

## **Issues with respect to Lithuania, Belarus, and Moldova**

(In reference to HRC resolution 42/22 requesting a study on arbitrary detention relating to drug policies)

This submission was drafted by the Eurasian Harm Reduction Association with the technical assistance of the Canadian HIV/AIDS Legal Network.

Submission contains information relevant to the issues indicated in the questionnaire provided by WGAD.

### **Issue 1. Criminalization of drug possession for personal use is overcrowding prisons and puts burden on state budget in Lithuania.**

As for December 31st of 2019, there were 783 inmates in Lithuania prisons incarcerated for drug crimes (15% of all prison inmates' population). Of them 63 persons were incarcerated for the possession of drugs with no intention to sell.

Drug laws in Lithuania were amended in January, 2017 making the possession of drugs in small amounts a minor crime. Before the amendments such possession was considered an administrative offence.

### **Issue 2. Arbitrary detention & disproportionate sentencing for drug offences in comparison with other crimes, which include victims into the composition of crime in Lithuania**

Punishments imposed by courts in Lithuania for non-violent drug offences are as high as for violent crimes such as homicide. The average sentence imposed by the court for drug crimes in Lithuania is 7 years, 3 months and 23 days; while for example for serious bodily harm, rape and sexual assault, robbery, theft, human sentences are lower. One of recent cases includes a four years imprisonment sentence against a young man who sold 0.36 g. of cannabis to a person who appeared to be a minor.<sup>1</sup> To compare, a 17 years old person was sentenced to three years suspended sentencing for inflicting bodily harm and sexually assaulting a 16 year old female victim.<sup>2</sup>

### **Issue 3. Cruel, inhuman or degrading treatment in pre-trial detention and prisons in Lithuania.**

OST became available in Lithuanian prisons and pre-trial detention centers in 2018. However there are many barriers for inmates to access OST. For example OST is only available to those inmates who received OST before the incarceration. OST can be interrupted when an inmate is transferred from one prison to another; he/she must file a request for OST in a new prison facility. A health specialist can decide to terminate treatment if he/she thinks that treatment is not effective, if the inmate used mental or physical violence against prison staff, if the person refused to make test for

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<sup>1</sup> <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/operacija-del-0-36-gramo-zoles-metus-trukes-sekimas-rezultatu-neatnese-bet-jaunuoli-pasodinti-pavyko-59-1285316>

<sup>2</sup> <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/lietuva-sukretusi-jurbarko-istorija-teismas-paskelbe-verdikta-paaugle-sumususiam-jaunuoliui-59-1282070>

narcotic or psychotropic substances, etc. There is no access to NSP in prisons or pre-trial detention centers in Lithuania

**Issue 4. Police is performing discriminatory raids in the music festivals and clubs, based on the “style of music” in Lithuania.**

Lithuanian police discriminates against night clubs and festivals with alternative music and young clientele. None of Lithuania's pop music clubs was raided. Police uses sniffer dogs during raids. Many young people were arrested based on the fact that they “looked intoxicated” or because they appeared closest to the place where police found drugs. Young people spent 24 hours in police detention and were released without any charges.<sup>3</sup>

**Issue 5. Juveniles are subject of arrest, detention and imprisonment for drug crimes in Belarus.**

In 2014 Belarus amended drug criminal laws and reduced from 16 to 14 the legal age for criminal liability for all drug crimes related to trafficking. Due to this more than a thousand youth (14-18 years old) were convicted and sentenced to long terms of imprisonment in 2015-2017. In 2018-2019 the number of youth prosecuted for drug crimes reduced significantly. In 2019 of total 727 convicted youth 52 were convicted for drug crimes. Human Rights organizations inform that the right to fair trial is often violated on such cases.<sup>4</sup>

**Issue 6. Disproportionately tough criminal law is an obstacle for drug overdose prevention in Belarus.**

In 2014 Belarus toughened criminal punishment to the range from 12 to 25 years of imprisonment for drug trafficking that resulted to a death of a person who consumed drugs. Although this law was only used four times in 2018 and was not used in 2019, it has a chilling effect on fellow users to call for ambulance in case of overdose.

**Issue 7. Unlawful arrests, based on persons appearance, previous crime history, improvement of law enforcement results**

In Moldova police may stop and frisk people, including harm reduction service providers, on the street based on their appearance, because they “do look like drug users”.<sup>5</sup> Such stop and frisk tactic is especially prevalent during the police special operation “MAK” (eng. Poppy) that is conducted annually as a show case for public.

**Issue 8. Free legal aid is often not available or of a bad quality in all three countries.**

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<sup>3</sup> Based on anecdotal data of people, who were arrested and spent 24 hours under arrest

<sup>4</sup> <https://www.amnesty.org/en/documents/eur49/1119/2019/en/>;  
<https://www.amnesty.org/en/get-involved/take-action/w4r-2019-belarus-emil-ostrovko/>  
<https://www.amnesty.org/download/Documents/EUR4901002019ENGLISH.pdf>

<sup>5</sup> Based on the documented cases, by the local community of PWUD

Although in all three countries, according to laws on the book, free legal aid is available for every person charged with drug crimes, often free legal counsel is not available during the critical first hours of arrest. When available most free legal aid lawyers do not provide good quality service because of the lack of capacity or the lack of incentive or both. Most people who use drugs don't have finances to have private lawyer. As a result, people are not defended properly, according the justice principle and are incarcerated for the minor crimes or even wrongfully convicted.