

# SLOVENIA

Dr. Marko BOŠNJAK

*Researcher, Institute of Criminology, Ljubljana University*

## I. GENERAL INTRODUCTION

Although Slovenia is a newly independent State with a rather short democratic tradition<sup>1</sup>, its criminal law, criminal justice system and crime policy have a long history of strive for substantive and procedural legality, of the limitation of State repressive powers and of rationalisation and liberalisation of the choice of penal sanctions. These trends have been to some extent reversed in the recent years, which may mostly be seen as a local reflection of the growing feeling of insecurity in the World. Still, when compared to other European criminal justice systems, ours remains marked by relatively lenient penal sanctions and low incarceration rates. Other characteristics that influence Slovene criminal justice system tradition and viewpoints are the size of its territory and of its population<sup>2</sup>. The cases Slovene courts deal with, are mostly ordinary property and violent crimes, so almost no attention has been paid to the phenomena of terrorism, cybercrime and environmental crime, which were under special focus in the present Grotius research project. Such a situation may soon change as Slovenia accedes to different international integrations with clear interest in suppressing the abovementioned types of crimes.

As it is needless to elaborate on the general *nullum crimen, nulla poena* maxime, it is suitable to turn attention to more refined dimensions

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<sup>1</sup> The Republic of Slovenia gained its independence after the break-up of the former Yugoslavia in 1991 and was recognised as an independent State by the international community in 1992. First free parliamentary elections were held in 1990. The new constitution establishing a democratic republic with the separation of powers and the rule of law was adopted in 1991. Slovenia became the United Nations member in 1992, the Council of Europe member in 1994 and is today one of the EU candidates.

<sup>2</sup> The territory of Slovenia has a size of 20.251 km<sup>2</sup> and is populated by approximately 2.000.000 people.

of legality and limitation of the State repressive power. More than 25 years ago it was decided to abandon all side criminal law legislation, existing outside the CC, i.e. found in other laws containing criminal law provisions, and to incorporate all criminalized acts in the Criminal Code only. This decision came out of the notion that side criminal law legislation opens the door to a “softer” legality and to a less controlled widening of State repression. Although some initiatives existed, only one exception to the “no-side-legislation” rule has been adopted in the field of the privatisation law. Therefore Slovene criminal law remains cautious when it comes to initiatives for new legislative solutions concerning particular types of crimes. The cautiousness is not limited to side criminal law legislation only. At least in view of criminal law experts, new initiatives have to be rational and proportioned with the existing provisions of the Criminal Code. Such an orientation is a criminal law correlate of an increasing trend in the awareness of human rights. This trend started in the eighties and blooming at the end of eighties and at the beginning of the nineties. One of basic traits of this trend was the conviction that the human rights might mostly be jeopardised by an unrestricted and undercontrolled State repression.<sup>3</sup> Though not being within the direct scope of the present research project, it is useful to highlight that the abovementioned trend of limitation of the State repressive power has been reflected in the criminal procedural law as well. The procedural limitation may be seen on two levels, the first one being the constitutional and legislative level, the second one being the level of jurisprudence, above all the jurisprudence of the Constitutional Court. The latter rendered several judgements limiting the possibilities for special investigative means and methods (e.g. wire tapping) and for the pre-trial detention.

Nevertheless, Slovene criminal law does follow the stream of progressive development of international criminal law. In the Criminal Code (hereinafter referred to as the CC) one may find criminal offences of genocide, war crimes, aggression and of other international crimes. In the recent years our criminal law sufficiently follows the pace of the international and European (the CE and the EU) developments in the field of criminal law, e.g. fight against money laundering and other financial and economic crime, cybercrime or trafficking in human beings. One may observe that some of these particular changes are brought forward by different governmental bodies dictating crime policy in the field of financial and economic crimes, although these changes are not always logically consistent with other solutions in the CC and are therefore criticised by the theory. It may be preliminary concluded that the Slovene criminal law is ready to open itself and accept new solutions (either as new offences and aggravation of existing penalties or new theoretical solutions within

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<sup>3</sup> Such a conviction was without any doubt one of the main mobiles of the promotion of the human rights all over the world. The conviction was partly, but dramatically overturned in the recent years by the supposition that it's certain types of criminal activity (e.g. terrorism, organised crime) which most endanger human rights and that it's the growing State repression and surveillance that can prevent this menace best.

the conception of crime), as long as they are rationally founded and consistent with the general solutions and philosophy of the criminal law.

During the recent decades, penalties for crimes have generally been mitigated, due to liberal and rehabilitative ideals predominating in Slovene crime policy. The death penalty was formally abolished in 1989, but the last final judgement with the death penalty pronounced and implemented was passed in 1957. The general maximum penalty in Slovenia is 15 years of imprisonment. For a number of years an exceptional maximum penalty for intentionally committed grave crimes (e.g. genocide, war crimes) a penalty of 20 years of imprisonment could be prescribed. This exceptional maximum was augmented to 30 years in 1999, a solution criticised by some experts as having no rational grounds. The last broader mitigation of penalties took place in 1995, when the new CC entered into force.

The trend of legislative liberalisation of penal sanctions was long supported by the sentencing policy of the courts. The penalties pronounced tended to stick near the special minima provided for particular offences. Although in recent years some types of crimes (specially murders and sexual abuse of children) have experienced a harsher sentencing policy and the prison population is on the rise, the sentencing policy of the courts may generally be considered as a lenient one within the framework offered by the CC<sup>4</sup>. Such an orientation, specially in the field of sexual crimes, has been heavily criticised by a populist political party and parts of civil society, which put forward an initiative to augment the minimum and maximum penalties for these offences and to narrow the margin of appreciation of courts in order to attain pronouncement of harsher penalties. The initiative was accepted with mixed feelings by the criminal law theory experts.

In the past, the rehabilitative ideals were especially present in the execution of the penal sanctions, above all in the execution of the prison sentence. The so called "Slovene model" was marked by a tolerant treatment of convicts, by liberalisation of the regime in prisons without endangering the community and by early reinsertion of the convicts soon after the beginning of the execution of the prison sentence. This model was changed in important ways in the nineties, although no expert explanation for this change was given<sup>5</sup>.

When positioning Slovene crime policy and sentencing policy in the European perspective, it is possible to assess it as a relatively liberal one. Still one may not see it as a policy which lost touch with trends in European and international criminal law just for being less security oriented and for applying lower penalties than European average. As the goal of European integration process in the field of criminal sanctions is far from unification and as it rather promotes the idea of harmonisation, Slovene

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<sup>4</sup> See J. MARINKO, *Kakšne kazenske sankcije izrekajo sodišča v kazenskem postopku?*, *Pravna praksa*, št. 33-34, Ljubljana, 2002, pp. VI-VIII.

<sup>5</sup> See D. PETROVEC, *Nova država — nova kaznovalna ideologija in praksa?*, *Revija za kriminalistiko in kriminologijo*, Ljubljana, Nr. 3, 1998, pp. 238-244.

solutions and penal philosophy may be considered as compatible and open to further tying among European criminal law and criminal justice systems.

## II. GENERAL PRESENTATION OF THE APPLICABLE SANCTIONS

The Slovene CC provides for four types of penal sanctions, i.e. the penalties, admonitory sanctions, safety measures and educational measures. Penalties may be pronounced as principal or accessory sentences. The principal sentences are the imprisonment and the fine. The accessory sentences are the fine, the restriction of driving a motor vehicle and the deportation of foreign citizen from the country.

The imprisonment may last from 15 days to 15 years. In exceptional cases of intentionally committed grave crimes, a maximum of 30 years of imprisonment may be prescribed. There is no differentiation as to the type of the imprisonment sentence. In practice, the imprisonment sentence is applied in approximately 15 % of cases where the defendant is found guilty. The fine to be pronounced in a given case may be determined by the method of daily amounts or by the method of a fixed sum. When determined by the method of daily amounts, the fine may vary between 5 and 360 daily amounts (up to 1500 daily amounts if the offence in question was committed out of self-interest) with the daily amount fixed by taking into account the offender's daily income and family expenditure. When determined by the method of a fixed sum, the fine may vary between 30.000 and 3.000.000 tolar (132 — 13.200 euros), but it may amount up to 9.000.000 tolar (39.500 euros) if the offence in question was committed out of self-interest. Due to difficulties in the determination of the amount of the fine, this one is applied in less than 8 % of cases.

The admonitory sanctions provided by the CC are the suspended sentence, the suspended sentence with supervision and the judicial admonition. In contrast to the latter two which are seldom used, the suspended sentence is the sentence, most often used by Slovene courts, applied in almost 75 % of cases where the defendant was found guilty. When pronouncing a suspended sentence, the court passes a principal penalty, which will not be executed unless the offender commits another criminal offence in the period, fixed by the court. The suspended sentence may be pronounced in cases in which the penalty passed does not exceed two years of imprisonment and in which a prison sentence prescribed by CC does not exceed three years of imprisonment. The court may condition the suspension of the sentence by the restitution of the property gained by the offence, by the indemnification for damages caused by the offence or by the performance of other obligations prescribed by the law. The period for which the offender is placed on suspended sentence may be set between 1-5 years. The suspended sentence may be revoked due to further criminal offence or due to non-fulfilment of the imposed obligations.

The purpose of the safety measures<sup>6</sup> is to efficiently prevent the risk of recidivism through higher level of the individualisation of penal

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<sup>6</sup> The CC specifically lists six safety measures.

sanctions<sup>7</sup>. The safety measures are usually applied as accessory sanctions, except compulsory psychiatric treatment and detention in a health institution and compulsory psychiatric outpatient treatment, which may be ordered notwithstanding the imposition of any other criminal sanction.

Educational measures are penal sanctions applicable to juvenile offenders only. Rarely, a penalty is imposed upon a juvenile offender (in less than 2 % of cases).

In addition to the penal responsibility of natural persons, the Slovene legal system introduced the penal responsibility of legal persons in the second half of the nineties. A special law on penal responsibility of legal persons (hereinafter referred to as LPRLP) introduced several sanctions for legal persons, namely the penalties, the suspended sentence and the safety measures. The possible penalties are the fine, the confiscation of the property and the dissolution of the legal person. The fine may vary between 500.000 tolar (approximately 2.200 euros) and 150.000.000 tolar (approximately 650.000 euros). When the confiscation is ordered, at least one half of the property must be confiscated. The dissolution of the legal person may be ordered in cases where the activity of the legal person has been totally or predominantly misused for the commission of criminal offences. Instead of a fine, a suspended sentence may be pronounced. In addition to these sanctions, the court may impose upon the legal person one or more safety measures, namely the forfeiture of objects used for or produced by the criminal offence, the publication of the judgment and the interdiction of the economic activity.

More detailed features of the applicable sanctions in the Republic of Slovenia may be discerned from the tables attached to this publication.

### III. PRESENTATION OF SANCTIONS APPLICABLE TO CASES OF TERRORISM, CYBERCRIME AND ENVIRONMENTAL CRIME

In this section, the intention is to present the penalties applicable to specific types of terrorism crimes, cybercrimes and environmental crimes. In our opinion, such a presentation is necessary as the tables attached to the publication dealing with the abovementioned types of crimes do not provide a reader with a sufficiently detailed and explained information on criminalization and punishability of these offences. When reading the presentation of sanctions applicable to these types of crimes, it is necessary to bear in mind general provisions on applicable penal sanctions that are presented in the previous and the subsequent section.

The phenomena of terrorism are covered mostly by three criminal offences, which may be found in the special part of the CC, i.e. taking of hostages (art. 390 CC), international terrorism (art. 388 CC) and national terrorism (art. 355). The crime of taking of hostages is defined as kidnapping or threatening another person or hostage taking with the intention

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<sup>7</sup> See L. BAVCON, A. ŠELIH, *Kazensko pravo — splošni del*, ČZ Uradni list, Ljubljana, 1996, pp. 354-355.

of forcing a state or an international organization to perform or omit to perform a certain act. The prescribed penalty is imprisonment from 1 to 15 years. If the taking of hostages entails the death of one or more persons, the prescribed penalty is imprisonment from 5 to 15 years. If the offender intentionally takes lives of one or more hostages, the prescribed penalty is imprisonment from 10 to 15 years or imprisonment of 30 years. The crime of international terrorism is defined as kidnapping or violence against another person or endangering human life or property of substantial value with the intention of inflicting damage to a foreign country or an international organization. The prescribed penalty is imprisonment from 1 to 10 years. If the intention is to compel to perform or omit to perform a certain act, the prescribed penalty is imprisonment from 1 to 15 years. If the offence entails the death of one or more persons, the prescribed penalty is imprisonment from 5 to 15 years. If the offender intentionally takes the lives of one or more persons, the prescribed penalty is imprisonment from 10 to 15 years or imprisonment of 30 years. The crime of national terrorism is defined as causing violence or otherwise endangering public safety with the intention of jeopardising the constitutional order or security of the State. The prescribed penalty is imprisonment from 3 to 15 years.

The phenomena of cybercrime are mostly covered by two CC criminal offences, namely by unauthorised access to a protected computer data base (art. 225 CC) and breaking into a computer system (art. 242 CC). The first crime is defined as unauthorised entrance into a protected computer data base with the intention to obtain certain data. The prescribed penalty is the fine. If the abovementioned data are used, copied, changed or destroyed, or if another data or computer virus are inserted by the offender, the prescribed penalty is imprisonment up to 2 years. If the damage caused by this offence is considerable, the prescribed penalty is imprisonment from 3 months to 5 years. The crime of breaking into a computer system is in the relation of speciality to the abovementioned crime. It may only be committed in the performance of business operation. The prescribed penalty is imprisonment up to 3 years. If the loss or benefit of the property is considerable, the prescribed penalty is imprisonment up to 5 years.

It is impossible to list the whole range of acts criminalized as environmental crimes by the CC and contained in a special chapter entitled "Crimes against environment and natural resources". The most general and broad among crimes from the abovementioned chapter is the pollution and destruction of environment (art. 333 CC). The prescribed penalties vary in relation to the damage caused by a specific act. The harshest penalties are prescribed for cases of the pollution of drinking water (art. 337 par. 4 CC) and of tainting of foodstuffs (art. 338 par. CC), if these acts entail death of one or more persons (the imprisonment from 1 to 12 years).

#### IV. MARGIN OF APPRECIATION OF JUDGES IN DETERMINATION OF PENAL SANCTIONS

When determining the penal sanction to be imposed upon the defendant found guilty, the court is faced with two choices. First, it has to

determine the type of penal sanction to be imposed (so called qualitative individualisation of the sanction). Second, it has to determine the amount of the chosen sanction, e.g. the length of the prison sentence (so called quantitative individualisation of the sanction). According to the principle of legality, the determination is legally framed by the provisions of the national criminal code. Nevertheless, almost every legal system provides for some judicial margin of appreciation by omitting strict fixing of the penalty in the special part of the criminal code as well as by different provisions of the general part.

The Slovene CC provides for a comparatively broad margin of appreciation of courts either for the qualitative or for quantitative individualisation of the penal sanction<sup>8</sup>. This is mostly due to two reasons. First, it is a clear sign of trust in courts. Second, the philosophy of punishment in Slovene criminal justice system predominantly rejected the idea of retribution, which is the principal ground for fixing the penalty solely in proportion to the act committed. Instead, it followed the rehabilitative ideal allowing for a strong relation between the personality of the perpetrator and the type and amount of the penal sanction to be imposed on him. Nevertheless, the future of such an orientation is uncertain. The public trust in courts diminishes. The politics is keen to have a stronger say in the election of judges and on the functioning of the justice system in general. Rehabilitation ideology has been losing its position in criminological theory and thinking for a number of years or even decades, leaving less and less room for adjusting punishment to the personality of the offender.

When deciding on the question of qualitative individualisation, the courts are most often faced with an option whether to pronounce a suspended sentence or a sentence of imprisonment (if, legally, a suspended sentence is an option — see general presentation of applicable sanctions). The circumstances considered as decisive are the personality of the offender, his past behaviour, his conduct after committing the offence, the degree of his criminal responsibility and other circumstances under which the offence was committed. If these circumstances lead to a conclusion that it is reasonable to expect that the offender will not commit any further criminal offence, the court may pass a suspended sentence (art. 51 par. 3 CC).

When it comes to the quantitative individualisation, the margin of court's appreciation is even larger. There are no margins set for the pronouncement of fines for each specific offence in the special part of the CC. In particular cases, the courts are guided by the provisions of the general part of the CC only. On the contrary, the special part provides for special minima and maxima for each specific offence if a sentence of imprisonment is prescribed. However, the margin between the minimum and the maximum penalty for specific offences may be large (e.g. the minimum of one year and the maximum of 15 years of imprisonment). Due to such a margin the court has to pronounce a penalty according to

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<sup>8</sup> See BAVCON, ŠELIČ, 1996 : 377-378.

general rules on mitigating and aggravating circumstances contained in article 41 CC. In the mentioned article the circumstances having influence on the severity of the sentence are listed in an exemplary manner. These circumstances are : the degree of the offender's criminal responsibility ; the motives for which the offence was committed ; the intensity of the danger or injury caused to the protected legal good ; the circumstances in which the offence was committed ; the offender's past behaviour ; his personal and property circumstances ; his conduct after committing the offence and especially the fact, whether he recovered the damage caused by the commission of the criminal offence ; and other circumstances relating to the personality of the perpetrator.

In addition, the CC provides for further possibilities for individualisation of the sanction. The sentence may further be reduced (i.e. under the special minimum provided for a particular offence) if so provided for by the statute (e.g. mistake of law which could have been avoided) or if the court ascertains that special mitigating circumstances are present which justify the imposition of a reduced sentence. Limits of the reduction of sentence are set by the CC in relation to the special minimum provided for each particular offence. Further, a sentence may be remitted if provided so by the statute (e.g. action exceeding the justifiable self-defence by reason of great excitement or fright). The court also remits the sentence of the offender who committed a criminal offence out of negligence if the consequences of such an offence harmed him to such an extent that the imposition of a sentence would obviously not be justified (e.g. negligent causing of traffic accident resulting in the death of the spouse). On the other hand, the sentence provided for by the special part of the CC may be extended beyond the special maximum in cases of multirecidivism. Nevertheless, the extended sentence may exceed neither the double limit of the special maximum nor the limit of 20 years of imprisonment.

#### V. OPTIONS FOR THE REDUCTION OF SENTENCE IN THE COURSE OF ITS EXECUTION

Theoretically, two basic groups of options for the reduction of sentence in the course of its execution may be discerned. The first group of options may be called regular options. These options are provided either by the CC and further elaborated in the Law on the Execution of Penal Sanctions (hereinafter referred to as LEPS) or are provided by the LEPS only. The second group of exceptional options constitutes the presidential pardon, the parliamentary amnesty and the exceptional reduction of the sentence.

The group of regular options consists of the conditional release, the transformation of a short prison sentence to a socially beneficial work and of other options provided by the LEPS as modalities of the execution of the prison sentence. The conditional release is an option provided for by the CC and further elaborated in the LEPS. The offender may be released, if it is reasonable to expect that he will not offend again. The conditional release is possible after the offender has served half of his

prison sentence under the condition that, in the term for which he was sentenced, he does not commit another criminal offence. Exceptionally, the offender may be conditionally released after having served one third of his prison sentence, if special circumstances relating to his personality indicate that he will not commit any further criminal offence. The offender who has been sentenced to a term of imprisonment of more than 15 years may be conditionally released after he has served three fourths of his sentence. The conditional release may be granted by a special commission, comprised of one Supreme Court Judge, one District Attorney and one delegate of the Ministry of Justice. The commission decides upon a motion of the offender. There is no recourse against the decision of the commission. Additionally, the director of the correctional institution<sup>9</sup> may grant the conditional release to an offender, who has less than one month of the prison sentence left to serve.

A special option to avoid serving the sentence of imprisonment is offered by the article 107 paragraph 4 of the CC in cases where a prison sentence does not exceed three months. Instead of serving the sentence, the offender may be put under obligation to perform work for a humanitarian organisation or a local community for a period of not more than six months, whereby the total period of work may range from a minimum of eighty to a maximum of two hundred and forty hours. Due to the constitutional barrier of forced work, such a transformation may be ordered only with the consent of the offender. The transformation is ordered by the court of first instance which delivered the sentence. The objective and subjective circumstances relating to the offender must be taken under consideration.

Further, three options are offered by the LEPS as special modalities of the execution of the sentence, whereby the sentence is not reduced, but mitigated. These options are the continuation of the professional activity, the contractual work outside the correctional institution and the weekend serving of the prison sentence. The continuation of the professional activity may be granted by the Minister of Justice in cases where a prison sentence of less than six months was pronounced by the court. Through this option, the offender is obliged only to spend the nights in prison. The contractual work outside the correctional institution may be granted by the director of the correctional institution. The latter may also grant the so called weekend serving of the prison sentence to the first time offenders who were convicted to a prison sentence of not more than six months for the offences committed out of negligence, if these offenders are personally settled and work or study on the regular basis. These offenders may work and reside at home during the working days.

As mentioned above, three possibilities exist for an exceptional reduction of the sentence in the course of its execution, namely the pardon, the amnesty and the exceptional reduction of the sentence. The pardon

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<sup>9</sup> The correctional institutions (i.e. prisons) are parts of the Administration for the Execution of Penal Sanction, which is a part of the Ministry of Justice.

is granted by the President of the Republic upon the motion of a person entitled to file an appeal against the judgement in the favour of the defendant. The circumstances justifying the pardon are examined by the court of first instance, which prepares a proposal for the decision and files it to the President. Usually, the decision of the President is in accordance with the opinion of the judiciary. By the presidential pardon, the execution of the sentence may be reduced in part or waived in total.

The amnesty is granted by the State Assembly, i.e. the Lower House of the Slovene Parliament. In contrast with the presidential pardon, the amnesty is not granted to a specific convict, but to all persons convicted of a certain offence or to all those convicted to a certain sentence. The amnesty may also be granted for a part of the sentence only (e.g. reduction of the sentence for one third).

The exceptional reduction of sentence is a special legal remedy provided for by the Code of Criminal Procedure (hereinafter referred to as the CCP) and is granted by the Supreme Court in cases where mitigating circumstances occur which either did not exist when the judgement was passed or were unknown to the court at that time and which would have obviously led to a less severe punishment. The request for the exceptional reduction of sentence may be filed by those who are entitled to file an appeal against the judgement in the favour of the defendant. The circumstances justifying the exceptional reduction of sentence are examined by the court of first instance, which prepares a proposal for the decision and files it to the Supreme Court.

More detailed features on options for the reduction of the sanctions in the course of their execution may be discerned from the tables attached to this publication.

#### VI. THE INFLUENCES OF FOREIGN JUDICIAL DECISIONS UPON THE DETERMINATION OF THE SENTENCE

No specific provision exists in the Slovene legal order on taking into account a foreign judicial decision in the determination of the sentence to be pronounced by a Slovene court. However, this does not mean that the courts are discouraged to take foreign judgements into account. The past convictions by the foreign courts may be a proof of the offender's past behaviour, which must always be taken in consideration in the determination of the sentence. The Slovene criminal law theory emphasises that all past behaviour must be considered which may in any way be linked with the offender's attitude towards his or her act and with its legal importance.<sup>10</sup> In practice, it may prove difficult to have knowledge of the offender's past convictions abroad. In evidence of the offender's past behaviour, the court deciding on the guilt and sentence requires a copy of the offender's criminal record, which may practically consist only of

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<sup>10</sup> See I. BELE, *Kazenski zakonik s komentarjem — splošni del*, GV založba, Ljubljana, 2001, p. 287.

the decisions rendered by the Slovene courts and of those foreign judicial decisions that have acquired special execution clause through the special procedure offered by the CCP (see the subsequent section).

#### VII. THE EXECUTION OF FOREIGN JUDICIAL DECISIONS IN THE REPUBLIC OF SLOVENIA

The execution of foreign judicial decisions is governed by special provisions of the CCP. According to these provisions the court of the first instance may grant the request of a foreign agency for execution of a judgement of conviction passed by a foreign court if so provided by the international agreement or if reciprocity exists. The court of first instance executes the sentence contained in a foreign judgement by pronouncing the penal sanction in accordance with the legislation of the Republic of Slovenia. The appeal against the decision of the court of first instance is possible. If the request for execution of a foreign judgement is denied, extradition is still an option in accordance with the special provisions of the CCP. At present, extradition of a Slovene citizen is forbidden by the Constitution. A change of this constitutional provision has been proposed by the Government due to the EU accession process.

#### VIII. POSSIBLE OBSTACLES TO THE HARMONISATION <sup>11</sup> OF PENAL SANCTIONS AT THE EUROPEAN LEVEL WITHIN THE SLOVENE LEGAL SYSTEM

As Slovenia is presently fully engaged in the EU accession process, the reception of the European legal order is viewed at as a top priority. This reception is generally accepted as a kind of inevitable necessity, whereby no substantial objections deriving from the feeling of state sovereignty or exceptionality are allowed. Any process of harmonisation of the penal sanctions at the European level is therefore expected to be received with few hesitations or even resistances from the Slovene side. The European legal documents would at one point or another be transformed (or even directly applied once the accession process is completed) into Slovene penal legislation. The latter would be amended if necessary in order to facilitate the harmonisation, in case the latter is put forward by the existent members of the European Union.

Putting aside political dimensions and focusing on the present situation, one may find a few obstacles to the harmonisation of penal sanctions at the level of legal principles of general application as well. The main

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<sup>11</sup> The meeting of the research group of the Grotius project has shown that the notion of the harmonisation is unclear to a certain extent in its two dimensions : in relation to the level of tying among European States as well as in relation to the content of tying (searching for the common denominator or a majority solution vs. Searching for the so called better law). Therefore it is difficult for a national rapporteur to comment on possible legal and political obstacles to the harmonisation process.

principle possibly holding back the repressive trend in connection with some “modern” types of crimes is the principle of the limitation of the State repressive power. According to this principle, the prescription of sentences is legitimate only to the extent that the protection of human life and other basic values cannot be otherwise assured. The choice of the Slovene crime policy is that thirty years of imprisonment is the harshest sentence which sufficiently assures the protection of the abovementioned values. The thirty years sentence is prescribed for most horrendous crimes like e.g. genocide or war crimes. Other crimes destroying or threatening the basic values in a less serious manner justify a more lenient punishment. From the point of view of repressively oriented legal systems or supranational institutions this may seem a very lenient approach. Nevertheless, this may not at all be seen as a sign of unjustified sympathy towards dangerous criminals or as a sign of willingness to harbour them or their activities. This is simply a sign of the crime policy which does not believe in an unlimited might of punishment. Building on the principle of limitation of the State power, a further requirement as regards harmonisation may be discerned. Any prescription of the punishment must be in accordance with the level of destroying or endangering of the protected value by a certain act. Therefore, it is necessary to differentiate between e.g. cases of taking of hostages where none is hurt and cases where the offenders deliberately take lives of several hostages. To conclude, the criminal law must be regarded upon as a coherent system, so any new initiative must be proportioned with the existing provisions on definitions of crimes and prescribed penal sanctions.

As many of crimes under the attention of supranational bodies (e.g. terrorism) are well designed and committed by well organised groups, it is necessary to bear in mind general principles of the Slovene criminal law as regards the so called *iter criminis* (i.e. stages of the criminal act) and as regards participation. Whereas the stage of the criminal attempt is broadly criminalized in the Slovene legal system with several possibilities for the reduction and the remittance of the sentence in the cases of the impossible attempt and the voluntary abandonment, the general principle is not to criminalize the stage of preparation of a criminal offence. There are only few exceptions to this general principle by criminalizing specific type of behaviour as a criminal offence, e.g. manufacturing and acquisition of instruments intended for committing a criminal offence (art. 309 CC). The penalty for this offence (i.e. the imprisonment) is set relatively low, due to the objective concept of crime : the level of endangering of the protected value by a preparatory act is relatively low. The Slovene criminal law is relatively narrow when it comes to the criminalization of participation. It does not accept the conspiracy doctrine that is very common in the Anglo-Saxon legal systems. Instead, it lists as a criminal offence the criminal association, which is defined as establishing a group for purposes of perpetrating criminal offences for which a punishment exceeding five years of imprisonment may be applied (the prescribed sentence is imprisonment for not more than three years) or joining such an association (the prescribed sentence is imprisonment for not more than one year). The

organiser or the members of such an association are not criminally liable for acts committed in the furtherance of the purpose of the association, unless instigation, aid or abetting may be proven.

Another basic principle of the general application of the Slovene criminal law is the principle of individualisation of penal sanctions giving a large margin of appreciation to the courts in the determination of penal sanctions to be applied in the particular cases. Considerable narrowing of this margin of appreciation by e.g. rising the special minima for the particular offences would result in less room for adjusting the sanction to the personality and other personal circumstances related to the offender. The role of the courts must in our opinion not be reduced to deciding solely on guilt of the defendant. More retribution does not mean more protection of basic values of the society.

All these principles of general application may not be viewed as real obstacles to the harmonisation of penal sanctions in Europe. There are several purposes of harmonisation. One of the most important is without any doubt to prevent harbouring of transnational activity with a criminal potential in one of the European countries due to flawed provisions on sanctioning or on the execution of penal sanctions. In our opinion no provision of the Slovene criminal law system may be seen as a solution undermining an efficient pan-European front against types of crimes endangering common European values and interests. Therefore, one may expect a smooth cooperation of Slovenia in European integration processes in the field of criminal law.

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