**Human rights challenges in addressing and countering drug problem in the Republic of Moldova**

# This report is drafted based on information about human rights violations documented by civil society and people who use drugs with the help of the electronic database REACT[[1]](#footnote-1) and the Eurasian Harm Reduction Association.[[2]](#footnote-2)

Person to contract: Vitali Rabincuk, email: puls.centre@gmail.com

# **Introduction**

The National Drug Strategy of Moldova aims at achieving a balance between punitive measures to stop drug supply and actions of social and medical support to people with drug dependence.[[3]](#endnote-1) Police instructions provide police officers with the power to refer people who use drugs to social and medical services[[4]](#endnote-2).

Despite these progressive documents, national drug policy remains inherently archaic, especially when it comes to drug enforcement. Because of outdated drug laws and police performance indicators, drug enforcement focuses on people who use drugs rather than commercial drug traffickers. In 2021, courts in Moldova convicted 777 persons for drug crimes, and 66.3% (613 cases) concerned drug possession with no intent to distribute. [[5]](#endnote-3)

As of October 2022, 874 persons, or 16.6% of all 5248 prisoners in Moldova (285 women, 4985 men, 36 minors), were in prison for drug crimes (36 women and 839 men).[[6]](#endnote-4)

People who use drugs, especially those with drug dependence, are very vulnerable to the misuse of police power. Punitive measures against people who use drugs have a disproportionate impact on the right to be free from ill-treatment, the right to be free from arbitrary arrests on the street due to appearance or previous convictions, and the right to a fair trial.

# **Violation of the right to be free from ill-treatment, in the context of drug enforcement.**

Moldova is one of the regional leaders in ensuring access for people who use drugs to harm reduction interventions, including opioid maintenance therapy in places of detention. However, there are documented cases that suggest that police officers misuse the condition of drug withdrawal or acute psychosis after the use of synthetic drugs to manipulate suspects with drug dependence and force them into confession or cooperation with the police. A study with expert interviews and interviews of people who use drugs points to such practices, including cases where the lack of police officers' attention to the health needs of an arrested person with drug dependence resulted in death. Respondents pointed to cases of interruption of opioid maintenance therapy due to police arrest and detention.[[7]](#endnote-5) In some cases, patients of opioid maintenance therapy are so scared of opioid withdrawal after the arrest that they are very vulnerable to police misuse of power, including offers by police officers to make self-incriminating statements in exchange for release from a police station. Former prisoners – clients of opioid maintenance therapy are especially vulnerable to a misuse of power.

# **Violation of the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.**

In Moldova, police may stop and frisk people, including harm reduction service providers, on the street based on their appearance because they "do look like drug users." Such stop-and-frisk tactics are especially prevalent during the police special operation "MAK" (ENG. Poppy), which is conducted annually as a showcase for the public.[[8]](#endnote-6) Unlawful arrests, based on a person's appearance and previous criminal history, rise at times of quarterly police reporting as an attempt by police officers to improve their performance indicators. Arbitrary arrests of people who use drugs based on a person's appearance are especially harmful to people who use synthetic stimulants.[[9]](#endnote-7) The use of stimulants may provoke psychosis and panic attacks. Police officers are often unaware of how to deal with people who use synthetic stimulants. They arrest and detain them, thus unnecessarily augmenting the adverse consequences of stimulant use.

# **Violation of the principle of equality of arms at drug trials.**

A part of the right to a fair hearing is the principle of equality of arms. This principle requires that there must be a fair balance between the opportunities afforded to the parties involved in a criminal trial – the defence and the prosecutor.

Establishing the quantity and quality of the street substance is critical in categorizing the offence as possession in small amounts (an administrative offense) and in large or extra-large amounts (criminal offenses). For drug crimes, especially those with the intent to distribute, the difference in punishment for large and extra-large amounts could mean many years of imprisonment. Drug possession without intent to sell, in amounts exceeding 2.5 grams of heroin, for instance, is punishable by up to 6 years in prison (Article 217(4b) of the Criminal Code of the Republic of Moldova). Possession with the intent to sell in any amount is a criminal offence. Possession with the intent to sell extra-large amounts is punishable with up to 15 years imprisonment. The extra-large amount for heroin is the amount exceeding 2.5 grams (Article 2171(4) of the Criminal Code).

According to the established practice in Moldova, the purity of the seized narcotic mixtures (street drugs) is rarely established. Most drug possession and drug supply cases concern tiny amounts of drugs, barely exceeding the threshold set by criminal laws to distinguish crimes from administrative offences. When the purity of the seized amount isn't established, police can 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 Moldova is no exception. Because of their high tolerance to opioids, people with drug dependence must purchase more significant amounts of street drugs, thus exposing them to harsher penalties — up to 6 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 de-facto punishes them for their dependence, clearly violating fundamental notions of fairness and potentially amounting to an arbitrary, disproportionate, and discriminatory deprivation of liberty.

When purity is not established, the defence is deprived of an opportunity to rely on Article 14(2) of the Criminal Code that provides for acquittal for minor offences — e.g., in cases where the purity is less than 1%. The defence simply cannot argue the case because the purity is unknown. In theory, the defence can order an alternative forensic examination of the seized substance, but such examination is costly, and courts may reject the results of such examination.

Thus, when the purity of the substance is not established, the defence is placed in an unequal position in violation of the principle of equality of arms. In addition, the principle that criminal law must not be extensively construed to an accused's detriment is also violated.

**Proposed Recommendations by OHCHR to State Parties**

Repeal discriminatory laws that provide for any form of punishment for any act committed in the context of drug consumption, such as

* non-medical drug use;
* possession of any amount of drugs with no intent to traffic; and
* the social distribution of drugs among a limited social group (usually among peers).

To prevent arbitrary and disproportionate use of sanctions and especially detention in drug law enforcement, prosecution, and sentencing, the legal definition of drug trafficking should clearly distinguish it from social distribution in the context of drug use. Such a definition of trafficking could include the purpose of systematic enrichment on a scale that significantly exceeds the suspect's basic needs and their family's basic needs.

In aid of making such vital distinctions, the law may specify threshold quantities of substances, but only to indicate when the engagement of law enforcement, rather than other social and health measures, may be in the public interest.

The law must be clear that defined threshold quantities cannot be applied to amount to de jure or de facto derogation from the right to a fair trial, including the presumption of innocence. For example, possession of a quantity greater than a set threshold amount cannot give rise to a legal presumption that possession was for the purpose of trafficking, nor can it suffice on its own to prove such an offense beyond a reasonable doubt.

1. https://react-aph.org [↑](#footnote-ref-1)
2. https://harmreductioneurasia.org/ [↑](#footnote-ref-2)
3. The document is available online: <https://www.legis.md/cautare/getResults?doc_id=121214&lang=ru> [↑](#endnote-ref-1)
4. This document is available online: <http://www.leahn.org/wp-content/uploads/2014/05/Manual-on-police-and-HIV.pdf> [↑](#endnote-ref-2)
5. General Prosecutor Office. Report for 2021, page 43. Online: http://procuratura.md/file/2022-03-21\_RAPORT%20de%20activitate%20FINAL.pdf [↑](#endnote-ref-3)
6. Ibid, page 40. [↑](#endnote-ref-4)
7. Оценка влияния наркополитики на общественное здоровье и эпидемию ВИЧ в Республике Молдова. Uniunea pentru Echitate in Sanatate (UES). 2023. In print. [↑](#endnote-ref-5)
8. Issues with respect to Lithuania, Belarus, and Moldova (In reference to HRC resolution 42/22 requesting a study on arbitrary detention relating to drug policies). Eurasian Harm Reduction Association.2020. Online: https://www.ohchr.org/Documents/Issues/Detention/Call/CSOs/Eurasian\_Harm\_Reduction.pdf [↑](#endnote-ref-6)
9. The use of synthetic stimulants is on rise in Moldova as in other countries of Central and Eastern Europe. For more information see Iatco, Ala. New psychoactive substance use in Moldova and Belarus: results from the Republic of Moldova. Vilnius: Swansea University, Eurasian Harm Reduction Association; 2019. Online: <https://harmreductioneurasia.org/wp-content/uploads/2019/12/Moldova-NPS-Research_ENG.pdf> [↑](#endnote-ref-7)