

Report to the UN Human Rights Committee for the List of Issues in relation to the review of the 8th Periodic Report of the Russian Federation CCPR/C/RUS/8

from

The Russian Civil Society Mechanism for Monitoring of Drug Policy Reforms in Russia, with technical assistance of the Andrey Rylkov Foundation for Health and Social Justice, Eurasian Harm Reduction Association and the Canadian HIV/AIDS Legal Network¹

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Introduction

This paper is based on information that was submitted by members of the Monitoring Mechanism and its partners.

Russia is one of the countries most severely affected by the world drug problem. According to the UN Office on Drugs and Crime (UNODC), about 2.29% of the Russian population between the ages of 15 and 64 inject drugs;² unsafe drug injection remains a leading cause of HIV infection in the country;³ and

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² UNODC, 2014 World Drug Report. 2014. Section B, p. 6

³ According to the official statistics of the Federal AIDS Center, 57.3% of all new HIV cases in 2014 were attributed to unsafely injecting drugs. Online at <http://hivrussia.metodlab.ru/files/spravkaHIV2014.pdf>

more than 120,000 of about 420,000 adults imprisoned in penitentiary institutions in 2019 were convicted of drug-related offences.⁴

The response of the federal government of the Russian Federation is deeply rooted in that country's punitive and stigmatizing drug control system. Russia's main drug policy document — the federal government's State Anti-Drug Strategy — does not refer to human rights even once. As a result, a human rights framework cannot be applied to drug control on the national level, which means drug control agencies are virtually unrestricted. In Russia's highly punitive and stigmatizing environment, law enforcement agencies have a virtual *carte blanche* to discriminate against people who use drugs.⁵ The information below is a brief account of how such heavy-handed drug policies and drug enforcement drive violations of Articles 2, 3, 7, 9, 10, 14, 15, 19, and 26 of the Covenant.

Violation of Article 2 and Article 26 of the Covenant by the promotion of stigma against people who use drugs

Russia's State Anti-Drug Strategy (2010-2020) and a new Draft of the State Anti-Drug Strategy (2020-2030) stipulate a policy of social intolerance to drugs and drug use,⁶ which in practice turns into intolerance to people who use drugs and drives ill-treatment, discrimination, and other multiple, widespread, and systemic violations of human rights against people who use drugs, as listed below.⁷ One of the purposes of the new State Anti-Drug Strategy (2020-2030) is to “create conditions for anti-drug ideology based on traditional moral and cultural values of Russia.” Such an approach sets up a discriminatory policy against those who disagree with “traditional” values. This approach also extends too far from the public health goals and purposes.

Case of Evgeniy Kazban (E.K.), a man living with drug dependence, HIV, and HCV in Yekaterinburg

E.K. started using opiates and other drugs in 2005 and soon developed drug dependence, contracted HIV and hepatitis C. Beginning in 2014, he unsuccessfully tried all available treatment methods in Yekaterinburg. Opioid Substitution Therapy (OST), a WHO-recommended method for treatment of opioid dependence⁸, is legally banned in Russia as part of that country's policy of intolerance to drug use even for the purpose of drug dependence treatment. His health deteriorated and he became ill with tuberculosis, which prevented drug rehabilitation centers from accepting him. He was hospitalized in a tuberculosis dispensary. Without access to effective drug dependence treatment, he was discharged a month later for violating the regime due to drug use. In 2016, he was detained for possession of drugs and sentenced to a year of restriction of liberty. In 2017, he

⁴ Official statistics of the Federal Penitentiary Service of the Russian Federation, April 2020. Online at <http://fsin.su/structure/inspector/iao/statistika/Xar-ka%20lic%20sodergahixsya%20v%20IK/>

⁵ A. Sarang et al., “Policing Drug Users in Russia: Risk, Fear, and Structural Violence,” *Substance Use & Misuse* 45 (2010):813-864.

⁶ State Anti-Drug Strategy, adopted by the Decree of the President of the Russian Federation No 690 of June 9, 2010, para. 23, 48; Draft Anti-Drug Strategy 2020-2030. Online at <https://regulation.gov.ru/projects#npa=98716>

⁷ M. Golichenko and A. Sarang, “Atmospheric pressure: Russian drug policy as a driver for violations of the UN Convention against Torture and the International Covenant on Economic, Social and Cultural Rights”. *Health and Human Rights International Journal*. 15(1) (2013):E135-43. Online at <http://www.hhrjournal.org/2013/10/24/atmospheric-pressure-russian-drug-policy-as-a-driver-for-violations-of-the-un-convention-against-torture-and-the-international-covenant-on-economic-social-and-cultural-rights/>

⁸ WHO/UNODC/UNAIDS. *Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users – 2012 revision*. January 2013.

again turned to a dispensary to treat his tuberculosis and again was expelled for consuming drug. After that, all city hospitals refused to treat E.K. and he died in April 2017.⁹

Question for the List of Issues

How does the State Party ensure equal protection and non-discrimination with respect to people who use drugs?

Violation of Article 3 by failing to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant.

Women who use drugs are much more vulnerable than men who use drugs to human rights violations, including gender-based violence by intimate partners, parents, health workers and law enforcement officers. In 2018, the Eurasian Harm Reduction Association interviewed 26 women who use drugs in Russia. (The women had a median age of 36 years old, median experience of drug dependence of 10 years; 20 of the women had children.) The women reported the following widespread practices during the interviews:

- Arbitrary arrests by police because they looked like drug users; after arrest police officers intimidated women to cooperate and become informants (in violation of Article 9 of the Covenant);
- Disclosure of personal and medical data by medical doctors to police (in violation to Article 17 of the Covenant);
- Infliction of unnecessary pain and suffering on women due to the lack of effective drug dependence treatment in pre- and post-natal care facilities (in violation of Article 7 of the Covenant);
- Permanent termination of parental rights based solely on the diagnosis of drug dependence, according to Article 69 of the *Family Code of the Russian Federation* (in violation of Article 17 of the Covenant).¹⁰

Due to the state-promoted stigma and indifference to their special needs, women with drug dependence usually face just two options — either try to overcome the addiction on their own (which is incredibly difficult) or inevitably get caught by the criminal justice system and face a real risk of long imprisonment.

State authorities do not take into account gender-specific patterns of behavior, including the fact that women who use drugs often depend on men and tend to use drugs with their partners. For this reason, the proportion of women sentenced for drug distribution, extra serious drug crimes, and crimes in complicity are significantly higher than the proportions of men charged with the similar drug offenses.¹¹

⁹ Information is obtained during case management by social worker Ivan Zhavoronkov.

¹⁰ Legal analysis of human rights violations against women who use drugs in Russia. EHRA. 2019. Online: <https://harmreductioneurasia.org/analysis-of-human-rights-women-russia/>

¹¹ This analysis is based on sentencing statistics available from the Judicial Department of the Russian Supreme Court at <http://www.cdep.ru/index.php?id=79&item=5259>

Crime	Total number of drug convictions	Number of men convicted of drug crimes	% of men convicted of drug crimes	Number of women convicted of drug crimes	% of women convicted of drug crimes
All drug crimes	78,410	71,059	100%	7,351	100%
Possession with no intent to sell (section 228 of the Crim Code)	59,018	54,966	77.4%	4,052	55.1%
Distribution of drugs	17,044	14,220	20%	2,824	38.4%
Extra serious drug crimes	14,568	12,141	17%	2,427	33%
Drug crimes committed in complicity	10,427	8,631	12.1%	1,796	24.4%

Failure to prevent pain and suffering of pregnant women who use drugs is a form of gender-based discrimination. Russian authorities fail to provide effective drug dependence treatment services for pregnant women who use drugs. For many women, the lack of access to effective drug dependence treatment causes preventable pain and suffering due to adverse consequences of street drug use. At least one out of ten (11%) pregnant women uses narcotic drugs.¹² No medical protocols are available in Russia to guide the prenatal care of women with drug dependence. Most medications prescribed in Russia for the treatment of drug addiction are contraindicated during pregnancy.¹³ OST — the gold standard of care for pregnant women with opioid dependence — is legally banned. Russian gynecologists are not trained in specific aspects of caring for women with drug dependence. Drug addiction is considered an indication for abortion.¹⁴ The state-promoted intolerance towards patients with addictions causes medical professionals to pressure women who use drugs and who wish to carry their pregnancy to term into having an abortion by wrongly convincing them that their babies would be born with abnormalities.

Case of U.K., a woman living with drug dependence, HIV, and HCV, in Yekaterinburg

In August 2017, U.K. was charged with possession of drugs in a large amount. At that time, she had recently learned about her HIV status, was in the early stages of pregnancy, and also had hepatitis C and diabetes mellitus. During the trial, U.K.'s defence filed a non-custodial application based on U.K.'s health conditions, as well as an agreement with a private rehabilitation centre to undergo medical and social rehabilitation. Despite this, the court sentenced her to three years' imprisonment. After sentencing, U.K. continued to be held in the remand centre, where she was not

¹² E. Aylamzyan at al., *Obstetrics. National Guidelines*. (GEOTAR-MEDIA, 2009). p. 488. Online at http://med-books.by/books/Aylamzyan_Natsionalnoe_rukovodstvo_Akusherstvo.pdf

¹³ Order of the RF Ministry of Health of 28 April 1998, No 140 endorsing the Standards (Model Protocols) for diagnosis and treatment of patients with addictions.

¹⁴ Order of the RF Ministry of Health and Social Development of 3 December 2007, No. 736 endorsing the List of medical indications for termination of pregnancy.

provided with adequate medical care, resulting in the premature delivery of her child, which had a severe negative impact on the child's health.

Question for the List of Issues

What measures does the State Party employ to address the special vulnerability of women living with drug dependence to gender-based discrimination in the enjoyment of civil and political rights?

Violation of Article 7 by failing to undertake measures for the prevention of ill-treatment of people with drug dependence in police custody.

Despite recommendations given by this Committee to the State Party in paragraph 16 of the 2015 Concluding Observations, Russian authorities did not undertake any steps to protect people with drug dependence against the pain and suffering associated with withdrawal syndrome when in police custody. The Government continues to enforce the legal ban on WHO-recommended opioid substitution therapy (OST), including for people in custody. In this respect the UN Special Rapporteur on Torture noted that

“[b]y denying effective drug treatment, State drug policies intentionally subject a large group of people to severe physical pain, suffering and humiliation, effectively punishing them for using drugs and trying to coerce them into abstinence, in complete disregard of the chronic nature of dependency and of the scientific evidence pointing to the ineffectiveness of punitive measures.”¹⁵

Police do not have a protocol for how to deal with people in drug withdrawal or with obvious signs of drug intoxication. In theory, people in withdrawal can inform a duty officer about their withdrawal symptoms and ask for help but they do not because neither police officers nor paramedics can effectively alleviate withdrawal syndrome in police custody. Because of this, people in withdrawal often sign confessions in exchange for release on bail. Courts later accept such confessions despite lawyers' objections.

Case of Ms Y.Y., a woman living with drug dependence from Yekaterinburg¹⁶

On December 1, 2016 Y.Y. was arrested for possession of drugs for personal use. During arrest she was under the influence of carfentanil (synthetic opioid), which she had used less than an hour before the arrest. Police held Y.Y. in custody for about 24 hours. Soon after arrest Y.Y. started suffering from acute withdrawal syndrome; she was sweating heavily, shivering, and experiencing muscular pain, uncontrolled muscular spasms/twitching, nausea, stomach cramps and diarrhea. Despite this, no any medical assistance was offered to Y.Y. What could have been an effective and recommended by the WHO for drug dependent treatment that would also alleviate symptoms of opioid withdrawal syndrome - OST - is not available in police custody in Russia because this type of drug dependent treatment is subject to a federal legal ban in Russia, and other types of pharmacological interventions would inadequately alleviate withdrawal symptoms. Y.Y. also asked police to give her the HIV medication (antiretroviral therapy — ART), which her relatives had brought to the police station, but the police refused this request. ART for people living with HIV as well as OST medications such as methadone and buprenorphine for people with opioid dependence, are included in the WHO Model List of Essential Medicines.¹⁷ At some point of the day following her arrest, 2 December 2016, by which time Y.Y. was hours into experiencing opioid withdrawal syndrome, police detective N. G. Shutov offered her the chance to confess that she

¹⁵ Ibid, para 74.

¹⁶ The complaint was submitted to Human Rights Committee in December 2018

¹⁷ 20th WHO Essential Medicines List. Online:

<https://www.who.int/medicines/publications/essentialmedicines/en/>

helped her friend to purchase drugs two months earlier (a deed which could be categorized as facilitation to purchase drugs or as drug trafficking – far more serious crime). According to Y.Y., in exchange for the confession, detective Shutov promised her access to her ART, release from police custody, and not to charge her with trafficking. She confessed. According to Y.Y., Detective Shutov dictated to her the text of a confession statement, which she handwrote into the police form. In less than one hour after the confession Y.Y. was released from police custody after she made the confession, completed the interview and the cross examination. During the trial the court accepted the confession as evidence despite the defence's arguments against this. On 12 October 2017, the Oktyabrsky district court of Yekaterinburg sentenced Y.Y. to 10 years in prison. Appeals were rejected.

Case of Denis Shirokov (D.S.), a man living with drug dependence in Moscow

On February 16, 2018, D.S. was stopped by two police officers who claimed he had violated his parole conditions. Subsequently, at the trial, the officers admitted that they had stopped D.S. solely because they knew he has a drug addiction. The officers took him to the staircase of the apartment building, where they waited for several hours for the witnesses to their search to arrive. After that, search was carried out, during which 1.31 g of cocaine was found. D.S. denied knowledge or ownership of the cocaine. After the search, he was taken for a medical examination, which determined the state of intoxication from morphine and other surfactants. The report of detention was not drawn up and he was not informed of his rights. After 18 hours of imprisonment, when he started having severe abstinence syndrome, officers started the interrogation. He asked to be taken to the hospital but this request was denied. He did not receive any medical treatment until February 19. While in this condition, he admitted to possession of drugs and was released under a restriction of travel order. During the trial, he recanted his earlier confession, but the court ignored this and sentenced him to a prison term of one year and eight months.

Case of J.R., a woman living with drug dependence, HIV, and HCV in Kaliningrad

On June 13, 2019, J.R. helped a friend purchase two doses of heroin to be shared between them. She managed to use her part of the drug before police arrested her and brought to a police station for an interview. Police kept J.R. in the police station for four days with no access to medical help, despite her obvious symptoms of withdrawal syndrome, to force her to testify against herself and a drug dealer. In order to create legal grounds for keeping her in custody, police charged J.R. with the administrative offence of pronouncing an obscenity in public. When police finally arrested the drug dealer, they released J.R. on bail.

Case of Larisa Solovyova (L.S.), a woman living with drug dependence and HIV in Kaliningrad

On January 16, 2016, at 11:30 a.m., L.S. was arrested by police for non-medical use of drugs. Police acted on a tip from their informant, who had used opioids with L.S. about 21 hours before her arrest, on the afternoon of January 15, 2016. Police knew about L.S.'s drug dependency. At the time of her arrest, and later in the police station, police officers saw that she was suffering from acute withdrawal syndrome; she was sweating heavily, shivering, and experiencing nausea and diarrhea. The investigator told her that they could charge her either with the crime of attempting to sell drugs or a less serious crime of drug possession. According to an investigator, this would depend on whether or not she confessed. At that point, she just wanted to leave the police station because she was about to start vomiting and soiling her pants. She also knew that no medical help would be offered to her in a police station. Under such duress, L.S. signed a confession statement, which had been pre-drafted by an investigator. Without reading the statement carefully, she thought

that she had confessed to aiding drug purchase for personal use. The investigator later categorized her statement as aiding drug trafficking.¹⁸

Question for the List of Issues

What measures has the State Party undertaken to protect people with drug dependence from ill treatment in police custody, especially taking into account the continuous enforcement by the state party of a legal ban on evidence based treatment such as opioid substitution therapy?

Violation of Article 9 by failing to ensure protection of people from arbitrary arrest or detention on discriminatory grounds in the context of drug enforcement.

The Human Rights Committee has stated that the concept of arbitrary detention is not limited to cases when arrest or detention was against the law; rather, the justification for detention must be much broader and include elements of appropriateness, justice, due process and predictability to avoid the charge of arbitrariness.¹⁹ The prohibition against arbitrariness furthermore stipulates that the underlying rationale for detention cannot be discrimination.

Despite this, law enforcement officers in Russia often use unreasonable grounds as justification for the search and arrest of people who use drugs: youth, looking like a “junkie,” association with drug users, needle marks on arms.^{20,21} Police Orders stipulate that police should obtain medical information about people who use drugs and drug-dependent people who are registered as such with drug dependence treatment clinics, and use this information for law enforcement purposes.²² Police have also been known to use medical data on people who have been diagnosed as drug dependent, in order to arrest them.²³ The official courts statistics demonstrate that police prosecute more than 90,000 people annually for “non-medical use of drugs” (Article 6.9 of the *Code of Administrative Violations*).²⁴ In more than half of those cases, people are punished with custodial sentences. Article 6.9 of the *Code of Administrative Violations* stipulates that anyone who consumes narcotic drugs without a medical prescription can be prosecuted for this, regardless when the consumption took place, and whether or not a person is actually intoxicated and/or poses any risk to public order at the time of arrest. Article 6.9 gives police virtually unlimited power to arrest anybody who appears to be under the influence of drugs (red eyes, for example).

From an interview with a 32-year-old woman in, Saint-Petersburg:

¹⁸ In 2019 Larisa Solovyova was granted asylum in Germany. Information is obtained from the case file of Larisa Solovyova, as well as interview with Larisa Solovyova recorded by Mikhail Golichenko on June 15, 2018

¹⁹ *Fongum Gorji-Dinka v. Cameroon*, Communication No. 1134/2002, U.N. Doc. CCPR/C/83/D/1134/2002 (2005), para. 5.1.

²⁰ Legal analysis of human rights violations against women who use drugs in Russia. EHRA. 2019. Online at <https://harmreductioneurasia.org/analysis-of-human-rights-women-russia/>

²¹ Andrey Rylkov Foundation, Canadian HIV/AIDS Legal Network, Eurasian Harm Reduction Network, *Atmospheric Pressure: Russian Drug Policy as a Driver for Violations of the UN Convention Against Torture*, 2011. pp. 8–16. Online at <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=1949>

²² “Instruction for Community Policing Officers.” Approved by the Ministry of the Interior Order No 1166 of December 31, 2012. Para. 63.2, 65.2, 67.2

²³ L. Levinson and M. Torban, *Drug Registry: As per the law or as per an instruction? Regulation of registration of people who use drugs in the Russian Federation*. Human Rights Institute, 2009. p. 20-21 (Левинсон Л., Торбан М. Наркоучет: по закону или по инструкции? Регулирование регистрации потребителей наркотиков в Российской Федерации. Институт прав человека. 2009. С 20-21).

²⁴ The official statistics are available on the website of the Administration of Justice Department of the Supreme Court of Russia at <http://www.cdep.ru/index.php?id=79>.

– *I was stopped by police on the street just for the way I look. And in police station police started intimidating me into cooperation to provide them information and set up an entrapment for a drug dealer or just a fellow drug user*²⁵.

In other words, people who use drugs are singled out for discrimination by law enforcement simply because they are drug users and despite the fact that many of them may have developed drug dependence. The *Code of Administrative Offences* provides for an alternative to administrative punishment if the arrested person agrees to undergo drug dependence treatment. However, with the lack of access to evidence-based treatment in Russia, heavy-handed law enforcement remains a front line response to drug use, which is a health issue, requiring primarily a health care response instead of law enforcement.

Case of Farkhad Navliutov (F.N.), human rights activist and harm reduction worker from the city of Almet'yevsk, Russia

On January 09, 2020 F.N. was detained near his house by drug police officers. He confronted these officers several days earlier trying to defend human rights of one of his clients. He was forcibly taken to the police department for a rapid drug testing. The test result was negative. This only irritated police officers. They took F.N. to a medical facility for further testing. On the road officers intimidated F.N., saying that he must stop defending human rights if he does not want further problems with police. After urine samples were taken in a medical facility, police officers released F.N. without any documents. Altogether F.N. spent about four hours under arrest. He filed a complaint to a prosecutor's office. However the prosecutor's office found no violations allegedly because F.N. could not provide documents to prove the arrest. Later F.N. learned that his urine test also brought negative results.

Question for the List of Issues

How does the State Party protect people with drug dependence from arbitrary arrest and detention on discriminatory grounds?

Violation of Article 10 by failing to ensure that people with drug dependence are treated with humanity and with respect for the inherent dignity of a person when deprived of their liberty.

Approximately one quarter of people in Russian prisons are incarcerated because of drug convictions.²⁶ Many of these people suffer from some form of drug dependence. Despite this, Russia prohibits internationally recognized pharmacological drug-dependence treatments such as opioid substitution treatment (OST).²⁷ Russia's drug dependence treatment has already been a matter of concern for the Committee on Economic, Social and Cultural Rights (CESCR),²⁸ the Human Rights Committee,²⁹ the Committee on the Elimination of Discrimination against Women (CEDAW),³⁰ the UN Special Rapporteur on the right to health,³¹ the UN Special Rapporteur on torture,³² and the UN Special Rapporteur on

²⁵ Legal analysis of human rights violations against women who use drugs in Russia. EHRA. 2019. Online at <https://harmreductioneurasia.org/analysis-of-human-rights-women-russia/>

²⁶ Official statistics of the Federal Penitentiary Service of the Russian Federation. April 2020. Online at <http://fsin.su/statistics/>

²⁷ Narcotics Drugs and Psychotropic Substances Act [N 3-FZ] art. 31 (Russ.).

²⁸ E/C.12/RUS/CO/5 and E/C.12/RUS/CO/6

²⁹ CCPR/C/RUS/CO/7

³⁰ CEDAW/C/RUS/CO/8

³¹ Report of the Special Rapporteur on the right to health to the UN Human Rights Council: Summary of communications sent and replies received from States and other actors. A/HRC/17/25/Add.1, May 2011. Paras. 289-293. Online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/132/11/PDF/G1113211.pdf>.

violence against women.³³

No evidence-based drug treatment services are available in pre-trial detention or in any custodial facilities. Moreover people with drug dependence generally prefer not to disclose to their health status prison administration because such disclosure would lead to unnecessary restrictions — allegedly to prevent suicides — and often bars an inmate from early conditional release.

Subjecting people to harsh custodial sanctions for behavior related to their health condition (drug dependence) without access to evidence-based treatment for the underlying cause of such behavior runs contrary to the very core of human dignity.

Question for the List of Issues

What drug treatment options are available for people in custodial settings in Russia, especially taking into account the number of prisoners incarcerated for drug crimes?

Violations of Article 10 by poorly handling COVID-19 related situation in prisons

Russian authorities did not undertake any measures to reduce the high risk of COVID-19 infection in crowded prisons. Despite numerous calls from the prominent members of the public, lawyers and human rights defenders, neither Russian Parliament, nor President, nor judiciary, nor Penitentiary Service undertook positive steps to release less serious criminals from prisons in order to make prisons less crowded. As of 4 May 2020 Russian authorities handle the situation as if no COVID-19 was looming. The only step they undertook was to restrict information about infections in prisons and to restrict lawyers from accessing prisons.

Question for the List of Issues

What measures do Russian authorities undertake to reduce risk of COVID-19 infections in prisons?

Violation of Article 14 by failing to ensure the right to a fair hearing by an independent and impartial court for people charged with drug crimes.

The Russian judicial system is not free of political influence.³⁴ According to official court statistics, the rate of acquittals in drug-related cases is lower than 1%; every year Russian courts prosecute more than 100 000 people for drug crimes, with more than 75% of drug cases directly related to drug use, not supply. Two thirds of these cases are reviewed in the absence of a court trial, with the defendants pleading guilty.³⁵

³² Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Applying the torture and ill-treatment protection framework in health-care settings*, A/HRC/22/53. Feb 1, 2013, para 73.

³³ Office of the United Nations High Commissioner for Human Rights. Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on violence against women, its causes and consequences. 2013. Online at [https://spdb.ohchr.org/hrdb/24th/Public_-_AL_Russia_15.07.13_\(5.2013\)_Pro.pdf](https://spdb.ohchr.org/hrdb/24th/Public_-_AL_Russia_15.07.13_(5.2013)_Pro.pdf).

³⁴ Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, based on his Mission to the Russian Federation in 2013, A/HRC/26/32/Add.1, 2014.

³⁵ Analysis of statistics from the Section on court statistics on the website of the Department of Courts. (Раздел судебная статистика на сайте Судебного Департамента.) www.cdep.ru

When making their decisions, courts disregard police provocation (police entrapment), which occurs with great frequency, as is evident from numerous judgments of the European Court of Human Rights with regard to Russia.³⁶

Very often the purity of the narcotic mixtures (street drugs) is not established. Drug possession without intent to sell, in amounts exceeding 2.5 grams of heroin, for instance, is punishable by up to 10 years in prison (Article 228(2) of the *Criminal Code of the Russian Federation*). Resent research into court files demonstrates that the majority of criminal cases of drug possession and drug supply concern tiny amounts of drugs, barely exceeding the threshold amount established by criminal laws to distinguish crimes from administrative offences.³⁷ Without establishing the purity of the seized amount, police are left in a position to manipulate the amount of the seized mixture with no chance of control by the defence.

The purity of street drugs, especially heroin, is very weak in many countries and Russia is not an exception. Available data shows that an average purity of street heroin in Russia was 0.07 (7%).³⁸ Because of their high tolerance to opioids, people living with drug dependence have to purchase larger amounts of street drugs, thus exposing them to tougher penalties — up to 10 years in prison or even more. When purity is not taken into account, the criminal justice system subjects people with drug dependence to a stricter standard and in fact punishes them for their dependence, clearly violating fundamental notions of fairness and potentially amounting to an arbitrary, disproportionate and discriminatory deprivation of liberty. In addition, when purity is not established, accused people are deprived of an opportunity to rely on criminal laws that provide for acquittal for minor offences — e.g. in cases where the purity is less than 1%. Thus, when the purity of the substance is not established, the principle that the criminal law must not be extensively construed to an accused's detriment is violated.

Forensic reports play a key role in establishing what type of substance was allegedly in possession of an accused. Based on the fundamental role of adversarial procedure, the defence should have the right to present independent forensic and other expert reports on drug cases. However, Russian courts very often deny them this right and refuse to accept results of independent forensic and other scientific examinations.

Question for the List of Issues

How does the State Party ensure the right to a fair trial with respect to drug-related charges?

Violation of Article 15 by criminally prosecuting people for possessing or handling substances that are not listed as prohibited substances.

According to Russia's drug laws, the police can prosecute any person for handling so-called derivative substances – a type of substances vaguely defined in the law as substances that chemically differ from a known listed narcotic drug by way of several atoms.³⁹ Only a chemist can define whether or not a certain substance is derivative. Ordinary people cannot make such conclusions, thus cannot anticipate legal

³⁶ *Vanyan v. Russia*, no. 53203/99, ECHR 2005; *Khudobin v. the Russia*, no. 59696/00, ECHR 2006; *Bannikova v Russian Federation*, no. 18757/06, ECHR 2011; *Veselov and others v Russia*, nos. 23200/10, 24009/07 and 556/10, ECHR 2012.

³⁷ А.Кнорре. Наркопреступления в России: анализ судебной и криминальной статистики. Институт проблем правоприменения при Европейском Университете в Санкт-Петербурге. 2017. https://enforce.spb.ru/images/Knorre_Drug_crimes_in_Russia.pdf

³⁸ Price and Purity. UNODC World Drug Report, 2019. Online at https://wdr.unodc.org/wdr2019/prelaunch/8.1._Prices_and_purities_of_drugs.pdf

³⁹ Постановление Правительства РФ от 19.11.2012 г. № 1178 "О внесении изменения в перечень наркотических средств, психотропных веществ и их прекурсоров, подлежащих контролю в Российской Федерации".

consequences of handling substances.

According to Russia's Ombudsperson, a situation with derivative provides for a broad interpretation of what is prohibited based on an expert's opinion and prosecute and punish punishment by analogy.⁴⁰

Case of Daria Belyaeva (D.B.), a woman living with chronic depression in Yekaterinburg.

D.B. is officially diagnosed with chronic depression, she is visiting a psychiatrist for help, including to prescribe medicines. In 2015 Russia excluded a medicine Bupropion from the list of medicines. D.B. could not buy Bupropion in pharmacy anymore, she started ordering the medicine via internet from Poland. Such activities are not prohibited by Russian laws, provided that the ordered medicine is for personal treatment and not for sell. In April 2019 D.B. was arrested in the post office when she received two packs of Bupropion from Poland. A chemist from Russia's Customs Service concluded that Bupropion is a derivative of psychostimulant "Efedron". D.B. was charged with contraband – a crime punishable with imprisonment from 10 to 20 years. The case is still under investigation. Police refuse to terminate the case despite the established facts that D.B. ordered the medicine because of her doctor's advise and that the medicine was in the list of medicines in Russia before 2015.⁴¹

Under similar circumstances Ms. Olga Kalinovskaya, a woman with Attention deficit hyperactivity disorder (ADHD), is prosecuted in the city of Volgograd for ordering Bupropion⁴².

Question for the List of Issues

How does the State Party ensures the principle of legal certainty when prosecuting people for handling so-called derivatives?

Violation of Article 19 by unreasonable and unnecessary restrictions of the right to freedom of expression and the right to access scientific and human rights information under the guise of fighting "drug propaganda."

Anti-drug propaganda laws provide for so broad a definition of drug propaganda that anything containing the words "heroin" or "methadone" can fall within its scope.⁴³ Russian Federal Law No 149-FZ of July 27, 2006, "On information, information technologies, and protection of information" provides for administrative procedure to block information that falls under the definition of drug propaganda.⁴⁴ An inter-agency Order № 84/292/351/MMB-7-2/461 of May 18, 2017, stipulates that information that aims to create a positive image of those who make or use drugs should be blocked.⁴⁵

40 Доклад Уполномоченного по правам человека в Российской Федерации за 2016 год / Online: http://ombudsmanrf.org/www/upload/files/docs/appeals/doc_2016_medium.pdf

41 Александр Черных, газета «Коммерсант», Апрель 2019 г., статья «Таможня вгоняет в депрессию» / Online: <https://www.kommersant.ru/doc/3955483>

42 Александр Черных, газета «Коммерсант», Февраль 2020 г., статья «Бупропион дал уголовные осложнения» / Online: <https://www.kommersant.ru/doc/4259307>

⁴³ Federal Law No 3-FZ of January 8, 1998 "On narcotic drugs and psychotropic substances". Article 46.

⁴⁴ Ч. 5 ст. 15.1 Федерального закона от 27.07.2006 N 149-ФЗ «Об информации, информационных технологиях и о защите информации».

⁴⁵ Приказ Роскомнадзора, МВД РФ, Роспотребнадзора, ФНС РФ от 18.05.2017 г. № 84/292/351/MMB-7-2/461@. Текст доступен на Портале правовой информации по адресу: <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102437295>

Russian law enforcement has long been known to use this law to suppress human rights and health information.⁴⁶ Even scientific and other public discussions regarding such WHO-recommended methods of drug dependence treatment as opioid substitution therapy (OST) are suppressed in Russia under threat of prosecution for drug propaganda.⁴⁷ In 2012, the Federal Drug Control Service shut down as “drug propaganda” the website of the non-governmental organization Andrey Rylkov Foundation for Health and Social Justice for disseminating the recommendation concerning OST that had been delivered to the Russian government by the UN Committee on Economic, Social and Cultural Rights.⁴⁸

In 2018, government agencies administratively blocked 24,900 webpages or web domains. In addition to this, 1,338 internet sites were blocked based on court decisions. The Ministry of the Interior took 3,973 administrative decisions to block access to social networks groups.⁴⁹

Below are some examples of the sweeping use of anti-drug propaganda laws:

- Every year, Russian courts impose fines on many thousands of entrepreneurs for selling goods, such as socks or t-shirts, with pictures of cannabis leaves⁵⁰;
- In 2018, the court imposed a significant fine of 800,000 rubles on the Moscow-based non-governmental organization Andrey Rylkov Foundation for Health and Social Justice for making public information about how to reduce harm of illicit drug use⁵¹;
- In 2018, the court imposed a significant fine of 40,000 rubles on a journalist for comparing social adverse consequences of alcohol use (in particular murder under the influence of alcohol) to those of marijuana use (no registered cases of murder under the influence of marijuana in the whole history of mankind)⁵²;
- In 2018, the court imposed a significant fine of 800,000 rubles on an internet media “7x7” for publishing a statement of opposition politician Mr. Svetov, concerning the legalization of marijuana⁵³;
- In 2019, the court imposed a significant fine of 800,000 rubles on an internet media Lenta.ru for publishing information about the ongoing reform of drug laws in Europe⁵⁴;

⁴⁶ Communication to the United Nations Educational, Scientific and Cultural Organization (UNESCO) regarding violation by the Government of the Russian Federation of the right to enjoy the benefits of scientific progress and its applications. March 2012. Online at http://www.aidslaw.ca/newsite/wp-content/uploads/2013/04/ARF_UNESCO2April2012.pdf

⁴⁷ T. Parfitt, “Vladimir Mendeleevich: fighting for drug substitution treatment,” *The Lancet* 2006, Volume 368, Issue 9532, p. 279.

⁴⁸ Communication to the United Nations Educational, Scientific and Cultural Organization (UNESCO) regarding violation by the Government of the Russian Federation of the right to enjoy the benefits of scientific progress and its applications. March 2012. Online at http://www.aidslaw.ca/newsite/wp-content/uploads/2013/04/ARF_UNESCO2April2012.pdf

⁴⁹ Extracts from the State Drug Report, 2018. Online: <https://media.mvd.ru/files/application/1628743>

⁵⁰ См. обзор практики по делам об административных правонарушениях, предусмотренных ч. 1 ст. 6.13 КоАП РФ, на <http://hand-help.ru/doc25.18.html>

⁵¹ Информация о судебном процессе доступна по ссылке: <https://rylkov-fond.org/blog/category/strategicheskie-kejsy-far/delo-v-otnoshenii-far-o-propagande-narkotikov/>

⁵² А. Бородихин, «Удар телевизором и челябинская марихуана в Страсбурге. Журналист обжаловал в ЕСПЧ штраф за «пропаганду наркотиков». «Медиазона», 25 января 2019. <https://zona.media/article/2019/01/25/chelweed> Сама спорная публикация доступна по адресу: <https://lentachel.ru/news/2018/01/11/dobili-televizorom-po-golove-dvove-kusintsev-raspravilis-so-svoim-sobutylnikom.html>

⁵³ М. Поляков, «Суд в Сыктывкаре оштрафовал «7x7» на 800 тысяч рублей за «пропаганду наркотиков» в интервью политика Светова. Что об этом известно». «7x7», 20 июня 2018. <https://7x7-journal.ru/articles/2018/06/20/sud-v-syktvykare-oshtrafoval-7h7-na-800-tysyach-rublej-za-propagandu-narkotikov-v-intervyu-politika-svetova-chto-ob-etom-izvestno>

- In 2020, a Ukrainian organization (Alliance of Public Health, Ukraine) and a Lithuanian organization (Eurasian Harm Reduction Association) received orders from a Russian agency in charge of information control (Roskomnadzor) to delete several webpage from their websites for allegedly containing drug propaganda;
- Russian authorities also prohibit such public awareness events as cannabis march in support of drug laws and policy reforms.⁵⁵

Question for the List of Issues

How does the State Party ensure the right to freedom of expression and the right to access scientific and human rights information in the context of anti-drug propaganda restrictions?

Annex I



Andrey Rylkov Foundation for Health and Social Justice (www.rylkov-fond.org) is a grass-roots organization from Moscow, Russia with the mission to promote and develop humane drug policy based on tolerance, protection of health, dignity and human rights. The Foundation engages in 4 key strategies to advance its mission: advocacy, watchdog, service provision and capacity building of affected communities and individuals.

Address: 17-82 Marshala Biryzova street, Moscow, Russia, 123060



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, M5R 2A7

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

⁵⁴ «Ленту.ру» оштрафовали на 800 тысяч рублей за текст о легализации марихуаны в Европе». «Медиазона», 1 января 2020. <https://zona.media/news/2020/01/01/lenta>

⁵⁵ Application No. 25465/16 Konstantinov v. Russia (communicated on 5 June 2018 and merged with No. 2064/10 Fedotova v. Russia).