

Letter to Special Rapporteur on extreme poverty and human rights¹

Dear Mr. De Schutter,

The Eurasian Harm Reduction Association and HIV Legal Network would like to draw your attention to the disproportionality of the imposed fines for drug-related offences in the Kyrgyz Republic and kindly ask to address this issue.

The report below presents:

1. Socio-economic context
2. Laws regulating drug use in the Kyrgyz Republic
3. Drug user registry and access to drug treatment
4. Restrictions due to the presence of a criminal record and drug user registry
5. Conclusions

1. Socio-economic context

The total population of Kyrgyzstan is **6 389 500** people, of which 3 169 634 are men, 3 219 866 - women, of whom 3 701 891 (57.9%) - of working age (men - 16 to 63 years old, women - 16 up to 58 years old).

According to Article 1 of the Law of the Kyrgyz Republic No. 210 of October 13, 2008 "On the minimum wage in the Kyrgyz Republic", the minimum wage for the work of an unqualified worker who has fully completed the standard of working hours while performing simple work in normal conditions"² for 2019 was set at **1750 KGS**³ (25 USD, 23 EUR).

As of October 1, 2019, the monthly subsistence minimum for 1 person was **4840 KGS** (70 USD, 63 EUR): under working age - 4113 KGS (59 USD, 53.5 EUR), of working age - 5410 KGS (77, USD 5, EUR 71), over working age - 4319 (USD 62, EUR 56).

According to the National Statistical Committee, from January to June 2019 the average wage in the country amounted to **16 287 KGS**⁴ (233 USD or 208 EUR).

Unemployment in the Kyrgyz Republic remains a serious problem. According to the National Statistical Committee, the number of unemployed citizens is increasing every year.

According to the Ministry of Labor and Social Development of the Kyrgyz Republic, the total number of officially registered unemployed on October 1, 2019 amounted to **83 222** people, meaning that every 45th person of working age is unemployed.⁵

¹ This report is drafted by the Eurasian Harm Reduction Association (EHRA) and HIV Legal Network. Information about these organizations is annexed to this report. Contact for correspondence: Maria Plotko (EHRA) maria@harmreductioneurasia.org

² <http://cbd.minjust.gov.kg/act/view/ru-ru/202425>

³ 1 KGS= 0,010995 EUR, 0,012778 USD <https://www.oanda.com/fx-for-business/historical-rates>

⁴ <http://www.stat.kg/ru/news/kratkij-analiz-srednej-zarabotnoj-platy-po-vidam-ekonomicheskoy-deyatelnosti-regionam-respubliki-i-stranam-sng-v-yanvare-iyune-2019-goda/>.

⁵ Communication with the Ministry of Labor and Social Development of KR/ Publication on the Ministry's website (<http://zanyatost.kg/Page/PageShow/1016>).

The number of people who applied to employment services in search of work as of October 1, 2019 - **128 604** people.⁶

Most of the registered unemployed (41%) are 30-39 years old. Most of the people among the unemployed have completed secondary education (11 classes) - **59 215** people (71.15% of the total unemployed). **11 160** (13.41% of the total unemployed) - up to 9 years of high school.

The legal framework for social support in Kyrgyzstan includes **pensions** and **social benefits**.

Pension provision is regulated by the Law of the Kyrgyz Republic No. 57 of July 21, 1997 "On State Pension Social Insurance"⁷. People who use drugs, with disability and pension insurance record, can receive a pension of 1800-5820 KGS (from 26 to 83 USD, from 23 to 76 EUR), the amount of the benefit depends on its type .

Social benefits are regulated by the Law of the Kyrgyz Republic No. 163 of July 28, 2017 "On State Benefits in the Kyrgyz Republic" and some other legal acts, in accordance with which the following types of the assistance are provided:

- **lump sum child benefit** – one-off payment paid out to one of the parents for each newborn child 4000 KGS (57 USD, 52 EUR);
- **monthly allowance for the destitute citizens (families) with children under 16 years old** - provided if there are children under 16 years old and if the monthly family income per person is lower than the guaranteed minimum income. The allowance is paid monthly in the amount of 810 KGS (11.5 USD, 10.5 EUR). The level of need is determined taking into account all sources of income⁸;
- **monthly allowance for people who are not eligible for retirement benefits.**

The guaranteed minimum income and the amount of benefits are established annually by the Government of the Kyrgyz Republic, based on the results of budgetary opportunities calculations and the state of the country's economy, taking into account the subsistence minimum.⁹ From December 1, 2019, the guaranteed minimum income is 1000 KGS (14 USD, 13 EUR).¹⁰

2. Laws regulating drug use in the Kyrgyz Republic

On January 1, 2019 in the Kyrgyz Republic the new codes and laws entered into force, which, among other things, touched upon drug law offences.

Under the pre-2019 Code of Administrative Offences fines for drug possession without intent to supply varied between 500 to 2,000 Kyrgyzstani KGS (EUR 5 to 21 or USD 6 to 25 at the time of writing). Since 2019 acquisition or possession of any narcotic or psychotropic substances in "insignificant amounts" *without intent to supply*, an offence under article 123 of the Code of Misdemeanours, has been punishable by a fine of 30,000 to 60,000 KGS (EUR 320 to 640 or USD 380 to 720).

The fine under the new Code of Misdemeanours is accompanied by three to six months of probation ("limitation of liberty") which, under article 46(3) of the Code, consists of the obligation to report to the probation officials, to inform them of any change of place of residence, of workplace, not to leave the country and not to leave the place of residence without prior permission.

⁶ Ibid.

⁷ <http://cdb.minjust.gov.kg/act/view/ru-ru/557>.

⁸ More details on the procedure and criteria: <https://mlsp.gov.kg/ezhemesyachnoe-posobie-nuzhdayushhimsya-grazhdanam-semyam-imeyushhim-detej-do-16-let-uj-bulogo-komok/>.

⁹ <http://cbd.minjust.gov.kg/act/view/ru-ru/12229>.

¹⁰ <https://www.gov.kg/ru/post/s/pravitelstvo-kyrgyzskoy-respubliki-povysilo-razmer-garantirovannogo-minimalnogo-dokhoda>.

One further obligation under article 46(3)(7) of the Code of Misdemeanours is *not to consume* narcotic, psychotropic, toxic substances. As provided for in article 46(6) of the Code, failure to comply with this obligation may result in a fine, again of 30,000 to 60,000 KGS. If not paid within three months, the fine under article 46(6) is doubled, as provided for in article 46(7) of the Code.

While the amount of the fine of 30,000 to 60,000 KGS may not seem excessive in absolute terms, it is heavy when it is analysed in proportion to the level of income in Kyrgyzstan. Even the lowest fine for drug possession equals two to three average monthly incomes.¹¹ Furthermore, failure to pay the fine both under article 123 or under article 46(6) of the Code of Misdemeanours, is a crime under article 351 of the Criminal Code which is punishable by up to two years and six months of deprivation of liberty.

For misdemeanors, the period to pay the fine is three months, for criminal cases - a month.

Even harsher penalties are provided in Article 268 of the Criminal Code for the possession of drugs *without intent to supply* for the “large” quantities (e.g., over 1 g of heroin) - the penalty is either a fine of 260,000 to 300,000 KGS (EUR 2,776 to 3,203 or USD 3,265 to 3,768) or imprisonment for two and a half to five years accompanied, however, with a lower fine of 100,000 to 140,000 KGS (EUR 1,067 to 1,495 or USD 1,256 to 1,758). It follows that serving a prison sentence offers a discount on the fine. These penalties thus equal a year in prison to 42,667 KGS (EUR 455 or USD 535).

In practice, three fourths of offenders under article 123 of the Code of Misdemeanours were sentenced to the minimum fine of 30,000 KGS and the minimum probation of three months. 55% of convicts under article 268 of the Criminal Code were sentenced to terms between two years and six months and three years of deprivation of liberty with fines of 50,000 KGS, while 33% were sentenced to three to five years of deprivation of liberty with fines in the range of 40,000 to 100,000 KGS.¹² Of the 200 crimes examined, most were related to cannabis: 70–80%; the remaining 20-30% - to heroin.

In 2019 a man born in 1996 received 180,000 KGS fine and 10 years of jail time for the possession of 10 grams (Article 267 Part 2) of cannabis.

Published statistics are scarce, but it follows from the publications of the National Statistical Committee of the Kyrgyz Republic that in 2018 out of overall 7,097 persons convicted 1,217 were for drug-related crimes. This is the most recent year for which statistics are available and this was the last year of operation of the previous versions of the Criminal Code and the Code of Administrative Offences. There is no breakdown as to how many were convicted for drug trafficking and how many for consumption and no breakdown even by the type of the penalty imposed, but drug offenders are by far the largest group of criminal convicts, almost surpassing the sum of second (disorderly acts, 650) and third (theft, 633).

To an official request to the Supreme Court under Articles 267-268-269, an answer was received that in 2019 297 people were convicted / in 2020 - 471 / in 2021, in the first half of the year - 277. On the website of the National Statistical Committee and according to the Ministry of Internal Affairs in the media, we see growing statistics despite the 2020 lockdown due to the pandemic.

T.M. woman, 36 years old, married, has a secondary education, is a housewife and has 4 minor children. At five in the morning, police officers arrived and searched the house. They took T.M. to the precinct as a witness. Then she somehow turned from a witness into an accused. T.M. could not

¹¹<https://harmreductioneurasia.org/wp-content/uploads/2020/04/Analysis-drug-possession-fines-proportionality-Kyrgyzstan-RUS.pdf>

¹²Ibid., p. 19.

understand what her fault was since no drugs were found at her home and only 370 KGS were confiscated (Approx. 4.3 \$), and, in general, has a lot of questions for the investigation

The court imposed on T.M. a 130,000 KGS fine (approx. 1530 USD). T.M. was not provided with the opportunity to make a phone call to her husband so that he at least brought her warm clothes, since she was taken from the house in one dressing gown, on just the day after she had a miscarriage.

T.M. does not know how she will pay the fine, since the financial situation of her family is already in an extremely difficult state. After the pandemic, T.M.'s husband lost his job and they barely support 4 children. According to T.M. not only will her criminal record be a black spot in her life, and in order to pay the fine, her family must live from hand to mouth.

New changes in the legislation of the Kyrgyz Republic have put people who use drugs in an impossible position. Drug consumption and possession even in insignificant quantities and without intent to supply not only remain criminalised, but even the minimal fines were increased by a factor of 60 and became out of proportion to the average salary.

In March 2020, when buying drugs 61 years old man A.P. was detained on the spot by officers of the Oktyabrsky District. They seized 4 grams of hashish. A.P. is divorced, graduated from vocational school in his youth, worked before receiving a disability and has been unemployed for many years. A.P. suffers from hepatitis C and has an intervertebral hernia. He does not have housing, documents and the possibility of obtaining a residence permit and, accordingly, he does not have the money to hire a private lawyer. A.P. was convicted under Article 267 of the Criminal Code of the Kyrgyz Republic "Illegal manufacture of narcotic drugs, psychotropic substances and their analogues for the purpose of selling" he was given a prison term and a fine of 50,000 KGS (Approx. 590 USD) and compulsory treatment. If a person is in prison, then he cannot receive social benefits for disability. When A.P. will be released, most likely he will not be able to pay the fine imposed by the court due to lack of work and will most likely end up in prison again.

In December 2021 new amendments to the existing drug laws will come into force. The fines will be lowered to 20,000 KGS (Approx. 235 USD) but there are other challenges the effect of which is not clear yet.

3. Drug user registry and access to drug treatment

In the Kyrgyz Republic there is a procedure of drug user registration – registering and monitoring people who have issues with drug use in order to establish over them health monitoring, provision of prevention, treatment and medical and rehabilitative care. If a patient does not agree with the diagnosis or registration as drug dependent, he/she has the right to appeal the results of the examination or the fact of registration with a higher authority - the Ministry of Health - or in court.

Removal from drug user registration is carried out by decision of the medical advisory commission of the medical institution:

- in case of death of a patient;
- in the event of a patient leaving the Republic for a permanent residence;
- in case of recovery of a patient (in case of drug dependence – evidence of remission for at least 3 years).

Unfortunately, the regulation “On the rules and procedure for identifying, registering and monitoring persons who allow non-medical consumption of psychoactive substances in public health institutions of the Kyrgyz Republic” does not provide a detailed description of the procedure for removing a person

from the registry. This procedure is also not regulated in other local documents of the Ministry of Health.

As of 2018, 8966 people were registered with the diagnosis of drug addiction / substance abuse in the Kyrgyz Republic.

All information about patients registered with drug addiction is a medical secret and is protected by law. Disclosure of any information about the patients and their diagnosis is made on a case-by-case basis only upon an official request from the judicial or investigative authorities or health care institutions. However, the anonymity of registration can be violated in cases of bringing the patient to criminal responsibility, repeated treatment during the year in the same state drug treatment institution (at the request of the medical advisory commission) or in the case of the patient's participation in methadone maintenance therapy programs.

In terms of access to treatment, the following services are available for people with drug addiction:

- **Methadone maintenance therapy (MMT)** is provided free of charge and on a voluntary basis to people with opioid dependence and who inject drugs;
- **Detox therapy** (detoxification, treatment of withdrawal symptoms) - outpatient and inpatient, if the patient wishes - anonymously. The cost of anonymous treatment on an outpatient basis in the Consultative and Diagnostic Department is **691 KGS** per day (9.9 USD, 8.9 EUR). The cost of anonymous inpatient treatment is **627 KGS** per day (8.9 USD, 8.1 EUR). The duration of inpatient treatment in medical institutions in an inpatient department is no more than 10 days, however, if necessary (complications or severe withdrawal symptoms), the treatment can be extended;
- Free of charge **emergency medical care** in case of drug overdose, until the patient has passed life-threatening condition.

If a person does not belong to any of the categories of citizens who are entitled to receive free assistance (people with disabilities, people living with HIV, etc.) the provision of routine inpatient care to them will require a co-payment:

- **minimum level - 330 KGS** (4.8 USD, 4.3 EUR) provided to retirees (under the age of 70), labor veterans, as well as citizens receiving social benefits;
- **middle level - 1160 KGS** (17 USD, 15 EUR) provided to citizens with a compulsory health insurance; the amount of the contribution depends on the salary or the type of activity (individual entrepreneur).

If a person has had more than two hospitalizations during the year, he/she must make a co-payment of **1160 KGS** (17 USD, 15 EUR).

4. Restrictions due to the presence of a criminal record and being on drug user registry

Criminal record and drug user registry negatively affect personal fulfilment and access to certain services:

- **Employment.** Labor Code of the Kyrgyz Republic provides a number of restrictions for people who have a criminal record or are / were on drug user registry. For example, in the presence of a criminal record (non-expunged or outstanding charges), people cannot work in government agencies, cannot be state or municipal employees.¹³ They also cannot engage in activities

¹³ Article 19 of the Law on civic and municipal duty (закона Кыргызской Республики «О государственной гражданской службе и муниципальной службе»): <http://cbd.minjust.gov.kg/act/view/ru-ru/111354>.

related to the upbringing, training and service of adolescents and young people under the age of 18 (article 64 of the Labor Code of the Kyrgyz Republic), and the employer has the right to suspend an employee from work if he/she appears at the workplace in an intoxicated state and terminate the contract with him/her (article 83 of the Labor Code of the Kyrgyz Republic)¹⁴;

- **Obtaining driver's license.** People living with drug dependence and people on drug user registry are not allowed to have a driver's license¹⁵;
- **Family law.** According to the Family Code of the Kyrgyz Republic, drug addiction and being on drug user registry are considered as grounds for deprivation of parental rights¹⁶.

Labor Code also allows employers, in certain cases, not to employ people living with drug addiction who are on drug user registry and / or have criminal record (non-expunged or outstanding charges). The legislation does not specify in relation to which specific activities or which specific positions the provision of a criminal record or drug treatment certificate is required. It should be noted that the so-called latent discrimination against this group is widespread in society and they may be denied employment "under any pretext." Law enforcement practice shows that employers often set their own rules and requirements, which can go beyond the law and infringe on human rights.

There is no specific anti-discrimination law in Kyrgyzstan, but provisions prohibiting discrimination are listed in the Constitution and Labor Code. Kyrgyzstan has also signed all major human rights treaties, including the UN Convention on Economic, Cultural and Social Rights in 1994.

Despite the prohibition of discrimination, private employers do not seek to contract people who are registered with drug addiction, who have / had previous convictions. To avoid responsibility for violation of labor laws, they refuse to employ them under any pretext.

Drug user registry and the high probability of criminal conviction due to the repressive drug policy limit the chances of people who use drugs to secure stable, official and sufficient income. Combined with lack of social support and limited access to treatment of drug dependence it pushes people who use drugs to the margins of society leaving no way out.

5. Conclusions

De facto criminalization of people who use drugs and disproportionate punishment, in addition to economic consequences, negatively affect access to treatment, prevention of HIV and other infections and harm reduction programs. Using punitive laws with respect to drug use related behavior infringes upon multiple human rights, including the right to health. The targeting of people who use drugs makes an already vulnerable group particularly vulnerable.

Poverty is a major issue for people who use drugs, disproportionate penalties drive them into a poverty trap from which it is difficult to get out. There is evidence indicating that extreme fines imposed on people who are drug dependent could result in increases in poverty, homelessness and crime, and also lead to higher health and social costs.

Andrei, born in 1975, suffers from epilepsy, takes Carbamazepine, but so as to reduce the side effects of taking medications and improve his condition he uses marijuana (in the Kyrgyz Republic marijuana is not legalized for medical purposes). In July 2018, Andrei was arrested with marijuana in quantities slightly exceeding a small amount, under article 268.1 for possession without the purpose of supply. Andrei works as a car mechanic, but is not officially employed, has no previous convictions, and is not

¹⁴ Labor Code of Kyrgyz Republic: <http://cbd.minjust.gov.kg/act/view/ru-ru/1505>.

¹⁵ The rules for taking qualifying exams and issuing driving licenses, approved by the Government of the Kyrgyz Republic dated December 18, 2017, №819: <http://cbd.minjust.gov.kg/act/view/ru-ru/11617?cl=ru-ru>.

¹⁶ Article 76 of the Family Code: <http://cbd.minjust.gov.kg/act/view/ru-ru/1327>

on drug user registry. While the investigation was underway, a new law came into force. And in 2019, Andrey was fined with 260,000 KGS (3,066 USD, 2,582 EUR). The lawyers petitioned to consider the case under the 2018 Code, but the court refused due to the fact that the new legislation is considered more humane. Andrei is unable to pay the fine, in case of non-payment, he is threatened with replacing the fine with a real prison term of 2.5 to 5 years and half the amount of the fine. At the moment, Andrei is trying to challenge the decision and has filed an appeal.

Punitive laws against drug use related behavior are discriminatory because they contribute to the marginalization and vulnerability of people who use drugs - a group that historically suffers from social and often state-promoted stigma. Strategies to end extreme poverty require efforts to promote the realization of all human rights in accordance with the principle of the indivisibility of rights.

Annex I: Information about the submitters



Eurasian Harm Reduction Association (EHRA) (<http://harmreductioneurasia.org>) is a non-profit public organization, uniting 303 organizational and individual members from 29 countries of the Central and Eastern Europe and Central Asia region (CEECA). EHRA's mission is to actively unite and support communities and civil societies to ensure the rights and freedoms, health, and well-being of people who use psychoactive substances in the CEECA region.

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HIV Legal Network (www.hivlegalnetwork.ca), formerly the [Canadian HIV/AIDS Legal Network](#), promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization.

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