

**Report to the 134 Session of UN Human Rights Committee 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 HIV Legal Network¹

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INDEX

Section No	Section Title	Pages
I	Introduction and suggested overarching recommendation to address violations of Articles 2, 3, 7, 9, 10, 14, 15, 19, and 26 of the Covenant	2
II	Violation of Article 2 and Article 26	4
III	Violation of Article 3	5
IV	Violation of Article 7	5
V	Violation of Article 9	8
VI	Violation of Article 10	9
VII	Violation of Article 14	10
VIII	Violation of Article 15	11
IX	Violation of Article 17	12
X	Violation of Article 19	13
	Annex I	15

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Introduction and suggested overarching recommendation to address violations of Articles 2, 3, 7, 9, 10, 14, 15, 17, 19, and 26 of the Covenant

In its Concluding Observations of March 2015, the Committee recommended the Russian Federation

take all the measures necessary to ensure that: (a) its policies vis-à-vis drug users deprived of their liberty fully conform to its obligation to effectively protect them against the pain and suffering associated with the withdrawal syndrome and that timely, adequate and scientifically based medical assistance to counter withdrawal symptoms is available in practice; (b) adequate legal safeguards are in place to prevent interrogations or any other procedural actions being conducted while the person is suffering from the withdrawal syndrome; and (c) due process rights of drug users deprived of their liberty, including not to be compelled to testify against themselves, are effectively respected in practice.²

By January 2022, the Russian Federation had not fulfilled this recommendation. At present, neither Russian law enforcement nor the penitentiary system have introduced protocols to address withdrawal symptoms in people who have been arrested/detained by police. Russia continues to resist the introduction of such effective and WHO-recommended measures to address opioid dependence as Opioid Substitution Therapy.

Russia has also failed to introduce adequate legal safeguards to prevent interrogations or other procedural actions from being conducted while the suspect/accused person is suffering from withdrawal syndrome. The criminal justice system continues to accept the results of procedural actions that were conducted with an accused suffering withdrawal symptoms. Law enforcement continues to force people with drug dependence to testify against themselves.

Russia's drug control system is disproportionately punitive and discriminatory against marginalized populations, such as people experiencing poverty and/or people with drug dependence. They often cannot afford good quality legal counsel. These groups remain the chief target of harsh law enforcement that aims to punish drug use-related behavior, rather than wholesale drug trafficking.³

Such national drug policy runs in striking contrast with recent UN drug policy and human rights bodies' recommendations. In January 2019, the UN Chief Executives Board for Coordination, representing the heads of all UN agencies and programs, unanimously issued the United Nations system common position that includes a commitment to promote "alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use."⁴ A similar commitment had been previously expressed by 12 UN agencies and programs.⁵

² Human Rights Committee. Concluding observations on the seventh periodic report of the Russian Federation. CCPR/C/RUS/CO/7. April 2015. Para 16.

³ A. Sarang et al., "Policing Drug Users in Russia: Risk, Fear, and Structural Violence," *Substance Use & Misuse* 45 (2010):813-864.

⁴ UN System Chief Executive Board for Coordination. Second regular session of 2018. Manhasset, New York, 7 and 8 November 2018. CEB/2018/2. includes the Executive Heads of the United Nations, its 12 Funds and Programmes, the 15 Specialized Agencies, and 3 Related Organizations.

In 2021, the UN Working Group on Arbitrary Detention recommended that states “[d]ecriminalize the use, possession, acquisition or cultivation of drugs for personal use, including the possession of associated paraphernalia.”⁶

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, 17, 19, and 26 of the Covenant. In order to help the Government of the Russian Federation address violations of human rights guaranteed by the Covenant, we suggest the following overarching recommendation:

People who use drugs

The State Party should take all necessary measures to ensure the respect for international human rights standards and the principle of proportionality in drug control and in particular (a) consider decriminalization of drug use-related behavior, including drug possession/cultivation/preparation for personal use, and provide viable alternatives to conviction and punishment in cases of non-violent drug-related and general crimes, where problematic drug use and/or drug dependence is the principal cause of the offending behavior; (b) establish the definition of police provocation (entrapment) in drug enforcement based on the case law of the European Court for Human Rights and mandate prosecutors and courts to stop accepting evidence received as the result of police provocation; (c) introduce mandatory procedures to establish the quality and quantity of illicit substances based on pure substances in order to determine what exactly an accused is charged with (Actus Reus) and to allow the defence to challenge the quality and the quantity of illicit substances in adversarial procedure, including with help of independent experts; (d) establish a mandatory procedural rule to consider gender in relation to illicit drug use in order to protect women who use drugs from gender-based violence, and from violations of the right to private and family life; (e) stop arbitrary prosecutions for substances that are not listed as prohibited substances such as in cases where police experts have unlimited discretion to decide what substances to categorize as a derivative; (f) limit the scope of drug propaganda only to information that clearly promotes illicit drugs and stop 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”; (g) stop unreasonable and unnecessary interference with the right to respect for private life and personal development of people with drug dependence by repealing overly broad lists of occupations that are prohibited for people with drug dependence and/or a criminal record related to drug use; (h) accelerate the implementation of the recommendations given by the Committee in paragraph 16 of the Concluding observations on the seventh periodic report of the Russian Federation with respect to Drug users (CCPR/C/RUS/CO/7).

⁵ UNAIDS, UNCHR, UNICEF et al., Joint UN statement on ending discrimination in health care settings, June 2017. Available at: www.who.int/gender-equity-rights/knowledge/ending-discrimination-healthcare-settings/en/.

⁶ Study of the Working Group on Arbitrary Detention. Human Rights Council. Forty-seventh session. A/HRC/47/40. 2021. Para 126(a)

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

In paras 197 and 198 of the 8th Periodic Report of the Russian Federation, the State Party refers to the main objective of the Strategy for the State Anti-Drug Policy of the Russian Federation *to significantly reduce the illicit proliferation and non-medical use of drugs and their impact on the safety and health of individuals, society and the State*; as well as to the allegedly improved State legislation that *encourages persons to give up illicit drug use and seek help from health centres and rehabilitation facilities for drug addiction treatment and medical and social rehabilitation*.

We would like to inform the Committee that Russia's State Anti-Drug Strategy (2010-2020) and a new State Anti-Drug Strategy (2020-2030) stipulate a policy of social intolerance to drugs and drug use,⁷ 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.⁸ 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 leads to tough enforcement against the most vulnerable people who get embroiled in the illicit drug market, rather than targeting wholesale drug trafficking. By way of highly punitive and stigmatizing law and policy environment, law enforcement agencies have a virtual *carte blanche* to discriminate against people who use drugs, especially at the expense of human rights guaranteed in Articles 2, 3, 7, 9, 10, 14, 15, 19, and 26 of the Covenant.⁹

Case of Anton Smol'yaninov (A.S.), a 37-year-old man living with drug dependence in Kaliningrad

Mr. A.S. died in November 2020 when several of his chronic health conditions severely deteriorated due to stress after police prosecuted him for drug trafficking — a crime he did not commit. A.S. was officially diagnosed with opioid drug dependence in 2006. He unsuccessfully tried drug dependence treatment in Russia 12 times. In 2020, he was denied opioid substitution therapy by the Ministry of Health. In 2019, police forcefully entered A.S.'s house and conducted a search. Although police did not find any prohibited substances in A.S.'s house, A.S. was charged with drug trafficking along with four other people who used drugs. In the police station, A.S. experienced severe opioid withdrawal syndrome and confessed in exchange for the release on bail. During the year-long investigation, one of the accused died of opioid overdose, another one died by suicide, and another one died in hospital due to his chronic health condition. Mr. A.S. suffered severe stress due to the prosecution. His health condition deteriorated. From September to November 2020, A.S. was hospitalized more than 10 times, including due to symptoms of

⁷ Decree of the President of Russia of 23 November 2020 No 733

⁸ 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/>

⁹ A. Sarang et al., "Policing Drug Users in Russia: Risk, Fear, and Structural Violence," *Substance Use & Misuse* 45 (2010):813-864.

encephalopathy. No science-based drug dependence treatment was offered to A.S. during the prosecution. On November 29, 2020, A.S. died.

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 their male counterparts to human rights violations, including gender-based violence by intimate partners, parents, health workers, and law enforcement officers. Recent studies demonstrate that women who use drugs in Russia suffer

- arbitrary arrests by police because they looked like people who use drugs; 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); and
- 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

State authorities do not consider 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 similar drug offenses.¹¹ Due to this criminalization, women who use illicit drugs systematically experience police violence and are defenceless against it. Police abuse — including beatings, torture, blackmail, threats, planting drugs, extortion of bribes, coerced testimony, bullying, and degrading treatment — is reported as routine.^{12,13}

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

In para 200 of the 8th Periodic Report of the Russian Federation, the State Party asserts that “*medical care for suspects and accused and convicted persons who are drug addicts is provided in accordance with the principles of humanity and respect for human rights. The principle of voluntary treatment is fully implemented with respect to drug addicts in penal institutions as*

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>

¹² Sarang A. et al (2010), Policing Drug Users in Russia: Risk, Fear, and Structural Violence, *Substance Use & Misuse*, 45:6, 813-864, DOI: 10.3109/10826081003590938

¹³ “Female drug user for them – is a signal to do whatever they want”. 89% of respondents experienced violence. («Наркоманка для них — это сигнал, что можно сделать что угодно». 89% россиянок, употребляющих запрещенные вещества, столкнулись с насилием). Такие дела. 8 March 2021. Online: <https://takiedela.ru/news/2021/03/08/nasilie-k-zhenshinam/>

well. Drug addicts may be subjected to treatment against their will only on medical grounds, in cases in which they present a danger to themselves or others and their health would be significantly harmed without specialist care.”

We would like to inform the Committee that not a single police detachment or police custody facility provides any science-based treatment. 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.”¹⁴

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 symptoms and ask for help but they do not do this 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 Yelena Bulatova, a 37-year-old woman with drug dependence from Yekaterinburg

Ms. Bulatova was invited to a police station as a witness on October 16, 2018. In the police station, Ms. Bulatova started experiencing severe opioid withdrawal syndrome. Police officers misused Ms. Bulatova’s ensuing pain and suffering and forced her to sign a confession admitting to drug trafficking. During the trial, Ms. Bulatova and her defence withdrew the confession as having been signed under duress. Despite this, the district court, the court of appeal, and later the Supreme Court of the Russian Federation continued to refer to the confession. Ms. Bulatova was sentenced to 11 years of imprisonment.¹⁵

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 her 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 medical assistance was offered to Y.Y. OST, which could have been an effective and WHO-recommended treatment, is not available in police custody in Russia because this treatment

¹⁴ Ibid, para 74.

¹⁵ Decision of the Supreme of 15 September 2020, File No 45-YKC20-507-K7

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

is subject to a federal legal ban. Other types of pharmacological interventions would inadequately alleviate withdrawal symptoms. Y.Y. also asked police to give her the HIV medication (antiretroviral therapy — ART) 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 on December 2, 2016, the day following her arrest, by which time Y.Y. was hours into opioid withdrawal syndrome, police detective N. G. Shutov offered her the chance to confess that she helped her friend purchase drugs two months earlier (an action that could be categorized as facilitation to purchase drugs or as drug trafficking — a 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 that she wouldn't be charged with trafficking. She confessed. According to Y.Y., Detective Shutov dictated the confession statement to her, which she handwrote into the police form. Less than one hour later, 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 October 12, 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 he lived in, where they waited for several hours for the witnesses to their search to arrive. When the search was carried out, 1.31 g of cocaine was found in D.S.'s apartment. D.S. denied knowledge or ownership of the cocaine. After the search, he was taken for a medical examination, which determined he was in a 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 withdrawal 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 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,

¹⁷ 20th WHO Essential Medicines List. Online: <https://www.who.int/medicines/publications/essentialmedicines/en/>

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 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

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.

Law enforcement officers in Russia often use unreasonable grounds to justify the search and arrest of people who use drugs: youth, looking like a “junkie,” association with drug users, needle marks on arms.^{19,20} 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.²¹ Police have also been known to use medical data on people who have been diagnosed as drug dependent in order to arrest them.²² 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*).²³ 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 of when the consumption took place, and whether 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 (having red eyes, for example).

In other words, people who use drugs are singled out for discrimination by law enforcement simply because of their drug use 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.

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 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/>

²⁰ 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>

²¹ “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

²² 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).

²³ 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>.

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 9, 2020, F.N. was detained near his house by drug police officers. He confronted these officers several days earlier trying to defend the human rights of one of his clients. He was forcibly taken to the police department for a rapid drug test. 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 the 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 results were also negative.

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 liberty.

In paras 201-205 of the 8th Periodic Report of the Russian Federation, the State Party asserts that people with drug dependence must have adequate access to drug dependence treatment.

We would like to inform the Committee that Russia continues to prohibit internationally recognized pharmacological drug-dependence treatments such as opioid substitution treatment (OST).²⁴ Russia's drug dependence treatment has already been a matter of concern for the Committee on Economic, Social and Cultural Rights (CESCR),²⁵ the Human Rights Committee,²⁶ the Committee on the Elimination of Discrimination against Women (CEDAW),²⁷ the UN Special Rapporteur on the right to health,²⁸ the UN Special Rapporteur on torture,²⁹ and the UN Special Rapporteur on violence against women.³⁰ The only treatment option available in

²⁴ Narcotics Drugs and Psychotropic Substances Act [N 3-FZ] art. 31 (Russ.).

²⁵ E/C.12/RUS/CO/5 and E/C.12/RUS/CO/6

²⁶ CCPR/C/RUS/CO/7

²⁷ CEDAW/C/RUS/CO/8

²⁸ 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>.

²⁹ 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.

³⁰ 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).

Russia in general and in prison is abstinence-based treatment, which is ineffective and often harmful.

Approximately one third of people in Russian prisons are incarcerated because of drug convictions.³¹ Many of these people suffer from some form of drug dependence. 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.

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.

In violation of the right to a fair hearing, Russian drug enforcement and criminal justice employ the following tactics against the most vulnerable people who use drugs — those who aren't involved in trafficking/dealing:

- Police provocation
- Lowering the standards to establish the quantity and the quality of the street substances

These two tactics allow drug enforcement to frame virtually any low-level drug user as a serious drug dealer and deprive him/her of the procedural guarantees of the right to a fair hearing.

Police provocation (police entrapment) occurs when police create incentives for a person to commit an offence. In other words, this offence would not take place if not for the incentives created by police or a police agent. Russian police often use drug-dependent people to incite another fellow drug user to purchase and hand over a narcotic drug, thus essentially creating all the conditions for the behavior that police document and categorize as drug trafficking. The European Court issued multiple judgments concerning police provocation in Russia from 2005 to 2021.³² Despite this, Russian courts continue to admit evidence received as the result of police provocation.

Establishing the quantity and the quality of street substance is a critical part of the process of categorizing the offence as possession for personal use or as possession with the intent to distribute. 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*). Recent research into court files demonstrates that most cases of drug possession and drug supply concern tiny amounts of drugs, barely exceeding the threshold amount established

³¹ Official statistics of the Federal Penitentiary Service of the Russian Federation. January 2022. Online at <http://fsin.su/statistics/>

³² *Vanyan v. Russia*, no. 53203/99, ECHR 2005; *Khudobin v. 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; *Kuzmina and others v. Russia*, nos 66152/14 and 8 others, ECHR 2021

by criminal laws to distinguish crimes from administrative offences.³³ When the purity of the seized amount isn't established, police have the opportunity to manipulate the amount of narcotics in 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 no exception. Available data shows that the average purity of street heroin in Russia was 0.07 (7%).³⁴ Because of their high tolerance to opioids, people living with drug dependence must 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.

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.³⁵ Only a chemist can determine whether a certain substance is derivative. Lay people cannot draw such conclusions, and thus cannot anticipate the legal consequences of handling substances.

According to Russia's Ombudsperson, the lack of definition regarding derivatives allows for a broad interpretation of what is prohibited based on an expert's opinion and for cases to be prosecuted and punished based on assumptions.³⁶ The arbitrary nature of prosecutions for derivatives is demonstrated in two recent cases.

³³ 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

³⁴ Price and Purity. UNODC World Drug Report, 2019. Online at https://wdr.unodc.org/wdr2019/prelaunch/8.1._Prices_and_purities_of_drugs.pdf

³⁵ 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".

³⁶ Доклад Уполномоченного по правам человека в Российской Федерации за 2016 год / Online: http://ombudsmanrf.org/www/upload/files/docs/appeals/doc_2016_medium.pdf

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

D.B. has been officially diagnosed with chronic depression and she sees a psychiatrist for help, including prescription medicines. In 2015, Russia excluded the medicine Bupropion from its list of approved medications. D.B. could not buy Bupropion in the pharmacy anymore, so she started ordering it via the internet from Poland. Such activities are not prohibited by Russian laws, provided that the ordered medicine is for personal treatment and not for sale. 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 "Methcathinone." D.B. was charged with contraband — a crime punishable with imprisonment from 10 to 20 years.³⁷ In December 2021, police ended their prosecution of Ms. Daria Belyaeva.

However, similar cases continue in other provinces of Russia. Under similar circumstances, Ms. Olga Kalinovskaya, a woman with Attention Deficit Hyperactivity Disorder (ADHD), was prosecuted in the city of Volgograd for ordering Bupropion.³⁸ On January 10, 2022, law enforcement initiated a criminal case against Renar A., who ordered Bupropion from India to treat his officially diagnosed psychiatric disorder.³⁹

Violation of Article 17 by unreasonable and unnecessary interference with the right to respect for private life and personal development

The protection of private life encompasses a series of factors associated with the dignity of the individual, including, for example, the ability to develop his or her own personality and aspirations, to determine his or her own identity, and to define his or her own personal relationships.^{40,41} As part of its punitive drug policy, the Russian Federation maintains a system of mandatory disclosure of the diagnosis of drug dependence by doctors to law enforcement, and restricting people with drug dependence in personal development by banning them from more than 300 professions and occupations.⁴² People with drug crime records are indefinitely prohibited from working in the area of education and social support.

³⁷Александр Черных, газета «Коммерсант», Апрель 2019 г., статья «Таможня вгоняет в депрессию» / Online: <https://www.kommersant.ru/doc/3955483>

³⁸Александр Черных, газета «Коммерсант», Февраль 2020 г., статья «Бупропион дал уголовные осложнения» / Online: <https://www.kommersant.ru/doc/4259307>

³⁹ The charge arrived with the pouch. A criminal case is initiated for the contraband of bupropion. (Статья пришла посылкой. В Кузбассе возбуждено уголовное дело о контрабанде бупропиона). Kommersant. 20.01.2022. Online: <https://www.kommersant.ru/doc/5172833>

⁴⁰ Ibid

⁴¹ Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary, (2nd ed.), 2005. para 388

⁴² This requirement is a cumulative effect of the following laws: *Decree of the Government No 1604 of 29.12.2014* stipulates that drug dependence is among health conditions contraindicated for driving a car; *Order of the Ministry of Health No 984n* stipulates that people with drug dependence cannot occupy any position in state and municipal bodies; *Decree of the Government No 300 of 19.05.2007* stipulates that drug dependence is contraindicated for a position of a security guard; *Decree of the Government No 394 of 18.05.2011* stipulates that drug dependence is contraindicated for a long list of categories of industrial, educational and public health professions; *Order of the*

Case of Maxim Malyshev, a 43-year-old man with drug dependence, in remission for more than 11 years

In 2021, Mr. Malyshev filed an application to the State Tax Service to register as an individual entrepreneur providing social support to people living with drug dependence. The Tax Service refused to register Mr. Malyshev because Article 22.1 of the Federal Law of 8 August 2001 No 129-FZ “On the State Registration of Corporations and Individual Entrepreneurs” prohibits people with drug-related criminal record from becoming entrepreneurs in the area of education, social protection, and social support. The Tax Service did not consider the fact that Mr. Malyshev’s criminal record was for a minor crime of drug possession back in 2006 and that Mr. Malyshev stopped using drugs in 2009, remaining in remission for more than 11 years.

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 such a broad 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 No 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

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

Ministry of Health No 1034n of 30.12.2015 stipulates that a person can be removed from the drug registry if he/she achieves three years of remission.

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>

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.

recommendation concerning OST that had been delivered to the Russian government by the UN Committee on Economic, Social and Cultural Rights.⁴⁸

In 2020, government agencies administratively blocked 16,900 webpages or web domains. In addition, 18,800 internet sites remain blocked based on court decisions.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 leaves;⁵⁰
- In 2021, police prosecuted a renowned Russia journalist Yuriy Dud' for drug propaganda because in two video interviews Mr. Dud' discussed problem drug use. Mr. Dud' was prosecuted even though before the interview he stated, "*Drugs are evil. Don't use drugs*";⁵¹
- From 2018 to 2020, courts imposed significant fines on civil society organizations, politicians, and journalists for simply informing the public about health, human rights, and scientific and political developments concerning such important public issues as narcotic drugs.^{52,53,54,55,56} None of the prosecuted people or organizations promoted illicit drug use or illicit drugs.

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, 2020. Online: <https://media.mvd.ru/files/embed/2175467>

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 Юрий Дудь оштрафован на 100 тысяч рублей за "пропаганду наркотиков". DW. 20.10.2021. Online: <https://www.dw.com/ru/jurij-dud-oshtrofovan-na-100-tys-rublej-za-propagandu-narkotikov/a-59562807>

⁵² Информация о судебном процессе доступна по ссылке: <https://rylkov-fond.org/blog/category/strategicheskie-kejsy-far/delo-v-otnoshenii-far-o-propagande-narkotikov/>

⁵³ 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-dvoe-kusintsev-raspravilis-so-svoim-sobutylnikom.html>

⁵⁴ 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-oshtrofoval-7h7-na-800-tysyach-rublej-za-propagandu-narkotikov-v-intervyu-politika-svetova-cto-ob-etom-izvestno>

⁵⁵ «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>

⁵⁶ Application No. 25465/16 Konstantinov v. Russia (communicated on 5 June 2018 and merged with No. 2064/10 Fedotova v. Russia).

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 HIV Legal Network (www.hivlegalnetwork.ca) promotes the human rights of people living with, at risk of, or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education, and community mobilization.

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