

Report to the Committee on Economic, Social and Cultural Rights
The implementation by Belarus of Article 12 (the right to health) with respect to people
who use drugs and people living with HIV

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Introduction and focus of the report

In the country report the Government informs that all preventive programmes recommended by WHO are implemented in the country, including 19 centres offering methadone replacement therapy for people who use drugs, 7 mobile prevention clinics for people who use drugs, 3 social support centres for persons living with HIV and people who use drugs and 48 anonymous counselling centres for key groups with the highest risk of HIV infection, with the coverage of key groups at a high risk of HIV infection by preventive measures 44.5 per cent. Also in the report is the information about the innovative approach to communication for preventive campaigns aimed at developing tolerant social attitudes towards HIV-positive persons and improvement of the quality of life and increase of the involvement of persons living with HIV in preventive programmes and antiretroviral therapy adherence programmes, round tables, training courses, seminars and conferences are held, covering medical, psychosocial, legal and other issues.¹

¹ Country report. E/C.12/BLR/7. Para 78, 79 Online:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBLR%2f7&Lang=en

The country should be commended for its commitment to WHO and UNAIDS recommended interventions. At the same time outdated and disproportionate drug laws and policies obstruct health intervention for people who use drugs, providing punishment instead of treatment.

According to UNAIDS “*criminalization of drug use and possession for personal use significantly and negatively impact the realization of the right to health.*”²

Belarus is a party to the UN Drug Conventions that pursue the aim of protecting the health from the adverse consequences of illicit drugs. In the implementation of the Conventions Belarus joins other UN member states in declaring commitment to a comprehensive, integrated and balanced approach³ through the development, adoption and implementation of alternative or additional measures to conviction or punishment in cases of an appropriate nature, in accordance with the three international drug control conventions.⁴

However, in practice, drug laws and policies in Belarus remain archaic and imbalanced with too much emphasis on harsh punishment to people who use drugs, including those whose drug use amounts to a chronic or temporary health condition. Draconian drug laws in Belarus do not delineate crimes committed in the context of use from crimes committed in the context of wholesale commercial trafficking. For this reason many people who use drugs end in jail for many years. Despite having many people who use drugs in prisons, Belarus does not provide any harm reduction measures in pre-trial detention or prisons.

Issue No 1: draconian drug laws as the disproportionate and ineffective instrument to achieve public health goals

The analysis of courts statistics as well as examples of drug cases suggest that the vast majority of people sentenced to long terms of imprisonment are drug users, not drug traffickers. Many of them receive such draconian sentencing as 13 years imprisonment or more. Such

² UNAIDS upholds decriminalization, access to services, on International Drug Users’ Day. UN News. 1 November 2021. Online: <https://news.un.org/en/story/2021/11/1104552>

³ Outcome document of the thirtieth special session of the General Assembly, entitled “Our joint commitment to effectively addressing and countering the world drug problem”. General Assembly resolution S-30-1, annex. Adopted on 19 April 2016

⁴ Para (i) Drugs and human rights, youth, women, children, vulnerable members of society, and Communities. General Assembly resolution S-30-1, annex. Adopted on 19 April 2016

disproportionate response in the name of public health runs contrary to Article 12 of the Covenant.

Of the total 2, 002 persons convicted for drug crimes in Belarus in the year 2020, people convicted under article 328 of the Criminal Code represented the majority - 1, 927 (96,3 %).

Section 328(1) is applicable to the possession of any amounts of narcotic drugs. Any possession is a crime.

Sections 328 (2)-(5) are applicable to any types of drug handling if law enforcement proves the intent to distribute. The Supreme Court defines the distribution as any act of handing over narcotic drug to another person, including as a gift, a share, or in exchange of any consideration. There is no definition of the wholesale commercial trafficking. Drug purchase and use often occur when several peers join funds so that one of them can buy certain amount of drugs and share with the rest of the group. In such circumstances a buyer can be subject to such a serious charge as handling of extra dangerous drug (if the subject drug is heroin, amphetamine, LSD, MDMA or similar drug) – section 328(3) punishable with imprisonment from 6 to 15 years.

Drug laws and punishment in Belarus⁵

Article of the Criminal Code	Definition of drug crime	Threshold amount	Punishment	No of convicted people in 2020	Share of people sentenced to imprisonment
328(1)	Handling of drugs with no purpose to distribute	No minimum amount, no maximum amount	Limitation or deprivation of liberty for 2 to 5 years	1, 344 or 69,7 % of all convicted under article 328	250 or 18,6 % of all sentenced under 328(1)
328(2)	Handling of drugs with the purpose to	No minimum amount	deprivation of liberty for 3 to 8 years with or	86 or 4.5 % of all convicted	

⁵ Данные за 2020 год о преступлениях, связанных с незаконным оборотом наркотических средств, психотропных веществ, их прекурсоров и аналогов. Интернет-портал судов общей юрисдикции Республики Беларусь. Онлайн: <http://www.court.gov.by/ru/statistika/>

	distribute		without a fine	under article 328	
328(3)	Handling of drugs in large amounts or handling of extra dangerous drugs (such as heroin, amphetamine)	No minimum amount for extra dangerous drugs (such as heroin or amphetamine); Large amount for marijuana is 80.0 grams; cannabis resin is 25.0 grams	deprivation of liberty for 6 to 15 years with or without a fine лишение	425 or 22.1% of all convicted under article 328	581 or 99,7 % were sentenced to imprisonment
328(4)	Activities described in 328(2)-(3) committed by an organized criminal group, or manufacturing of drugs using laboratory equipment	As described for 328(2)-(3)	deprivation of liberty for 10 to 20 years with or without a fine	68 or 3.5% of all convicted under article 328	
328(5)	Activities described in 328(2)-(4) that led to the death of a drug	As described for 328 (2)-(4)	deprivation of liberty for 12 to 25 years with or without a fine	4 or 0.2% of all convicted under article 328	

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Legal construction and application of Art. 328 of the Criminal Code of the Republic of Belarus allows to talk about two fundamental problems in the application of the criminal law to control drug trafficking:

- Part 1 of Article 328 of the Criminal Code of the Republic of Belarus provides for criminal liability for acts directly related to the use of drugs - the manufacture, processing, purchase, storage, transportation or transfer of narcotic drugs without the purpose of sale. Despite the fact that liability for drug use has not been established in Belarus, liability for actions with narcotic drugs and psychotropic substances without the intent to sell is, in fact, criminalization of drug use. This is exactly what the UN Commentary on the Single Convention on Narcotic Drugs says about such criminalization⁶.
- The legal structure of the norms of Art. 328 of the Criminal Code of the Republic of Belarus and the established practice of its application are not sensitive enough to distinguish between acts related to drug use and acts related to commercial sales. In fact, any action related to the use can, if desired, by the police be turned into sale.

Case of M. Zh., 24 y.o.

M was sentenced to eight years in a penal colony under article 328 of the Criminal code of the Republic of Belarus. On February 22, 2017, M's cousin A came to visit M at about 11 am. Later M walked with A to the bus stop and disappeared. Next day at 5 am police called M's mother to inform that both M and A were detained for drugs under part 1 of the article 328. However later M was indicted with the crime of trafficking under part 3 of the article 328 because in his first testimony, A said that M gave him a prohibited substance. Because the word "gave" appeared in the testimony, police was able to apply part 3 rather than part one. The court convicted M for drug trafficking and sentenced him to eight years.

⁶ Commentary to the Single Convention on Narcotic Drugs, 1961. Prepared by the UN Secretary-General in accordance with paragraph 1 of the ECOSOC Resolution 914 D (XXXIV) of 3 August 1962. New York, 1973. Commentaries to Article 4, Para 20.

Because of these problems, the drug control system is predisposed to focusing law enforcement and judicial work on acts committed in the context of use rather than commercial distribution. This situation is contrary to the latest principle of proportionality and is inconsistent with a balanced, health-oriented approach to drug policy.

Health measures cannot be so disproportionately focused on punishing people whose behavior is largely attributed to their chronic or temporary health conditions - problematic consumption or chronic drug addiction.

Recommendation: Consider decriminalizing possession without intent to sell, and develop legal mechanisms to clearly distinguish between wholesale commercial trafficking and small-scale sales associated with consumption. Severe sanctions can only be justified in relation to commercial distribution. With regard to acts related to consumption, including small-scale sale between co-users, the application of criminal sanctions should not be the main tool. Measures of health protection, social support, information, education are applicable to this type of behavior.

Issue No 2: the lack of access to harm reduction in police custody, pre-trial detention, and in prisons

In addition to the lack of access to harm reduction there is also a limited access to other medications, such as antiretroviral treatment for people living with HIV in pre-trial detention centers. Law enforcement offices often misuse the withdrawal syndrome to obtain confessions from people who use drugs in police custody. Detainees may also experience violence inflicted by prison guards or detention facilities staff members.

Case of I. P., who died in pre-trial detention center (SIZO No 1) on 4 August 2016

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.

Recommendation: provide legal and financial support to harm reduction measures, including needle and syringe and OST programs in police custody, pre-trial detention, and prisons.

Issue No 3: Criminalization of HIV

Belarus is a global leader in the number of convictions for HIV exposure and HIV transmission. Both, the exposure and transmission are criminal offences under Article 157 of the Criminal Code. In 2019 Article 157 was amended with the Note to prevent prosecution of people from discordant couples. This resulted in significant decrease of the number of criminal prosecution against people living with HIV. Despite this, in the first part of 2020 Belarus prosecuted 37 people living with HIV; the majority of them (65%) were prosecuted for HIV exposure, without actually transmitting HIV to anybody.⁷ According to laws of Belarus, doctors must inform law enforcement officers when they suspect that HIV exposure took place. Such laws seed mistrust between patients and doctors, and create chilling effect for people to get tested and ask for medical help.

Recommendation: significantly limit the application of criminal law only to cases of intentional transmission, provided that both, the transmission of HIV from an accused to a victim and the direct intent of the accused to transmit HIV to a victim, have been established beyond reasonable doubt. Educate law enforcement officers, judges, and lawyers on the scientifically proven facts about HIV transmission as well as about international prosecutorial and judicial guidance endorsed by UNDP and UNAIDS.⁸

Conclusions and recommendations

Recommendation 1: Consider decriminalizing possession without intent to sell, and develop legal mechanisms to clearly distinguish between wholesale commercial trafficking and small-scale sales associated with consumption. Severe sanctions can only be justified in relation to commercial distribution. With regard to acts related to consumption, including small-scale sale between co-users, the application of criminal sanctions should not be the main tool. Measures of health protection, social support, information, education are applicable to this type of behavior.

⁷ Valentina Mohor. Belarus needs the decriminalization of HIV transmission
Medical herald. October 13, 2020. Online: <https://www.bsmu.by/page/6/7317/>

⁸ <https://www.undp.org/publications/undp-and-unaid-policy-brief-criminalization-hiv-transmission>

Recommendation 2: provide legal and financial support to harm reduction measures, including needle and syringe and OST programs in police custody, pre-trial detention, and prisons.

Recommendation 3: significantly limit the application of criminal law only to cases of intentional transmission, provided that both, the transmission of HIV from an accused to a victim and the direct intent of the accused to transmit HIV to a victim, have been established beyond the reasonable doubts. Educate law enforcement officers, justices, and lawyers about the science based fact about HIV transmission as well as about international prosecutorial and judicial guidance endorsed by UNDP and UNAIDS.

Annex 1: Information about the submitters



Eurasian Harm Reduction Association (EHRA) (<http://harmreductioneurasia.org>) is a non-profit public organization, uniting 335 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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