

## **A review of legislative initiatives on the liability of drug-related advocacy (propaganda) in Russia, Ukraine, and Kazakhstan during the second half of 2019 and early 2020 and possible risks for social programmes aimed at working with people who use drugs**

*A number of countries in the Eastern Europe and Central Asia (EECA) region have recently seen a tendency to adopt legislative initiatives aimed at strengthening measures to combat drug-related advocacy (“propaganda”), particularly on the Internet, and toughening the liability for such propaganda. Furthermore, the term “propaganda” is often unclear and interpreted rather vaguely within the framework of these legislative initiatives. It raises concerns related to the possible risks for social programmes in the event that these initiatives are adopted, particularly those focused on working with people who use drugs as well as for those non-governmental organisations (NGOs) implementing such programmes. Consequently, the Eurasian Harm Reduction Association (EHRA) has conducted this brief review of legislative initiatives aimed at establishing, or tightening existing, regulations to ban propaganda related to (i.e. the promotion of) narcotic drugs in Russia, Kazakhstan, and Ukraine with a brief analysis of relevant risks.*

### **1. Legislative initiatives in the Russian Federation**

Legislative initiatives to tighten the liability for narcotic drugs-related propaganda in Russia have been developed in response to presidential requests received by the government from President Putin. A list of these was published at the end of October 2019 and involve the following:

- “l) Take additional measures to counteract the illicit traffic in narcotic drugs and psychotropic substances, including the following:

*Promptly implement the Russian Federation out-of-court statutory restrictions on access to the information published on the Internet pertaining to the ways and methods of processing, producing, manufacturing, and using narcotic drugs, psychotropic substances, new potentially harmful psychoactive substances, as well as their distribution locations;*

*Introduce amendments to the Russian Federation law to establish criminal liability for inducing others [to use], or for promoting (“the propaganda of”) narcotic drugs, psychotropic substances or their analogs using the Internet <...>”<sup>1</sup>.*

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<sup>1</sup> The List of Presidential Requests based on the outcomes of a meeting with community members from the Russian Far East, held on October 25, 2019 - <http://kremlin.ru/acts/assignments/orders/61916>.

On October 30, [2019], State Duma [Parliament] deputies S. Mironov, O. Nilov, and M. Yemelyanov (representing the political party, "A Just Russia") introduced draft law No. 826083-7, the essence of which, to a large extent, was to include Article 6.13 from the national *Code of Administrative Offences* as a newly introduced Article 230.3 to the *Criminal Code* of the Russian Federation.

According to the article, propaganda or non-authorized promotion/advertising of narcotic drugs are supposed to carry a fine of between RUB100,000 and RUB500,000 (equal to around €1,410-€7,040) or an alternate fine equating to the person's wages, or other income, over a period of up to 3 years, or a sentence of between 2 and 5 years in prison.

In the case of propaganda, or non-authorized promotion/advertising of narcotic drugs implemented with the help of mass media or digital communications, information and telecommunications networks, including the Internet, or if committed by a foreign citizen or a stateless person, a fine of a RUB300,000 to RUB1 million (equal to around €4,220-€14,070) can be imposed, or an alternate fine equivalent to the person's wages, or other income, over a period of 3 to 5 years, or a sentence of 5 to 7 years in prison with no right to hold certain posts, nor to engage in certain activities, for up to five additional years.

It is of particular note that this rough-and-ready initiative might require higher quality judicial expertise: in Article 6.13 of the *Code of Administrative Offences*, foreign citizens and stateless persons fall under a separate Part 2, being subjects of an additional sanction, such as expulsion from the Russian Federation. This classification is still in place in the newly introduced draft law even though it makes no sense under a criminal investigation. Regardless, this draft bill was dismissed by the *Committee on Legislation* of the State Duma on November 6 without consideration as it was non-compliant, meaning it was submitted without the reviews needed from the government and the Supreme Court, both of which are required for any amendments to the *Criminal Code* of the Russian Federation<sup>2</sup>.

On November 6, 2019, Russia's Ministry of Home Affairs published its own draft version of Article 230.3 of the Russian *Criminal Code* on the state portal for the publication of draft laws and regulations. According to this version of the article, only the propaganda of narcotic drugs with the help of mass media or digital communications, information and telecommunications networks, including the Internet, is criminalised. It can carry a fine of up to RUB50,000 (about €700) or an alternate fine equivalent to the person's wages, or other income, for a period of up to 6 months; or 180–240 hours of compulsory community service; or up to 2 years of correction labour; or some kind of preventive/community detention for up to 2 years; or a sentence of the

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<sup>2</sup> <https://sozd.duma.gov.ru/bill/826083-7>

same duration in prison. As of the time of writing, no further progress has been made in this regard<sup>3</sup>.

Meanwhile, on January 9, 2020, a ‘lighter’ version of this draft law was submitted to the State Duma by the government. Under this version, it is suggested to amend Article 6.13, Part 1.1, of the *Code of Administrative Offences* with an additional qualifying characteristic, namely, "propaganda of narcotic drugs using the information and telecommunications network Internet," with a following range of sentences it can carry: for citizens - an administrative fine of RUB5,000 to RUB30,000 (around €70-€420); for officials/authorised personnel, a RUB50,000-RUB100,000 fine (about €700-€1,410); for individual entrepreneurs/sole proprietors, either a RUB50,000-RUB100,000 fine (about €700-€1,410) or an administrative suspension of their business activities for a period of up to 90 days; for legal entities, either a RUB1-1.5 million fine (around €14,070-€21,100) or an administrative suspension of activities for a period of up to 90 days. Relevant amendments are also suggested for Part 2 of the Article, with the “administrative expulsion of foreign nationals” left unchanged. The draft bill is scheduled for its first hearing in March 2020<sup>4</sup>. Thus, despite the direct Presidential request, the Government (as of now) has opted for tightening the liability measures under the law on administrative offenses only.

The original bill can be significantly changed in the course of legislative procedures. At a board meeting of the Ministry of Home Affairs on February 26, 2020, President Putin requested that the Duma and the Government "return to a focused development of a legislative initiative to establish criminal liability for the propaganda of narcotic drugs via the Internet"<sup>5</sup>.

### *Possible risks*

While assessing the risks, one should take into account that until recently, Article 6.13 of the Russian *Code of Administrative Offences* has rarely been used in practice in charges for publication activities (particularly via the Internet). Penalties under this Article most often involve fines imposed on entrepreneurs for selling goods featuring hemp leaves. However, the “rubber” definition of the prohibited drug propaganda may be applied to any opioid substitution therapy advocacy: “It is prohibited to promote any benefits of using particular narcotic drugs, psychotropic substances, their analogs or precursors, as well as new potentially harmful psychoactive substances, and plants used as a source of drugs, that suppress a person's will and can become detrimental to a person's mental or physical health” (Article 46, Part 2 of the Federal Law No. 3-FZ of 08.01.1998 “On Drugs and Psychotropic Substances”).

Recently, on several occasions, law enforcement agencies and *Roskomnadzor* (the Federal Service for Supervision of Communications, Information Technology, and Mass Media) have

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<sup>3</sup> <https://regulation.gov.ru/projects#departments=7&npa=96807>

<sup>4</sup> <https://sozd.duma.gov.ru/bill/876368-7>

<sup>5</sup> <http://kremlin.ru/events/president/news/62860>

filed reports under Article 6.13 of the *Code of Administrative Offences* to impose liability for publications related to harm reduction or drug policy issues. In October 2018, a fine of RUB800,000 (some €11,250) was imposed under this Article on the *Andrey Rylkov Foundation* (a NGO involved in harm reduction work in Moscow) for the publication of a news article on harm reduction issues for people using synthetic cathinones<sup>6</sup>. In September 2019, the online publication *Lenta.ru* was charged a similar fine for a news article on the economic effects of marijuana legalisation in Europe<sup>7</sup>. There can be several scenarios for the development of the new law enforcement practice:

- No substantial changes: the police would mostly monitor the advertising of the same classified goods, the sale of which was previously forbidden/penalised;
- Under the new regulations, the police would mostly prosecute individuals - authors of those news items published on social media and forums which can (most strictly) be classified as drug propaganda;
- The new regulations would be used in a systematic way to "tighten the screws" and to prosecute for publishing items featuring international practices and experiences in the spheres of decriminalisation and legalisation of drugs, substitution therapy, criticism of criminal investigations of "drug smuggling" in relation to the delivery of medicine shipments from abroad, etc.

It is worth noting that the existing legislation and judicial practice in Russia provides all the necessary tools that the authorities may need for the implementation of the "strict" scenario.

It is also of note that in February 2020, the Ministry of Home Affairs published a draft "Strategies of the State Anti-Drug Policy of the Russian Federation up to the year 2030" (published on the state portal for the publication of draft laws and regulations, which must be approved by a presidential decree). The draft Strategy showcases all the punishing trends that involve the following:

- Threats to national security that involve, "attempts to destabilise the existing international drug control system and to revise it in view of liberalisation and legalisation of drugs", and, "the widespread use of the Internet information and telecommunications network for drug propaganda";
- Goals and purposes of the Strategy involve, "Detection and combating Internet resources which are used for propaganda and the distribution of drugs";

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<sup>6</sup> <https://mos-gorsud.ru/rs/zyuzinskij/services/cases/admin/details/abe4b2b8-bf62-4ab7-995f-e33d6bec422f>

<sup>7</sup> <https://mos-gorsud.ru/rs/zyuzinskij/services/cases/admin/details/1ad77696-7be1-47f1-bb79-4291046c4920>

- It is repeatedly declared that it is, "forbidden to use substitution therapy methods in the treatment of drug dependence in the Russian Federation, involving the use of narcotic drugs, the legalisation of recreational drug use, and unjustified expansion of the use of narcotic analgesics".

In his speech on February 13, 2020, V. Piskarev, Chairman of the State Duma *Commission on Investigation of Foreign Interference in Russia's Home Affairs*, accused international NGOs and foreign media broadcasting in Russian of drug propaganda and of lobbying for the decriminalisation of drugs in Russia. His speech was an exemplary example of “besieged fortress” rhetoric. In particular, it was claimed that harm reduction activities are connected with foreign attempts to interfere in the country's domestic affairs.

However<sup>8</sup>, the legislative initiatives discussed above do not involve harm reduction programmes in the sphere of HIV and hepatitis prevention, which are explicitly acceptable under Article 230 (explanatory note) of the *Criminal Code* of the Russian Federation, as well as publications in specialised medical journals (see explanatory note to Article 6.13 of the *Code of Administrative Offences*).

## **2. Legislative initiatives in Ukraine**

On January 17, 2020, a group of Verkhovna Rada of Ukraine deputies (MPs), representing the Servant of the People Party, introduced draft bill No. 2784 to amend a range of laws and regulations with regard to counteracting illicit traffic in narcotic drugs, psychotropic substances and precursors as well as substance abuse. The draft bill tightens criminal liability under existing drug-related articles of the *Criminal Code* of Ukraine; makes narcotic medicines accessible only on electronic medication warrants; makes other amendments to regulations and enactments in the sphere of drug policy control; and introduces a new article, No. 3151, concerning, “Propaganda or advertising of narcotic drugs, psychotropic substances or their precursors”, under the national *Criminal Code*.

According to this new Article, the propaganda or advertising of narcotic drugs in the information and telecommunications networks (including the Internet) or in public places (in particular, using the facades of buildings, road surfaces, and other urban infrastructure units) by means of posting images, digital signs and/or headlines, barcodes and scanned codes, links for web addresses, social media accounts and messengers (including in foreign languages), as well as the propaganda/promoting information pertaining to the ways and methods of narcotic drug processing, producing, manufacturing, cultivating, and using, distribution locations, and descriptions of any benefits related to the use of particular narcotic drugs, are punishable by a

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<sup>8</sup> <http://duma.gov.ru/news/47790/>

fine of 3,000 to 5,000 times the non-taxable minimum personal income (with the tax-free minimum rate amounting to 17 Hryvnias [UAH] in 2020, and the fine can be charged to the total amount of around €1,930-€3,220) or can carry an alternate sentence of 2 to 5 years in prison. The same offense committed repeatedly, or by a person previously convicted of other drug-related offenses, carries a sentence of 5 to 7 years in prison. An explanatory note to this Article stipulates that it is not applicable to the publication of information on narcotic drugs and psychotropic substances in specialised scientific publications and scientific, methodical and educational literature developed within the framework of academic programmes in compliance with the guidelines of, and approved by, higher education (scientific) institutions in accordance with established procedures, as well as to the dissemination of information at scientific seminars, workshops, conferences and symposia<sup>9</sup>. Currently, there are no statutory norms in Ukrainian law stipulating particular liability (including administrative charges) for drug propaganda.

However, the explanatory note to draft Article 3151 of the *Criminal Code* of Ukraine is broader than the text of Article 35 of the *Law on Narcotic Drugs, Psychotropic Substances and Precursors*, which controls the advertising of narcotic drugs classified as controlled medicines under List II and List III (approved by the resolution of the Ukrainian Cabinet of Ministers of Ukraine of 6 May 2000, No. 770). Under this regulation, the advertising of narcotic drugs and psychotropic substances can only be acceptable in specialised publications and other information outlets specifically targeting medical, pharmaceutical, and scientific/academic professionals in the sphere of health care.

#### *Possible risks*

It is highly unlikely that this regulation can be applied to restrain harm reduction programmes and other social programmes developed for people who use drugs (including opioid substitution therapy programmes) in Ukraine. This regulation is primarily focused on the most popular, and commonly used, formats of disseminating offers/information on the supply of drugs (such as graffiti on apartment buildings). Moreover, particularly noticeable in this regard is the absence of any provisions restricting the propaganda/promotion of the application of narcotic drugs for medical purposes in the proposed draft text, which is otherwise quite similar to the wording used in versions of the Russian legislation.

However, in the proposed version, these regulatory provisions could be potentially harmful to freedom of speech if used to restrict public debate on socially important issues, which could take place only in specialised medical publications and, therefore, would be shifted to "grey zone" in the event that this draft version is approved. In a strict scenario, a very formalised interpretation of the law can result in the criminalisation of those individuals and organisations working in the harm reduction field and also involved in activism to legalise recreational drug

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<sup>9</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=67952](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67952)



use, or authors of publications featuring the details of a drug business or daily life activities of people who use drugs. Participants of such public discussions on acute issues may face criminal charges which can be arbitrary as it is undertaken at the discretion of the law enforcement agent.

### **3. Legislation in the Republic of Kazakhstan**

In accordance with the Law of the Republic of Kazakhstan, No. 292-VI ZRK, “On Amendments to Some Laws and Regulations of the Republic of Kazakhstan to Improve the Criminal Law and Procedure and to Strengthen the Protection of Human Rights” (effective as of December 27, 2019), a number of amendments were made to the national Criminal Code of the Republic of Kazakhstan, Law No. 279, “On Narcotic Drugs, Psychotropic Substances, their Analogues and Precursors, and Measures to Combat Illicit Trafficking and Substance Abuse” (effective as of July 10, 1998) and certain other laws and regulations, including those not directly related to drug policy<sup>10</sup>.

Article 24 of Law No. 279, prohibiting the propaganda/promotion and advertising of narcotic drugs, has been amended to clarify the text of the article. Propaganda now refers (see Part 1) to the dissemination by any means (as compared to only several formats which used to be specified in previous versions) of information on narcotic drugs with the aim to develop positive or tolerant attitudes towards illicit trafficking and drug use among any (unspecified) groups/persons (in previous versions, this clarification was not included). Part 2 now includes the following definition of advertising as, “Information about distribution locations or ways of purchasing [drugs] and their quality, price and other characteristics, which is made available and/or placed anywhere, in any form, by any means in order to reach an unspecified number/group of people, and to develop or maintain an interest in narcotic drugs and psychotropic substances”. However, the article stipulates (as in the previous version) that the advertising of those narcotic drugs and psychotropic substances and their analogs, included in the official List of Controlled Narcotic Drugs, Psychotropic Substances and Precursors in the Republic of Kazakhstan (Table II and Table III), can be made in specialised publications and information outlets specifically targeting health care and pharmacy professionals.

As included previously, liability for propaganda and non-authorized advertising of narcotic drugs for entrepreneurs (differentiated for small-, medium- and large-size businesses) is determined under Article 423 of the Republic of Kazakhstan *Code of Administrative Offences*. In compliance with Law No. 279, fines for propaganda and non-authorized advertising are now combined (previously they used to be charged in different amounts and under different parts of the article) and increased 1.5-2 fold. These fines are currently set as follows: 300 standard units (which equals to some €1,960) for small business entities; 500 standard units (around

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<sup>10</sup> <http://adilet.zan.kz/rus/docs/Z1900000292>

€3,260) for medium-sized business entities; and 1,000 monthly standard units (about €6,520) for large-sized business entities (a standard unit currently [as of 2020] amounts to 2,651 Tenges (KZT) or about €6.50).

The *Criminal Code* of the Republic of Kazakhstan is amended with Article No. 299-1, “Propaganda or non-authorised advertising of narcotic drugs, psychotropic substances or their analogs and precursors”. As a basic penalty (under Part 1), it implies a sentence of up to 3 years in prison, or up to 3–6 years in prison if there are further qualifying circumstances (involving any of the following: committed by a group of people acting in concert, or repeatedly, on the premises of educational organisations and in busy public places, using the mass media or digital information resources, or by someone acting in the capacity of an authorised official/personnel). In addition, Part 2 of Article 299 of the national *Criminal Code*, entitled, “Inducing others to use narcotic drugs, psychotropic substances and their analogs” (carrying a sentence of 3 to 8 years in prison), has been amended with paragraph 3, “by means of using digital information resources”.

#### *Possible risks*

The above-mentioned clarifications to Article 24 of Law No. 279, or the modification of penalties/sanctions established for propaganda and advertising of narcotic drugs (including the amount of fines under Article 423 of the Republic of Kazakhstan (RK) *Code of Administrative Offences*, and amendments to Article 299-1 of the RK *Criminal Code*) do not significantly change the basic approach to the definitions of what is forbidden propaganda and non-authorised advertising of drugs, which are currently applied in Kazakhstan law. In particular, none of these have significantly expanded any of the existing definitions, nor do they introduce any new, critically important, key points; therefore, harm reduction activities have not been affected. The law, which came into force recently, is unlikely to have any significant impact on the harm reduction programmes currently operated in Kazakhstan and the dissemination of information about these programmes.

In the meantime, it is worth noting that some risks are similar to those associated with the Ukrainian legislative initiatives. The new version of Article 24 of Law No. 279 (as well as its previous version) technically provides for a wider use of restrictive provisions which can be used to restrain a more meaningful and large-scale (that is, going beyond narrowly specialised publications) public discussion on the liberalisation of drug policy and its wider coverage by journalists or artists; as a precedent, it may create opportunities for an exemplary, demonstrative, case trial. This emphasises the importance of further monitoring and analysis of law enforcement practices in the implementation of these regulations.