

Ukraine

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Coalition of NGOs submitting the report:

NGO «Association of STA of Ukraine»

“All-Ukrainian League “Legalife”

“Aeneas” Club

“HIV-service organizations’ coalition”

“Odessa human rights organization “Veritas”

“Penitentiary initiative” NGO

“Fulcrum ” NGO

This report is prepared by the coalition of NGOs, whose expertise is related to the management, monitoring and assessment of programs, aimed at counteracting HIV/AIDS epidemics in Ukraine

Report goal is bringing together the efforts of civil society in providing harmonized recommendations, implementation of which will enable improving in situation with human rights protection in the area of HIV/AIDS prevention and treatment in Ukraine.

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1. Epidemic situation with regards to HIV/AIDS

1. Since registering the first HIV case in Ukraine in 1987 and till the end of 2010 almost 182,000 cases of HIV-infection have been registered among population, including 37,000 of AIDS and 21 thousand of lethal cases caused by it.
2. In 2009-2010 increase in number of HIV-infected persons, identified due to clinical manifestations of the disease, has been registered (22 and 26 % respectively).
3. TB, as before, remains the most AIDS-inductive disease; it is registered in 3,609 out of 5,861 (61,6%) of all newly diagnosed cases of AIDS, including 1,568 out of 2,620 (59,8%) of first-diagnosed HIV-infection at the stage of AIDS.
4. Analysis of HIV-infection reveals that this infection challenges the whole system of health care: the rates of HIV/AIDS epidemics spreading are higher than the rates of implementing measures of counteraction, including antiretroviral therapy (hereinafter - ART) for all those who need it. The death caused directly by AIDS-related diseases, have become a real threat for thousand HIV patients: in 2010 3,096 persons died of AIDS, including 19 children.
5. The number of HIV-infected, under medical care by 01.01.2011 constitutes over 110,000 people (242.0 per 100 thousand of population); over 14,000 have been diagnosed with AIDS (30.8 per 100 thousand of population).¹

2. Policy and legislation with regards to HIV

6. Legislation currently in force in Ukraine with respect to HIV/AIDS counteraction allows taking certain positive steps to protect the rights of people affected by HIV and to ensure favorable environment for nationwide struggle with HIV/AIDS.
7. In 2009 the National Program for Ensuring HIV Prevention, Treatment and Support HIV and AIDS Patients for the period 2009-2013 was adopted by Law. In 2010 the Verkhovna Rada passed the amendments to the Law On Preventing AIDS and Social Protection of Population. The law was made public in the new version and under the new title On Combating Spreading of Diseases Caused by HIV and Providing Legal and Social Protection to People Living with HIV.
8. In the previous years the programs for funding of HIV treatment in Ukraine were financed by 50%: in 2008 – 41%, 2009 – 48%, 2010 – 53 %, 2011 – 46%. In 2012 for the first time of combating HIV in Ukraine 100% access to treatment for people living with HIV has been achieved.
9. At the same time the legislation with respect to HIV epidemics contains contradictory provisions which deserve special attention:
 - Provision requiring refoulement from Ukraine of HIV-infected foreigners and stateless persons, whose behaviour poses danger to health, rights and lawful interests of Ukrainian citizens.

- Provision on criminal responsibility for intended endangering of other person in terms or contaminating him/her with HIV; the infected person must “confirm the fact of being familiarized with this information in writing”. The fact that signing of this form stigmatizes the signer and can become serious motivation against HIV testing is most alarming.

10. Some legal initiatives also provide grounds for concern. In 2011 the Verkhovna Rada received two draft laws for consideration: MPs submitted a draft law № 8711 on banning propaganda of homosexuality, while the government submitted the draft law on increasing liability for prostitution. If passed these laws might entail banning of preventive work, aimed at HIV-positive men practicing sex with men, increase in homophobia and further marginalization of commercial sex workers.

Recommendations:

- ✓ Excluding the provision concerning criminal responsibility for intended endangering of other person with potential HV-infection and actual infecting from the law. Focusing the law on the right to get post-testing counselling and other support to prevent further spreading of virus and other negative consequences related to HIV-status.
- ✓ Excluding the provision requiring refoulement from Ukraine of HIV-infected foreigners and stateless persons from the law. This provision can be misused and lead to discriminatory practices.
- ✓ Targeting the efforts of the state at setting up the monitoring research system with the goal of assessing the rates and standards of HIV/AIDS treatment.

3. HIV/AIDS problems in the penitentiary institutions

11. In order to comply with the National Program for Ensuring HIV Prevention, Treatment and Support of HIV and AIDS Patients for the Period 2009-2013 State Penitentiary Service developed respective departmental program.

12. Under the data collected by State Penitentiary Service of Ukraine in 2011, the penitentiary institutions housed 6,500² inmates with HIV and AIDS. Only 13% of them received the vitally needed medication (ART).

13. The problem with treatment arises when convicts treated with ART received their treatment in AIDS centres of one oblast', and are serving their term in another. Absence of normative mechanisms for medications' transfers from one oblast' to another leads to interruptions in inmates' treatment. The same scenario applies in cases when convicts are transported, and their journey lasts over a month; in cases when convicts are transferred from one correctional facility to another.

14. Departmental programs for counteracting TB in the penitentiary institutions and pre-trial detention centres were devised for the period of 2007-2011 to improve the situation.

15. However, due to absence of ultra-sound diagnostic devices in the majority of medical centres, the extra-pulmonary TB diagnostics is not conducted. As a result, diagnoses are delayed as well as treatment.

16. Despite prohibition illegal drugs are circulating in the penitentiary institutions. Often the drug addicts are infected with HIV in these penitentiary institutions. Meanwhile the programs of prevention (replacement therapy, needle exchange) are not in place.

17. The majority of measures for HIV prevention (distributing condoms, introducing learning programs, “peer-to-peer counselling” etc) in the penitentiary institutions is introduced mainly by the NGOs with charitable funds. The state does not participate in funding for these programs.

Recommendations:

- ✓ Increasing accessibility of diagnostics and medical counselling with regards to HIV/AIDS for the convicts;
- ✓ Implementing the programs of replacement therapy and needle exchange in the penitentiary institutions.
- ✓ Ensuring availability of extra-pulmonary TB diagnostics.

4. Repressive narcotic policy, its negative effects on legal status of drug addicts and efficiency of HIV/AIDS counteraction in Ukraine

18. In December 2010 Parliament of Ukraine passed new progressive version of the Law On Combating Spreading of Diseases Caused by HIV, Legal and Social Protection for the People Living with HIV, under which the state guarantees prevention of HIV spreading through harm reduction programs, which among other measures, envisage the use of replacement therapy for the persons, suffering from drug addiction and setting up conditions for the exchange of used needles and syringes for the disposable ones”³.

19. Extremely severe Ukrainian legislation with respect to drug use and illegal drug circulation does not allow for efficient counteraction to HIV/AIDS epidemics in Ukraine and ultimately marginalizes illegal drug users (IDU), making them one of the most vulnerable categories in Ukraine.

20. Under official statistic data, as of January 1, 2011 the ratio of the convicts in Ukraine serving their terms for crimes requiring incarceration constitutes 19,06% of the total number of convicts (20,707 out of 114,688 persons). It is noteworthy that in 2006 respective figure amounted to 12,6% (19,387 out of 160,725 persons). Obviously the dynamics of increase is related to drug use and traffic.

That’s why the number of HIV-positive among convicts and detainees in Ukraine in 2012 reached the number of 6,890 persons, i.e. over 5% of the total number of inmates of penitentiary institutions⁴.

21. In October 2010 in compliance with Ministry of Health order, the new version of the Charts of Small, Large and Extra-Large Quantities of Drug Substances in Illegal Circulation (the Chart) was adopted. As a result, the quantities of the opioid injective drugs, most widely used in Ukraine (opium and acetylene opiate), entailing criminal responsibility, were decreased 5-20 times respectively⁵.

22. While implementing changes into the Chart the data of UN International Narcotics Control Board were not taken into account, and established acceptable quantities were 100-300 lesser than respective numbers in Russian Federation⁶ or in EU countries⁷.

23. Recommendations of UN Commission on Narcotic Drugs (p. 6 of resolution 53/9 of 10.03.2010), and UN Committee on Economic, Social and Cultural Rights (final remarks at the 39th – session for Ukraine (E/C.12/UKR/CO/5) (p. 28)⁸ *on eliminating factors hindering achievement of the goal of ensuring access to services related to HIV prevention, treatment, care and relevant support, so that HIV-positive people or those running higher risk of infection, including drug users, could use available services*⁹ are not fully fulfilled by the state.

24. As a result of such unreasonable actions the level of IDU criminalization has increased respectively 5-20, as this group includes major number of opiates' users. A used syringe might contain the drug quantities, sufficient to bring a person to criminal liability and penal action, including incarceration up to 3 years. As a result, the IDU have solid grounds to be afraid of keeping the used syringes and bringing them for exchange within the framework of programs, supported mainly by The Global Fund to Fight AIDS, Tuberculosis and Malaria.

25. This situation leads to specific negative impacts for HIV/AIDS preventive programs. One year later after the implementation of the new Charts the portion of used syringes brought by the addicts to exchange centres decreased almost twice (from 28 to 15%). Absolute figures show that the number of submitted used syringes reduced by 1 million pieces¹⁰. The syringes, left in the streets, pose serious danger in terms of HIV-infection, hepatitis and other contagious diseases.

26. National Council on counteracting HIV/AIDS and TB under the Cabinet of Ministers as early as on November 11, 2010 passed a recommendation to the Ministry of Health to revise its decision and establish reasonable Charts¹¹. Regrettably, this recommendation was never fulfilled.

27. International Alliance for HIV/AIDS in Ukraine initiated a trial, aimed at classifying the Ministry of Health order № 634 of 2010, in the part concerning reduction of acceptable quantities of certain drugs, as violating a number of laws and contrary to European Convention provisions. At present, however, the courts of the first and appellation instances declared this order legal¹².

28. Under the legislation and WHO documents, drug addiction is a disease, that's why applying criminal punishment, especially such severe as incarceration, to sick people, can be absolutely classified as discrimination on health condition. Article 14 of the European Convention,

International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights oblige member states to ensure these rights without any discrimination.

29. If the countries of EU stipulate fines or administrative penalties for storing drugs, in Ukraine it means imprisonment. This state of matters is contrary to the declarations of humanization in criminal justice and orientation towards high European standards and to the practice of European Court, which often stressed its position, i.e. one of the tasks of Article 5 (right to liberty and security of person) is to guarantee protection from arbitrariness, while Article 14 declares prohibition of discrimination; Commentaries to the UN Convention on Narcotic Drugs of 1961, Commission on Narcotic Drugs resolutions, position of the International Narcotics Control Board, under which the use of controlling measures should be harmonized with human rights standards and not come in conflict with them.¹³

30. The increase in the rate of drug addicts criminalization in Ukraine due to cardinal reductions in acceptable quantities of opioids is contrary to provisions of p. 58 of UN Declaration of Commitment on HIV/AIDS (adopted by resolution S-26/2 of the special session of the General Assembly of June 27, 2001), which calls for “ensuring by 2003 passing, approving and compliance with relevant legislation, provisions and other measures for the elimination of all forms of discrimination with regards to HIV/AIDS affected people and members of vulnerable categories of society, so that they could fully exercise their human rights; specifically, ensuring their access to...health care, social and medical services, prevention, treatment, support, information and legal protection in accordance with principles of confidentiality and immunity of private life; developing strategies overcoming stigmatization and social isolation caused by epidemics”.

31. According to statistical data of State Judicial Administration of Ukraine, in 2011, 154 35674 persons in total were convicted for criminal offenses; 25,487 (16,5% of all the convicts) – for illegal drug circulation. 13,013 persons (8,5 % of the total number) were convicted for personal drug use (possession of drugs in quantities larger than insignificant – p.1 art. 309 of the Criminal Code of Ukraine)¹⁴. In the predominant majority of cases the quantities leading to arrests were much smaller than 24-hours doses used by drug addicts.

32. State expenses for investigation, criminal proceedings and detention of drug addicts in the penitentiary institutions amount to hundred millions hryvnas. Ukrainian taxpayers' money are used to fight sick people, not narcotic illegal business. The excessive criminalization of drug users thus becomes a heavy burden for Ukrainian economy, diminishing the efficiency of struggle against organized illegal drug dealing.

33. If criminalization of drug users is mitigated, the money used for investigation, criminal proceedings and detention of drug addicts in the penitentiary institutions can be used for resolving acute social problems, in particular, for prevention and treatment of drug addictions, which, subsequently, will lead to overcoming HIV/AIDS epidemics.

Recommendations:

- ✓ The state should guarantee appropriate compliance with p. 51 of the recommendations issued by UN Committee on Economic, Social and Cultural Rights (E/C.12/UKR/CO/5) with regards to immediate measures concerning availability and accessibility of HIV-prevention programs, banning of discrimination of people living with HIV/AIDS and high risk groups, enhancing availability of substitutive therapy and other services of HIV-prevention for drug addicts.
- ✓ The state should revise repressive approaches in counteracting drug use and illegal circulation and combine its efforts in combating organized narcotic related crimes, granting drug addicts opportunity to use harm reduction services, including substitutive therapy.
- ✓ “Charts of small, large and extra-large quantities of drug substances in illegal circulation” should be revised immediately, with the goal of establishing their adequacy to public hazard related to drugs storage and personal use.

5. Insufficient accessibility of HIV-prevention and drug treatment for teenagers

34. In 2010 objective assessment of maximum number of teenagers – injective drug users at the age of 10 to 19 in Ukraine identified about 50 000 persons. The number of boys-IDU amounts to 35 thousand, and girls – IDU – to 15 thousand¹⁵.

35. Within the framework of 46th session in its assessment in February 2011 of forth periodic review with regards to Ukraine’s compliance with UN Convention on the Rights of the Child, the Committee on the Rights of the Child pointed out the absence of adequate access to HIV/AIDS prevention, drug treatment and rehabilitation services for drug addicts of young age. Committee expressed its concern with existence of normative barriers, hindering young people’s access to these services¹⁶.

36. No substantial changes in the legislation or state system of aforementioned services for teenage drug users have been implemented in Ukraine by the time when this report was compiled. It means that this vulnerable category of population still has restricted access to HIV/AIDS prevention, drug addiction treatment and harm reduction therapy.

Recommendations :

- ✓ The state should fully comply with recommendations of the Committee on the Rights of the Child with regards to Ukraine’s realization of UN Convention on the Rights of the Child, to ensure adequate and efficient access to HIV/AIDS prevention, drug addiction treatment and harm reduction therapy.

- ✓ Competent authorities should immediately proceed to implement the recommendations of the Committee on the Rights of the Child with respect to setting up specialized services for children and young people, addicted to drugs, in terms of treatment and harm reduction; ensuring legal norms which would not restrict access to these services; amending the laws criminalizing children for possession of drugs for personal use; preventing cruel treatment of children from high-risk groups by law-enforcement bodies (p.60).

6. Violation of rights of drug-addicts treated with replacement therapy (RT)

37. Currently over 6,700 drug addicts undergo treatment in Ukraine.¹⁷ Meanwhile the number of patients, officially registered as persons dependent on opioids, amounted to 56,973 persons as of 01.01.2011¹⁸, while estimated number of IDU in the country constitutes 290,000 individuals. Despite the fact the RT program in Ukraine is regulated by two Laws and guaranteed by the state, systematic and numerous cases of law-enforcement bodies' interference with the program have been registered over the years 2010-2011 in Ukraine.¹⁹

38. Illegal arrests of RT programs' patients, including in the medical care facilities, their searches and checks as to their participation in illegal drug circulation without legal grounds remain serious problem. Militia officials organized systematic watches at the entrance to medical facilities which offer RT programs, with the goal of unjustified detentions of the patients. Thus they interrupt the treatment regime and inconvenience patients.

39. Militiamen presence in the places where RT programs are run, illegal requests of obtaining medical histories of the patients with all their personal data, including HIV-status, from clinic administration; mass bringing of patients to militia wards for interrogation and routine inquests as to their involvement in unresolved crimes; psychological pressure and threats – all that, lamentably, has become inalienable part of everyday struggle of RT program participants, individuals and organizations who help to promote this treatment in the country.

40. In 2010 and 2011 the facts of militia and prosecutor's office interference into RT programs have been registered. This interference was warranted by the orders of president of Ukraine Administration and Ministry of Interior.²⁰

41. Medical staff working in RT programs is subjected to persecution, arrests and even several-months' detentions²¹. Officials from the Ministry of Interior express publicly their negative attitude to RT programs, which has a very negative impact on law-enforcers at the local levels²².

42. Such actions lead to the utmost intimidation of RT programs staff, which is reluctant to spread this treatment further, because of fear to be exposed to pressure or persecution by law enforcement bodies.

43. Continuity of RT program is seriously jeopardized when a patient has to be hospitalized in non-specialized medical facility, leave the city, or is detained by militia. The system of supplying narcotic drugs within RT on prescription operates in two cities only; in the rest of regions it isn't done at all.

44. Absolute unavailability of RT programs in the penitentiary institutions poses another problem. Prime-Minister in February 2011 gave an order to the Ministry of Health to convoke an interdepartmental working group with public representatives with the goal of devising amendments to normative and legal acts, enabling dissemination of RT programs and adequate control for drug (narcotics) circulation used in them.

45. Currently the mechanism for providing RT programs for the inmates of penitentiary institutions is not in place, and neither is a relevant normative act in the instructions of concerned agencies, i.e. MHU, MIU, Department of Punishment Execution. Additional funding for guards who would accompany inmates in their treatment is not provided; medical staff is scarce and the procedure for obtaining permit for drugs handling is not developed.

46. As a result, people ending up in custody experience severe physical and psychological suffering due to impossibility of continuing their treatment.

47. Despite the provisions of National Program for Counteracting HIV/AIDS, currently RT programs cover twice less patients than stipulated by the law. Many IDU are deprived of a chance to participate in this efficient treatment, doomed to stay in criminal environment, while efficiency of measures aimed at HIV/AIDS prevention and narcotic addiction treatment leaves much to be desired.

Recommendations:

- ✓ Ensuring realization of rights for participants and providers of harm reduction and RT programs; non-interference of law-enforcement bodies into their operation.
- ✓ Ensuring in practice continuity of RT treatment in the situations when a patient cannot come to a clinic (due to disease, hospitalization in general hospital, detention or incarceration etc.)
- ✓ Ensuring availability of prescribed drugs for the patients within RT programs.

7. Disability, HIV and human rights in the penitentiary institutions.

48. Convention on the Rights of Persons with Disabilities was adopted by resolution 61/106 of the General Assembly of December 13, 2006. Ukraine has undertaken commitment to comply with international standards with regards to rights of people with disabilities, by ratifying the Convention.

49. Article 25 of the Convention stipulates that member states shall take all the measures necessary for ensuring access to health care services for the people with disabilities, with due consideration of gender specifics, including rehabilitation.

50. HIV-positive people in penitentiary institutions usually suffer a number of other diseases leading to partial or complete loss of ability to work. Often they are certified and granted respective group of disability.

51. The terms for re-examination of people with disabilities are established according to p. 22 of the Regulations on Procedure, Order and Criteria for Establishing Disability, approved by the Cabinet of Ministers by order № 1317 of 03.12.2009. If the disability term comes to an end and re-examination has not been performed, a person loses the status of disabled, which entails the loss of respective benefits and compensations.

52. In pre-trial detention centres the re-examinations are performed by medical-social expert board extremely rarely, while procedure for establishing the degree of disability is not used at all. A sick person, upon losing his/her status, is denied necessary protection and social assistance from the state. The expert re-examination or establishing the degree of disability is performed by treatment/labour commissions under Regulation for Treatment/Labour Commissions approved by the order of State Department of Ukraine for Execution of Punishments of 18.01.2000, № 3/6.

53. Individuals with established disability, serving their terms in penitentiary institutions, are not entitled to pensions; pension is paid only after their discharge and submission of relevant petition to the bodies of social security (joint order of MHU and State Department of Ukraine for execution of punishments № 79/91 On Instruction for Expert Re-Examination Procedure for Disabled Individuals in Correctional Facilities).

54. Taking into consideration all the aforementioned one can conclude that Ukraine fails to comply with its international commitments, violating human rights and rights of people with disabilities with regards to individuals incarcerated in pre-trial detention centres and penitentiary institutions.

Recommendations:

- ✓ Amending normative and regulatory acts of Ukraine with procedures for establishing the group of disability for people kept in pre-trial detention centres.
- ✓ Introducing changes into normative and regulatory acts, ensuring social guarantees, including entitlement to pensions and other social benefits for people with disabilities, qualified as such in pre-trial detention centres or penitentiary institutions.
- ✓ Including HIV IV stage into the list of diseases making a person eligible for disability.

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<http://dssz.gov.ua/index.php/uk/operatyvna-informaciya/415-35>
- ² Report “Information on meeting the outcome indicators characterizing implementation of budget program by State Penitentiary Service of Ukraine in 2011
- ³ <http://zakon1.rada.gov.ua/laws/show/2861-17>
- ⁴ National report on narcotic drugs situation (data from 2010) for European monitoring center on drug use and addiction REITOX 2011. Ukrainian monitoring and medical center on alcohol and narcotics , Ministry of Health of Ukraine p.70
- ⁵ http://www.aidsalliance.org.ua/ru/news/pdf/20fold/Infonote_drugpolicy_16.11.10_eng.doc
- ⁶ Resolution of the Government of Russian Federation of 7 February 2006 . N 76 “On Approving large and super large quantities of narcotics and psychotropic drugs for the goals defined by articles 228, 228¹ and 229 of the Criminal Code of Russian Federation.
- ⁷ Threshold quantities for drug offences, The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). 2011. <http://www.emcdda.europa.eu/html.cfm/index99321EN.html>
- ⁸ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/400/45/PDF/G0840045.pdf?OpenElement>
- ⁹ http://www.unodc.org/documents/commissions/CND-Uploads/CND-53-RelatedFiles/E2010_28rV1052084.pdf
- ¹⁰ Information on exchange of the used needles. MBF 2 International HIV/AIDS alliance in Ukraine № 366 of 21.03.2012
- ¹¹ <http://dssz.gov.ua/index.php/uk/nacionalna-rada/diyalnist-nacrady/500-11-2010-a1>
- ¹² http://www.aidsalliance.org.ua/ru/news/pdf/appeal/Court_verdict_eng_19.09.2011.pdf
- ¹³ Report of UN Executive Director on drugs and crime for the UN Commission on narcotic substances. March, 2010 .E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1. para 23 http://www.unodc.org/documents/commissions/CND-Uploads/CND-53-RelatedFiles/ECN72010_CRP6eV1051605.pdf
- ¹⁴ Letter of State Judicial Administration of Ukraine to the International HIV/AIDS alliance in Ukraine № 8-1223/12 of 13.03.2012
- ¹⁵ Assessment of number of young people and children at the age of 10-19, belonging to risk groups. Kyiv, 2011 (p. 27). http://www.unicef.org/ukraine/Ocinka_chiselnosti_ditey_ukr.pdf
- ¹⁶ COMMITTEE ON THE RIGHTS OF THE CHILD. Fifty-sixth session. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION. Concluding observations: Ukraine. <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.UKR.CO.4.doc>
- ¹⁷ <http://www.uiphp.org.ua/media/1475>
- ¹⁸ National report on narcotic drugs situation (data from 2010) for European monitoring centre on drug use and addiction REITOX 2011. Ukrainian monitoring and medical centre on alcohol and narcotics , Ministry of Health of Ukraine p.34
- ¹⁹ http://www.aidsalliance.org.ua/ru/news/pdf/openappeal2011/President_problems_21%2001%202011_eng.pdf
- ²⁰ <http://www.hrw.org/news/2011/02/08/letter-president-ukraine-viktor-fedorovych-yanukovych>
- ²¹ <http://www.hrw.org/world-report-2011/ukraine>
- ²² <http://www.youtube.com/watch?v=wcZIE4norUw&feature=channel>