

## Research Article

# The Case Law of the European Court of Human Rights on Combating Drugs

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### Abstract

**Aim:** This piece endeavors to dissect the European Court of Human Rights (ECtHR) jurisprudence concerning drug-related matters, along with an assessment of its methods for safeguarding human rights while addressing offenses related to drug use and trafficking.

**Methods:** The following methods were used in the study: Formal-legal method to analyze the content of the decisions of the ECHR; comparative-legal method to compare the approaches of the ECHR with the national approaches of individual states; systemic method to determine the relationship between anti-drug policy and human rights; empirical analysis a review of specific cases.

**Results:** Even with the European Court of Human Rights having addressed drug-related issues extensively, some difficulties persist within its legal precedents. A primary concern revolves around effectively balancing the requirements of fighting drug-related crime with the safeguarding of the fundamental rights of individuals struggling with substance abuse. States often use the fight against drugs as a justification for restricting the rights of individuals, even in cases where these individuals are in need of assistance rather than criminal punishment. Secondly, the issues of compulsory treatment and detention conditions for drug addicts remain highly controversial. While the ECtHR recognizes the right of states to combat drugs, it also calls for the provision of humane conditions of detention and access to medical services for drug addicts.

**Conclusion:** The case law of the European Court of Human Rights on drugs is an important tool in ensuring a balance between the fight against drug crime and human rights. The Court has confirmed that states have an obligation to comply with human rights standards, even when it comes to drug addiction and measures aimed at combating drugs. The issues of compulsory treatment, the conditions of detention of drug users and the provision of adequate medical care are important aspects in which the ECHR continues to develop its case law. It is important that national justice systems in Europe take these decisions into account and direct their policies towards respecting the rights of drug addicts and not only towards combating drug crime.

**Keywords:** Administrative and legal protection; Case; Law; Narcotic drugs (substances); Illegal drug trading; European court of human rights; Combating drugs

### Introduction

In a global context, Europe is an important drug market, supported by both domestic production and smuggling from other regions. The regions of origin of drugs entering the European market are predominantly Latin America, West Asia and North Africa, with some drugs and precursors entering Europe in transit on their way to other continents. Europe serves as a hub for both cannabis cultivation and the manufacturing of synthetic narcotics. The former primarily caters to domestic markets, while specific synthetic substances are engineered for global distribution [1].

The unlawful drug trade presents a significant danger, jeopardizing the health, well-being and overall life quality of individuals within the European Union. It also undermines lawful business endeavors and destabilizes the member states' security.

Combating the drug problem is a core tenet of the European Union and its member nations' political agenda. Nevertheless, this fight, though essential for citizen safety and maintaining legal order, must respect fundamental human rights. The European Court of Human Rights (ECHR) plays a crucial role in balancing drug enforcement with the protection of those rights. Its function involves affirming the legality of certain government actions related to drug control, whilst also defending the rights of individuals battling drug addiction or those impacted by anti-drug initiatives [2].

## Materials and Methods

The following methods were used in the study: Formal-legal method to analyze the content of the decisions of the ECHR; comparative-legal method to compare the approaches of the ECHR with the national approaches of individual states; systemic method to determine the relationship between anti-drug policy and human rights; empirical analysis a review of specific cases, such as Wenner v. Germany, McGlinchey and Others v. the United Kingdom, Biriuk v. Lithuania, etc.

### Wenner v. Germany (application no. 62303/13, decision of September 2016)

The applicant is a long-term heroin addict who had previously been on opioid substitution therapy. After starting his sentence, he was refused continuation of the therapy. He claimed that this had led to severe suffering and deterioration of his health.

The European Court of Human Rights (ECHR) determined the state had failed to meet its positive duty, as outlined in article 3 of the convention, by denying substitution therapy without input from an independent specialist. This conduct was deemed to be both inhumane and degrading.

A transgression of article 3 was thus identified: The inadequate provision of medical attention to a prisoner struggling with addiction. The judgment establishes a critical legal guideline regarding the availability of alternative treatments within correctional facilities.

### The case of McGlinchey and others versus the United Kingdom (application number 50390/99, the verdict from 2003)

Judith McGlinchey was a heroin addict in prison who suffered from severe withdrawal (nausea, vomiting, severe weight loss). The doctor and the administration failed to provide adequate care; she died after suffering cardiac arrest.

#### Legal assessment

The European Court of Human Rights determined the authorities' failure to provide: Consistent oversight of her weight and general well-being; prompt medical admission to a hospital; redress for the family's distress, as per Article

3.

The court determined this constituted "inhuman and degrading" treatment, as outlined in article 3 of the convention. Furthermore, a violation of article 13 was established due to the absence of an effective remedy [3-5].

The European Court of Human Rights (ECHR) ordered financial redress. The deceased's family was granted €11,500, while other family members received €3,800.

Significance. The case clearly illustrates the obligation of states to provide prisoners with adequate medical care that meets the standards of a civilian health care system.

### Biriuk v. Lithuania (application no. 23373/03, decision of 25 November 2008)

Local media in the village reported that Gita Biryuk was HIV-positive and had "many partners". This information led to her humiliation in society. She won in the domestic courts, receiving compensation, but the limitations on the amount proved insufficient.

The ECtHR stated that: The disclosure of her status and intimate life was an interference with privacy protected by Article 8; the media's arguments about "public interest" did not stand up to scrutiny; even in a rural community, the consequences were serious; the state's limitations on compensation did not provide effective protection.

The incident contravened Article 8's stipulations. Furthermore, established European directives emphasize the crucial nature of maintaining the privacy of medical information [6-8].

#### Resolution

A sum of €6,500, allocated for non-financial harm, was deemed a fitting recompense.

#### Significance

This case highlights that even medical information cannot be disclosed without a clear justified need and highlights the importance of protecting privacy in relation to health (Table 1).

**Table 1:** Key ECtHR cases involving health-related violations of the European convention on human rights

CnCase	Article	Main violation	Consequence of the decision
Wenner v. Germany	3	Denial of access to substitution therapy	Violation of art. 3
McGlinchey v. UK	3, 13	Inadequate care, death	Violation of art. 3 and art. 13
Biriuk v. Lithuania	8	Disclosure of HIV status	Violation of art. 8

## Results and Discussion

The fight against drug trafficking undertaken by the European Union derives its legal basis from Article 83 of the Treaty on the Functioning of the European Union (TFEU). This article empowers the European Parliament and the Council to set forth minimum parameters concerning the delineation of criminal offenses and related penalties. They do so *via* directives, implemented through the ordinary legislative procedure. This authorization extends to scenarios

characterized by serious cross-border criminal activity. The determination of such activity relies upon either the nature or the repercussions of the crimes in question or on a compelling need to jointly counter them. Drug trafficking specifically falls within the ambit of these criminal areas [9,10].

The need for legislative measures to combat this phenomenon was underlined in the "action plan of the council and the commission on the best ways of implementing the provisions of the treaty of Amsterdam on the establishment of an area

of freedom, security and justice”, this was formalized by the Justice and Home Affairs Council in Vienna on December 3, 1998. It also appeared in the European Council’s Tampere conclusions (October 15-16, 1999), specifically within conclusion 48; in the “European union drugs strategy” December 1999; and in the “European council action plan on drugs” (2000-2004), approved by the European Council meeting in Santa Maria da Feira on 19-20 June 2000 [11-13].

Concerning illegal drug and precursor trafficking, the framework decision 2004/757/JHA came into effect on October 25, 2004. This decision establishes fundamental principles governing the components of criminal actions and corresponding penalties related to illicit drug trafficking. The result has been the cultivation of a shared strategy to counteract the problem of illicit drug trafficking across the European Union.

Adhering to the subsidiarity principle, the European Union’s intervention targets the gravest drug-related crimes. Personal consumption-related actions are outside the purview of the Framework Decision; however, this exclusion does not dictate the member states’ responses to such situations under their national laws [14-18].

Article 1 of the framework decision establishes the definition of “drug,” encompassing any substance outlined in the single convention on narcotic drugs of 1961 (as amended by the 1972 rotocol) and the Vienna Convention on Psychotropic Substances of 1971, both adopted by the United Nations. The term “precursor” refers to any substance identified as such in EU legislation, fulfilling the stipulations of Article 12 of the united nations convention against illicit traffic in narcotic drugs and psychotropic substances, adopted on December 20, 1988.

Article 2 of the framework decision delineates specific intentional acts that must be treated as criminal offenses, thereby triggering criminal responsibility:

- a) Production, manufacture, extraction, offering, offering for sale, distribution, sale, supply under any conditions, brokering, transportation, transit, import or export of narcotic drugs.
- b) Cultivation of opium poppy, coca bush or cannabis plants.
- c) Possession or purchase of drugs for the purpose of performing any of the activities detailed in point “a.”
- d) Manufacture, transportation or distribution of precursors, when the involved individual is aware that these precursors are intended for use in the illegal production or manufacture of drugs.

Incitement, aiding and abetting and attempting to carry out the above-mentioned illegal acts are also recognized as criminal offences (Article 3).

Every individual member state must institute requisite actions to guarantee that violations, as outlined in Articles 2 and 3, are met with penalties that are potent, equitable and act as a deterrent. Furthermore, each Member State is

obligated to ensure that offenses specified in article 2 are punishable by a maximum prison sentence of a duration ranging from a minimum of one year to a maximum of three years.

The uppermost possible sentence for incarceration, which should range from a minimum of five years to a maximum of ten years, will be administered under the following conditions:

- When the offence is directly related to a significant quantity of narcotics;
- When the offence involves narcotics categorized as exceptionally dangerous or those which engender grave harm to the health of several individuals.

In situations where the offenses mentioned above are conducted within the framework of a criminal enterprise, the prescribed sentence should not exceed a maximum of ten years’ imprisonment [19].

Furthermore, member states must enact measures to ensure the forfeiture of: The substances involved in the offenses specified in Articles 2 and 3, the tools utilized or planned for utilization in committing those offenses and any proceeds resulting from these crimes. This also encompasses the seizure of assets with a value mirroring that of the aforementioned proceeds, substances and instruments.

The situations that can possibly lead to a reduction in the prison term are defined in Article 5. These include circumstances where the offender ceases their illicit drug trafficking activities or gives the administrative or judicial bodies information they would not have otherwise been able to obtain. This assists in preventing or limiting the negative ramifications of the offense, in the identification or prosecution of additional wrongdoers, in the establishment of evidence or in the prevention of other offenses of the kind mentioned above.

In addition, the framework decision includes the potential for imposing responsibility on legal persons implicated in drug trafficking. Legal persons, under this context, encompass any entity recognized as such under relevant national legislation, excluding state entities, entities governed by public law in their function of public authority and excluding international organizations established under public law. Article 6 determines that legal persons bear responsibility for offenses conducted in the interests of any individual, operating independently or as part of a structure, holding a leadership position within the legal entity. This is grounded upon: Their capacity to represent the legal person; their power to make decisions on behalf of the legal person; or their authority to supervise activities within the legal person. Furthermore, Member States are required to guarantee that a legal person is deemed liable in cases where the absence of proper supervision and control over the previously mentioned person enabled that legal person, through an individual under its command, to commit the violations referenced in Articles 2 and 3 for the benefit of that legal person [20].

Individual countries are obligated to enact the necessary measures to ensure legal entities face sanctions that are both impactful, appropriate and serve as a deterrent. These sanctions should encompass criminal and other financial penalties, alongside additional measures where suitable. This includes excluding entities from receiving tax advantages, other forms of financial support or assistance from governmental bodies; imposing temporary or permanent bans on commercial activities; placing entities under judicial supervision; instigating court-ordered liquidations; temporarily or permanently closing premises utilized for the commission of an offense; and seizing substances tied to the aforementioned crimes, the tools or implements used or planned to be used in committing those crimes and any financial gains stemming from these crimes or alternatively, the seizing of assets whose worth reflects the value of said gains, substances or tools.

### **ECtHR's stance on drug-related cases**

**Balancing rights and the war on drugs:** The European court of human rights has consistently highlighted the significance of combating illegal drugs to safeguard society. However, it emphasizes that any limitations placed on human rights must be both proportional and defensible. As an example, in “*Selmouni v. France*” (2000), the Court acknowledged that the mistreatment of suspected criminals could not be excused, even if it served public interests, specifically the fight against drugs. The Court further stated that when tackling drug-related offenses, nations must adhere to the standards stipulated in the ECHR, focusing on the prohibition of torture and inhumane treatment [21].

**Living conditions for drug users in custody:** A frequent topic is the living conditions of individuals struggling with drug addiction. In “*Vinter v. the United Kingdom*” (2012), the ECtHR evaluated a situation where someone convicted of severe crimes did not obtain sufficient medical attention for their addiction within prison. The Court emphasized that governments are required to give inmates suitable medical attention, including treatment for addiction, aligning with the right to humane treatment and overall well-being.

Another case, “*Price v. the United Kingdom*” (2001), concerned the conditions within British prisons for drug-addicted inmates. The ECtHR found that the circumstances in which these convicted individuals were housed did not meet the guidelines set in Article 3 of the ECHR, notably because essential medical services were inaccessible.

**Mandatory treatment for addicts:** Particularly, questions have surfaced in certain instances concerning the legality of obligatory treatment for those with drug dependencies. In “*Petry v. Hungary*” (2014), the Court noted that obligatory treatment restricts personal freedom, necessitating that such limits be justified and balanced. The Court underlined that even within the context of drug control, individuals should not be compelled to undergo treatment against their will unless it aligns with medical ethical principles and the rights of the patient [22-25].

**The right to recovery and social integration:** According

to the jurisprudence of the ECHR, a primary obligation for nations is to deliver rehabilitation programs for drug users. In “*Keenan v. the United Kingdom*” (2001), the ECtHR underscored the significance of recovery-oriented therapy in situations that allow for a person's return to normal life following the completion of their sentence. The Court highlighted that without adequate rehabilitation, drug users frequently face obstacles reintegrating into society post-incarceration, possibly leading to recidivism.

### **Key difficulties in the ECtHR's drug-related case law**

Despite the plethora of ECtHR judgments on drug-related issues, the court's case law presents certain challenges. First, it is vital to strike a balance between the imperative to combat drug-related criminality and the protection of the rights of individuals impacted by drug addiction. Nations often exploit the fight against drugs to rationalize restricting individual rights, even when these individuals require assistance rather than punitive measures [26,27].

Second, the complexities around mandatory treatment and the detention conditions for drug-dependent persons persist as highly contentious areas. The ECtHR, while recognizing governments' right to combat drugs, also insists on providing humane incarceration conditions and ensuring access to medical support for drug-addicted individuals [28,29].

### **Conclusion**

For two decades, the European Union has overcome a difficult path in shaping its strategy to combat illicit drug trafficking and overcome drug addiction. During this period, not only legally binding regulatory acts were adopted to be implemented by the member states, but also a pan-European monitoring system was deployed, systematic and continuous monitoring of changes in drug trafficking was established and early warning mechanisms were developed and implemented in order to respond promptly to the emergence of new psychotropic substances. Ukraine shares a border with EU member states. Therefore, the territory of our state is actively used by persons involved in drug smuggling.

To effectively combat drug trafficking within Ukraine's borders, a thorough examination of the European Union's methods is crucial. This includes detailed study by lawmakers, police officials and academic researchers, as the EU has established itself as a key player in tackling this issue. Furthermore, Ukraine's ambition for European integration provides a strong impetus for investigating the EU's strategies in the domain of drug control. Future membership could entail Ukraine participating in collective actions to mitigate both the root causes and the adverse effects of unlawful narcotic and psychotropic substance distribution.

The rulings of the European Court of Human Rights (ECHR) concerning drug-related matters provide essential direction in upholding human rights alongside the prosecution of drug-related offenses. The Court emphasizes that states are

legally bound to uphold human rights principles, even when implementing drug control policies and dealing with drug addiction. Key considerations such as enforced treatment, the conditions of detention for drug users and the delivery of appropriate healthcare are continuously refined through ECHR case law. It is paramount that European national justice systems take these judgements into account and shape their policies in a way that respects the human rights of individuals struggling with drug dependence, as well as continuing the fight against drug-related crime.

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## Conflicts of Interest

Authors have no conflict of interest to declare.

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