

Kyrgyzstan's New the Code of Administrative Offences: high risk of violations of rights of people who use drugs

Our client Aibek lived in a social hostel six months after his release from prison for possession of psychoactive substances with no intent of further sale. We managed to collect all the documents required to issue a passport for Aibek with the support of a team of social workers and a lawyer from the Public Foundation "Ranar". The passport office denied to issue a new passport for Aibek because he failed to pay the fine which had been imposed on him in 2014, even prior to his last conviction for drug possession. Aibek was able to pay only one third of the fine of 30 000 soms (375 euros) while he was in prison. It's possible to pay this fine if Aibek gets a job but having a passport is essential to find one. That means Aibek can't get a job. The state system placed Aibek on a wanted list for his failure to pay the penalty instead of assisting in this situation and Aibek is facing an imprisonment again. The story of Aibek is not the only of its kind. The position of people who use drugs will worsen even more as the state has recently introduced a new the Code of Administrative Offenses and a new edition of the Criminal Code in the Kyrgyz Republic (KR), which were adopted without proper consultation with the community and will become effective in 2019.

According to the National Statistical Committee of the Kyrgyz Republic, the minimum subsistence income amounted to 4 900 som (60 euros) in 2017.¹ The minimum wage is currently 940 som (12 euros) and it is planning to rise up to 1 140 som (14 euros) in 2018².

Fines are practically the only alternative to imprisonment for people who use drugs under the current legislation in Kyrgyzstan. 99% of the fines are the amounts of 20 000 soms, or about 250 euros, which is 4 minimum subsistence incomes or 18 minimum wages. The new Code of Administrative Offenses categorizes fines into 2 separate categories. If a person gets caught with a small amount of drugs, the new law doubles the fine up to 40 000 soms (500 euro, that is 8 minimum subsistence incomes or 35 minimum wages).

The current Criminal Code imposes the fine amounting from 250 to 650 euro or imprisonment for up to five years for possession of large amounts of drugs with no intent of supply, that is, possession of more than 1 gram of heroin and more than 3 grams of hashish. The new Criminal Code, which, like the Code of Administrative Offenses, will come into effect in 2019, raises the fines to 325-375 euros.

The minimum penalty will amount to 40 000 soms (500 euros) and have to be paid within a three months period. The rehab will be appointed upon the client's consent but at their own expense. The result is that a person will be fined 500 euro and will only have three months to pay it and also will have to undergo a course of treatment at the same time. If you don't pay the fine of 40 000 soms (500 euro) within a three months period, it will be automatically doubled to 80 000 soms or exactly 1 000 euros. You will only have one month to pay the doubled fine.

And that's what you call a government support? If a person couldn't pay a fine of 500 euro within three months, then how can he or she find 1000 euro in just one month? Our clients say that you have to commit a more serious offense to annul the fine imposed for possession of drugs. If a person is not able

¹ <http://www.stat.kg/ru/statistics/uroven-zhizni-naseleniya/>

² <http://visasam.ru/emigration/pereezdsng/zarplata-v-kyrgyzstane.html>

to pay a fine of 1000 euro within one month, then he or she gets 2.5 years of imprisonment according to Article 351 of the new Criminal Code. Thus, an alternative to paying the penalty is imprisonment for up to five years. Nevertheless, the fine won't be annulled completely but will be transferred into a different category of fines amounting to 1250-1750 euros. People have no money while being released from prison, they often have no documents or opportunities for social engagement, and having a "debt" to the state of at least 20 minimum living wages doesn't help with this situation at all.

Aibek and five of our clients have to pay a fine and they don't know how to pay 375 euros at the moment while in a few years, in 2019, people will have to pay fines which are three or five times bigger upon their release from prison.

Will the new Code of Administrative Offenses and the Criminal Code combat HIV epidemics and help implementing the rights of Kyrgyz citizens on health and adequate standard of living?

HIV prevalence among prisoners in Kyrgyzstan is increasing. HIV prevalence among inmates was 4.8% in 2013, estimated 13.7% in 2010 and declined to 7.6% by 2013.³ However, the situation worsened by 2016, with the increase of HIV prevalence to 11.3 % in prisons, according to UNAIDS.⁴

During the period from January to September 2017, 21 025 crimes were registered in total, almost 6% of which (1 178) related to drugs. 858 people were convicted for possession of drugs with no intent of sale, for the specified period.

The situation is aggravated by corruption. Kyrgyzstan ranked 135th out of 180 in the Global Corruption Perceptions Index, submitted annually by the international anti-corruption organization.⁵ According to the opinion of the Kyrgyz people, the most corrupt organizations are customs, law enforcement agencies and tax authorities, as well as the medical and penal system.⁶ Kyrgyzstan has a very common practice of increasing the amount of drugs to the level enough for the criminal offense (the inspection of purity of the seized drugs and impurity level hasn't been carried out since 2007).

The Code of Administrative Offenses for 2019 and the Criminal Code 2019 increase the risks for corruption by law enforcement agencies. If a person who uses drugs gets caught with 0.9 grams of heroin, he or she faces a fine of 500 euros. At the same time, the police officers can "make it" 1.2 grams of heroin and then "decide the matter on the spot": you either give them a bribe (usually half of the fine), or pay the state a fine of 2 000 euros. If you do not pay the fine you'll be imprisoned.

The new Code of Administrative Offenses describes an alternative to imprisonment which is a rehabilitation. It's a good option but the problem is that there are no state rehab programs in the country. There are private rehabs though, but they are expensive. Nobody checks their effectiveness or monitors the quality of their help. The result is that you pay a fine, and you have to undergo ineffective

³ UNODC Paris Pact Newsletter Kyrgyzstan, February 2018

⁴ <http://www.unaids.org/ru/regionscountries/countries/kyrgyzstan>

⁵ <https://ru.sputnik.kg/digest/20180222/1037860757/kyrgyzstan-rejting-vospriyatiya-korruptcii-transparency-international.html>

⁶ <http://www.stat.kg/ru/indeks-doveriya-naseleniya/>

treatment in a rehab center and pay for that too. It's a double burden - paying a fine and rehab at the same time.

Nevertheless, the new Code of Administrative Offenses has some positive aspects: administrative arrests for possession of small amounts of drugs will not be considered a conviction; it clears up the alternative to punishment in the form of rehabilitation; the implementation of probation. But even bearing this in mind, it is impossible not to take into account that practical implementation of the Code of Administrative Offenses and the Criminal Code will increase the poverty rates of people who inject drugs and their families and will also lead to the growth in prison population at the expense of people who use drugs. And while heroin is available in many prisons of Kyrgyzstan and OST programs don't have a sufficient level of recognition among prisoners, the implementation of the new Codes will likely result in the increase of HIV prevalence in prison population and poverty levels among people who use drugs.

The community of people who use drugs in the Republic of Kyrgyzstan represented by the Harm Reduction Association and their partners are considering a Portugal model to solve this problem, which is decriminalization of possession and use of drugs. The Portuguese reform was not limited to making drug possession an administrative offense; it also covers a wide range of measures, such as prevention and raising public awareness, increasing motivation to quit using controlled substances; harm reduction and assistance in social reintegration. The research shows that the number of people living with diseases associated with high risk practices of drug use (HIV, HBV and HCV) has reduced in Portugal.⁷

The Code of Administrative Offenses and the Criminal Code of the Republic of Kyrgyzstan should be reviewed according to the objectives of the State. It makes people who use drugs and their families even more poorer by imposing extremely high penalties and as a result those who can't pay a fine of 35 minimum wages will be imprisoned. Again, supporting people in prisons is a certain burden for their families.

We ask the support of the Global Commission to advocate the development of well considered policies working for the benefit of the population: science-based prevention, commissions on state abuse prevention; community-run and community-based harm reduction programs, affordable and effective treatment and support; social reintegration.

⁷ A series of "Lessons on drug policy development" Drug policy in Portugal. The benefits of decriminalizing drug use. 2011, Open Society Institute.