**Submission to the United Nations High Commissioner for Human Rights**

**Criminalization of drug-use-related behaviour as the main driver of systematic human rights violations in CEECA**

*May 2023*

**Submitting organisation:**

Eurasian Harm Reduction Association (EHRA) (<http://harmreductioneurasia.org>) is a non-profit public organization, uniting 277 organizational and individual members from 29 countries of the Central and Eastern Europe and Central Asia region (CEECA) with a mission to support communities and civil societies to ensure the rights and freedoms, health, and well-being of people who use psychoactive substances.

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**Introduction**

1. We welcome the opportunity to provide this submission to the UN High Commissioner for Human Rights ahead of its report on human rights challenges in drug policy.

The essence of international human rights treaties is respect for human dignity and freedom. Existing legislation imposing criminal or disproportional administrative sanctions for drug use, possession and low-level drug supply often committed due to drug dependence de facto is criminalization of a health condition which outlaw people who use drugs. According to the UN Special Rapporteur on the right to health, "criminalization of drug use and by extension of drug possession fuels the perception that people who use drugs are unproductive criminals or moral degenerates, which consequently allows disciplinary treatment approaches to proliferate."

Adverse effects of criminalization of controlled psychoactive substances on access to healthcare and social services, and human rights of people who use drugs are well documented. To ensure the adherence to the international human rights standards acts committed in the context of drug consumption, such as:

* non-medical drug use;
* possession of any amount of drugs without intent to traffic (the intent should be proved beyond reasonable doubt); and
* the social distribution of drugs among a limited social group (usually among peers)

should not entail a law enforcement response and be removed from criminal law.

**Findings**

2.1. Living with substance use dependence and even recreational use implies possession hence all people who use drugs are at risk of criminal sanctions. Data on the estimated number of people who use drugs in the region is unavailable but there are approximately 2,2 million people who inject drugs living in CEECA who have been criminalized by national legislation and marginalized by society. In most countries of CEECA region the difference between simple possession and possession with intent to distribute is defined by the quantity of the substance even without determining the purity. There is no clear guidance for countries to define the threshold quantities. For example, in Georgia even 1 gram of methadone might be considered as an extra-large amount and may lead to lifelong imprisonment.

Armenia, Azerbaijan, Georgia, Estonia, Hungary, Latvia, Moldova and Russia still consider mere use an administrative offence. Russia alone prosecutes approximately 90,000 people for this offence annually, with more than 40,000 people sentenced to imprisonment for up to 15 days[[1]](#footnote-1). The majority of countries also have an offence of drug use in public or being intoxicated in public. In Kyrgyzstan in 2020 the highest number of cases related to drugs were attributed to Article 268 “Illicit manufacture of narcotic drugs, psychotropic substances and their analogues without the intent to distribute”.[[2]](#footnote-2) 52% of the participants of the study among prison inmates conducted for Kyrgyz ombudsmen office in 2021 reported that they were sentenced for the possession of small and large (e.g., over 1 gram of heroin) amounts.[[3]](#footnote-3) In 2018, every seventh person convicted in Ukraine (10,144 of 73,659 people convicted of criminal offences) was convicted of drug crimes. Of those, 8,513 people (84%) were convicted of crimes of simple possession for personal use (Article 309 of the Criminal Code of Ukraine). Within this group, 6,482 (76%) were convicted for possession of narcotics in miniscule amounts ranging from 0.005 to 1.00 gram of heroin.

As a result of gender stereotypes, women who use drugs and women living with HIV are subject to additional stigma and discrimination, compared to men with the same drug-use and HIV status. Women who use drugs have been forced to undergo sterilization or abortions, separated from their children and denied access to shelters and public housing. In a survey in Kyrgyzstan, 81% of women in harm reduction programs reported surviving sexual, physical, or other injurious violence at the hands of their partner, their family, or the police.[[4]](#footnote-4) Similarly, in Georgia, 80% of women in harm reduction programs reported experiencing violence in the year prior to the survey.[[5]](#footnote-5)

2.2. Examples of how existing laws and practices led to egregious violations of human rights

* Ill-treatment of people who use drugs by police during the detention

*In January 2021, police detained a 35-year-old person who injects drugs, a resident of Tashkent city, Uzbekistan. Police suspected him of theft of a mobile phone. The suspect was in police custody for three days with no access to any drug treatment to alleviate the opioid withdrawal syndrome. When officers learned that he was injected drugs, they misused the pain and suffering he experienced due to withdrawal syndrome to persuade the suspect to become a police informant.[[6]](#footnote-6)*

**Case of I. P., Belarus**

*The initial cause of death was established as heart failure. Later a coroner established the cause of death as an acute psychiatric disorder due to the use of synthetic cannabinoids (spice). However a doctor A. K. during the police interview told that I.P. was tied up to a bed for more than 20 hours. I.P.’s relatives also informed that Igor was beaten before his death, there was blood on his shoes and urine on his clothes. It looked like I.P. could not more, eat, or go to toilet for the whole day because he was tied up to a bed [[7]](#footnote-7)*

* Severe punishment for possession of small quantities, or for distribution of small amounts among peers

***Case of U.K., a pregnant woman living with drug dependence, HIV, and HCV in***

***Yekaterinburg, Russia.14***

*In April 2017, U.K. was sentenced to 200 hours of mandatory labor for helping two fellow drug users to purchase 0.25 grams of a synthetic cannabinoid online. No medical help, educational or social support was offered to her. In June and July 2017, the police stopped U.K. twice next to her house to check whether she was intoxicated and/or possessed any drugs. During the last engagement with the police in July 2017 U.K. had 0.53 grams of a synthetic cannabinoid with her. This was categorized as a large amount of drugs. She had hepatitis C and diabetes mellitus, had recently learned about her HIV status and was at an early stage of pregnancy. Because of her health conditions, U.K.’s defense filed a non-custodial application. She already had an agreement with a private rehabilitation centre to undergo rehabilitation. No medical help or social support was offered to U.K. by the state. The court sentenced her to three years in prison. After being sentenced, U.K. was left in the pre-trial detention, where she was not provided with adequate medical care which resulted in premature delivery with severe negative impact on the child's health.[[8]](#footnote-8)*

* Arbitrary arrests of people on the streets

*On June 8, 2019, Nikolay, a 46-year-old male living with drug dependence, HIV and hepatitis C and a client of the community-based organization VOLNA, was arrested and tortured by police in the city of Ivano-Frankivsk, Ukraine. Nikolay was on his way home after a visit to a doctor who had prescribed him enough methadone pills for six days of treatment as part of Opioid Substitution Therapy (OST). Police officers took the methadone from Nikolay. Then, while in police custody, Nikolay experienced severe pain and suffering due to opioid withdrawal. He pleaded guilty to possession of narcotic drugs for personal use under Article 309(2) of the Criminal Code and currently faces a minimum punishment of two years’ imprisonment. Police insist that Nikolay possessed methadone pills illegally because he allegedly did not have medical documents with him to prove that the methadone had been given to him by his doctor. VOLNA has registered similar cases of arbitrary arrest, ill-treatment and misuse of power by police against people with drug dependence in the cities of Lysychansk, Kharkiv, Poltava, Odessa, and Kyiv. Police officers often seize OST medications from patients under arrest and misuse the pain and suffering that comes from withdrawal syndrome to obtain confessions or information on matters of police interest.* [[9]](#footnote-9)

**Recommendations**

1. In light of the above, we urge the UN High Commissioner for Human Rights to provide in his report the following recommendations to Member States and to stakeholders:

It is unwarranted to use punishment, especially to deprive people of liberty for their use or possession for consumption of drugs. As a matter of principle, acts committed in the context of drug consumption shall not be the subject of any punitive criminal or administrative laws.

Moreover, to avoid being discriminatory and disproportionate, the law should recognize the difference between circumstances of drug distribution, based on the context in which transferring or supplying drugs occurs.

To prevent arbitrary and disproportionate use of sanctions and especially detention in drug law enforcement, prosecution, and sentencing, the legal definition of drug trafficking should clearly distinguish it from social distribution in the context of drug use. The law must be clear that defined threshold quantities cannot be applied to amount to de jure or de facto derogation from the right to a fair trial, including the presumption of innocence.

1. https://ececacd.org/wp-content/uploads/2021/11/EN\_Drug-policy\_full-version\_%D0%93%D0%BE%D0%BB%D0%B8%D1%87%D0%B5%D0%BD%D0%BA%D0%BE\_12.11.2021.pdf [↑](#footnote-ref-1)
2. https://api.harmreductioneurasia.org/e619e4a8-9e84-4a54-9719-de81ba929d09.pdf [↑](#footnote-ref-2)
3. https://api.harmreductioneurasia.org/e619e4a8-9e84-4a54-9719-de81ba929d09.pdf [↑](#footnote-ref-3)
4. https://www.opensocietyfoundations.org/uploads/05b0d17a-4337-460a-8950-7804d0ad26fe/impact-drug-policy-women-20160928.pdf [↑](#footnote-ref-4)
5. http://www.ewna.org/wp-content/uploads/2017/09/Georgia-domestic-violence-report-Jan-10.pdf [↑](#footnote-ref-5)
6. https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FCSS%2FUZB%2F47615&Lang=en [↑](#footnote-ref-6)
7. https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FCSS%2FBLR%2F47505&Lang=en [↑](#footnote-ref-7)
8. https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FCSS%2FRUS%2F47727&Lang=en [↑](#footnote-ref-8)
9. https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCSS%2fUKR%2f41277&Lang=en [↑](#footnote-ref-9)