



## **INPUT OF THE SLOVAK NATIONAL CENTRE FOR HUMAN RIGHTS TO THE QUESTIONS OF THE UN WORKING GROUP ON ARBITRARY DETENTION**

*Slovak National Centre for Human Rights (the “Centre”) is a national human rights institution established in the Slovak Republic, accredited with status B by the Global Association of National Human Rights Institutions. As an NHRI, the Centre is a member of the European Network of NHRIs (ENNHRI). The Centre was established by the Act of the Slovak National Council No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights. Pursuant to Act No. 365/2004 Coll. on Equal Treatment in Some Areas and on Protection from Discrimination, and on amendments and supplements of certain acts, as amended (the Anti-discrimination Act), the Centre also acts as the only Slovak equality body. As an NHRI and Equality Body, the Centre performs a wide range of tasks in the area of human rights and fundamental freedoms including the observance of the principle of equal treatment.*

*The Centre among other powers:*

- 1) monitors and evaluates the observance of human rights and the observance of the equal treatment principle;*
- 2) conducts research and surveys to provide data in the area of human rights; gathers and distributes information in this area;*
- 3) prepares educational activities and participating in information campaigns aimed at increasing tolerance of the society;*
- 4) provides legal assistance to victims of discrimination and manifestations of intolerance;*
- 5) issues expert opinions on matters of the observance of the equal treatment principle;*
- 6) performs independent inquiries related to discrimination;*



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- 7) *prepares and publishes reports and recommendations on issues related to discrimination; and*
- 8) *provides library services and services in the area of human rights.*



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- 1. Please provide information concerning the number of people held in pre-trial detention as well as the number of those who are imprisoned pursuant to a conviction for drug-related offences. Please indicate what percentage of the total pre-trial detention population are being held for drug-related offences. Please identify the percentage of the total prison population who have been convicted and imprisoned for drug-related offences. For those convicted of drug-related offences, what percentage of this group have been imprisoned for acquisition, use or possession of drugs for personal use? How many people convicted of drug use belong to disadvantaged groups (e.g. women, pregnant women, children and youth, indigenous people, sex workers, lesbian, gay, bisexual, transgender (LGBT) persons, homeless people, people with HIV/AIDS, persons with disabilities, ethnic minorities, migrant communities)?**

According to the European Harm Reduction Association report from 2018, the number of people incarcerated because of drug related crimes in Slovakia was 1 028 with average sentences of 7 years. The same report indicated, that the total number of incarcerated people in Slovakia in 2018 was 10 028, which accounts for 10,25 % being incarcerated for drug related offences<sup>1</sup>.

Under the Slovak Criminal Code (Act No. 300/2005 Coll.) drug use is not considered a criminal offence. Drug possession, distribution or other drug related conduct under the Criminal Code are considered criminal offences and are sanctionable by up to 15 years imprisonment.

There is no relevant data being collected on the disadvantaged groups convicted of drug-offences, since the state does not collect disaggregated data in such extent and collection of certain data (such as sexual orientation of convicted persons) would be a rather sensitive issue.

- 2. Does your State consider the acquisition, use or possession of drugs for personal use a minor offence within the meaning of this term as set out in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (article 3, para. 4 (c)? If so, what percentage of people arrested for the acquisition, use or possession for personal use of drugs are diverted out of the criminal justice system, and what alternative measures, if any, are such people subjected to?**

In Slovakia, drug use is not considered a criminal offence as set out in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (article 3, para. 4 (c)). However, acquisition and possession of drugs are considered criminal offences even for personal use. The severity of a sanction depends among other factors, on the amount of illicit drug in possession.

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<sup>1</sup> <https://harmreductioneurasia.org/criminalization-costs/slovakia/>



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There is no data on the percentage of people diverted from the criminal justice system for drug offences. However, the courts can use alternative sanctions, such as mandated protective treatment under Article 73 of the Criminal Code or Protective re-education under Article 75 of the Criminal Code when deciding about juvenile offenders.

A court may also impose on the young offender a sentence of a) community service work, b) pecuniary penalty, c) forfeiture of a thing, d) prohibition to undertake certain activities, e) expulsion, f) imprisonment under Article 109 of the Criminal Code.

- 3. Has your State decriminalized the acquisition, use or possession of illegal drugs for personal use? If so, to what drugs does this apply and what are the amounts considered to be for personal use? What is the legislative or judicial basis for such decriminalization? If decriminalization has not taken place, what penalties apply to the acquisition, use or possession of illegal drugs for personal use?**

Slovakia has not decriminalized acquisition nor possession of illegal drugs, drug use, however, is not considered a criminal offence.

The Slovak legislature does not reflect the quantity of a drug in person's possession but rather their potency. According to the law possession of maximum 3 usual doses for personal use can be fined by 3 years in prison, and 5 years for possession of 10 usual doses for personal use. Possession of more than 10 doses is considered as manufacturing and dealing and is punishable by up to 10 years in prison.

- 4. What types of circumstances have led to unlawful and arbitrary arrest of people in your State for drug-related offences? What structures/institutions are in place so that people who are arrested for a drug-related offence can make a complaint about unlawful and arbitrary arrest and detention, or the threat thereof?**

There is no relevant data being collected on the circumstances that have led to unlawful and arbitrary arrest for drug related offences. The circumstances are monitored on case-to-case basis during the criminal proceedings.

Drug use in Slovakia is not considered a criminal offence, however possession for personal use is punishable by up to 10 years in prison. If a person is arrested for possession, he/she has all the rights of any other detained person, including a right to fair trial. There are no institutions for complaints specific to drug-offences, but a person can raise a complaint with the general or regional prosecutor's office.



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- 5. Does your State differentiate in its criminal procedures for persons alleged to have committed drug-related offences compared to those who have been arrested for other types of criminal offences? For example, are persons arrested for drug-related offences held in custody longer than persons arrested for other offences before being charged or before being brought before a judge to determine the legality of their arrest? Are persons charged with drug-related offences automatically held in pre-trial detention until trial? Is legal aid available for persons charged with drug-related offences in similar circumstances to which it would be available for other criminal offences? Does your State allow persons convicted of drug-related offences to be considered for suspended sentence, sentence reduction, parole, release on compassionate grounds, pardon or amnesty that are available to those who are convicted of other crimes? Are legal presumptions used so that persons found with amounts of drugs above specified thresholds, or in possession of keys to a building or vehicle where drugs are found, are presumed to have committed an offence?**

Slovakia includes expert forensic analysis in drug related criminal procedures. The experts are tasked to specify the amount of usual doses detained compared to tolerance and body structure of a given person charged. The severity of a given criminal offence therefore depends on the amount of usual doses identified by independent testing.

In the meantime, persons arrested for drug offences are usually not detained before the results of expert analysis, but may be subject to examination by relevant authorities. If there is an alleged additional drug related offence or a risk of further criminal activity, such as distribution or juvenile intoxication, a person can be subject to pre-trial detention. Before the test results are received, however, a person charged is usually sent home. After the test results come back, a person charged is subjected to examination with the department of abridged investigations again and the case is designated towards the regional prosecutor's office.

Persons charged with drug-related offences have equal right to a fair trial in its entire extent and should have access to legal representation. In all criminal cases, drug-related offences including, all persons have equal right to legal representation provided by state ex offio, in case they do not opt for their own lawyer. There are certain NGOs that provide legal aid to persons charged with drug-related offences, such as RASTA MAMA, but they are usually underfunded and do not have the capacities to monitor all drug-related cases.

Considering the severity of a given drug offence, depending on the amount of illicit drugs seized, some drug-related charges can be dropped by the prosecutors office, depending on a person's criminal record and other factors. Cases where charges are dropped usually do not exceed the amount of 3 usual doses.

Legal presumptions are sometimes used in drug related offences. For example, if a person has in possession more than 3 usual doses, or uses multiple separate packages with amounts designated for personal possession, charges of possession with intent to distribute can be applied.

- 6. Have there been cases of torture or other cruel, inhuman or degrading treatment or punishment for persons arrested and detained on drug-related offences, with the objective, for example, to elicit a confession or to learn information about other alleged criminal actors or networks? Have there been cases where opioid substitution therapy has been withheld**



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**from drug dependent detainees in order to elicit a confession, or obtain information concerning other alleged criminal or networks? What procedures exist to prevent torture and other forms of ill treatment of people detained for drug-related offences, and to bring to justice those responsible when it does occur? What monitoring measures are in place to ensure that torture or other cruel, inhuman or degrading treatment or punishment does not take place? What avenues do detainees have for making a formal complaint to an independent authority if such practices occur?**

Slovakia does not collect data specific to drug-related offences considering cruel, inhuman or degrading treatment.

Individuals sometimes tend to complain about alleged forms of misconduct, when the police and investigators can “trick” a person into confession with procedural shortcomings. E.g. if a person is detained with multiple usual doses, with the intent to use, the police would scare this person with the threat of long sentence in case they do not get a confession or the seller’s identity. These scare tactics tend to be used in juvenile cases where the probability of the person not knowing their rights is higher. However, there are no official information available regarding police misconduct. Some of the rumoured cases may however constitute a breach of fundamental right to fair trial.

If a person wants to raise a complaint about the violation of their right to fair trial or other rights by public bodies, he/she can do so with the prosecutor’s office or the office of public defender of rights. There are however no specific procedures for drug-related offences.

- 7. Does your State operate compulsory drug treatment centres? If so, what is the legislative basis for such deprivation of liberty? What procedures exist to ensure procedural guarantees are respected prior to confinement in such centres, including whether the detainee has the right to be represented by legal counsel and the right to appeal the decision on compulsory treatment. Is there a medical evaluation of the person’s drug dependency prior to confinement? Is treatment in such centres individualized (as opposed to en masse treatment), evidence-based and in conformity with generally accepted medical practices for drug treatment as articulated by World Health Organization (WHO). Is a person detained in such a facility for a specific amount of time, or indefinitely until treatment has been determined to be successful? Can a person, or by way of his or her legal representative, or a family member, file a petition either with an administrative or criminal court for a hearing on his or her release while detained?**

Slovakia does not operate compulsory drug treatment centres. A person can be treated in a facility providing voluntary treatment against their will only in certain cases. A person can be subject to compulsory treatment only in case, he/she committed a drug-related offence or committed an offence



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under the influence of illicit substances. Legislative basis for such deprivation of liberty can be found in Article 25 of the Criminal Code as protective treatment.<sup>2</sup>

Under Act No. 550/2003 Coll. on Probation and Mediation Officers, persons charged with drug-related offences can in certain cases have probationary sentences supervised by a probation officer, who is in charge of supervising social re-education. This form of a sentence is used rarely, however, has a great potential in the future of harm reduction drug policies.

If a person wants to raise a complaint about the violation of their right to fair trial or other rights by public bodies, he/she can do so with the prosecutor's office or the office of public defender of rights. There are no specific procedures for drug-related offences.

A person's medical evaluation can be a part of the criminal proceedings in case of suspicion of pathological behaviour or when a person is charged with conducting a crime under the influence of illicit substances. The duration of compulsory treatment depends on the goal of a given treatment. Court can decide, whether the treatment met its goal and deem it no longer necessary.

If a person wants to raise a complaint about the violation of their right to fair trial or other rights by public bodies, it can do so with the prosecutor's office or the office of public defender of rights. There are however no specific procedures for drug-related offences.

- 8. Do private drug treatment centres exist in your State? What steps does your State take to ensure that treatment in such facilities is voluntary and not a result of coercion? How is the informed consent for treatment obtained? How regularly do independent inspections of private drug treatment facilities take place to ensure that practices that constitute torture or other cruel, inhuman or degrading treatment or punishment do not occur? Do inspections of such facilities include a determination whether treatment is individualized (as opposed to treatment en masse), evidence-based and in conformity with generally accepted medical practices for drug treatment as elaborated by WHO? What guarantees exist that a person who has either voluntarily sought treatment or who has been coercively confined in a private drug treatment centre can freely leave if he or she so wishes? Can such persons make a complaint to inspectors who monitor such facilities or a competent authority if a person who is seeking to leave a private drug treatment centre is prevented from doing so? Are there any criminal or other penalties for failure to complete the treatment?**

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<sup>2</sup> EXCERPT Law No. 301/2005 Coll. Code of Criminal Procedure of the Slovak Republic



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Specialized private drug treatment centres do not exist in Slovakia. The National Centre for Treatment of Drug Addiction carries the tasks of national body and as such is state sponsored under the jurisdiction of the Ministry of Health of the Slovak Republic. There are private clinics of psychiatrists and addiction specialists, however, most of them work as individuals without the need to associate into centres and therefore are not subject to additional oversight.

Legislative basis for such deprivation of liberty as compulsory treatment can be found in Article 25 of the Criminal Code as Protective treatment. The necessity of such deprivations needs to be upheld in court. If a person enters treatment voluntarily, they cannot be subject to any additional deprivation of liberty unless they express their consent. A person who is not subject to compulsory treatment cannot be subject to criminal or other penalties for failing to complete the treatment.

These facilities however are subject to monitoring of their establishing bodies, in this case, the Ministry of Health of the Slovak Republic, which determines, whether obligatory treatment is compliant with necessary international standards.

If a person wants to raise a complaint about the violation of their right to fair trial or other rights by public bodies, it can do so with the prosecutor's office or the office of public defender of rights. The public defender of rights has the authority to enter into objects where violation of human rights from the side of public bodies might have occurred.

Slovakia has not ratified the Optional Protocol to Convention Against Torture and therefore does not have established National Preventative Mechanism, which would be monitoring the protection of human rights of person's limited or deprived on their personal freedoms. Currently, oversight over Social services centres is conducted by Commissioner for persons with disabilities and oversight in penitentiaries is conducted by the Public defender of rights.

- 9. Do drug courts which seek to use treatment as an alternative to imprisonment exist in your State? Please describe their operations, including applicable procedural guarantees for the accused. Does the accused have to plead guilty to the drug-related offence prior to being diverted into treatment? Are only accused persons who are drug dependent on opioids diverted for treatment, or are people who use other drugs that do not cause drug dependence diverted? Can treatment exist for a period that is longer than the period of imprisonment provided for in the offence for which the accused has been charged? Does the accused still have to serve a period of imprisonment if the treatment is not successful? What constitutes successful treatment and does the person in treatment have the right to a hearing before an independent authority and to be represented by legal counsel and present expert medical testimony on the evolution of his or her treatment?**





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Slovakia does not recognize drug courts or specific courts, which seek to use treatment as an alternative to imprisonment.

- 10. Does your State have specialized criminal courts for people accused of drug-related offences that do not have as their focus diversion for drug treatment, but rather operate as specialized criminal courts and normally sentence those charged to prison after conviction? What differences exist between specialized criminal drug courts and regular criminal courts? What is the legislative justification for having specialized criminal courts for drug-related offences? Please describe how such specialized courts conform to the procedural guarantees for detention and fair trial under international norms.**

There are no such courts in Slovakia.

- 11. Does your State use military courts to try people for drug-related offences? Please describe how such military courts conform to the procedural guarantees for detention and fair trial under international norms. Are military personnel involved in law enforcement operations against individuals or groups suspected of drug-related crimes? If so, are these regular military forces or the military police? Have they received training in human rights standards for law enforcement and the use of force? How is coordination undertaken with civilian law enforcement?**

Slovakia does not use military courts to try people for drug-related offences. Military courts in Slovakia ceased to exist in 2008 and their jurisdiction was transferred under the general court system.

- 12. Does your State have legislation that provides for administrative detention for people who use drugs who are considered a danger to themselves or others? If so, can you please describe the legislative basis for such detention, applicable procedural safeguards, including the right to be represented by legal counsel and to present expert medical testimony, and a right of appeal? Can other legislation such as that aimed at individuals with psycho-social disabilities be used in relation to those who use drugs and are considered a danger to themselves or others? If so, can you describe the legislative basis for such detention, applicable procedural safeguards, including the right to be represented by legal counsel and to present expert medical testimony, and a right of appeal?**

As mentioned above, Slovakia does have legislation for administrative detention. A person can be mandated for outpatient treatment or institutional treatment only as a part of court decision in drug related offences, or upon a person's request to be treated voluntarily.



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Court decides upon expert testimony, whether a person is deemed dangerous for themselves or society. In Title 5 Article 73 of the Criminal Code, protective measures including Protective medical treatment are defined. The law also defines conditions, under which the court can impose medical treatment on a person, e.g. if the offender commits the criminal offence in a state of diminished responsibility, and his/her remaining at liberty could be dangerous.

If a person deprived of liberty is also subject to mandatory protective treatment, the court rules on the necessary duration regardless of time served. Successfulness of a given treatment is constituted on case to case basis. Court uses expert medical analysis and cooperates with independent forensic and psychiatrist experts. Person charged has a right to challenge such medical testimony and have in some cases have it reviewed by other medical experts.

**13. Does your State provide for the involuntary detention of pregnant women who use drugs in circumstances where such drug use has been deemed to constitute a danger to the foetus, and where voluntary attempts by health professional to work with the pregnant woman have failed? Please describe the legislative basis and applicable procedural guarantees in case of such an involuntary detention.**

The Centre is not aware of specific policy or procedure that would apply explicitly to pregnant women who use drugs in Slovakia.

**14. Does your State provide drug treatment to people in custodial or pre-trial detention, or who have been imprisoned following a conviction? Do these drug treatment services include harm reduction services? Please describe what types of drug treatment and harm reduction services are available to detainees and imprisoned people. Please also indicate if such services are available to those in administrative detention such as undocumented migrants or those subject to a deportation order. If no such services are available, does this result in forced confessions or people not being able to participate in their defence?**

A person can be mandated for outpatient treatment or institutional treatment only as a part of court decision in drug related offences, or upon a person's request to be treated voluntarily. Court decides upon expert testimony, whether a person is deemed dangerous for themselves or society. In Title 5 Article 73 of the Criminal Code protective measures including Protective medical treatment are defined.

The Criminal Code also defines the conditions, under which the court can impose medical treatment on a person, e.g. if the offender commits the criminal offence in a state of diminished responsibility, and his continued remaining at liberty could be dangerous.



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Harm reduction services are provided as a part of protective treatment, but can also be provided on voluntary basis by non-governmental organizations and in compliance with National antidrug strategy 2013 – 2020.<sup>3</sup>

Persons in administrative detention such as undocumented migrants or those subject to a deportation order are entitled to such services under Equal treatment Act 365/2004 Coll., however, there is no relevant data specific to harm reduction services provided in the aforementioned facilities.

**15. Are juveniles (those under the age of 18) subject to arrest, detention and imprisonment for drug-related crimes? For crimes relating to the acquisition, use or possession for personal use of drugs? If so, are they detained or imprisoned in facilities for children in conflict with the law who are under 18, or are they detained or imprisoned in facilities for adults? Can such juveniles be subjected to compulsory drug treatment or treatment with the consent of their families/legal guardians?**

Juveniles older than 14 may also be subject to arrest and detention and may face imprisonment or be mandated to enter protective treatment or protective re-education under Article 75 of the Criminal Code. Courts tend to use protective treatment or protective re-education in juvenile cases, but may also rule in favour of imprisonment, depending on the severity of a given drug offence.

Protective re-education is regulated in Article 103 of the Criminal Code and shall be provided in special re-educational institutions or may also be provided in a professional foster family; if, however, the health condition of the inmate makes it necessary, it is provided in a medical institution.

**16. What provision is in place for those drug users and their dependants who are detained in the context of migration in your State?**

There is no relevant data available on these issues in Slovakia.

**17. Are there any good practices being developed or implemented in your State in relation to drug-related detention and drug policies? If so, please provide examples.**

Slovakia has been following its National antidrug strategy 2013 – 2020, which is effective until the end of this year. Therefore, it is hard to say which direction the new administration will head regarding drug regulation. During the validity of the aforementioned National strategy, funding for harm reduction initiatives had decreased severely and no nationwide strategy has yet been discussed.

A coalition party SME RODINA has showcased a will to consider the first two cannabis detentions as misdemeanours rather than crimes but otherwise, drug policies will most likely not be the government's priority.

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<sup>3</sup> [http://www.emcdda.europa.eu/drugs-library/national-antidrug-strategy-slovak-republic-2013%E2%80%932020\\_en](http://www.emcdda.europa.eu/drugs-library/national-antidrug-strategy-slovak-republic-2013%E2%80%932020_en)



**18. Are there any new or emerging trends in drug-related detention and drug policies that could be addressed by this study?**

Slovakia has a great potential for improving its drug policy situation. In 2020, the National antidrug strategy 2013 – 2020 goes out of effect and it with the generational change in state administration, it will be interesting to see the development in the legal framework regulating drug-related offences. Current political leaders however, don't seem too eager to change the status quo of current prohibitionist drug policies.

Some new trends in drug policies and harm reduction services are visible in some self-governing regions, such as the Bratislava Region or the Trnava Region, where administrations increased public funding for social services including harm reduction services.

The social acceptance for certain drugs, e.g. cannabis, is visible especially with the young generation. According to European monitoring centre for drugs and drug addiction, in 2017, almost 10 % of young adults between 15 – 34 years old have used cannabis in the past year at least once.<sup>4</sup> This data also show, that drug use in Slovakia has not declined in the past decade, despite the best efforts of National antidrug strategy 2013 – 2020. With other states loosening strict drug regulations and investing more in harm reduction projects all over Europe, maybe it is time that Slovakia considers some changes in its drug policies as well.

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<sup>4</sup> European Monitoring Centre for Drugs and Drug Addiction (2017), Slovakia, Country Drug Report 2017, Publications Office of the European Union, Luxembourg