

**United Nation Special Procedures Division**  
**c/o Office of the High Commissioner for Human Rights**  
**United Nations Office at Geneva**  
**CH-1211 Geneva 10**  
**Switzerland**  
[sr-torture@ohchr.org](mailto:sr-torture@ohchr.org)

*Date: May 15, 2021*

**Input for the report on accountability for torture and other ill-treatment of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

**To the attention of:**

- **Mr. Nils Melzer**

*UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

*Your Excellency,*

*The Union for HIV Prevention and Harm Reduction in cooperation with the Eurasian Harm Reduction Association, Promo-LEX Association and Committee of key affected population in the context of HIV and Tuberculosis epidemics in Moldova<sup>1</sup> would like to draw your attention to the issue regarding the impact of criminal laws and punitive measures against drug use in the Republic of Moldova and the availability of harm reduction treatment for all those who use drugs or are dependent on drugs. Criminalising drug use or imposing punitive measures against drug use has a disproportionate impact on the right to health of people who use drugs or are dependent on drugs and the right not to be tortured or treated in an inhuman or degrading way.*

***This submission can be posted on the website of the Special Rapporteur for public information purposes.***

*For contacts:*

Nicoleta Hriplivii  
Human Rights Lawyer Promo-LEX Association  
tel.no.(+373) 69279133; mail: [hr.nicoleta@gmail.com](mailto:hr.nicoleta@gmail.com)

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<sup>1</sup> Information about the organizations is provided in Annex I

## I. INTRODUCTION

1. Drug trafficking and drug use is a serious problem that affects people's lives in the Republic of Moldova. People who inject drugs can carry significant health risks, including increased exposure to HIV, hepatitis C and hepatitis B. People who use drugs are regularly harassed and detained, subjected to involuntary and abusive treatment procedures, and denied adequate medical care, especially in the penitentiary system. On July 22 and 23, 2019 the Council for the Prevention of Torture of Republic of Moldova (CPT), together with health experts, conducted a two-day monitoring visit to penitentiary institution No. 16-Pruncul, which resulted in one of the most comprehensive reports on healthcare in the penitentiary system (published on 2020).<sup>2</sup> This report confirms the Moldova's failure to provide proper healthcare in detention and the persistence of the systemic problems (*lack of effective mechanisms for cooperation between psychologists, medical staff and other penitentiary staff; medical staff shortage, especially shortage of narcologist psychiatrists*).
2. The medical use of controlled narcotic drugs continues to be indispensable for the relief of pain and suffering. Ensuring their availability for such purposes is essential: the denial of pain relief may constitute ill-treatment amounting to torture. **It is also vital to ensure that opioid substitution therapy can assist people, who have become dependent to distance themselves, from the many dangers to life and health associated with illegal sources of narcotics.**<sup>3</sup> The linkages between drugs and the right to personal integrity and human dignity have not previously been exposed in a systematic way, in particular not from a torture/ill-treatment perspective. One of the factors contributing to this is the limited access to justice for drug users, which goes hand in hand with the criminalization and marginalization to which they are subjected in many contexts. On February 2009, the UN Special Rapporteur on torture, Manfred Nowak, called on UN member states to adopt a rights-based approach to drug policies in his forthcoming report to the Human Rights Council. **As regards human rights and drug policies, the Special Rapporteur recalled that, from a human rights perspective, drug dependence should be treated like any other health-care condition.**<sup>4</sup>
3. The pharmacological treatment program in Moldova was approved by the Ministry of Health, Labor and Social Protection by the Order no.159 of May 20, 2003. According to the Government Decision no.166 of February 15, 2005, methadone substitution treatment was introduced in penitentiary institutions.<sup>5</sup> Opioid Substitution Therapy (OST) in Moldova is free-of-charge treatment for any person, regardless of the availability of health insurance.<sup>6</sup>

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<sup>2</sup> "Medical care for prisoners in Penitentiary.nr. 16 - Pruncul ...." <http://ombudsman.md/wp-content/uploads/2020/02/P-16-Pruncul.pdf>. Accessed 14 May. 2021.

<sup>3</sup> "Harm Reduction International Conference 2019 - OHCHR."

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24529&LangID=E>. Accessed 14 May. 2021.

<sup>4</sup> "ADVANCE EDITED VERSION - OHCHR." 14 Jan. 2009,

<https://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.44AEV.pdf>. Accessed 14 May. 2021.

<sup>5</sup>Annual report on consumption and illicit drug trafficking, 2019 [https://msmps.gov.md/wp-content/uploads/2020/12/raport\\_anual\\_2019\\_ond.docx](https://msmps.gov.md/wp-content/uploads/2020/12/raport_anual_2019_ond.docx).

<sup>6</sup> Yatsko A., Republic of Moldova: Analysis of the sustainability of the opioid agonist therapy programs in the context of the transition from donor support to national financing. Vilnius, Lithuania: Eurasian Harm Reduction Association (EHRA), 2020. <https://harmreductioneurasia.org/harm-reduction/>. Accessed 14 May. 2021.

## II. THE PROBLEM OF THE DRUG USERS IN THE CRIMINAL JUSTICE SYSTEM OF REPUBLIC OF MOLDOVA

4. Although over the last few years several amendments have been made to the law on the regulation of drugs, narcotic and psychotropic substances, proportions of prohibited substances in large and particularly large amounts for which criminal liability arises, as well as the applicable punishments, the Republic of Moldova is still a country where punishments related to drug use (keeping, transportation, processing, etc.) are considered to be harsh, including the deprivation of freedom.
5. Drug laws and their implementation in Moldova focused on people who use drugs, rather than those who are involved in commercial sales for systematic enrichment purposes. Repressive criminal acts continue to prevail over other measures, including on issues that concern people who use drugs. Despite the development of harm reduction services in Moldova, including the availability of needle and syringe programs and substitution therapy in prisons, the availability of these services is hindered by the fact that drug users are more concerned about their relations with the police than about maintaining their health. Results of drug policy - increase in the number of convicts, system and massive violations of human rights, growing HIV epidemic, tuberculosis, and extensively drug-resistant viral hepatitis. The penalties for drug use are significant, reaching the size of the monthly subsistence minimum for an adult. In case of non-payment of the fine, the punishment may be changed to imprisonment. Thus, even simple consumption can lead to imprisonment if the fine is not paid. Drug use is also criminalized through the criminalization of possession without the purpose of marketing, as well as the criminalization of drug transmission in the context of consumption (social marketing). Preparation for consumption, ie the purchase, possession for personal use, may be grounds for criminal prosecution.<sup>7</sup>
6. The Government Decision no. 233 of April 10, 2020 approved the National Anti-Drug Strategy for 2020-2027 and the National Anti-Drug Action Plan for 2020-2021.<sup>8</sup> The document provides for a series of activities for the implementation of alternative measures for the preventive arrest and deprivation of freedom in cases associated with drug use. Although these activities were planned for 2020-2021,<sup>9</sup> so far, the planned activities have not been implemented, and the problems of criminalization of drug use are still relevant.
7. The analysis of the data of crimes presented by the National Public Health Agency (NPHA) related to drugs and the seriousness of crimes shows that **most of them falls into the least serious and minor category**. During 2019, the number of crimes related to drug trafficking and illicit drug use, the number of particularly serious crimes was 335 cases, serious crimes – 1,255 cases and **less serious and minor crimes – 2,082 crimes**. The number of cases of storage of narcotic substances for the purpose of sending them to detainees in penitentiary institutions in 2019 made up 111, i.e. increasing compared to 2018 when there were 24 cases. The total number of people investigated for drug crimes in 2019 made up 737, including 45 women and 692 men.

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<sup>7</sup> "Criminalization of drugs and the rights of people who use drug ..." <https://harmreductioneurasia.org/wp-content/uploads/2020/04/Drug-criminalization-and-human-rights-Moldova-RUS.pdf>. Accessed 14 May. 2021.

<sup>8</sup> "HG233/2020 - Legis.md." [https://www.legis.md/cautare/getResults?doc\\_id=121214&lang=ro](https://www.legis.md/cautare/getResults?doc_id=121214&lang=ro). Accessed 14 May. 2021.

<sup>9</sup> "HG233/2020 - Legis.md." [https://www.legis.md/cautare/getResults?doc\\_id=121214&lang=ro](https://www.legis.md/cautare/getResults?doc_id=121214&lang=ro). Accessed 14 May. 2021.

8. According to the National Penitentiary Administration (NPA), in 2019 the number of registered drug users in the penitentiary system of the Republic of Moldova (the right bank of the Nistru River) was 548 detainees. In the same year, the NPA Medical Service had 217 registered people (***convicted in accordance with Article 103 of the Criminal Code***<sup>10</sup>), that is 1.6 times higher than in 2018 – 138 persons, **which is an increase in the number of crimes committed under the influence of harmful substances.**
9. Following the special investigation activity regarding the prevention of illicit actions by detainees in penitentiary institutions, in 2019, 453 illicit acts related to the circulation of narcotic substances in the penitentiary system were registered, and a series of criminal cases were initiated against the detainees.<sup>11</sup> At the same time, it should be noted that, if for storage in large amounts not for sale, a criminal punishment of up to one year of imprisonment is provided, then stored on the territory of penitentiary institutions is punishable by imprisonment of up to 4 years, even if it is stored for personal consumption.<sup>12</sup>
10. According to the Report on the monitoring of the implementation of the Methodical Instruction on police intervention in HIV prevention in high-risk groups<sup>13</sup> only some of participants/police officers said that they found out whether the detained person was beneficiary of the Programs of any treatment, the other participants only mentioned general procedural actions. It is worrying that contrary to the rules established by the Instruction<sup>14</sup>, those interviewed during the monitoring (one third)<sup>15</sup> said that physical force can be applied as a matter of necessity or as the case may be, and is used regardless of whether or not the person is a drug consumer.

### **SUGGESTED RECOMMENDATION**

- Identifying the normative framework necessary for the amendment to implement the assistance services, the alternative measures to the pre-trial detention, and to the custodial sanctions in the cases associated with drug use.
- Implement as soon as possible the alternative measures to the pre-trial detention and the custodial sentences in the cases associated with drug use.
- The Government should develop national support policies: rehabilitation, treatment and assistance of drug users who are subjects of crimes related to illegal drug circulation rather than punishing them. Create prerequisites for the implementation of the concept of “*Therapeutic justice*” and alternatives for penalties in the case of drug-related crimes.
- Review of Government Decision No. 79 of 23.01.2006 regarding the List of drugs, psychotropic substances and plants containing such substances discovered in illicit trafficking.

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<sup>10</sup> "CP985/2002 - Legis.md." [https://www.legis.md/cautare/getResults?lang=rw&doc\\_id=109495](https://www.legis.md/cautare/getResults?lang=rw&doc_id=109495). Accessed 14 May. 2021.

<sup>11</sup> "Annual report on consumption and illicit drug trafficking, 2019" [https://msmps.gov.md/wp-content/uploads/2020/12/Raport\\_anual\\_2019\\_OND.docx](https://msmps.gov.md/wp-content/uploads/2020/12/Raport_anual_2019_OND.docx). Accessed 14 May. 2021.

<sup>12</sup> "Criminalization of drugs and the rights of people who use drug..." <https://harmreductioneurasia.org/wp-content/uploads/2020/04/Drug-criminalization-and-human-rights-Moldova-RUS.pdf>. Accessed 14 May. 2021.

<sup>13</sup> "Monitoring the observance of the rights of persons from groups with ...." <https://www.soros.md/event/monitorizarea-respectarii-drepturilor-persoanelor-hiv-raport>. Accessed 14 May. 2021.

<sup>14</sup> "METHODICAL INSTRUCTION - LEAHN." <http://www.leahn.org/wp-content/uploads/2014/05/Manual-on-police-and-HIV.pdf>. Accessed 14 May. 2021.

<sup>15</sup> "Monitoring the observance of the rights of persons from groups with ...." <https://www.soros.md/event/monitorizarea-respectarii-drepturilor-persoanelor-hiv-raport>. Accessed 14 May. 2021.

### III. LIMITED AVAILABILITY OF PHARMACOLOGICAL TREATMENT WITH METADONUM AND / OR BUPRENORFINUM.

11. The estimated size of the Group of Injecting Drug Users (IDU) in the Republic of Moldova in 2020 is 27.5 thousand, including 22.78 thousand on the right bank and 4.72 thousand on the left bank of the Nistru River. The estimated number of injecting opioid users is about 47% of the estimated number of injecting drug users, which is about 12,920 people.<sup>16</sup>
12. As of February 2020, 522 clients were registered throughout the country as benefiting from opioid substitution therapy (OST), including 72 in penitentiary institutions. 33 of the total number of clients used buprenorphine (only in Chisinau), and the other used methadone.<sup>17</sup>
13. The current national program for prevention and control of HIV/AIDS for 2021-2025<sup>18</sup> provides for the introduction of OST programs in 18 administrative units. But according to the results of the introduction of programs at the beginning of 2021, **only 8 administrative units are covered** by the OST programs **with a total coverage of not more than 3%**. The geographical location of the OST offices in Moldova is uneven as the northern and central regions of the country are mostly covered, while the southern and eastern parts of the country are not covered. The OST programs are available in only 8 of the 34 territorial administrative units of the Republic of Moldova (areas and municipalities) and in the penitentiary system, both for women and for men.
14. So, the OST coverage in Moldova remains low, i.e. less than 3% of the total estimated number of opioid drug users, which is 10,170 people on the right bank of the Nistru River (only 12,920 people) according to the estimated data in 2020.<sup>19</sup> This is significantly lower than the 40% recommended the WHO, UNODC and UNAIDS to influence the HIV and Hepatitis C epidemic.
15. **Although, in accordance with the legislation OST programs in Moldova are accessible to all opioid drug users, regardless of the availability of medical insurance status, there are a number of obstacles to attract IDUs and improve the coverage:** mandatory medical records and registration as drug consumer; employment restrictions, discrimination by employers, as well as restrictions on traveling abroad; quality of programs and lack of interest of medical institutions/narcological services to the implementation of OST programs; lack of narcologists in administrative and territorial units of hospitals; limited operation of OST issuing points.
16. In the period from June to September 2020, on the basis of a framework concept and a methodology developed by the Eurasian Harm Reduction Association (EHRA), an analysis was carried out as a result of which the following obstacles were noted on the way to achieving greater stability of OST in Moldova. This report notes the unfavorable practices of the interaction of law enforcement officers with OST patients. Despite the *Instruction for work*

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<sup>16</sup> "Annual report on consumption and illicit drug trafficking, 2019" [https://msmps.gov.md/wp-content/uploads/2020/12/Raport\\_anual\\_2019\\_OND.docx](https://msmps.gov.md/wp-content/uploads/2020/12/Raport_anual_2019_OND.docx). Accessed 14 May. 2021.

<sup>17</sup> "Harm Reduction - EHRA., Yatsko A., Republic of Moldova: Analysis of the sustainability of the opioid agonist therapy programs in the context of the transition from donor support to national financing. Vilnius, Lithuania: Eurasian Harm Reduction Association (EHRA), 2020". <https://harmreductioneurasia.org/harm-reduction/>. Accessed 14 May. 2021.

<sup>18</sup> "Republic of Moldova/Project of the National Program for the Prevention and Control of HIV/AIDS and STIs for 2021-2025." <https://cancelaria.gov.md/sites/default/files/document/attachments/954-msmps.pdf>. Accessed 14 May. 2021.

<sup>19</sup> "Harm Reduction - EHRA., Yatsko A., Republic of Moldova: Analysis of the sustainability of the opioid agonist therapy programs in the context of the transition from donor support to national financing. Vilnius, Lithuania: Eurasian Harm Reduction Association (EHRA), 2020". <https://harmreductioneurasia.org/harm-reduction/>. Accessed 14 May. 2021." <https://harmreductioneurasia.org/harm-reduction/>. Accessed 14 May. 2021.

*of law enforcement agencies with groups with increased risk of HIV infection, there are still cases of applying violence and violating human rights, which also affect the inclusion and retention of patients in the OST program. It is important to expand the powers of this Instruction on the employees of the prosecutor's office, judicial and investigating authorities.*

## **SUGGESTED RECOMMENDATION**

- Implement the recommendations formulated on the basis of the analysis of the sustainability of opioid agonist therapy programs (opioid substitution therapy) in the context of transition from donor support to national financing conducted in 2020. Eurasian Harm Reduction Association.<sup>20</sup>
- Expand the programs in all regions of the country, including using buprenorphine.
- Continue issuing drugs for use at home, according to the treatment protocol.
- Ensure the training of specialists in accordance with the National Clinical Protocol and quality standards for the provision of OST.

*We thank you for your attention on these crucial matters. We remain available to provide further information as needed.*

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<sup>20</sup> "Harm Reduction - EHRA., Yatsko A., Republic of Moldova: Analysis of the sustainability of the opioid agonist therapy programs in the context of the transition from donor support to national financing. Vilnius, Lithuania: Eurasian Harm Reduction Association (EHRA), 2020". <https://harmreductioneurasia.org/harm-reduction/>. Accessed 14 May. 2021." <https://harmreductioneurasia.org/harm-reduction/>. Accessed 14 May. 2021.

## Annex I. Information about the applicants



*The Union for HIV Prevention and Harm Reduction (UORN) ([www.uorn.md](http://www.uorn.md)) is an umbrella structure that brings together public associations implementing the Harm Reduction Strategy of the Republic of Moldova. The Union for HIV Prevention and Harm Reduction is an association that actively promotes human rights in the context of public health and safety, develops and implements sustainable and qualitative innovative programs that respond to the current challenges of the various groups of beneficiaries against the background of the HIV epidemic and drug use in the Republic of Moldova.*



Eurasian Harm Reduction Association (EHRA)

[www.harmreductioneurasia.org](http://www.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.



Promo-LEX Association [www.promolex.md](http://www.promolex.md) is a non-governmental organization that aims to advance democracy in the Republic of Moldova, including in the Transnistrian region, by promoting and defending human rights, monitoring the democratic processes, and strengthening civil society. Promo-LEX Association is a not-for-profit and politically independent organization. Promo-LEX Association is a national level organization and operates throughout the Republic of Moldova.



Key affected population committee (KAP committee) (<https://www.facebook.com/KAP.Moldova/>)

- is an informal platform created in 2014 by a group of leaders of key affected communities and civil society organizations to coordinate opinions, efforts, unite and strengthen the voice and participation of communities in the development of national and local policies, promote and protect the rights and interests of the main groups affected, as well as strengthen national responses to the challenges of HIV / AIDS, tuberculosis, viral hepatitis, STIs, psychoactive substances and other areas of public health, both in the civilian and the penitentiary system of the Republic of Moldova.