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HUMAN RIGHTS COMMITTEE
Country Report Task Force for the adoption of lists of issues on Ukraine
127th Session (14 Oct 2019 - 08 Nov 2019)

Violations of Articles 2, 7, 9 and 10 of the International Covenant on Civil and Political Rights as part of drug enforcement in Ukraine¹

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Introduction

At the outset of this report, we would like to refer to the outcome of the 108th Session (08 Jul 2013 – 26 Jul 2013) when the Human Rights Committee (the Committee) missed an opportunity to address violations of the International Covenant on Civil and Political Rights (ICCPR) by state agencies responsible for the adoption and the implementation of drug policy in Ukraine. Initially, in 2012, the Committee included a request to provide information about the human rights of people who use drugs in Ukraine (CCPR/C/UKR/Q/7) in the List of Issues. The government of Ukraine failed to address the issues highlighted by the Committee (CCPR/C/UKR/Q/7/Add.1). The Committee then did not include any recommendations concerning drug policy in its Concluding Observations.²

In 2019, the national drug policy and practices in Ukraine remain archaic and discriminatory. This drives massive violations of Articles 2, 7, 9 and 10 of the *International Covenant on Civil and Political Rights* (“the International Covenant”).

¹ This report is drafted by the Ukrainian Network of People who Use Drugs (VOLNA), Eurasian Harm Reduction Association and the Canadian HIV/AIDS Legal Network. Information about these organizations is annexed to this report.

² Golichenko M., Stolz S., Ezer T., Addressing Human Rights Abuses against People Who Use Drugs: A Critical Role for Human Rights Treaty Bodies and Special Procedures. *Journal of Human Rights Practice*, Volume 10, Issue 1, February 2018, Pages 83–102, <https://doi.org/10.1093/jhuman/huy011>.

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We would also like to refer to International Guidelines on Human Rights and Drug Policy.³ This document is useful for assessing drug policies and practices in the context of the State Parties' obligations under the International Covenant on Civil and Political Rights.

Suggested items for the List of Issues with respect to Ukraine

- Please provide information about measures the State Party has adopted to protect people with chronic drug dependence from discrimination and ill-treatment, taking into account tough drug laws and high rates of criminalization of people who use drugs in Ukraine.
- Please provide information about measures the State Party has adopted to ensure access of prisoners with drug dependence and HIV to essential medicines and HIV prevention services that are equivalent to those available in the community.

PART ONE: Violations of Article 2, 7, and 9 of the Covenant

People who use drugs in Ukraine are highly criminalized and disproportionately represented in the country's prison population. 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 those, 6,482 (76%) were convicted for possession of narcotics in miniscule amounts that ranged from 0.005 to 1.00 gram of heroin.⁴

These numbers demonstrate that the majority of drug offenders in Ukraine are people who use drugs rather than people who distribute drugs for commercial purposes. People who use drugs and especially people who live with drug dependence are vulnerable to discrimination based on this chronic health condition, arbitrary arrest and ill-treatment by police. When people with drug dependence are criminally prosecuted for possession of small amounts of narcotic drugs for personal use, this amounts to detention solely on the basis of drug use or drug dependence.

According to the 2019 Report of the UN High Commissioner for Human Rights, people who use drugs face an increased risk of torture and ill-treatment [in detention]. In some cases, law enforcement officials cases deliberately take advantage of the pain and suffering associated with withdrawal syndrome elicit forced confessions while people who use drugs are deprived of their liberty. Human rights mechanisms concluded that the

³International guidelines on human rights and drug policy. UNAIDS, UNDP, WHO, International Centre on Human Rights and Drug Policy. March 2019. Online:

<https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/international-guidelines-on-human-rights-and-drug-policy.html>

⁴ Official courts' statistics for 2018. Online: https://court.gov.ua/inshe/sudova_statystyka/rik_2018

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use of withdrawal symptoms to obtain information or confessions, to punish or to intimidate or coerce may amount to torture.⁵

Case of Nikolay:

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-Frankovsk, 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).⁶ The methadone was taken from Nikolay by police. 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 Lisichansk, Kharkov, Poltava, Odessa and Kyiv. Police officers often seize OST medications from arrested patients and misuse the pain and suffering that comes from withdrawal syndrome to obtain confessions or information on matters of police interest.

Case of Natalia:

In February 2019, Natalia, a woman living with drug dependence and a patient of an OST program in Kyiv, Ukraine, was arrested by police for an unspecified crime. She was placed in Lukyanovsky pre-trial detention facility. Natalia was refused access to OST medications by the pre-trial facility administration despite her multiple requests and official requests from VOLNA social workers. She experienced acute pain and suffering for several weeks.

Cases of Artyom Kazanov and Shulga Zhdanov:

In March 2019, both Artyom and Shulga, people living with drug dependence and patients of OST, were arrested for the possession of drugs for personal use. They were placed in one of pre-trial detention facilities in the city of Kyiv. No OST medication was provided to them despite their multiple requests. As a result, they

⁵ Human rights in the administration of justice. Report of the United Nations High Commissioner for Human Rights. A/HRC/42/20. 30 July 2019. Para 6.

⁶ Opioid Substitution Therapy is one of the most effective methods of treatment of opioid dependence as well as HIV prevention among people who inject opioids. See Guidelines for the psychosocially assisted pharmacological treatment of opioid dependence. WHO, 2009. Online: https://www.who.int/substance_abuse/activities/treatment_opioid_dependence/en/

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suffered several weeks of severe pain and psychological distress due to acute opioid withdrawal syndrome.

Apart from being questionable in terms of their compliance with Articles 2, 7 and 9 of the Covenant, such drug enforcement practices have a chilling effect on the development of OST and other health services for people who use drugs, despite the fact that the national laws on HIV prevention clearly support such services and stipulate their expansion. Thus, people who use drugs — especially people who inject drugs — have limited access to drug treatment services and must continue use of illicit opioids and other drugs, committing crimes to finance their dependence and exposing themselves to higher risks of HIV, hepatitis C and overdose.

According to International Guidelines on Human Rights and Drug Policy, State Parties shall:

- take all appropriate measures to prevent, identify, and remedy unjust discrimination in drug laws, policies, and practices on any prohibited grounds, including drug dependence;
- take effective legislative, administrative, judicial, and other measures to prohibit, prevent, and redress all acts of torture and ill-treatment in their jurisdiction and in all settings under their custody or control, including in the context of drug dependence treatment, whether administered in public or private facilities;
- ensure that people are not detained solely on the basis of drug use or drug dependence.

An item to include into the List of Issues for Ukraine

Please provide information about measures the State Party has adopted to protect people with chronic drug dependence from discrimination and ill-treatment, taking into account harsh drug laws and high rates of criminalization of people who use drugs in Ukraine.

PART TWO: Violations of Article 10 of the Covenant

About 8% of inmates in Ukraine (4,360 of 54,905 in 2015) were in prison for drug offences.⁷ Many of these people continue to use drugs while imprisoned. A 2014 study demonstrates that using contaminated needles to inject drugs is a widespread phenomenon in Ukrainian prisons.⁸ HIV prevalence among prisoners in Ukraine is 8% or eight times higher than among the general population.⁹ However, no prison in Ukraine has adopted harm reduction interventions, such as needle and syringe programs, to reduce

⁷ SPACE - Council of Europe Annual Penal Statistics. Online: <https://www.coe.int/en/web/prison/space>

⁸ Izenberg JM et.al., Within-Prison Drug Injection among HIV-Infected Ukrainian Prisoners: Prevalence and Correlates of an Extremely High-Risk Behaviour. International Journal of Drug Policy 25(5), September 2014

⁹ UNAIDS. Country factsheets. UKRAINE, 2018. Online: <https://www.unaids.org/en/regionscountries/countries/ukraine>

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the risk of HIV transmission. By August 2019, only one pre-trial detention facility in Ukraine provides access to OST.¹⁰ This treatment is not available in Ukrainian prisons.

According to the July 2019 Report by the UN High Commissioner for Human Rights, there should be no intentional withholding of drug treatment from a person who uses drugs as a form of punishment; the lack of health care or inadequate treatment in detention for people who use drugs, including access to opioid substitution therapy, can also contravene the right to health and can contribute to deaths in detention.¹¹

According to the International Guidelines on Human Rights and Drug Policy, State Parties shall:

- ensure access to essential medicines, including for drug dependence, pain treatment, and palliative care;
- ensure that access to health care for people who use or are dependent on drugs and are in places of detention is equivalent to that available in the community.

An item to include into the List of Issues for Ukraine

Please provide information about measures the State Party has adopted to ensure access of inmates with drug dependence and HIV to essential medicines and HIV prevention services equivalent to those available in the community.

¹⁰ Чим Сумські тюрми здивували Глобальний Фонд. FREE ZONE. 23.04.2019. Online: <https://freezone.org.ua/globalnyj-fond-vidvidav-sumski-tyurmy-ta-sizo-yak-pratsyuyut-unikalni-praktyky-medyko-sotsialnoyi-dopomogy-v-ustanovah/>

¹¹ Human rights in the administration of justice. Report of the United Nations High Commissioner for Human Rights. A/HRC/42/20. 30 July 2019. Para 7, 29-34

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Annex: Information about the submitters



OLNA or Charitable Organization «Charitable Fund «Ukrainian Network of People who Use Drugs» (PUD.UA) (<http://volna.in.ua>) assists people living with drug addiction to help each other, protect and promote human rights of People Who Use Drugs, improve their quality of life and access to health programs.

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The Canadian HIV/AIDS Legal Network (www.aidslaw.ca) promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research and analysis, advocacy and litigation, public education and community mobilization. The Legal Network is Canada's leading advocacy organization working on the legal and human rights issues raised by HIV/AIDS. (An NGO with Special Consultative Status with the Economic and Social Council of the United Nations).

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Eurasian Harm Reduction Association (EHRA) (<http://harmreductioneurasia.org>) is a non-profit public organization, uniting 251 organizational and individual members from 29 countries of the Central and Eastern Europe and Central Asia region (CEECA). The EHRA's mission is the creation in CEECA region of favorable environment for sustainable harm reduction programs and decent lives of people who use drugs.

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