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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

KYRGYZSTAN

OPINION

ON

**THE DRAFT AMENDMENTS TO THE CODE OF OFFENCES ON THE
COMPULSORY TRANSFER OF OFFENDERS IN A STATE OF
INTOXICATION FOR EMERGENCY DRUG TREATMENT**

**Adopted by the Venice Commission
at its 142nd Plenary Session
(Venice, 14-15 March 2025)**

on the basis of comments by

**Ms Renata DESKOSKA (Member, North Macedonia)
Mr António Henriques GASPAR (Member, Portugal)
Mr Jörg PONT (Expert, Venice Commission)**



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I. Introduction

1. By letter of 21 January 2025, the Minister of Justice of the Kyrgyz Republic, Mr Ayaz Baetov, requested an opinion of the Venice Commission on the draft law "On Amendments to the Code of the Kyrgyz Republic on Offences" (CDL-REF(2025)011, hereinafter the "draft law").

2. Ms Renata Deskoska (Member, North Macedonia), Mr António Henriques Gaspar (Member, Portugal) and Mr Jörg Pont (Expert, Venice Commission) acted as rapporteurs for this opinion.

3. On 18 and 19 February 2025, a delegation of the Commission composed of Ms Deskoska, Mr Gaspar and Mr Pont, accompanied by Mr Mamuka Longurashvili from the Secretariat, had online meetings with representatives of the Ministry of Justice, the Ministry of Health, the Supreme Court, the Ombudsman's Office, the Bar Association as well as with representatives of civil society. The Commission is grateful to the Ministry of Justice for its support in organising the online meetings. Following the online meetings, on 19 February 2025, the Ministry of Health, the Ombudsman's Office and the NGO Akyykat Karegy Network provided their comments. The Commission is grateful to the interlocutors for their input.

4. This opinion was prepared in reliance on the English translation of the draft law. The translation may not accurately reflect the original version on all points.

5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 18 and 19 February 2025. Following an exchange of views with Mr Ayaz Baetov, the Minister of Justice of the Kyrgyz Republic, the Opinion was adopted by the Venice Commission at its 142nd Plenary Session (Venice, 14-15 March 2025).

II. Background, content of the draft law and scope of the Opinion

6. The explanatory report shows that the draft law is based on Article 91 of the Law of the Kyrgyz Republic "On the Protection of Health of Citizens"¹ (see para. 9 below), which opens up broad opportunities for the involuntary hospitalisation of persons in a state of intoxication who have committed an offence while intoxicated. However, law enforcement agencies, in the context of legal proceedings on cases of offences, do not have the right to compulsorily transfer intoxicated offenders to drug treatment facilities of the Ministry of Health. The main aims of the draft law are to strengthen security measures towards participants in legal proceedings in cases of offences, to reduce premature deaths from the use of alcohol, narcotic drugs, psychotropic and other intoxicating substances and to improve access to effective emergency medical and highly specialised qualified care.

7. Against this background, the draft law introduces two new provisions in Chapter 55 (Measures to ensure the legality of proceedings in cases of offences) of the Code of Offences:

- *Draft Sub-paragraph 5²* to be added to Article 522 (Types of measures to ensure the legality of proceedings in cases of offences)² reads as follows: "forced delivery of an offender who is in a state of intoxication, poses an immediate danger to himself or others, or is in a state of helplessness, to an institution of an authorised body in the field of health care for the provision of emergency drug addiction treatment".
- *Draft Article 529²* (Forced delivery of an offender in a state of intoxication for emergency drug treatment), which provides the procedure for Sub-paragraph 5², reads as follows:

¹ Available in Kyrgyz and Russian languages here: <https://cbd.minjust.gov.kg/4-5260/edition/1939/ru>

² Existing procedural measures provided in Article 522 of the Code of Offences are: 1) bringing-in of the offender to the place where the protocol on the offence is drawn up; 2) detention; 3) forcible bringing-in; 4) personal search and inspection of the vehicle, small vessel and belongings; 5) examination to determine the state of intoxication with alcohol, narcotic drugs, psychotropic and other intoxicating substances (concerns road traffic checks, as specified in Article 529); 6) drawing up a risk assessment protocol.

"1. Forced delivery of an offender in a state of intoxication for emergency drug treatment is the forced transfer of a person in order to ensure the safety of participants in legal proceedings in cases of offences to an institution of an authorised body in the field of health care. 2. Forced delivery must be carried out within a short period of time. 3. Forced delivery is carried out exclusively in relation to an offender who is in a state of intoxication, poses an immediate danger to himself or others, or is in a state of helplessness. 4. A corresponding entry is made in the report on the offence or detention regarding forced delivery".

8. The Venice Commission notes that the sensitive nature of the draft provisions, which relate, *inter alia*, to human rights and medical aspects, makes it important to clarify some terms used in the draft law. Draft Sub-paragraph 5² of Article 522 uses "emergency drug addiction treatment" while Article 529² uses "emergency drug treatment". Taking into account the difference between drug use and drug addiction/dependency (see para. 14 below) and based on the aims of the draft amendments, this Opinion will use "emergency drug treatment".

9. Further to Article 91, the Law on Health Protection contains other provisions relevant to the draft law, as described below. The Commission will not analyse their compatibility with international standards, as it is not the object of the present Opinion.

- *Article 64 § 3 (1) of the Law* stipulates that all persons with mental/substance use disorders, in the provision of medical care, have the right, in addition to the general rights of citizens and patients, to psychiatric and drug treatment based on the principles of legality, mercy, humanity and respect for human rights and freedoms in the least restrictive conditions.
- *Article 90 § 2 of the Law* provides the following grounds for hospitalisation in a psychiatric or narcological in-patient facility: the presence of a mental or behavioural disorder, the decision of a psychiatrist or narcologist to conduct an examination or in-patient treatment or a judge's ruling, as well as the need to conduct a psychiatric, narcological or psychological-psychiatric examination in the cases and in accordance with the procedure established by this Law.
- According to *Article 90 § 12 of the Law*, police have an obligation to assist medical personnel during involuntary hospitalisation and to ensure safe conditions for access to and examination of the person to be hospitalised. In cases where it is necessary to prevent actions that threaten the life and health of others on the part of the person being hospitalised or other persons, as well as if it is necessary to search for and detain the person to be hospitalised.
- *Article 91 of the Law* (Provision of in-patient care for mental and/or behavioural disorders without the patient's consent) reads as follows: "1. A person with a mental and/or behavioural disorder³ may be hospitalised in a psychiatric/drug treatment hospital without his/her consent or without the consent of his/her legal representative prior to a judge's ruling, if his/her examination or treatment is possible only in in-patient conditions and the mental disorder is severe and causes: 1) his immediate danger to himself or others; 2) his helplessness, i.e. inability to fulfil the basic needs of life independently; 3) substantial harm to his/her health due to deterioration of mental condition, if the person will be left without psychiatric care. 2. The involuntary stay of a person in a psychiatric/narcological in-patient facility shall continue only for the period of time when the grounds for which the hospitalisation was carried out are maintained. 3. A person placed in a psychiatric/narcological hospital involuntarily, if the grounds for which the hospitalization was carried out persist, during the first six months at least once a month is subject to examination by a commission of psychiatrists of the psychiatric institution to decide on

³ According to the explanatory report, "behavioural disorders" arise as a result of the use of alcohol, drugs, psychotropic and other intoxicating substances.

the extension of the hospitalization. If the hospitalization is extended beyond six months and if the grounds for which the hospitalization was carried out persist, examinations by a commission of psychiatrists are carried out at least once every six months. 4. After six months from the moment of placement of a person in a psychiatric/narcological hospital on an involuntary basis, the conclusion of the commission of psychiatrists on the need to extend such hospitalization is sent by the administration of the psychiatric hospital to the court at the location of the psychiatric organization. The judge may extend the hospitalization in the manner prescribed by civil procedure legislation. Subsequently, the decision to extend the hospitalization of a person placed in a psychiatric hospital on an involuntary basis is made by the judge annually".

10. As regards the link between administrative offences and intoxication, according to the Code of Offences of the Kyrgyz Republic, the use of narcotic drugs or psychotropic substances without medical justification, as well as the consumption of alcohol in public places, represent offences against public order and shall entail the imposition of a fine or community service (Article 127). Furthermore, committing an offence in a state of intoxication (by alcohol, narcotic, psychotropic or other intoxicating drugs) constitutes an aggravating circumstance (Article 46).

A. Applicable standards

1. UN Human Rights Treaty System

11. Article 9⁴ (1) of the International Covenant on Civil and Political Rights (ICCPR), to which Kyrgyzstan is a party, states that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". "Paragraphs 2 to 5 of Article 9 set out specific safeguards for the protection of liberty and security of person. ... the important guarantee laid down in paragraph 4, i.e. the right to review by a court of the legality of detention, applies to all persons deprived of liberty". Deprivation of liberty involves, *inter alia*, police custody, administrative detention and involuntary hospitalisation, as well as being involuntarily transported, further restrictions on a person who is already detained, for example, solitary confinement or the use of physical restraining devices. "The term "arrest" refers to any apprehension of a person that commences a deprivation of liberty, and the term "detention" refers to the deprivation of liberty that begins with the arrest and continues in time from apprehension until release".⁵

12. The UN Human Rights Committee also considered that "security detention (sometimes known as administrative detention or internment) ... presents severe risks of arbitrary deprivation of liberty ... as other effective measures addressing the threat would be available. If ... a present, direct and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden of proof lies with the State ... to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention". The State "also needs to show that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that the guarantees provided by Article 9 are fully respected in all cases. Prompt and regular review by a court is a necessary guarantee for those conditions,

⁴ Article 9: "1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

⁵ ICCPR, General comment No. 35 on Article 9, Liberty and security of person, §§ 4-5 and 13.

as is access to independent legal advice, preferably selected by the detainee, and disclosure to the detainee of, at least, the essence of the evidence on which the decision is taken".⁶

13. Article 10 (1) of the ICCPR stipulates that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Ultimate responsibility for the observance of Article 10 (1) rests with the State as regards all institutions where persons are lawfully held against their will, including hospitals and correctional institutions.⁷ The right to health is provided for in Article 12 of the International Covenant on Economic, Social and Cultural Rights. Under articles 2 (2) and 3 of the Covenant, States are required to implement the right to health on a non-discriminatory basis, which includes extending that right to drug users.

14. The UN Special Rapporteur on the right to health underlined the distinction between drug use and drug dependence as follows: "Drug dependence is a chronic, relapsing disorder that should be medically treated using a biopsychosocial approach. Drug use is neither a medical condition nor does it necessarily lead to drug dependence. People who use drugs and people who are dependent on drugs possess the same right to health as everyone else, ... the same standards of ethical treatment apply to the treatment of drug dependence as to other health-related conditions".⁸

2. European standards

15. Although Kyrgyzstan is not bound by European standards in the area of the right to liberty and security, certain elements of the European constitutional heritage that have universal relevance may be useful in interpreting and applying provisions of international law applicable to Kyrgyzstan.

16. European standards in this field are more detailed. Article 5 of the European Convention on Human Rights (ECHR) is, together with Articles 2 and 3, in the first rank of the fundamental rights that protect the physical security of the individual, and, as such, its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty. According to the case law of the European Court of Human Rights (ECtHR), "in order not to make it impracticable for the police to fulfil their duties of maintaining order and protecting the public, provided that they comply with the underlying principle of Article 5, which is to protect the individual from arbitrariness..., the lawful detention of a person outside the context of criminal proceedings can, as a matter of principle be permissible under Article 5 § 1 (c) of the Convention".⁹ The lawful detention of alcoholics or drug addicts is also one of the exceptions allowing the deprivation of liberty under Article 5 § 1 (e). The ECtHR consistently noted that the persons referred to in Article 5 § 1 (e) "may be deprived of their liberty for the purpose of medical treatment, for social policy considerations, or on both medical and social grounds".¹⁰ The ECtHR also indicated that for the purposes of Article 5 § 1 (e), the term "alcoholics" should not be understood in the limited sense of persons in a clinical state of "alcoholism". "People who are not medically diagnosed as 'alcoholics', but whose conduct and behaviour under the influence of alcohol pose a threat to public order or themselves, can be taken into custody for the protection of the public or for the protection of their own interests, such as health or personal safety. The provision does not, however, permit the detention of an individual merely because of his alcohol intake".¹¹

⁶ *Ibid.* § 15.

⁷ ICCPR, General Comment [No. 21 \(Article 10\)](#).

⁸ UN Human Rights Council, [Study on the impact of the world drug problem on the enjoyment of human rights](#), 2015, § 7.

⁹ ECtHR, *S., V. and A. v. Denmark* [GC], no. 35553/12, judgment of 22 October 2018, § 116.

¹⁰ ECtHR, *Witold Litwa v. Poland*, No. 26629/95, judgment of 4 April 2000, § 60.

¹¹ ECtHR, *Petschulies v. Germany*, No. 6281/13, judgment of 2 June 2016, § 65.

17. Article 5 § 1 sets out important safeguards. The requirement of lawfulness is not satisfied merely by compliance with the relevant domestic law; domestic law must be in conformity with the general rule of law principles of legal certainty, the principle of proportionality and the principle of protection against arbitrariness.¹² The conditions for deprivation of liberty must be clearly defined in the domestic law, which should be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to the degree that is reasonable in the circumstances, the consequences which a given action may entail.¹³ The absence of arbitrariness is a necessary element of the "lawfulness" of the detention within the meaning of Article 5 § 1. Detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities or where the domestic authorities neglected to attempt to apply the relevant legislation correctly. For deprivation of liberty to be considered free from arbitrariness, it does not suffice that this measure is executed in conformity with national law; it must also be necessary in the circumstances. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. The notion of arbitrariness also includes assessing whether detention was necessary to achieve the stated aim. "The detention of an individual is such a serious measure that it is justified only as a last resort where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest, which might require that the person concerned be detained".¹⁴ The applicability of one sub-paragraph ((a) to (f) of Article 5 § 1) does not necessarily preclude that of another; detention may, depending on the circumstances, be justified under more than one sub-paragraph.¹⁵

18. Further to the above-mentioned standards to be upheld in the context of deprivation of liberty, the ECtHR case law also established that the State's positive obligations arise under Article 2 (Right to life) of the ECHR in the context of healthcare in detention. In particular, where "the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual by a third party or himself and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. ... even where it is not established that the authorities knew or ought to have known about any such risk, there are certain basic precautions which police officers ... should be expected to take in all cases in order to minimise any potential risk to protect the health and well-being of the arrested person".¹⁶

19. As regards the use of physical force and the conduct of law-enforcement officers in this context, the ECtHR held that Article 3 of the ECHR does not prohibit the use of force by State agents in certain well-defined circumstances, such as to effect an arrest. However, such force may be used only if indispensable and must not be excessive. "Where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity. ... any conduct by law-enforcement officers vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question".¹⁷

20. The Council of Europe International Co-operation Group on Drugs and Addictions (Pompidou Group) has identified key human rights principles that must be safeguarded in addressing drug-

¹² Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, benchmarks B and C.

¹³ ECtHR, *Khlaifia and Others v. Italy* [GC], 2016, § 92; *Del Río Prada v. Spain* [GC], 2013, § 125; *Creangă v. Romania*, 2012, § 120; *Medvedyev and Others v. France* [GC], 2010, § 80.

¹⁴ ECtHR, *S., V. and A. v. Denmark*, op. cit., §§ 73-77. See also, *Witold Litwa v. Poland*, op. cit., § 78.

¹⁵ ECtHR, *Iliseher v. Germany* [GC], nos. [10211/12](#), judgment of 4 December 2018, § 126.

¹⁶ ECtHR, *Daraibou v. Croatia*, No. [84523/17](#), judgment of 17 January 2023, § 84.

¹⁷ ECtHR, *Necdet Bulut v. Turkey*, no. [77092/01](#), judgment of 20 November 2007, § 23; *Shmorgunov and Others v. Ukraine*, nos. [15367/14](#) and 13 others, judgment of 21 January 2021, § 359; *Bouyid v. Belgium* [GC], no. [23380/09](#). Judgment of 29 September 2015, §§ 100-101.

related and addiction-related issues, including the right to life – “drug-related or any other substance/behavioural addictions-related violence is a serious human rights concern. ... Governments must take steps to ensure the safety and security of their citizens and respect the rule of law. From these flows the right to live in a safe and healthy environment; ... the right to health care requires governments to ensure that all people, including people who use drugs and those with substance use disorder or addictive behaviours, have early access to evidence-based prevention and comprehensive healthcare services, bio-psycho-social treatments, recovery programmes and harm reduction; the absolute prohibition on torture or inhuman or degrading treatment or punishment and obligation to respect human dignity; “the right to freedom from discrimination and stigmatisation – Governments must ensure that drug policies are evidence-based and do not unfairly target people who use drugs and those with substance use disorder or addictive behaviours”. Informed consent of the patient is a crucial principle in the treatment of substance use disorders.¹⁸

21. According to CPT standards, “Every patient capable of discernment is free to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances which are applicable to the population as a whole”.¹⁹

III. Analysis

A. Law making process

22. As it appears from the explanatory report and online discussions, the draft law was developed and submitted to public consultations, but no input was received. The draft law has not yet been transmitted to Parliament. The online exchanges showed the lack of consensus among the main state actors concerned as to the need for and relevance of the draft law. Most of the interlocutors, including the Ministry of Health of Kyrgyzstan, do not see the necessity of the draft amendments, pointing out that the compulsory hospitalisation of intoxicated persons is already regulated in the existing legislation (see para. 9 above). Most of the interlocutors also expressed concerns that the draft law lacks necessary safeguards and entails the risks of arbitrary application.

23. The Venice Commission's Rule of Law Checklist contains the standards and best practices of proper law-making. Under the Rule of Law Checklist, the process for making laws must be transparent, accountable, inclusive, and democratic. For this requirement to be satisfied, the public should have access to draft legislation and should have a meaningful opportunity to provide input.²⁰ The Venice Commission wishes to underline the importance of wide and substantive consultations when it comes to the draft legislation on issues of major importance for society and raising a number of complex human rights-sensitive issues. Consultations with external participants (i.e., professionals in the relevant field) and representatives of social, professional and/or other groups affected by the issue may also be required. External input may also be obtained through discussions in the media and in civil society.²¹ Therefore, the Venice Commission recommends that the authorities conduct proper law-making procedures involving all the relevant stakeholders.

¹⁸ Pompidou Group, [P-PG\(2024\)8](#), Bringing human rights to the heart of drug and addiction policies: guidance for aligning drug and addiction policies with human rights, §§ 7 and 15.

¹⁹ [CPT/INF\(93\)12-part](#), Health care services in prisons - Extracts from the 3rd General Report of the CPT published in 1993, §47.

²⁰ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, Benchmarks A.5.

²¹ Venice Commission, [CDL-AD\(2019\)015](#), Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist, paras 77 and 79. See also [CDL-AD\(2016\)007](#), Rule of Law Checklist, *op. cit.*, Benchmark II.A.5. Law-making procedures. [CDL-PI\(2021\)003](#), Compilation of Venice Commission opinions and reports concerning the law-making procedures and the quality of the law.

B. Compliance of the draft law with the principles of legal certainty, proportionality and protection against arbitrariness

24. The Venice Commission reiterates that the domestic law should be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to the degree that is reasonable in the circumstances, the consequences which a given action may entail.²² Therefore, it is recommended that the draft provisions be clarified and the terms used with the existing legislation be aligned with relevant international standards.

a. Grounds for compulsory transfer and new powers of police in this regard

25. For the compulsory transfer for emergency drug treatment under the draft law, two alternative grounds have to be present: the intoxicated offender shall a) represent an immediate danger to him/herself or others or b) be in a state of helplessness. The draft law aims at vesting the police with the powers to assess whether the degree of the intoxication of an offender is severe enough to trigger the application of draft Sub-paragraph 5² and, based on such an assessment, to decide on the compulsory transfer to a medical facility.

26. While the draft law provides for the first criterion (i.e., immediate danger to him/herself or others) as a basis for the compulsory transfer to a medical facility, it ignores other non-medical processes, for example, sobering up from intoxication due to the use of alcohol. Sobering up is not a medical²³ but a social service as it does not require medical intervention, but physiological sobering at home or, in case of disturbance of public order, in specialised social institutions designed for short-term accommodation outside the system of the Ministry of Health of Kyrgyzstan. In other cases, an immediate danger that an intoxicated person poses to him/herself, discernible by non-medical persons (for example, loss of consciousness, respiratory suppression, etc.), needs immediate medical emergency support on the spot and not the forced placement in an institution by law enforcement officials. Identification and treatment of other dangerous stages of intoxication need examination and arrangements by a health professional as well.

27. Based on the above, the Venice Commission considers that allowing the police to compulsorily transfer intoxicated offenders to a medical institution, in all cases, without obtaining medical evidence from a health professional, entails considerable risks. In particular, the Venice Commission entertains doubts as to whether the police officers would be able to make adequate decisions on the compulsory transfer without medical knowledge and skills and faced with the multitude of specific urgent circumstances that different kinds of offences and intoxicated offenders may represent.

28. Another important concern raised in this context is that draft Sub-paragraph 5² represents a new measure to ensure the legality of proceedings in cases of offences. In other terms, the compulsory transfer to a medical facility serves as a means for ensuring the person's subsequent appearance and participation in offence-related proceedings. Giving the police the power to decide on the application of an urgent medical measure without the medical evidence/expertise entails serious risks that the legal goal outweighs the medical goal disproportionately and that any offender be considered as needing compulsory hospitalisation without clear, foreseeable provisions and necessary safeguards. Referring to the existing model of the interaction between the police and medical workers (Article 90 § 12 of the Health Protection Law – see in para. 9 above), the Commission considers that the draft law should

²² Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, Benchmark B.3.

²³ Medical classifications such as the International Classification of Diseases (ICD-10) do not include alcohol intoxication as a *separate disease*. It is classified as a condition associated with alcohol consumption. It is only considered by medical professionals as a symptom of alcohol dependence (F10.2 in ICD-10). Alcohol dependence treatment in drug treatment facilities is a long-established and systematised procedure. This treatment process includes diagnosis, treatment of withdrawal syndrome, detoxification, psychotherapeutic care and rehabilitation.

explicitly provide that in certain categories of cases, the medical evidence is necessary to decide on the compulsory transfer and on the relevant institution.

29. Regarding the second ground (state of helplessness), the Venice Commission notes that the draft law does not define "state of helplessness". Although this ground for compulsory transfer in the draft law is similar to the ground provided for in Article 91 of the Health Protection Law (which defines helplessness as the inability to fulfil basic life needs independently), the definition of the "state of helplessness" is absent in the draft law. The Venice Commission considers it important that the draft law defines "state of helplessness" for the purposes of the Code of Offences.

30. Finally, the Venice Commission wishes to stress the need for emergency medical care not only upon the arrival of the intoxicated offender in the specialised medical institution but also on the spot and/or during the transfer as the absence of qualified medical care at these critical stages may represent a risk to the life of the intoxicated person.²⁴

b. Proportionality

31. Based on the draft law, compulsory transfer may imply the use of physical force to restrain an intoxicated offender (for example, when s/he poses an immediate danger to him/herself or others) and transfer him/her by police car to a relevant medical facility. The detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest, which might require that the person concerned be detained. That means that it does not suffice for the deprivation of liberty to be executed in conformity with national law, but it must also be necessary in the circumstances.

32. The above-mentioned criteria are absent in the draft law. The compulsory transfer must be a last resort after the police have considered other, less serious, measures but have found them to be insufficient.²⁵ The absence of arbitrariness is a necessary element of the "lawfulness" of the detention. Furthermore, the law should be foreseeable in terms of the consequences which a given action may entail. The Commission finds that the draft law lacks conditions under which such a measure is strictly necessary. Therefore, the draft law should be improved in this regard in line with international human rights standards.

33. Overall, the Venice Commission finds that not only the relevant legislation but also its implementation will be of crucial importance for upholding human rights in accordance with international standards, which set out a number of criteria referred to above. The interconnected nature of the work of police and medical services needs to be clearly set out and implemented. In this regard, the legislation should be supplemented by bylaws/protocols to clearly define the role of each (police and healthcare) body and how to react and interact when it comes to the compulsory transfer of intoxicated offenders while abiding by the safeguards foreseen in the law.

C. Procedural safeguards

34. The Venice Commission wishes to stress that the draft law lacks procedural safeguards regarding all the stages of the procedure. In particular, the draft law does not specify the maximum time limit within which the police have an obligation to proceed with the compulsory transfer (i.e., the intoxicated offender remains under the police's control). Recalling that deprivation of liberty involves, among others, being involuntarily transported (see para. 11 above) and that the authorities must justify any period of detention, no matter how short (see para. 18

²⁴ ECtHR, *Daraibou v. Croatia*, *op.cit.*, § 84.

²⁵ ECtHR, *Kharin v. Russia*, No. [37345/03](#), judgment of 3 February 2011, § 45.

above), the Venice Commission recommends that "a short period of time" provided in para. 2 of draft Article 529² be specified.

35. There is no clear obligation for a mandatory medical examination upon arrival at the healthcare facility, which is essential to confirm the necessity of the compulsory transfer and to decide on hospitalisation. Furthermore, the draft law does not specify how long an individual may be held under compulsory transfer measures or provide for periodic assessments of whether continued hospitalisation remains necessary. The Commission notes that Article 91 §§ 2-4 of the Law on the Protection of Health (see para. 9 above) specifies certain procedural safeguards (the timeframes of compulsory hospitalisation and the periodic - medical and judicial - reviews thereof). The Commission recommends that the draft law properly incorporates all the relevant procedural safeguards.

36. Draft Article 529² § 4 of the Code of Offences mentions the corresponding entry in the offence protocol regarding compulsory transfer without, however, specifying the required elements, such as the reasons for the compulsory transfer, the detailed description of the circumstances justifying such a measure, information on the individual's condition and any immediate risks (e.g., observed signs of intoxication, the identity of the officials involved in the transfer, the time and place of the transfer, the steps taken to ensure compliance with procedural safeguards, any medical assessment conducted before, during or after the transfer, and the notification of rights). In this context, reference needs to be made to Article 517 of the Code of Offences, which describes the content of the offence protocol.²⁶

37. The draft law does not establish a requirement to inform the family and legal representative of an individual who has been forcibly transferred to a healthcare facility. The Venice Commission refers to Article 524 § 3 of the Code of Offences, which stipulates that in cases of administrative detention, the offender's relatives, workplace or study administration and the defence counsel shall be informed of his whereabouts as soon as possible. The Commission recommends that the reference to Article 524 § 3 be made in the draft law.

38. As regards the possibility of appealing against the compulsory transfer, the Commission notes that Articles 545-547 of the Code of Offences provide for the procedure of appealing the decision of the authorised body in the case of an offence to the district (city) court, which should be made explicitly applicable in this context.

39. Lastly, the draft law does not explicitly prohibit the punitive use of compulsory transfer. There is a risk that these provisions could be misused to punish individuals for drug or alcohol use rather than being applied strictly as a measure to prevent harm. The implementation of the draft provisions should not result in administrative detention in disguise in deviation from the appropriate safeguards. The Venice Commission, therefore, considers that there is a need for additional safeguards to protect individuals' rights and ensure that compulsory transfer measures are applied fairly, lawfully, and with appropriate oversight.

²⁶ The offence protocol shall be drawn up "on paper or in electronic form, certified by the electronic signature of an official. The protocol shall specify: the date, time and place of its drawing up; position, surname, name, patronymic of the person who drew up the protocol; information on the person who committed the offence; the place, date, time of commission and circumstances evidencing the commission of the offence; the article of this Code providing for liability for the offence; information about witnesses and victims, if any; explanation of the person prosecuted for committing the offence; other information necessary for the resolution of the offence case. Before drawing up a protocol the authorised person has an obligation to inform the offender of his rights to have the assistance of a representative; give an explanation or refuse to give an explanation and answer the question; file a complaint with the court against the decision of the authorised body. 4. The protocol shall be signed by the representative of the law enforcement body and the offender as well as by witnesses/victims (if any). The refusal by the offender to sign the protocol is recorded in the protocol. The offender shall have the right to submit explanations and comments on the content of the protocol -to be attached to the protocol, as well as to state the reasons for his refusal to sign it. 6. The protocol shall be drawn up in two copies, one of which shall be handed to the person held liable for the offence against signature.

IV. Conclusion

40. At the request of the Minister of Justice of the Kyrgyz Republic, the Venice Commission has assessed the draft amendments to the Law Code of Offences on the compulsory transfer of offenders in a state of intoxication for emergency drug treatment.

41. The Venice Commission notes that the compulsory hospitalisation of persons with mental/behavioural disorders in a psychiatric or drug treatment facility is already regulated in the Kyrgyz legislation, which, however, is not covered by the present Opinion. Furthermore, the police have an obligation to assist medical personnel in this regard, including securing access for medical personnel to the person concerned, ensuring the safety of the person and others and searching and detaining the person for the purposes of compulsory hospitalisation. It remains unclear why the existing legal framework is considered insufficient to address the compulsory transfer of intoxicated offenders for emergency drug treatment.

42. Given the complex nature of the issue, including, among others, human rights and medical aspects, the Venice Commission invites the authorities to ensure meaningful dialogue among the relevant state bodies, civil society and all other relevant stakeholders in order to reach a broad consensus as to the policy regarding the mechanism of compulsory transfer and the relevance of supplementing the current legislation.

43. The Venice Commission considers that allowing the police to compulsorily transfer intoxicated offenders to a medical facility, in all cases, without obtaining medical evidence from a health professional, entails considerable risks. Giving the police the power to decide on the application of an urgent medical measure without the medical evidence/expertise entails serious risks of arbitrariness.

44. Overall, the Venice Commission finds that not only the relevant legislation but also its implementation will be of crucial importance for upholding human rights in accordance with international standards, which set out a number of criteria referred to above. The interconnected nature of the work of police and medical services needs to be clearly set out and implemented. In this regard, the legislation should be supplemented by bylaws/protocols to clearly define the role of each (police and healthcare) body and how to react and interact when it comes to the compulsory transfer of intoxicated offenders while abiding by the safeguards foreseen in the law.

45. As regards the draft law, if the authorities reach a consensus to supplement the current legislation, the Venice Commission considers that it needs to be aligned with international standards on a number of aspects. Therefore, the Commission makes the following key recommendations and notes that further detailed recommendations are to be found in the text of this Opinion:

- defining and clarifying the scope of the concepts used in the draft law in line with the relevant national legislation and international standards;
- specifying the scope of action of the law-enforcement bodies as well as their obligation to assist and interact with the medical personnel;
- specifying that compulsory transfer must be a measure of last resort after other, less serious measures appear insufficient;
- providing that in certain categories of cases, the medical evidence is necessary to decide on the compulsory transfer and on the relevant institution;
- providing explicitly in the draft law all the necessary safeguards as regards length of the transfer, mandatory medical examination upon arrival, length of compulsory hospitalisation, periodic independent assessments and the obligation to inform relatives/legal representative);
- prohibit the punitive use of compulsory transfer explicitly to ensure that the implementation of the draft provisions does not result in administrative detention in

disguise, in deviation from the appropriate safeguards to protect individuals' rights and ensure that compulsory transfer measures are applied fairly, lawfully, and with appropriate oversight.

46. The Commission remains at the disposal of the Kyrgyz authorities for further assistance in this matter.