

Human rights challenges in addressing the drug situation in Eastern, Central, Southern Europe, Central Asia, and Transcaucasia

Submission on behalf of the Eastern and Central European and Central Asian Commission on Drug Policy (ECECADC)

ECECADC was established in November 2021 by a group of high-level leaders, including former Heads of State, politicians, scientists, diplomats, and philanthropists from the region.

The ECECADC is inspired by the Global Commission on Drug Policy and works in close collaboration with it. The ECECADC aims to inspire an open debate and promote evidence-based drug policy approaches across the region.

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Introduction

There is considerable variance in how countries in four regions of Eastern, Central, Southern Europe, Central Asia, and Transcaucasia, are affected by “the world drug problem” and their responses to this public health challenge.¹ However, what they face in common is a high prevalence of injection drug use (IDU) and serious epidemics of HIV and HCV affecting people who inject drugs (PWID).

With the notable exceptions of Russia, Uzbekistan, and Turkmenistan, all countries in these four regions have embraced harm reduction in principle and, to varying degrees, in practice. Harm reduction efforts have yielded impressive results even in some countries in which PWIDs have been most heavily affected by HIV, such as Ukraine.² However, these achievements would likely have been greater if not for the negative impact of the criminalization of drugs and people who use drugs.

Criminalization of drugs and discrimination against people who use drugs

Every country in each of the four regions retains and enforces punitive drug laws. Mere drug *use* is not an offense in most countries in the four regions. But all countries in each of the four regions prohibit simple *possession* (i.e. for personal consumption) of narcotic drugs and psychotropic substances, but the enforcement and the severity of punishment vary greatly from country to country, even within the same region.

Most countries in all four regions apply legally defined threshold quantities of drugs either to delineate administrative liability from criminal liability for simple possession or to decide between prosecutions and employ social or medical alternatives. Threshold quantities are also used to determine whether a charge of trafficking (or possession for the purpose of trafficking) will be laid, and the severity of sanctions for trafficking if convicted. Selection of the threshold quantities is very rarely based on science, even though the body defining the quantities is often part of the national public health agency.³ In many instances, threshold quantities are set so low that they do not correspond realistically to common possession and consumption patterns and practices,

¹ We follow the regional groupings used by the United Nations Office on Drugs and Crime (UNODC) in its annual World Drug Report in referencing and presenting global data.

² UNAIDS, “Data: Ukraine,” 2020. Available at: www.unaids.org/en/regionscountries/countries/ukraine.

³ D. Nutt, “The role and basis of the drug laws,” *Prometheus* 28:3 (2010): 293-297. Available at: <https://doi.org/10.1080/08109028.2010.518052>.

undermining the ostensible objective of avoiding criminalization of people who possess drugs for personal use.

Although the use of threshold quantities can greatly reduce the disproportionate focus of the national drug control system on petty crimes related to personal drug use rather than on drug trafficking, this is insufficient on its own to re-balance national drug policies. The major drug policy issue is, not how proportionate the threshold amounts are, or how many alternatives to prosecution and/or harsh sentencing are technically in place, but who calls the shots — law enforcement or health. The prohibition of drug use, whether directly or indirectly through a prohibition on simple possession, always invites law enforcement to dominate and overpower the health bodies in making the decisions that affect the health of individuals who use drugs and public health at the societal level. When law enforcement dominates the field, concerns for public health and human rights are only mitigating factors at best. In countries where concern for public health and human rights is somewhat stronger — such as in Western Europe and to some extent in Central Europe — the domestic drug policy tends to be less harmful, as can be observed in Portugal. In Eastern, South-Eastern Europe, Transcaucasia, and Central Asia, law enforcement remains an overwhelmingly powerful player in all areas of drug control, with public health agencies and concerns subordinate.

The lack of police discretionary power in Eastern, South-Eastern Europe, Central Asia, and Transcaucasia makes it much more difficult to refer people who use drugs from the criminal legal system to social support and public health responses, meaning opportunities to mitigate the negative impact of drug criminalization on human rights and public health may be missed.

Harms of imbalanced drug laws

Drug laws and their enforcement are too often focused on people who use drugs, rather than those who are engaged in other harmful criminal activity in the context of commercial drug trafficking.

Laws that criminalize drugs, and people who use them, make people vulnerable to human rights violations, prevent them from accessing health services, and lead to drug-use practices that pose a greater risk of overdose and of acquiring and transmitting infections such as HIV and HCV. With law enforcement dominant, there is little to mitigate the inherently imbalanced and harmful laws criminalizing simple possession, leaving people who use drugs highly criminalized and disproportionately represented in police arrests and prison populations.

None of the countries in the four regions of focus provide adequate access to pain relief medications because of the burdensome drug control regulations that doctors must observe to prescribe pain medications containing controlled substances, including unnecessary reporting requirements.

Drug Policy Mandates of the Regional Intergovernmental Organizations

Arguably, the EU is the only successful intergovernmental organization that has managed to promote the idea of a balanced drug policy down to the national level of its members. In the other three regions we're focused on here, there has rarely been any serious attempt to move drug laws and policies away from harsh law enforcement and punishment to public health, human rights, and science. Even where such reforms have had some degree of success, such as in Ukraine or Kyrgyzstan, law enforcement continues to significantly overpower public health. Unlike with respect to promoting harm reduction, large international donors have been quite timid in promoting broader drug policy reforms. Regional intergovernmental organizations tend to adopt and encourage drug laws and policies that reflect those of countries that are the regional power players. Within the EU, such projections reflect the fairly balanced drug policies of countries such as Germany, Denmark, France, Spain, and the UK (before it exited the EU), with the scientific support of the

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). Eurasian countries outside the EU, however, have felt a greater influence from such regional power players as Russia and China, whose approach to drug policy is either based purely on stigma and punishment, with profound disrespect for human rights and science as in Russia,⁴ or a marginally more balanced approach of China, which actively promotes harm reduction interventions but at the same time retains harsh drug enforcement with little or no respect to human rights, including a strong commitment to such practices as public executions to commemorate the UN's International Day Against Drug Abuse and Illicit Trafficking,⁵ contrary to established international human rights law regarding the death penalty.⁶

The Council of Europe (CoE) — an organization that may potentially project the drug policy principles of the EU — is counterbalanced by other regional intergovernmental organizations whose focus on military, state security, and law enforcement cooperation is much stronger than that of the CoE. The Commonwealth of Independent States (CIS) promotes drug laws, policies, and treatment practices reflective of those in the Russian Federation. Another regional organization that serves to project Russia's drug policy approach is the Collective Security Treaty Organization (CSTO). The Shanghai Cooperation Organization (SCO), an organization that projects the drug policies of both China and Russia, has three levels of drug law enforcement cooperation on a wide spectrum of issues from drug trafficking to drug treatment.

Conclusions and recommendations

Punitive drug laws and their enforcement practices **do not** lead to the reduction of drug supply or demand but do increase prison populations, massive violations of human rights, and growing epidemics of HIV, viral hepatitis, drug-resistant tuberculosis, and, in some settings, overdose from increasingly toxic illegal drug supplies.

Drug laws and policies should provide for **socio-medical and human rights-based approaches to drug use, including harm reduction and overdose prevention programs rather than punitive law enforcement methods. Drug policy reforms should include the following:**

- **Remove all criminal and administrative sanctions for drug use, possession of drugs for personal use, and possibly social distribution of drugs in the context of social use.**
- **Limit the scope of so-called “drug propaganda” laws, so that they do not prevent public access to accurate information about drugs and possible ways to reduce harm from their use.**
- **Immediately provide legal, political, and financial support to make available, accessible, acceptable, and of good quality, for all those in need, all the interventions in the WHO-recommended comprehensive package for HIV and HCV prevention among people who inject drugs.**

⁴ For more information about the suppression of science by drug enforcement in Russia, see Canadian HIV/AIDS Legal Network and Andrey Rylkov Foundation, *Communication to the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the UN Independent Expert in the Field of Cultural Rights regarding violation by the Government of the Russian Federation of the right to enjoy the benefits of scientific progress and its applications*, 2012. Available at:

www.hivlegalnetwork.ca/site/when-science-is-just-a-decoration-russian-drug-policy-the-right-to-scientific-progress/?lang=en.

⁵ Z. Keck, “Ahead of International Drug Day, China Executes 6,” *The Diplomat*, June 27, 2013. Available at: <https://thediplomat.com/2013/06/ahead-of-international-drug-day-china-executes-6/>.

⁶ Using the death penalty to fight drug crimes violates international law, UN rights experts warn, 7 October 2015, Geneva. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16581&LangID=E>.

- **Stop the widespread practice of immediate, automatic termination of parental rights of parents who use drugs or who are drug dependent and provide such parents and families with social and medical support as a first-line response.**
- **Repeal laws that discriminate against people with drug dependence based on their diagnosis, including the practice of mandatory registration of people who use drugs and the subsequent disclosure of their registration to law enforcement, employers, and educational and licensing institutions.**
- **Formulate guidelines that provide direction to relevant actors on taking a human rights–based approach to drug control,⁷ and devise and promote rights-based indicators concerning drug control and the right to health.**

⁷ See for example *International Guidelines on Human Rights and Drug Policy*. UNDP, 2020. Online: <https://www.undp.org/publications/international-guidelines-human-rights-and-drug-policy>