Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Declassified*
AS/Jur (2019) 25 Rev
26 June 2019
ajdoc25 2019 Rev

Committee on Legal Affairs and Human Rights

Drug policy and human rights in Europe: a baseline study

Introductory memorandum

Rapporteur: Ms Hannah BARDELL, United Kingdom, Member not belonging to a Political Group

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* Document declassified by the Committee on 25 June 2019.

1. Introduction

1.1. Procedure

1. On 8 October 2018, the motion for a resolution on "Drug policy and human rights in Europe: a baseline study" (Doc. 14587) was referred to the Committee on Legal Affairs and Human Rights (the Committee) for report and the Committee on Social Affairs, Health and Sustainable Development (the Social Affairs Committee) for opinion.[1] I was appointed rapporteur by the Committee at its meeting in Paris on 13 December 2018.

2. A hearing was held on 4 March 2019 for the purposes of the preparation of the draft report with the participation of Mr Damon Barrett, Director of the International Centre on Human Rights and Drug Policy (University of Essex, United Kingdom), Lecturer at the Section for Epidemiology and Social Medicine (University of Gothenburg, Sweden) and Expert for the Council of Europe Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group), Ms Naomi Burke-Shyne, Executive Director, Harm Reduction International (London, United Kingdom) and Mr Zaved Mahmood, Human Rights and Drug Policy Advisor, Office of the United Nations High Commissioner for Human Rights (OHCHR, Geneva, Switzerland).

1.2. Issues at stake

3. Over the years, countries in Europe and beyond have faced evolving patterns of drug use, drug related harm and drug related crime. These can be closely interconnected with the effects of wars, conflicts, terrorism, trafficking in human beings, economic/financial instability and new communication and information technologies (such as the Darknet) they are confronted with. According to the EMCDDA's 2018 European Drug Report, drugs are widely available and in some areas even increasing in availability. Polydrug consumption is common and individual patterns of use range from experimental to habitual and dependent consumption. For example, according to the UN 2018 World Drug Report, "About 275 million people worldwide, which is roughly 5.6 per cent of the global population aged 15–64 years, used drugs at least once during 2016."

4. This so-called "drug problem" has generated severe harm and risks for the health and safety of those concerned and societies in general. Individual vulnerabilities and the social context in which drugs are consumed often aggravate the situation. According to the UN 2018 World Drug Report, "some 31 million of people who use drugs suffer from drug use disorders, meaning that their drug use is harmful to the point where they may need treatment." Today's challenges around societal problems associated with drugs involve a multifaceted and complex policy area, including laws, regulations, strategies and funding priorities.

5. Until recently, there was a global understanding that the best way to deal with drug-related issues was to focus on reducing, and ultimately eliminating, the illicit production, supply and use of narcotic and psychotropic substances. The Assembly's Social Affairs Committee noted in 2015 that "drug-control efforts […] focusing on repression have been responsible for generating large-scale human rights abuses, including the violation of the right to health, and disastrous consequences in terms of public health."[2] Strong evidence suggests that the consequences of purely repressive policies include also death, violence, ill-treatment, discrimination, stigmatisation, marginalisation, absence of fair trials and inadequate sentencing.[3] History reveals that there has never been any society without psychoactive drugs, begging the question whether a world free of drugs is a realistic aim.

6. The principle of subsidiarity reflected in international human rights instruments, including the European Convention on Human Rights (the Convention), gives Council of Europe member States a significant margin of appreciation for drug policy development - and there is evidently a wide array of possible responses based on national cultural and economic contexts. Recent developments in drug policy have put increasing emphasis

[1] Reference to both committees No. 4396 of 8 October 2018.

[2] The right to health is recognised in Articles 11 and 13 of the revised European Social Charter (ETS No. 163), which reinforced obligations under Articles 2 (right to life) and 3 (prohibition of torture, inhuman and degrading treatment) of the European Convention on Human Rights. See also the WHO Constitution signed in New York, 22 July 1946.

[3] Pompidou Group, Barrett D., *Drug policy and Human Rights in Europe: Managing tensions, maximising complementarities*, January 2018; Pompidou Group, *Costs and unintended consequences of drug control policies*, 2017. See also, OHCHR, *Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights*, A/HRC/39/39, September 2018.

on a comprehensive, integrated, balanced, and scientific evidence-based approach which closely intersects with public health responsibilities, human rights and sustainable development.

1.3. Objectives for the report

7. This report describes, through concrete examples, how human rights' standards increasingly form an integral part of drug policy development in member States. While measuring the success and coherence of drug policies is not an easy task, the report advocates for the adoption of indicators tailored to a new understanding of drugs and related harm. Such indicators should provide comprehensive guidance to member States taking on the challenge to review the impact of their drug policies on individuals and societies.

2. Global shift towards mainstreaming human rights into drug policies

2.1. Evolving priorities for the global drug control regime

8. The current globally applicable legal framework on drug control includes three United Nations (UN) Conventions: the Single Convention on Narcotic Drugs (1961, as amended by the 1972 Protocol), the Convention on Psychotropic Substances (1971) and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). This legal framework for the global "war on drugs" in principle provides "sufficient flexibility for States parties to design and implement national drug policies according to their priorities and needs, consistent with the principle of common and shared responsibility and applicable international law."[4] Yet it has been increasingly criticised by high level experts and institutions for laying down an inflexible, outdated and counterproductive approach, overlooking the realities of drug use and dependence.[5]

9. In 2009, UN Member States reaffirmed their "commitment to ensure that all aspects of demand reduction, supply reduction and international cooperation are addressed in [full respect for] all human rights."[6] In 2015, however, the UN Special Rapporteur on the Right to Health argued that "while such language is welcome, it becomes meaningless unless underpinned by clear and explicit human rights standards and principles"; "this pledge only represents a consensus-based commitment repeated in different fora that remains far from being realized". The outcome document of the UN General Assembly Special Session on the world drug problem held in April 2016 (UNGASS 2016) reaffirmed the 2009 commitment and made operational recommendations. In March 2019, Government ministers at the Commission on Narcotic Drugs (CND) renewed their commitment to the UNGASS 2016 outcome document.[7] The UN Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions observed that governments had thus "recognised explicitly that the 'war on drugs' – be it community based, national or global – does not work. And further, that many harms associated with drugs are not caused by drugs, but by the negative impacts of […] badly thought out, ill-conceived drug policies [which] not only fail to address substantively drug dependency, drug-related criminality, and the drug trade, […] they add, escalate and/or compound problems".[8]

2.2. Europe's leading role on integrating human rights into drug policies

10. The Parliamentary Assembly of the Council of Europe (the Assembly) has, since its 2007 report *For a European convention on promoting public health policy in drug control*, called several times for a shift from punitive models to policies that are focused on public health, including policies for prevention, education, treatment, rehabilitation, social reintegration and harm reduction. The Social Affairs Committee highlighted that the resulting benefits of such measures already carried out by certain member States "have been felt by society as a whole, through reductions in the incidence of criminal behaviour, reduced costs for health and criminal

[4] H.E. Ambassador Alicia Buenrostro Massieu, Chairperson of the Commission on Narcotic Drugs (CND)'s 61st session, *2019: Accelerating collective efforts to address and counter the World Drug Problem based on common and shared responsibility*, 3 December 2018.
[5] See for example, Global Commission on Drug Policy (GCDP), *Regulation – The Responsible Control of Drugs*, 2018.
[6] UNODC, *Political Declaration and Plan of Action on International cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem*, 11-12 March 2009.
[7] UN General Assembly, *Our joint commitment to effectively addressing and countering the world drug problem,* Resolution S-30-1, 19 April 2016; CND, Ministerial declaration *on strengthening our actions at the national, regional and international levels to accelerate the implementation of our joint commitments to address and counter the world drug problem*, 14 March 2019.
[8] i.e. "the break-down of the rule of law, torture, ill-treatment and sexual violence, disproportionately long sentences for drug possession, detention in drug and rehabilitation centres without trial or a proper evaluation of drug dependency, non-consensual experimental treatment". UN Special Rapporteur, key note speech, Manila (May 2017).

justice systems, reduced risks of transmission of HIV and other blood-borne viruses, and, ultimately, reduced levels of drug use".[9]

11. Member States have increasingly recognised their responsibility to ensure drug policies comply with international human rights law,[10] including the Convention as interpreted in the caselaw of the European Court of Human Rights and the European Social Charter, to which most are also bound, and other pertinent standards of Council of Europe bodies.

12. The November 2018 "Stavanger Declaration" of the Pompidou Group's Ministerial Conference reaffirmed a focus on "human rights as a fundamental cornerstone in drug policy, in line with the Council of Europe's core mission". Recognising the 2016 UNGASS outcome document as "a milestone", the Ministers reflected on the possibility of changing the official title of the Pompidou Group "to more adequately reflect today's drug policy evolution and challenges, and subsequently to initiate a broader reflection on the Group's mandate, operation and working methods." In January 2019, the Committee of Ministers took note of this decision, which could culminate in the adoption of a revised Statutory Resolution in 2021, on the occasion of the Pompidou Group's 50th anniversary.[11]

13. The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) has since 1993 provided data on drug-related issues in EU member States. The EU Drugs Strategy for 2013-2020 and the EU common position on UNGASS 2016 recall its member States' commitments to human rights as an integral part of drug policy.

3. A human rights-based approach to drug policy

3.1. Defining a human rights-based approach to drug policy

14. There is little existing consensus on what a 'human rights-based approach' means for drug policies and practices. The absence of such agreement obviously complicates member States' efforts to implement effective harmonised policies. Progress is, however, being made.

15. In March 2019, a set of International Guidelines on Human Rights and Drug Policy were launched following a two-year global, multi-stakeholder process involving governments, civil society, academia, and United Nations agencies. These guidelines analyse human rights norms and apply them to drug policy. The guidelines describe obligations that shall or should arise from human rights standards such as the right to the highest attainable standard of health, to life, to a fair trial, to privacy as well as the right to live free from torture, inhuman and degrading treatment or punishment, or arbitrary arrest and detention.

16. Some of these rights and freedoms can be connected to the Convention, which member States are bound to. However, the Court, which oversees the application of the Convention, has not provided extensive guidelines for national drug policies. As far as certain (non-absolute) rights are concerned, the Court leaves a wide margin of appreciation to member States. Nevertheless, the Convention as interpreted by the Court can provide useful elements of understanding when examining drug policy from a human rights perspective.[12] In general, member States shall search for a fair balance between the demands of the general interest of the community and the protection of the individual's fundamental rights.[13] States may interfere with certain (non-absolute) rights if, for example, it is necessary to protect children or preserve public health and safety. However, this requires them to demonstrate that measures are necessary to achieve the objectives they are intended for and that no less restrictive means are available to achieve the same aims.

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[9] Resolution 1576 (2007), Recommendation 1813 (2007), Reply to the Recommendation by the Committee of Ministers (Doc.11620) and Report (Doc.11344), debate of 3 October 2017. See also, Assembly President's statement on the occasion of the global day of action for the 'Support, don't punish' Campaign, 2015; Social Committee's *call for a public-health-oriented drug policy*, 23 November 2015.

[10] All member States of the Council of Europe have ratified or acceded to the International Covenant on Civil and Political Rights (1976), the International Covenant on Economic, Social and Cultural Rights (1976), the Convention on the Rights of the Child (1990), and the Convention on the Elimination of All Forms of Discrimination Against Women (1981), among other relevant and more specific treaties.

[11] Pompidou Group, *Stavanger Declaration adopted at the 17th Ministerial Conference of the Pompidou Group*, 28 November 2018; Committee of Ministers, CM/Del/Dec(2019)1335/6.1, 30 January 2019; Pompidou Group Statement, *Bringing Human Rights into drug policy development, implementation, monitoring and evaluation*, November 2017.

[12] See Pompidou Group, Legal jurisprudence of the European Court of Human Rights in relation to drug offences, June 2015.

[13] *Soering v the United Kingdom,* No. 14038/88, 7 July 1989.

17. There are various ways in which the Council of Europe and its organs and bodies could contribute to developing standards for harmonising drug policy. In 2007, the Assembly recommended that the Council of Europe adopt a European Convention on promoting public health policy in drug control. The Pompidou Group has also called for "concrete guidance from the bodies entitled to interpret and construe international human rights law, including the Court."

18. At EU level, the EMCDDA has also developed guidelines on health and social responses to drug problems and a portal of best practices.

3.2. Evaluating the effects of drug policies on human rights

19. Further to their existing legal obligations, States should assess the intended and unintended effects of envisaged drug policy measures, taking into account their potential impact on the enjoyment of human rights.

20. By performing this assessment, States may regularly adapt drug policies to current developments and the most accurate, reliable and objective evidence available on costs, impacts and discriminatory effects of drug policies. Capacity building of policymakers and the participation of affected communities (i.e. people who use drugs, their families and the wider community) and civil society has proven to help in the development of well-informed drug policies and initiatives tailored to vulnerabilities.[14]

21. For example, the European Social Charter requires that policies respect the right to benefit from measures enabling individuals to enjoy the highest possible standard of health attainable. In this case, the "3AQ" framework can be used to examine whether the health services are Available, Accessible, Acceptable and of Sufficient Quality for all persons with drug disorders or addictions. Sub-standard healthcare provision in prisons deserves particular attention. According to the principle of equivalence, prisoners who suffer from drug disorders or addictions should receive care that is equivalent to that which is provided outside of prison.[15]

4. Measuring the impact of human rights-based responses to drug problems

4.1. Identification of new indicators for measuring the effectiveness of drug policies

22. The search for successful, evidence-based and comprehensive drug-related policies requires a transparent and effective methodology for assessing their effectiveness. In this context, the collection of data relating to specific and coherent indicators of the process and outcomes of drug policies should guide policymakers in the development of sustainable interventions.[16]

23. As a human-rights based approach becomes increasingly accepted, there is a growing realisation that traditional indicators focused on the process of drug policies (i.e. arrests, seizures and criminal justice responses) are inadequate to show their real impact on individuals and communities. The International Drug Policy Consortium, for example, explained that "if drug control no longer has a singular focus on reducing cultivation, trafficking and use – but rather on minimising drug-related health harms, improving access to healthcare, upholding basic human rights, reducing poverty, improving citizen safety and reducing corruption – the use of indicators focusing on measuring the scale of and flows within the illegal drug market will no longer be enough." [17]

24. Indicators should be tailored to existing national, regional and international human rights standards. A range of relevant human rights indicators can already be extracted from the work of Council of Europe and other various bodies.[18] For example, indicators can aim to collect data on the availability and coverage of harm

[14] Pompidou Group, *Government interaction with Civil Society*, 2015; Op. cit. Pompidou Group, Barrett D., January 2018.
[15] See European Prison Rules, Committee of Ministers' Recommendation Rec(2006)2, 11 January 2006; Committee of Ministers' Recommendation Rec(98) 7 concerning the ethical and organisational aspects of health care in prison, 8 April 1998; CPT's *3rd General report,* CPT/Inf(93)12-part, 1993; *Khudobin v Russia*, No. 59696/00, 26 October 2006; Op. cit. Pompidou Group, Barrett D., Jan. 2018.
[16] Pompidou Group, *Coherence policy markers for psychoactive substances*, 2014.
[17] IDPC and Global Drug Policy Observatory (GDPO), *Identifying new indicators for the assessment of drug policy*, 2019. See also, GDPO, Bewley-Taylor D. R. and Nougier M., *Measuring the "world drug problem": ARQ Revision. Beyond traditional indicators?,* January 2018.
[18] The IDPC identified recently a list of possible indicators on drug policies with regard to "Human rights, youth, children, women and communities" in its 2018 report *Taking stock: A decade of drug policy – A civil society shadow report*. OHCHR,

reduction and treatment, reported cases of stigma and discrimination in accessing healthcare, reported cases of physical and psychological abuse by law enforcement, provision of legal aid during trial, and proportion of drug offenders held in pre-trial detention, by age and sex. Sustainable Development Goals targets and impact-oriented indicators should be considered as sustainable human development equally involves enhanced human rights within drug control and enforcement systems.[19]

4.2. Implementing coherent data collection methods

25. Data reporting methods and tools need to be elaborated and constantly readjusted for member States to collect and evaluate quality and meaningful statistics on the effects of drug policies on human rights. There are many ways for member States to collect data. I intend to send a questionnaire to parliaments of the member States and enquire on their national data collection methods.

26. In my view, the Council of Europe is also in a position to support national structures, in particular national drug observatories. The Pompidou Group could serve as a platform for the exchange of information in order to identify gaps in relevant statistical tools and other drug monitoring systems. The Group has indicated in its 2019-2022 work programme its intention to initiate a repository on drug-related national practices and their impact on the realisation of human rights' obligations.

27. National authorities should support expert civil society networks as well as networks of national and local authorities and elected representatives. They should seek to cooperate with relevant institutions such as the EMCDDA and UN bodies, whose role was underlined in the November 2018 UN common position on drug policy. There are currently discussions to revise the UN Office on Drugs and Crime's (UNODC) Annual Reports Questionnaire (ARQ), in order to facilitate the UNGASS outcome document's recommendation that States collect age- and gender-related data and "consider, on a voluntary basis, […] the inclusion of information concerning, inter alia, the promotion of human rights and the health, safety and welfare of all individuals, communities and society in the context of their domestic implementation of [drug-control] conventions, including recent developments, best practices and challenges".

28. A revised ARQ could provide a good working basis for European policymakers, depending on the quality and extent of its data. While the UNODC plans to define a road map for developing global standards and generating more and higher quality drug-related data, it is essential that the Council of Europe seeks to take part in this process to avoid duplication of efforts and work towards a common understanding of human rights' concepts and indicators for drug policies.[20]

5. Concrete examples to incorporate human rights into drug policies

5.1. Prevention of drug use and abuse

29. States should implement effective preventive measures to address the drug problem, such as educational programmes and awareness raising and preventive campaigns based on evidence and real life experience. For example, national prevention strategies can include particular efforts to keep drugs away from children, since they are especially vulnerable.

30. Governments should nonetheless balance the preventative piece to ensure that such measures do not have unintended negative human rights consequences. For example, the mandatory testing of schoolchildren for drug use sometimes carried out randomly as a preventive measure has often raised human rights concerns and has been ultimately discouraged, as it fails the test of proportionality.[21] A human rights-centred approach would encourage promotion of a public health narrative with non-stigmatizing attitudes and language, avoiding people who use drugs suffering discrimination, exclusion or prejudice. Criminalisation may lead to stigmatisation of people with drug disorders as criminals rather than patients. In circumstances where experimentation is going to take place, education is paramount and it would be helpful to provide information on safer drug-taking practices and drug-testing.[22] The Global Commission on Drug Policy (GCDP)

Human Rights Indicators: A Guide to Measurement and Implementation, 2012*;* OHCHR, *A human rights-based approach to data, Guidance note to data collection and disaggregation,* 2018.

[19] Statement by the Pompidou Group's Portuguese Presidency, CND's 62nd session, March 2019. International Peace Institute, Segura R. and Stein S., *Aligning Agendas: Drugs, Sustainable Development, and the Drive for Policy Coherence*, 2018; Op. cit. IDPC and GDPO, 2019.

[20] UNODC, *Report on drugs and drug use statistics*, E/CN.3/2019/20, 19 December 2018.

[21] Op. Cit. A/HRC/39/39; Op. cit. Pompidou Group, Barrett D., Jan. 2018.

[22] See, for example, OHCHR*, Joint Open Letter,* 15 April 2016; 2016 UNGASS outcome document.

recommended that "if there were to be public awareness campaigns on youth and drug use, a possible way forward would be to give honest information, encouraging moderation in youthful experimentation and prioritizing safety through knowledge".

5.2. Harm reduction

31. Harm reduction measures have a decisive impact on relieving societies from adverse effects of drugs such as deaths and harms (including overdoses, blood-borne infectious diseases, misuse of new substances). These measures include Drug Consumption Rooms (DCR), Needle and Syringe Programs (NSP), and Opioid Substitution Therapy (OST). They have often proven to be cost-effective methods to preventing life-threatening and damaging consequences of ongoing drug use – and ultimately promoting the right to health.[23] Various European and international experiences of harm reduction strategies have largely overcome negative public opinion and political opposition. Most member States have to varying degrees embraced harm reduction.[24] The EU's Action Plan on Drugs for 2017-2020 has specifically aimed for a stronger focus on risk and harm reduction measures.

32. National experiences and reported challenges in the implementation show that a holistic human rights approach can help protect individuals and societies from unintended consequences. These include arrests and seizures by police lacking training around harm reduction facilities (fixed and mobile), difficult accessibility due to isolated locations of these facilities, discriminatory criteria of access to services, lack of agreement and support from law enforcement with regard to responsibilities in cases of violent situations or other emergencies, poor safety standards for staff. Research by Harm Reduction International (HRI) showed that a decline in the funding of harm reduction facilities by both governments and international donors had a detrimental impact on individuals and public health, particularly in the context of prisons.[25] Systematic evaluations of harm reduction services can highlight issues and tensions with human rights. The participation of all stakeholders, in particular people who use drugs, in regular community meetings and the exchange of information at local, national and international levels help resolve problems with due consideration of human rights.

33. Efforts to protect the health of detainees in the same way as outside prison have also led to the implementation of harm reduction within detention settings. These are high-risk environments for transmission of infectious diseases such as HIV, hepatitis C and tuberculosis. According to the EMCDDA, up to 70% of European prisoners have a history of using illicit drugs. The 2018 European Drug Report indicates that "in 28 countries it is possible to provide OST in prisons, but the coverage is low in most countries." In a 2014 report, the CPT indicated that various types of NSP consistently "improved prisoners' health, reduced needle sharing and undercut fears of violence", with "no evidence of increased drug consumption or other negative consequences" observed. A human-rights approach entails effective provision of assistance to prisoners with drug-related problems (as part of a wider national drugs strategy). This should include harm reduction measures, specific training for staff and the provision of adequate information material on drug-related issues and services available to detainees, psycho-social services and respect of medical confidentiality.[26] HRI has developed a supportive monitoring tool for oversight bodies to monitor harm reduction services provided to prisoners.

5.3. Treatment

34. European policymakers are putting increasing emphasis on treating drug disorders and addictions as a medical condition[27], rather than a crime. Unreliable and potentially lethal street drugs, poorly informed drug-

[23] Pompidou Group, *Criminal Justice and Drug policy: Treatment, Harm Reduction and Alternatives to Punishment*, March 2017. As reported by the OHCHR in 2018, Austria, Norway, Spain and Switzerland for instance support harm reduction as part of their public health strategies. According to Harm Reduction International, higher rates of overdose deaths have prompted the implementation of naloxone overdose prevention programmes, such as the distribution of take-home kits from community outlets and prisons in Scotland.

[24] Op. cit. Pompidou Group, Barrett D., Jan. 2018. The Russian Federation does not support harm reduction in its legislation and has placed a complete ban on the provision of OST. This "blanket ban" is currently the subject of 3 joint applications to the Court on the grounds of Articles 3 and 8 combined with Article 14 of the Convention, i.e. *Kurmanayevskiy et al v Russia* (Nos.62964/10, 58502/11, 55683/13). See also, International Centre on Human Rights and Drug Policy, Case information sheet, May 2016.

[25] HRI, *Global State of Harm Reduction 2018*, 11 December 2018.

[26] CPT, Lehtmets A., Pont J, *Prisons healthcare and medical ethics*, November 2014; CPT, 26th General Report, 2017; CPT visit to Ukraine in 2017, CPT/Inf (2018)41.

[27] "Drug dependency is a multifactorial disorder resulting from a complex interplay of individual, psychological, social and neurobiological factors that make a person who is exposed to psychoactive drugs susceptible to developing those

taking practices and stigmatisation often increase the suffering of persons with drug problems and call for States to meet their obligations under their conventional duty to protect. The 2016 outcome document stated that "drug dependence can be prevented and treated through effective, scientific and evidence-based drug treatment, care and rehabilitation programmes". Yet, to prevent "disciplinary treatment" approaches to proliferate, where drug-dependent individuals are forced into centres and subject to ill-treatment or forced labour, treatment should always involve the voluntary participation of individuals with drug use disorders, with informed consent.[28]

35. With regard to prisoners, member States have a duty, according to the Court's caselaw (*Kudła v. Poland* [GC], no. 30210/96) and the European Prison Rules, to safeguard their health, and "deal with withdrawal symptoms resulting from use of drugs, medication or alcohol". As explained by HRI, "denying treatment to a person with a drug dependence can cause unbearable pain and suffering." The Court recognised in 2016 that the denial to grant treatment, including OST, to prisoners with a drug dependency could constitute inhuman and degrading treatment.[29] States must ensure equivalence of care in prisons and other custodial settings, as well as continuity of care after admission to, or release from, prison.

5.4. Law enforcement and human rights

36. The UNGASS outcome document called for "effective drug-related crime prevention and law enforcement measures" as well as "effective criminal justice responses to drug-related crimes". To this aim, "legal guarantees and due process safeguards pertaining to criminal justice proceedings" and the right to a fair trial must be ensured. States recommitted on the same occasion to uphold the prohibition of arbitrary arrest and detention as well as the prohibition of torture, inhuman or degrading treatment or punishment.

37. In practice, repressive law-enforcement measures to control drugs use have often been accompanied by excessive force, with disproportionate effects on vulnerable persons.[30] At the same time, despite considerable efforts, law enforcement bodies have not been able entirely to eliminate human rights abuses by drug criminals, including trafficking and exploitation.

38. A 2017 Council of Europe study on "Drug Treatment Systems in Prisons in Eastern and South-East Europe" indicated that the majority of people serving time in prisons are sentenced for minor drug offences. The CPT noted that "serious consideration should be given to the negative psychosocial impact of incarceration, particularly on young drug-dependent persons, the lack of appropriate treatment and rehabilitation facilities for drug dependency in prison settings". Efforts to exhaust all available alternatives (e.g. diversion, alternative sanctions, release on parole – combined with treatment offered in the community) before incarcerating drug-dependent offenders is the most pertinent rights-based strategy.[31] In this context, certain experts argued that the text of Article 5§1e) of the Convention, which allows for the "lawful detention of persons for the prevention of the spreading of infectious diseases, of[…] drug addicts", could be considered outdated.[32]

39. Some also argue that current drug policies interfere with the right to private life. Indeed, the prohibition of "recreational" drug-taking in private could interfere with or even violate the right to private life (especially in circumstances where there are no risks to children or public health).[33]

40. The death penalty has been prohibited in all member States. However, in a joint declaration on 10 October 2018, the Secretary General of the Council of Europe and European Union High Representative for

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persistent neurophysiologic alterations in the brain that are responsible for drug dependency and that make abstinence difficult to achieve in a short time." Op. cit. CPT, Lehtmets A., Pont J, 2014.

[28] For instance, Norway focuses on the 3AQ test for treatment services. Switzerland has developed a national addiction strategy focusing on the quality of life and the health of the individual. Op. cit. A/HRC/39/39. See also, Secretary General, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/65/255, 6 August 2010. *Concluding observations on the seventh periodic report of the Russian Federation*, CCPR/C/RUS/CO/7, 28 April 2015.

[29] *Wenner v Germany*, No. 62303/13, 1 December 2016; Junod V., Wolff H., et al, *Methadone versus torture: The perspective of the European court of Human Rights*, 2018. See also, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, 1 February 2013.

[30] Op. cit. A/HRC/39/39. See also, Report of the Working Group on Arbitrary Detention, A/HRC/30/36, 10 July 2015.

[31] Op. cit. CPT, Lehtmets A., Pont J, 2014; CPT, *Factsheet on Healthcare services in prisons*, 1993. See also, Pompidou Group, Programme on Criminal Justice and Prison; EMCDDA, Briefing on prisons and the criminal justice system.

[32] Barrett D., 'Drug addicts' and the ECHR, 3 September 2018.

[33] Irish Council for Civil Liberties (ICCL), Submission to the Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, on the review of Ireland's approach to the possession of limited quantities of certain drugs, 6 August 2015.

Foreign Affairs and Security Policy, urged European states not to co-operate with the implementation of drug policies in countries that apply the death penalty for drug offences.[34] In the 2018 Stavanger Declaration, the Pompidou Group encouraged governments to "actively work" against the death penalty for drug-related offences and to "condemn extra-judicial executions". Some member States have reportedly discontinued support for international drug-enforcement cooperation activities that may directly or indirectly lead or contribute to the execution or any unlawful arrest of persons for drug-related offences.[35]

6. Cross-cutting human rights issues in drug policies

6.1. Women and gender-mainstreaming

41. Women and girls continue to be particularly vulnerable to drug-related harms, including exploitation (for example forced prostitution or forced labour) and participation in drug trafficking. Women who use drugs are particularly vulnerable to stigmatisation and marginalisation.[36] While the above-mentioned benefits of harm reduction facilities and drug treatment programmes encourage their promotion, authorities must be particularly attentive to removing any obstacles to women's equal access to such health-oriented measures. Ireland, for instance, has identified in its national strategy on drug use that the "absence of childcare can be a barrier for women attending treatment and after-care services" and aimed to increase "the range of wrap-around community and residential services equipped to meet the needs of women who are using drugs and/or alcohol in a harmful manner, including those with children and those who are pregnant". A gender perspective should always be mainstreamed into the design and implementation of drug policies, as recalled by the Pompidou Group's 2018 Stavanger Declaration.

42. Prison settings are particularly concerning. According to HRI, in 2012, 31,000 of the women in prison across Europe and Central Asia were incarcerated for drug offences. This represented 28%, or more than one in four, of all women in prison in the region.[37] Thus, States at the UNGASS 2016 also committed to "identify and address protective and risk factors and conditions that continue to make women and girls vulnerable to exploitation and participation in drug trafficking, […] with a view to preventing their involvement in drug-related crime". They also committed to ensuring "non-discriminatory access to health, care and social services in prevention, primary care and treatment programmes, including those offered to persons in prison or pretrial detention, which are to be on a level equal to those available in the community, and ensur(ing) that women, including detained women, have access to adequate health services and counselling, including those particularly needed during pregnancy."[38]

6.2. Youth and children

43. The Council of Europe has engaged in the promotion of the UN Convention on the Rights of the Child and has developed a wide range of legal standards which apply to children's rights. Member States have committed to pursuing children's best interests by eliminating all forms of violence against children, including sexual violence, exploitation and corporal punishment; promoting child-friendly justice and social services; guaranteeing the rights of children in vulnerable situations, such as drug-related abusive living environments.[39]

44. The Pompidou Group's Stavanger Declaration recalled the right of children to be protected from the illicit use of narcotic drugs and psychoactive substances. According to several UN experts in a joint letter published ahead of the UNGASS, "history and evidence have shown that the negative impact of repressive drug policies on children's health and their healthy development often outweighs the protective element behind such policies, and children who use drugs are criminalised, do not have access to harm reduction or adequate drug

[34] See also, the joint declaration of October 2015.
[35] Op. cit. ICCL submission, 2015. See also, HRI, Death penalty for drug offences, 2018.
[36] The 2018 World Drug Report explained that "both drug use and incarceration carry stigma for men and women, but the degree of stigma is much greater for women because of gender-based stereotypes that hold women to different standards".
[37] Countries in 2012 with the highest incarceration percentage of women for drug offences were Latvia, Portugal, Estonia, Spain, Greece, Italy, Sweden and Georgia. Russia incarcerated almost 20,000 women for drugs. HRI, Iakobishvili E., *Cause for Alarm: the Incarceration of Women for Drug Offences in Europe and central Asia, and the need for legislative and sentencing reform,* 2012; Report on the Revision of the European Prison Rules, 2006.
[38] According to the OHCHR's 2018 report, Spain indicated "that it was aiming to improve the integration of gender-specific aspects in all its prevention and assistance programmes, including the prevention and early detection of gender-related violence against women who were drug-dependent or at places where drugs were consumed". A new drug strategy in Ireland also provides for various gender-sensitive programmes.
[39] See for example, the Committee of Ministers' Recommendation Rec(2009)10 on Council of Europe Policy guidelines on integrated national strategies for the protection of children from violence.

treatment, and are placed in compulsory drug rehabilitation centres." At the UNGASS 2016, States committed to "implement age-appropriate practical measures, tailored to the specific needs of children, (and) youth" to prevent their abuse of drugs and address their involvement in drug-related crime.

6.3. Other members of societies exposed to particular risks: minorities, persons with disabilities, LGBTI

45. With respect to the prohibition of discrimination under Article 14 of the Convention, States should ensure that drug policies do not have unnecessary, undesirable or discriminatory impact on the delivery of health care to persons suffering from addiction and other drug disorders. Ireland, for example, has aimed in its national strategy on drug use to improve access to and the capacity of services for people with more complex needs, including among others "Members of the Traveller community and other minority ethnic communities" and "Lesbian, gay, bisexual, transgender and intersex communities" (LGBTI), migrant communities, sex workers and homeless people. Furthermore, the Strategy aims to foster engagement with representatives of these communities and/or services working with them as well as to "intervene early with at risk groups in criminal justice settings" by providing relevant training for staff and appropriate interventions.

46. The UN Working Group of Experts on People of African Descent found that certain minorities, in particular people of African descent, are disproportionately affected by excessively punitive drug policies and racial profiling. LGBTI persons who use drugs are also disproportionately impacted by drug policies in many countries. Evidence shows that LGBTI persons who use drugs may not seek support or treatment from health-care providers because of previous or anticipated experiences of discrimination. [40]

7. Conclusions

47. While old and emerging drug-related trends have put countries to the test, member States have increasingly found viable solutions by bringing human rights into drug policy development, implementation, monitoring and evaluation. What seemed to be existing in "parallel universes" might well be finding a meeting point.[41] There are many opportunities for sustainable drug policies, but it takes a proactive and holistic approach to counter societal problems related to drugs in a way that fully respects human rights. Political and infrastructural obstacles need to be identified and addressed to allow for the implementation of effective and human rights-compatible responses. Member States should make use of the existing tools to assess their policies' implications on individuals and adequate indicators should be available to support governments and institutions collecting coherent evidence on drug-related policies.

48. For the further preparation of this report, I propose holding a second hearing with experts on the development of a measurable framework of indicators and a questionnaire to parliaments of member States on the integration of human rights in drug policies. I also propose to conduct a fact-finding mission in Portugal to meet with authorities, professionals and people who use drugs. I also propose to conduct a fact-finding mission in my parliamentary constituency and surrounding areas of local authorities, professionals and people who use drugs. Once these steps are completed, I will present a draft report to the committee with a preliminary draft resolution and a preliminary draft recommendation to the Committee of Ministers.

[40] See for example UN Working Group of Experts on People of African Descent, Statement of 21 April 2016; Op. Cit. A/HRC/39/39.
[41] Paul Hunt, *Human rights, health and harm reduction – States' amnesia and parallel universe*, 11 May 2008.

Appendix: Proposed questionnaire to be sent to national delegations

The present request is intended to provide information for the preparation of a report by Ms Hannah Bardell (United Kingdom, NR) on the integration of human rights in drug policy development as well as the evaluation of the policies' success and coherence, in Council of Europe member States.[42]

The information obtained will be used to help formulate concrete policy recommendations by the Parliamentary Assembly to member States and to the Committee of Ministers of the Council of Europe.

1. Is there a strategy to adopt a human-rights based approach to drug policies? If yes, how do national drug policies (i.e. laws, regulations, funding) integrate human rights?

2. How does your country evaluate the impact and costs of drug policies on individuals and society? Please provide information on existing monitoring mechanisms and data collection methods.

[42] Further information on the background to the report can be found in the motion for a resolution: Doc. 14587.