for the substitution of drug addiction (art. 22(5)).

- According to art. 23(1), imprisonment for life or for at least 10 years (maximum 20 years) and a pecuniary penalty of EUR 50 000–600 000 are imposed when:
 - i) the drugs could result and have resulted in severe bodily injury (art. 310 par. 2 of the Criminal Code) or death;
 - ii) the perpetrator is an adult and traffics drugs to minors by profession, or uses, in any way, minors during drug trafficking.
- According to art. 23(2), imprisonment for life and a pecuniary penalty of EUR 50 000–1 000 000 are imposed when:
 - i) the perpetrator funds drug trafficking acts as a profession, in order to gain profit that exceeds EUR 75 000;
 - ii) the perpetrator traffics drugs as a profession, in order to gain profit that exceeds EUR 75 000;
 - iii) the perpetrator uses guns in violation of art. 1 par. 1 of Law 2168/1993 in order to traffic drugs or to facilitate his or her escape.

On the other hand, some mitigating circumstances exist in Greek law that change the penalties laid down in law. In particular, the following mitigating circumstances are provided for by Law 4139/2013:

- According to art. 21, imprisonment of up to three years is imposed when:
 - i) the perpetrator is an addict who traffics small amounts of drugs in order to cover his or her daily needs;
 - ii) the perpetrator offers drugs to his or her relatives in order to cover their daily drug needs;
 - iii) the perpetrator offers, without profit, part of the drugs intended for personal use, to a third person for personal use only.
- According to art. 27, information leading to the discovery and dismantling of a criminal organisation or arrest of a drug trafficker is a mitigating circumstance. Also, according to art. 29(2), the perpetrator of art. 29(1) shall not be punished in cases where the Court decides that the offence was occasional and not likely to recur. Furthermore, according to art. 30(4), if the perpetrator is a drug addict he/she is punished as follows:
 - (a) for violation of art. 29(1–2) he/she remains unpunished;
 - (b) for violation of art. 20 the penalty of imprisonment of at least one year (maximum five years) is imposed;
 - (c) for violation of art. 21(1–2) the penalty of imprisonment of up to one year is imposed;
 - (d) for violation of art. 22 the penalty of imprisonment of up to 10 years is imposed.

Finally, in 2013 the Anti-Drug Squad of the Greek Police issued a list of the minimum and maximum prices of drugs in 2012. This list is taken into account by Courts in order to calculate the intended profit of drug trafficking and conclude whether the aggravating circumstance of art. 23(2) is applicable.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentence ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances.

Two judges and one prosecutor were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive. The results are summarised in the table below.

Early release in drug trafficking cases

Early release rules that theoretically would be applicable to the scenarios mentioned above can be found in articles 105 of Greek Criminal Code and article 35 of Law 4139/2013. The practitioners interviewed generally felt that it was very likely that the non-problematic first-time offender would be released; one judge thought this would be after approximately 67 % of the sentence had been served, and the other judge and the prosecutor thought this would be after approximately 60 % of the sentence had been served.

Applying this proportion of 60 % to the median expected penalty, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	8–20 years' imprisonment	8 years (judge 1) 10 years + EUR 20 000 (judge 2) 10 years + EUR 20 000 (prosecutor)	10 years	6 years
	10 kg	8–20 years' imprisonment	12 years (judge 1) 12 years + EUR 40 000 (judge 2) 15 years + EUR 100 000 (prosecutor)	12 years	7 years 2 months
Amphetamine (20 % purity)	100 g	8–20 years' imprisonment	9 years (judge 1) 10 years + EUR 40 000 (judge 2) 11 years + EUR 50 000 (prosecutor)	10 years	6 years
	1 kg	8–20 years' imprisonment	10 years (judge 1) 15 years + EUR 60 000 (judge 2) 16 years + EUR 250 000 (prosecutor)	15 years	9 years

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cocaine (33 % purity)	100 g	8–20 years' imprisonment	10 years (judge 1) 12 years + EUR 60 000 (judge 2) 12 years + EUR 100 000 (prosecutor)	12 years	7 years 2 months
	1 kg	8–20 years' imprisonment	15 years (judge 1) 17 years + EUR 80 000 (judge 2) 17 years + EUR 280 000 (prosecutor)	17 years	10 years 2 months
Heroin (25 % purity)	100 g	8–20 years' imprisonment	10 years (judge 1) 15 years + EUR 70 000 (judge 2) 15 years + EUR 150 000 (prosecutor)	15 years	9 years
	1 kg	8–20 years' imprisonment	12 years (judge 1) 20 years + EUR 100 000 (judge 2) 20 years + EUR 300 000 (prosecutor)	20 years	12 years

Spain

Country profile on penalties in drug trafficking cases in Spain

By Manuel Cancio Meliá (UAM) & Mariona Llobet Anglí (UPF)

General information on penalties in drug trafficking cases

Drug-related offences are established in the Spanish Criminal Code (Código Penal, CP) in arts. 368 CP *et sequ.* Penalties provided for by law for the different drug trafficking offences range from six months' to 18 years' imprisonment, depending on the presence of aggravating and mitigating circumstances. The supply of drugs that cause serious damage to health is punishable by 3–6 years' imprisonment, and for other drugs the sentence is 1–3 years. In the scenarios below, amphetamine, cocaine and heroin are legally considered as substances causing serious damage to health.

Fines may be set from a minimum amount that is equal to the drugs' value, to maxima of two, three, or four times the value, depending on the severity of the offence.

The main criterion for the penalty level is whether the controlled substance is held to 'cause severe harm to health' or not. Alongside this, various aggravating circumstances are set out: supply to minors, location of the traffic, content of the substance (adulteration), quantity of drug involved, means used by the perpetrator (violence).

For large quantities, the law provides for a penalty 'one level higher'; art. 70 CP explains that this means the new maximum is the standard maximum increased by half, while the new minimum is the standard maximum plus one day (or one day-fine, if the penalty is pecuniary). Judicial precedents set the large quantity as over 500 days of consumption; the daily consumption quantity was established by the Spanish Instituto Nacional de Toxicología on 31 January 2004. For the substances considered in the scenarios below, the relevant quantities are as follows:

	Daily quantity	500x daily quantity
Cannabis	5 g	2.5 kg for resin
	20 g	10 kg for herb
Amphetamine	0.18 g	90 g
Cocaine	1.5 g	750 g
Heroin	0.6 g	300 g

Besides a general mitigation clause, collaboration with the authorities or experiencing drug addiction can be mitigating circumstances.

According to a unanimous interpretation by the Courts and scholars of the relevant legal provision (art. 368 CP), in Spain possession for personal consumption is not a crime, but is classed as a (non-criminal) offence against public order. The CP only punishes possession with the intent to traffic. The law does not expressly explain when this intention occurs. However, the Courts have elaborated

evidence rules in this area. According to the Supreme Court's rulings, the following provide relevant evidence that an individual intends to traffic a drug:

- possession of a significant quantity of drugs, with the quantity dependent on the kind of substance;
- its purity;
- the usual quantity that the user consumes, etc. — the Courts usually say that the possession is in order to traffic when the holder possess more than five daily doses (for example, 50 g of hashish, 3 g of heroin, 7.5–13 g of cocaine);
- the possessor is not an addict or a habitual consumer;
- possession of different kinds of drugs.

Moreover, the Courts also use other evidence: (a) if the drug has been prepared in order to be distributed (e.g., put into little bags); (b) if the drug is hidden; (c) the reaction of the holder in the presence of the police; (d) the degree of purity; (e) the possession of instruments needed to 'cut' the drug; (f) the possession of cash in coins or small bills; (g) the lack of the holder's economic resources in relation to the value of drugs.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentencing ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances.

Two judges and two defence lawyers were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

Rules on early release theoretically applicable to the scenarios mentioned above are the provisions for *probation* (art. 90 CP, after three quarters of the sentence has been served) and *parole* (art. 80.1 CP).

The practitioners interviewed generally felt that it was likely that the non-problematic first-time offender supplying 1 kg cannabis would be granted parole; the others in the scenarios would be released after approximately 75 % of the sentence had been served.

Applying this proportion of 75 % to the median expected penalty, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	1–3 years' imprisonment and fine	2 years, suspended + fine of 2x value of the drug (judge 1) 1–3 years, suspended (judge 2) 1 year 6 months, suspended, + fine of value of the drug (defence lawyer 1) 15 months, suspended (defence lawyer 2)	1 year 9 months, suspended	–
	10 kg	3–4.5 years' imprisonment and fine	3 years 6 months + fine of 4x value of the drug (judge 1) 3–4.5 years (judge 2) 4 years + fine of 2x value of the drug (defence lawyer 1) 3 years 3 months (defence lawyer 2)	3 years 8 months	2 years 9 months
Amphetamine (20 % purity)	100 g	6–9 years' imprisonment and fine	4 years + fine of 3x value of the drug (judge 1) 6–9 years (judge 2) 3 years + fine of value of the drug (defence lawyer 1) 3 years 3 months (defence lawyer 2)	3 years 8 months	2 years 9 months
	1 kg	6–9 years' imprisonment and fine	7 years + fine of 4x value of the drug (judge 1) 6–9 years (judge 2) 7 years + fine of 3x value of the drug (defence lawyer 1) 6 years 3 months (defence lawyer 2)	7 years	5 years 3 months
Cocaine (33 % purity)	100 g	3–6 years' imprisonment and fine	4 years + fine of 3x value of the drug (judge 1) 3–6 years (judge 2) 3 years + fine of value of the drug (defence lawyer 1) 3 years 3 months (defence lawyer 2)	3 years 8 months	2 years 9 months
	1 kg	6–9 years' imprisonment and fine	4 years + fine of 3x value of the drug (judge 1) 6–9 years (judge 2) 4 years + fine of 2x value of the drug (defence lawyer 1) 4 years 6 months (defence lawyer 2)	4 years 3 months	3 years 2 months

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Heroin (25 % purity)	100 g	3–6 years' imprisonment and fine	4 years + fine of 3x value of the drug (judge 1) 3–6 years (judge 2) 3 years + fine of value of the drug (defence lawyer 1) 3 years 3 months (defence lawyer 2)	3 years 8 months	2 years 9 months
	1 kg	6–9 years' imprisonment and fine	4 years + fine of 3x value of the drug (judge 1) 6–9 years (judge 2) 6 years + fine of 3x value of the drug (defence lawyer 1) 4 years 6 months (defence lawyer 2)	5 years 3 months	3 years 11 months

France

Country profile on penalties in drug trafficking cases in France

Written by Vincent Sizaire, Magistrate.

General information on penalties in drug trafficking cases

The export or import of narcotic drugs, transportation, retention, offer, sale, acquisition or possession of narcotics are punishable by 10 years' imprisonment and a fine of EUR 7 500 000, according to articles 222-36 and 222-37 of the Criminal Code.

The export or import of narcotic drugs with the involvement of a criminal organisation is punishable by 30 years' imprisonment and a fine of EUR 7 500 000, according to article 222-36 of the Criminal Code.

There are no mitigating circumstances. However, penalties provided by law represent the maximum that can be pronounced. Judges can sentence the offender to a shorter length of imprisonment or a smaller fine.

There is no sentencing guideline. The most recent prosecuting guideline was adopted by the Ministry of Justice on 1 October 2005. It only gives orders to the prosecutors regarding the mode of prosecution. It gives no indications on the penalties.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentencing ranges that are prescribed for supply of defined quantities of particular drugs in certain circumstances.

One judge, two prosecutors and three defence lawyers were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

Rules on early release are theoretically applicable to the scenarios mentioned above.

According to article 729 of the Code of Criminal Procedure, any convicted person can obtain early release after 50 % of the sentence served (or 66 % if the sentence is for a second offence) if he/she shows substantial efforts at social reintegration, such as actively seeking a job or compensating the victim.

The practitioners interviewed generally felt that it was probable that the non-problematic first-time offender would be released after approximately 50 % of the sentence had been served.

Applying this proportion of 50 % to the median expected penalty, subject to the different conditions above, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	10 years' imprisonment and a fine of EUR 7 500 000	12 months (judge) 8 months (prosecutor 1) 6 months (prosecutor 2) 1 month, suspended (defence lawyers 1, 2) 2 months, suspended (defence lawyer 3)	Median incalculable	–
	10 kg	10 years' imprisonment and a fine of EUR 7 500 000	2 years (judge) 3 years (prosecutor 1) 1 year (prosecutor 2) 1 year 6 months, suspended (defence lawyer 1) 1 year, suspended (defence lawyers 2, 3)	Median incalculable	–
Amphetamine (20 % purity)	100 g	10 years' imprisonment and a fine of EUR 7 500 000	12 months (judge) 4 months (prosecutor 1) 8 months (prosecutor 2) 6 months, suspended (defence lawyer 1) 4 months, suspended (defence lawyers 2, 3)	Median incalculable	–
	1 kg	10 years' imprisonment and a fine of EUR 7 500 000	1 year 6 months (judge) 1 year (prosecutor 1) 14 months (prosecutor 2) 1 month (defence lawyer 1) 2 months, suspended with probation (defence lawyer 2) 1 month (defence lawyer 3)	7 months	3.5 months
Cocaine (33 % purity)	100 g	10 years' imprisonment and a fine of EUR 7 500 000	12 months (judge) 12 months (prosecutors 1, 2) 6 months, suspended (defence lawyers 1, 3) 7 months, suspended (defence lawyer 2)	Median incalculable	–
	1 kg	10 years' imprisonment and a fine of EUR 7 500 000	1 year 6 months (judge) 5 years (prosecutor 1) 2 years (prosecutor 2) 3 months (defence lawyer 1) 4 months (defence lawyers 2), 3	11 months	5.5 months

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Heroin (25 % purity)	100 g	10 years' imprisonment and a fine of EUR 7 500 000	12 months (judge) 12 months (prosecutors 1, 2) 3 months (defence lawyer 1) 6 months (defence lawyer 2) 4 months (defence lawyer 3)	9 months	4.5 months
	1 kg	10 years' imprisonment and a fine of EUR 7 500 000	1 year 6 months (judge) 5 years (prosecutor 1) 2 years (prosecutor 2) 8 months (defence lawyer 1) 1 year 6 months (defence lawyer 2) 1 year (defence lawyer 3)	1 year 6 months	9 months

Croatia

Country profile on penalties in drug trafficking cases in Croatia

Written by Assistant Professor Dr Maja Munivrana Vajda, LL.M.

General information on penalties in drug trafficking cases

Drug trafficking penalties in Croatia are set out in Art. 190(2) of the new Croatian Criminal Code, which entered into force on 1 January 2013 ⁽²¹⁾. Whoever manufactures, processes, transports, imports or exports, procures or possesses substances declared by law to be illegal drugs that are intended for unauthorised sale or for placing them on the market in some other way, or offers them for sale without authorisation or sells or mediates in their sale or purchase or puts them in circulation in some other way, shall be sentenced to imprisonment from 1–12 years.

The same article provides for a number of aggravating circumstances that change the penalties laid down by law. Pursuant to Art. 190(3), drug trafficking is punishable by imprisonment from 3–15 years when committed by a public official who offers for sale, sells or mediates in the sale of drugs in performing his or her function or by a responsible person who offers for sale, sells or mediates in the sale of drugs in exercising public authority, when committed against a child or mentally ill person, when committed in a school or at another place providing education and care or where children engage in sporting or social activities, or in its immediate proximity, or in a penal institution. The same punishment can be imposed on anyone who uses a child to offer for sale, sell or mediate in the sale of illegal drug substances (all Art. 190(3)).

Another aggravating circumstance that changes the penalty range is the involvement of organised crime. Organising a network of resellers or mediators incurs imprisonment of not less than three years (up to a general maximum penalty of 20 years' imprisonment). When it comes to drug trafficking within a framework of a criminal organisation, the law provides for a similar effect relying on a different legislative technique; leaders or organisers of such a criminal organisation will be punished not just for drug trafficking but also, in concurrence, for a separate offence (Art. 328(1)) ⁽²²⁾; punishment is also increased for those who commit a crime within a framework of a criminal organisation without taking part in its organisation or leadership (Art. 329) ⁽²³⁾.

Finally, drug trafficking is aggravated when it causes further harm — the death of a person to whom the perpetrator sold the substance or to whom the substance was sold through his mediation, or the significant impairment of health of a large number of people (art. 190(5)). In such cases the perpetrator may be punished by imprisonment of not less than 5 years (up to a maximum of 20 years).

Other circumstances, such as large quantities and the types of drugs involved may be seen as aggravating by a judge, but do not, by themselves, change the applicable penalties.

⁽²¹⁾ Official Gazette No. 125/11, 144/12, 56/15, 61/15.

⁽²²⁾ Punishable by imprisonment from six months to five years.

⁽²³⁾ For the basic offence of drug trafficking, set out in Art. 192(2), the applicable penalty range would therefore be increased to imprisonment from 3–15 years.

The law does not provide explicitly for any mitigating circumstances that would reduce the penalty. Small quantities, certain types of drug and the addiction of the perpetrator may only lead to a lower penalty within the described range of penalty. However, a perpetrator of drug trafficking who voluntarily substantially contributes to the discovery of the offence may have his or her punishment remitted (Art. 190(9)) ⁽²⁴⁾.

In Croatia there are no sentencing or prosecuting guidelines. Although some non-binding guidelines may be found in the case law, court decisions in Croatia do not have the strength of precedents and additional caution should be exercised in this regard as the new Croatian Criminal Code changed both the definition and the penalties of crimes.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentencing ranges that are prescribed for supply of defined quantities of particular drugs in certain circumstances.

Two judges, one prosecutor and two defence lawyers were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

Pursuant to Art. 59(1), the court may release a prisoner from serving a sentence of imprisonment if he/she has served at least one half but not less than three months of the term to which he/she has been sentenced, if it can be reasonably expected that the convicted person will not commit another criminal offence and if he/she agrees to this. This general rule on early release is theoretically applicable to all offences, and hence is relevant to the scenarios mentioned above.

Although Art. 59(1) would theoretically allow for early release after one half of the prison sentence has been served, the practitioners interviewed generally felt that it was very likely that a non-problematic first-time offender would be released from prison only after approximately 75 % of the sentence had been served.

Applying this proportion of 75 % to the median expected penalty, the expected time spent incarcerated can be estimated, and is shown in the table.

⁽²⁴⁾ But not if his or her act caused further harm described in Art. 192(5).

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	1–12 years' imprisonment	2 years (judge 1) 2 years (judge 2) 2 years (prosecutor) 1 year (defence lawyer 1) 2 years (defence lawyer 2)	2 years	1 year 6 months
	10 kg	1–12 years' imprisonment	4 years (judge 1) 4 years (judge 2) 4 years 6 months (prosecutor) 3 years (defence lawyer 1) 5 years (defence lawyer 2)	4 years	3 years
Amphetamine (20 % purity)	100 g	1–12 years' imprisonment	2 years 6 months (judge 1) 2 years (judge 2) 1 year 6 months (prosecutor) 1 year (defence lawyer 1) 1 year 6 months (defence lawyer 2)	1 year 6 months	13.5 months
	1 kg	1–12 years' imprisonment	4–5 years (judge 1) 3 years 6 months (judge 2) 3 years (prosecutor) 3 years (defence lawyer 1) 4 years (defence lawyer 2)	3 years 6 months	2 years 8 months
Cocaine (33 % purity)	100 g	1–12 years' imprisonment	3 years (judge 1) 2 years 6 months (judge 2) 2 years (prosecutor) 2 years (defence lawyer 1) 2 years (defence lawyer 2)	2 years	1 year 6 months
	1 kg	1–12 years' imprisonment	4–5 years (judge 1) 4 years (judge 2) 5 years (prosecutor) 5 years (defence lawyer 1) 5 years (defence lawyer 2)	5 years	3 years 9 months
Heroin (25 % purity)	100 g	1–12 years' imprisonment	3 years (judge 1) 3 years (judge 2) 2 years 6 months (prosecutor) 2 years (defence lawyer 1) 2 years 6 months (defence lawyer 2)	2 years 6 months	1 year 11 months
	1 kg	1–12 years' imprisonment	4–5 years (judge 1) 5 years (judge 2) 5 years 6 months (prosecutor) 5 years (defence lawyer 1) 5 years (defence lawyer 2)	5 years	3 years 9 months

Italy

Country profile on penalties in drug trafficking cases in Italy

Written by Prof. Giovanni Grasso in cooperation with Dr Floriana Bianco

General information on penalties in drug trafficking cases

In Italy drug trafficking offences and their associated penalties are set out in the Presidential Decree (DPR) No. 309 of 9 October 1990 'Consolidated Law covering regulations in the field of narcotic drugs and psychotropic substances, prevention and treatment of drug addiction and rehabilitation of drug addicts'.

The DPR No. 309/1990, and its penalties for trafficking drugs, was amended in 2006. However, on 25 February 2014 the Italian Constitutional Court adopted its judgment n. 32 that declared the 2006 amendment unconstitutional on procedural grounds. On 16 May 2014 the Italian Legislator adopted Law No.79, which contained various amendments, including reducing the penalty for offences of 'minor seriousness' to imprisonment of 6 months–4 years, without a distinction between substances.

This country profile describes the state of Italian law and practice at the time interviews were carried out with a selection of professionals (see below), and therefore the following is a description of the Italian law before the February 2014 judgment.

Article 73 of DPR 309/1990 lists the drug-related crimes and provides for a penalty that is common to all the offences listed: imprisonment of 6–20 years and a fine of EUR 26 000–260 000.

The main specific aggravating circumstances that apply in cases of illicit drug trafficking are listed in Article 80, § 1 DPR No. 309/1990. Some aggravating circumstances entail an increase in the penalty from one third to one half (e.g. supply of drugs to minors; incitement of a drug addict to commit the offence; the adulteration of drugs or psychotropic substances in a way that increases their harmfulness). According to Article 80, § 2 DPR No. 309/1990 if a 'large quantity' of drugs is involved this represents an aggravating circumstance entailing an increase in the penalty from one half to two thirds.

The main specific mitigating circumstances that apply in cases of illicit drug trafficking are listed in Article 73 DPR No. 309/1990. Article 73, § 5 establishes that the facts of 'minor seriousness', due to the means, the characters or the circumstances of the action or to the quantity and quality of the drug substances, are punished by imprisonment of 1–6 years and a fine of EUR 3 000–26 000. Article 73, § 7 provides for a reduction of the penalty from one half to two thirds in cases where the offender makes an effort to prevent his or her criminal activity from having further consequences.

In Italy there are no official guidelines for the sentencing or prosecuting of illicit drug trafficking. However, with regard to aggravating circumstance in relation to a large quantity, the Grand Chamber of the Court of Cassation, 24 May 2012, n. 36258 stated that this circumstance does not apply when the amount of the drug substances is less than '2 000 times' the maximum value in milligrams (mg) (threshold value), determined for each substance in the table attached to the Ministerial Decree of 11 April 2006, subject to the discretionary evaluation of the judge when this quantity is exceeded.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentence ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances.

Three judges, one public prosecutor and one defence lawyer were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

When a penalty not exceeding two years' imprisonment is imposed, probation could apply, according to Articles 163–168 of Penal Code. The probation period is five years.

When a penalty not exceeding three years' imprisonment is imposed (or when this is the residual portion of a longer sentence), probation under social services' supervision could be applied (Article 47 of Law No. 354/1975).

According to Article 47 ter of Law No. 354/1975, home detention can be granted to a person convicted to no more than four years' imprisonment (even when this is the residual portion of a longer sentence) who belongs to one of the special categories listed by the article.

Article 54 of Law No. 354/1975 provides for the reduction of prison terms, so-called early release, allowing a prisoner who has given proof of his or her participation in the rehabilitation process to deduct 45 days for every semester (six-month period) of imprisonment served.

There was no consensus among the practitioners interviewed as to the likelihood of applicability of early release rules or the amount of sentence that would be served by the non-problematic first-time offender.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty (sentence)
Cannabis	1 kg	6–20 years' imprisonment plus fine of EUR 26 000–260 000	3 years (judge 1) 2–4 years (judge 2) 1.5 years + EUR 4 000 (judge 3) 5 years (prosecutor) 5 years (defence lawyer)	3 years
	10 kg	6–20 years' imprisonment plus fine of EUR 26 000–260 000	9–10 years (judge 1) 3–6 years (judge 2) 4 years + EUR 20 000 (judge 3) 10 years (prosecutor) 7 years (defence lawyer)	7 years
Amphetamine	100 g	6–20 years' imprisonment plus fine of EUR 26 000–260 000	4.5 years (judge 1) 2–5 years (judge 2) 4 years + EUR 20 000 (judge 3) 4 years (prosecutor) 6 years (defence lawyer)	4 years
	1 kg	6–20 years' imprisonment plus fine of EUR 26 000–260 000	7–8 years (judge 1) 3–6 years (judge 2) 6 years + EUR 26 000 (judge 3) 7 years (prosecutor) 8 years (defence lawyer)	7 years
Cocaine	100 g	6–20 years' imprisonment plus fine of EUR 26 000–260 000	4–6 years (judge 1) 4–6 years or more (judge 2) 4 years + EUR 20 000 (judge 3) 6 years (prosecutor) 7 years (defence lawyer)	5 years
	1 kg	6–20 years' imprisonment plus fine of EUR 26 000–260 000	7–8 years (judge 1) 6 years or more (judge 2) 8 years + EUR 30 000 (judge 3) 10 years (prosecutor) 9 years (defence lawyer)	8 years
Heroin	100 g	6–20 years' imprisonment plus fine of EUR 26 000–260 000	7–8 years (judge 1) 4–6 years (judge 2) 4 years + EUR 20 000 (judge 3) 7 years (prosecutor) 7 years (defence lawyer)	7 years
	1 kg	6–20 years' imprisonment plus fine of EUR 26 000–260 000	9–10 years (judge 1) 6 years or more (judge 2) 8 years + EUR 30 000 (judge 3) 12 years (prosecutor) 9 years (defence lawyer)	9 years

Cyprus

Country profile on penalties in drug trafficking cases in Cyprus

Written by Natassa Economou with the valuable contribution of George Ioannou

General information on penalties in drug trafficking cases

In Cyprus the different drug trafficking offences and their associated penalties are set out in the Narcotic Drugs and Psychotropic Substances Law of 1977. The main supply offences are described in sections 4–5, and the corresponding penalties are listed in Schedule III. This Law does not differentiate between offences according to their scale, but the penalty ranges for supply offences vary by the type of drug, according to whether they are listed in Class A, B or C in Schedule I of the Law. Schedule III then lists the penalties for supply offences as follows:

- Class A (includes heroin and cocaine): up to life imprisonment.
- Class B (includes cannabis and amphetamine): up to life imprisonment.
- Class C (does not include any of the drugs in these scenarios): up to 8 years' imprisonment.

Courts in Cyprus have the power to impose fine sanctions together with imprisonment sanctions if they wish to do so.

The Law categorises various actions into two groups, broadly speaking those related to production and those related to distribution, but the penalties for the offences are the same.

A quite detailed list of aggravating and mitigating circumstances is provided in section 30(4) of the Law. Aggravating circumstances include the exploitation of minors or other vulnerable people, the involvement in criminal gangs, the use of weapons, the abuse of a public position, and supplying in a particular institution such as a prison or educational or sports facility. Mitigating circumstances include the age and vulnerability of the offender, degrees of drug dependence, remorse and agreement to attend a course of treatment, and the type and quantity of substances found. However, the Law does not specify any increase or decrease in penalty when such circumstances are present; the lists are provided only to guide the judges in their discretion.

In Cyprus there are no prosecutor or sentencing guidelines for drug trafficking offences. Significant court decisions include *Tilemachou v. The Police (2000) 2 AAD 701* and *Abe v. The Republic (2008) 2 AAD 211*, where it was decided that the personal circumstances of the offender should be taken into account when determining the sentence. These court decisions are binding. Case law in the last few years at the Court of Criminal Appeal has seen penalties of 5 years for supplying 500 g of cannabis (244/2012); 8 years for 900 g of cocaine (197/2011); and 4 years for 50 g of heroin (42/2010).

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentence ranges that should be prescribed for the supply of defined quantities of particular drugs with no aggravating or mitigating circumstances.

Two judges, one prosecutor and two defence lawyers were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

In Cyprus the rules regarding early release from prison are laid down in article 12 (2) of the Prison Law of 1996, Law 62(I) 1996 and an attached Table. These rules apply for every convicted prisoner who has not been sentenced to life imprisonment.

An offender can be released early on the grounds of good behaviour and hard work. The reduction in the sentence is calculated in accordance with the Table in Law 62(I) 1996 and the number of previous periods of imprisonment that the offender has been sentenced to. For each month of imprisonment set out in the first column of the Table, the sentence is reduced by the corresponding period set out in the second column.

Early release may also be considered if an offender has cooperated with the authorities to prosecute suppliers.

The practitioners interviewed generally felt that it was very likely that a non-problematic first-time offender would be released after approximately 75 % of the sentence had been served.

Applying this proportion of 75 % to the median expected penalty, subject to the above conditions, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	Up to life imprisonment	EUR 1 700 fine and bound over for 2 years to be consistent with the law (judge 1) 2 years (judge 2) 2 years (prosecutor) 4 months (defence lawyer 1) 1 year 6 months–2 years (defence lawyer 2)	1 year 9 months	1 year 4 months
	10 kg	Up to life imprisonment	6 months, suspended (judge 1) 7 years (judge 2) 7 years (prosecutor) 2 years (defence lawyer 1) 4–6 years (defence lawyer 2)	5 years	3 years 9 months
Amphetamine (20 % purity)	100 g	Up to life imprisonment	3 months, suspended (judge 1) 2 years (judge 2) 6 months (prosecutor) 6 months (defence lawyer 1) 1 year 6 months–2 years (defence lawyer 2)	6 months	4.5 months
	1 kg	Up to life imprisonment	6 months, suspended (judge 1) 7 years (judge 2) 1 year 6 months (prosecutor) 2 years (defence lawyer 1) 4–6 years (defence lawyer 2)	2 years	1 year 6 months

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cocaine (33 % pure)	100 g	Up to life imprisonment	1 year (judge 1) 2 years (judge 2) 1 year 6 months (prosecutor) 1 year (defence lawyer 1) 2–5 years (defence lawyer 2)	1 year 6 months	13.5 months
	1 kg	Up to life imprisonment	3 years (judge 1) 7 years (judge 2) 4 years (prosecutor) 3 years (defence lawyer 1) 4–6 years (defence lawyer 2)	4 years	3 years
Heroin (25 % pure)	100 g	Up to life imprisonment	1 year (judge 1) 3–4 years (judge 2) 3 years (prosecutor) 1 year (defence lawyer 1) 2–5 years (defence lawyer 2)	3 years	2 years 3 months
	1 kg	Up to life imprisonment	3 years (judge 1) 8 years (judge 2) 8 years (prosecutor) 3 years (defence lawyer 1) 5–7 years (defence lawyer 2)	6 years	4 years 6 months

Latvia

Country profile on penalties in drug trafficking cases in Latvia

Written by Elita Nimande (Dr. iur., Assistant Professor, Criminal Law Sciences Department, Faculty of Law, University of Latvia)

General information on penalties in drug trafficking cases

In Latvia there are different types and levels of penalties (sentences) according to modalities of the offence. Those relevant to this study include:

1) Chapter XIX Criminal Offences of an Economic Nature, of the Criminal Law:

- Section 190.1 Movement of Goods and Substances the Circulation of which is Prohibited or Specially Regulated across the State Border of the Republic of Latvia.

2) Chapter XX Criminal Offences against General Safety and Public Order:

- Section 249 Violation of Provisions Regarding the Production, Acquisition, Storage, Registration, Dispensation, Transportation and Forwarding of Narcotic and Psychotropic Substances;
- Section 250 Unauthorised Dispensation of Narcotic and Psychotropic Substances;
- Section 251 Inducement to Use Narcotic and Psychotropic Substances;
- Section 253 Unauthorised Manufacture, Acquisition, Storage, Transportation and Forwarding of Narcotic and Psychotropic Substances;
- Section 253.1 Unauthorised Manufacture, Acquisition, Storage, Transportation and Forwarding of Narcotic and Psychotropic Substances for the Purpose of Sale and Unauthorised Sale.

3) Chapter XXIII Criminal Offences Against Administration of Justice:

- Section 309 Illegal Providing of Substances and Objects to Persons who are Confined in Places of Short-term Detention and Prisons, and Illegal Receiving of Substances and Objects from Such Persons.

The applicable punishment of deprivation of liberty depends on different features of the offence. It ranges from minimum temporary deprivation of liberty for Unauthorised Manufacture, Acquisition, Storage, and Sale of Narcotic and Psychotropic Substances in Small Amounts and Use of Narcotic and Psychotropic Substances without a Physician's Designation (Section 253.2 subsection 1), to a maximum term of 5–15 years' imprisonment, with or without confiscation of property, and with police supervision for a term not exceeding three years for Unauthorised Manufacture, Acquisition, Storage, Transportation and Forwarding of Narcotic and Psychotropic Substances for the Purpose of Sale and Unauthorised Sale (Section 253.1, subsection 3).

The Law On the Procedures for the Coming into Force and Application of the Criminal Law, Annex 2, sets out two quantity limits for different substances; the 'Amount up to which the amount is recognised as small', and the 'Amount beginning with which the amount is recognised as large'. For the substances in the scenarios described below, large amounts are: cannabis resin 50 g; amphetamine 10 g; cocaine 5 g; and heroin 1 g.

There are no legislative limitations to the imposition of the maximum sentence in Latvia. It is provided for in Section 46 General Principles for Determination of Sentence of the Criminal Law that, in determining a sentence, a court shall take into account the character of and harm caused by the criminal offence committed, the personality of the offender and mitigating or aggravating circumstances.

In Latvia it is also possible to pass lesser sentences than that provided for by the law (Section 49), by taking into account various mitigating circumstances and the personality of the offender. At the same time, Section 49 is not applicable if the court has found that the criminal offence was committed in aggravating circumstances.

There are no specific guidelines to be implemented in drug trafficking criminal cases in Latvia. Therefore the general guidelines as provided in the Criminal Law are implemented. A summary of court practice about 'narcotic drug cases' was produced in 2002 ⁽²⁵⁾; it is not publicly available at present because substantial amendments have been made to the Criminal Law during the last 10 years and since the new Criminal Procedure Law came into force on 1 October 2005.

Scenarios: prescribed and expected sentences

In all the scenarios described below the amount is considered large (large scale) according to Latvian Criminal Law, and so the penalty according to Section 253.1 subsection 3 would usually be 5–15 years' imprisonment, with or without confiscation of property, and with police supervision for a term not exceeding three years.

Two judges, three prosecutors and two defence lawyers were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

According to Latvian law, a person can be released from criminal liability and from serving a sentence. The relevant provisions for these scenarios are in s.61 of the Criminal Law, Conditional Release Prior to Completion of Punishment. A person who has been punished with deprivation of liberty may be conditionally released prior to completion of his or her basic punishment, if there is a reason to believe that he or she is able to integrate with society after release without committing a criminal offence. Conditional release prior to completion of punishment may be proposed if the convicted person has served: not less than 50 % for a criminal violation or a less serious crime; not less than 67 % (two thirds) of the punishment imposed for a serious crime; not less than 75 % of the punishment imposed for a particularly serious crime.

Supplying or possessing with the intent to supply is considered a particularly serious crime, and the offender in the above scenarios would only be released after serving 75 % of the sentence.

⁽²⁵⁾ See the homepage of the Supreme Court of the Republic of Latvia at www.at.gov.lv.

The defence lawyers and judges who were interviewed stated that it was very likely or probable that these early release rules would be applied; however, the prosecutors stated that it was very unlikely that these early release rules would be applied.

Applying this proportion of 75 % to the median expected penalty, subject to the above limitations, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	5–15 years' imprisonment, with police supervision for up to 3 years	5.5–8 years (judge 1) 5 years (judge 2) 250 hours' community service or fine of 200x minimum wage (prosecutor 1) 8 years (prosecutor 2) 3 years (prosecutor 3) 5 years (defence lawyer 1) 5–8 years (defence lawyer 2)	5 years	3 years 9 months
	10 kg	5–15 years' imprisonment, with police supervision for up to 3 years	7–10 years (judge 1) 8 years (judge 2) 3 years, suspended (prosecutor 1) 15 years (prosecutor 2) 8 years (prosecutor 3) 12 years (defence lawyer 1) 8–10 years (defence lawyer 2)	8 years 6 months	6 years 5 months
Amphetamine (20 % purity)	100 g	5–15 years' imprisonment, with police supervision for up to 3 years	5.5–8 years (judge 1) 6 years (judge 2) 3 years, suspended, fine 200x minimum wage (prosecutor 1) 4 years (prosecutor 2) 1 year (prosecutor 3) 3 years (defence lawyer 1) 5–8/9 years (defence lawyer 2)	4 years	3 years
	1 kg	5–15 years' imprisonment, with police supervision for up to 3 years	7–10 years (judge 1) 8 years (judge 2) 5 years, confiscation of property (prosecutor 1) 9 years (prosecutor 2) 5 years (prosecutor 3) 10 years (defence lawyer 1) 5–10 years (defence lawyer 2)	8 years	6 years

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cocaine (33 % purity)	100 g	5–15 years' imprisonment, with police supervision for up to 3 years	6–9 years (judge 1) 7 years (judge 2) 5 years, suspended, fine 200x minimum wage (prosecutor 1) 6 years (prosecutor 2) 1 year (prosecutor 3) 2 years (defence lawyer 1) 5–10 years (defence lawyer 2)	6 years	4 years 6 months
	1 kg	5–15 years' imprisonment, with police supervision for up to 3 years	7–12 years (judge 1) 10 years (judge 2) 5–8 years, confiscation of property (prosecutor 1) 15 years (prosecutor 2) 5 years (prosecutor 3) 10 years (defence lawyer 1) 5–10 years or more (defence lawyer 2)	9 years 6 months	7 years 2 months
Heroin (25 % purity)	100 g	5–15 years' imprisonment, with police supervision for up to 3 years	6–9 years (judge 1) 8 years (judge 2) 8–10 years, confiscation of property (prosecutor 1) 8 years (prosecutor 2) 3 years (prosecutor 3) 3 years (defence lawyer 1) 5–10 years (defence lawyer 2)	7 years 6 months	5 years 8 months
	1 kg	5–15 years' imprisonment, with police supervision for up to 3 years	7–12 years (judge 1) 12 years (judge 2) 10–15 years, confiscation of property (prosecutor 1) 12 years (prosecutor 2) 10 years (prosecutor 3) 12 years (defence lawyer 1) 5–10 years or more (defence lawyer 2)	12 years	9 years

Lithuania

Country profile on penalties in drug trafficking cases in Lithuania

Written by Prof., Habil. dr. Gintaras Švedas

General information on penalties in drug trafficking cases

In Lithuania the different drug trafficking offences and their associated penalties are set out in Articles 199, 259, 260, 261 and 264 of the Criminal Code (CC).

Para 2 of Article 199 of the CC sets out criminal liability for the smuggling of narcotic substances and establishes a penalty of 3–10 years' imprisonment.

Article 259 of the CC sets out criminal liability for the producing, processing, acquiring, storing, transporting and forwarding of narcotic substances for purposes other than distribution. Various penalties are outlined, including fines defined as multiples of the minimum standard of living (MSL) (currently 1 MSL = EUR 37.7). Paragraph 1 sets out penalties for the basic offence, such as community service for 1–12 months, restriction of liberty for 3 months–2 years, a fine of 1–500 MSL (up to EUR 18 800), detention for 15–90 days and imprisonment for up to two years. Paragraph 2 establishes the penalties for offences that involve a 'small quantity' of narcotic substances, with possible sentences being community service for 1–12 months, restriction of liberty for 3 months–2 years, a fine of 1–50 MSL (up to EUR 1 880) and detention for 10–45 days.

Article 260 of the CC sets out criminal liability for the producing, processing, acquiring, storing, transporting and forwarding for the purpose of distribution, selling or otherwise distributing of narcotic substances. Paragraph 1 establishes the basic penalty of 2–8 years' imprisonment; paragraph 2 sets out a sentence of 8–10 years' imprisonment in cases involving 'a large quantity' of narcotic substances; and the third paragraph sets out a sentence of 10–15 years' imprisonment in cases involving a 'very large quantity'. Cases involving a 'very large quantity' do not require evidence of a purpose of distribution.

To interpret the different quantities, guidelines to determine small, large and very large quantities of narcotic or psychotropic substances have been approved by the Order of the Minister of Health, and these refer to the weight of pure drug within the seizure. The limit quantities of the substances involved in this study are as follows:

Quantity	Small	Large	Very large
Cannabis resin	0.25 g	25 g	125 g
Amphetamine	0.2 g	20 g	100 g
Cocaine	0.2 g	20 g	100 g
Heroin	0.02 g	2 g	10 g

Article 261 of the CC sets out the criminal liability for the distribution of narcotic substances among minors and establishes a penalty of 3–12 years' imprisonment.

Article 264 of the CC sets out the criminal liability for assisting a person in the acquisition of, forcing, inducing or otherwise habituating a person to the use of narcotic substances for purposes other than medical treatment and establishes penalties of detention from 15–90 days or 3 months–10 years' imprisonment.

The issues of 'harm to health' and 'type of drug' are not specified as aggravating circumstances. However, these factors can have an impact on the imposition of the penalty.

The involvement of a criminal organisation in the unlawful possession of narcotic substances is treated as a separate offence of 'criminal association'. Paragraph 1 of Article 249 of the CC sets out the liability for the participation in a criminal organisation and establishes a penalty of 3–15 years' imprisonment; paragraph 2 gives the penalty for participation in an armed criminal organisation as 6–20 years' imprisonment or life imprisonment; and paragraph 3 gives the penalty for organising or leading a criminal organisation as 10–20 years' imprisonment or life imprisonment.

The common mitigating and aggravating circumstances that have an influence on the imposition of the penalties are provided in Articles 59 and 60 of the CC. The most common mitigating factors in illicit drug trafficking cases, according to the opinion of judges and prosecutors interviewed, are: a confession; maintaining the health of an individual suffering from a serious illness; maintaining a job and (or) studies; difficult financial condition of the offender; a first-time offence (where the crime is considered as accidental); the crime did not give rise to serious consequences. The most common aggravating circumstances that occur in illicit drug trafficking cases are: previous convictions; complicity; leadership; serious consequences resulting from the crime.

Other than the quantity limits outlined above, there are no specific guidelines for sentencing or prosecuting illicit drug trafficking. However, the Supreme Court of Lithuania has made some fundamental decisions (binding precedents) in criminal cases 2K-7-217/2007, 2K-P-412/2007, 2K-456/2007, 2K-P-218/2009, 2K-7-195/2009, 2K-7-76/2012 concerning the issues of definition of small, large and very large quantities of narcotic substances, proving the purpose of distribution, etc.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentence ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances.

Seven judges, three prosecutors and one defence lawyer were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

Legal issues on early release from custodial sentences are governed by the Sentence Execution Code and the Law of Probation. The regulation of early release in Lithuania is characterised by two obligatory conditions for its application: formal and material.

The formal condition is the mandatory minimum percentage of the custodial penalty that must be served before early release rules can be applied. According to Article 157 of the Sentence Execution

Code, release on probation from correctional institutions can be granted to persons who have served no less than:

- one third of the sentence (but no less than four months): convicts sentenced to up to six years' imprisonment for negligent offences; other convicts sentenced to imprisonment of up to three years inclusive; juveniles;
- half of the sentence: convicts sentenced to more than six years' imprisonment for negligent offences; other convicts sentenced to imprisonment of over three years to 10 years inclusive;
- two thirds of the sentence: convicts sentenced to imprisonment of over 10 years to 15 years inclusive;
- three quarters of the sentence: convicts sentenced to imprisonment of over 15 years to 25 years inclusive.

The exact proportion depends only on the term of the custodial penalty. The type of the crime does not directly affect the application of early release rules (however, in determining the material condition, the judges applying the rules of early release shall consider this criterion). Moreover, the prison administration must present to the court the recommendations concerning every convicted person who has served the minimum term of the custodial penalty. Meanwhile, the court deciding the question of early release cannot base its negative decision on whether the court believes that the time served has been too short.

Following these rules, persons convicted for illicit drug trafficking (under the scenarios mentioned above) may theoretically be released from custody having served no less than half (for cases involving a 'large quantity' of drugs) or two thirds (for cases involving a 'very large quantity' of drugs) of the original sentence. In the scenarios, the smaller quantities of cannabis resin, amphetamine and cocaine would be considered as 'large quantity', while the others would be considered as 'very large quantity'.

Applying these proportions of 50 % and 67 % to the relevant median expected penalty, subject to the above considerations, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/ guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	8–10 years' imprisonment	9 years (judges 1, 3, 4, 6, 7) 9 years 6 months (judges 2, 5) 9 years 6 months (prosecutor 1) 9 years (prosecutors 2, 3) 8 years 6 months (defence lawyer)	9 years	4 years 6 months
	10 kg	10–15 years' imprisonment	12 years (judges 1, 4, 6, 7) 12 years 6 months (judge 2) 11 years (judge 3) 13 years (judge 5) 12 years 6 months (prosecutors 1, 2) 12 years (prosecutor 3) 11 years (defence lawyer)	12 years	8 years
Amphetamine (20 % purity)	100 g	8–10 years' imprisonment	8 years (judges 1, 3, 4, 5, 7) 8 years 6 months (judge 2) 9 years (judge 6) 9 years 6 months (prosecutor 1) 11 years 6 months (prosecutor 2) 8 years 6 months (prosecutor 3) 8 years (defence lawyer)	8 years	4 years
	1 kg	10–15 years' imprisonment	12 years (judge 1) 12 years 6 months (judge 2) 10 years (judges 3, 4, 7) 13 years (judges 5, 6) 12 years 6 months (prosecutors 1, 2) 12 years (prosecutor 3) 11 years (defence lawyer)	12 years	8 years
Cocaine (33 % purity)	100 g	8–10 years' imprisonment	8 years (judges 1, 4, 5, 7) 9 years 6 months (judge 2) 9 years (judges 3, 6) 9 years 6 months (prosecutors 1, 2) 8 years 6 months (prosecutor 3) 8 years (defence lawyer)	8 years 6 months	4 years 3 months
	1 kg	10–15 years' imprisonment	12 years (judges 1, 3) 12 years 6 months (judge 2) 10 years (judges 4, 7) 13 years (judge 5) 14 years (judge 6) 12 years 6 months (prosecutors 1, 2) 12 years (prosecutor 3) 10 years (defence lawyer)	12 years	8 years

Substance	Weight	Penalty range prescribed in law/ guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Heroin (25 % purity)	100 g	10–15 years' imprisonment	12 years (judges 1, 3, 5) 12 years 6 months (judge 2) 10 years (judges 4, 6, 7) 10 years 6 months (prosecutor 1) 12 years 6 months (prosecutor 2) 12 years (prosecutor 3) 10 years (defence lawyer)	12 years	8 years
	1 kg	10–15 years' imprisonment	14 years (judges 1, 4) 12 years 6 months (judge 2) 13 years (judges 3, 4) 15 years (judge 6) 12 years (judge 7) 12 years 6 months (prosecutors 1, 2) 13 years (prosecutor 3) 12 years (defence lawyer)	13 years	8 years 8 months

Luxembourg

Country profile on penalties in drug trafficking cases in Luxembourg

Written by Martin Petschko ⁽²⁶⁾

General information on penalties in drug trafficking cases

Trafficking in drugs as defined by Art. 8 Law of 19 February 1973 ('Law of 1973') ⁽²⁷⁾ is to be punished by imprisonment of 1–5 years and/or a fine of EUR 500–1 250 000. In this respect Luxembourg criminal law follows a uniform approach, inasmuch as a wide variety of trafficking offences will fall under this provision. Consequently, there are no separate provisions dealing with trafficking with drugs or precursors; or with supply, distribution or sale.

In practice, Luxembourg criminal law provides for several aggravating circumstances, differentiating between those related to aspects of the offence itself (*circonstances aggravantes réelles*) and those related to the perpetrator (*circonstances aggravantes personnelles*).

Aggravating circumstances with respect to drug trafficking offences are defined exhaustively in Arts 9 and 10 of the Law of 1973. When applying them, the courts are bound to the respective preconditions. The most significant aggravating circumstances are the following:

- drug trafficking to a minor: 5–10 years' imprisonment and/or a fine of EUR 1 250 to 1 250 000 (Art. 9 Law of 1973);
- drug trafficking that results in an incurable disease, a permanent incapacity for work, the loss of a body organ or a serious mutilation: 5–10 years' imprisonment and/or a fine of EUR 1 250–1 250 000 (Art. 9.b Law of 1973);
- drug trafficking that leads to death: 15–20 years' imprisonment and/or a fine of EUR 1 250–1 250 000 (Art. 10, para. 2 Law of 1973);
- drug trafficking that results in the death of a minor: life imprisonment (Art. 10, para. 2 Law of 1973);
- drug trafficking committed as participation in a criminal organisation: 15–20 years' imprisonment and/or a fine of EUR 1 250–1 250 000 (Art. 10, para. 1 Law of 1973).

The quantities of illicit drugs in themselves do not constitute an aggravating circumstance. However, this factor is taken into account by the courts when imposing the sentence.

In contrast, statutory law does not exhaustively define mitigating circumstances. The courts therefore enjoy a relatively wide range of discretion when ascertaining if the respective case at hand includes mitigating circumstances.

According to jurisprudence, the most important mitigating circumstances are the following:

- juvenility;

⁽²⁶⁾ Martin Petschko is *Collaborateur de recherche* at the University of Luxembourg.

⁽²⁷⁾ *Loi du 19 février 1973 concernant la vente de substances médicamenteuses et la lutte contre la toxicomanie*, last amended by *Loi du 27 octobre 2010 portant renforcement du cadre légal en matière de lutte contre le blanchiment et contre le financement du terrorisme*; available at: <http://www.legilux.public.lu/leg/a/archives/1973/0012/1973A03191.html> (last accessed 18 November 2013).

- voluntary participation in a detoxification programme (Art. 28 in conjunction with Art. 6 Law of 1973);
- the drug trafficking offence was committed in order to finance the perpetrator's addiction.

Financial penalties can be reduced, but the absolute minimum is set at EUR 251 (Art. 76 Criminal Code).

Judges can refuse to impose a sentence of imprisonment and apply financial penalties instead (Art. 78 Law of 1973). However, this provision is virtually never applied with respect to trafficking in drugs.

Luxembourg criminal law does not provide for sentencing guidelines or similar regulations. Consequently, the determination of the respective sentence and/or financial penalty is within the discretion of the judge.

Scenarios: prescribed and expected sentences

As has been stated, Luxembourg statutory criminal law does not distinguish between different quantities of illicit substances, and the extent of the penalty laid down by law does not depend upon it. Having said that, all the scenarios outlined below are covered by the drug trafficking provisions described above. Judges will, in practice, take the amount of the illicit substances seized into account when determining the individual sentence.

Two judges, two prosecutors and two defence lawyers were interviewed in order to understand what would be the most likely sentence in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive. One prosecutor declined to give specific estimates of the penalties in the scenarios, stating that the sentencing would take into account other factors.

The results are summarised in the table below.

Early release in drug trafficking cases

Early release is defined by Art. 100 Criminal Code. Roughly speaking, the statutory preconditions for the application of this instrument are as follows:

- Where the imposed sentence is six months' imprisonment or less, the perpetrator must serve at least three months of the sentence.
- For longer sentences at least half of the sentence must be served.
- Repeat perpetrators must serve at least six months of a nine-month sentence, and for all sentences over nine months at least two thirds of the sentence imposed must be served.
- In cases of lifetime imprisonment at least 15 years of the sentence must be served.

In order for early release to be granted, perpetrators must have demonstrated good conduct and serious pledges of social rehabilitation.

Early release may be made conditional upon the perpetrator respecting specific conditions that generally aim at his/her social reintegration, the protection of society or the victim, etc. Such conditions typically consist of an obligation to follow regular professional activity, to have a stable residence, not to commit any further crimes, etc.

Other instruments allow for specific modalities with regard to the sentence's enforcement. The Law of 26 July 1986 ⁽²⁸⁾ establishes, for example, that sentences may be executed in instalments (*exécution fractionnée*), the perpetrator may continue a professional activity and leave the penal institution for this purpose (*semi-liberté*), the perpetrator may leave the penal institution on occasion (*congé pénal*) and the enforcement of the sentence may be suspended (*suspension de peine*).

The practitioners interviewed generally felt that it was likely that the non-problematic first-time offender would be released after approximately 50 % of the sentence had been served, according to the provisions of Art. 100 Criminal Code.

Applying this proportion of 50 % to the median expected penalty, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	1–5 years' imprisonment and/or fine of EUR 500–1 250 000	1 year 6 months (judges 1, 2) 1–2 years (prosecutor) 12–15 months (defence lawyer 1) 2 years (defence lawyer 2)	1 year 6 months	9 months
	10 kg	1–5 years' imprisonment and/or fine of EUR 500–1 250 000	2–3 years (judge 1) 3 years (judge 2) 2–4 years (prosecutor) 2 years 6 months (defence lawyer 1) 4 years (defence lawyer 2)	3 years	1 year 6 months
Amphetamine (20 % purity)	100 g	1–5 years' imprisonment and/or fine of EUR 500–1 250 000	2 years (judge 1) 1.5–2 years (judge 2) 1–2 years (prosecutor) 12–15 months (defence lawyer 1) 2 years (defence lawyer 2)	1 year 9 months	10.5 months
	1 kg	1–5 years' imprisonment and/or fine of EUR 500–1 250 000	2–4 years (judge 1) 3 years (judge 2) 2–4 years (prosecutor) 2 years (defence lawyer 1) 4 years (defence lawyer 2)	3 years	1 year 6 months
Cocaine (33 % purity)	100 g	1–5 years' imprisonment and/or fine of EUR 500–1 250 000	2 years (judges 1, 2) 1–2 years (prosecutor) 1 year 6 months (defence lawyer 1) 2 years (defence lawyer 2)	2 years	1 year
	1 kg	1–5 years' imprisonment and/or fine of EUR 500–1 250 000	2–4 years (judge 1) 4 years (judge 2) 2–4 years (prosecutor) 3 years (defence lawyer 1) 4 years (defence 2)	3 years	1 year 6 months

⁽²⁸⁾ *Loi du 26 juillet 1986 relative à certains modes d'exécution des peines privatives de liberté*, last amended by *Loi du 24 février 2012 relative à la récidive internationale*; available at <http://www.legilux.public.lu/leg/a/archives/2012/0038/2012A0402A.html>.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Heroin (25 % purity)	100 g	1–5 years’ imprisonment and/or fine of EUR 500–1 250 000	2 years (judge 1) 2 years (judge 2) 1–2 years (prosecutor) 1 year 6 months (defence lawyer 1) 2 years (defence lawyer 2)	2 years	1 year
	1 kg	1–5 years’ imprisonment and/or fine of EUR 500–1 250 000	2–4 years (judge 1) 4 years (judge 2) 2–4 years (prosecutor) 3 years (defence lawyer 1) 4 years (defence lawyer 2)	3 years	1 year 6 months

Hungary

Country profile on penalties in drug trafficking cases in Hungary

Written by Imre Szabó, Dr, Ph.D.

General information on penalties in drug trafficking cases

The 1978 Hungarian Criminal Code defined both consumption and trafficking within the framework of the Misuse of Narcotic Drugs. However, the 2012 Hungarian Criminal Code (HCC), which has been in force since 1 July 2013, established more distinct crimes of trafficking (§ 176), trafficking between adult and minor (§ 177), possession (§ 178), incitement (§ 181), manufacture (§ 182), etc. It omits the lower penalties that relate to addicts, and changes the system regulating the quantity of drugs, introducing the definition of ‘particularly substantial quantities’ for certain importation or production offences. Nevertheless, the involvement of a small quantity of drugs has remained a mitigating circumstance, while the involvement of a substantial quantity and a particularly substantial quantity have remained aggravating factors.

The quantity is determined in the regulations laid down in § 461 HCC. No differentiation has been made regarding the health hazards drugs pose. Based on this, the quantities of drugs examined in the present study are as follows:

	Small quantity	Basic quantity	Substantial quantity	Particularly substantial quantity
Tetrahydrocannabinol (THC)	≤ 6 g	> 2 g to ≤ 120 g	> 120 g	> 1200 g
Amphetamine	≤ 0.5 g	> 0.5 g to ≤ 10 g	> 10 g	> 100 g
Cocaine	≤ 2 g	> 2 g to ≤ 40 g	> 40 g	> 400 g
Heroin	≤ 0.6 g	> 0.6 g to ≤ 12 g	> 12 g	> 120 g

As these quantities refer to the amount of active substance within the product seized (in case of THC: the THC content (total THC) in pure and acid form), the scenario of 100 g of cocaine at 33 % purity implies 33 g of cocaine, and so is charged as a basic supply offence, while all others would be charged as ‘substantial quantities’.

For offering, supplying, engagement in distribution, or trafficking a basic quantity with no qualifying circumstance, § 176(1) provides for the penalty of 2–8 years’ imprisonment.

Specific aggravating and mitigating circumstances are defined in the following subsections. If the above acts of trafficking are carried out in criminal association with accomplices, by a public official or a person entrusted with public functions, acting in such official capacity, or in any facility of the Hungarian Armed Forces or law enforcement agencies, or the facilities of the National Tax and Customs Authority, § 176(2) sets the penalty range as 5–10 years’ imprisonment. According to § 176(3), any offence involving a substantial quantity is punished by 5–20 years’ imprisonment or life imprisonment. By contrast, according to § 176(5), offering or supplying a small quantity is punishable

by three months to two years' imprisonment; or, if carried out by a public official or a person entrusted with public functions, acting in such official capacity, or in any facility of the Hungarian Armed Forces or law enforcement agencies, or the facilities of the National Tax and Customs Authority, by 1–5 years' imprisonment.

At a more general level, the aggravating and mitigating circumstances that can be taken into account during sentencing are regulated by the 56th Opinion of the Criminal College of the Supreme Court, which describes mainly mitigating and aggravating circumstances regarding the perpetrator (no prior offence committed, sentenced on several occasions, recidivism etc.). This regulation serves as a guideline for courts; adherence is not mandatory, but courts do not usually diverge from these guidelines.

If the criminal offence carries a maximum sentence of three years' imprisonment, the term of imprisonment may be substituted by custodial arrest, community service work, fine, prohibition from exercising professional activity, driving ban, prohibition from residing in a particular area, ban from visiting sport events or expulsion, or by any combination of these (subsection (4) § 33 HCC). Therefore, in the case of crimes sanctioned with more than three years' imprisonment, the only opportunity to impose less severe imprisonment or a different sanction is by the application of the commutation of sentences (§ 82 HCC); this might be done, for instance, the minimum sentence is deemed too harsh based on the principles of sentencing.

Besides the above, other guidelines for sentencing in drug trafficking cases are found in relevant court decisions regarding drug trafficking cases, including the Opinions of the Criminal College of the Supreme Court and the Decision regarding Legal Uniformity in Criminal Matters. The one that is relevant here is the 1/2007 Decision regarding Legal Uniformity in Criminal Matters, because it provides regulations for the calculation of the quantity of drugs. In summary, if the perpetrator has trafficked different types of drugs, the quantities of all the drugs are added together and the offender is prosecuted based on that quantity of the drug with the severest penalties among those being trafficked. The Decisions regarding Legal Uniformity in Criminal Matters are binding, i.e. their application is mandatory for courts.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentencing ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances.

Two judges and two defence lawyers were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive. The results are summarised in the table below.

Early release in drug trafficking cases

If the sentence is for a fixed-term imprisonment, the court shall specify in the sentence the earliest date of eligibility for parole, or preclude any eligibility for parole.

If release on parole has not been excluded, the earliest date of eligibility shall:

- a. fall on the next day when two thirds of the sentence has been served;
- b. in the case of a recidivist, fall on the next day when three quarters of the sentence has been served.

In either case, at least three months have to be served (§ 38 HCC).

If the perpetrator completes the objective time interval determined by the sentence of the court as prescribed by the law (for example, in the case under discussion, two thirds of the imprisonment), the court can examine whether the subjective condition of the parole is present, as presented in the Act CCXL of 2013 on the execution of punishments, criminal measures, certain coercive measures and confinement for administrative offences:

‘there is reason to believe — in view the person's good conduct displayed when serving a term of imprisonment and of his willingness to lead the life of a law abiding citizen — that the aim of the punishment may also be achieved without further incarceration.’

If these conditions are present, the judge makes a decision about parole for the perpetrator.

The practitioners interviewed generally felt that it was very likely that the non-problematic first-time offender would be released after approximately 67 % of the sentence had been served.

Applying this proportion of 67 % to the median expected penalty, subject to the conditions above, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	5–20 years' imprisonment or life imprisonment	3 years (judge 1) 2 years, suspended for 3 years (judge 2) Suspended sentence (defence lawyer 1) 2 years, suspended for 3 years (defence lawyer 2)	Median incalculable	–
	10 kg	5–20 years' imprisonment or life imprisonment	6 years (judge 1) 4 years (judge 2) 2 years (defence lawyer 1) 3 years (defence lawyer 2)	3 years 6 months	2 years 4 months
Amphetamine (20 % purity)	100 g	5–20 years' imprisonment or life imprisonment	6 years (judge 1) 3 years (judge 2) Suspended sentence (defence lawyer 1) 3 years (defence lawyer 2)	Median incalculable	–
	1 kg	5–20 years' imprisonment or life imprisonment	7 years (judge 1) 6 years (judge 2) 2 years (defence lawyer 1) 5 years (defence lawyer 2)	5 years 6 months	3 years 8 months

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cocaine (33 % purity)	100 g	2–8 years' imprisonment	4 years (judge 1) 2 years (judge 2) Suspended sentence (defence lawyer 1) 2 years, suspended for 5 years (defence lawyer 2)	Median incalculable	–
	1 kg	5–20 years' imprisonment or life imprisonment	7 years (judge 1) 5 years (judge 2) 2 years (defence lawyer 1) 4 years (defence lawyer 2)	4 years 6 months	3 years
Heroin (25 % purity)	100 g	5–20 years' imprisonment or life imprisonment	7 years (judge 1) 3 years 6 months (judge 2) 1 years (defence lawyer 1) 5 years (defence lawyer 2)	4 years 3 months	2 years 10 months
	1 kg	5–20 years' imprisonment or life imprisonment	9 years (judge 1) 6 years (judge 2) 3 years (defence lawyer 1) 6 years (defence lawyer 2)	6 years	4 years

Netherlands

Country profile on penalties in drug trafficking cases in the Netherlands

Written by Willem Geelhoed

General information on penalties in drug trafficking cases

The Dutch *Opiumwet* defines drug offences and penalty levels, depending on how dangerous the substances involved are, as defined in schedule I (most dangerous) and schedule II (less dangerous). Offences are defined in articles 2 (schedule I) and 3 (schedule II): (a) import or export; (b) cultivation, preparation, processing, sale, delivery, distribution and transport; (c) possession; (d) manufacture.

Maximum financial penalties are categorised in article 23 CC: (1) EUR 390; (2) EUR 3 900; (3) EUR 7 800; (4) EUR 19 500; (5) EUR 78 000; (6) EUR 780 000. Legal entities can be sentenced to a financial penalty of one category higher than the maximum specified in the offence; the same counts for both individuals and legal entities when the value of trafficked drugs is more than one quarter of the maximum financial penalty (article 12).

For schedule I offences (article 10, 10a) penalty levels are as follows. All offences are punishable as a misdemeanour with a maximum of six months' imprisonment or a fourth category fine, without requiring intent. Intentional possession is punishable by a maximum of six years' imprisonment or a fifth category fine. Intentional manufacture, cultivation etc. (defined as (b)/(d) offences) is punishable by a maximum of eight years' imprisonment or a fifth category fine. Intentional import or export is punishable by a maximum of twelve years' imprisonment or a fifth category fine. Preparing or promoting any intentional behaviour except possession is punishable by a maximum of six years' imprisonment or a fifth category fine.

For schedule II offences (article 11) penalty levels are as follows. All offences are punishable as misdemeanour with a maximum of one month's imprisonment or a second category fine, without requiring intent. Intentional import or export is punishable a maximum of four years' imprisonment or a fifth category fine; all other intentional behaviour is punishable by a maximum of two years' imprisonment or a fourth category fine.

Participation in a criminal organisation with the aim of trafficking drugs is punishable by a maximum of eight years' imprisonment or a fifth category fine (article 11b).

Committing intentional (b)-type schedule II offences (sale, distribution of cannabis, etc.) in the execution of a profession or a business is an aggravating circumstance, punishable by up to six years' imprisonment or a fifth category fine. Committing any intentional offence with a 'large quantity' of schedule II substances is punishable by up to six years' imprisonment or a fifth category fine. Preparing or promoting schedule II offences that take place in a profession or a business, or that relate to large quantities is punishable by a maximum of three years' imprisonment or a fifth category fine (article 11a). There is no specific aggravating circumstance relating to the harm substances may cause.

Import, export or possession of a schedule I substance, when it relates to a small quantity that is intended for personal use by the offender, is a mitigating circumstance, punishable by up to one year's imprisonment or a third category fine. All schedule II offences regarding cannabis or hash to a

maximum of 30 g (without a personal use requirement) are only punishable as a misdemeanour. All offences regarding schedule II substances except cannabis and hash, if they concern small quantities and the substances are intended for personal use by the offender, are only punishable as a misdemeanour.

The Prosecution's guideline (*Aanwijzing Opiumwet*, 13 December 2012) is binding, but prosecutors can deviate from it if they state their reasons. For reasons of public health and public order, the guideline tolerates some offences and gives less priority to other. Licensed cannabis sales outlets, known as 'coffee shops,' will not be prosecuted when they adhere to these criteria: no advertising, no sale or supply of schedule I substances, no public nuisance, no sale to or entry for juveniles, no sale or supply of large quantities, and no entry for and no sale to people not resident in the Netherlands. Local policies can diverge from this. Mayors have the power to close a coffee shop (article 13b).

The courts' guidelines (*Oriëntatiepunten straftoemeting*) are non-binding. There are three separate guidelines for three different types of drug offences. For 'importing and exporting schedule I substances', the guideline attaches importance to the weight of the substance and whether the offender acted as a member of an organisation or not. For 'selling small quantities of schedule I substances from a house or on the street' weight is irrelevant, but the duration of dealing is not. For selling for less than a month the lowest sentence should be imposed; the highest is imposed for selling for more than six months. For 'more or less professionally cultivating cannabis plants', the sentence depends on the number of plants within three ranges: 50–100, 100–500 or 500–1 000.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentence ranges that are prescribed for supply of defined quantities of particular drugs in certain circumstances. It must be remembered that several factors are involved in calculating the sentence, and the penalties listed here assume no duration of dealing and no organisational capacity — if these were found, the penalties would be considerably higher.

Two judges, two prosecutors and a defence lawyer were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

For sentences over two years' imprisonment, early release is available after two thirds of the sentence has been served. For sentences of more than one year, but less than two years, early release is available after imprisonment of more than one year and a third of the remainder (article 15 CC). Early release is applicable to all drug offences. The non-executed part of a sentence can be executed in cases of non-compliance with conditions, e.g. prohibition of drug use and complying with inspections. Early release is very likely for unconditional imprisonment of more than one year. Below that limit, early release is not possible or very unlikely.

As the practitioners generally expected sentences of less than one year's imprisonment to be applied, no early release would be available in these scenarios, and therefore the offender would be incarcerated for the full sentence mentioned above when the sentence was not suspended.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty (sentence)
Cannabis resin (10 % THC)	1 kg	<p>Prosecution guidelines: 97 days' imprisonment (for commercial sale of this amount)</p> <p>Court guidelines: only specify sanctions depending on the number of cannabis plants, not on the weight of cannabis resin</p> <p>(Law: imprisonment up to 6 years or fine up to EUR 78 000)</p>	<p>100 hours' community service (judge 1)</p> <p>120 hours' community service and 1 month's conditional imprisonment (judge 2)</p> <p>3 months' imprisonment (prosecutor 1)</p> <p>1 month's imprisonment (prosecutor 2)</p> <p>A fine and 40 hours' community service (defence lawyer)</p>	Median incalculable
	10 kg	<p>Prosecution guidelines: 281 days' imprisonment (for commercial sale of this amount)</p> <p>Court guidelines: only specify sanctions depending on the number of cannabis plants, not on the weight of cannabis resin</p> <p>(Law: imprisonment up to 6 years or fine up to EUR 78 000)</p>	<p>240 hours' community service (judge 1)</p> <p>180 hours' community service and 2 months' conditional imprisonment (judge 2)</p> <p>9 to 10 months' imprisonment (prosecutor 1)</p> <p>4 to 5 months' imprisonment (prosecutor 2)</p> <p>180 hours' community service and conditional imprisonment (defence lawyer)</p>	Median incalculable
Amphetamine (20 % purity)	100 g	<p>Prosecution guidelines: 8 months' imprisonment (for sale of this amount)</p> <p>Court guidelines (for selling user quantities from house or on the street): 3 months' imprisonment (if selling for less than 1 month)</p> <p>Court guidelines (for importing or exporting): 7 weeks' imprisonment</p> <p>(Law: imprisonment up to 8 years or fine up to EUR 78 000)</p>	<p>7 weeks' imprisonment (judge 1)</p> <p>2 months' imprisonment (judge 2)</p> <p>5 months' imprisonment (prosecutor 1)</p> <p>3 months' imprisonment (prosecutor 2)</p> <p>80 hours' community service (defence lawyer)</p>	2 months' imprisonment

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty (sentence)
Amphetamine (20 % purity)	1 kg	<p>Prosecution guidelines: 22.5 months' imprisonment (for sale of this amount)</p> <p>Court guidelines (for selling user quantities from house or on the street): 3 months' imprisonment (if selling for less than 1 month)</p> <p>Court guidelines (for importing or exporting): 8 months' imprisonment</p> <p>(Law: imprisonment up to 8 years or fine up to EUR 78 000)</p>	<p>8 months' imprisonment (judge 1)</p> <p>3 months' imprisonment (judge 2)</p> <p>18 months' imprisonment (prosecutor 1)</p> <p>8 months' imprisonment (prosecutor 2)</p> <p>3 months' imprisonment (defence lawyer)</p>	8 months' imprisonment
Cocaine (33 % purity)	100 g	<p>Prosecution guidelines: 8 months' imprisonment (for sale of this amount)</p> <p>Court guidelines (for selling user quantities from house or on the street): 3 months' imprisonment (if selling for less than 1 month)</p> <p>Court guidelines (for importing or exporting): 8 months' imprisonment</p> <p>(Law: imprisonment up to 8 years or fine up to EUR 78 000)</p>	<p>7 weeks' imprisonment (judge 1)</p> <p>2 months' imprisonment (judge 2)</p> <p>5 months' imprisonment (prosecutor 1)</p> <p>3 months' imprisonment (prosecutor 2)</p> <p>3 months' imprisonment (defence lawyer)</p>	3 months' imprisonment
	1 kg	<p>Prosecution guidelines: 22.5 months' imprisonment (for sale of this amount)</p> <p>Court guidelines (for selling user quantities from house or on the street): 3 months' imprisonment (if selling for less than 1 month)</p> <p>Court guidelines (for importing or exporting): 8 months' imprisonment</p> <p>(Law: imprisonment up to 8 years or fine up to EUR 78 000)</p>	<p>8 months' imprisonment (judge 1)</p> <p>3 months' imprisonment (judge 2)</p> <p>18 months' imprisonment (prosecutor 1)</p> <p>8 months' imprisonment (prosecutor 2)</p> <p>12 months' imprisonment (defence lawyer)</p>	8 months' imprisonment

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty (sentence)
Heroin (25 % purity)	100 g	<p>Prosecution guidelines: 8 months' imprisonment (for sale of this amount)</p> <p>Court guidelines (for selling user quantities from house or on the street): 3 months' imprisonment (if selling for less than 1 month)</p> <p>Court guidelines (for importing or exporting): 8 months' imprisonment</p> <p>(Law: imprisonment up to 8 years or fine up to EUR 78 000)</p>	<p>7 weeks' imprisonment (judge 1)</p> <p>2 months' imprisonment (judge 2)</p> <p>5 months' imprisonment (prosecutor 1)</p> <p>3 months' imprisonment (prosecutor 2)</p> <p>3 months' imprisonment (defence lawyer)</p>	3 months' imprisonment
	1 kg	<p>Prosecution guidelines: 8 months' imprisonment (for sale of this amount)</p> <p>Court guidelines (for selling user quantities from house or on the street): 3 months' imprisonment (if selling for less than 1 month)</p> <p>Court guidelines (for importing or exporting): 8 months' imprisonment</p> <p>(Law: imprisonment up to 8 years or fine up to EUR 78 000)</p>	<p>8 months' imprisonment (judge 1)</p> <p>3 months' imprisonment (judge 2)</p> <p>18 months' imprisonment (prosecutor 1)</p> <p>8 months' imprisonment (prosecutor 2)</p> <p>12 months' imprisonment (defence lawyer)</p>	8 months' imprisonment

Austria

Country profile on penalties in drug trafficking cases in Austria

Written by Christoph Zehetgruber

General information on penalties in drug trafficking cases

The main penalties for drug trafficking offences in Austria are set out in the Narcotics Act (SMG) §§ 27–31. The penalties sometimes differ according to whether the drugs involved have been classed under Austrian law as narcotics or psychotropics; as all substances in the scenarios discussed below are classed as narcotics, these are the penalties that will be described in more detail here.

A lower penalty is provided for (among others) possession, giving, import or export of drugs that do not exceed a defined quantity (the so-called ‘limit amount’), and consists of a prison sentence of up to one year or a fine of up to 360 x the so-called ‘daily rate’, which is based on the offender’s income (see § 27(1) Z 1 SMG); however, if these acts are for commercial gain, the penalty is up to three years’ imprisonment, under § 27(3). The limit amount refers to the quantity of pure substance that is laid down by the Ministry of Health in accordance with the Ministry of Justice in a special regulation.

For larger quantities, the distinction between intention and action is relevant. A person found in possession of more than the limit amount with the intention to supply may be punished for ‘preparation to supply’ under § 28, for which the penalty is up to three years’ imprisonment. A person who illegally supplies, distributes or sells drugs may be punished for ‘supply’ under § 28a, for which the penalty is up to five years’ imprisonment.

Aggravating and mitigating circumstances are stipulated in each of these three sections. The most relevant aggravating circumstances for these scenarios are those raising the penalty for when the offence involves quantities more than 15 times or more than 25 times the limit amount, as follows:

	Standard penalty	More than 15x	More than 25x
Preparation to supply (§ 28)	Up to 3 years	Up to 5 years	–
Supply (§ 28a)	Up to 5 years	1 to 10 years	1 to 15 years

Other aggravating circumstances include: committing the offence on a commercial basis, the fact that the offence leads to the facilitation of a minor using drugs (if the offender is of legal age and more than two years older than the minor); committing the offence as a member of a criminal organisation, a further conviction under § 28a(1) SMG; committing the offence as a member of a group of a large number of people or as a leading figure — the latter may receive a penalty of 10–20 years or life in prison. Mitigating circumstances include committing an offence solely for personal use, addiction to drugs and committing an offence mainly to get drugs for personal use or to get resources to acquire drugs.

There are no prosecutor or sentencing guidelines in Austria that refer to drug trafficking. Significant court decisions include the proportionality between the amount of drugs and the level of sentence

(Austrian Supreme Court [OGH] 13 Os 160/84 [18.10.1984]), the mitigation factor if the offence does not involve hard drugs and the amount of drugs concerned is not extraordinary (OGH 13 Os 183/95 [6 March 1996] and 13 Os 164/97 [19 November 1997]) and questions referring to exceeding the limit amount (e.g. OGH 15 Os 126/88 [29 November 1988], 15 Os 128/13g [2 October 2013], 12 Os 48/08p [15 May 2008]), which have a strong effect on judgments in lower criminal courts.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentencing ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances. In the scenarios, the limit amounts are as follows:

	Limit amount	15x limit (1–10 years' imprisonment)	25x limit (1–15 years' imprisonment)
THC (for cannabis)	20 g	300 g	500 g
Amphetamine	10 g	150 g	250 g
Cocaine	15 g	225 g	375 g
Heroin	3 g	45 g	75 g

Three judges, one prosecutor and one defence lawyer were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

In Austria, § 46 StGB (Strafgesetzbuch) could be applicable in the above-mentioned scenarios, so theoretically it is possible in drug trafficking cases to be released from prison after half the sentence has been served (§ 46(1) StGB), or after two thirds of the sentence has been served (§ 46(2) StGB).

It is likely that these norms will be applied to a non-problematic first-time offender in the drug trafficking scenarios given, but in practice it is usual that an offender has to serve two thirds (67 %) of the sentence.

Applying this proportion of 67 % to the median expected penalty, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	Up to 5 years' imprisonment	3–12 months, partially suspended (judge 1) 9–12 months, suspended (judge 2) 18 months, suspended (judge 3) 6–12 months, suspended (prosecutor) 8–12 months, partially suspended (defence lawyer)	Median incalculable	–
	10 kg	1–15 years' imprisonment	10 months–2 years, partially suspended (judge 1) 2–2.5 years (judge 2) 2 years (judge 3) 1.5–2 years, partially suspended (prosecutor) 1.5–2 years, partially suspended (defence lawyer)	Median incalculable	–
Amphetamine (20 % purity)	0.1 kg	Up to 5 years' imprisonment	8 months, suspended (judge 1) 15–18 months (judge 2) 18 months, partially suspended (judge 3) 9–12 months, partially suspended (prosecutor) 8–12 months, partially suspended (defence lawyer)	Median incalculable	–
	1 kg	1–15 years' imprisonment	2–4 years (judge 1) 15 months–2.5 years (judge 2) 2 years (judge 3) 1.5–2 years, partially suspended (prosecutor) 1.5–2 years, partially suspended (defence lawyer)	Median incalculable	–
Cocaine (33 % purity)	0.1 kg	Up to 5 years' imprisonment	8–24 months (judge 1) 12–18 months (judge 2) 21 months, partially suspended (judge 3) 12 months, partially suspended (prosecutor) 12–14 months, partially suspended (defence lawyer)	Median incalculable	–

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cocaine (33 % purity)	1 kg	1–10 years' imprisonment	2.5–5 years (judge 1) 1.5–2.5 years (judge 2) 2 years (judge 3) 1.5 years (prosecutor) 1.5–2 years, partially suspended (defence lawyer)	2 years	16 months
Heroin (25 % purity)	0.1 kg	Up to 5 years' imprisonment	24 months and more (judge 1) 15 months–3 years (judge 2) 24 months, partially suspended (judge 3) 12–24 months, partially suspended (prosecutor) 12–14 months, partially suspended (defence lawyer)	Median incalculable	–
	1 kg	1–15 years' imprisonment	4.5–8 years (judge 1) 2–5 years (judge 2) 3 years (judge 3) 1.5–3 years (prosecutor) 1.5–2 years, partially suspended (defence lawyer)	3 years	2 years

Poland

Country profile on penalties in drug trafficking cases in Poland

Written by Adam Lazowski

General information on penalties in drug trafficking cases

In Poland, penalties in drug trafficking cases are regulated in Articles 53 (manufacturing or processing), 55 (import, export or transit), 56 (placing on the market), 58 (supply, facilitation or incitement), 59 (supply with intent to gain material or personal benefit), 61 (precursor offences) and 62 (possession) of the Act on Counteracting Drug Addiction 2005 ⁽²⁹⁾. The most relevant are as follows:

Provision of the Act 2005	Activity	Penalty
Article 55(1)	Import, export, transport, intra-EU purchase or intra-EU consignment of narcotic drugs, psychotropic substances or poppy straw	Fine and imprisonment of up to 5 years
Article 55(2)	As above but in a case of lesser gravity	Fine and limitation of liberty or imprisonment of up to one year
Article 55(3)	As above but involving a considerable quantity of narcotic drugs, psychotropic substances or poppy straw or the act has been committed with intention of gaining material or personal benefit	Fine and imprisonment of not less than 3 years
Article 56(1)	Placing on the market narcotic drugs, psychotropic substances or poppy straw or participation in such an activity	Fine and imprisonment of 6 months–8 years
Article 56(2)	As above but in a case of lesser gravity	Fine and limitation of liberty or imprisonment of up to 1 year
Article 56(3)	As above but a considerable quantity of narcotic drugs, psychotropic substances or poppy straw	Fine and imprisonment of 2–12 years
Article 58(1)	Supply of another person with a narcotic drug or a psychotropic substance, facilitation or making the use thereof possible or incitement of another person to use such a drug or substance	Imprisonment of up to 3 years

⁽²⁹⁾ Obwieszczenie Marszałka Sejmu RP z dnia 10 stycznia 2012 r. w sprawie ogłoszenia jednolitego tekstu ustawy o przeciwdziałaniu narkomanii, Dziennik Ustaw 2012 Item 124.

Provision of the Act 2005	Activity	Penalty
Article 58(2)	As above but supply of a narcotic drug or psychotropic substance is to a minor or incitement of him or her to use thereof or providing another person with considerable quantities thereof	Imprisonment of 6 months–8 years
Article 59(1)	Supply of another person (with intent to gain material or personal benefit) with a narcotic drug or a psychotropic substance, facilitation of the use or incitement to the use thereof	Imprisonment of 1–10 years
Article 59(2)	As above but a person supplies a narcotic drug or a psychotropic substance to a minor, facilitates the use or incites to the use thereof	Imprisonment of not less than 3 years
Article 59(3)	As above but lesser gravity	Fine, limitation of liberty or imprisonment of up to 2 years
Article 62(2)	Possession of a considerable quantity of narcotic drugs or psychotropic substances	Imprisonment of 1–10 years

Aggravating circumstances include large quantities of drugs, involvement in organised crime and type of drug. They are not listed explicitly in the legislation but rather prosecutors and judges have discretion. Participation in organised crime, including national and international gangs, is the aggravating circumstance that is most often used. As well as the provisions of the Act on Counteracting Drug Addiction 2005, Article 38 Criminal Code 1997 provides for an increase in the financial penalty in cases of aggravating circumstances to a maximum of 810 daily fines (from 540 daily fines, which is a maximum under standard circumstances). As per Article 33 of the Code, courts determine the daily amount, which has to be within the range PLN 10–2 000 (EUR 2.32–465).

Article 60 of the Criminal Code 1997 provides for general rules on mitigating circumstances. Judges are obliged to take into account the motivation and the manner of conduct of the perpetrator, whether the offence was committed together with a minor, the type and degree of transgression against obligations imposed on the perpetrator, the type and dimension of any adverse consequences of the offence, the characteristics and personal conditions of perpetrator, his or her way of life prior to the offence and conduct thereafter, and particularly his or her efforts to redress the damage or to compensate the public perception of justice in another form. In practice the mitigating circumstances that are most often used, other than the quantity of drugs, are that first-time offenders tend to be treated more leniently; even in cases related to participation in organised crime, those cooperating with the prosecutors and police will be treated more leniently.

No prosecuting or sentencing guidelines are available. The case law of Polish courts tends to be quite inconsistent, particularly in relation to Article 62 of the Act (possession of drugs for personal use).

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentence ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances.

Five judges and two prosecutors were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive. The results are summarised in the table below.

Note that these are estimates based on generic information provided in the questionnaire for this study and instructions for the national rapporteurs. Penalties will vary depending on factual circumstances. Furthermore, as per Article 60 of the Polish Criminal Code, the judges are allowed to go below the level of minimum statutory sanctions when particular conditions are met. Indeed, one of the interviewees stated:

‘The Polish penal system does not have a unified type of a crime that addresses both scenarios described above. Supplying drugs can be classified as different crimes, depending on the intent of the offender, whether he acts with the intention of monetary gain (articles 58.1 and 59.1 of the Act on prevention of drug abuse) or not. The crime of illegal possession of drugs (article 62.1) is considered to be aggravated in the case of possessing a substantial amount of drugs (article 62.2). Jurisprudence of Polish courts is very inconsistent in this matter; the minimum quantity of drugs, which can be considered as substantial amount, varies from about a hundred to approximately a dozen thousands of consumption doses. The scenario can also be perceived as taking part in the market of supplying drugs, which is also qualified as two separate offences, depending on the amount of the drug (articles 56.1 and 56.3).’

Early release in drug trafficking cases

The rules on early release, laid down in Article 77 of the Criminal Code 1997, apply to all types of criminal offences. A court may conditionally release a person sentenced to imprisonment from serving the remainder of the penalty, only when his/her attitude, personal characteristics and situation, his/her way of life prior to the offence, the circumstances thereof, as well as his/her conduct after committing an offence, and while serving the penalty, justify the assumption that the perpetrator will after release respect the legal order, and in particular that he/she will not re-offend. However, in cases where it is particularly justified a court, when imposing imprisonment, may determine more rigorous restrictions to prevent the possibility of the offender benefiting from conditional release. As a matter of principle a sentenced person may be conditionally released having served at least half of the punishment (Article 78 § 1 of the Criminal Procedure Code 1997). For sentences of 25 years, or life imprisonment, conditional release is only possible after periods of 15 or 25 years respectively. In cases of conditional release, the remainder of the penalty constitutes a probation period, which may not, however, be less than two or longer than five years (rising to 10 years for cases where the sentence is 25 years’ imprisonment or life imprisonment). Article 82 of Criminal Code 1997 provides a guarantee that if, during the probation period and in the course of the following six months, the conditional release has not been revoked, the sentence shall be considered to have been served at the time of the conditional release (Article 82 of the Criminal Code 1997).

The practitioners interviewed for this study gave no clear consensus as to when early release was likely, with opinions fairly evenly split between 50 % and 75 % of the sentence (some expressed the view that while 50 % was possible, it was relatively unlikely). The more cautious figure of 75 % has therefore been applied to the eight scenarios.

Applying this proportion of 75 % to the median expected penalty, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	Up to 2 years' imprisonment + fine	2 years, suspended, + fine (judge 1) 1 year 6 months (judge 2) 8 months, suspended + forfeit of proceeds + supervision of curator (judge 3) 1 year, suspended (judge 4) 2 years (judges of the Gdansk Court) 2 years, suspended (prosecutor 1) 2 years' imprisonment (prosecutor 2)	Median incalculable	–
	10 kg	1–10 years' imprisonment	1 year 6 months + fine (judge 1) 2 years (judge 2) 1 year 4 months + forfeit + supervision of curator (judge 3) 1 year 6 months, suspended (judge 4) 5 years (judges of the Gdansk Court) 2–3 years (prosecutor 1) 5 years (prosecutor 2)	2 years	1 year 6 months
Amphetamine (20 % purity)	0.1 kg	Up to 2 years' imprisonment + fine	2 years, suspended for 4 years + fine (judge 1) 1 year 6 months (judge 2) 1 year, suspended + forfeit + curator (judge 3) 2 years, suspended (judge 4) 3 years (judges of the Gdansk Court) 1 year, suspended (prosecutor 1) 2 years (prosecutor 2)	Median incalculable	–
	1 kg	1–10 years' imprisonment	1 year 6 months + fine (judge 1) 2 years (judge 2) 1 year 6 months, + forfeit + curator (judge 3) 1 year's imprisonment (judge 4) 6 years (judges of the Gdansk Court) 2 years (prosecutor 1) 5 years (prosecutor 2)	2 years	1 year 6 months

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cocaine (33 % purity)	0.1 kg	Up to 2 years' imprisonment + fine	2 years, suspended for 4 years + fine (judge 1) 1 year 6 months (judge 2) 1 year, + forfeit + curator (judge 3) 1 year (judge 4) 4 years (judges of the Gdansk Court) 1–2 years, suspended (prosecutor 1) 2 years (prosecutor 2)	Median incalculable	–
	1 kg	1–10 years' imprisonment	1 year 6 months + fine (judge 1) 2 years (judge 2) 1.5–2 years, + forfeit + curator (judge 3) 1 year 6 months (judge 4) 8 years (judges of the Gdansk Court) 2–3 years (prosecutor 1) 5 years (prosecutor 2)	2 years	1 year 6 months
Heroin (25 % purity)	0.1 kg	Up to 2 years' imprisonment + fine	2 years, suspended for 4 years + fine (judge 1) 1 year 10 months (judge 2) 1 year 3 months, conditionally suspended + forfeit + curator (judge 3) 1 year's imprisonment (judge 4) 5 years (judges of the Gdansk Court) 1–2 years, suspended (prosecutor 1) 2 years 6 months (prosecutor 2)	Median incalculable	–
	1 kg	1–10 years' imprisonment	1 year 6 months + fine (judge 1) 2 years 6 months (judge 2) 2–2.5 years, + forfeit + curator (judge 3) 1 year 6 months (judge 4) 8 years (judges of the Gdansk Court) 2–3 years (prosecutor 1) 6 years (prosecutor 2)	2 years 6 months	1 year 10.5 months

Portugal

Country profile on penalties in drug trafficking cases in Portugal

Written by Pedro Caeiro and Miguel João Costa

General information on penalties in drug trafficking cases

In Portugal the different drug trafficking offences and their associated penalties are set out in Decree-Law no. 15/93 of 22 January 1993 (DL 15/93). This statute lists the prohibited plants, substances and preparations in six tables. Tables I–IV include drugs, while Tables V and VI refer to precursors. Tables I and II are further divided into classes (A, B, C).

All offences linked to trafficking drugs and precursors are sanctioned with imprisonment, though some permit a fine as an alternative. Trafficking (*sensu proprio*) entails 4–12 years' imprisonment for cases involving drugs listed in Tables I–III, and 1–5 years' imprisonment for cases involving drugs listed in Table IV, which lists those drugs assumed to be of a lesser gravity. Involvement in criminal organisations the purpose of which is drug trafficking is punished harshly: sanctions vary depending on the role played within the organisation, but reach 25 years' imprisonment, the most severe penalty possible under Portuguese criminal law. Trafficker-consumers (those who traffic drugs to finance their addiction) are punished more leniently: a maximum term of three years' imprisonment applies, if the quantity held does not exceed five days' average individual consumption. Limits for the 'daily dose' for the most frequent drugs were set out in Ordinance no. 94/96 of 26 March 1996: heroin and methadone, 0.1 g; cocaine (hydrochloride), 0.2 g; cannabis (plant), 2.5 g, (resin) 0.5 g, (oil) 0.25 g. However, those limits are merely indicative and a margin for discretion remains.

In addition to the rules of the Criminal Code (CC) on aggravating circumstances — for example, on recidivism (Arts. 75 and 76) — DL 15/93 includes a number of circumstances in which the penalties mentioned above will be aggravated by one quarter in both their lower and upper limits: where the drugs were delivered or addressed to minors or mentally handicapped persons, distributed to a large number of persons, or manipulated in such a way that increased the risk to the life or the physical integrity of others.

Similarly, the general mitigating circumstances established in the CC — for example, low gravity of the act, low blameworthiness of the defendant (Art. 72 CC) — are complemented by special rules on attenuation laid out in DL 15/93. The maximum limit of the penalty is reduced by one third, and the minimum reduced to one fifth or to the general minimum of one month, where, for instance, the offender has voluntarily given up his/her activities, or helped authorities to gather decisive evidence, chiefly where criminal organisations are involved. If circumstances like these occur, the perpetrator may even be exempted from the execution of the penalty if certain conditions are met. Cases where the trafficking is deemed to be of 'minor importance' (given, for example, the reduced quantity or quality of the drugs) are also sanctioned more leniently.

In Portugal there are no prosecution or sentencing guidelines, binding court decisions or other regulations that directly influence the sanctioning of drug offences.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentencing ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances. The sentence range for all scenarios is 4–12 years' imprisonment. Some of those cases, however, are likely to fall within the offence 'trafficking of minor importance', which is sanctioned with imprisonment for up to five years (Art. 25 DL 15/93). It should also be noted that in Portugal, provided that certain conditions are met, it is possible to suspend the execution of any penalty of imprisonment not exceeding five years, as reflected in some of the answers provided by the practitioners interviewed, below.

Three judges, two prosecutors and one attorney were interviewed in order to understand what the most likely sentence would be, for a first-time offender, in eight (hypothetical) supply offences.

The results are summarised in the table below.

Early release in drug trafficking cases

According to Art. 61 CC, a convict shall be conditionally released provided that he/she consents to it and:

- (a) Half of the penalty has been executed, insofar as it lasted at least 6 months, and: (a) there is a reasonable prospect that — taking into account the circumstances of the case, the previous life of the convict, his/her personality and its evolution during the execution of the penalty — once released, the convict will behave in a socially responsible manner, without committing any crimes; (b) the release does not conflict with social order and peace.
- (b) Two thirds of the penalty has been executed, provided that it lasted at least 6 months and that the requirement in item (a), above, is met.
- (c) Notwithstanding the previous paragraphs, if the penalty exceeds six years of imprisonment, the convict must be conditionally released as soon as s/he has served five sixths of the penalty, with no other condition.
- (d) Furthermore, according to art. 62 CC, in order to afford the convict a period of adaptation to conditional release, and as long as one of the previous alternatives is met, the release may be anticipated for a period up to one year, during which time the convict must abide by a set of rules of behaviour and remain in his/her home (subject to an electronic bracelet). In any case, the maximum duration of conditional release is equivalent to the remaining period of imprisonment, up to five years, at which time the penalty is extinct.

All the interviewees agreed that the rules on parole apply in any case where a penalty of imprisonment is imposed. Most of them considered that their actual application in the scenarios described above would be 'very likely', while two stated that such application would be merely 'probable'. The three judges agreed that, in the most optimistic scenario, the offenders involved in the less serious cases would serve 50 % of the sentence, whereas those involved in the more serious ones would serve 67 %. In contrast, two practitioners expected the offenders to serve, respectively, 75 % and 83 % of the time. Due to these differing answers, it is not possible to calculate the expected time spent incarcerated.

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Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty (sentence)
Cannabis resin (10 % THC)	1 kg	4–12 years' imprisonment	2 years 6 months, suspended (judge 1) 5 years (judge 2) 4 years 6 months (judge 3) 2 years 6 months, suspended (prosecutor 1) 1 year 3 months, suspended (prosecutor 2) 4 years (attorney)	Median incalculable
	10 kg	4–12 years' imprisonment	4 years 9 months, suspended (judge 1) 6 years 10 months (judge 2) 6 years (judge 3) 4 years (prosecutor 1) 4 years 3 months, suspended (prosecutor 2) 7 years (attorney)	Median incalculable
Amphetamine (20 % purity)	100 g	4–12 years' imprisonment	2 years 6 months, suspended (judge 1) 5 years (judges 2, 3) 4 years, suspended (prosecutor 1) 2 years, suspended (prosecutor 2) 5 years (attorney)	Median incalculable
	1 kg	4–12 years' imprisonment	4 years 6 months, suspended (judge 1) 7 years (judge 2) 6 years (judge 3) 6 years (prosecutor 1) 5 years, suspended (prosecutor 2) 9 years (attorney)	Median incalculable
Cocaine (33 % purity)	100 g	4–12 years' imprisonment	4 years 6 months, suspended (judge 1) 5 years (judges 2, 3) 4 years, suspended (prosecutor 1) 1 year 6 months, suspended (prosecutor 2) 5 years (attorney)	Median incalculable
	1 kg	4–12 years' imprisonment	5 years 6 months (judge 1) 7 years (judge 2) 6 years (judge 3) 6 years (prosecutor 1) 4 years 6 months, suspended (prosecutor 2) 9 years (attorney)	6 years
Heroin (25 % purity)	100 g	4–12 years' imprisonment	5 years, suspended (judge 1) 5 years (judge 2) 5 years 6 months (judge 3) 4 years, suspended (prosecutor 1) 1 year 6 months, suspended (prosecutor 2) 6 years (attorney)	Median incalculable
	1 kg	4–12 years' imprisonment	6 years (judge 1) 7 years (judges 2, 3) 6 years (prosecutor 1) 4 years 6 months, suspended (prosecutor 2) 10 years (attorney)	6 years 6 months

Romania

Country profile on penalties in drug trafficking cases in Romania

Written by Daniel Nițu, Ph.D., Lecturer

General information on penalties in drug trafficking cases

In Romania penalties provided for by law for the different drug trafficking offences are established in Law no. 143/2000, and vary depending on whether the drugs have been categorised as ‘risk’ drugs or ‘high-risk’ drugs. Penalties were generally reduced by the New Romanian Criminal Code (NRCC) that entered into force on 1 February 2014, and this country profile refers to the new penalty ranges.

Article 2 establishes the penalties for trafficking ‘risk’ drugs as 2–7 years’ imprisonment, and for ‘high-risk’ drugs as 5–12 years’ imprisonment. For ‘international’ trafficking, Article 3 increases these ranges for ‘risk’ drugs to 3–10 years, and for ‘high-risk’ drugs to 7–15 years. All the drugs in the scenarios below are classed as ‘high-risk’.

Aggravating circumstances are set out in Article 13:

- a) The person who committed the crime was in a position implying the exercise of public authority, and the action was committed in the exercise of that position.
- b) The person who committed the crime is a member of the medical staff or a person who has powers in drug control.
- c) Drugs have been sent or delivered, supplied or offered to a minor, a mental patient, a person included in a therapeutic programme, or such actions prohibited by the law have been carried out as regards one of those persons, or if the action has been committed in a medical, educational or military facility or institution, in a detention facility, in social care or rehabilitation centres, in a medical-educational institution or at places where school or college students and young people carry out educational, sporting or social activities or in the vicinity of such places (in such cases an extra five years may be added to the maximum limit provided by the law, in the case of imprisonment, or the general maximum limit, in the case of a fine).
- d) Minors were used with a view to committing the actions stipulated under Articles 2–10.
- e) Drugs were mixed with other substances that increased their risk to human life and integrity.

The aggravating effect in cases a), b), d) and e) is regulated by Article 78 of the new Romanian Criminal Code of 2014 (NRCC): in the case of imprisonment, the penalty can be increased by a maximum of two years (not exceeding one third of the maximum limit provided by law regarding that offence), while in the case of a fine, an extra one third of the maximum limit provided for that particular offence can be added.

One other aggravating circumstance is named in Article 11: if the crimes from Article 2, 6–8 and 10 have caused the victim’s death, the penalty is 10–20 years’ imprisonment and denial of certain rights.

Mitigating circumstances are set out in two articles of Law no. 143/2000:

- Article 14: ‘No punishment shall be applied to a person who committed a crime from Article 2–9 if, before the investigation starts, [he or she] denounces to the competent authorities his or her participation, thus allowing the identification and sanctioning the other participants.’

- Article 15: ‘The person who has committed one of the crimes from Articles 2–9 and who, during the investigation, denounces and facilitates the identification and holding criminally accountable of other persons who have committed drug-related crimes shall benefit from a reduction by half of the penalty stipulated by law.’

In addition to these, the NRCC provides mitigating circumstances of general applicability, in which cases the person shall benefit from a one-third reduction of the penalty provided by law.

There are no relevant prosecuting or sentencing guidelines, significant court decision, or similar regulations.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentencing range for high-risk drugs is 5–12 years’ imprisonment. All the drugs in these scenarios are classed as high-risk.

Three judges, nine prosecutors and two defence lawyers were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

Early release is possible only after a fraction of the imposed penalty has been served. Article 100 NRCC provides that early release can be granted only after at least 50 % of a sentence of imprisonment has been served when the penalty does not exceed 10 years, or after at least 67 % has been served when the penalty exceeds 10 years.

The practitioners interviewed generally felt that it was very likely that a non-problematic first-time offender would be released early, but there was no consensus as to the proportion of sentence that would be served; the proportions indicated varied from 50 % through 67 % to 75 % of the sentence, even for sentences of less than 10 years. Two observed that a reduction of 50 % was more likely if the offender had worked in prison during their sentence. For these reasons, it was not possible to calculate the expected time spent incarcerated.

Substance	Weight	Penalty range prescribed in law/ guidelines	Expected penalty range (sentence)	Median expected penalty (sentence)
Cannabis resin (10 % THC)	1 kg	5–12 years' imprisonment	3 years (judges 1, 3) 4 years (judge 2) 4 years (prosecutor 1) 5 years (prosecutor 2) 6 months (prosecutor 3) 1 year (prosecutors 4, 7) 6 years (prosecutor 5) 1 year 6 months (prosecutor 6) 7 years (prosecutor 8) 3 years (prosecutor 9) 5 years (defence lawyers 1, 2)	3 years 6 months
	10 kg	5–12 years' imprisonment	5 years (judges 1, 3) 5–6 years (judge 2) 5 years (prosecutors 1, 9) 7 years (prosecutor 2) 2 years (prosecutor 3) 3 years (prosecutors 4, 7) 10 years (prosecutor 5) 4 years 8 months (prosecutor 6) 12 years (prosecutor 8) 7 years (defence lawyer 1) 9 years (defence lawyer 2)	5 years
Amphetamine (20 % purity)	100 g	5–12 years' imprisonment	4–6 years (judge 1) 5–6 years (judge 2) 6 years (judge 3) 4 years (prosecutor 1) 5 years (prosecutors 2, 7, 8) 1 year 6 months (prosecutor 3) 3 years (prosecutors 4, 5) 2 years (prosecutors 6, 9) 6 years (defence lawyer 1) 4 years (defence lawyer 2)	4 years 6 months
	1 kg	5–12 years' imprisonment	7–8 years (judge 1) 8 years (judges 2, 3) 5 years (prosecutors 1, 9) 7 years (prosecutors 2, 4) 4 years (prosecutor 3) 8 years (prosecutors 5, 7, 8) 6 years (prosecutor 6) 8 years (defence lawyer 1) 7 years (defence lawyer 2)	7 years 3 months

Substance	Weight	Penalty range prescribed in law/ guidelines	Expected penalty range (sentence)	Median expected penalty (sentence)
Cocaine (33 % purity)	100 g	5–12 years' imprisonment	4–6 years (judge 1) 6 years (judges 2, 3) 5 years (prosecutors 1, 3, 6, 7) 7 years (prosecutor 2) 3 years (prosecutors 4, 9) 10 years (prosecutor 5) 6 years (prosecutor 8) 7–8 years (defence lawyer 1) 3 years 6 months (defence lawyer 2)	5 years
	1 kg	5–12 years' imprisonment	7–8 years (judge 1) 8–9 years (judge 2) 8 years (judge 3) 6 years (prosecutor 1) 10 years (prosecutors 2, 3, 4, 6) 15 years (prosecutors 5, 8) 8 years (prosecutors 7, 9) 10 years (defence lawyer 1) 6 years (defence lawyer 2)	9 years 3 months
Heroin (25 % purity)	100 g	5–12 years' imprisonment	4–6 years (judge 1) 6 years (judges 2, 3) 7 years (prosecutors 1, 2, 3, 7, 8) 3 years (prosecutors 4, 9) 12 years (prosecutor 5) 4 years (prosecutor 6) 7–8 years (defence lawyer 1) 4 years (defence lawyer 2)	6 years 6 months
	1 kg	5–12 years' imprisonment	7–8 years (judge 1) 8–10 years (judge 2) 8 years (judge 3) 8 years (prosecutors 1, 6, 9) 10 years (prosecutors 2, 4, 5, 7) 15 years (prosecutor 3) 16 years (prosecutor 8) 10 years (defence lawyers 1, 2)	10 years

Note: The denial of certain rights is mandatory in all cases.

Slovenia

Country profile on penalties in drug trafficking cases in Slovenia

Written by Andreja Tratnik Zagorac, Ph.D.

General information on penalties in drug trafficking cases

Drug trafficking offences are prohibited by Articles 186 and 187 of the Slovenian Criminal Code (CC).

Article 186 lists different modalities of drug supply, taking into account various aggravating factors. Article 187 prohibits giving an opportunity to consume drugs or doping substances. All penalties provided by these two articles are sentences of imprisonment.

More precisely, the penalties are as follows. The general penalty is 1–10 years' imprisonment (Article 186/1 CC). This is the sentence for (i) unlawful manufacturing, processing, selling or offering for sale, or (ii) purchasing, keeping or transporting substances classified as narcotic drugs or doping substances or precursors.

Article 187/1 of the CC-1 criminalises (i) soliciting another person to use narcotic drugs or illegal doping substances, or (ii) providing a person with drugs to be used by him/her or by a third person, or (iii) providing a person with a place or other facility for the use of narcotic drugs or doping substances, and punishes these offences with 6 months–8 years' imprisonment (the legal wording has been simplified).

The seizure of narcotic drugs, doping substances and the tools for their consumption is obligatory.

Aggravating circumstances are listed in Article 186/2 as follows:

- the perpetrator sells or offers or hands out free of charge illicit drugs to a minor, or (permanently or temporary) mentally disabled person;
- the offence is committed in (or in the vicinity of) an educational institution, prison, military unit, public place or public event;
- the offence is committed by a civil servant, priest, doctor, social worker, teacher, educator.

For an offence covered by Article 186/1 these circumstances increase the punishment range to 3–15 years' imprisonment. For an offence in Article 187/1 they increase the punishment range to 1–12 years' imprisonment.

Another aggravating circumstance is listed in Article 186/3, namely commission of an offence from Article 186/1 within a criminal organisation. The prescribed sentence in this case is 5–15 years' imprisonment.

No special mitigating circumstances are laid down by law, though the quantity, type of drug and personal circumstances of the offender are taken into account in practice. The general mitigating circumstances as provided by Article 49 of CC do apply. Only if there are special mitigating circumstances can the sentence be mitigated according to a scale provided in Article 51, with the effect on the above sentences as follows: a sentence of minimum 15 years of imprisonment may be mitigated to 10 years; a sentence of 3 years' imprisonment or more may be mitigated to one year; a sentence of one year may be mitigated to 3 months; a sentence lower than one year of

imprisonment can be mitigated to one month; while a sentence of imprisonment without specifying the duration may be mitigated to a monetary fine. Also, denouncing the criminal activity (if the drug related offence was committed within a criminal organisation) may serve as a mitigating circumstance. However, the law does not specify by how much (exactly) the punishment can be mitigated.

There are no publically available police, prosecuting or sentencing guidelines, significant court decisions, or any other regulations on quantities, purity, etc. for drug trafficking cases.

A supreme prosecutor said during this project that some of the prosecution offices hold their own statistics and they use special tables to make decisions about the sentences. However, these are not publically available. Furthermore, the State Prosecutor General told the author of this paper that some of the penalty policy will be unified by passing some guidelines.

Generally, judgments are not binding in Slovenia, though there are Supreme Court and Constitutional Court judgments about the seizure of the vehicles that were used for the transport.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates that the sentencing range that is prescribed for the supply of drugs in the scenarios is 1–10 years' imprisonment.

Four judges, two prosecutors and one defence lawyer were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

There is a general rule (Article 88, paragraph 1 of the Criminal Code) that the offender can be released on parole after half of the sentence has been served, under the condition that he or she does not commit another criminal offence until the end of the term of the whole sentence. Only exceptionally (when it is reasonable to expect that he will not repeat the criminal offence and if special circumstances relating to his personality indicate that he will not repeat the criminal offence) may the offender be released already after one third of his/her sentence has been served (Article 88, paragraph 6).

The Parole Commission decides upon early release. The Criminal Code (Article 88, paragraph 5) generally prescribes the factors that the Commission has to consider when deciding upon early release, in particular the possibility of re-offending, any criminal proceedings taking place against the offender for criminal offences committed before they started serving their prison sentence, the attitude of the offender towards the criminal offence committed and towards the victim, the offender's conduct while the serving the sentence, the success of addiction treatment and the conditions for the offender's re-introduction to life outside prison.

The Law on the Execution of Criminal Sanctions and the Rules on the Execution of the Prison Sentence provide some further general provisions on early release.

The practitioners interviewed generally felt that it was very likely that the non-problematic first-time offender would be released after approximately 75 % of the sentence had been served.

Applying this proportion of 75 % to the median expected penalty, subject to the different possibilities above, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/ guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	1–10 years’ imprisonment	1 year 6 months (judges 1, 2) 1 year (judge 3) 1.5–2 years (judge 4) 1 year 6 months, suspended (probation term 2 years) (prosecutor 1) 1 year (prosecutor 2) 2 years (defence lawyer)	1 year 6 months	13.5 months
	10 kg	1–10 years’ imprisonment	3 years (judge 1) 2 years 6 months (judge 2) 2 years 3 months (judge 3) 3–4 years (judge 4) 1 year 6 months (prosecutor 1) 3 years (prosecutor 2) 5 years (defence lawyer)	3 years	2 years 3 months
Amphetamine (20 % purity)	100 g	1–10 years’ imprisonment	1 year 2 months (judges 1, 3) 1 year 6 months (judge 2) 1.5–2 years (judge 4) 1 year, suspended (probation term 2 years) (prosecutor 1) 1 year (prosecutor 2) 2 years 6 months (defence lawyer)	1 year 2 months	10.5 months
	1 kg	1–10 years’ imprisonment	2 years 2 months (judge 1) 2 years 6 months (judge 2) 3 years (judge 3) 3–4 years (judge 4) 1 year (prosecutor 1) 3 years (prosecutor 2) 6 years (defence lawyer)	3 years	2 years 3 months

Substance	Weight	Penalty range prescribed in law/ guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cocaine (33 % purity)	100 g	1–10 years' imprisonment	2 years (judge 1) 3 years 6 months (judge 2) 3 years (judge 3) 1.5–2 years (judge 4) 1 year 6 months (prosecutors 1, 2) 3 years (defence lawyer)	2 years	1 year 6 months
	1 kg	1–10 years' imprisonment	4 years 6 months (judge 1) 6 years (judges 2, 3) 3–4 years (judge 4) 3 years 5 months (prosecutor 1) 4 years (prosecutor 2) 7 years (defence lawyer)	4 years 6 months	3 years 5 months
Heroin (25 % purity)	100 g	1–10 years' imprisonment	2 years (judge 1) 3 years 6 months (judge 2) 3 years (judge 3) 1.5–2 years (judge 4) 1 year (prosecutor 1) 1 year 6 months (prosecutor 2) 3 years (defence lawyer)	2 years	1 year 6 months
	1 kg	1–10 years' imprisonment	4 years 6 months (judge 1) 6 years (judges 2, 3) 3–4 years (judge 4) 3 years (prosecutor 1) 4 years (prosecutor 2) 8 years (defence lawyer)	4 years 6 months	3 years 5 months

Slovakia

Country profile on penalties in drug trafficking cases in Slovakia

Written by JUDr. Anna Ondrejová LL.M.

General information on penalties in drug trafficking cases

In Slovakia the different drug trafficking offences and their associated penalties are set out in the Criminal Code in § 172. This section is divided into four subsections with four associated penalty ranges. Each subsection applies to the offences of production, import or export, transport, sale, and procurement and possession.

The first subsection of section 172 establishes a basic penalty range of 3–10 years' imprisonment. The second increases this to 10–15 years in cases of a 'large extent' but also for recidivists, treatment clients and if the crime was against vulnerable people. The third subsection increases the penalty range further, to 15–20 years, for acts of a 'significant extent', but also against people under 15 or causing serious harm or death. Finally, the fourth section provides for a range of 20–25 years or life if the case is of a 'large extent', and causes harm to several persons or the offender is a member of a dangerous group.

Other mitigating and aggravating circumstances are provided for in Section 36 and Section 37 (respectively) of the Criminal Code. In cases where mitigating circumstances prevail over aggravating circumstances, the upper limit of statutory penalty shall be reduced by one third. In cases where aggravating circumstances prevail over mitigating circumstances, the lower limit of statutory penalty shall be increased by one third. If mitigating and aggravating circumstances are equal, the penalty shall be imposed within the ranges stipulated in Section 172.

There are no official guidelines for sentencing or prosecuting illicit drug trafficking. However, as one can see from wording of the Section 172, the extent of the crime (larger, significant and large) plays a key role. The criteria for calculating the extent of an offence are contained in Section 125 of the Criminal Code. It follows that the particular extents mean:

- to a larger extent: the monetary sum exceeding EUR 2 660;
- to a significant extent: the monetary sum exceeding EUR 26 660;
- to a large extent: the monetary sum exceeding EUR 133 000.

With regard to drug trafficking offences, these refer to the sum for which the seized amount of drug can be sold to the final customer on the black market at the particular place and time where the offence has been committed. For a long time this was calculated based on the degree of purity of the drug, but Supreme Court Decision No. 4Tdo 32/2012 of 27 November 2012 considered that the purity was not decisive and the value should be calculated on the total amount of substance found. However, as this is not binding on lower courts, both approaches are possible.

The other implication from the factors of place and time is that a fixed quantity may be valued differently in different regions. For this reason this study uses the current average price of each type of drug in Žilina region, as this appears to be an averagely developed region. Amphetamine is not a commonly traded drug in Slovakia, so in the scenarios for this has been substituted with

methamphetamine. The average black market prices of 1 g of the drugs in the third quarter of 2013 in Žilina region were:

- cannabis: EUR 7.50;
- methamphetamine: EUR 67.50;
- cocaine: EUR 97.50;
- heroin: EUR 75.00.

Therefore, the weight limits for the substances in our scenarios would be as follows:

	§ 172(1) [3–10 years’ imprisonment]	§ 172(2) [10–15 years’ imprisonment]	§ 172(3) [15–20 years’ imprisonment]	§ 172(4) [20–25 years’ imprisonment, life imprisonment]
Cannabis resin	Up to 354 g	Up to 3.54 kg	Up to 17.73 kg	Over 17.73 kg
(Meth)amphetamine	Up to 39.4 g	Up to 394 g	Up to 1.97 kg	Over 1.97 kg
Cocaine	Up to 27.3 g	Up to 273 g	Up to 1.36 kg	Over 1.36 kg
Heroin	Up to 35.5 g	Up to 355 g	Up to 1.77 kg	Over 1.77 kg

Scenarios: prescribed and expected sentences

The legislation and market prices outlined above indicate the sentencing ranges that should be prescribed for the supply of defined quantities of certain drugs with no aggravating or mitigating circumstances.

Two judges, two prosecutors and one defence lawyer were interviewed in order to understand what would be the most likely sentence in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below. It can be seen that some practitioners would use extraordinary reduction of penalty under the lower limit insisting on milder punishment in the cases of cannabis. One judge in particular employed a different legal reasoning than presented above. In determining the legal classification of the offence (and sentence) he relied on type of drug (soft and hard) and the amount of substance, rather than on the financial extent of the crime. He also assumed the total time spent incarcerated in relation to the seriousness of the offence, not applying solely the 75 % rule detailed below, as for example 1 kg of cannabis would not be classified as a particularly serious offence. This supports an assumption on the inconsistency of legal practice in Slovakia regarding drug type offences.

Early release in drug trafficking cases

In Slovakia, the rules and conditions of early release (technically ‘conditional’ release) from any prison sentence are contained in §§ 66–68 of the Criminal Code. These establish that an offender can be released after serving 50 % of the sentence for an offence, 67 % of the sentence for a criminal

offence, and 75 % of the sentence for a particularly serious crime. The offender should show good conduct while serving the punishment and demonstrated improvement, and it may be expected that they will lead an orderly life in the future. These may be accompanied by a period of probation of 1–7 years, and even probational supervision with restrictions or obligations for 1–3 years. The drug trafficking in these scenarios is considered a particularly serious crime, and so offenders in these scenarios would only be released after serving 75 % of the sentence.

The practitioners interviewed generally felt that it was likely that the non-problematic first-time offender would be released after approximately 75 % of the sentence had been served.

Applying this proportion of 75 % to the median expected penalty, subject to the conditions above, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	10–15 years' imprisonment	5 years (judge 1) 8 years (judge 2) 11 years (prosecutor 1) 10 years (prosecutor 2) 6 years (defence lawyer)	8 years	6 years
	10 kg	15–20 years' imprisonment	10 years (judge 1) 12 years (judge 2) 16 years (prosecutor 1) 15 years (prosecutor 2) 11 years (defence lawyer)	12 years	9 years
Amphetamine (20 % purity)	100 g	10–15 years' imprisonment	10 years (judge 1) 14 years (judge 2) 11 years (prosecutor 1) 10 years (prosecutor 2) 10 years (defence lawyer)	10 years	7 years 6 months
	1 kg	15–20 years' imprisonment	15 years (judge 1) 22 years (judge 2) 17 years (prosecutor 1) 15 years (prosecutor 2) 15 years (defence lawyer)	15 years	11 years 3 months
Cocaine (33 % purity)	100 g	10–15 years' imprisonment	10 years (judge 1) 14 years (judge 2) 11 years (prosecutor 1) 10 years (prosecutor 2) 10 years (defence lawyer)	10 years	7 years 6 months
	1 kg	15–20 years' imprisonment	16 years (judge 1) 22 years (judge 2) 17 years (prosecutor 1) 15 years (prosecutor 2) 15 years (defence lawyer)	16 years	12 years

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Heroin (25 % purity)	100 g	10–15 years' imprisonment	10 years (judge 1) 14 years (judge 2) 11 years (prosecutor 1) 10 years (prosecutor 2) 10 years (defence lawyer)	10 years	7 years 6 months
	1 kg	15–20 years' imprisonment	16 years (judge 1) 22 years (judge 2) 17 years (prosecutor 1) 15 years (prosecutor 2) 15 years (defence lawyer)	16 years	12 years

Finland

Country profile on penalties in drug trafficking cases in Finland

Written by Sanna Leinonen, Master of Laws

General information on penalties in drug trafficking cases

Narcotics offences are regulated in chapter 50 of the Finnish Criminal Code (CC). Illicit drug trafficking is included in the category of a narcotics offence in CC 50:1. The sentence range for a narcotics offence is a fine or imprisonment for up to two years. According to CC 50:2, a narcotics offence is regarded as aggravated when considering all circumstances and when a very dangerous narcotic substance or a large quantity of narcotic substance is involved, considerable financial benefit is sought, the offender acts as a member of a group organised for the extensive commission of such an offence, a serious danger is caused to the life or health of several people or the narcotic substance is distributed to minors or in an otherwise unscrupulous manner. The sentence range for an aggravated narcotics offence is imprisonment for 1–10 years.

A sentence of imprisonment for a fixed period not exceeding two years may be conditional, unless the seriousness of the offence, the guilt of the offender as manifested in the offence, or the criminal history of the offender requires the imposition of an unconditional sentence of imprisonment. If conditional imprisonment by itself is to be deemed insufficient punishment for the offence, an ancillary fine may be imposed.

In addition to the circumstances that make a narcotics offence aggravated according to CC 50:2, there are mitigating and aggravating circumstances listed in chapter 6 of the CC that may generally be applied to any crime in the CC.

There are no official sentencing guidelines in Finland, but in 2006 a group of experts (mostly judges) published unofficial guidelines for sentencing in narcotics offences. The report's aim was to harmonise sentencing for drug related offences. It is an unofficial tool, but its guidelines are widely used by judges as a starting point for sentencing. Courts are not bound by the guidelines; they are only bound by the minimum and maximum penalty stated in the legislation concerning the offence in question.

The guidelines include normally imposed sentences for certain amounts of a certain type of drug. The following are the guidelines for cannabis resin, amphetamine, cocaine and heroin:

Substance	Weight	Standard sentence
Cannabis resin	1–3 kg	1 year–1 year 6 months
	3–10 kg	1 year 6 months–3 years
	10–50 kg	3–5 years
	50–100 kg	5–7 years
	over 100 kg	7–10 years
Amphetamine	100–500 g	1 year–2 years 4 months
	500–1.250 g	2 years 4 months–4 years
	1.250 g–2 kg	4–5 years
	2–4 kg	5 years–6 years 6 months
	over 5 kg	7–10 years
Cocaine	30–100 g	1–2 years
	100–200 g	2–3 years
	200 g–1 kg	3–5 years
	1–2 kg	5–7 years
	over 2 kg	7–10 years
Heroin	15–50 g	1–2 years
	50–100 g	2–3 years
	100–500 g	3–5 years
	500 g–1 kg	5–7 years
	over 1 kg	7–10 years

According to Supreme Court decisions KKO 2006:82 and KKO 2004:73, the purity of drugs should be taken into account if the purity differs significantly from what is regarded as a typical degree of purity of a certain drug. Slight differences in the degree of purity should not affect the sentences.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentencing ranges for the supply of drugs.

Two judges, two prosecutors and one defence lawyer were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

In Finland, rules of conditional release are applicable no matter what crime has been committed. Conditional release is regulated in chapter 2c of the CC. A person serving a fixed term of imprisonment shall be conditionally released when he/she has served two thirds of the sentence. If

the offence was committed under the age of 21 years, a prisoner shall be released when he/she has served half of the sentence. A prisoner who has not served a sentence of imprisonment in prison during the three preceding years shall be conditionally released when he/she has served half of the sentence or, if the offence was committed under the age of 21, when he/she has served one third of the sentence.

The practitioners interviewed generally felt that it was very likely that the non-problematic first-time offender would be released after approximately 50 % of the sentence had been served. Only in very exceptional circumstances may a conditional release be postponed.

Applying this proportion of 50 % to the median expected penalty, subject to the conditions above, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	1–10 years' imprisonment	1 year, suspended (judges 1, 2) 1 year, suspended (prosecutor 1) 1 year (prosecutor 2) 1 year (defence lawyer)	Median incalculable	–
	10 kg	1–10 years' imprisonment	3 years (judges 1, 2) 3 years (prosecutors 1, 2) 3 years (defence lawyer)	3 years	1 year 6 months
Amphetamine (20 % purity)	100 g	1–10 years' imprisonment	1 year, suspended (judges 1, 2) 1 year, suspended (prosecutor 1) 1 year (prosecutor 2) 1 year (defence lawyer)	Median incalculable	–
	1 kg	1–10 years' imprisonment	3 years 8 months (judges 1, 2) 3 years 10 months (prosecutors 1, 2) 3 years (defence lawyer)	3 years 8 months	1 year 10 months
Cocaine (33 % purity)	100 g	1–10 years' imprisonment	2 years (judges 1, 2) 2 years (prosecutors 1, 2) 2 years (defence lawyer)	2 years	1 year
	1 kg	1–10 years' imprisonment	5 years (judges 1, 2) 5 years (prosecutors 1, 2) 5 years (defence lawyer)	5 years	2 years 6 months
Heroin (25 % purity)	100 g	1–10 years' imprisonment	3 years (judges 1, 2) 3 years (prosecutors 1, 2) 3 years (defence lawyer)	3 years	1 year 6 months
	1 kg	1–10 years' imprisonment	7 years (judges 1, 2) 7 years (prosecutors 1, 2) 7 years (defence lawyer)	7 years	3 years 6 months

Sweden

Country profile on penalties in drug trafficking cases in Sweden

Written by Christoffer Wong

General information on penalties in drug trafficking cases

The offence in Swedish law that best corresponds to the definition of ‘drug trafficking’ in the present study is ‘narcotic offence’ (*narkotikabrott*) pursuant to section 1 of the Narcotic Offences Act (SFS 1968:64) (Narkotikastrafflag) and ‘gross narcotic offence’ (*grovt narkotikabrott*) pursuant to section 3 of the same Act. Lesser penalties are attached to minor cases of ‘narcotic offence’, but the minor offences do not have a separate label. The definition of ‘narcotic offence’ is very wide under Swedish law and the penalty scale according to the statute also covers offences that fall outside the definition of ‘drug trafficking’. Where drug trafficking involves the import or export of drugs, the crime is dealt with under section 6 of the Smuggling (Offences) Act (SFS 2000:1225) (Lag om straff för smuggling): ‘smuggling of narcotics’ (*narkotikasmuggling*) pursuant to § 6(1) and ‘gross smuggling of narcotics’ (*grov narkotikasmuggling*) pursuant to § 6(3). Again, there is a minor offence. The penalty scales are the same whether an offence is dealt with under the Narcotic Offences Act or the Smuggling (Offences) Act:

- Narcotic (smuggling) offence (minor offence): fine or up to 6 months’ imprisonment.
- Narcotic (smuggling) offence: up to 3 years’ imprisonment.
- Gross narcotic (smuggling) offence: 2–10 years’ imprisonment.

With respect to aggravating circumstances, only § 3(2) of the Narcotic Offences Act and § 6(3) of the Smuggling (Offences) Act list the circumstances that determine whether a crime is gross. They state that special consideration shall be paid to whether the crime:

- has constituted a part of an activity carried out on a large scale or professionally;
- has involved a particularly large quantity of narcotics; or
- has otherwise been of a particularly dangerous or ruthless nature.

The determination shall be based on an overall assessment of all circumstances surrounding the case in question.

In contrast, there is no statutory provision enumerating mitigating circumstances that should be taken into account when the penal scale for minor offences is applicable.

More generally, within each category (normal, minor or gross) the actual penalty is initially dependent on the concrete ‘penal value’ (*straffvärde*) of the crime in question, which is determined according to general principles on aggravating and mitigating circumstances for all categories of offences (i.e. not specifically for narcotic offences).

Alongside the above factors, the Supreme Court provides principles of sentencing. In an important decision from 2011 dealing with different types of handling of the synthetic drug mephedrone by a number of persons (NJA 2011 s. 357), the Supreme Court emphasised that, in addition to the type and quantity of the narcotics involved, the sentence must take into account all circumstances

surrounding the particular case. This can be seen as a reaction to earlier practice in which the type and quantity of the narcotics have been given a predominant role.

The factors to be considered, which the Supreme Court has mentioned, are:

- the crime is associated with the perpetrator's own drug abuse;
- the handling of narcotics in this case is for the purpose of supply;
- the supply of narcotics in this case is likely to lead to a 'not unsubstantial' profit;
- the perpetrators do not appear to have inhibitions against a continuing or expanding the activity of drug trafficking;
- the handling in this case is relatively remote from participation in an organised and international network of drug trafficking;
- the crime in this case is not part of a wider drug trafficking network;
- the crimes have not persisted over a long period of time;
- the supply has been limited to the circle of friends and acquaintance;
- this case was originally intended to be a joint purchase (by a small group);
- the crime for one of the counts is at the level of attempt.

Subsequent to the 2011 judgment, the Supreme Court has granted leave to appeal in a large number of cases dealing with different types of narcotic substances. The new case law has been analysed in Martin Borgeke, Catharina Månsson, Georg Sterzel, *Studier rörande påföljdspraxis m.m.*, 5th edn., Jure, Stockholm 2013. The result of the analysis has been presented in tables for standard sentences for narcotic offences involving different types and quantity of narcotics, when only the type and quantity are taken into consideration as the starting point of the sentencing process. Although these tables are not sources of law as such, they are highly indicative of the likely outcome of a case and have therefore been used as a basis for the replies in the following section.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentencing ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances.

Three judges, one prosecutor and one defence lawyer were interviewed in order to understand what would be the most likely sentence in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below. The 'expected penalty ranges' are identical to the 'Penalties provided for by law and/or prosecutor/sentencing guidelines, etc.' above. This is the actual result obtained through interviews and needs an explanation. The guidelines published by Borgeke et al., 2013 (see above) are very precise and detailed; different tables exist for different types of narcotic substances. A circumstance that adds further authority to these guidelines is the fact that the chief author of the book is a justice of the Supreme Court who has been responsible for formulating a number of precedents on the sentencing of narcotic crimes. It is the unanimous view of the practitioners interviewed that the starting point for the determination of actual sentences is always the tables published in the above-mentioned book. Where there is debate about the sentence, it is always based on the fact that there are other special circumstances that have been specifically excluded in the present study.

Early release in drug trafficking cases

According to chapter 26 section 6 of the Penal Code, a person sentenced to imprisonment shall be released conditionally after two thirds of the sentence has been served unless there are pressing reasons not to do so. This is a mandatory rule applicable to all prison sentences regardless of the offence committed. As it is mandatory, it shall apply in practice; it is not subject to the discretion of the courts or the prison authority.

Applying this proportion of 67 % to the median expected penalty, the expected time spent incarcerated can be estimated, and is shown in the table.

Substance	Weight	Penalty range prescribed in law/ guidelines	Expected penalty range (sentence)	Median expected penalty	
				Sentence	Time spent incarcerated
Cannabis resin (10 % THC)	1 kg	7 months' imprisonment	7 months	7 months	5 months
	10 kg	3 years' imprisonment	3 years	3 years	2 years
Amphetamine (20 % purity)	100 g	7 months' imprisonment	7 months	7 months	5 months
	1 kg	3 years' imprisonment	3 years	3 years	2 years
Cocaine (33 % purity)	100 g	2 years' imprisonment	2 years	2 years	1 year 4 months
	1 kg	5–5.5 years' imprisonment	5–5.5 years	5 years 3 months	3 years 6 months
Heroin (25 % purity)	100 g	3 years' imprisonment	3 years	3 years	2 years
	1 kg	5.5 years' imprisonment	5 years 6 months	5 years 6 months	3 years 8 months

As the rule for early release applicable to all cases (i.e. not only for drug trafficking cases) is mandatory and leaves the court or other officials with no discretion, the actual early release in practice is identical with the release as prescribed by law. This being the case, the answers given by all practitioners are identical, as they should be.