Warsaw, 20 October 2026
Opinion-Nr: CRIM-ARM/591/2026 [TO]

NOTE ON INTERNATIONAL STANDARDS AND COMPARATIVE REGULATORY PRACTICES CONCERNING TESTING FOR THE NON-MEDICAL USE OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

ARMENIA

The Note has benefitted from contributions made by Renaud Colson, Associate Professor at the Law & Political Science Faculty of the University of Nantes, France; Julie Hannah, Director of the International Centre on Human Rights and Drug Policy; Tamara Otiashvili, Senior Legal Expert in Human Rights and Democratic Governance; Elina Steinerte, Member of the UN Expert Panel on Strengthening the International Drug Control System; and Khalid Tinasti, Centre on Conflict, Development and Peacebuilding (CCDP), Geneva Graduate Institute.



OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw
Office: +48 22 520 06 00
www.legislationline.org

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

This Note provides an overview of applicable international and regional standards and selected comparative practices concerning testing for the non-medical use of narcotic drugs and psychotropic substances. As per the request, it focuses on drug testing of students in educational institutions, convicted individuals in penitentiary institutions, drivers of motor vehicles and military personnel, including circumstances in which testing may be voluntary or compulsory.

International conventions aiming at drug control conventions emphasize prevention, treatment, rehabilitation, education and social reintegration, but do not specifically address or prescribe drug testing as a general means of implementing those objectives. Where a State chooses to introduce drug testing, such measures may affect a range of human rights and fundamental freedoms, including the rights to privacy, physical and psychological integrity, health and dignity, as well as the right to equality and non-discrimination. They may also raise specific concerns regarding the collection, processing, health, use and protection of sensitive personal medical information. At the outset, drug testing should be considered if at all, within a broader, evidence-based ecosystem of drug use prevention rather than as a stand-alone measure. Any proposed drug-testing measure should be based on scientific evidence on its effectiveness and appropriateness in the specific setting, taking account of the characteristics and needs of the people concerned, patterns and reasons for drug use, available evidence-based alternatives depending on the aim pursued with the test and potential negative or unintended harms; where evidence is limited or uncertain, that uncertainty should form part of the necessity assessment. Any measure introduced should be regularly monitored and evaluated for effectiveness and discriminatory impact. Drug testing measures should be human rights-based while reflecting a gender- and diversity-sensitive perspective, including through meaningful and inclusive consultation.

Any drug-testing mechanism should comply with the requirements of legality, legitimacy, necessity and proportionality, and non-discrimination. The legal framework should identify with sufficient precision the purposes for which testing may be conducted, the categories of persons who may be tested, the competent authorities, the circumstances and modalities of testing and sampling, the information generated and who may access it, and the consequences of positive, refused or unavailable tests, together with strict safeguards governing the processing, confidentiality, retention and destruction of testing results. The necessity and proportionality assessment should consider, in particular, the suitability and effectiveness of testing for the objective pursued, the availability of less restrictive means, the intrusiveness of the testing method and institutional context of the persons concerned, whether testing is voluntary or compulsory, the reliability and accuracy of the testing method, the availability of confirmatory testing before adverse or otherwise serious consequences are imposed, whether the person concerned has an effective opportunity to challenge the testing results, and

the nature and severity of the consequences of a positive or refused test. As highly sensitive health information, samples and test results should be subject to strict personal data protection safeguards, including purpose limitation, confidentiality, accuracy, access, retention and secure destruction

These general requirements should be applied to the particular legal and factual circumstances of each category of persons concerned. The assessment should therefore take account of the specific purpose and context of testing, including the characteristics of the targeted group in all its diversity, the risks sought to be addressed, the relationship between the testing measure and the objective pursued, and the safeguards available in practice. Particular attention should be paid to the potential for direct or indirect discrimination, including where authorities have discretion to determine who should be tested, and to intersecting forms of discrimination.

Drug testing of students in educational institutions - Preventing drug use among children and adolescents is a legitimate objective. However, the introduction of random or targeted drug testing for students in educational institutions raises important considerations, given the available evidence pointing to the limited effectiveness of such measures, their potential adverse effects on children and adolescents, and the availability of less intrusive, more effective, alternatives, such as confidential counselling and support, screening questionnaires accompanied by appropriate interventions and referral to treatment or other support services, and prevention programmes addressing psychosocial mechanisms and cognitive skills.

Should any drug testing modality nevertheless be retained, this would require particularly compelling justification, remain exceptional and be narrowly targeted. Any such scheme should comply with the requirements of legality, legitimacy, necessity and proportionality, and non-discrimination, while being child-rights-centred with safeguards appropriate to the age, maturity and potential vulnerability of the students concerned. In particular, the legal basis should enable students and their parents or guardians to foresee the circumstances in which testing may be required, the applicable procedures and the consequences, which should not be punitive. When a student tests positive, the response should focus on further assessment and offering voluntary, evidence-based counselling, treatment, health-care or psychosocial services based on free and informed consent, rather than punishment, suspension or expulsion. A positive screening or test result should not lead to compulsory treatment, compulsory registration or placement in a closed facility. Any reliance on children’s consent should take account of the imbalance of power in the educational setting and of the child’s best interests, evolving capacities, right to be heard and right to privacy.

Drug testing of convicted individuals in penitentiary institutions - The appropriateness of testing in penitentiary institutions and the safeguards required, depend in part on its purpose. Drug testing may serve different objectives, which should be clearly distinguished in law or policy. First, testing for prevention and institutional safety may be intended to deter drug use, identify patterns of use or respond to specific safety concerns. Such testing should address a clearly

identified institutional need, and its scope and frequency should be proportionate to that need. Second, testing to identify treatment and rehabilitation needs should primarily serve as a means of offering appropriate healthcare, counselling, harm-reduction interventions and treatment, rather than triggering punitive responses. A positive result should facilitate access to appropriate support and should not, in itself, be treated as a substitute for an individual assessment of healthcare needs. The right to health requires consideration of what treatment and support are available alongside any testing regime Third, testing may be linked to incentives, privileges or decisions concerning conditional or early release, including as part of an agreed treatment or rehabilitation plan. In such cases, the conditions and consequences of testing should be clearly defined in advance, relevant to the specific decision, proportionate and subject to effective review. A positive result should not automatically lead to the loss of privileges or adversely determine a release decision without an individual assessment and consideration of the circumstances, including any relevant treatment needs.

Regardless of its purpose, any testing regime should have a clear, accessible and foreseeable legal basis and comply with the requirements of legality, legitimacy, necessity, proportionality and non-discrimination. The selection of individuals for testing should be based on objective, transparent and non-discriminatory criteria. The least intrusive reliable method should be used, and sample collection should respect the privacy, bodily and psychological integrity, and dignity of convicted individuals. Safeguards should include the possibility of confirmatory testing and an effective opportunity to challenge results and decisions based on them. Drug testing should not undermine equitable access to healthcare, treatment and rehabilitation services. Testing policies should also incorporate a gender-sensitive approach and ensure equitable access to appropriate treatment and rehabilitation services.

Drug testing of drivers of motor vehicles - Random roadside testing aimed at preventing impaired driving would be a more appropriate and targeted measure, while periodic testing may be justified in specific circumstances, such as a documented medical condition, a prior drug-driving offence, a rehabilitation programme or a safety-sensitive professional or vocational category.

If drug testing is introduced, the legal framework should clearly define when testing may be required, the competent authority and lawful trigger, permissible testing methods, the consequences of refusal or a positive result, and should distinguish preliminary roadside screening from evidential or confirmatory testing. Selection for random roadside testing should be governed by objective, clear and non-discriminatory criteria. Less intrusive testing methods should be preferred where sufficiently reliable, with more intrusive methods reserved where necessary to confirm initial results and obtain evidentially robust results. Appropriate safeguards should ensure the accuracy and reliability of testing, including confirmatory testing and a meaningful opportunity to challenge the result. The framework should also distinguish the presence of a substance from impairment relevant to driving and provide for legitimate medical explanations, including prescribed medication, while

ensuring strict personal data protection safeguards for health information collected as a result of the testing.

Preventive mechanisms for military personnel - Drug testing may be justified by the distinctive requirements of military service, including safety, discipline and operational readiness, particularly for safety-sensitive functions. Military status alone, however, does not justify unrestricted testing of all personnel at the same intensity or frequency. Law or regulation should differentiate testing according to purpose and risk, and specify who may be tested, on what grounds, by whom, according to which method and with what frequency. Random or periodic testing should have an identifiable operational, safety or disciplinary rationale and should not be broader or more frequent than reasonably required to achieve the objective pursued. Information obtained for diagnosis, treatment or rehabilitation should be subject to medical confidentiality and information disclosed to commanders should be limited to what is necessary for a specified fit-for-purpose, safety or operational decision. Where a positive result may lead to disciplinary proceedings, or affect deployment, security clearance, promotion or continued service, the drug testing process should ensure reliable chain of custody, confirmatory testing, an effective opportunity to challenge the test result and any decision based on it. Consequences of a positive drug test should be proportionate and, where compatible with operational safety, allow consideration of medical explanations, treatment, rehabilitation or temporary reassignment if appropriate.

More specific and detailed comments are included in the text of this Note.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

TABLE OF CONTENTS

I. INTRODUCTION 7

II. SCOPE OF THE NOTE 7

III. RELEVANT INTERNATIONAL STANDARDS AND OSCE COMMITMENTS 8

1. Relevant International Standards and Other Instruments on Drug Control and Drug Use Prevention 8
2. Relevant International Human Rights Standards and OSCE Human Dimension Commitments 12
   - *2.1. Right to Privacy and Personal Data Protection 12*
   - *2.2. Right to the Physical and Mental Integrity of the Person 15*
   - *2.3. Right to Health 16*
   - *2.4. Right to Equality and Non-Discrimination 16*
3. Standards of the International Labour Organisation on Occupational Safety and Health in the Working Environment 17

IV. COMPARATIVE OVERVIEW AND LEGAL ANALYSIS OF SELECTED ISSUES 18

1. General Comments and Considerations 18
   - *1.1. Comprehensive Approach to Drug Use Prevention 18*
   - *1.2. Evidence-Based 18*
   - *1.3. Human Rights-Based, Gender- and Diversity-Sensitive Approach to Drug Use Prevention 19*
   - *1.4. Participation and Inclusiveness when Adopting Drug Use Prevention Measures 19*
   - *1.5. Requirements of Legality, Legitimacy, Necessity and Proportionality and Non-discrimination 20*
2. Drug Testing for Students in Educational Institutions 24
3. Drug Testing for Convicted Individuals in Penitentiary Institutions 28
   - *3.1. Legality 30*
   - *3.2. Legitimate Aim 31*
   - *3.3. Necessity and Proportionality 31*
   - *3.4. Non-discrimination and Gender-Responsive Approach 33*
4. Mandatory Periodic Drug Testing for Drivers of Motor Vehicles 34
   - *4.1. Legality 35*
   - *4.2. Necessity and Proportionality 35*
5. Preventive Mechanisms Concerning the Use of Narcotic Drugs and Psychotropic Substances by Military Personnel 38
   - *5.1. Legality and Differentiation of Testing Purposes 38*
   - *5.2. Necessity, Proportionality and Non-Discrimination 40*
   - *5.3. Medical Confidentiality 40*
   - *5.4. Testing Procedures and Consequences 41*

I. INTRODUCTION

1. On 4 August 2026, the Human Rights Defender of Armenia sent a request to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") to prepare a legal analysis on applicable international and regional standards and good practices concerning the prevention of the non-medical use of narcotic drugs and psychotropic substances, in particular through the introduction of drug-testing mechanisms for different categories of persons, especially students in educational institutions, convicted individuals in penitentiary institutions, drivers of motor vehicles and military personnel. In addition, the requestor also asked for an overview of relevant standards and good practices on combatting the trafficking of narcotic drugs online.
2. On 10 August 2026, ODIHR responded to this request, confirming the Office's readiness to prepare two separate Notes on the said issues.
3. This first Note was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[1]

II. SCOPE OF THE NOTE

4. This Note covers only the list of selected issues relating to the prevention of the non-medical use of narcotic drugs and psychotropic substances, mentioned in the request of the Human Rights Defender of Armenia with respect to the possible introduction of: (i) screening drug-testing mechanisms for students in educational institutions; (ii) an obligation for convicted individuals in penitentiary institutions to undergo drug testing at regular intervals; (iii) mandatory periodic drug testing for drivers of motor vehicles; and (iv) preventive mechanisms concerning the use of narcotic drugs and psychotropic substances by military personnel, including periodic voluntary or mandatory drug-testing regimes. Thus limited, it does not constitute a full or comprehensive overview of measures aimed at preventing the non-medical use of narcotic drugs and psychotropic substances nor an analysis of the legal and institutional frameworks governing these issues in Armenia.
5. This Note provides an overview of applicable international and regional standards and domestic practices. Country examples primarily illustrate how selected OSCE participating States approach the issues addressed in the Note; where useful, examples from non-OSCE jurisdictions illustrate contrasting or supplementary approaches. Their inclusion should not be read as endorsing any particular model. Country examples should

1 See especially OSCE Permanent Council, *Decision no. 1048, OSCE Concept for Combating the Threat of Illicit Drugs and the Diversion of Chemical Precursors*, 26 July 2012, para. 12, whereby OSCE participating States committed to abide by the following principles when countering illicit trafficking in narcotic drugs and the diversion of chemical precursors: *"[f]ull respect for human rights and fundamental freedoms, democracy and the rule of law*" and "*preventive measures aimed at reducing drug abuse and dependence, and drug-related harm to health and society, especially to children and young people*", and para. 20, which underlines the commitment to *"[r]ais[e] public awareness of the risks and threats posed by the world drug problem and of best practices in the field of drug abuse prevention initiatives based on scientific evidence*".

be assessed with caution and in light of the broader national legal and institutional framework and country context, since they cannot necessarily be replicated in another jurisdiction.

6. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*[2] (CEDAW) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*[3] and commitments to mainstream gender into OSCE activities, programmes and projects, this Note integrates, as appropriate, a gender and diversity perspective.

7. Should the Note be translated into another language, the English version shall prevail.

8. In view of the above, this Note does not prevent ODIHR from formulating additional written or oral recommendations or comments on the issues addressed in the present Note or on relevant legal acts or related legislation pertaining to the legal and institutional framework regulating the non-medical use of narcotic drugs and psychotropic substances in the future.

III. RELEVANT INTERNATIONAL STANDARDS AND OSCE COMMITMENTS

1. Relevant International Standards and Other Instruments on Drug Control and Drug Use Prevention

9. The prevention of the non-medical use of narcotic drugs and psychotropic substances constitutes a legitimate public policy objective and is recognized under the international drug-control framework. The principal international instruments in this area are the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol (1961 Convention), the 1971 Convention on Psychotropic Substances (1971 Convention), and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Convention) (together, the "International Drug Control Conventions).[4]

10. Article 38 of the 1961 Convention, as revised by the 1972 Protocol, requires States Parties to "*give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved*".[5] Article 20 (1) of the 1971 Convention on Psychotropic Substances contains a comparable provision concerning the prevention of abuse and the early identification, treatment, education, after-care, rehabilitation and social reintegration of persons affected by the abuse of psychotropic substances.[6]

11. These instruments also consider treatment and other health-oriented measures in place of, or alongside, criminal punishment in certain circumstances. Article 36 (1) (b) of the 1961

2 *UN Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), adopted by General Assembly resolution 34/180 on 18 December 1979. Armenia acceded to the Convention on 3 September 1993.
3 See OSCE *Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.
4 See *UN Single Convention on Narcotic Drugs*, 1961, as amended by the 1972 Protocol; *UN Convention on Psychotropic Substances*, 1971; and *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1988. Armenia acceded to the three Conventions on 13 September 1993.
5 See *Single Convention on Narcotic Drugs*, 1961, as amended by the 1972 Protocol, Article 38.
6 See *Convention on Psychotropic Substances*, Article 20 (1), which states: "*The Parties shall take all practicable measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved, and shall co-ordinate their efforts to these ends*".

Convention provides that, where persons who abuse drugs have committed offences covered by that provision, States Parties may provide for treatment, education, after-care, rehabilitation and social reintegration either as an alternative to conviction or punishment or in addition to it.[7] The corresponding provision in the 1971 Convention is Article 22 (1) (b), which similarly permits such measures in relation to persons who abuse psychotropic substances.[8] The 1988 Convention further provides in Article 3 (4) (c) that, in appropriate cases of a minor nature, States Parties may provide measures such as education, rehabilitation or social reintegration as alternatives to conviction or punishment.[9] The International Drug Control Conventions do not specifically address or prescribe drug testing as a general means of implementing their prevention, treatment and rehabilitation objectives. The official commentary to the 1961 Convention confirms that Article 38, as amended by the 1972 Protocol, is deliberately framed in general terms as guidelines for the policies to be adopted by Governments in the field rather than as a set of mandatory rules requiring particular measures.[10]

12. While demand reduction featured in earlier multilateral instruments, notably the Comprehensive Multidisciplinary Outline adopted at the 1987 International Conference on Drug Abuse and Illicit Trafficking and the 1990 Global Programme of Action, the adoption by the General Assembly of the Declaration on the Guiding Principles of Drug Demand Reduction marked the first time that demand reduction became the subject of a dedicated General Assembly instrument and was recognised as an indispensable pillar of international drug control, on an equal footing with supply reduction.'[11] The subsequent Action Plan for the Implementation of the Declaration on the Guiding Principles of Drug Demand Reduction, endorsed by General Assembly resolution 54/132 (1999), similarly focused on prevention, treatment, rehabilitation and the needs of groups in vulnerable situation, including drug-using offenders in prison.[12] At the same time, neither the 1998 documents nor the Action Plan refer to drug testing, screening or urinalysis as a demand-reduction measure. The same approach is reflected in subsequent UN declarations and international policy documents, reaffirming a comprehensive approach to demand reduction, encompassing prevention, early intervention, treatment, care, recovery, rehabilitation and social reintegration, including the provision of such measures "*on a non-discriminatory basis*" (a qualification added in 2019), and underlying the integration

7 See *Single Convention on Narcotic Drugs*, Article 36(1)(b).

8 See *Convention on Psychotropic Substances*, Article 22 (1) (b), which provides: "*when abusers of psychotropic substances have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to punishment, that such abusers undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of article 20*".

9 See *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1988, Article 3(4)(c).

10 See United Nations, *Commentary on the Single Convention on Narcotic Drugs, 1961*, on Article 38, para. 4.

11 UN General Assembly, *Declaration on the Guiding Principles of Drug Demand Reduction*, resolution A/RES/S-20/3, annex, 10 June 1998; adopted alongside the *Political Declaration*, resolution A/RES/S-20/2, 10 June 1998. See also UN General Assembly, resolution 42/112, *International Conference on Drug Abuse and Illicit Trafficking*, 7 December 1987.

12 See United Nations General Assembly, *International cooperation against the world drug problem*, A/RES/54/132, 17 December 1999. The "early detection" and "early identification" language of the conventions and political declarations refers to clinical screening and brief intervention by health professionals, and does not refer to, or endorse, biological drug testing.

of drug-dependence care into health-care systems.[13] These commitments were subsequently reaffirmed and further developed at the 2016 UNGASS.[14]

13. Against this background, the United Nations Office on Drugs and Crime (UNODC) International Standards on Drug Use Prevention (2nd ed., 2018), developed with the World Health Organisation (WHO) and endorsed by the Commission on Narcotic Drugs (CND), aim to provide relevant evidence-based guidance for developing effective national drug prevention system, which specifically notes that random drug testing in schools is not an effective intervention, while drug testing in the workplace should only be envisaged as part of more comprehensive programme including referral and treatment.[15] In addition, the recent reports of the Office of the UN High Commissioner for Human Rights (OHCHR) are relevant. In particular, the 2023 report identifies drug testing "without consent or a judicial warrant" as a human rights concern and describes mandatory testing in schools as "seriously concerning".[16] The 2026 report identifies mandatory drug testing among the structural obstacles to the right to health. It finds that testing without knowledge or consent "raises human rights concerns" and that conditioning assistance on drug testing "can constitute impermissible discrimination". It also recommends that access to services not be conditional on "abstinence, compulsory treatment or mandatory drug testing".[17]

14. Although the International Drug Control Conventions do not contain a general express requirement that their implementation comply with international human rights law, they include specific human rights-related safeguards. In particular, article 14(2) of the 1988 Convention expressly requires measures adopted pursuant to that article to respect fundamental human rights. More broadly, States must interpret and implement their obligations under the drug control conventions consistently with their other obligations under international law, including international human rights law, and subsequent United Nations policy instruments have further affirmed that measures addressing the world drug problem must respect human rights and fundamental freedoms.[18]

---

13 See Commission on Narcotic Drugs, *Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem*, 2009, Official Records of the Economic and Social Council, 2009, Supplement No. 8 (E/2009/28), chap. I, sect. C, which reaffirmed a comprehensive approach to demand reduction and called for affordable, culturally appropriate and evidence-based treatment and the integration of drug-dependence care into health-care systems. See also See United Nations General Assembly, *Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem*, A/RES/S-30/1, adopted 19 April 2016, which identified prevention, early detection and intervention, treatment, care, recovery, rehabilitation and social reintegration as components of demand reduction, while its reference to "testing" concerns forensic analysis of seized substances in the context of supply reduction and law enforcement. See also Commission on Narcotic Drugs, *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, 2019*, which maintained this continuum, referring to prevention, early intervention, treatment, care, recovery, rehabilitation and social reintegration on a non-discriminatory basis.

14 See *Our joint commitment to effectively addressing and countering the world drug problem*, A/RES/S-30/1, 19 April 2016.

15 See Commission on Narcotic Drugs, *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, 2019*; UNODC and WHO, International Standards on Drug Use Prevention, 2nd updated ed., 2018.

16 See OHCHR, *Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights*, A/HRC/39/39 (2018); OHCHR, *Human rights challenges in addressing and countering all aspects of the world drug problem*, A/HRC/54/53 (2023), and its *summary*.

17 OHCHR, *Human rights challenges in addressing and countering all aspects of the world drug problem, in particular on the impact of drug policies on the rights of women and girls*, A/HRC/63/56 (advance unedited version, 14 September 2026), paras 27, 56, 58 and 77(k). See also Special Rapporteur on the right to health, *A/65/255* (2010), on drug control and the right to health; and *A/HRC/56/52* (2024). Special Rapporteur on torture, *A/HRC/22/53* (2013), on abuses in health-care settings, including compulsory drug treatment and the denial of opioid agonist therapy.

18 UN General Assembly, *Declaration on the Guiding Principles of Drug Demand Reduction*, resolution A/RES/S-20/3, annex, 10 June 1998, para. 8; adopted alongside the *Political Declaration*, resolution A/RES/S-20/2, 10 June 1998 (see para. 2, which states: "*action against the world drug problem is a common and shared responsibility requiring an integrated and balanced approach in full conformity with the purposes and principles of the Charter of the United Nations and international law, and particularly with full respect for the sovereignty and territorial integrity of States, non-intervention in the internal affairs of States and all human rights and fundamental freedoms*"). See the more explicit commitment in 2008, when the Commission on Narcotic Drugs adopted *Resolution 51/12* on Strengthening cooperation between the United Nations Office on Drugs and Crime and other United Nations entities for the promotion of human rights in the implementation of the international drug control treaties. See also United Nations *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1988, Article 14(2).

15. At the OSCE level, the 2012 OSCE Concept for Combating the Threat of Illicit Drugs and the Diversion of Chemical Precursors and the 2015 Declaration on the OSCE Activities in Support of Global Efforts in Tackling the World Drug Problem reflect the OSCE participating States' commitment to address illicit drugs through international co-operation and in conjunction with the International Drug Control Conventions.[19] These commitments are primarily concerned with the security, law-enforcement and international co-operation dimensions of the drug problem and do not specifically address drug testing.

16. The international drug-control framework must also be read in conjunction with subsequent United Nations policy instruments affirming that measures addressing the world drug problem must be implemented in conformity with human rights and fundamental freedoms.[20] In that respect, the OSCE participating States specifically committed to *"[f]ull[y] respect for human rights and fundamental freedoms, democracy and the rule of law*" when countering illicit trafficking in narcotic drugs and the diversion of chemical precursors and to focus on "*preventive measures aimed at reducing drug abuse and dependence, and drug-related harm to health and society, especially to children and young people*".[21]

17. At the regional level, the Council of Europe's International Co-operation Group on Drugs and Addictions (Pompidou Group) further developed the human-rights-based approach in its 2018 report "Drug Policy and Human Rights in Europe: Managing Tensions, Maximising Complementarities",[22] which sets out a framework for integrating human rights standards and tests into drug-policy development, monitoring and evaluation.[23] The International Guidelines on Human Rights and Drug Policy (2019) further articulate the application of principles including legality, necessity and proportionality to drug-control measures.[24]

18. Although Armenia is not a Member State of the European Union (EU), the reports and guidance of the EU Drugs Agency offer a useful overview of what to consider when planning or delivering health and social responses to drug-related problems in various settings, including prisons and schools, reviewing the available interventions and their effectiveness.[25]

---

19 See Permanent Council Decision No. 1048, *Concept for Combating the Threat of Illicit Drugs and the Diversion of Chemical Precursors*, 26 July 2012; See also *Declaration on the OSCE Activities in Support of Global Efforts in Tackling the World Drug Problem*, 4 December 2015.

20 UN General Assembly, *Declaration on the Guiding Principles of Drug Demand Reduction*, resolution A/RES/S-20/3, annex, 10 June 1998, para. 8; adopted alongside the *Political Declaration*, resolution A/RES/S-20/2, 10 June 1998 (see para. 2, which states: "*action against the world drug problem is a common and shared responsibility requiring an integrated and balanced approach in full conformity with the purposes and principles of the Charter of the United Nations and international law, and particularly with full respect for the sovereignty and territorial integrity of States, non-intervention in the internal affairs of States and all human rights and fundamental freedoms*"). See the more explicit commitment in 2008, when the Commission on Narcotic Drugs adopted Resolution 51/12 on Strengthening cooperation between the United Nations Office on Drugs and Crime and other United Nations entities for the promotion of human rights in the implementation of the international drug control treaties.

21 See especially OSCE Permanent Council, *Decision no. 1048, OSCE Concept for Combating the Threat of Illicit Drugs and the Diversion of Chemical Precursors*, 26 July 2012, para. 12, whereby OSCE participating States committed to abide by the following principles when countering illicit trafficking in narcotic drugs and the diversion of chemical precursors: *"[f]ull respect for human rights and fundamental freedoms, democracy and the rule of law*" and "*preventive measures aimed at reducing drug abuse and dependence, and drug-related harm to health and society, especially to children and young people*", and para. 20, which underlines the commitment to *"[r]ais[e] public awareness of the risks and threats posed by the world drug problem and of best practices in the field of drug abuse prevention initiatives based on scientific evidence*".

22 See Council of Europe (CoE), International Co-operation Group on Drugs and Addictions (Pompidou Group), *Drug Policy and Human Rights in Europe: Managing Tensions, Maximising Complementarities*, in particular the framework concerning human rights standards and tests in drug-policy development, monitoring and evaluation and the application of proportionality to random school drug testing.

23 *Ibid. Drug Policy and Human Rights in Europe: Managing Tensions, Maximising Complementarities*.

24 See *International Guidelines on Human Rights and Drug Policy, 2019*, developed by a coalition of UN Member States, WHO, UNAIDS, UNDP and leading human rights and drug policy experts.

25 See the *European Union Drug Agency*.

2. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

19. More generally, drug testing may potentially unduly impact a range of human rights and fundamental freedoms protected under international and regional human rights law, including the rights to privacy, physical and psychological integrity, health, education and dignity, as well as the right to equality and non-discrimination. Where such rights are violated, those affected should have access to an effective remedy in accordance with applicable international and regional human rights standards.[26] The assessment of the legitimacy, necessity and proportionality of drug testing, and the safeguards required, will depend on its purpose, personal scope, testing modalities and circumstances in which it is applied, the consequences of a positive test or a refusal to submit to testing, and the subsequent recording, storage, disclosure or use of information derived from the test.

2.1. Right to Privacy and Personal Data Protection

20. Article 17 of the International Covenant on Civil and Political Rights (ICCPR) protects individuals against arbitrary or unlawful interference with their privacy, family, home or correspondence. In its General Comment on Article 17, the UN Human Rights Committee has stressed that legislation authorizing interference with privacy "*must specify in detail the precise circumstances in which such interferences may be permitted*", noting that even interference provided for by law "*should be reasonable in the particular circumstances*", and that *"[a] decision to make use of such authorized interference must be made only by the authority designated under the law"*.[27] In a case concerning mandatory HIV and drug testing, the Committee applied these principles and found a violation of Article 17 of the ICCPR where the State had failed to explain how mandatory HIV and drug testing furthered the stated aims of protecting public health and maintaining public order,[28] thereby emphasizing the need for a demonstrated connection between the testing measure and the objective pursued.

21. Drug tests involve the collection, analysis, recording, storage, potential disclosure and use of highly sensitive personal information. While the right to personal data protection is not a stand-alone right under the ICCPR, the UN Human Rights Committee has clarified that Article 17 of the ICCPR also requires that "*every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination*."

22. At the Council of Europe level, the right to respect for private and family life is enshrined in Article 8 of the European Convention on Human Rights (ECHR).[29] Interference with this right is only acceptable if it complies with the strict requirements of Article 8 (2) of the ECHR, meaning that such interference must be "in accordance with the law", must pursue a "legitimate aim" (i.e., the protection of national security, public safety or the economic well-being of the country, the prevention of disorder or crime, the protection

26 In particular, Article 2 of the *International Covenant on Civil and Political Rights* (ICCPR); and Article 13 of the *European Convention on Human Rights* (ECHR).

27 See UN Human Rights Committee, *General Comment No. 16*: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 8 April 1988, paras. 4 and 8.

28 See UN Human Rights Committee, *Andrea Vandom v Republic of Korea*, Communication No. 2273/2013, CCPR/C/123/D/2273/2013, 12 July 2018, para. 8.9.

29 See the *European Convention on Human Rights* (ECHR).

of health or morals, or the protection of the rights and freedoms of others) and must be "necessary in a democratic society" and strictly proportionate to the aim pursued. The European Court of Human Rights (ECtHR) has considered drug testing or the taking of medical samples in different contexts, including employment and criminal proceedings, and its case law confirms that the assessment of the interference depends on the legal basis, the legitimate aim being pursued, the nature and degree of the intrusion caused by the test, the modalities of the test, and the safeguards surrounding the measure and the handling of the test results.[30]

23. The right to personal data protection is also not a stand-alone right in the ECHR, but the ECtHR has acknowledged that the protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life.[31] In its caselaw, the ECtHR relies on the right to respect privacy with regard to the automatic processing of personal data as laid out in the CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)[32] and its Protocol (CETS 223)[33] (also known as "modernized Convention 108"), which aim to protect data subjects against abuses that may result from the processing of personal data.[34] Under Article 6 of the modernized Convention 108, personal data revealing information on an individual's health are classified as "sensitive", thereby warranting a heightened degree of protection and additional safeguards[35] and the automatic processing of such sensitive data "*shall only be allowed where appropriate safeguards are enshrined in law"*. The Explanatory Report to the Protocol 223 further provides examples of the types of additional safeguards that could be considered alone or in combination regarding the handling of such sensitive data, including the data subject's explicit consent, a law covering the intended purpose and means of the processing or indicating the exceptional cases where processing such data would be

30 See e.g., ECtHR, *Wretlund v. Sweden*, Application no. 46210/99, decision of 9 March 2004, regarding a drug testing programme at a nuclear plant. See also ECtHR, *Schmidt v. Germany* (dec.), Application no. 32352/02, 5 January 2006, in which the Court reiterated that *"[t]he taking of a blood and saliva sample from the applicant constitutes a compulsory medical intervention which, even if it is of minor importance, must consequently be considered as an interference with his right to privacy*", which may give rise to a breach of the right to respect for private life unless it is "prescribed by law", pursues one or more legitimate aim or aims as defined in Article 8 (2) of the ECHR and is "necessary in a democratic society" to attain them; the ECtHR concluded that in that case of determination of authorship of a criminal offence, compulsory blood and saliva sampling was necessary and proportionate. See also ECtHR, *X v. the Netherlands*, Application no. 8239/78, Commission decision of 4 December 1978, which recognizes that the taking of blood samples is a generally accepted and applied measure in the Codes of Criminal Procedure of many Member States of the Council of Europe, *e.g.*, to determine the blood alcohol level of traffic participants; and *X v. Austria*, Application no. 8278/78, Commission decision of 13 December 1979, para. 3 (blood test in paternity proceedings).

31 See ECtHR *Registry*, *Guide on case-law of the Convention – Data protection*, 28 February 2026 (latest update), see paras. 5 and 19.

32 See Council of Europe, *Convention for the protection of individuals with regard to the processing of personal data*, 28 January 1981 (CETS 108), ratified by Armenia on 9 May 2012.

33 See Council of Europe, *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 223), ratified by Armenia on 25 January 2022. The Protocol specifies that the automatic processing of such sensitive data "*shall only be allowed where appropriate safeguards are enshrined in law, complementing those of [the] Convention*", which shall "*guard against the risks that the processing of sensitive data may present for the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination*" (new Article 6 (1) and (2) of the modernized Convention 108).

34 Under Article 2 of Convention 108, "data processing" includes "*any operation or set of operations performed on personal data, such as the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure, or destruction of, or the carrying out of logical and/or arithmetical operations on such data*".

35 *The Protocol (CETS: 223) amending the Convention 108 (or modernized Convention 108)* specifies that the automatic processing of such sensitive data "*shall only be allowed where appropriate safeguards are enshrined in law, complementing those of [the] Convention*", which shall "*guard against the risks that the processing of sensitive data may present for the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination*" (new Article 6 (1) and (2) of the modernized Convention 108). The Explanatory Report to the Protocol 223 further provides examples of the types of additional safeguards that could be considered alone or in combination regarding the handling of such sensitive data, including the data subject's explicit consent, a law covering the intended purpose and means of the processing or indicating the exceptional cases where processing such data would be permitted, a professional secrecy obligation, measures following a risk analysis (risk assessment prior to processing should assess whether data are protected against unauthorised access, modification and removal/ destruction and should seek to embed high standards of security throughout the processing; such an assessment should be informed by considerations of necessity and proportionality, and the fundamental data protection principles across the range of risks including physical accessibility, networked access to devices and data, and the backup and archiving of data; see Convention 108, *Guidelines on the Protection of Individuals with regard to the Processing of Personal Data by and for Political Campaigns* (2021), para. 4.3.5); a particular and qualified organisational or technical security measure; see *Explanatory Report – CETS 223 – Automatic Processing of Personal Data (Amending Protocol)*, 10 October 2018, para. 56.

permitted, a professional secrecy obligation, measures following a risk analysis (risk assessment prior to processing should assess whether data are protected against unauthorised access, modification and removal/destruction and should seek to embed high standards of security throughout the processing; such an assessment should be informed by considerations of necessity and proportionality, and the fundamental data protection principles across the range of risks including physical accessibility, networked access to devices and data, and the backup and archiving of data).[36]

24. To assess if a certain measure does not unduly interfere with the right to privacy and personal data protection, the ECtHR examines whether the measure complies with the requirements listed in Article 5 of Convention 108, including whether personal data undergoing automatic processing was obtained and processed fairly and lawfully, whether it has been collected for explicit, specified and legitimate purposes, and whether the requirements to minimize the amount of data collected, to ensure that they are accurate, adequate, relevant and not excessive in relation to the purposes for which they are processed, to limit the duration of their storage, to use them for the purposes for which those data have been collected and to ensure transparency in data processing have been met.[37]

25. Although Armenia is not an EU Member State, within the framework of the Armenia-EU Visa Liberalization Action Plan (VLAP), it has committed to the strengthening of the institutional and legal framework governing personal data protection. From this perspective, Articles 7 and 8 of the EU Charter on Fundamental Rights which guarantee the right to privacy and personal data protection respectively, and the General Data Protection Regulation (GDPR) are also of relevance.[38] The GDPR provides data protection rights in all areas, except law enforcement, which is governed by the Law Enforcement Directive 2016/680 (hereinafter "LED").[39] Article 5 of the GDPR sets out the principles governing the processing of personal data, including lawfulness, fairness and transparency; purpose limitation; data minimization; data accuracy; storage limitation; integrity and confidentiality.[40] The International Guidelines on Human Rights

36 See CoE, *Explanatory Report – CETS 223 – Automatic Processing of Personal Data (Amending Protocol)*, 10 October 2018, para. 56.

37 ECtHR Registry, Guide on case-law of the Convention – Data protection, 28 February 2026 (latest update), paras. 89, 103, 108, 113-133, and caselaw referred therein.

38 See Council of Europe, *Convention 108 and modernised data-protection framework*; Committee of Ministers, *Recommendation CM/Rec(2019)2 on the protection of health-related data*; Council of Europe, *Convention on Human Rights and Biomedicine (Oviedo Convention)*; and, for EU Member States where Union law applies, EU Charter of Fundamental Rights, Arts 7-8, and *Regulation (EU) 2016/679 (GDPR)*, in particular Art. 9.

39 See *EU Directive 2016/680 of the European Parliament and of the Council* of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, OJ L 119, 4 May 2016.

40 The lawfulness principle is detailed in Article 6 (1) which requires that any processing operation must be based on at least one of the six legal bases in the exhaustive list provided (i.e., the legal bases requirement is met when consent from the person concerned is obtained; data processing is necessary for the performance of a contract; data processing is necessary because there is a legal obligation to do so; data processing is necessary for the protection of vital interests; data processing is necessary for the performance of a task carried out in the public interest / in the exercise of official authority; or data processing is necessary for representing legitimate interests). The meaning of the principle of transparency could be derived from Recital 39 GDPR which states that, "it should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed"; data subjects should be "made aware of risks, rules, safeguards, and rights in relation to the processing... and how to exercise their rights"; all information communicated should be "accessible and easy to understand" and in "clear and plain language". The principle of purpose limitation, which is also enshrined in Article 8 (2) of the EU Charter of Fundamental Rights, ensures that personal data is only used for the stated and specified purpose(s); purpose limitation should ensure that controllers do not engage in further processing of the collected data when such processing exceeds the original aim or is incompatible with the specified purpose. The data minimisation principle is essentially a proportionality principle as any interference with the fundamental right to data protection must be proportionate and any processing of personal data must be necessary. Article 5 (1) (e) of the GDPR requires the controller to limit the period of collection of personal data to what is strictly necessary for the purpose. Article 5 (1) (d) requires that personal data must be accurate and, where necessary, kept up to date, and that all reasonable steps be taken to delete or rectify inaccurate data promptly. The principle of storage limitation requires that data processing is limited by time (recital 39 of the GDPR provides that "[i]n order to ensure that the personal data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review"). The principle of confidentiality and integrity is detailed in Article 32 of the GDPR.

and Drug Policy treat the creation and sharing of drug registries, including with police, as a breach of health confidentiality that deters people from seeking care.[41]

2.2. Right to the Physical and Mental Integrity of the Person

26. Compulsory drug testing has been considered permissible in certain specific institutional settings and for particular purposes, including where testing pursues legitimate aims beyond drug prevention and is subject to appropriate safeguards. The permissibility of such testing therefore depends on its purpose, the institutional context, and the manner and degree of intrusion involved. These circumstances are distinct from compulsory drug testing undertaken for the general purpose of drug prevention, which requires separate justification and assessment in light of the rights to physical and mental integrity, privacy, and respect for human dignity. These interests are protected under Article 7 of the ICCPR and Article 3 of the ECHR, which enshrine an absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.[42] While the collection of a biological sample for the purpose of drug testing will not, in itself, necessarily attain the minimum level of severity required under Article 7 of the ICCPR and Article 3 of the ECHR, relevant factors to be assessed include whether the person concerned experienced serious physical pain or suffering as a result, whether the forcible medical procedure was ordered and administered by medical doctors; whether less intrusive methods were available, whether the person concerned was placed under constant medical supervision, and whether the forcible medical intervention resulted in any aggravation of the state of health of the person concerned and had lasting consequences for his or her health, also considering also the sex, age and state of health of the person concerned.[43] By contrast, the ECtHR has held that, considering the generally accepted desirability to effectively control the use of drugs in prisons, the treatment complained of, i.e., that a detainee had to produce the urine in the presence of a supervisor, did not attain the minimum level of severity required in order to fall within the scope of Article 3 of the ECHR.[44] The Court also held that the taking of blood and saliva samples from a suspect against his will in order to establish his participation in an offence did not attain the minimum level of severity required under Article 3 of the ECHR.[45]

27. The UN Human Rights Council's special procedures have addressed drug testing more directly. Most significantly, in its 2021 Study on Arbitrary Detention Relating to Drug Policies, the Working Group on Arbitrary Detention stated that "*subjecting persons to […] testing without their consent may constitute a violation of the right to physical integrity*" and, in that context, recommended that any testing, including the obtaining of a blood or urine sample, be undertaken only pursuant to a warrant approved by a judicial officer.[46] The Working Group further observed that random drug testing used to identify persons who use or possess drugs with a view to arrest, represents "*a marked departure from the requirement of probable cause for legal searches*" and "*considerably*

41 See International Guidelines on Human Rights and Drug Policy, *Right to privacy*, including para (iii) and commentary; see also *Drug dependence treatment*, para (iv).

42 See UN Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, para. 2, where the Committee specifically emphasized that the provision protects the dignity and physical and mental integrity of the individual. See also Eighteenth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *CAT/C/82/2*, paras. 40-45.

43 See e.g., ECtHR, *Jalloh v. Germany [GC]*, no. 54810/00, 11 July 2006, para. 76 (compulsory medical intervention to retrieve evidence whereas less intrusive methods could have been used). See also ECtHR, *R.S. v. Hungary*, no. 65290/14, 2 July 2019, paras. 34, 57-58.

44 See European Commission of Human Rights, *Peters v. the Netherlands*, no. 21132/93, decision of 6 April 1994; and *Galloway v. the United Kingdom*, no. 34199/96, decision of 9 September 1998, with respect to a requirement to produce urine samples in the presence of a supervisor held to not attain the minimum level of severity to fall under Article 3 of the ECHR.

45 See ECtHR, *Schmidt v. Germany* (dec.), no. 32352/02, 5 January 2006, where the ECtHR concluded that in that case of determination of authorship of a criminal offence, compulsory blood and saliva sampling was necessary and proportionate. See the *Nelson Mandela Rules, A/RES/70/175*, Rules 50–52; the *Bangkok Rules, A/RES/65/229*, Rules 19–20.

46 See Working Group on Arbitrary Detention, *Study on Arbitrary Detention Relating to Drug Policies* (2021), A/HRC/47/40, para. 10.

diminish[es] the human right to security of person", while noting the risk that decisions as to whom to test "*can be highly subjective, often based on a person's physical appearance, gender, age, race, ethnicity or their status as a migrant or a sex worker*".[47]

2.3. Right to Health

28. The right to health is also relevant, particularly where drug testing entails some forms of medical intervention, such as blood sampling,[48] or generates health-related information, or because its stated aim is drug-use prevention, itself a health-related measure. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right to the highest attainable standard of physical and mental health.[49] Where drug testing entails some forms of medical intervention, or is undertaken for health or treatment purposes, its design and implementation should be consistent with standards applicable to medical services, including medical confidentiality, professional ethics, gender- and diversity-sensitiveness, as well as being scientifically and medically appropriate and of good quality.[50]

29. With respect to routine testing specifically (in the distinct context of routine HIV/AIDS testing), the UN Special Rapporteur on the Right to Health concluded that *"[a]ny protocols for routine testing should require informed consent and be accompanied by anti-stigma sensitization to avoid exacerbating conditions of marginalization*", further emphasizing that *"[c]ompulsory testing, unless justified by public health requirements, must never be used as a means of policing private behaviour"*.[51] This guidance concerns testing justified by specific public health requirements and should be distinguished from compulsory drug testing undertaken for the general purpose of preventing drug use.

2.4. Right to Equality and Non-Discrimination

30. Drug-testing regimes must further comply with the principle of equality and non-discrimination, which is enshrined in Article 26 of the ICCPR, Article 14 of the ECHR and Protocol 12 to the ECHR, which guarantee to all persons equal and effective protection against discrimination on any ground. Differential treatment between categories of persons is not, by itself, incompatible with this requirement if the distinction pursues a legitimate objective and is based on reasonable and objective criteria,[52] and is proportionate to the aim pursued. The prohibition of discrimination shall cover both direct discrimination, i.e., acts or regulations that generate inequality, and indirect discrimination, i.e., acts or regulations that, although *prima facie* not discriminatory, result in unequal treatment when put into practice. The fact that a person belongs to a particular institutional, occupational or regulatory category may justify a differential treatment compared to other categories, although due justification should be provided. In any case, when contemplating the possible introduction of drug testing, the possible discriminatory impact of the contemplated measures should be considered,[53] including

47 *Ibid*, para. 11.
48 It is noted that the ECtHR has qualified the taking of a blood and saliva sample as a compulsory medical intervention, see e.g., ECtHR, *Schmidt v. Germany* (dec.), no. 32352/02, 5 January 2006.
49 See the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Armenia acceded to the ICESCR on 13 September 1993.
50 See UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (2000), E/C.12/2000/4, para. 12.
51 See *Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Report*, August 2009, UN Doc. A/64/272, para. 32.
52 See UN Human Rights Committee, *General Comment No. 18 (1989) on non-discrimination*, para. 13.
53 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para. 156.

the risks of potential stigma, which may also drive people who use drugs away from potential treatment.[54]

3. STANDARDS OF THE INTERNATIONAL LABOUR ORGANISATION ON OCCUPATIONAL SAFETY AND HEALTH IN THE WORKING ENVIRONMENT

31. The standards developed by the International Labour Organisation (ILO) relating to occupational safety and health in the working environment are also relevant to the issue of drug testing in the workplace. The Preamble of ILO's Constitution commits Member States to protect "*the worker[s] against sickness, disease and injury arising out of [their] employment*",[55] which has been further elaborated in several Conventions, Recommendations and Codes of Practice. Especially, the 1981 Occupational Safety and Health Convention (No. 155) requires ratifying States to formulate, implement and periodically review a coherent national policy aimed at preventing accidents and injury arising out of, linked with, or occurring in the course of work in both the public and private sectors, by minimizing the causes of hazards inherent in the working environment (Article 4).[56] Where used, drug testing may constitute one component of a broader risk-prevention policy in safety-sensitive occupations. The 1985 Occupational Health Services Convention (No. 161) further requires co-operation between employers, workers and their representatives to establish and maintain a safe and healthy working environment, including through the "*adaptation of work to the capabilities of workers in the light of their state of physical and mental health*".[57]

32. While Armenia has not ratified either Convention,[58] in June 2022, the International Labour Conference adopted a resolution recognizing Convention No. 155, together with the 2006 Promotional Framework for Occupational Safety and Health Convention (No. 187), as "fundamental Conventions" under the ILO's Declaration on Fundamental Principles and Rights at Work. This means that their core principles, including the risk-prevention and health-adaptation focus are treated as being applicable to all ILO member States by virtue of ILO membership, irrespective of ratification of the said Conventions.[59]

33. The ILO Code of Practice on the Management of Alcohol- and Drug-Related Issues in the Workplace[60] underlines that alcohol- and drug-related problems are health issues and favours counselling, treatment and rehabilitation over disciplinary measures; it also requires workplace policies to be developed in co-operation with workers and their representatives, while incorporating principles of non-discrimination. With respect to testing specifically, the Code recognizes that the testing of bodily samples raises fundamental moral, ethical and legal issues and should therefore be undertaken only where it is fair and appropriate and in accordance with applicable national law and practice (Section 7.2 of the Code). The accompanying Guiding Principles (Appendix V to the Code), while noting that there is insufficient evidence to demonstrate that alcohol and drug testing programs improve productivity and safety in the workplace, establish safeguards should drug testing be introduced, including a clearly defined testing policy, confirmatory testing of positive screening results, independent medical review, and strict

54 See Committee on Economic, Social and Cultural Rights, *Concluding Observations on Australia*, E/C.12/AUS/CO/5 (2017), concerning drug-testing requirements, para. 43.
55 See International Labour Organisation (ILO), *Constitution of the International Labour Organisation* (1919), as amended.
56 See ILO, *Occupational Safety and Health Convention* (No. 155), 1981.
57 See ILO, *Occupational Health Services Convention* (No. 161), 1985.
58 See United Nations in Armenia, *National OSH Profile*.
59 See ILO, *Resolution Concerning the Inclusion of a Safe and Healthy Working Environment in the ILO's Framework of Fundamental Principles and Rights at Work* (2022), adopted at the 110th Session of the International Labour Conference.
60 See ILO, *Code of Practice on the Management of Alcohol- and Drug-Related Issues in the Workplace* (1996), including Annex V on Guiding principles on drug and alcohol testing in the workplace.

confidentiality and security of test results, and provide that refusal to undergo testing should not, in itself, be treated as evidence of drug or alcohol use.

34. Other international standards, guidance and recommendations related to the specific categories of persons to be tested will be further elaborated in the respective sections below.

IV. COMPARATIVE OVERVIEW AND LEGAL ANALYSIS OF SELECTED ISSUES

1. General Comments and Considerations

1.1. Comprehensive Approach to Drug Use Prevention

35. Drug testing should be considered, if at all, within a broader, evidence-based ecosystem of drug use prevention rather than as a stand-alone measure or as an assumed component of a comprehensive system of drug control. As outlined in the UNODC-WHO International Standards on Drug Use Prevention, an effective national drug prevention system delivers an integrated range of interventions and policies based on scientific evidence, taking place in multiple settings and targeting relevant ages and levels of risk.[61] Such a system should recognize that drug use encompasses a broad spectrum of behaviors and experiences: drug use is neither itself a medical condition nor does it necessarily lead to drug dependence. Prevention responses should therefore reflect the diversity of individual circumstances and patterns of drug use, as well as the social, economic and structural factors influencing health and wellbeing, and should be grounded in scientific evidence and respect for human rights.[62] Against this framework, any proposed role for drug testing should be assessed by reference to whether, and on what evidence, it contributes to the objectives of a comprehensive prevention system.

1.2. Evidence-Based

36. Any consideration of introducing drug testing as a prevention measure should be guided from the outset by scientific evidence on whether the intervention is effective and appropriate within the broader prevention system and in the specific setting in which it is proposed, taking account of the characteristics and needs of the population concerned, patterns and reasons for drug use, and the available evidence on effective interventions.[63] Where evidence is limited or uncertain, that uncertainty should also form part of the assessment of whether the measure can be considered necessary.[64] If a new drug prevention measure or programme is introduced, it should also be monitored and evaluated at regular intervals to assess its effectiveness in practice, including any

61 See UNODC and WHO, *International Standards on Drug Use Prevention, 2nd updated* ed., 2018, p. 41.

62 See United Nations High Commissioner for Human Rights, *Study on the Impact of the World Drug Problem on the Enjoyment of Human Rights*, UN Doc. A/HRC/30/65 (4 September 2015), para. 7; and WHO and UNODC, *International Standards for the Treatment of Drug Use Disorders: Revised Edition Incorporating Results of Field-Testing*, 2020, pp. 3-6.

63 See UNODC and WHO, International Standards on Drug Use Prevention, 2nd updated ed., 2018, pp. 42-43. See also ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 5.

64 See precautionary principle rationale in CoE Pompidou Group, *Drug Policy and Human Rights in Europe: Managing Tensions, Maximising Complementarities*, p. 8.

discriminatory impact .[65] In that respect, as further elaborated below, available evidence does not generally support drug testing as an effective measure for the purpose of drug use prevention

1.3. Human Rights-Based, Gender- and Diversity-Sensitive Approach to Drug Use Prevention

37. As underlined in Sub-Section III.1 and 2, the consideration of States' obligations to incorporate human rights into drug policies are relatively new. The possible introduction of compulsory drug testing should be assessed from the outset through a human rights-based approach.[66] The assessment should examine the measure's stated objectives, the persons and groups who would be subjected to testing, the settings and methods in which testing would be conducted, and the potential consequences for affected individuals. Any interference with human rights should be assessed against the requirements of legality, legitimate aim, necessity, proportionality and non-discrimination (see Sub-Section III.2 *supra* and Sub-Section 1.5 *infra*). The CoE Pompidou Group's 2018 Report on Drug Policy and Human Rights in Europe[67] and the International Guidelines on Human Rights and Drug Policy[68] may serve as useful frameworks for that purpose, including in relation to meaningful participation, accountability and access to effective remedies. Gender and intersectional considerations should be integrated throughout the assessment, with particular attention to risks of discriminatory targeting and disproportionate impact on women and persons in marginalized or vulnerable situations. Relevant guidance includes CoE Pompidou Group's Handbook on Implementing a Gender Approach in Drug Policies[69] and the OHCHR Report on Human Rights Challenges in Addressing and Countering All Aspects of the World Drug Problem, in particular on the Impact of Drug Policies on the Rights of Women and Girls (2026)[70].

1.4. Participation and Inclusiveness when Adopting Drug Use Prevention Measures

38. When considering drug use policies, States should ensure meaningful and inclusive participation in the design, implementation, and evaluation of drug laws, policies, and practices, particularly by persons and groups who may be directly affected.[71] Participation mechanisms should be adapted to the circumstances of those most affected. Where direct participation may be difficult or constrained, including for children and persons deprived of their liberty, States should use accessible and context-appropriate

65 See UNODC and WHO, International Standards on Drug Use Prevention, 2nd updated ed., 2018, p. 45; and CoE Pompidou Group, *Drug Policy and Human Rights in Europe: Managing Tensions, Maximising Complementarities*, p. 10, which notes that *"[a]ny de facto discriminatory effects of drug policies should also be monitored and remedied, even if this was not intended or enshrined in law or policy*". See also ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 5, which states: "*laws and public decision-making should be prepared, discussed and adopted on the basis of well-founded arguments, scientific evidence and data, including information deriving from impact assessments and consultations with the public and other stakeholders. Evidence-based impact assessments should be made early in the process of preparing a law or an amendment. These should evaluate the likely economic, environmental, social, human rights, equality, gender and other impacts, as well as the budgetary, regulatory and bureaucratic implications of the planned legislation*".

66 See Human Rights Council resolutions *28/28* (2015), *37/42* (2018), *52/24* (2023) and *60/26* (2025), "The human rights implications of drug policy.

67 See CoE Pompidou Group, *Drug Policy and Human Rights in Europe: Managing Tensions, Maximising Complementarities* (2018).

68 See *International Guidelines on Human Rights and Drug Policy, 2019*, developed by a coalition of UN Member States, WHO, UNAIDS, UNDP and leading human rights and drug policy experts. See also Commentary on *International Guidelines on Human Rights and Drug Policy*.

69 See CoE Pompidou Group, *Handbook on Implementing a Gender Approach in Drug Policies: Prevention, Treatment and Criminal Justice* (2022).

70 See UN OHCHR, *Report on Human rights challenges in addressing and countering all aspects of the world drug problem, in particular on the impact of drug policies on the rights of women and girls*, A/HRC/63/56, 14 September 2026.

71 See *International Guidelines on Human Rights and Drug Policy, 2019*, Section I.4. See also CoE Pompidou Group, *Drug Policy and Human Rights in Europe: Managing Tensions, Maximising Complementarities* (2018); and See also ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 7.

means to obtain their views, including through representative organizations, civil society and community actors and, where appropriate, public or institution-specific consultations. For children, such processes should be age-appropriate and consistent with applicable standards under the CRC. As specifically recommended in the latest UN OHCHR Report on Human Rights Challenges in Addressing and Countering All Aspects of the World Drug Problem, in particular on the Impact of Drug Policies on the Rights of Women and Girls (2026), States should "*ensure the meaningful participation of women and girls, including women who use drugs and women with lived experience of drug-related criminal justice systems, women human rights defenders- in the design, implementation, monitoring and evaluation of drug policies and programmes*".[72] Accordingly, any consideration of introducing drug testing should be preceded by meaningful and inclusive consultation, including with persons who may be subject to the measure, including women and persons in marginalized or vulnerable situations, their representatives, civil society organizations, experts and other stakeholders. To guarantee effective participation, consultation mechanisms should allow for input at an early stage, from the initial policymaking phase *and throughout the process*,[73] as well as when evaluating the proposed measure.

1.5. Requirements of Legality, Legitimacy, Necessity and Proportionality and Non-discrimination

39. As underlined above, drug testing may may affect a range of human rights and fundamental freedoms protected under international and regional human rights law, especially the right to privacy, but depending on the modalities of the drug testing and consequences, also the rights to physical and psychological integrity, health, education and dignity, as well as the right to equality and non-discrimination. Accordingly, for it to not constitute an undue interference, any proposed measure must comply with the requirements of legality, legitimacy, necessity and proportionality, and non-discrimination.

40. *Legality of the Measure* – The requirement that interference be "provided by law" means not only that the restriction should have an explicit basis in domestic law, but also refers to the quality of the law in question.[74] While acknowledging that absolute precision is not possible and that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice,[75] laws must be sufficiently clear and precise to enable an individual to assess whether or not his or her conduct would be in breach of the law and to foresee the likely consequences of any such breach.[76] This also means that the law must be formulated in terms that provide a reasonable indication as to how these provisions will be interpreted

72 See UN OHCHR, *Report on Human rights challenges in addressing and countering all aspects of the world drug problem, in particular on the impact of drug policies on the rights of women and girls*, A/HRC/63/56, 14 September 2026, para. 77 (m).

73 See ODIHR, Guidelines on Democratic Lawmaking for Better Laws (2024), Principle 7.

74 See e.g., ECtHR, *The Sunday Times v. the United Kingdom (No. 1)*, Application no. 6538/74, 26 April 1979, where the Court ruled that "*the law must be formulated with sufficient precision to enable the citizen to regulate his conduct," by being able to foresee what is reasonable and what type of consequences an action may cause*"; and ECtHR, *Perinçek v. Switzerland* [GC], Application no. 27510/08, 15 October 2015, para. 131, where the Court underlined that: "*A norm could not be regarded as a "law" unless it was formulated with sufficient precision to enable the person concerned to regulate his or her conduct: he or she needed to be able – if need be with appropriate advice – to foresee, to a degree that was reasonable in the circumstances, the consequences that a given action could entail. However, the Court went on to state that these consequences did not need to be foreseeable with absolute certainty, as experience showed that to be unattainable.*" See also ECtHR, *Wretlund v. Sweden*, Application no. 46210/99, decision of 9 March 2004, regarding a drug testing programme at a nuclear plant.

75 See, for example, ECtHR, *Kudrevičius and Others v. Lithuania* [GC], Application no. 37553/05, 15 October 2015, para. 109.

76 See, for example, ECtHR, *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, 25 November 1999; *Gillan and Quinton v. the United Kingdom*, Application no. 4158/05, 12 January 2010; *Kudrevičius and Others v Lithuania* [GC], Application no. 37553/05, 15 October 2015. See also ECtHR, *The Sunday Times v. the United Kingdom (No. 1)*, Application no. 6538/74, paras. 48-49; and *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 131.

and applied.[77] In addition, the ECtHR emphasized that foreseeability also requires the law to "*indicate the scope of any discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference*".[78] In its General Comment on Article 17, the UN Human Rights Committee has stressed that legislation authorizing interference with privacy "*must specify in detail the precise circumstances in which such interferences may be permitted*", noting that even interference provided for by law "*should be reasonable in the particular circumstances*", and that *"[a] decision to make use of such authorized interference must be made only by the authority designated under the law"*.

41. In light of the foregoing, if drug testing is introduced, t**he legal framework should identify, with sufficient precision, the purposes for which testing may be conducted; the categories of persons who may be tested; the authorities competent to order or undertake testing; the precise circumstances and modalities of the test and sampling; the information that may be generated; the persons or bodies who may access it; the consequences of positive results or of refusing or being unable to provide a sample.** As underlined in para. 23 *supra*, given the sensitive nature of the information collected through drug testing, t**he legal framework should also establish strict rules and safeguards governing the processing of testing results, including purpose limitation, necessity, proportionality, accuracy, security, confidentiality, access – which should be restricted to persons with a defined and legitimate need to know, disclosure, and applicable retention and destruction periods**.[79] Biological samples and associated records should be retained only for as long as necessary for the lawful purpose for which they were collected, subject to any strictly defined period required to permit a meaningful challenge or review.[80]

42. *Legitimacy of Drug Testing* – Article 8 (2) of the ECHR provides a list of legitimate aims" that may justify an interference with the right to respect for private life, including the protection of national security, public safety or the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, and the protection of the rights and freedoms of others. Depending on the targeted groups and circumstances, drug testing may be presented as pursuing, for example, the prevention of non-medical drug use as part of the protection of public health, the maintenance of public order, or the protection of public, including road, safety. However, the identification of a legitimate aim is not sufficient in itself: a clear nexus must be established between the proposed testing measure and the specific legitimate aim pursued. Thus, while preventing non-medical drug use may constitute a legitimate objective, it is a separate question

77 See e.g., ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 15 "Clarity and Intelligibility" and Principle 16 "Foreseeability"; and Venice Commission, *Updated Rule of Law Checklist*, CDL-AD(2025)002-e, December 2025, Part II.B.1. In addition, see ECtHR, *The Sunday Times v. the United Kingdom (No. 1)*, Application no. 6538/74, where the Court ruled that "*the law must be formulated with sufficient precision to enable the citizen to regulate his conduct," by being able to foresee what is reasonable and what type of consequences an action may cause*."

78 See, for example, ECtHR, *Big Brother Watch and Others v. the United Kingdom* [GC], Application nos. 58170/13, 62322/14 and 24960/15, 25 May 2021, para. 333.

79 See UN Human Rights Committee, *General Comment No. 16 on Article 17 of the ICCPR* (1988), paras. 8 and 10; and CoE, Protocol (CETS: 223) amending the Convention 108 (or modernized Convention 108), which specifies that the automatic processing of sensitive data "*shall only be allowed where appropriate safeguards are enshrined in law, complementing those of [the] Convention*", which shall "*guard against the risks that the processing of sensitive data may present for the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination*" (new Article 6 (1) and (2) of the modernized Convention 108). The Explanatory Report to the Protocol 223 further provides examples of the types of additional safeguards that could be considered alone or in combination regarding the handling of such sensitive data, including the data subject's explicit consent, a law covering the intended purpose and means of the processing or indicating the exceptional cases where processing such data would be permitted, a professional secrecy obligation, measures following a risk analysis (risk assessment prior to processing should assess whether data are protected against unauthorised access, modification and removal/ destruction and should seek to embed high standards of security throughout the processing; such an assessment should be informed by considerations of necessity and proportionality, and the fundamental data protection principles across the range of risks including physical accessibility, networked access to devices and data, and the backup and archiving of data; see *Explanatory Report – CETS 223 – Automatic Processing of Personal Data (Amending Protocol)*, 10 October 2018, para. 56.

80 See e.g., ECtHR, *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, 4 December 2008, paras. 107-119.

whether drug testing is an appropriate means of achieving that objective.[81] . As per Article 18 of the ECHR, restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific aim being pursued.

43. *Necessity and Proportionality of the Measure* – The necessity test means that any restriction, whether set out in law or applied in practice, must meet a "pressing social need",[82] be proportionate to the legitimate aim pursued and the reasons justifying it must be relevant and sufficient.[83] For the purpose of assessing the necessity and proportionality of drug testing, the following aspects should be considered:

   i. the suitability and effectiveness of drug testing for achieving the objective pursued;[84] including whether there is a demonstrated link between the testing measure and the objective sought, whether there are scientific research and findings confirming the effectiveness of the measure and, where relevant, considering the characteristics of the chosen forms of biological testing selected (urine, saliva, blood, other) which may differ in their accuracy, detection windows and capacity to establish drug use, its timing or possible impairment and there by not necessarily be suitable for achieving the objective pursued; a general assertion that drug use is harmful, without evidence of a specific problem in the relevant context or setting or evidence that testing is capable of addressing it, would be weak basis for an intervention;

   ii. whether there are less restrictive evidence-based means to achieve the aim in question;[85] the evidence, particularly where drug testing is introduced as a public health or prevention intervention. In General Comment No 14 on the right to health, the Committee on Economic, Social and Cultural Rights has made clear that health strategies should be of sufficient quality, based on appropriate scientific and medical evidence and that such interventions should be ethically appropriate. The assessment should therefore consider the best available evidence on effectiveness, and nature of drug use within the population concerned, and evidence of consideration of potential negative or unintended harms.[86]

   iii. whether the method of collection, testing procedures and treatment of the person concerned are designed and implemented so as to avoid undue interference with their physical and mental integrity, humiliation or degrading treatment, which is prohibited under international human rights law,[87] taking into account the

---

81 In Vandom v. Republic of Korea, the Human Rights Committee found a violation of Article 17 of the ICCPR where the State had failed to explain how mandatory HIV and drug testing furthered the stated aims of protecting public health and maintaining public order.

82 This means that a restriction must be considered imperative, rather than merely 'reasonable' or 'expedient': ECtHR, *Chassagnou v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, 29 April 1999. "Necessary" is not synonymous with "indispensable", neither has it the flexibility of such expressions as "admissible", "ordinary", "useful", "reasonable" or "desirable"; see ECtHR, *The Sunday Times v. the United Kingdom (No. 1),* Application no. 6538/74*,* para. 59.

83 See, for example, ECtHR, *Vavřička and Others v. the Czech Republic*, Application nos. 47621/13 and 5 others, 8 April 2021, paras. 273-275; and *Z v. Finland*, Application no. 22009/93, 25 February 997, para. 94.

84 See e.g., UN Human Rights Committee, *Andrea Vandom v. Republic of Korea, Communication No. 2273/2013*, CCPR/C/123/D/2273/2013, paras. 8.5, where the State had failed to explain how mandatory HIV and drug testing furthered the stated aims of protecting public health and maintaining public order. See also e.g., CoE Pompidou Group, *Drug Policy and Human Rights in Europe: Managing Tensions, Maximising Complementarities* (2018), p. 18, which underlines that "*if a measure is to meet the test of necessity it must work to achieve the aim in question. It must, in other words, be fit for purpose*". See also e.g., UNODC, Guidance for the Implementation of a Quality Management System in Drug Testing Laboratories (2009), pp. 20-21, which underlines that testing should rely on validated methods, be conducted by appropriately trained personnel and be subject to procedures that reduce the risks of contamination, substitution, tampering, misidentification, inadequate storage or transport, analytical error and false-positive or false-negative results.

85 *Ibid*, p. 17.

86 See *Drug Policy and Human Rights in Europe: Managing Tensions, Maximising Complementarities*, Council of Europe 2018) p. 8.

87 See UN Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, para. 8. See also EComHR, *Peters v. the Netherlands*, Application no. 21132/93, decision of 6 April 1994, and *Galloway v. the United Kingdom*, Application no. 34199/96, decision of 9 September 1998, with respect to a requirement to produce urine samples in the presence of a supervisor, which was considered as not reaching the level of severity required

intrusiveness of the testing method, the institutional context and the potential vulnerability or dependency of the persons concerned;

iv. whether the testing is voluntary or compulsory;

v. the reliability and accuracy of the testing method and the safeguards in place to minimise the risk of erroneous results, including confirmatory testing[88] and the possibility to have the test result medically reviewed for legitimate medical explanations of a test result to determine whether prescribed medicines, medically necessary substances or other relevant clinical circumstances may have affected test results;[89]

vi. whether legal mechanisms and procedures are available, accessible, and affordable for individuals and groups to make formal complaints about alleged human rights violations in the context of drug testing and to challenge the test results – with particular attention being paid to the position of persons who may face particular barriers to understanding or challenging a testing decision or result, including children, persons with disabilities and persons subject to institutional or disciplinary authority;[90]

vii. the nature and severity of the consequences of a positive or refused test, including whether they may involve punishment, disciplinary measures, loss of a driving licence, or other status, or affect access to education, employment social benefits, family life (caring responsibilities, parental rights or custody), or other protected interests;[91]

viii. the potential for stigma or discrimination associated with drug use testing or a positive test result;

ix. the handling and processing of the drug test results, which constitute sensitive personal information and should therefore be subject to enhanced safeguards in accordance with applicable international personal data protection standards.

44. *Non-Discrimination* – Restrictions must not be discriminatory, either directly or indirectly.[92] When assessing whether to introduce drug testing for the different categories contemplated, policy- and lawmakers should assess the potential discriminatory impact of the measure, in law and in practice.[93] Particular attention should be paid to situations in which authorities have discretion to determine who should be subject to drug testing, as the exercise of such discretion may involve subjective or insufficiently clear and

---

to fall under the scope of Article 3 of the ECHR, and was considered nnecessary in a democratic society for the prevention of disorder or crime in a prison. See also ECtHR, *Young v. the United Kingdom (dec.)*, Application no. 60682/00, decision of 11 October 2005, where it was concluded that supervised prison urine sampling did not, in the circumstances, attain the minimum level of severity required by Article 3 of the ECHR; and *Jalloh v. Germany [GC]*, Application no. 54810/00, judgment of 11 July 2006, which concerned the forcible administration of emetics to recover drug evidence, where the Court held that it resulted in a violation of Article 3.

88 See e.g., CoE, Pompidou Group, *Opinion on drug testing at school and in the workplace, P-PG/Ethics(2007)5rev3*, p. 7.

89 See e.g., ECtHR, *Wretlund v. Sweden* (dec.), Application no. 46210/99, 9 March 2004, where the Court noted that the applicant was able to challenge the efficiency of the drug testing as such, resulting in the alcohol test being rejected partly due to doubts as to its accuracy. See also e.g., UNODC, Guidance for the Implementation of a Quality Management System in Drug Testing Laboratories (2009), pp. 20-21, which underlines that testing should rely on validated methods, be conducted by appropriately trained personnel and be subject to procedures that reduce the risks of contamination, substitution, tampering, misidentification, inadequate storage or transport, analytical error and false-positive or false-negative results.

90 See, for example, *International Guidelines on Human Rights and Drug Policy* (2019), Guideline I.5, p. 7, and III.1. See also UN Human Rights Committee, *General Comment No. 31* (2004), para. 15; and United Nations General Assembly, *Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem*, A/RES/S-30/1, adopted 19 April 2016, para. 4(f) calling for "age-appropriate practical measures, tailored to the specific needs of children, youth and other vulnerable members of society".

91 See e.g., Committee on Economic, Social and Cultural Rights, *Concluding Observations on Australia*, E/C.12/AUS/CO/5 (2017), concerning drug-testing requirements, para. 43, where access to welfare benefits was conditioned on undergoing drug testing. See also UN OHCHR, *Report on Human rights challenges in addressing and countering all aspects of the world drug problem, in particular on the impact of drug policies on the rights of women and girls*, A/HRC/63/56, 14 September 2026, para. 31.

92 Armenia ratified the Protocol no. 12 to the ECHR on 17 December2004 and it entered into force on 1 April 2005.

93 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para. 156.

transparent criteria and may give rise to discriminatory practices,[94] while considering potential intersecting forms of discrimination, resulting in distinct and compounded harms.

45. The subsequent Sub-Sections apply these general principles to the particular legal and factual circumstances of drug testing for students in education institutions, convicted individuals in prisons, the military and in relation to drivers of motor vehicles.

2. DRUG TESTING FOR STUDENTS IN EDUCATIONAL INSTITUTIONS

46. For educational settings where children are under the age of 18, the Convention on the Rights of the Child (CRC) [95] applies in addition to the general legal framework set out above. This brings child-specific rights and additional obligations into the assessment of the proposed introduction of drug testing in educational institutions. In particular, Article 3 of the CRC requires that the best interests of the child be a primary consideration in all actions concerning children, including actions undertaken by legislative bodies and administrative authorities.[96] Article 12 guarantees the right of a child capable of forming their own views to express those views freely in all matters affecting them, with those views being given due weight in accordance with the child's age and maturity.[97] Article 16 protects children and adolescents against arbitrary or unlawful interference with their privacy,[98] while Articles 24 and 28 of the CRC recognize their rights to health and to education respectively.

47. Article 33 of the CRC further requires States Parties to take appropriate legislative, administrative, social and educational measures to protect children from the illicit use of narcotic drugs and psychotropic substances and to prevent the use of children in the illicit production and trafficking of such substances. In implementing this obligation, States must ensure that measures adopted to pursue these objectives are consistent with the rights established in the Convention as a whole, including the best interests of the child under Article 3 and the right of children to express their views and have those views given due weight in accordance with Article 12. These should be taken into account when determining the substantive objective of a drug prevention measure, but also when determining the means by which that objective is pursued.

48. Preventing illicit drug use among young people is a legitimate and important public-interest objective under Article 33 of the CRC. The Committee on the Rights of the Child has regularly called on States Parties to the CRC to put in place effective drug prevention measures pursuant to the Convention, including in schools.[99] That objective does not, however, in itself establish that drug testing is a necessary or proportionate means of achieving it. The assessment should therefore distinguish the legitimacy of the drug

94 See e.g., ECtHR, *Wretlund v. Sweden* (dec.), Application no. 46210/99, 9 March 2004, where the Court noted in particular that the alcohol and drug testing applied to all employees and therefore "*the test procedures d[id] not single out the applicant or any other employee as being personally suspected of abusing drugs*".

95 See *Convention on the Rights of the Child* (CRC), adopted by General Assembly resolution 44/25 on 20 November 1989. Armenia acceded to the Convention on 23 June 1993.

96 See *Convention on the Rights of the Child* (CRC), Article 3 (1). See also Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, CRC/C/GC/14, paras. 6 and 14, where the Committee on the Rights of the Child emphasized that the best interests of the child under Article 3 constitute a substantive right, an interpretive legal principle and a rule of procedure, and that the best interests of children must be considered both individually and as a group.

97 See also Committee on the Rights of the Child, *General Comment No. 12 (2009): The right of the child to be heard*, CRC/C/GC/12, paras. 1-2 and 70-72.

98 See also *CRC General Comment No. 20* (2016), para. 46, on the right to privacy and confidentiality.

99 See e.g., Committee on the Rights of the Child, Concluding Observations: Germany, UN Doc. CRC/C/DEU/CO/3-4 (2014), para. 61; Concluding Observations: Saint Lucia, UN Doc. CRC/C/LCA/CO/2-4 (2014), para. 49; Concluding Observations: Bosnia and Herzegovina, UN Doc. CRC/C/BIH/CO/5-6 (2019), para. 35 (b).

prevention objective from the assessment of the necessity and proportionality of the particular measure chosen, including whether less intrusive and potentially more effective preventive measures are available and whether testing is compatible with the best interests of the child, evolving capacities, the right to be heard, privacy and confidentiality.

49. Several international and regional bodies have noted that the effectiveness of drug testing in schools as a drug-use prevention measure has not been demonstrated, while also highlighting its potential adverse effects.[100] In particular, the CoE Pompidou Group has specifically addressed drug testing at school and concluded that "*the best available evidence suggests no positive effect of random school drug testing on levels of drug use",* further noting that *"the restriction on the child's privacy has no evidence-based connection to a policy aim of prevention"* and that *"how the testing is conducted is not relevant, and the intervention fails a proportionality test".*[101] The International Guidelines on Human Rights and Drug Policy specifically recommend avoiding random drug testing; their Commentary treats random school drug testing as ineffective and, on that basis, an unwarranted infringement of children's privacy.[102] The UN Human Rights Committee expressed concern about mandatory drug testing of teachers and students in schools and called for interferences with privacy in the context of anti-drug measures to comply with the requirements of legality, necessity and proportionality under Article 17 of the ICCPR.[103]

50. The practice of random drug testing in schools is uncommon in the European Union and in some countries, schools are expressly not authorized to conduct compulsory drug testing of students.[104] At the same time, there are some cases, in the OSCE region, of random or universal testing within a defined student sub-population, such as students participating in competitive sports or particular extracurricular activities (although this

100 See e.g., UNODC and WHO, International Standards on Drug Use Prevention, 2nd updated ed., 2018, p. 24, which specifically notes that random drug testing in schools is not an effective intervention; UN OHCHR, *Report on Human rights challenges in addressing and countering all aspects of the world drug problem*, A/HRC/54/53, 15 August 2023, para. 39, which states that "Drug prevention based on creating fear, random mandatory drug testing in school settings, and expulsion from education for drug use are measures that continue to raise human rights concerns"; UNESCO-UNODC-WHO, *Good Policy and Practice in Health Education: Education sector responses to the use of alcohol, tobacco and drugs*, 2017, p. 45, which provides: "*Evidence in support of drug testing students in school is very limited, with most studies showing no preventative effect. Weighed against the many concerns (e.g. expense, alcohol and tobacco is not tested, significant ethical considerations concerning student privacy, and the possibility of harm due to punitive actions that reduce school engagement), this measure is not recommended (Shek, 2010; Sznitman & Romer, 2014; UNODC, 2013)*"; CoE, Pompidou Group, *Opinion on drug testing at school and in the workplace, P-PG/Ethics(2007)5rev3*, p. 5, which concluded that "*the precautionary principle does not provide any arguments justifying infringement of pupils' private lives and interference with the school's vocation by drug testing*"; CoE, Pompidou Group, *Drug Policy and Human Rights in Europe: Managing Tensions, Maximising Complementarities*, 2018, p. 18, which provides that "*the best available evidence suggests no positive effect of random school drug testing on levels of drug use. The margin of appreciation, normally wide, is therefore narrowed as the restriction on the child's privacy has no evidence-based connection to a policy aim of prevention. In such circumstances, how the testing is conducted is not relevant, and the intervention fails a proportionality test*"; European Monitoring Centre for Drugs and Drug Addiction, *Drug Testing in Schools* (2017), concluding that *"testing has little or no effect on drug use"* also noting *"the invasiveness of the testing procedure and limitations to the information derived from drug testing affecting its utility as a prevention approach*"; European Union Drugs Agency, *Schools and drugs: health and social responses* (2022), p. 3, which states; "*The assumption here is that drug testing acts as a deterrent to substance use. However, there is no evidence to support this claim and the practice remains controversial and uncommon in Europe. Critics point out that drug testing in schools is an invasion of students' privacy, communicates a lack of trust on the part of the school and may lead to increased risks associated with substance use. There is also no established best practice to indicate which procedures are most effective in following up and supporting students who test positive. Hence it is not an intervention that is currently recommended*". See also Committee on the Rights of the Child, *Concluding observations on the second periodic report of the [North Macedonia]*, adopted on 11 June 2010.

101 See CoE, Pompidou Group, *Drug Policy and Human Rights in Europe: Managing Tensions, Maximising Complementarities*, 2018, p. 18.

102 *Ibid*, See also Commentary on *International Guidelines on Human Rights and Drug Policy*. *See also International Standards on Drug Use Prevention, 2nd updated edition (2018).*

103 See UN Human Rights Committee, *Concluding observations on the fifth periodic report of the Philippines*, CCPR/C/PHL/CO/5, 1 December 2022, para. 41-42, where the Committee expressly raised concern regarding mandatory drug testing for teachers and students in schools and called for compliance with legality, proportionality and necessity and, in the circumstances identified by the Committee, judicial authorization.

104 See e.g., European Union Drugs Agency, *Schools and drugs: health and social responses* (2022), p. 3. For instance, in **Estonia**, the Chancellor of Justice has stated that schools are not authorized to conduct compulsory drug testing of students (see *Estonia – Chancellor of Justice, Drug Testing in Schools*).

should be distinguished from drug use prevention in general as such testing primarily aim at ensuring the integrity of competitive sport and the detection of prohibited performance-enhancing substances),[105] or testing based on individualised concerns.[106]

51. While the latter may *prima facie* seem less intrusive because it limits testing to individual cases in which there is an identified concern, it nevertheless creates risks of inconsistent application, arbitrary decision-making, and discriminatory profiling if the criteria for establishing reasonable suspicion are not clearly defined, objectively verifiable, and subject to appropriate oversight.

52. The necessity of introducing drug testing should also be assessed against the availability and effectiveness of less intrusive measures to achieve the objective of reducing drug use among young people. Where such measures are capable of addressing the identified risk, the introduction of generalized or random testing would require particularly strong justification. The Committee on the Rights of the Child has emphasized the importance of prevention, accurate and objective information, life-skills education, health services and appropriate confidential counselling and support in addressing substance use among adolescents.[107] Less invasive tools, such as screening questionnaires designed to evaluate substance use patterns and assist in identifying whether further assessment or intervention is necessary, may provide a less intrusive means of identifying young people who may require support; their use should, however, be accompanied by appropriate interventions and clearly defined pathways for referral to relevant treatment, counselling or other support services, as well as by appropriate safeguards concerning informed consent and the confidentiality of information.[108] Any such referral should constitute an offer of voluntary, evidence-based services and should be based on free and informed consent. Drug use or drug dependence does not extinguish a person's right to refuse treatment, and refusal of treatment should not itself give rise to sanctions or other adverse consequences. A positive screening or test result should not lead to compulsory treatment, compulsory registration or placement in a closed facility, including a compulsory drug detention or treatment centre.[109] Evidence also suggests that prevention programmes focusing on psychosocial mechanisms and cognitive abilities can be effective in preventing, reducing or helping to control drug use among young people.[110] Any intervention following screening should therefore remain supportive, proportionate

105 For example, anti-doping testing of student-athletes in organized sport, such as in **Ireland**, where Sport Ireland operates in-competition and out-of-competition testing of athletes, with selection potentially being random or targeted and applying to members of teams or squads (see example, *What happens in a drug test?*); similar risk-based and random testing mechanisms operate under national anti-doping systems in the **United Kingdom** (see the *United Kingdom testing procedures*). In the **United States of America**, while only relevant in the national context, in *Vernonia School District v. Acton* (1995), the US Supreme Court upheld random drug testing of student athletes, and in *Board of Education v. Earls* (2002) upheld testing of students participating in competitive extracurricular activities, applying the Fourth Amendment's "special needs" analysis (see *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995); *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822 (2002)).

106 For example, in **Finland**, drug testing during studies is *regulated* and, where statutory conditions for testing are met, testing is conducted by qualified health-care professionals rather than ordinary school personnel; historically, Finnish guidance also emphasizes treatment following a positive result; in **Czechia**, drug testing is legally possible in limited individual circumstances where it is considered necessary and reasonable, rather than as a general system of random testing – while prima facie potentially less intrusive because it limits testing to individual cases in which there is an identified concern, it creates risks of inconsistent application, arbitrary decision-making, and discriminatory profiling if the criteria for establishing reasonable suspicion are not clearly defined, objectively verifiable, and subject to appropriate oversight; see the European Union Drug Agency, *Drug testing in schools*, including for Finland, Norway and Czechia. In the **United States of America**, where random drug testing is rather common (see European Monitoring Centre for Drugs and Drug Addiction, *Drug Testing in Schools* (2017)), the American Academy of Pediatrics has opposed widespread implementation of school-based drug testing because of the lack of solid evidence of its effectiveness and has identified potential adverse consequences, including breaches of confidentiality, disciplinary consequences and displacement towards substances not covered by testing.

107 See Committee on the Rights of the Child, *General Comment No. 20* (2016), para. 64.

108 See UNODC/WHO *International Standards on Drug Use Prevention*, *p.24*; See also UNICEF, Screening tools for substance use in adolescents, p. 2.

109 See International Guidelines on Human Rights and Drug Policy, *Drug dependence treatment*, paras (ii), (v) and (vi); UNODC and WHO, International Standards for the Treatment of Drug Use Disorders (revised ed., 2020).

110 See CoE Pompidou Group, *Handbook on Implementing a Gender Approach in Drug Policies: Prevention, Treatment and Criminal Justice* (2022), p. 54.

and consistent with the individual's rights to health, bodily autonomy and freedom from ill-treatment.

53. In light of the foregoing, **the introduction of random drug testing for students in educational institutions should be discouraged, given the available evidence pointing to the limited effectiveness of such measures, potential adverse effects on children and adolescents and the availability of less intrusive alternatives that are reported to be effective, such as confidential counselling and support, screening questionnaires designed to assess substance use patterns accompanied by appropriate interventions and well-defined pathways for referral to relevant treatment or support services and appropriate safeguards concerning confidentiality, and prevention programs addressing psychosocial mechanisms and cognitive skills. Targeted drug testing based on specific, objectively justified grounds for suspecting drug use should be considered separately as it may have a stronger proportionality rationale because it is linked to individualized indications of drug use. However, it should be also approached with caution, taking into account the best interests of the child, the proportionality of the measure, applicable legal safeguards and whether less intrusive measures would adequately address the concern.**

54. Any drug testing that may nevertheless be retained should be narrowly targeted, comply with the requirements of legality, legitimacy, necessity and proportionality, and non-discrimination (see Sub-Section IV.1.5. *supra*), while being accompanied by safeguards appropriate to the age and maturity of the students concerned, and potential situation of vulnerability, taking into account the following. Where children under 18 are concerned, its design and implementation should also comply with the specific requirements of the CRC, including that the best interests of the child be a primary consideration, that children are afforded an opportunity to express their views and have those views given due weight in accordance with their age and maturity, and that their evolving capacities are appropriately taken into account.[111]

55. *Legality* – the legal basis should be sufficiently precise to enable children and adolescents and their parents or guardians to foresee, to a reasonable degree, the circumstances in which testing may be required, the procedures applicable to testing, and the consequences that may follow, which should not be punitive.[112]

56. *Necessity and proportionality of the measure* – As noted above, the proportionality assessment should take into account various factors, including the scope of the testing programme and whether it applies to all students under the age of 18 or only to specific categories of students, the nature and degree of intrusion associated with the testing method, the nature and severity of the consequences of a positive test result, and the safeguards available to students, including effective opportunities to challenge the result and any resulting measures. Where a student tests positive, the appropriate response should focus on further assessment and on providing or referring the student to counselling, treatment, health-care or psychosocial services, rather than punishment, suspension or expulsion, also given the risks of disproportionately affecting students in a

111 See Committee on the Rights of the Child, *General Comment No. 14 (2013)*, The right of the child to have his or her best interests taken as a primary consideration, paras. 1, 6 and 36–40. See also Committee on the Rights of the Child, *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, CRC/C/GC/20, paras 39 and 64.

112 See *International Guidelines on Human Rights and Drug Policy, 2019*, Part III.1.1, which recommends to "[a]void excluding children from school due to risk-taking behaviours and take measures to ensure their access to education"; see also UNESCO-UNODC-WHO, *Good Policy and Practice in Health Education: Education sector responses to the use of alcohol, tobacco and drugs*, 2017, pp. 12 and 45.

disadvantaged or marginalized situation.[113] The Committee on the Rights of the Child has similarly encouraged States to provide adolescents with accurate and objective information on substance use, confidential counselling and accessible, youth-friendly treatment and support, rather than relying solely on punitive responses.[114]

57. Drug testing in educational institutions raises significant data-protection and confidentiality concerns for students. Information concerning a student's drug use or suspected use, treatment, medication and toxicological test results constitute highly sensitive personal information. The collection of biological samples and processing of test results therefore require safeguards beyond ordinary school confidentiality and personal data protection arrangements. This is particularly important for children and adolescents, for whom disclosure may have lasting consequences for their education, family relationships, social participation and future opportunities.

58. As mentioned above, the handling of test results should comply, as applicable, with the principles of lawfulness, purpose limitation, data minimization, accuracy, storage limitation, confidentiality and accountability. Information should be collected only for clearly specified purposes and should not be used for incompatible purposes without a separate lawful basis and appropriate privacy safeguards.

59. Particular caution is also required where children's consent is relied upon as the basis for testing or processing personal information.[115] In the school environment, there is a clear imbalance of power in the relationship between educational institutions and students, who may then experience testing as compulsory even when it is formally described as voluntary, which may undermine the validity of consent.[116] In this respect, children should be provided with adequate and appropriate information in order to understand the situation and all the relevant aspects in relation to their interests, and be allowed, when possible, to give their consent in an informed manner based on evolving capacities.[117] Parental or institutional authorization should not, by itself, displace consideration of the child's best interests, evolving capacities, right to be heard and right to privacy, including the particular privacy and confidentiality interests of adolescents.[118]

3. Drug Testing for Convicted Individuals in Penitentiary Institutions

60. Article 10 of the ICCPR requires that all persons deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person, while Article 17

113 See e.g., UNESCO-UNODC-WHO, *Good Policy and Practice in Health Education: Education sector responses to the use of alcohol, tobacco and drugs*, 2017, pp. 12 and 45. See also Committee on Economic, Social and Cultural Rights, *Concluding observations on the 7th periodic report of Sweden*, 22 March 2024, paras. 36-37, where the Committee expressed concern regarding reports of drug testing in schools and the possibility that drug testing and associated sanctions, including suspension or expulsion, could disproportionately affect students belonging to disadvantaged or marginalized groups, calling on the State to "*adopt measures to ensure that drug testing in schools and penalties, including suspensions or expulsions, do not disproportionately affect the rights of students, in particular those from disadvantaged and marginalized groups, to education*".

114 See *CRC General Comment No. 20* (2016), para. 64, which explicitly states that *"[a]lternatives to punitive or repressive drug control policies in relation to adolescents are welcome*".

115 See e.g., Committee on the Rights of the Child, *General Comment No. 14 (2013)* on the right of the child to have his or her best interests taken as a primary consideration, para. 77, which emphasizes that "*children should be provided with adequate and appropriate information in order to understand the situation and all the relevant aspects in relation to their interests, and be allowed, when possible, to give their consent in an informed manner*"; and *General Comment No. 20 (2016)* on the implementation of the rights of the child during adolescence, para. 39, which underlines that "*all adolescents have the right to have access to confidential medical counselling and advice without the consent of a parent or guardian, irrespective of age, if they so wish. This is distinct from the right to give medical consent and should not be subject to any age limit*". See also *European Data Protection Board, Guidelines 05/2020* on consent under Regulation 2016/679, 4 May 2020, paras. 13, 16, 20 and 24.

116 See e.g., *European Data Protection Board, Guidelines 05/2020* on consent under Regulation 2016/679, 4 May 2020, paras. 13, 16, 20 and 24.

117 See e.g., Committee on the Rights of the Child, *General Comment No. 14 (2013)* on the right of the child to have his or her best interests taken as a primary consideration, para. 77.

118 See *General Comment No. 20 (2016)*, para. 39.

protects against arbitrary or unlawful interference with privacy. The fact that a person has been convicted of an offence or is otherwise subject to lawful detention does not, in itself, remove that person from the protection of Article 17. In addition, Article 12 of the ICESCR protects the right to the highest attainable standard of physical and mental health, including for persons deprived of their liberty. The UN Human Rights Committee has further clarified in General Comment No. 21 that persons deprived of their liberty should not, as a consequence of their detention, be subjected to hardship or constraint other than that resulting from the deprivation of liberty itself, subject to the legitimate restrictions necessarily associated with detention.[119]

61. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)[120] provide further relevant guidance. The Rules require medical examinations to be undertaken in confidentiality and provide that the relationship between health-care professionals and prisoners should be governed by the same ethical and professional standards applicable to patients in the community, including respect for prisoners' autonomy, informed consent and the confidentiality of medical information, subject to narrowly defined exceptions.[121] For persons subject to non-custodial measures, including probation or other forms of community supervision, the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) provide relevant guidance concerning the use of restrictions as part of criminal-justice supervision.[122] In addition, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) further require that measures affecting women prisoners be implemented in a manner consistent with dignity, non-discrimination and gender-responsive health-care needs.[123]

62. Relevant guidance is also contained in UNODC Prison and Health (2014), and Opioid Substitution Treatment in Custodial Settings: A Practical Guide (2008), particularly regarding the health-oriented nature of drug-dependence interventions and the distinction between health-care and security or disciplinary functions.[124] The annual reporting of the International Narcotics Control Board (INCB) has likewise generally framed drug use as a matter requiring prevention, treatment and rehabilitation, including for persons deprived of liberty, although the INCB has not adopted specific guidance on drug-testing methods as such. Taken together, these instruments provide a relevant interpretive and policy context for assessing drug-testing measures, while not themselves establishing a general international requirement or endorsement of compulsory biological testing of convicted individuals in penitentiary institutions.

63. The European Prison Rules (EPR), revised in 2020, further provide the principal Council of Europe standards for the treatment and management of prisoners, emphasizing respect for human rights, proportionality in restrictions, health care equivalent to that available in the community and the professional independence of prison health-care services.[125]

---

119 See CCPR *General Comment No. 21: Article 10* (Humane Treatment of Persons Deprived of Their Liberty).

120 See *United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, A/RES/70/175, 17 December 2015.

121 See *United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, A/RES/70/175, 17 December 2015, especially Rules 31–32. Rule 31 requires medical examinations to be undertaken in full confidentiality, while Rule 32 refers to patient autonomy, informed consent and confidentiality of medical information.

122 See United Nations General Assembly, *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*, A/RES/45/110, 14 December 1990.

123 See the United Nations *Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules).

124 See UNODC, *Prison and Health* (2014); *Opioid Substitution Treatment in Custodial Settings: A Practical Guide* (2008). *International Guidelines on Human Rights and Drug Policy* also devote a specific section to persons deprived of their liberty.

125 See the *Guidance document on the European Prison Rules* (2023). Recent proceedings in **Northern Ireland** concerning access to opioid substitution treatment further illustrate the equivalence principle: the High Court emphasized that prisoners with opioid dependency should have access to assessment for effective treatment on an equivalent basis to people in the community (see *Clarke and Pollins' Applications for Judicial Review* [2024] NIKB 69).

These principles are complemented by the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which stress the need to distinguish health-care from security functions and has cautioned against involving treating health-care staff in drug testing conducted for essentially security or repressive purposes, given the potential impact on the therapeutic relationship and medical confidentiality.[126]

64. The introduction of compulsory drug testing for persons serving custodial sentences raises distinct human-rights considerations. Prison authorities may have legitimate interests in detecting or addressing drug use, including maintaining prison order, preventing crime or protecting the health of prisoners and staff Those interests do not, in themselves, determine whether a particular drug testing regime is compatible with international human-rights standards. Drug testing may also form part of arrangements concerning temporary release, parole or other forms of conditional release.

65. Compulsory drug testing in penitentiary institutions may interfere with rights protected under international and regional human-rights instruments, including the rights to privacy, physical and psychological integrity, health, as well as the right to equality and non-discrimination. The ECtHR has recognized that the taking of a urine sample constitutes an interference with private life, even where the physical intervention involved is relatively limited.[127] In any case, the compatibility of any drug testing regime with international human rights standards depends on whether it complies with the above-mentioned requirements of legality, legitimacy, necessity and proportionality, and non-discrimination (see Sub-Section IV.1.5. *supra*). The Working Group on Arbitrary Detention has, in this context, considered that non-consensual and warrantless drug testing may raise concerns relating to the right to physical integrity.[128] While the specific circumstances of each testing regime require individual assessment, this consideration is of particular relevance in custodial settings, where the practical capacity of an individual to decline a compulsory measure is inherently constrained.

3.1. Legality

66. As noted above, any drug testing regime should have a clear, accessible and foreseeable legal basis to allow persons deprived of liberty to understand when testing may be required, how it may be conducted and the consequences of refusal or a positive result. The legislation should **define with sufficient precision who may be tested, for what purpose, on what grounds, by whom, by which methods and with what consequences**.[129] It should also **distinguish random or routine testing, reasonable-**

126 See, for example, *Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT), para. 76; See also *Report to the Serbian Government on the periodic visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT) from 9 to 19 March 2021, para. 90;

127 See *also A.B. v. Switzerland*, Application no. 20872/92.

128 See Working Group on Arbitrary Detention, *Study on Arbitrary Detention Relating to Drug Policies*, 18 May 2021, para. 10, which states that "*subjecting persons to […] testing without their consent may constitute a violation of the right to physical integrity*" and, in that context, recommended that any testing, including the obtaining of a blood or urine sample, be undertaken only pursuant to a warrant approved by a judicial officer.

129 For instance, in the **United Kingdom**, the Section 151 of the *Criminal Justice and Public Order Act 1994* provides that, where an authorization by the governor is in force, a prison officer may, in accordance with prison rules, require a prisoner to provide a urine sample for substance testing; in current practice in England and Wales, prisons are required to carry out random mandatory drug testing of either 5 or 10 per cent of the prisoner population each month, alongside a separate voluntary drug testing track for prisoners who choose to reside on incentivized substance-free living units, as a condition of remaining there (see PSO 3601: *Mandatory Drug Testing*); in these cases, the statutory basis, type of sample, purpose of testing and frequency of random testing are defined and communicated in advance, also distinguishing compulsory testing from voluntary arrangements established for a different institutional purpose. In **Estonia**, the *Estonian Imprisonment Act* provides another example where compulsory substance testing is expressly connected to the specific objective of establishing prohibited substance consumption and accompanied by detailed procedural limits; under the Estonian Imprisonment Act, prison officers may examine prisoners for the purpose of establishing consumption of prohibited substances, with

suspicion testing, clinical or treatment-related testing, and testing connected with privileges, temporary release or parole, since these forms of testing serve different purposes and require different safeguards.[130]

3.2. Legitimate Aim

67. Compulsory drug testing in penitentiary institutions may pursue a number of objectives, including maintaining order and security, preventing violence and other misconduct associated with intoxication, detecting and preventing the trafficking or diversion of controlled substances within prisons, protecting the health of prisoners and staff, identifying persons who may require treatment for substance-use disorders, and supporting rehabilitation.

68. The case-law confirms that maintaining order and security in prisons, including by addressing the availability and use of drugs within prisons, may constitute legitimate aims under Article 8 (2) ECHR, in particular the prevention of disorder or crime.[131]

69. At the same time, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has raised concern regarding compulsory drug testing in prison when they are not linked to treatment, calling upon States to reverse such measures and ensure adherence to legislation protecting prisoners' rights.[132]

3.3. Necessity and Proportionality

70. Compulsory drug testing constitutes an interference with private life and, depending on the manner in which a sample is obtained, may also raise issues concerning dignity and physical integrity. The assessment should therefore address not only whether testing is capable of achieving the objective pursued, but also whether the particular form, scope and frequency of testing are necessary and proportionate to that objective.[133]

71. Any assessment of the necessity of a drug-testing scheme should begin by examining its suitability and effectiveness in achieving its specific intended purpose. Depending on the context, this may include reducing drug use in prisons, addressing identifiable institutional safety concerns, identifying individuals who may benefit from treatment and rehabilitation, or informing decisions concerning privileges or early release. In this respect, the effectiveness of mandatory drug testing regimes in prisons has been put into questions both at the national[134] and international level, including because of its potential

---

the legislation distinguishing between less intrusive indicators and testing of breath, blood or biological liquids. Where a prisoner refuses to provide a sample to a health-care provider, direct coercion may be used only for as long as it is "unavoidable for the achievement of the objective".

130 See ECtHR, *Young v. United Kingdom* (dec.), Application no. 60682/00, 11 October 2005, holding that mandatory urine drug testing constituted an interference with private life under Article 8 and considering the statutory basis and procedural safeguards governing such testing.

131 See ECtHR, *Peters v. the Netherlands*, Application no. 21132/93, decision of 6 April 1994, and *Galloway v. the United Kingdom*, Application no. 34199/96, decision of 9 September 1998, with respect to a requirement to produce urine samples in the presence of a supervisor, which was considered as not reaching the level of severity required to fall under the scope of Article 3 of the ECHR, and was considered nnecessary in a democratic society for the prevention of disorder or crime in a prison. See also ECtHR, *Young v. the United Kingdom (dec.)*, Application no. 60682/00, decision of 11 October 2005, where the Court expressly found that mandatory drug testing pursued "*the legitimate aim of the prevention of disorder and crime*", recalling that the availability of drugs in prison represented a considerable problem for prison authorities.

132 See Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *2009 Report*, A/64/272, para. 81.

133 See ECtHR, *Galloway v. the United Kingdom*, Application no. 34199/96, decision of 9 September 1998.

134 For example, a **United States** Department of Justice review of federal prisons found continuing drug use and smuggling and identified visitors, staff and mail as principal points of entry; see United States Department of Justice, Office of the Inspector General, *The Federal Bureau of Prisons' Drug Interdiction Activities, Report No. I-2003-002* (January 2003). In the in **England and Wales**, a 2025 Ministry of Justice study in England and Wales observed that little is known about the effectiveness of drug-testing regimens in reducing drug

adverse public-health consequences.[135]. Where testing is nevertheless provided for, its scope, frequency and consequences should be justified by reference to its specific purpose and an identifiable institutional need, with more extensive or intrusive programs requiring stronger justification.[136]

72. The necessity of a drug testing regime in penitentiary institutions should also be assessed against the availability and effectiveness of less intrusive. Where several reliable methods can achieve the same legitimate objective, for example, reducing the use of drugs in prison, authorities should generally use the method that interferes least with privacy, bodily and psychological integrity and dignity, including in relation to the degree of observation or supervision required during sampling. Testing based on reasonable suspicion may have a stronger proportionality rationale because it is linked to individualized indications of drug use. At the same time, selection of individuals to be tested should be governed by objective and transparent criteria and applied without discrimination.[137] Domestic rules should define the applicable threshold clearly and require the grounds relied upon to be capable of objective verification, such as observed impairment, credible information concerning drug use or possession, or other documented circumstances, to reduce the risk of discretionary selection.[138]

73. The institutional arrangements for conducting drug testing should also be taken into account to assess the proportionality of the drug testing scheme. In that respect, the European Committee for the Prevention of Torture (CPT) has cautioned against the involvement of prison health-care staff in urine testing undertaken for control or repressive purposes, given the potential effect on the doctor-patient relationship.[139]

74. The right to health also requires consideration of what treatment and support is available alongside any mandatory testing regime.[140] Any testing should be voluntary and treatment-linked, or based on individualized and objectively verifiable grounds. Testing undertaken for diagnosis, treatment or clinical monitoring should remain within the health-care relationship and be governed by applicable professional, ethical and confidentiality standards.[141] Testing linked to temporary release, parole, rehabilitation programs or specified privileges should likewise be based on clearly defined conditions

---

use in prisons; see *Tackling Drug Misuse in Prisons: A Qualitative Study on the Implementation of Drug Testing in Six Prisons* (Ministry of Justice Analytical Series 2025), pp. 7 and 27.

135 See e.g., UNODC, WHO and UNAIDS, HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: *A Framework for an Effective National Response* (2006), page 18, which recommends to "*Ensure that prisoners are not subjected to mandatory or random drug testing, as such testing has been shown to encourage drug injecting (often using unsafe injecting practices)*". See also UNODC, *Drug Dependence Treatment: Interventions for Drug Users in Prison*, pp. 23-24, which notes that mandatory drug testing may detract financial resources from treatment and prevention services; divert staff time from treatment and prevention initiatives; have an adverse effect on the prison regime e.g., prisoner resentment of testing, or provide an incentive for prisoners to switch to the use of harder drugs, which are more difficult to detect.

136 See UNODC, Incorporating the Nelson Mandela Rules into National Prison Legislation: *A Model Prison Act and Related Commentary*, Commentary to Article 42, page 87.

137 See e.g., Working Group on Arbitrary Detention, *Study on Arbitrary Detention Relating to Drug Policies* (2021), A/HRC/47/40, para. 11, where the Working Group on Arbitrary Detention has warned that decisions as to whom to test "*can be highly subjective, often based on a person's physical appearance, gender, age, race, ethnicity or their status as a migrant or a sex worker*". For example, in the **United States of America**'s federal prison system, random drug testing is conducted on the basis of centrally generated random lists of prisoners, which aims to prevent discretionary selection by individual staff, with additional names generated to replace prisoners who are unavailable for testing (see See United States Department of Justice, Federal Bureau of Prisons, *Narcotic Identification, Inmate Urine and Alcohol Surveillance and Testing Program*, Program Statement 5514.01). For the purpose of comparison, in **New Zealand**, prisoners selected for general random drug testing are chosen weekly by a computer programme using a pre-defined algorithm; replacement names are generated in advance and reasons must be recorded when an originally selected prisoner is not tested; the general random programme is also capped at no more than 10 per cent of eligible sentenced prisoners per month (see New Zealand Department of Corrections, Prison Operations Manual, S.07 *Drug and Alcohol Testing*; S.07.Res.06 *General Random Selection Process*).

138 See e.g., Working Group on Arbitrary Detention, *Study on Arbitrary Detention Relating to Drug Policies* (2021), A/HRC/47/40, para. 11, where the Working Group on Arbitrary Detention has warned that decisions as to whom to test "*can be highly subjective, often based on a person's physical appearance, gender, age, race, ethnicity or their status as a migrant or a sex worker*".

139 See, Council of Europe, CPT, *Report to the Czech Government on the visit to the Czech Republic carried out by the CPT*, para. 76; see also *CPT standards and visit reports* concerning the separation of health-care and control functions in prisons.

140 See *International Guidelines on Human Rights and Drug Policy*, III.3.iii-vi. See also Human Rights Council, *Human rights challenges in addressing and countering all aspects of the world drug problem*, 15 August 2023.

141 See *Nelson Mandela Rules*, Rules 25 (2), 27 (2) and 32 (1)(a)–(c).

and remain subject to necessity and proportionality.[142] A positive result should not automatically trigger a punitive or other adverse consequence where treatment or a less restrictive response can adequately address the relevant risk. Drug dependency should not be primarily through surveillance mechanisms without providing prisoners with drug dependence access to appropriate and community-equivalent healthcare.

75. The consequences attached to a positive result, as well as the safeguards available to ensure the accuracy and reliability of test results, should be taken into account when assessing the proportionality of a drug-testing scheme. The same applies to the consequences of refusing to provide a sample. In particular, the ability to carry out a confirmatory test[143] and to challenge the results, may weigh in favour of proportionality.

3.4. Non-discrimination and Gender-Responsive Approach

76. Latest data shows that 35% of women in prison, compared with 19% of men in prison, have been sentenced for drug offences. It has also been reported that 51% of women in prison, compared with 30% of men in prison, have a drug-use disorder[144] but with women representing only 1/5th of the participants in treatment and rehabilitation programs. Public authorities should ensure that drug-testing, treatment and rehabilitation arrangements do not reproduce or exacerbate gender-based disparities in access to care and treatment. Given the higher proportion of women prisoners sentenced for drug-related offences and the substantially higher reported prevalence of drug use disorders among women prisoners, authorities should aim to ensure equitable access to appropriate treatment and rehabilitation services during and after detention in line with the principle of continuity of care during the transition from prison to the community, identify and address barriers to access – including potential stigma associated drug use by women.[145]

77. In light of the foregoing, overall, the possible introduction of drug testing in penitentiary institutions should be approached with caution given the general uncertainty concerning the effectiveness of such measure to reduce drug use in penitentiary institutions. The appropriateness of testing, and the safeguards required, depend in part on its purpose. Drug testing may serve different objectives, which should be clearly distinguished in law or policy. First, testing for prevention and institutional safety may be intended to deter drug use, identify patterns of use or respond to specific safety concerns. Such testing should address a clearly identified institutional need, and its scope and frequency should be proportionate to that need. Second, testing to identify treatment and rehabilitation needs should primarily serve as a means of offering appropriate healthcare, counselling, harm-reduction interventions and treatment, rather than triggering punitive responses. A positive result should facilitate access to appropriate support and should not, in itself, be treated as a substitute for an individual assessment of healthcare needs. The right to health requires consideration of what treatment and support are available alongside any testing regime Third, testing may be linked to incentives, privileges or decisions concerning conditional or early release, including as part of an agreed treatment or rehabilitation plan.

142 For instance, in **England and Wales**, a Drug Rehabilitation Requirement may include a specified treatment and testing period during which an offender must provide samples as directed, with statutory review arrangements for longer requirements; a separate Drug Testing Requirement is also available in specified court arrangements, and current probation policy describes random testing at regular intervals (see England and Wales, *Sentencing Act 2020, Schedule 9, Part 10*, concerning Drug Rehabilitation Requirements and treatment/testing periods; Ministry of Justice/HMPPS, *Probation Court Services Policy Framework*, including the stand-alone Drug Testing Requirement used in specified Intensive Supervision Court arrangements; and *Expanded Drug Rehabilitation Requirement drug testing: process evaluation (2026)*).

143 In the Netherlands, the *Penitentiary Principles Act* provides procedural safeguards, including the prisoner's right to know the result and to request a repeat examination at the prisoner' own expense (Article 30).

144 See CoE Pompidou Group, *Handbook on Implementing a Gender Approach in Drug Policies: Prevention, Treatment and Criminal Justice* (2022), p. 31.

145 See CoE Pompidou Group, *Handbook on Implementing a Gender Approach in Drug Policies: Prevention, Treatment and Criminal Justice* (2022), pp. 70-75.

In such cases, the conditions and consequences of testing should be clearly defined in advance, relevant to the specific decision, proportionate and subject to effective review. A positive result should not automatically lead to the loss of privileges or adversely determine a release decision without an individual assessment and consideration of the circumstances, including any relevant treatment needs.

78. **If introduced at all, drug testing should primarily aim at identifying individuals using drugs for the purpose of proposing care, treatment and rehabilitation services. Any selection for random testing should be based on objective, transparent and non-discriminatory criteria and applied without discrimination. Sample collection should be the least intrusive possible, with the possibility of requesting a confirmatory test and challenging the results, while ensuring a gender-sensitive approach to any drug testing scheme integrated within broader drug prevention, treatment and rehabilitation efforts.**

4. MANDATORY PERIODIC DRUG TESTING FOR DRIVERS OF MOTOR VEHICLES

79. The State has a positive interest in protecting life, health and road safety, while drug testing for drivers of motor vehicles may interfere with privacy, bodily integrity and the protection of sensitive health-related information. The World Health Organization has identified driving under the influence of psychoactive substances as a road-safety risk, while also noting that the effects and associated crash risks vary according to the substance concerned.[146]

80. No international instrument requires all licensed drivers to undergo periodic testing for the non-medical use of narcotic drugs and psychotropic substances. WHO guidance treats drug-impaired driving as a legitimate road-safety concern, but notes continuing evidentiary gaps, including in the relationship between drug concentrations and crash risk; WHO regional reporting further states that there are currently no recommended best-practice criteria for drug-driving laws against which national legislation can be assessed.[147] This argues against presenting any particular model of drug-testing legislation as internationally required or recommended good practice.

81. A relevant recent European benchmark is Directive (EU) 2025/2205 on driving licences, which entered into force in November 2025 and is to be transposed by EU Member States by November 2029. It provides that licences are not to be issued or renewed where a person is dependent on psychotropic substances or narcotics, is unwilling or unable to dissociate consumption from driving, or regularly uses such substances in quantities that adversely affect safe driving.[148] The Directive therefore addresses drug use through medical fitness to drive and permits appropriate requirements or restrictions, but does not establish a general obligation of periodic toxicological testing for all licence-holders.

82. International drug control bodies have likewise addressed drug-affected driving as a road-safety matter. In its Resolution 54/2, the Commission on Narcotic Drugs encouraged the development of effective roadside testing options to assess drug-affected driving, while

146 See World Health Organization, *Drug use and road safety: a policy brief*, WHO/MSD/NVI/2016.01, 2016, pp. 1-5. See also WHO, *Road traffic injuries* (2026), section on driving under the influence of alcohol and other psychoactive substances.

147 See World Health Organization, *Drug use and road safety: a policy brief*, WHO/MSD/NVI/2016.01, 2016; see also WHO, *Road safety in the Eastern Mediterranean Region*: facts from the Global status report on road safety 2023.

148 See *Directive (EU) 2025/2205* of the European Parliament and of the Council of 22 October 2025 on driving licences, amending Regulation (EU) 2018/1724 of the European Parliament and of the Council and Directive (EU) 2022/2561 of the European Parliament and of the Council, Annex III, Title 12.

expressly referring to human dignity, physical integrity and relevant ethical considerations.[149]

83. The possible introduction of mandatory periodic drug testing, which involves the compulsory collection of biological material, constitutes an interference with the right to respect for private life under Article 17 of the ICCPR and Article 8 of the ECHR.[150] The existence of a legitimate road-safety objective does not dispense with the need to ensure that the particular testing regime complies with the above-mentioned requirements of legality, legitimacy, necessity and proportionality, and non-discrimination (see Sub-Section IV.1.5. *supra*).

4.1. Legality

84. The legal framework should define when a driver may be required to undergo testing, the competent authority and lawful grounds for testing, permissible methods, the consequences of refusal and the legal significance of a positive result. It should distinguish roadside screening tests, whether conducted randomly or on the basis of specific grounds for testing, from evidential or confirmatory testing. A screening device may indicate the possible presence of drugs but may not, by itself, provide a sufficiently reliable basis for determining potential criminal or licensing consequences.

85. Particular attention should be paid to the distinction between the presence of a substance and impairment relevant to driving, since different psychoactive substances may affect driving in different ways, and the relationship between concentration and crash risk is not uniform across substances.[151] The legislation should therefore make clear what a test is intended to establish and how the result relates to the prohibited conduct or relevant threshold.

4.2. Necessity and Proportionality

86. As underlined in Sub-Section IV.1.5 supra, a number of factors should be taken into account to assess the necessity and proportionality of compulsory periodic testing of (all) drivers of motor vehicles.

87. *Suitability and Effectiveness of the Measures to Enhance Road Safety by Reducing Drug-Driving* – Evidence tends to show that increased drug-driving enforcement based on roadside oral fluid screening is potentially cost-beneficial for road safety, unless this implies reducing law enforcement on alcohol to fund drug enforcement, which would have a negative impact on road safety, although this also depends on other factors.[152]

149 See *Commission on Narcotic Drugs, Resolution 54/2*, Promoting international cooperation in addressing the challenges posed by drug-affected driving, Report on the fifty-fourth session, E/2011/28-E/CN.7/2011/15, para. 1.

150 See ECtHR, *Schmidt v. Germany* (dec.), no. 32352/02, 5 January 2006, holding that compulsory blood and saliva sampling constitutes an interference with private life which may give rise to a breach of the right to respect for private life unless it is "prescribed by law", pursues one or more legitimate aim or aims as defined in Article 8 (2) of the ECHR and is "necessary in a democratic society" to attain them; in Schmidt v. Germany, the ECtHR concluded that in that case of determination of authorship of a criminal offence, compulsory blood and saliva sampling was necessary and proportionate. See also ECtHR, *X v. the Netherlands*, Application no. 8239/78, Commission decision of 4 December 1978, which recognizes that the taking of blood samples is a generally accepted and applied measure in the Codes of Criminal Procedure of many Member States of the Council of Europe, e.g., to determine the blood alcohol level of traffic participants; and *X v. Austria*, Application no. 8278/78, Commission decision of 13 December 1979, para. 3 (blood test in paternity proceedings).

151 See WHO, *Drug use and road safety: a policy brief, 2016*, noting that the effects of psychoactive substances on driving and the relationship between drug concentration and crash risk vary by substance and that important evidentiary questions arise in setting legal thresholds. See also European Union Drugs Agency (EUDA), *Legal Approaches to Drugs and Driving: Topic Overview*, updated May 2025, which shows how respective legislation address the issue of impairment and drug testing.

152 See European Monitoring Centre for Drugs and Drug Addiction, *Driving Under the Influence of Drugs, Alcohol and Medicines in Europe — findings from the DRUID project (2012)*, p. 40.

88. If the aim is indeed road safety, then the likely appropriate measure and less restrictive means would be random roadside testing aimed at preventing impaired drug driving, rather than periodic testing of licence holders generally.

89. The proportionality assessment should also assess whether the scope and frequency of testing, method of collection, testing procedures and treatment of the person concerned are necessary and proportionate to the specific road safety objective relied upon.

90. Frequency should be assessed differently for random roadside testing and recurring testing of identified drivers for licensing or occupational safety obligations. Random roadside drug testing is encounter-based and may be justified as a deterrent to drug use or detection measure where the law authorizes it,[153] but the selection of vehicles, locations, times and drivers should be governed by objective, clear and non-discriminatory criteria. By contrast, requiring the same driver to undergo toxicological testing at fixed intervals is a more sustained interference and calls for a correspondingly stronger justification, particularly for ordinary licence holders. Where mandatory periodic testing is linked to a documented medical condition, a prior drug-driving offence, a rehabilitation programme or a safety-sensitive professional/vocational category (e.g., professional or commercial drivers; drivers of buses, coaches, taxis or heavy goods vehicles; drivers performing particularly safety-sensitive functions), the frequency and duration of the measure should be tied to the level of the identified risk and should be subject to periodic review rather than imposed indefinitely.[154]

91. The EU Drugs Agency's comparative overview of European practice of testing for drug driving records systems in which police may stop drivers at random and/or test on suspicion of impairment, commonly using roadside oral-fluid screening or behavioural assessment followed, in nearly all countries, by confirmatory blood testing for prosecution.[155]

92. A driver should be informed of the result and, where an adverse determination is contemplated, should have an effective opportunity to challenge the accuracy or interpretation of the test.[156] This may require access to confirmatory analysis, relevant records concerning the testing procedure and, where appropriate, an independent or second examination.

93. The choice of testing method should reflect the principle of minimum necessary interference. A less intrusive method should be preferred where it is sufficiently reliable for the relevant stage of the procedure, with more intrusive testing reserved for

153 See World Health Organization, *Drug Use and Road Safety: A Policy Brief*, WHO/MSD/NVI/2016.01 (2016), p. 7.

154 Recurring testing appears in *medical-fitness-to-drive* frameworks rather than as population-wide screening. For example, **Germany**'s driving-licence rules link restoration of fitness after drug dependence to demonstrated abstinence and regular controls (see Fahrerlaubnis-Verordnung (FeV), Annex 4, item 9, *official consolidated text*); in **United Kingdom**, Driver and Vehicle Licensing Agency's (DVLA) guidance likewise uses medical assessment and, in defined drug-misuse, dependence or maintenance-treatment situations, may require toxicology or urine screening and continuing review. (United Kingdom, DVLA, *Drug or alcohol misuse or dependence: assessing fitness to drive*).

155 See European Union Drugs Agency (EUDA), *Legal Approaches to Drugs and Driving: Topic Overview*, updated May 2025; see also EMCDDA, *Driving Under the Influence of Drugs, Alcohol and Medicines in Europe: Findings from the DRUID Project* (2012), ETSC, *Preventing Drug Driving in Europe* (2017). For instance, in **Spain**, its traffic legislation requires drivers to submit to drug testing carried out by traffic authorities, using an authorised saliva screen followed by laboratory analysis, and the Directorate-General for Traffic continues to conduct intensive preventive alcohol-and-drug campaigns (see *Royal Legislative Decree 6/2015*, Article 14, and Dirección General de Tráfico, preventive alcohol-and-drug enforcement campaign results (9 August 2025); in Ireland, Gardaí use roadside oral-fluid testing and all drivers at the scene of a serious collision may be tested for drugs (see *Road Safety Authority, Drug Driving*).

156 See ECtHR, *Lilian Erhan v. the Republic of Moldova*, no. 21947/16, 5 July 2022, paras. 19-21, finding a violation of Article 6 §§ 1 and 3 (b) where police conduct made it impossible for the applicant effectively to obtain and rely on a biological test to contest a disputed breathalyzer result.

confirming the test results, especially in circumstances in which it is necessary to obtain evidentially robust results.[157]

94. Test results and associated health information should be subject to clear rules on purpose limitation, accuracy, security, access, disclosure, retention and destruction, consistent with the general personal data protection safeguards set out above (see para. 41 *supra*).

95. *Non-Discrimination and gender-sensitive approach* – Evidence suggests that in the general driving population, psychoactive medicines, both benzodiazepines and medicinal opioids, tend to be detected more frequently among middle-aged and older female drivers, during daytime hours.[158] These findings highlight the importance of ensuring that drug-testing policies take account of patterns of prescribed medicine use and do not result in discriminatory treatment. Any testing mechanism should distinguish the detection of a medicine from evidence of impairment and should not impose liability solely on the basis of the presence of a medicine that has been lawfully prescribed and used in accordance with medical advice. Road-safety information and prevention campaigns should address the risks associated with driving while impaired by psychotropic medicines and, where supported by evidence, include appropriate gender-sensitive outreach.

96. **Random roadside testing aimed at preventing impaired driving would be a more appropriate measure, while periodic testing may be justified in specific circumstances, such as a documented medical condition, a prior drug-driving offence, a rehabilitation programme or a safety-sensitive professional/vocational category. The legal framework should clearly define when testing may be required, the competent authority and lawful trigger, permissible testing methods, the consequences of refusal or of a positive result, while distinguishing preliminary roadside screening from evidential or confirmatory testing. Selection for random roadside testing should be governed by objective, clear and non-discriminatory criteria, and less intrusive testing methods should be preferred where sufficiently reliable, with more intrusive methods reserved where necessary to confirm initial results and obtain evidentially robust results. Appropriate safeguards should ensure the accuracy and reliability of testing, including confirmatory testing, and a meaningful opportunity to challenge the drug test result.**

97. The framework should further provide for legitimate medical explanations, including prescribed medication capable of producing a positive result or affecting driving ability. Any medical information obtained for this purpose should be limited to what is necessary for determining the road-safety or legal issue and should not be used for unrelated purposes without a separate lawful basis.[159] Test results and associated health information should be subject to clear rules on access, disclosure, retention and destruction, consistent with the general safeguards set out above.

157 See European Union Drugs Agency (EUDA), *Legal Approaches to Drugs and Driving: Topic Overview*, updated May 2025, which notes that "*In most EU Member States, police have the authority to stop drivers at random, for example to check documentation, though approximately half will require some sort of suspicion before testing a driver for drugs. In about half of the countries, saliva from the driver will be collected and tested on the spot, while the remaining countries will assess physical or behavioural signs, such pupil dilation or ability to walk in a straight line. Nearly all countries require a confirmatory blood test, usually performed in a hospital, in order to prosecute the driver*".

158 See EMCDDA, *Driving Under the Influence of Drugs, Alcohol and Medicines in Europe: Findings from the DRUID Project* (2012), ETSC, *Preventing Drug Driving in Europe* (2017), p. 19.

159 See *Convention for the Protection of Individuals with regard to the Processing of Personal Data*, as amended by Protocol CETS No. 223 ("Convention 108+"), Articles 5(4)(b), (c) and (e), 6, 7 and 9

5. Preventive Mechanisms Concerning the Use of Narcotic Drugs and Psychotropic Substances by Military Personnel

98. Members of the armed forces remain rights-holders notwithstanding the distinctive requirements of military service and any restriction on their rights require justification, taking into consideration the particular requirements of military service.[160] A drug-testing regime for military personnel should therefore be assessed against both the legitimate requirements of discipline, operational readiness and safety and the rights of the individual service member.

99. At the CoE level, Recommendation CM/Rec(2010)4 on human rights of members of the armed forces proceeds from the principle that military personnel retain Convention rights, while recognizing that the characteristics of military life may justify certain restrictions. In particular, it emphasizes that the right to respect for private and family life applies as much to military personnel as it does to civilians although enrolment in the armed forces may involve some degree of interference with private and family life.[161]

100. In addition, since the ILO Standards on Occupational Safety and Health in the workplace apply to both the private and public sectors, the relevant guidance on drug testing in the workplace should also be taken into account (see Sub-Section III.3. *supra*).

101. Drug use may raise particular concerns where military personnel perform safety-sensitive functions, handle weapons or hazardous equipment, operate vehicles or aircraft, have access to classified material, or are required to maintain operational readiness.[162] These considerations can provide a strong legitimate basis for drug prevention measures and considering the introduction of drug testing, but they do not by themselves justify disproportionate measures, such as unrestricted testing of every service member at any frequency or the unnecessary collection and disclosure of health-related information.

102. To be compatible with international human rights standards, preventive drug-testing mechanisms for military personnel need to comply with the above-mentioned requirements of legality, legitimacy, necessity and proportionality, and non-discrimination (see Sub-Section IV.1.5. *supra*). Their justification will in particular depend on whether there is a demonstrable connection to military safety, discipline or operational readiness, a differentiation according to function and risk, reliable and minimally intrusive drug testing procedures, strict safeguards for the protection of collected medical information and effective opportunities to challenge adverse results and decisions.

5.1. Legality and Differentiation of Testing Purposes

103. The legal framework should define the categories of personnel who may be tested, the purposes and circumstances of testing, the competent authority, the permitted testing methods, the treatment of samples and results, and the consequences of refusal or a confirmed positive result. It should distinguish between the potential different use drug

160 See ODIHR and DCAF, *Human Rights of Armed Forces Personnel*: Compendium of Standards, Good Practices and Recommendations, 2021, in particular the chapters on international human rights law and civil and political rights. See also OSCE, *Code of Conduct on Politico-Military Aspects of Security*, adopted in Budapest on 3 December 1994, paras. 32-33, under which OSCE participating States committed to ensuring that military, paramilitary and security forces personnel are able to enjoy and exercise their human rights and fundamental freedoms, in conformity with the requirements of service, and to providing appropriate legal and administrative procedures to protect the rights of forces personnel.

161 See Council of Europe, Committee of Ministers, *Recommendation CM/Rec(2010)4 on human rights of members of the armed forces and explanatory memorandum*, paras. 35-39 and Explanatory Memorandum.

162 See NATO, *Military Medical Support*, updated 22 May 2025, noting that the military health-support system aims to preserve and restore the health of NATO personnel and thereby contribute to the operational capacity of Allied and partner forces; see also NATO, *Committee of the Chiefs of Military Medical Services* (COMEDS).

testing including deterrent effect, testing of safety-sensitive personnel, reasonable suspicion and post-incident testing, follow-up or control testing, and testing undertaken for clinical assessment or treatment. These different forms of drug testing should not be treated as interchangeable, because their legitimate aims, degree of intrusion and appropriate safeguards differ.

104. Where random or periodic testing is contemplated, the authorities should identify why that form of testing is needed, whether it is suitable and effective to achieve the objective pursued, and why the chosen frequency is proportionate. Military status alone is not a sufficient explanation for testing everyone at the same interval. In this respect, the Explanatory Memorandum to the CoE Recommendation CM/Rec(2010)4 emphasizes that assertions based on national security or operational effectiveness must be well-founded and objectively justified and should be substantiated by concrete and convincing considerations.[163] Relevant considerations include the duties performed, the immediacy and seriousness of the safety or operational risk, the purpose of the programme, the likely detection window of the chosen method, the consequences attached to a positive result, and whether a less intrusive or more targeted approach could achieve the same objective. No single testing frequency can therefore be treated as a general human-rights benchmark; frequency should be linked to the identified risk and reviewed where circumstances change.

105. Although no ECtHR case specifically addressed drug testing of military personnel, in *Wretlund v. Sweden*, the Court concluded that public-safety considerations could justify the nuclear plant's compulsory urine testing scheme, emphasizing the balance between the employer's safety interest and the individual's personal integrity, taking took into account the high-security nature of the workplace, the purpose of the testing, the manner in which it was conducted, the limited disclosure and use of results, and the fact that testing applied to all employees rather than singling out the applicant.[164]

106. Comparative practice also shows that military systems often determine the frequency of testing depending on the purpose of the test, such as deterrent testing, testing of members in high-risk safety-sensitive positions, accident- and incident-related testing, testing for cause, control testing and blind testing.[165]

---

163 See Council of Europe, *Recommendation CM/Rec(2010)4*, Explanatory Memorandum, section G, concerning Article 8 ECHR, p. 46; see also ECtHR, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, 27 September 1999.

164 See ECtHR, *Wretlund v. Sweden* (dec.), no. 46210/99, 9 March 2004, which concerned compulsory urine testing every third year at a nuclear power plant.

165 For instance, **Canada** distinguishes deterrent, high-risk safety-sensitive, accident/incident, cause, control and blind testing, and personnel in designated high-risk safety-sensitive occupations or positions are expected to be tested at least once each year; by contrast, follow-up control testing after confirmed prohibited drug use must be ordered at the minimum frequency reasonably necessary to confirm abstinence and may operate only during a one-year period (see Canada, *Department of National Defence, DAOD 5019-3*, Canadian Forces Drug Control Program, especially paras. 5.26, 5.32-5.38 and 5.53-5.56); in **Ireland**, the Defence (Amendment) Act 2024 introduced an express statutory basis for a drug-testing regime that may include random and targeted testing and may regulate sampling, storage, review, refusal and positive results (see *Defence (Amendment) Act 2024*, s. 12, inserting s. 117A into the Defence Act 1954 and providing for regulations establishing random or targeted drug testing, including rules on sampling, storage, review, refusal and positive results); the Department of Defence and Defence Forces Annual Report 2024 records 1,192 tests during that year, of which 1,188 were random and four targeted, amounting to 12.54 per cent of combined Permanent and Reserve Defence Forces strength (see Department of Defence and Defence Forces, *Annual Report 2024* (published 10 December 2025); the **United States Department of Defense (DoD)** likewise maintains a centrally regulated programme combining deterrence and detection with command purposes relating to security, fitness, readiness, good order and discipline; DoD policy requires computerized random selection and provides that Service members should be tested at least annually, while a separate technical instruction governs collection and laboratory procedures; both principal instructions were updated in August 2025. (see U.S. Department of Defense *Instruction 1010.01*, Military Personnel Drug Abuse Testing Program, Change 2 (21 August 2025), and DoDI 1010.16, *Technical Procedures for the Military Personnel Drug Abuse Testing Program*, Change 1 (22 August 2025); the **United Kingdom** provides for a further preventive model describing compulsory random urine testing as a deterrent measure applicable to personnel subject to service law and also addressing testing connected with safety-critical duties; the framework places testing alongside education, prevention and command measures, illustrating that testing can be one component of a broader prevention architecture rather than a stand-alone intervention (see United Kingdom Ministry of Defence, *JSP 835: Alcohol and Substance Misuse and Testing*, including the chapters on compulsory drug testing and safety-critical duties).

107. Voluntary military testing should also be kept distinct from command-ordered testing. Where a service member seeks testing within medical treatment or rehabilitation, consent should be genuine and clinical confidentiality should apply subject to narrowly defined exceptions. A test described as voluntary but carrying disciplinary, deployment or career consequences for refusal is functionally compulsory and should satisfy the safeguards applicable to mandatory testing.

5.2. Necessity, Proportionality and Non-Discrimination

108. The proportionality of testing should be assessed in relation to the actual duties of military personnel and risks concerned. More intensive testing may be easier to justify for personnel performing functions in which impairment could create an immediate and serious risk to life, operational security or the safety of others than for personnel whose duties do not present comparable risks. The framework should avoid overly broad classifications that subject all service members to the same level of intrusion without regard to their function, deployment, risk or other relevant circumstances. In conducting this assessment, particular account should also be taken of the position of conscripts, who, unlike professional military personnel, have not voluntarily chosen military service or accepted its occupational conditions. Any distinction between categories of personnel should have an objective and reasonable justification and be proportionate to the legitimate aim pursued. Selection for targeted testing should be based on objective, clear and transparent criteria and should not facilitate discriminatory profiling or retaliation. Given the authority exercised through the military chain of command, clear criteria and effective review mechanisms are especially important.[166]

109. Testing procedures should also respect dignity and bodily integrity. Sample collection should be no more intrusive than necessary to ensure reliability and prevent manipulation, and should be carried out by appropriately trained personnel. Where several scientifically adequate methods are available, the degree of physical and psychological intrusion should form part of the choice of method, while procedures should minimize the risks of humiliation and unnecessary interference with privacy.

5.3. Medical Confidentiality

110. A clear distinction should be maintained between testing for command, disciplinary or operational purposes and testing undertaken as part of medical care. This distinction is also supported by international standards concerning the right to health and medical confidentiality. The Committee on Economic, Social and Cultural Rights emphasized that access to health-related information must not impair the confidentiality of personal health data.[167] Where the primary purpose is diagnosis, treatment or rehabilitation, medical confidentiality and professional independence should apply. Information disclosed to military health professionals for treatment should not automatically be made available to commanders for disciplinary purposes merely because it concerns substance use.

111. Where testing is conducted for operational readiness, safety or disciplinary purposes, the legal framework should specify what information may be communicated through the chain of command, ensuring that disclosure should be limited to what is necessary for the relevant decision. Detailed clinical information, including unrelated diagnoses or

166 See CoE, Committee of Ministers, *Recommendation CM/Rec(2010)4* on human rights of members of the armed forces, paras. 35, 77-78. See also ODIHR and DCAF, *Human Rights of Armed Forces Personnel*: Compendium of Standards, Good Practices and Recommendations, 2021, pp. 294-299.

167 See *ICESCR*, Article 12; Committee on Economic, Social and Cultural Rights, *General Comment No. 14* (2000) on the right to the highest attainable standard of health, para. 12 (b)-(c).

prescribed medication, should not be disclosed where a narrower communication (for example, fitness or unfitness for a particular duty) would adequately serve the legitimate purpose. As noted above, health and test data should moreover be treated as sensitive personal data, subject to heightened safeguards, including concerning purpose limitation, access, disclosure, security and retention.[168]

5.4. Testing Procedures and Consequences

112. Given the potentially serious consequences of a positive result, including disciplinary proceedings or sanctions, and possible effects on deployment, security clearance, promotion or continued service, the testing process should incorporate safeguards concerning sample identification, chain of custody, laboratory reliability, confirmatory testing and the opportunity to challenge an allegedly erroneous result.[169]

113. Where disciplinary proceedings may follow, the service member should have access to the procedural guarantees applicable under national military law and the relevant international fair hearing standards. ODIHR's guidance recognizes that military discipline may require a distinct system, while underscoring the importance of rights protection and effective remedies.[170] The requirement for effective review is also consistent with paragraph 33 of the OSCE Code of Conduct on Politico-Military Aspects of Security, which requires participating States to provide appropriate legal and administrative procedures to protect the rights of their armed forces personnel.[171] CoE standards similarly require fairness, legally defined disciplinary procedures and opportunities for appeal within military disciplinary systems.[172]

114. The consequences attached to a positive result should themselves be proportionate to the purpose of the testing regime. The framework should permit consideration of legitimate medical explanations and, where appropriate, distinguish substance dependence or other health needs from misconduct warranting disciplinary action. Where a positive result indicates a possible drug use disorder or treatment need, relevant UN standards support an evidence-based response that respects human dignity, confidentiality and non-discrimination.[173] Where operational safety can be protected through temporary removal from safety-sensitive duties, medical assessment, treatment or rehabilitation, these alternatives should be considered before more severe or irreversible consequences are imposed.

115. In light of the foregoing, **the introduction of drug testing for military personnel is possible if it complies with the requirements of legality, legitimacy, necessity and proportionality, and non-discrimination, taking into account the particular requirements of military service. Military legislation or regulations should differentiate testing by purpose and risk, and on this basis, specify who may be tested, on what grounds, by whom, according to which method and what frequency. Random or periodic testing should have an identifiable operational, safety or**

168 See *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (Convention 108), Articles 5–7; CoE, *Recommendation CM/Rec(2019)2* on the protection of health-related data.

169 See ILO, *Management of Alcohol- and Drug-related Issues in the Workplace*: An ILO *Code of Practice* (Geneva, 1996), Appendix V, Guiding Principles on Drug and Alcohol Testing in the Workplace, emphasizing, *inter alia*, reliable analytical procedures, confirmation of initial positive screening results, appropriately qualified personnel and safeguards concerning the confidentiality and handling of test results.

170 See ODIHR and DCAF, *Human Rights of Armed Forces Personnel*: Compendium of Standards, Good Practices and Recommendations, 2021.

171 See *OSCE Code of Conduct on Politico-Military Aspects of Security*, para. 33;

172 See also CoE, *Recommendation CM/Rec(2010)4*, Appendix, paras. 17-21 and 28-34 concerning military discipline and procedural guarantees.

173 See UNODC and WHO, *International Standards for the Treatment of Drug Use Disorders, revised edition* (2020), Principle 2 and Standards 2.1–2.5.

disciplinary rationale and should not be broader or more frequent than reasonably required to achieve the objective pursued. The intensity and frequency of testing should correspond to actual duties and operational risks rather than military status alone. Targeted selection should rely on objective, clear and transparent criteria, and collection procedures should minimize intrusion and humiliation while preserving sample integrity. Information obtained for diagnosis, treatment or rehabilitation should remain subject to medical confidentiality, while information disclosed to commanders should be limited to what is necessary for a specified fitness, safety or operational decision. Where a positive result may lead to disciplinary proceedings or affect deployment, security clearance, promotion or continued service, the process should ensure reliable chain of custody, confirmatory testing and an effective opportunity to challenge the result and any decision based on the test result. Consequences should be proportionate and, where compatible with operational safety, allow consideration of medical explanations, treatment, rehabilitation or temporary reassignment if appropriate.

[END OF TEXT]