

**Report to the 67 Session of the Committee on Economic, Social and Cultural Rights
on the implementation by Ukraine of Article 12 of the International Covenant on
Economic, Social and Cultural Rights as it relates to access of people who inject
drugs to health services.¹**

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Introduction

At the outset of this report, we would like to commend the Government of Ukraine for its continuous implementation of internationally recommended and evidence-based drug dependence treatment programs such as opioid substitution therapy (OST) and other health services aimed at reducing the adverse consequences of illegal drug use, including HIV. We welcome the Government’s overall commitment to fight HIV/AIDS, including in the most vulnerable population groups, such as people who inject drugs (§§ 274–280 of the Seventh Periodic Report of Ukraine).

Having said this, we remain deeply concerned about the current inconsistency of the Ukrainian drug and health policies and practices, when the results of some positive undertakings (such as improving access to medical care for persons with mental and

¹ This report is drafted by the Ukrainian Network of People who Use Drugs (VOLNA), Ukrainian CO «100% Life», Eurasian Harm Reduction Association, and the Canadian HIV/AIDS Legal Network. Information about these organizations is annexed to this report.

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behavioral disorders due to the use of psychoactive substances, as reported in §§ 281–285 of the Seventh Periodic Report of Ukraine) are nullified by counterproductive, discriminatory and draconian drug laws and arbitrary law enforcement practices.

In particular, we would like to focus this report on the major failure of the Government of Ukraine to implement the National Drug Strategy of Ukraine² concerning such key undertakings as:

- amending the national laws of Ukraine to ensure a balance between the enforcement of drug laws and the provision of medical support for people who use drugs;
- depenalizing drug use-related activities such as simple possession of narcotic drugs with no intent to sell.³

Despite the above-mentioned progressive undertakings of the State Drug Strategy, seven years after the 2013 adoption of the Strategy, the national drug policy and practices in Ukraine in 2020 remain archaic and discriminatory. Article 309 of the Criminal Code of Ukraine (simple possession of narcotic drugs) has not been repealed. And even the attempts of the Ministry of Health to amend the threshold quantities of narcotic drugs for the purposes of criminal liability failed due to the stubborn resistance of the Ministry of the Interior (see Part two below).

According to 2018 research,

*Ukraine's policy on drugs continues to be repressive, affecting Ukraine's ability to treat people who use drugs that are living with HIV. Poor treatment by law enforcement agencies and fear of the police are barriers to accessing HIV prevention and treatment services and other health care.*⁴

These policies and practices drive the HIV epidemic in violation of Article 12 of the *International Covenant on Economic, Social, and Cultural Rights* (“the Covenant”).

Recommendations for the State party:

The Committee remains concerned about the punitive approach taken in the State party towards people who use drugs, which results in high numbers of such persons being

² Decree of the Cabinet of Ministers of 08 August 2013 No. 735-p. Available at www.kmu.gov.ua/npas/246715472

³ According to the Head of the State Drug Control Agency, the Strategy stipulated the need to repeal Article 309 of the Criminal Code of Ukraine. J. Ryabchun et al, “Cabinet has Taken a Dose,” *Kommersant Ukraine*, August 29, 2013, p. 3. (Газета "Коммерсантъ Украина" №132 от 29.08.2013, стр. 3). Available at www.kommersant.ru/doc/2265699

⁴ The Global Fund, *Scaling up Programs to Reduce Human Rights-Related Barriers to HIV and TB Services. Baseline assessment - Ukraine*, May 2018, p. 10.

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prosecuted and obstructs access to opioid substitution therapy (OST) and needle and syringe exchange (NSE) programmes (art. 12), despite previous recommendations of the Committee (E/C.12/UKR/CO/6, para 24).

The Committee recommends that the State party adopt a human rights–based approach in addressing the problem of drug use, including by:

(a) Depenalizing drug use–related behavior, such as simple possession of narcotic drugs (Article 309 of the Criminal Code), and ensuring that such behavior triggers the State to respond with interventions of social support, education, and medical help, rather than with policing and punishment.

(b) Addressing discrimination against people who use drugs and drug-dependent people and ensuring that drug use and drug dependence are not listed as barriers to parenting, education, obtaining a driving license, employment, freedom of movement, and other rights or freedoms;

(c) Continuing to improve access of people with drug dependence to appropriate health care, psychological support services and rehabilitation, including effective drug dependence treatment such as opioid substitution therapy;

(d) Allocating sufficient financial resources for the proper operation of opioid substitution therapy (OST) and needle and syringe exchange (NSE) programmes and increasing their coverage, as well as ensuring better access to such programmes in prisons.

PART ONE: Punitive drug policy as a driver of systemic violations of Article 12.

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 Ukraine).⁵ Within this group, 6,482 (76%) were convicted for possession of narcotics in miniscule amounts ranging from 0.005 to 1.00 gram of heroin.⁶

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

⁵Drug-related crimes without intent to sell are included as offenses under Article 309 of the Criminal Code of Ukraine and Article 44 of the Code of Ukraine on Administrative Offenses. Article 309 of the Criminal Code provides for up to eight years’ imprisonment for possession, production, purchase, transportation, or sending of narcotics without intent to sell, while the same actions with intent to sell qualify for up to 12 years imprisonment under Article 307 of CCU. Article 44 of the Code of Criminal Offences allows for arrest for 15 days in cases of possession, production, purchase, transportation, or sending of small amounts of narcotics without intent to sell.

⁶ Official court statistics for 2018. Available at https://court.gov.ua/inshe/sudova_statystyka/rik_2018

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.

The resulting criminalization of people who use drugs hinders their access to outreach and healthcare services,⁷ and significantly complicates the work of needle and syringe program (NSP) sites, where the number of clients has decreased over time.⁸ UNAIDS data for 2018 demonstrates that people who inject drugs remain the population most affected by HIV with a prevalence rate of 22.6%.⁹ According to a recent study,

*Mathematical modelling suggest incarceration is a driver of HIV transmission among people who inject drugs in Ukraine, with 55.1% (95% CrI 40.2–68.2) of incident HIV infections possibly attributable to incarceration if we assume all the elevated risk among previously incarcerated people who inject drugs results from incarceration, or 28.2% (95% CrI 13.6–41.1) if we conservatively assume only the additional risk among recently released individuals is due to incarceration.*¹⁰

The same study suggests that

*Although only 0.5% of the adult population was incarcerated, we estimate that 6.2% (95% CI 2.2–13.4) of all incident tuberculosis cases result from incarceration. Conversely, among people who inject drugs this increases to 75% (95% CI 51–94) for HIV-infected people who inject drugs and 86% (95% CI 56–98) among HIV-negative people who inject drugs.*¹¹

Drug law enforcement that focuses on drug users rather than on traffickers sends thousands of people with chronic health conditions to prisons. About 8% of inmates in Ukraine (4,360 of 54,905 in 2015) were in prison for drug offences.¹² Many of these people continue to use drugs while imprisoned. A 2014 study demonstrates that using unsterile needles to inject drugs is a widespread phenomenon in Ukrainian prisons.¹³ The

⁷ N. Isayeva, *Fulfillment of rights of women related to vulnerable groups*, AIDS Foundation East-West, AFEW Ukraine, 2015, p. 2. Available at <http://afew.org.ua/wp-content/uploads/2015/07/Prava-ginok-for-web.pdf> p. 2

⁸ Supra note 4, p. 36.

⁹ Ukraine Country Factsheet. UNAIDS. 2018. Available at www.unaids.org/en/regionscountries/countries/ukraine.

¹⁰ F. L. Altice et al., “The perfect storm: incarceration and the high-risk environment perpetuating transmission of HIV, hepatitis C virus, and tuberculosis in Eastern Europe and Central Asia,” *Lancet*, 2016 Sep 17; 388(10050): 1228–1248.

¹¹ Ibid.

¹² SPACE - Council of Europe Annual Penal Statistics. Available at www.coe.int/en/web/prison/space.

¹³ J. M. Izenberg 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.

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HIV prevalence rate among prisoners in Ukraine is 8% or eight times higher than among the general population.¹⁴ However, no prison in Ukraine has adopted harm reduction interventions, such as needle and syringe programs, to reduce the risk of HIV transmission. As of August 2019, only one pre-trial detention facility in Ukraine provided access to OST.¹⁵ This treatment is not available in Ukrainian prisons.

Below are some examples of how drug law enforcement impedes access of people with drug dependence to health services.

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-Frankivsk, 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).¹⁶ Police officers took the methadone from Nikolay. 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 Lysychansk, Kharkiv, Poltava, Odessa, and Kyiv. Police officers often seize OST medications from patients under arrest 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 in 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 administration there despite her multiple requests and official requests from VOLNA social workers. She experienced acute pain and suffering for several weeks.

¹⁴ Supra note 9.

¹⁵ Чим Сумські тюрми здивували Глобальний Фонд. FREE ZONE. 23.04.2019. Available at <https://freezone.org.ua/globalnyj-fond-vidvidav-sumski-tyurmy-ta-sizo-yak-pratsyuyut-unikalni-praktyky-medyko-sotsialnoyi-dopomogy-v-ustanovah/>.

¹⁶ 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 World Health Organization, *Guidelines for the psychosocially assisted pharmacological treatment of opioid dependence*, June 2012. Available at www.who.int/substance_abuse/activities/treatment_opioid_dependence/en/

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Cases of Artyom Kazanov and Shulga Zhdanov:

In March 2019, both Artyom and Shulga, people living with drug dependence and patients in OST programmes, were arrested for the possession of drugs under Article 309 of the Criminal Code. They were placed in one of the pre-trial detention facilities in the city of Kyiv. No OST medication was provided to them despite their multiple requests. As a result, they suffered several weeks of severe pain and psychological distress due to acute opioid withdrawal syndrome.

Case of Vitaly Rumyantsev, a person with a disability due to encephalopathy:

In June 2018, police charged Vitaly with cultivating cannabis in his backyard. Police cut his eight plants into smaller pieces and calculated these as 183 separate plants. Vitaly indeed cultivated eight cannabis plants for his personal use to offset tremors in his hands and pain in his joints due to encephalopathy. He faced up to eight years imprisonment according to Article 310 of the Criminal Code of Ukraine. Due to public outrage and pro-bono legal help, Vitaly was acquitted in 2019. But the majority of such cases end with the severe punishment of imprisonment.¹⁷

Drug enforcement practices that focus on drug users 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 their use of illegal opioids and other drugs, committing crimes to finance their dependence and exposing themselves to higher risks of HIV, hepatitis C, and overdose.

Application of punitive laws (criminal or administrative) is disproportionate and discriminatory for drug use-related behavior, such as drug possession for personal use. Using punitive laws with respect to drug use-related behavior infringes upon multiple human rights, including the right to health. The infringement could not be justified as necessary in a free and democratic society because the proportionality test fails for two reasons:

- The systematic and large-scale negative health impact of the application of punitive drug laws undermines the objectives of public health (as demonstrated above).
- The use of punishment for drug use-related behavior does not satisfy the requirement of “minimal infringement” of rights. A health-based approach provides for the same or better health and public safety results with far fewer infringements.

¹⁷ Video report with the details of the case. Available online: <https://www.youtube.com/watch?v=gwZ-tQfH8c4&feature=youtu.be&fbclid=IwAR0gEIzchIuRuyOzmeRlc8UDpJ8WPwEYxX0HbzXGRGOd7h6-yAOrdoIYWpU>

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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.

In 2016 and 2016, CESCR recommended that the Philippines and Russia decriminalize possession of drugs for personal use.^{18,19} This recommendation is consistent throughout the UN system. In January 2019, the UN Chief Executives Board for Coordination issued the United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration. As part of this common position, the Chief Executives committed to promoting alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use.²⁰ Earlier similar commitment was expressed by 12 UN agencies and programs.²¹ In March 2019, the WHO, the Joint United Nations Programme on HIV/AIDS (UNAIDS), and the United Nations Development Programme (UNDP) co-sponsored International Guidelines on Human Rights and Drug Policy, where States are advised to use the available flexibilities in the UN drug control conventions to decriminalize the possession, purchase, or cultivation of controlled substances for personal consumption.²²

Drug policy in Ukraine is similarly punitive to drug policy in Russia, if not more so. Decriminalizing drug possession for personal use by completely repealing Article 309 of the Criminal Code of Ukraine will help Ukraine fulfill its obligations under Article 12 of the Covenant.

PART TWO: Why Article 309 of the Criminal Code (simple possession of drugs) should be completely repealed instead of such policy changes as increasing the threshold amounts of narcotic drugs for personal possession.

When it comes to drug use–related behaviour, such as simple possession of narcotic drugs, the Government should not remain unresponsive. Rather the response should be focused on interventions of social support, education, and medical help, instead of on punitive measures. When criminal punishment for simple possession remains in place, police *de-jure* and *de-facto* have a major role to play in fulfilling the state’s obligations related to drug use, overshadowing and subordinating other branches of the Government. Below is an example of how the Ministry of the Interior obstructed the Ministry of Health’s attempts to reform drug regulations.

¹⁸ CESCR. Concluding observations on the combined fifth and sixth periodic reports of the Philippines. E/C.12/PHL/CO/5-6. 2016. Para 53-54.

¹⁹ CESCR. Concluding observations on the sixth periodic report of the Russian Federation. E/C.12/RUS/CO/6. 2017. Para 51-52

²⁰ UN System Chief Executive Board for Coordination. Second regular session of 2018. Manhasset, New York, 7 and 8 November 2018. CEB/2018/2. Includes the Executive Heads of the United Nations, its 12 Funds and Programmes, the 15 Specialized Agencies, and 3 Related Organizations.

²¹ Joint UN statement on ending discrimination in health care settings. June 2017. Available at www.who.int/gender-equity-rights/knowledge/ending-discrimination-healthcare-settings/en/

²² Available on WHO website at www.who.int/gender-equity-rights/news/intl-guidelines-on-human-rights-and-drug-policy/en/.

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The Criminal Code of Ukraine (Art 3(3)) defines the criminality as well as its punishment and other criminal and legal consequences of action. For the purpose of criminal liability, the Ministry of Health Order No. 188 of August 2, 2000, serves to clarify what quantities of illegal drugs may be considered “small,” “large” and “extra-large” (threshold quantities). Although technically the adoption of an order falls under the mandate of the Ministry of Health, the Ministry of the Interior always plays a major role in defining the threshold quantities. The Ministry of Justice of Ukraine will not register such orders of the Ministry of Health if the Ministry of the Interior does not agree to this. Without such registration an order won’t enter into effect.

On July 29, 2010, the Ukrainian Ministry of Health adopted Order No. 634 “On amendments to Ukrainian Ministry of Health Order No. 188, dated 1 August 2000” (hereinafter amendments of 2010). The amendments of 2010 significantly reduced the legal threshold for “small,” “large,” and “extra-large” quantities of certain types of illegal drugs, including those most commonly used by people who use drugs in Ukraine.

The threshold for criminal liability for possession of acetylated opium, one of the most widely used illegal injected drug in Ukraine, for example, was reduced by a factor of 20. Anyone in possession of as little as 0.005 grams of acetylated opium or heroin faces criminal prosecution and a penalty of up to three years’ incarceration. This quantity is so minute that it is approximately equivalent to the amount found in the residue of used syringes.

Although from a legal standpoint the amendments of 2010 were brought by the Order of the Ministry of Health, the Order was inspired, drafted, and argued for by the Ministry of the Interior. In particular, it was the Ministry of the Interior that misrepresented statements of the International Narcotic Control Board in order to support the need to significantly reduce the threshold quantities. (Please see *Annex I* for more details about the arbitrary, disproportionate, and discriminatory nature of the amendments of 2010.)

These amendments had the following negative effects:

- They carry higher rates of incarceration for petty drug offences, leading to further overcrowding in Ukraine’s already strained prison system, and consequently to a higher prevalence of HIV, hepatitis C, and tuberculosis among prisoners.
- More stringent criminal liability makes it even harder for health and social services to reach PWID, undermining HIV prevention, care and treatment, drug dependency treatment, and other vital services.²³
- The mandate to investigate, prosecute, and imprison a significantly larger number of petty drug offenders reduces the criminal justice system’s ability to deal with

²³R. Jürgens et al, “People who use drugs, HIV, and human rights,” *Lancet*, Volume 376, Issue 9739 (2010): pp. 475 – 485; D. Wolfe and J. Cohen, “Human Rights and HIV Prevention, Treatment and Care for People Who Inject Drugs: Key Principles and Research Needs,” *Journal of Acquired Immune Deficiency Syndrome*, 55: S56-S62 (2010)

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- more serious offences, and will necessarily increase government spending at the expense of other national priorities such as health care.
- The authority to impose severe criminal penalties for possession of very small quantities of illegal drugs creates a substantial opportunity for corruption among law-enforcement officers and judicial bodies.

From 2013 to 2019, there were several attempts to amend MoH Order No. 188 to raise the thresholds of illegal drugs, in particular to improve access to HIV services for people who use drugs. The Ministry of Health drafted and approved a new order to amend its own Order No. 188. However, in 2019, this new order was not registered because it was blocked by the Ministry of the Interior.²⁴

Annex I²⁵

Brief information concerning the arbitrary, disproportionate, and discriminatory nature of the Ministry of Health Order No. 634 of 29 July 2010 amending the Ministry of Health Order No. 188 of 2 August 2000.

In 2010, the Order of the Ministry of Health of Ukraine No. 634 from 29/07/2010 “On amendments to Ukrainian Ministry of Health Order No. 188 from 01/08/2000” enabled significantly reduced the legal threshold for small quantities of certain types of illegal drugs, including the most commonly used ones. Anyone detained for the possession of 0.005 grams of acetylated opium or heroin (approximately the amount that can be found from residue in several used syringes) faces criminal prosecution and a possible sentence of up to three years in prison.

There are three main reasons for concluding that Order No. 634 was adopted by the Ministry of Health in the most arbitrary manner.

The authorities, including the Ministry of the Interior, grossly misunderstood or misused of the concept of the “defined daily dose” (hereafter “DDD”) as provided by the International Narcotics Control Board (INCB). According to Order No. 634, the threshold between a “small amount” of drugs and the amount deemed criminal was defined as the DDD multiplied by 10. By using this formula, the threshold amount for acetylated opium was calculated as not exceeding 0.005 grams. However, the amount defined by the Order is significantly lower and does not correspond to the one identified by INCB. A daily dose of opium is defined in the INCB’s tables as 0.1 grams and the daily dose of heroin as 0.03 grams.^[i] Based on these amounts, multiplied by a presumed ten-day supply of a drug, and applying the methodology set forth in Order No. 634, a small amount of heroin should not exceed 0.3 grams or a small quantity for opium one gram. Moreover, this

²⁴ Supra note 4, p. 36.

²⁵ Annex I is an extract from Golichenko M., Merkinaite S., In breach of international law: Ukrainian drug legislation and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Discussion paper. Canadian HIV/AIDS Legal Network and Eurasian Harm Reduction Network. 2011.

approach by Ukrainian policymakers represents a gross misunderstanding of the DDD concept. As the INCB has stated,

The term “defined daily doses for statistical purposes” (S-DDD) replaced the term “defined daily doses” (DDD), which had previously been used by the Board in its publications. The defined daily doses for statistical purposes are technical units of measurement for the purpose of statistical analysis and are not recommended prescription doses. Their definitions are not free of a certain degree of arbitrariness. Certain narcotic drugs may be used in certain countries for different treatments or in accordance with different medical practices and, therefore, a different daily dose could be more appropriate. The defined daily doses for statistical purposes indicated should be considered approximate and subject to modification if more precise information becomes available.^[iii]

In other words, the INCB is not in any way implying that the DDD is a standard prescribed dose of a drug to be used for legal medical purposes, much less for the purpose of defining prosecution of people for illegal drug use. The DDD is intended purely as a means of normalizing statistics on narcotic drugs between different countries and medical systems. It is explicitly *not* intended as guidance on either medical practice or as an estimate of the quantity of an illegal substance that a person might use. It may also be pointed out that acetylated opium is not used in medical practice in any country, and defining the daily dose of this substance using INCB’s statistical units is not possible. It is obvious that the reasoning for Order No. 634 was done in bad faith and misleads the public and legal practitioners by lending artificially established drug quantities an air of legitimacy and conformity with international practice.

Order No. 634 is failing the goal of “protecting the public health” for promotion of which it was adopted. The Order was developed and approved by the Ukrainian Ministry of Health, which leads the implementation of the state health care policy.^[iii] Chapter 13 of the Criminal Code is called “Drug crimes and other crimes against public health.” This suggests that establishing certain acts as crimes under Chapter 13 of the Criminal Code should protect public health. However, reducing the threshold for quantities of drugs for criminal prosecution focuses the efforts of law enforcement agencies and judicial bodies on people who use drugs rather than on drug dealers. Repressive measures against people who use drugs impede their access to medical and social services and HIV prevention and care programmes, and hinder the work of HIV prevention programmes among people who inject drugs.^[iv] According to the International AIDS Alliance in Ukraine, the number of used syringes brought for exchange by people who inject drugs dropped from 27% to 11% since Order No. 634 came into effect. Due to the risk of arrest and detention if their drug use is known, people who use drugs often avoid social and health service workers, and are often forced to engage in risky practices that increase the risk of overdose or of contracting HIV, hepatitis C, or other injection-related disease.^[v] Increasing the number of people in detention increases the frequency of prison overcrowding and the spread of infectious disease between inmates.^[vi] By impeding access to medical and social services and creating the conditions for otherwise

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preventable morbidity and mortality, Order No. 634 undermines the public health goals that are otherwise the very reason for the existence of the Ministry of Health.^[vii]

Order No. 634 does not conform with international law and recommendations. The Political Declaration on HIV/AIDS calls for states to adopt legislation ensuring that members of vulnerable groups have access to health care, social, and medical services, HIV prevention and treatment, information and legal protection.^[viii] The Human Rights Commission and subsequent Human Rights Council have repeatedly called on governments to ensure that their domestic legislation is consistent with human rights obligations so that criminal penalties are not used in bad faith against groups at risk of HIV, in full accordance with the International Guidelines on HIV/AIDS and Human Rights.^[ix] The UN Commission on Narcotic Drugs has called on UN member states to eliminate potential barriers to achieving universal access to HIV prevention, care, and treatment, so that people living with HIV or at higher risk of HIV infection, including people who use drugs, have access to appropriate services.^[x] This also includes recommendations regarding the prevention of other infectious diseases among people who inject drugs, such as TB and hepatitis C. The imposition of criminal penalties as part of efforts to reduce demand for drugs — particularly the deprivation of liberty — should not create obstacles to exercising the right to health. Order No. 634 does not meet this criterion.

Lack of conformity with the scientific research. According to data from numerous studies, increasing arrests and other repressive measures against people who use drugs does not have any discernible effect on the rate of drug use among the population^[xi] nor does it reduce access to illegal narcotic drugs; the availability of and access to narcotic drugs is unaffected by extensive use of punishment.^[xii] The results of “deterrence” appear even less significant in light of the amount of government spending on the justice and incarceration system, together with the negative effects of overcrowding in prisons and the negative impact on health care in the community and in prisons.^[xiii] Research shows that alternatives to criminal prosecution and detention for minor drug offences are highly effective.^[xiv] The United Nations Office on Drugs and Crime has noted the ineffectiveness of deterrent criminal penalties and, on the basis of scientific analysis, recommends no detention for insignificant drug crimes.^[xv] A report by the Special Rapporteur on the Right to the Health also cites evidence of the ineffectiveness of penalties for the use and possession of narcotic drugs without intent to sell/supply.^[xvi] Research on law enforcement practices in European Union member states conducted by the European Monitoring Centre for Drugs and Drug Addiction shows a trend toward not using incarceration as punishment for the possession of quantities of drugs that suggest intent for personal use.^[xvii]

By significantly reducing the threshold quantities of illegal drugs for the purpose of criminal liability, Order No. 634 subjected virtually any person who uses opioids, especially through injection, to arrest by police, as often these people carry some trace amounts of drugs on them, including in the used syringes. The unleashed police power to arbitrarily arrest people who use drugs is an important obstacle preventing people who

use drugs from accessing harm reduction services, and a strong pre-condition for the torture and ill-treatment of drug-dependent people.

After being arrested by police while intoxicated, drug-dependent people start feeling acute withdrawal syndrome in three to five hours. According to the Ukrainian Ombudsman, “widespread are the complaints about the use of threats and coercion to testify using morbid state of consciousness where the person being in a state of intoxication, forced to sign the procedural documents without knowing their content and the consequences of signing.”[xviii]

The special vulnerability of drug-dependent people to torture, especially in the context of detention has long been recognized by the UN Special Rapporteur on Torture:

Drug users are particularly vulnerable when deprived of their liberty. One of the questions in this context concerns withdrawal symptoms and to what extent they may qualify as torture or ill-treatment. There can be no doubt that withdrawal symptoms can cause severe pain and suffering if not alleviated by appropriate medical treatment, and the potential for abuse of withdrawal symptoms, in particular in custody situations, is evident. In a 2003 case, without specifically stating that the woman died from withdrawal, the European Court of Human Rights found a violation of the prohibition of inhuman or degrading treatment or punishment based on “the responsibility owed by prison authorities to provide the requisite medical care for detained persons”. Moreover, if withdrawal symptoms are used for any of the purposes cited in definition of torture enshrined in article 1 of the Convention against Torture, this might amount to torture.[xix]

By subjecting people who use drugs, especially drug-dependent people, to arbitrary arrest by police, Order No. 634 also increases their vulnerability to torture and other ill-treatment while in custody. This is especially so due to the fact that, despite the creation of the legal framework for providing opioid substitution therapy in the places of detention, there is a significant lack of access to OST in police custody, as was attested to by the Ombudsman of Ukraine.^[xx]

Order No. 634 subjects anyone in possession of as little as 0.005 grams of acetylated opium regardless of purity to up to three years’ imprisonment. There can be no justification for such excessively harsh use of criminal laws, especially taking into account the principle of proportionality. Moreover, Order No. 634 inevitably affects the most vulnerable group of people who use drugs — drug-dependent people, whose essential vulnerability due to their health conditions must give them special protection by the state when fulfilling its positive obligations related to prevention of torture and ensuring the right to health. Order No. 634 does not respect such a vulnerability thus contradicting the state’s obligation under Article 12 of the Covenant on Economic, Social and Cultural Rights.

- [i] *T. v. the United Kingdom* [GC], no. 24724/94, § 103, ECHR 2000-I ; *Stafford v. the United Kingdom* [GC], no. 46295/99, § 64, ECHR 2002-IV. p.167
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- [iii] Order No. 1542 of the Ukrainian Cabinet of Ministers dated 02.11.2006, “On approving the Statute on the Ukrainian Ministry of Health.”
- [iv] R. Jürgens et al., “People who use drugs, HIV, and human rights,” *Lancet* (July 2010); D. Wolfe and J. Cohen, “Human Rights and HIV Prevention, Treatment and Care for People Who Inject Drugs: Key Principles and Research Needs,” *Journal of Acquired Immune Deficiency Syndrome*, (55): S56-S62 (2010); S. Burris et al., “Addressing the “risk environment” for injecting drug users: the mysterious case of the missing cop,” *Milbank Q*82(1): pp.125-156; UN General Assembly, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2010. A/HRC/15/L.28; Open Society Institute, *The Effect of Drug User Registration Laws on People’s Rights and Health: Key Findings from Russia, Georgia, and Ukraine*, New York, 2009.
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- [vii] For examples of how health care is interconnected with law enforcement, judicial, and penitentiary activities, see Open Society Institute, *Harm Reduction: Public Health and Public Order*. Available at <https://www.opensocietyfoundations.org/publications/harm-reduction-public-health-and-public-order>
- [viii] UN General Assembly Resolution 60/262, 2 June 2006.
- [ix] Human Rights Council Resolution 12/27: Protection of Human Rights in the Context of HIV/AIDS. A/HRC/RES/12/27, October 2, 2009.
- [x] Commission on Narcotic Drugs, Resolution 53/9: Achieving universal access to prevention, treatment, care and support for drug users and people living with or affected by HIV. March 10, 2010.
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- [xvii] European Monitoring Centre for Drugs and Drug Addiction, “Illicit drug use in the EU: legislative approach,” 2005. pp. 13, 22.
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- [xix] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak (A/HRC/10/44), January 14, 2009. Para 57.
- [xx] Advocates and patients ascertain violations of human rights in health care and negative consequences of health reform in Ukraine. April 26, 2013. <http://www.ombudsman.gov.ua>

Annex II: Information about the submitters

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https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCSS%2fUKR%2f41277&Lang=en



VOLNA or Charitable Organization «Charitable Fund «Ukrainian Network of People who Use Drugs» (PUD.UA) (<http://volna.in.ua>) unites 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.

Address: 21/9, Budevnyky Str., office 2, Kyiv, Ukraine, 03057



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.)

Address: 1240 Bay Street, Suite 600, Toronto, Ontario, Canada, M5R2A7

Tel: 1(416)595 1666; Fax: 1 (416) 595 0094



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.

Address: Verkių g. 34B, office 701 LT – 04111, Vilnius, Lithuania



CO «100% Life» (former the Network of PLWH) is the largest patient-led organization in Ukraine with the mission to fight for Life. <https://network.org.ua/en/>

Address: 87A Mezhygorskaya Street, Letter B, 04080, Kiev, Ukraine