

DRUG LAWS AND POLICIES IN THE REPUBLIC OF MOLDOVA AND THEIR IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS

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EMERGING ISSUES

Penalization of drug possession for one's own use

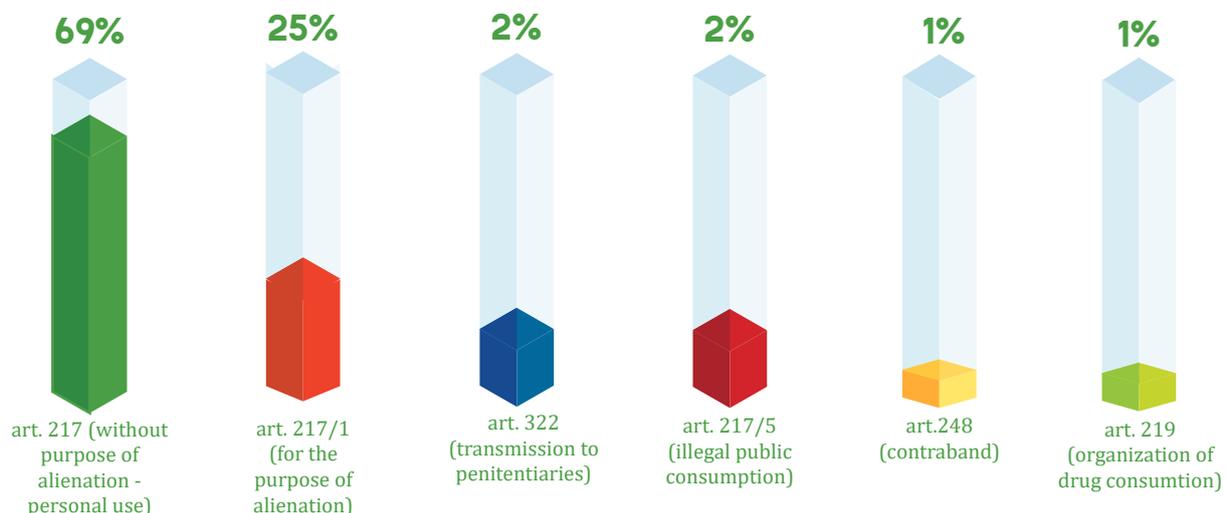
Illicit drug use and trafficking remain a problem that negatively influences our society's sustainable and safe development. Penalizing drug use or imposing punitive measures against drug use have a disproportionate impact on the right to health of people who are dependent on drugs and the right not to be tortured or treated in an inhuman or degrading way. The solution proposed is the treatment, rehabilitation and not the punishment in any form and / or imprisonment of the person.

Drug laws and their implementation in Moldova focus on people who use drugs, rather than those who are involved in commercial sales for systematic enrichment purposes. The following open issues remain:

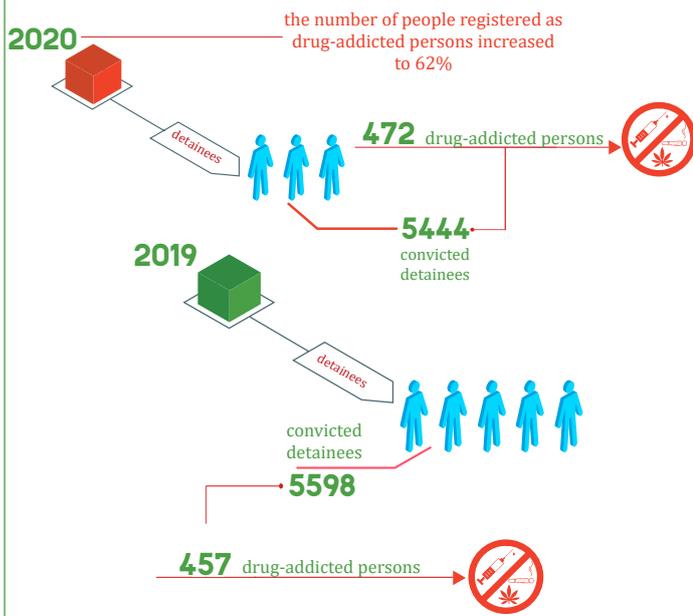


Official data on crimes proves that most of the cases investigated by the criminal prosecution bodies in the field of drugs fall under the category of the least severe and minor crimes. These crimes relate to consumption of drugs and not to trafficking.

The number of cases brought to court regarding the illegal circulation of drugs (registered in 2020)



In August 2021, as a result of an analysis of the activity of some institutions in the anti-drug field, carried out by the National Anticorruption Center (CNA), several serious problems were highlighted:



The Ministry of Internal Affairs is responsible for monitoring the implementation of the actions provided for in the national anti-drug action plans, for exchanging data and information with members of the National Anti-Drug Commission. Despite this, it does not hold all the necessary information, accurate and true, not even about the criminogenic situation in the country, or refuses to disclose this data to the general public. The Ministry of Internal Affairs database contains inaccurate data on crime in the field of illegal drug trafficking.

Disclosures in the media about the involvement of officials in illicit drug trafficking (police, prosecutors, judges, etc.) for the most part remain without an adequate response from the competent authorities. The investigation of the cases concerning the officials involved is delayed. The course and stages of these investigations are not disclosed to the public.

SUGGESTED RECOMMENDATIONS

Directing the efforts of the law enforcement system to counter the drug sales for systematic enrichment.

DESCRIPTION OF THE ISSUES

The lack of alternatives to conviction or punishment for drug-use related offenses

Public policy makers in many countries are looking for alternative approaches to conviction and punishment for drug-use related offenses. This search is likely to be further spurred by a recent call by the coordinating body of the United Nations (UN) for all member states to 'promote alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use'.

As an alternative measure to criminal punishment, the Criminal Code provides for the possibility of being treated only if the person has already been convicted. Only in such cases, the execution of the sentence will be conditionally suspended (Art.90 of the Criminal Code).

Regarding the application of punishments, in the context of promoting alternatives to detention of persons who have committed crimes associated with drug use, the release of the person from criminal liability and criminal punishment as a means of simplifying justice (both at the stage of prosecution and at the judicial stage) provided by law in the Republic of Moldova, is almost restricted in the case of drug users.

In conclusion, it is requested to amend the criminal and procedural criminal legislation so that persons who have committed crimes associated with drug use voluntarily choose the path of treatment and rehabilitation, and the state to offer these possibilities, identifying those "alternative measures" and creating mechanisms for control and supervision of their execution.

SUGGESTED RECOMMENDATIONS

1

Create legal possibilities to include in the integrated medical and social services the persons who have been subjected to the contravention liability for drug use in small quantities and specifying the types of social services (Art.85 of the Contravention Code).

2

Develop integrated medical and social services for drug-use offenders.

3

Amend laws, regulations and policies to provide explicitly that treatment may be ordered as an alternative to condemnation and punishment for drug-use offenders, rather than in addition to condemnation.

4

Amend laws to make the possibility of applying the alternatives to conviction or punishment, with an element of drug treatment, at each of the stages of the criminal justice process.

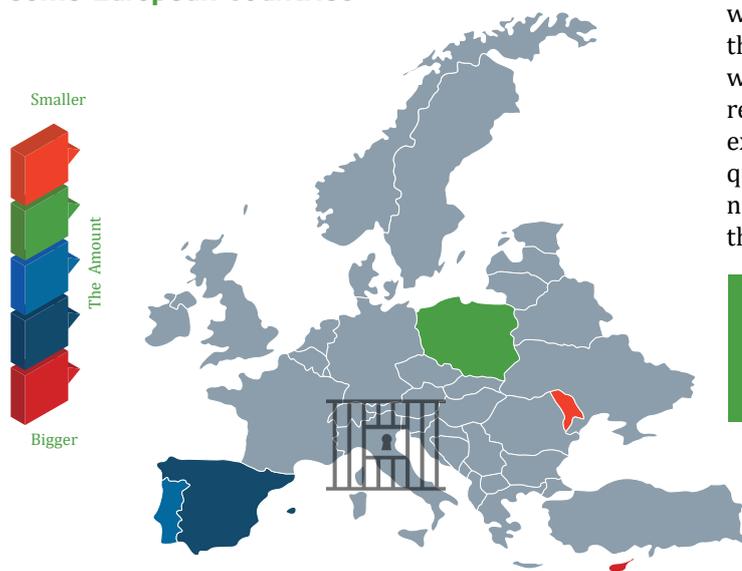
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Implement nationwide public information campaigns on drug use, the importance of alternatives to conviction and incarceration, access of drug users to assistance and treatment.

The problem of regulating the quantities of drugs for which the criminal liability of drug users arises

Although several amendments have been made to the Law on the regulation of drugs, narcotic and psychotropic substances, proportions of prohibited substances in large and particularly large amounts for which criminal liability arises, as well as the applicable punishments, the Republic of Moldova is still a country where punishments related to drug use (keeping, transportation, processing, etc.) are harsh.

The amount of narcotic substances for which criminal liability is established in Moldova and some European countries



	CANNABIS	ECSTASY	HEROINE	COCAINE
MOLDOVA	2 g	0.05 g	0.01 g	0.15 g
GERMANY	6 g	3 G	1 g	1 g
PORTUGAL	25 g	1 g	1 g	2 g
SPAIN	100 g	2.4 g	3 g	7.5 g
CYPRUS	30 g	20 g	10 g	10 g

The proportions set in the “List of narcotic drugs, psychotropic substances and plants containing such substances” (hereinafter the “List”), detected in illegal trafficking, raise several questions in at least two aspects and seriously violate the rights of drug-addicted persons:

The quantities of drugs for establishing criminal liability in the Republic of Moldova are high

Comparing the established small and large quantities of narcotic substances in other countries, such as Austria, Spain and Portugal, it can be noted that the quantity of drugs, which is considered a large quantity in the Republic of Moldova, in other countries is estimated as a small amount, and possession for personal use is not punishable by law.

The lack of legal provisions that would oblige experts to assess the quantities of substances subject to expertise in order to delimit drugs from mixtures.

According to the Note no.2 to the Decision of the Government of the Republic of Moldova, no.79 of 23 January 2006 on the approval of the List of narcotic substances, when preparations consisting of mixtures of narcotic and / or psychotropic substances with precursors and additives (medicinal preparations, acids, glucose, starch, flour, etc.) are sent for expertise, experts do not delimit the quantities or proportions of drugs in their purest form and the mixtures with which they interacted, and the overall quantity of the substance is taken into account when evaluating the weight. This issue was also highlighted in 2013 in a Study, recommending the authorities to establish a mechanism for excluding from the evaluation of large and particularly large quantities of narcotic substances various additives that do not fall into such a category of substances, but even in 2020, this issue remains unresolved.

Moreover, according to the authorities, the Republic of Moldova currently does not have the necessary technical capabilities to determine the degree of purity of drugs on a routine basis.

SUGGESTED RECOMMENDATIONS

1 Amend the Government Decision no. 79 of 23.01.2006 approving the List of narcotic, psychotropic substances and plants containing such substances found in illicit trafficking and their quantities by increasing the quantities of narcotic and psychotropic substances and plants containing such substances, taking into account the practice of other states and international standards.

2 Develop technical capacity needed to determine the purity of drugs on a routine basis.

3 Amend the Note no.2 to the Government Decision no. 79 of 23.01.2006 approving the List of narcotic, psychotropic substances and plants containing such substances found in illicit trafficking and their quantities and / or develop a mechanism for excluding from the evaluation of large and particularly large quantities of narcotic substances, various additives that do not fall into such a category of substances.

THE COMPULSORY DRUG DEPENDENCE TREATMENT APPLIED BY THE COURTS

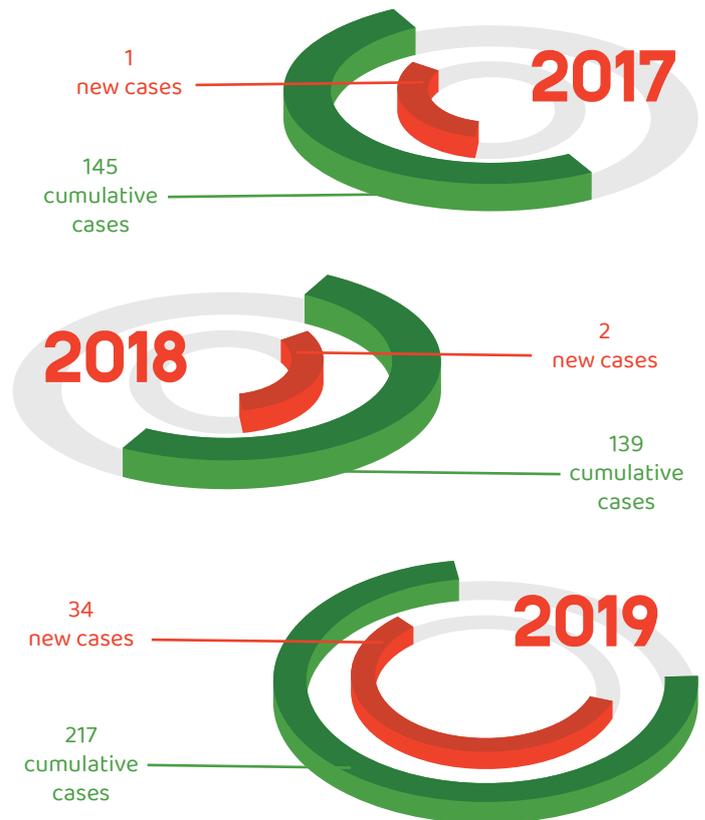
DESCRIPTION OF THE ISSUE

Until now, in the Republic of Moldova, the courts have ordered the application of forced treatment to drug and alcohol addicts. However, international organizations underline the principle that drug dependence treatment should generally be voluntary. Given that compulsory medical treatment, including for drug dependence, inherently involves infringements of these rights, it is only potentially justifiable in exceptional, clearly defined circumstances (e.g., in order to prevent a person from causing or risking imminent, serious harm to himself/herself or to others) and in compliance with the UN's Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights.

According to the Art.103 of the Criminal Code, forced treatment may be applied to drug users who have committed crimes and only simultaneously with the punishment.

According to the data provided, starting with 2018, the number of new cases for which the courts have ordered forced treatment is increasing. In 2018, only two cases of forced treatment were registered, while in 2019 - 34 cases of forced treatment were registered in the medical service of the National Administration of Penitentiaries.

According to the provisions of Art. 90 of the Criminal Code, a detainee subjected to forced treatment cannot benefit from parole.



SUGGESTED RECOMMENDATIONS

Amend laws and regulations to exclude compulsory treatment (in civil or prison system) and support access to voluntary, community-based drug treatment. It does not force individuals into treatment without their consent.

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"This advocacy factsheet was prepared by Association "Promo-LEX" on the basis of its joint NGOs Submission. Please access the NGO Submission at the following link: www.promolex.md."