

REPUBLIC OF MOLDOVA, 3rd cycle of Universal Periodic Review

UPR Working Group 40th Session
United Nations Human Rights Council

ISSUES RELATED TO DRUG LAWS AND POLICIES IN MOLDOVA AND THEIR IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS

Joint NGO Submission by the Promo-LEX Association, Union for HIV Prevention and Harm Reduction (UORN) and Eurasian Harm Reduction Association (EHRA)

Information about the organizations:

Promo - LEX

Advancing democracy and human rights



Promo-LEX Association www.promolex.md is a non-governmental organization with ECOSOC Status, 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.

The **Union for HIV Prevention and Harm Reduction (UORN)** (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 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.

July 14, 2021

Contents

I. INTRODUCTION	3
II. INTERNATIONAL MOLDOVA’S OBLIGATION ON HUMAN RIGHTS AND DRUG POLICY	3
III. DRUG USERS IN THE CRIMINAL JUSTICE SYSTEM OF REPUBLIC OF MOLDOVA	4
A. Penalization of drug possession for one's own use.....	4
B. The problem of regulating the quantities of drugs for which the criminal liability of drug users arises... 7	
C. The lack of alternative of conviction and punishment for drug-related offenses.....	9
D. Inefficiency of public anti-drug policies.....	11
IV. DRUG DEPENDENCE TREATMENT IN THE PENITENTIARY SYSTEM	12
A. The lack of comprehensive and adequate dependence treatment, including rehabilitation services to drug-addicted people in penitentiary system in Moldova.....	12
B. Access to adequate Health Services for People Who Use Drugs in Prison.....	14
C. The compulsory drug dependence treatment applying by the courts.....	16

I. INTRODUCTION

1. This joint submission to the third Universal Periodic Review (“UPR”) of the Republic of Moldova (“Moldova”) was prepared by the Promo-LEX Association (“Promo-LEX”), Union for HIV prevention and Harm Reduction (UORN) and Eurasian Harm Reduction Association.
2. This submission focuses on Moldova's compliance with its international human rights obligations with respect to the to the issue regarding the punitive measures against drug use in the Republic of Moldova, the alternatives to conviction or punishment for drug-related offenses and the availability of treatment for all those who use drugs or are dependent on drugs.
3. **During Moldova’s second UPR in 2017, no recommendations were made to the Government specifically regarding the impact of criminal laws against drug use in the Republic of Moldova.**¹
4. Illicit drug use and trafficking remains a problem that negatively influences the sustainable and safe development of our society. The statistical data presented in the Annual Report of the Prosecutor's Office of the Republic of Moldova in 2020, further denotes an increased number of criminal cases initiated for acts of illegal circulation of drugs, ethnobotanicals or their analogues “*without purpose of alienation*”,² which indicates that the punitive measures taken by the state are not effective in combating consumption (*to see for more details chapters below*).
5. Penalizing drug use or imposing punitive measures against drug use have a disproportionate impact on the right to health of people who are dependent on drugs and the right not to be tortured or treated in an inhuman or degrading way. The solution proposed by the treatment, rehabilitation and not the punishment in any form and / or imprisonment of the person.

II. INTERNATIONAL MOLDOVA’S OBLIGATION ON HUMAN RIGHTS AND DRUG POLICY

6. Criminalization of drug use and drug dependence violates the right to health under international human rights law as also the Constitution of the Republic of Moldova.³ Criminalization of drug dependence, which is a medical condition, also infringes Article 2 of the International Covenant on Economic, Social and Cultural Rights, as persons with substance use disorders are subjected to discrimination, i.e. treated as criminals on the grounds of their health status. Treating drug dependent patients as criminals violates Article 26 of the International Covenant on Civil and Political Rights, which requires all persons to enjoy equal protection of the law, without discrimination on the basis of any of the enumerated grounds which includes health

status.

7. Moldova has ratified three main drug control conventions: Single Convention on Narcotics Drugs, 1961; Convention on psychotropic substances 1971; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988,⁴ as well as all major international human rights treaties.⁵
8. Single Convention on Narcotics Drugs, adopted in NEW YORK on 30 March 1961, and the Protocol amending this Convention draw attention to the need for a different approach by States parties to cases:⁶
 - ⇒ in which people who produce and spread drugs are involved
 - ⇒ and cases in which drug users are involved (Art.36).
9. At the same time, the Single Convention on Narcotics Drugs states that, ***by way of exception, when such offenses have been committed by drug users, States Parties may, instead of convicting or imposing a criminal sanction on them, or as a complementary punishment to conviction,*** to subject these persons to measures of treatment, education, aftercare, rehabilitation and social reintegration (Art. 38).
10. **Thus, in their totality, the international treaties ratified by Moldova provide minimum standards and require a balanced approach to the regulation of the circulation of narcotics drugs and psychotropic substances.** A balanced approach presupposes the use of various methods of legal regulation, including the principle of proportionality, so that the applied restrictive or prohibitive measures are proportionate to the harm avoided, do not lead to even greater harm, and could reasonably lead to the desired regulatory result. **This means balancing the use of criminal and administrative drug prohibitions with treatment, education, aftercare, rehabilitation and social reintegration for people who use drugs.**⁷

III. DRUG USERS IN THE CRIMINAL JUSTICE SYSTEM OF REPUBLIC OF MOLDOVA

A. Penalization of drug possession for one's own use

11. The Republic of Moldova has a national legal framework in the field of circulation of narcotic and psychotropic substances: Law no. 382-XIV of May 6, 1999 "On the circulation of narcotic and psychotropic substances and precursors"; Law no. 713 of December 6, 2001 "On the control and prevention of alcohol abuse, illicit drug use and other psychotropic substances"; the Contravention and the Criminal Code. The Criminal Code of the Republic of Moldova provides a special chapter: "*Crimes against public health and social coexistence*", which includes the categories of crimes contained in art.217-219 which provide for punishment with fine, unpaid work for the benefit of the community, imprisonment and deprivation of the right to hold certain positions or to exercise a certain activity for a period established by the court.

Offences for which people with drug use disorder enter the criminal justice system:

❖ Liability according to the Contravention Code:

⇒ According to Moldovan legislation, for the consumption of drugs without a doctor's prescription, or the illegal acquisition or possession of small amounts of narcotic drugs without the purpose of marketing, an administrative penalty is imposed by a fine of 30 to 60 conventional units (the fine is 1,500 MDL (70 EUR) up to 3000 MDL (140 EUR)) or punishment in the form of unpaid work for 'the benefit of society for up to 72 hours.⁸⁹ It should be noted that in case of non-payment of the fine within 30 days from the date of its imposition (due to the absence or insufficiency of property or due to the delinquent evasion of the offender from paying it), the court may replace the unpaid amount of the fine, depending on the several circumstances.¹⁰

❖ Liability according to the Criminal Code:

⇒ Criminal liability and a fine of 400 to 700 conventional units shall be provided for the detention of drugs in large proportions and without the purpose of alienation¹¹ which in MDL is from 20,000 MDL (931 Euro) to 35,000 (1630 Euro)¹² or unpaid work for the benefit of society of up to 150 hours, or imprisonment for up to 1 year.¹³

a) In case of evasion in bad faith of the convict from the payment of the fine established as the main or complementary punishment, the court may replace the unpaid amount with the prison sentence within the maximum sentence provided by the respective article of the Special Part of this code. The amount of the fine is replaced by imprisonment, calculating one month in prison for 100 conventional units.

- According to the National Bureau of Statistics, the minimum subsistence level in 2020 was 2088.4 MDL (97 EUR) on average per person, per month, and the minimum wage, starting from 1 January 2021, was set in the amount of 2935.3MDL (137 EUR) per month.

12. Thus, the size of the punishment is significant and can reach almost one living wage per person, per month,¹⁴ in case of administrative liability or more in case of criminal liability, and most consumers do not have a permanent job or are unemployed and are unable to pay the amount of the fine.¹⁵ In case of non-payment of the fine, the punishment may be changed to imprisonment. Preparation for consumption, i.e. the

purchase, possession for personal use, may be grounds for criminal prosecution.¹⁶

13. At the same time, it is important to note that if for possession in large amounts, not for the purpose of alienation, a criminal penalty of up to one year of imprisonment is provided, then possession on the territory of penitentiary institutions is punishable by imprisonment for up to 4 years, even if it is possession for personal consumption.¹⁷
14. 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. According to the official statistics presented by the Prosecutor's Office of the Republic of Moldova:¹⁸

- ⇒ From the total number of crimes registered in 2020 - 624 cases were initiated based on Art.217 of the Criminal Code - "Illegal circulation of drugs, ethnobotanicals or their analogues **without the purpose of alienation**". This is **62.2%** of the crimes in the indicated field.
- ⇒ In 2020 - 288 offenses provided by Art.217/1 of the Criminal Code – "Illegal circulation of drugs, ethnobotanicals or their analogues **for the purpose of alienation**". This is **28.7%** of the crimes in the indicated field.

Table 1: Completion report between the number of crimes regarding the illegal circulation of drugs, etc. by categories registered in 2020

Table 2: Completion report of cases regarding the illegal circulation of drugs, etc. sued in 2020

15. Analysis of crime data submitted by the National Agency for Public Health (ANSP),¹⁹ proves the same trend - **most of the cases investigated by the criminal prosecution**

bodies in the field of drugs, falls into the category of the least serious and minor crimes. That is, they are the ones that correlate with the consumption of narcotic substances and not with trafficking.

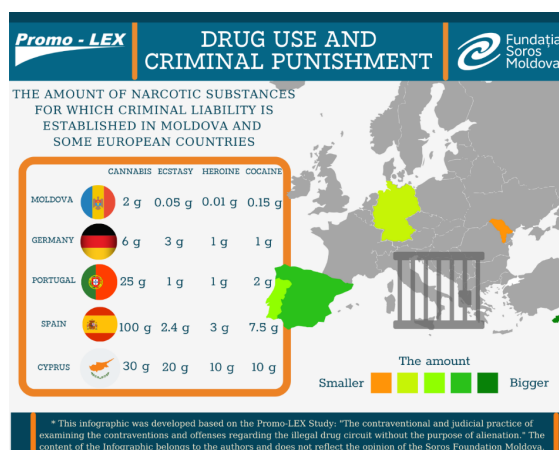
- ⇒ During 2019, the number of offenses related to “illicit drug trafficking and use”:
- the number of particularly serious cases constituted - 335 crimes
 - serious cases constituted - 1255 crimes
 - least serious and minor crimes constituted - 2082 offenses.

B. The problem of regulating the quantities of drugs for which the criminal liability of drug users arises

16. Although several amendments have been made to the Law on the regulation of drugs, narcotic and psychotropic substances,²⁰ 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.
17. As mentioned above, in accordance with the provisions of Articles 85-87 of the Contravention Code of the Republic of Moldova are liable to sanctions, illegal actions with *small quantities of narcotics*, psychotropic substances or plants containing such substances. Same actions with *large and particularly large quantities* are liable to punishment, in accordance with the Criminal Code of the Republic of Moldova (articles 217-2019).
18. The Government of the Republic of Moldova approved by Decision the *List of narcotic and psychotropic substances and plants containing such substances detected in illegal trafficking, as well as their quantities.*²¹ This list is used by law enforcement agencies in the process of classifying a drug-related action as a criminal offense or administrative offense, depending on the amount identified. The list defines small, large and particularly large quantities for each narcotic substance, psychotropic substance or plants containing such substances.
19. The proportions set in the *"List of narcotic drugs, psychotropic substances and plants containing such substances" (hereinafter the "List")*, detected in illegal trafficking, raises several questions in at least two respects and seriously violates the rights of drug users.
- 1) **The quantities of drugs that in the Republic of Moldova are considered high, while in other states are considered small.** Proportions approved by «List» predispose to criminal prosecution, mainly of drug users, as the mere fact of keeping or consuming a few doses of narcotics is sufficient to initiate criminal proceedings. At the same time, this gap predisposes to the focus and efforts

of law enforcement on the use and keeping of drugs by consumers and less on the criminal prosecution of drug traffickers and the fight against high drug trafficking.

- Although Moldova's anti-drug policy is oriented towards the UN recommendations and the states that have positive results in the fight against drug use and trafficking, we notice that in some legislative aspects we are worse off than in the states with a harsh policy. Comparing States that promote a harsh policy in preventing and combating illegal drug trafficking, such as Russia or Ukraine,²² the minimum threshold for the qualification of large and particularly large quantities of drugs is much higher than in the Republic of Moldova.
- Comparing the established small and large quantities of narcotic substances in other countries, such as Austria, Spain and Portugal, it can be noted that the quantity of drugs, which is considered a large quantity in the Republic of Moldova, in other countries is estimated as a small amount, and possession for personal use is not punishable by law.²³



- 2) **Lack of legal provisions that would oblige experts to assess the quantities of substances submitted for expertise, delimiting drugs from mixtures.** According to the Note no.2 to the Decision of the Government of the Republic of Moldova, no.79 of 23 January 2006 on the approval of the List of narcotic substances, etc., *quantities include mixtures of substances* narcotics and / or psychotropic drugs with precursors, additives (medicinal preparations, acids, glucose, starch, flour, etc.), being in any state of aggregation. Respectively, when preparations consisting of mixtures of narcotic and / or psychotropic substances with precursors and additives (medicinal preparations, acids, glucose, starch, flour, etc.) are sent for expertise, experts do not delimit the quantities or proportions of drugs *in their purest form* and the mixtures with which they interacted, *and the overall quantity of the substance is taken into account when evaluating the weight.* This issue was also highlighted in 2013 in a Study,²⁴ recommending

the authorities to establish a mechanism for excluding from the evaluation of large and particularly large quantities of narcotic substances various additives that do not fall into such a category of substances, but even in 2020, this issue remains relevant. **Moreover, according to the authorities, the Republic of Moldova currently does not have the necessary technical capabilities to determine the degree of purity of drugs on a routine basis.**²⁵

SUGGESTED RECOMMENDATIONS:

1. To amend the *Government Decision no. 79 of 23.01.2006 approving the List of narcotic, psychotropic substances and plants containing such substances found in illicit trafficking and their quantities* by increasing the quantities of narcotic and psychotropic substances and plants containing such substances, taking into account the practice of other states and international standards.
2. Amendment of the Note no.2 to the *Government Decision no. 79 of 23.01.2006 approving the List of narcotic, psychotropic substances and plants containing such substances found in illicit trafficking and their quantities* and / or the development of a mechanism for excluding from the evaluation of large and particularly large quantities of narcotic substances, various additives that do not fall into such a category of substances.
3. Creating the technical capacity needed to determine the purity of drugs on a routine basis.

C. The lack of alternative of conviction and punishment for drug-related offenses

20. Publics and policy makers across many countries are looking for alternative approaches to conviction and punishment for drug related offenses. This search is likely to be further spurred by a recent call by the coordinating body of the United Nations (UN) for all member states to '*promote alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use*'.²⁶
21. While '*alternatives to conviction or punishment*' emphasizes the aim of the policy response, '*alternatives to prison*' emphasises the setting. The '*Handbook of basic principles and promising practices on alternatives to imprisonment*' (UNODC, 2007) observes that the caseload of the criminal justice system may be reduced by policies of alternatives to conviction (decriminalisation) and alternatives to punishment (diversion). A country may establish alternatives to conviction through a process of decriminalization, but decriminalization is understood as maintaining the punishment though outside the criminal law. '*Alternatives to punishment*' are most

commonly understood to be programmes of treatment targeted at problem drug users who enter the criminal justice system, using the threat of (more severe) criminal sanction if the treatment is not undertaken to the satisfaction of the authorities.²⁷

22. Regarding the application of punishments, in the context of promoting alternatives to detention of persons who have committed crimes associated with drug use, the release of the person from criminal liability and criminal punishment as a means of simplifying justice (both at the stage of prosecution and at the judicial stage) provided by law in the Republic of Moldova, is almost restricted in the case of drug users.²⁸

A first impediment: is the provision of Art.24 of the Criminal Code, which stipulates that: the person who committed a crime in a state of intoxication, caused by alcohol or other substances, *is not released from criminal liability.*

A second impediment: in the procedure of conditional suspension of the criminal investigation and release from criminal liability is the provision of Art. 510 (2) point 2 of the Code of Criminal Procedure, by which the given provisions cannot be applied to the persons who are addicted to alcohol or drugs.

23. As an alternative measure to criminal punishment, the Criminal Code provides for the possibility of being treated only if the person **has already been convicted**. In these situations, the execution of the sentence will be conditionally suspended (Art.90 of the Criminal Code).
24. In conclusion, it is requested to amend the criminal and procedural criminal legislation so that persons who have committed crimes associated with drug use voluntarily choose the path of treatment and rehabilitation, and the state to offer these possibilities, identifying those "alternative measures" and creating mechanisms for control and supervision of their execution.

SUGGESTED RECOMMENDATIONS:

1. Directing the efforts of the law enforcement system to counter the commercial drug sales for systematic enrichment.
2. Amend laws, regulations and policies to provide explicitly that treatment may be ordered as an alternative to condemnation and punishment for drug-related offenses, rather than in addition to condemnation.²⁹
3. Amend laws to make the possibility of applying the alternatives to conviction or punishment, with an element of drug treatment, at each of the stages of the criminal justice process.

4. State should consider alternatives to penalization and incarceration of drug addicted individuals. The choice that has to be made is to either review legislation or, if possible, fit the implementation of alternatives to the existing legal framework.
5. Creating legal possibilities to include in the Integrated Medical and Social Assistance Program, the persons who have been subjected to the contravention liability for drug use in small quantities and specifying the types of social services (Art.85 of the Contravention Code).
6. To develop massive national information campaigns aimed at the general public on drug use, the importance of alternatives to conviction and incarceration, access of drug users to assistance and treatment.

D. Inefficiency of public anti-drug policies

25. The first national anti-drug strategy 2011-2018,³⁰ through which the state aims to reduce and counteract the illegal consumption and sale of drugs, ended in 2018 without too many results.³¹ According to an Analysis from January 2021 by the National Anticorruption Center of Anti-Drug Policies and Strategies in Moldova their effectiveness is far below the expectations and planned results:
 - As a result of the analysis performed, CNA found that at present there is no complex efficient and operational system for collecting data in the field of drugs. The organizational inefficiency of the National Anti-Drug Commission was found; defects and shortcomings in the segment of cooperation and coordination of activities; Lack of a strict control mechanism and procedures; lack of transparency in the implementation of the Strategy.
26. A new National Anti-Drug Strategy 2020-2027 was adopted on 10 April 2020. Through its strategic objectives and its implementation plan, are set out actions to reduce demand, supply, but also to reduce the negative effects associated with drug use, as well as creating a regulatory basis for implementing measures to support drug addicts and establishing alternatives to incarceration of addicts.³²
27. According to CNA, the situation reported at the time of the adoption of the Strategy for 2020-2027 is also not at all positive. The national anti-drug action plan for 2020-2021 was approved at the same time as the 2020-2027 Strategy.³³ Despite this fact, a performance verification report on the efficiency in achieving the objectives provided by the National Anti-Drug Strategy in the period 2011-2018, CNA **was not identified**. Although no analysis has been carried out to establish the strengths and weaknesses of the situation in this area, as well as the analysis of opportunities and threats that may arise in the process of implementing the planned measures of the National Anti-Drug Strategy for 2020-2027, it is found that a series of risks and weaknesses continue to exist.³⁴ Although the deadline for the implementation of the 2020-2021 Action Plan has expired, no performance evaluation plan has been

identified.

28. Thus, at the moment, the same unresolved issues are identified when implementing the previous Strategy: absence of a methodology, through which to ensure the monitoring of specific activities, in the conditions of non-functioning of the internal control and coordination mechanisms of the institutions involved in the segment of combating the drug phenomenon, the planned activities and the proposed objectives. The lack of separate financial allocations for each activity of the Action Plan, at the level of the implementing structure, also contributed to this fact.
29. In the context presented, there is a perception that the adoption of a strategy and action plans is not enough. Depending on the intermediate results obtained, the support of the activities carried out for the purpose of successful implementation should be permanently ensured, either by financial means, or human resources or an adequate legislative framework. The obligation of the authorities responsible for the timely preparation of detailed reports of analysis, evaluation of activities and actions carried out is indicated. Although in the absence of a methodology, this exercise seems difficult to carry out, especially given that the responsible authorities will evaluate their own work.³⁵

SUGGESTED RECOMMENDATION:³⁶

- 1. To ensure transparency throughout the activities planned in the National Anti-Drug Strategy 2020-2027 and the action plans based on it until the final reporting for each period of the plan (annually).**
- 2. The National Anti-Drug Commission has to prepare an annual assessment Report on the implementation of the Action Plan and its publication.**
- 3. In the context of implementing the National Anti-Drug Strategy 2020-2027 and the action plans based on it, the improvement and development of the control mechanisms of the National Anti-Drug Commission, to exclude deficiencies in the reporting process by central public administration authorities of the results of scheduled activities.**
- 4. To ensure free access to information of public interest on the drugs phenomenon and implementing the principle of transparency in interinstitutional collaboration and partnerships between the Commission, the institutions involved, civil society, and the media.**

IV. DRUG DEPENDENCE TREATMENT IN THE PENITENTIARY SYSTEM

A. The lack of comprehensive and adequate dependence treatment, including rehabilitation services to drug-addicted people in penitentiary system in Moldova.

30. In the principles for the provision of health care in prisons adopted by the World Health Organisation Health in Prisons Programme and the Pompidou Group of the Council of Europe (2001), it is noted that "... in prisons should be provided medical

services that are equivalent to health services in civil conditions" (principle of equivalence).

31. **Number of drug addicts in the penitentiary system.** According to ANP data, 37 the number of drug addicts is increasing:

Period	Number of detainees
<u>Registered</u>	Drug addicts
2019	342
2018	288

32. On the part of the detainees in the penitentiary institutions, in 2019, 453 illegal acts related to the circulation of narcotic substances in the penitentiary system were registered, which denotes the consumption of these substances among the detainees:³⁸

- In the section "Illegal circulation of narcotic substances, etc. (Art. 217-217 / 5; 322 of the Criminal Code)" a number of 388 cases or **85% of the total recorded illegal acts.**
- On the second position are recorded deviations as "Transmission or attempts to transmit to detainees prohibited objects, substances, products (Art. 343, 354 of the Contravention Code), illegal procurement or storage of drugs (85 Contravention Code) "a number of 30 cases or **6.6% of the total recorded illegal acts.**

33. Despite this large number of drug addicts and active use in prisons, there is no comprehensive system of drug dependence treatment, including rehabilitation services to drug-addicted people in penitentiary system in Moldova. According to the Report of the Ministry of Health on illicit drug use and trafficking (2019)³⁹ the treatment available in the penitentiary system is limited to:

- 1) **The short-term ("drug-free") detoxification.** In the context of health care, the medical service of the ANP can offer a detoxification treatment in case of abstinence syndrome. The severity of the abstinence syndrome also determines the place where detoxification is offered (*at the level of the detention institution or in a penitentiary hospital with republican destination no. 16, Pruncul*)
- 2) **Opioid substitution therapy (OST) program.** OST program in the Republic of Moldova was approved by the Ministry of Health by Order No. 159 of May 20, 2003 ("On Substitution Therapy") and Government Decision No. 166 of February 15, 2005, which introduced OST in prisons. In 2020, 13 penitentiary

institutions, including pre-trial detention centres, are implementing OST. According to ANP data, during 2019, 68 beneficiaries (61 men and 7 women) out of the entire penitentiary system were included in the OST. In December 2020, 72 beneficiaries were included.

- However, on 4 December 2020, as a result of the monitoring visit carried out to Penitentiary no.9-Pruncul was found by the members of the Council for the Prevention of Torture, a small number of drug addicts who are in methadone pharmacotherapy under medical supervision in this penitentiary. Moreover, the Council expressed its concern about the lack of new patients included in treatment during the last 2 years.⁴⁰ Thus, since the implementation of the OST program, the monitoring and evaluation of the efficiency of this service in the penitentiary system has not been performed yet.

B. Access to adequate Health Services for People Who Use Drugs in Prison

34. The acute problems of the medical service within the penitentiary system were confirmed in 2019 by the Council for the Prevention of Torture in the Republic of Moldova.⁴¹ The penitentiary system is not able to provide comprehensive and adequate drug dependence treatment:

- The medical service of the Penitentiary no.16⁴² does not have a sanitary authorization for operation, the provision of medical services is not accredited, and the detainees do not benefit from the status of insured person and, respectively, from the medical assistance funds of the National Medical Insurance Company.
- Systematic screening for drug, alcohol and tobacco use / abuse at the entrance to the institution is not performed despite the existence of DPI Order no.26 of 28.01.2013 on the implementation of the screening test for the detection of dependence on alcohol, tobacco products and other substances.
- The lack of a Mental Health Strategy in penitentiaries, but also the lack of efficient mechanisms for cooperation between psychologists, medical staff and other penitentiary staff.
- There is a shortage of psychiatrists, and the position of **narcologist psychiatrist** is vacant for more than 10 years.
- The lack of a clinical psychologist can lead not only to deficiencies in diagnosis but also to a limited treatment only on pharmacotherapy, and the psychotherapeutic intervention is currently lacking in the penitentiary system. In the psychoneurology department of the P.16 Penitentiary Hospital, no

recovery activities, psychoeducation, individual or group therapy are provided, the function of occupational therapist is missing.

- Access to qualified medical care is limited due to insufficient provision of the institution with medical staff. In 2019, the penitentiary hospital is facing a shortage of medical staff, including about 40% of doctors. Resulting from the overwork of the medical staff and their professional burning, the basic activity and the quality of the medical act suffer considerably.
- On the first place of the ranking of the annual morbidity registered in detainees, the period 2015-2018 is ranked as “mental and behavioural disorders”, with a rate of 33.1% of the rest of the diseases in detainees.
- In the structure of mortality in detainees in 2018, cardiovascular diseases are at the forefront with 32.1%, followed by suicide - 21.4%. The council was concerned about the high share of suicides and the lack of psychiatrists and mental health strategy in the prison system.

35. The examination of the detainee suspected of drug use is made at the request of the representatives of the security, regime and supervision service addressed to the doctor from the medical service of the penitentiary institution. Due to the lack of paraclinical tests for the identification of drugs in biological fluids, the finding of intoxication can be performed only on the basis of clinical signs without assessing its nature.⁴³ Respectively, there is often a need to escort the detainee in civilian narcological institutions to ascertain the state of narcological intoxication.

36. Given the large number of drug users among detainees, the high level of recidivism, the need to create equal conditions and access to treatment programs, it is extremely necessary to create some penitentiary therapeutic communities that combine the rehabilitation of drug addicts with their preparation for life after prison

- In the penitentiary system of the Republic of Moldova activates a single institution of this type - Therapeutic Community “Catharsis”⁴⁴ within the Penitentiary no.9 - Pruncul.⁴⁵ Addiction treatment in the therapeutic community is based on 3 psychosocial programs.⁴⁶ The capacity of the therapeutic community is 26 seats. In 2020, the therapy was followed by 14 detainees voluntarily enrolled in this program. By July 2020, a total of 27 detainees had benefited from the services of the Therapeutic Community “Catharsis”, 8 of them had been released and had not relapsed.⁴⁷

37. A delegation, made up of “Pompidou Group” representatives, paid a working visit to the National Administration of Penitentiaries (ANP) in December 2019. During the

meeting, the members of the delegation referred to the need for implementation of *assistance programs for drug addicts in the prison administration system*; expanding the model of the Therapeutic Community in other penitentiaries in the Republic of Moldova.⁴⁸

SUGGESTED RECOMMENDATIONS:

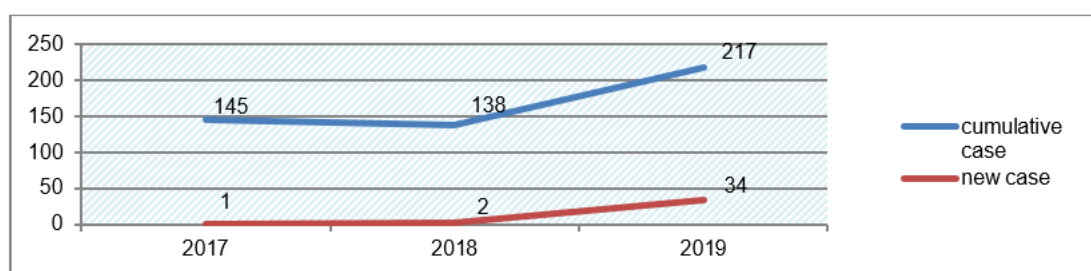
1. To reform and train, the medical service within the penitentiary system to provide comprehensive and adequate drug dependence treatment.
2. To provide adequate healthcare and harm reduction programs for drug users in prisons to fulfill their right to health and prevent ill-treatment.
3. To ensure gender equality in access to such programs and gender-responsiveness in line with Rules 14 and 15 of the UN Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (the 'Bangkok Rules').
4. To develop therapeutic programs in the penitentiary health system (treatment, rehabilitation, and recovery) addressed to people consuming and addicted to psychoactive substances (drugs, other than opiates) and their inclusion in an Integrated Health and Social Assistance Program.
5. To review budgetary allocations in such a way that reflects an understanding of drugs as a public health - rather than a criminal justice concern, and address non-compliance with States' obligations to progressively realize the right to the highest attainable standard of health to the maximum of their available resources.
6. Opioid Substitution Therapy (OST) should be available and delivered in the penitentiary system only by trained health personnel. Adopt and implement adequate strategies for monitoring and evaluating Opioid Substitution Therapy (OST) in prisons from a human-rights perspective.
7. Expansion of Therapeutic Communities for drug addicts in prisons across the country (*following the model of the "Catharsis" community implemented in Penitentiary no.9*).

C. *The compulsory drug dependence treatment applying by the courts*

38. Until now, in the Republic of Moldova, the courts have ordered the application of forced treatment to drug and alcohol addicts. However, international organizations underline the principle that drug dependence treatment should generally be voluntary.
- Moreover, in 2017 the UN Committee on Economic, Social and Cultural Rights raise its concern at reports that drug users in Republic of Moldova have been subjected to compulsory treatment, combined with detention, and that the harm reduction programmes for drug users face the withdrawal of international funding, which will result in fewer health services and an

increased prevalence of hepatitis and HIV among drug users. Regarding this concern, the Committee recommends that the Republic of Moldova apply a human rights-based approach to the treatment of drug users and provide appropriate health care, psychological support and rehabilitation.⁴⁹

39. Given that compulsory medical treatment, including for drug dependence, inherently involves infringements of these rights, it is only potentially justifiable in exceptional, clearly defined circumstances (e.g., in order to prevent a person from causing or risking imminent, serious harm to himself/herself or to others)⁵⁰ and in compliance with the UN's Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights.⁵¹ WHO recommends that any instances of compulsory treatment be strictly regulated and their effectiveness assessed.⁵²
40. According to the Art.103 of the Criminal Code, forced treatment may be applied to drug users who have committed crimes and only **simultaneously with the punishment**.⁵³
41. Within the medical service of ANP in 2019 they were registered (**convicted including according to Art. 103 of the Criminal Code**⁵⁴) 217 people, this number is 1.6 times higher than in 2018 - 138 people.⁵⁵ According to the data provided, the number of new cases for which the court ordered the forced treatment, from 2018 it is increasing. If in 2018 only two new people were registered for forced treatment, in 2019 - 34 people were registered for forced treatment within the medical service of ANP.⁵⁶



42. At the same time, because the forced treatment cannot be applied without seriously violating the rights of the patient-detainee, and the court decisions cannot be enforced for the same reasons; there is a need to intervene with changes to the legal norm that **orders the application of the medical coercive measure**. Moreover, the detainee to whom the forced treatment was applied cannot benefit from the release on parole, in accordance with the provisions of Art. 90 of the Criminal Code.

SUGGESTED RECOMMENDATIONS:

1. To amend laws and regulations to avoid compulsory treatment (in civil or prison system) and support access to voluntary, community-based drug treatment. It does not force individuals into treatment without their consent.

For contacts:

Vadim Vieru

Human Rights Lawyer, Promo-LEX Association

tel.no.(+373) 68017507; email: vadim.vieru@promolex.md

Nicoleta Hriplivii

Human Rights Lawyer, Promo-LEX Association

tel.no.(+373) 69279133; email: hr.nicoleta@gmail.com

Endnotes:

- ¹ Universal Periodic Review – Republic of Moldova <https://www.ohchr.org/EN/HRBodies/UPR/Pages/MDIndex.aspx>
- ² Activity Report of the General Prosecutor office, 2020
<http://procuratura.md/file/Raport%20de%20activitate%20a%20Procuraturii%20Republicii%20Moldova%20pentru%20anul%202020.pdf>
- ³ Constitution of the Republic of Moldova, art. 24 and art.36
https://www.constcourt.md/public/files/file/Actele%20Curtii/acte_en/MDA_Constitution_EN.pdf
- ⁴ Single Convention on Narcotics Drugs, 1961
https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-15&chapter=6; Convention on psychotropic substances, 1971 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-16&chapter=6&clang=en; United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&clang=en
- ⁵ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=142&Lang=EN
- ⁶ The International Drug Control Conventions, UN New York, 2013, page 62-63
https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf
- ⁷ Report on the study “Criminalization of drugs and human rights of people who use drugs in the Republic of Moldova”, 2020 <https://harmreductioneurasia.org/wp-content/uploads/2020/04/Drug-criminalization-and-human-rights-Moldova-RUS.pdf>
- ⁸ Exchange rate of the National Bank of the Republic of Moldova, official exchange rate Euro: 21.48 (on the day of access 29.06.2021) <https://www.bnm.md/>
- ⁹ Art.85 of the Contravention Code of the Republic of Moldova of 24.10.2008
https://www.legis.md/cautare/getResults?doc_id=126364&lang=ro#
- ¹⁰ a) by a fine in double the amount, which, however, cannot exceed the maximum amount of the penalty in the form of a fine provided for by the substantive rule on the offense or this article; b) deprivation of the right to carry out certain activities for a period of 6 months to 1 year; c) unpaid work for the benefit of society at the rate of 1 hour of work for 1 conventional unit, the duration of such work cannot exceed 60 hours; d) arrest for an offense at the rate of 1 day of arrest for 2 conventional units, the duration of such arrest cannot exceed 30 days.
- ¹¹ Article 46 of the Criminal Code of the Republic of Moldova from 18.04.2002 “One conventional unit equals to 50 lei.”
https://www.legis.md/cautare/getResults?doc_id=126674&lang=ro#
- ¹² Exchange rate of the National Bank of the Republic of Moldova, official exchange rate Euro: 21.48 (on the day of access 29.06.2021) <https://www.bnm.md/>
- ¹³ Art.217(2) The Criminal Code of the Republic of Moldova from 18.04.2002
https://www.legis.md/cautare/getResults?doc_id=126674&lang=ro#
- ¹⁴ <https://ism.gov.md/ro/content/cuatumul-minim-garantat-al-salariului-C3%AEen-sectorul-real-2935-de-lei-pe-lun%C4%83>; <https://statistica.gov.md/category.php?l=ro&idc=445&=>
- ¹⁵ <https://harmreductioneurasia.org/wp-content/uploads/2020/04/Drug-criminalization-and-human-rights-Moldova-RUS.pdf>
- ¹⁶ “Criminalization of drugs and the rights of people who use drug in Republic of Moldova”
<https://harmreductioneurasia.org/wp-content/uploads/2020/04/Drug-criminalization-and-human-rights-Moldova-RUS.pdf>. Accessed on 14 May. 2021
- ¹⁷ Art.217/5 The Criminal Code of the Republic of Moldova from 18.04.2002
https://www.legis.md/cautare/getResults?doc_id=126674&lang=ro#
- ¹⁸ Report on the activity of the Prosecutor's Office of the Republic of Moldova for 2020
<http://procuratura.md/file/Raport%20de%20activitate%20a%20Procuraturii%20Republicii%20Moldova%20pentru%20anul%202020.pdf>
- ¹⁹ Illicit drug use and trafficking / Annual report of the Ministry of Health 2019
https://msmps.gov.md/wp-content/uploads/2020/12/Raport_anual_2019_OND.docx
- ²⁰ Study “Police perceptions and behavior towards injecting drug users in the Republic of Moldova”, Promo-LEX 2014 (to see page 13) https://promolex.md/wp-content/uploads/2016/08/doc_1402913326.pdf
- ²¹ Government Decision no.79 of 23 January 2006, on the approval of the List of narcotic substances, psychotropic substances and plants containing such substances identified in illicit trafficking and their quantities
https://www.legis.md/cautare/getResults?doc_id=77798&lang=ro
- ²² Contravention and judicial examination of illicit drug trafficking not intended for alienation/ Promo-LEX 2017
https://promolex.md/wp-content/uploads/2019/06/A4_Practica-Judiciara_sumar_Eng.pdf
- ²³ The European Monitoring Center for Drugs and Drug Addiction (EMCDDA)
<http://www.emcdda.europa.eu/html.cfm/index99321EN.html>
- ²⁴ IDOM, Expert report on the legislation of the Republic of Moldova regarding the classification of narcotic substances in small, large and particularly large quantities in terms of contravention and criminal legislation, 2013, p.9.
- ²⁵ Illicit drug use and trafficking / Annual report of the Ministry of Health 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)

²⁶ <https://journals.sagepub.com/doi/full/10.1177/1477370819887514>

²⁷ <https://www.emcdda.europa.eu/system/files/publications/1020/TDAU14007ENN.pdf>

²⁸ Legal analysis: Promoting the application of alternative measures to detention (*deprivation of liberty*) in the case of persons committing crimes associated with drug use (Veronica Mihailov), May 2019.

²⁹ Right of everyone to the enjoyment of the highest attainable standard of physical and mental health

<https://www.ohchr.org/Documents/Issues/Water/ContributionsStigma/others/SPhealthI.pdf>

³⁰ https://www.legis.md/cautare/getResults?doc_id=67407&lang=ro

³¹ The fight against drug use in Moldova is done on paper. Who wins the fight? The results are kept under lock and key, but behind the scenes bosses <https://sanatateinfo.md/News/Item/7783>

³² https://www.legis.md/cautare/getResults?doc_id=121214&lang=ro

³³ https://www.legis.md/cautare/getResults?doc_id=121214&lang=ro

³⁴ Strategic analysis on some corruption vulnerabilities identified in the promotion of state policy on the circulation of narcotic substances and precursors / 2021 / <https://www.cna.md/doc.php?l=ro&idc=217&id=3058&t=/Studii-si-analize/Analize-strategice-sectoriale/Analiza-strategica-privind-unele-vulnerabilitati-de-coruptie-identificate-in-cadrul-promovarii-politicii-de-stat-privind-circulatia-substantelor-narcotice-stupefiante-si-precursori>

³⁵ Strategic analysis on some corruption vulnerabilities identified in the promotion of state policy on the circulation of narcotic substances and precursors / 2021 / <https://www.cna.md/doc.php?l=ro&idc=217&id=3058&t=/Studii-si-analize/Analize-strategice-sectoriale/Analiza-strategica-privind-unele-vulnerabilitati-de-coruptie-identificate-in-cadrul-promovarii-politicii-de-stat-privind-circulatia-substantelor-narcotice-stupefiante-si-precursori>

³⁶ Strategic analysis on some corruption vulnerabilities identified in the promotion of state policy on the circulation of narcotic substances and precursors / 2021 / <https://www.cna.md/doc.php?l=ro&idc=217&id=3058&t=/Studii-si-analize/Analize-strategice-sectoriale/Analiza-strategica-privind-unele-vulnerabilitati-de-coruptie-identificate-in-cadrul-promovarii-politicii-de-stat-privind-circulatia-substantelor-narcotice-stupefiante-si-precursori>

³⁷ ANP balance sheet report for 2019 <https://drive.google.com/file/d/1VwhMq9G4iILqyrXcYLQHyKBa0YLKxZZO/view>

³⁸ ANP balance sheet report for 2019 <https://drive.google.com/file/d/1VwhMq9G4iILqyrXcYLQHyKBa0YLKxZZO/view>

³⁹ Illicit drug use and trafficking / Annual report of the Ministry of Health 2019

https://msmps.gov.md/wp-content/uploads/2020/12/Raport_anual_2019_OND.docx

⁴⁰ National Council of the Republic of Moldova for the Prevention of Torture / Penitentiary Monitoring Report no.9 (2020) <http://ombudsman.md/wp-content/uploads/2021/01/08-1-76-din-31.12.2020-MJ-Raport-elaborat-CPT-vizita-de-monitorizare-la-Penitenciarul-nr.-9-Pruncul-la-04.12.2020-1.pdf>

⁴¹ National Council of the Republic of Moldova for the Prevention of Torture / Penitentiary Monitoring Report no.16 (2019) <http://ombudsman.md/wp-content/uploads/2020/02/P-16-Pruncul.pdf>

⁴² Penitentiary no. 16-Pruncul is the only hospital-penitentiary, where detainees suffering from various diseases are treated. The health system in penitentiaries is within the National Administration of Penitentiaries (ANP) subordinated to the Ministry of Justice.

⁴³ Illicit drug use and trafficking / Annual report of the Ministry of Health 2019

https://msmps.gov.md/wp-content/uploads/2020/12/Raport_anual_2019_OND.docx

⁴⁴ http://www.justice.gov.md/public/files/dir_elab_acte_norm/NI_comunitatea_terapeutic2020.pdf

⁴⁵ It is a joint project of the Ministry of Justice of the Republic of Moldova, the National Administration of Penitentiaries, Penitentiary no. 9 - Pruncul and Pompidou Group of the Council of Europe, in partnership with the Public Association "Initiativa Pozitiva"; to see also the Prison-based therapeutic communities (tcs): a handbook for prison administrators, treatment professionals and trainers / COE / 2021 <https://rm.coe.int/2021-ppg-prisontc-handbook-eng-web/1680a2abe6>

⁴⁶ Program - cognitive behavioral change; II Program - 12 steps used by Anonymous Drug Addicts; III Program - peer-to-peer training of counselors.

⁴⁷ <https://positivepeople.md/comunitatea-terapeutica-catharsis-despre-recidiva-si-a-doua-sansa-la-o-viata-mai-buna/>

⁴⁸ Prison-based therapeutic communities (tcs): a handbook for prison administrators, treatment professionals and trainers/COE/ 2021 <https://rm.coe.int/2021-ppg-prisontc-handbook-eng-web/1680a2abe6>

⁴⁹ The CESCR concluding observations on the third periodic report of the Republic of Moldova (19 October 2017, E/C.12/MDA/CO/3)

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMDA%2fCO%2f3&Lang=en

⁵⁰ Principles of Drug Dependence Treatment (World Health Organization and United Nations Office on Drugs and Crime) March 2008, <https://www.unodc.org/documents/drug-treatment/UNODC-WHO-Principles-of-Drug-Dependence-Treatment-March08.pdf>

⁵¹ Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights Annex, UN Doc E/CN.4/1984/4 (1984)

<https://www.uio.no/studier/emner/jus/humanrights/HUMR5503/h09/undervisningsmateriale/SiracusaPrinciples.pdf>

⁵²From coercion to cohesion Treating drug dependence through health care, not punishment (UNODC Vienna 2009)
https://www.unodc.org/docs/treatment/Coercion_Ebook.pdf

⁵³ In the event of the offense being committed by an alcoholic or a drug addict, if there is appropriate medical advice, the court, ex officio or at the request of the staff or the health care body, **simultaneously with the punishment** for the crime committed, may apply forced medical treatment to that person. The persons referred to in paragraph (1), sentenced to non-custodial sentences, shall be subjected to forced treatment in medical institutions with special regime in accordance with the provisions of the Law on the control and prevention of alcohol abuse, illicit drug and other psychotropic substances consumption no.713/2001. *After establishing the punishment, the court orders the application of the medical coercion measure.*

⁵⁴ Article 103. Criminal Code "Application of medical coercive measures to alcoholics and drug addicts or their curatorship" (coercive medical treatment in the medical institutions with special regimes)
https://www.legis.md/cautare/getResults?doc_id=109495&lang=ro

⁵⁵Illicit drug use and trafficking / Report of the Ministry of Health 2019 https://msmps.gov.md/wp-content/uploads/2020/12/Raport_anual_2019_OND.docx

⁵⁶ Illicit drug use and trafficking / Report of the Ministry of Health 2019 https://msmps.gov.md/wp-content/uploads/2020/12/Raport_anual_2019_OND.docx