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Decriminalisation of drugs in Portugal: a current overview

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The Beckley Foundation Drug Policy Programme (BFDPP) is a new project dedicated to providing a rigorous, independent review of global drug policy. The aim of this partnership between the Beckley Foundation and DrugScope is to assemble and disseminate information and analysis that supports the rational consideration of these sensitive policy issues at international level, and leads to the more effective management of the widespread use of psychoactive substances. It brings together the Beckley Foundation, a charitable trust set up to promote the investigation of consciousness, and DrugScope, the UK's leading independent centre of expertise on drugs.

SUMMARY

In July 2001, Portugal's government implemented a notable change in drug policy. From that date, users of any illegal drug apprehended by police were brought not before the courts, but before special commissions composed of health, legal, and social work professionals, whose aim was to give drug users the opportunity to access treatment for addiction and other problems related to drug use. That public health led approach had as its main goal the provision of immediate treatment for problematic drug users, aimed at minimising the social costs of drug use. With this reform, the state began viewing drug users not as criminals, but as victims of drugs. This paper presents an overview of the current Portuguese experience since the 2001 reforms.

BACKGROUND

Portugal had, and continues to have, a serious heroin problem, with rates of use amongst the highest in Europe at six to 10 cases per 1000 adults. Portugal has, paradoxically, a relatively low historic prevalence of the use of other drugs such as cannabis, ecstasy or cocaine. With regard to cannabis, for example, the rate of use in the last 12 months amongst the 15 to 34 age group is 6% in Portugal, compared with 20% in France, 19% in the UK and 17% in Spain. (EMCDDA Annual Report 2003).

A high proportion of this heroin use is by injection, and injecting drug use has been identified as one of the major factors in the rise in HIV infections in Portugal during the 1990s. The number of HIV infections attributable to drug use in Portugal rose from 73 in 1991 to 505 in 1998. During the same period, drug related deaths rose threefold. These rises brought the public health risks of heroin injection to the

forefront of the drug policy debate at that time.

Until July 1 2001, penalties for the use, possession, and acquisition of small quantities of drugs in Portugal were punishable by up to three months in prison or a fine.¹ Quantities exceeding a three-day supply were sanctioned by up to a year in prison or a fine. Portuguese approaches to illicit drugs were, then, officially characterised by a prohibitionist model, viewed by leading Portuguese experts as ineffective. On July 1 2001, Law 30/2000 took effect, decriminalising drug use, possession and acquisition for both the 'casual' user and addict. Whilst the reorientation of drug policy encapsulated in the decriminalisation of personal drug use and possession in mid-2001 was indeed a radical legislative change, it should also be viewed as the culmination of a process of evolution. This evolution arguably dates as far back as 1987, when the inception of Projecto Vida (National Drug Abuse Prevention

¹ As there was, and is, no distinction in Portuguese law between 'hard' and 'soft' drugs, these penalties applied to all drug use.

Programme), initiated a decentralised response to the drug problem, spread amongst six different ministries. Between 1987 and 1989, three Ministry of Health addiction centres were established in Lisbon, Oporto and Faro, whilst needle exchanges were operational by 1993. Addicts could have treatment instead of facing prison sentences, whilst incarceration was unusual for occasional users, and users under the age of twenty-one who promised not to re-offend rarely faced prosecution. Thus whilst both traffickers and users potentially faced prison sentences or fines, in practice most minor offenders were routinely receiving non-criminal sanctions.

In this context, from the mid-1990s onwards, alternatives to the traditional penal responses to drug use were increasingly debated by leading public figures. The presidents of parliament and of the supreme court openly declared themselves in favour of harm reduction programmes.

In 1998, the Portuguese government invited a panel of experts, including leading academics and medical professionals, to propose a rethought national drugs strategy. The panel's report started from the position that "there exist many pre-conceived notions about the use of drugs, many of which are false and result from uninformed emotional reactions."² In response to this, the report attempted to produce an overall strategy based on scientific evidence and empirical experience. In a framework based on prevention, harm reduction and the reintegration of drug users into society, the report proposed a new long-term strategy and action plan, the decriminalisation of personal drug use and possession, and consideration of treatment as an alternative to prison.

When the Partido Socialista (PS) government of Antonio Guterres won the 1999 elections, it quickly engaged in integrating these recommendations into its drug policy. These developments were not uncontested. Whilst the main opposition party, the Social Democrats (SD), initially held back from excessive criticism of the new law – recommending instead that the government call a referendum on the issue – other political actors, notably the conservative Partido Popular (PP), were strongly opposed to policy reforms. Nevertheless, the appointment of drugs minister Vitalino Canas, committed to implementing this new public health led approach to drug policy, helped to raise public awareness of the potential benefits of the policy, whilst the parliamentary majority enjoyed by the PS ensured that the necessary legislative changes proceeded through the Portuguese parliament. As the reforms were enacted in July 2001, the opposition to the policy of PP leader Paulo Portas was encapsulated in his claim that Portugal now offered 'sun, beaches and any drug you like.' (*The Guardian*, 20 July 2001). Indeed, these fears of 'drug tourism' were initially shared by the embassies of several other European countries,

but it quickly became clear that the flood of heroin addicts from around Europe was not going to materialise.

CURRENT PRACTICE: THE DRUG USE COMMISSIONS

Since the implementation of the new legal framework in July 2001, drug users apprehended by police for personal drug use or possession are referred within 72 hours to one of twenty local Commissions for the Dissuasion of Drug Use (*Comissões para a Dissuasão da Toxicoddependência* – CDT's), covering the entire country. Police no longer have the power to arrest users, but they can dispose of any drugs found, take the offenders name and address, and forward this information to the CDT. The CDTs are three-member panels made up of social workers, legal advisors and medical professionals, and are supported by a team of technical experts. They receive referrals from the police, and assess each case according to:

- the type of drug
- the level of drug use (whether an offender is an addict, an habitual or an occasional user)
- whether the use was in public or private
- the economic circumstances of the offender.

They then decide on the appropriate sanction to apply to the individual. Sanctions can include community service, fines, suspension of professional licences and banning from designated places. The CDT also recommends what they consider to be appropriate treatment or education for the offender. In the initial phase, mid to late 2001, the commissions processed almost 2,400 cases nationwide. Of these, 93 per cent were suspended (the panel recommended treatment or education for the offender), 4 per cent were absolved (the panel considered the individual not guilty), and 3 per cent incurred punitive measures, such as fines (EMCDDA 2002).

In the calendar year 2002, CDT's processed 5,580 cases. Of more than 4000 rulings made in that year, 91 per cent suspended the criminal justice process, 3 per cent found the presumed offender innocent, and 6 per cent were punitive rulings, showing little variation compared to 2001 (IDT 2003). In 2003, the total number of cases increased to 6,100. There was also a continued increase in punitive rulings, with 9 per cent of cases receiving a fine or similar sanction. The latest report from the IDT further notes a trend towards heavier fines in these cases. We can see from these figures that the Commissions are enthusiastically using their new powers, with the vast majority of cases still (after 3 years of implementation) receiving administrative, rather than criminal justice, sanctions.

² Report of Recommendations: Commission for the National Strategy to Combat Drugs, 1998.

Another notable feature of the functioning of the commissions is the speed of the process. Whereas prior to the establishment of the CDTs a process might take up to two years to reach court, decisions are now typically made within four to five weeks, and all but the most complex cases are reviewed by the Commission within three months.

As police officers are still the first point of contact with drug users and the commissions, the attitude of police management has been crucial to the smooth operation of the new system. It is acknowledged that the speed of implementation of the system allowed little time for the adequate training of police officers in the new legal framework. Nevertheless, reports from those involved are that police have generally accepted the initiative, and have worked well with the Commissions, particularly in areas where the benefits of the new way of working have been clearly explained and demonstrated.

LEGALISATION or DECRIMINALISATION?

When governments make changes to their legislation and practice regarding drug offences, it is important to recognise the differences between legalisation, decriminalisation and depenalisation. Although no internationally agreed definitions exist, and the terms are often confused in political and media debate, we can offer the following broad explanation.

LEGALISATION is where the legislature of a particular country formally amends its laws to end the prohibition of the possession, use or distribution of any of the currently controlled drugs. Although there are some grey areas (some countries criminalise use, some possession; the status of possession for medical or religious uses of some drugs is uncertain), this has not been attempted by any UN Member State, and would be in clear contravention of the UN Conventions.

DECRIMINALISATION is where a country retains its laws on drug offences but, either through an agreed policy change, or through new guidance to prosecuting authorities, decides to respond to certain of these offences through administrative processes rather than the criminal justice system. Many countries have a history of dealing with a whole range of offences through administrative sanctions, and have long dealt with drug offences in this way. For other countries (such as was the case in Portugal), this would be a significant change to established practice. It should be noted that, in many cases, administrative penalties for drug offences have actually been harsher than criminal sanctions, so decriminalisation can not always be seen as a less punitive approach to drug use.

DEPENALISATION is where a country decides to cease punishing those involved in the possession, use or distribution of drugs. Laws will still exist prohibiting these activities, and offenders may still be arrested, but no sanctions (criminal or administrative) are applied. A similar approach to this, but not technically depenalisation, is a policy of not arresting offenders.

The changes embarked upon in Portugal are an example of decriminalisation: drug use, possession, and acquisition are still prohibited under the law. Whilst attempting to minimise the social costs of drug use, the Portuguese government explains that its policy is now focussed more closely on drug trafficking. In the light of the establishment of the CDTs and their function as a route to treatment and rehabilitation of drug users, the legal changes of July 2001 represent instead a decriminalisation of personal drug use. The new law did not legalize any drug related offences, but removed criminal penalties for use, possession, and acquisition for all illicit drugs in quantities up to a 10-day supply.

IMPACT ASSESSMENT

The effects of the new regime remain unclear. Key indicators – such as the level of drug use in Portugal since the new system was introduced, the number of drug users still being imprisoned, and the extent to which the commissions have been successful with regard to rehabilitating drug users – cannot be accurately assessed at present due to a paucity of adequate research. The University of Oporto has been commissioned to produce an evaluation of the initiative, but this has yet to be published.

However, an analysis of the available data from the latest IDT report does give us some useful information.

Characteristics of Offenders. Of all the cases considered by the panel in 2003, 94 per cent were male and 6 per cent female. 86 per cent were aged between 16 and 34 years, and 96 per cent were Portuguese nationals.

Drugs Used by Offenders. The curious fact is that, consistently across the implementation period, the vast majority of CDT cases have been for the use of cannabis (92 per cent in 2003). This figure may not have been surprising in many other European countries but Portugal has traditionally been seen as a country with a relatively low prevalence of cannabis use. Indeed, the whole decriminalisation initiative was driven by the search for an effective way to deal with the large population of heroin users in the country. The concentration of cannabis cases could therefore be an indication that the panels are

focussing their efforts on the wrong type of drug user, or that the respective prevalence of cannabis and heroin use in Portugal has, over the last few years, converged towards European norms.

Relapse Rates. These have remained very low throughout the implementation period. In 2003, 6% of all cases reviewed were considered to have relapsed (either not complying with their treatment or reappearing in front of the panel for a further offence). This is a marginal increase from the relapse rates in earlier years, but remains a small minority of cases. These figures could be explained in a number of ways:

- that the individuals dealt with by the panel are mainly occasional users who do not repeat the offence
- that the referrals made by the panel are effective in ensuring that individuals stay away from future drug use
- that the standards for compliance with the requirements of the panels are set at a low level.

The true situation is likely to be a mixture of these factors.

CURRENT SITUATION AND ISSUES

The attitude of the present government towards the changes established by its predecessor is ambivalent. Although initially threatening to abandon the policy, it has instead continued to implement the new system. There are questions, however, as to whether the government support for the CDTs, in terms of resources and political backing, is as strong as under the last administration.

Current government spending on drug issues is based on the 'Horizon 2004 Action Plan', introduced by the previous government in 2001, which envisaged investment of 160 million euros over four years. Although departmental reorganization hindered data collection, the IDT noted in 2003 that budgets and funding, within the parameters of the 'Horizon 2004' plan, remained on a par with previous years (IDT 2003, p.9). Given that spending projections for the 2001-2004 period were contained in the 'Horizon 2004' plan, the present administration has so far had no obligation to alter levels of investment and budgeting.

However, in the light of the present administration's desire to cut government expenditure – and somewhat gloomy predictions for Portugal's budget deficit and economic growth – financial resources assigned to drug issues seem unlikely to increase during the lifetime of the present government, with elections next due in 2006.

In addition, developments in government drug policy are likely to be affected by the attitude adopted by the conservative Partido Popular (PP), which forms a small – but potentially decisive – part of the governing coalition.

There remains, therefore, considerable uncertainty over whether the Commissions will continue to have the resources and support to continue their work in the coming years. Any decision on this is unlikely to be based on a comprehensive analysis of the costs and benefits of this radical new approach. However, experience of the initiative so far does allow some conclusions to be drawn:

- The Portuguese authorities have been successful in implementing a significant national programme of change in the way they deal with drug offenders without major delays or administrative problems.
- It has been possible for the police, health and social services to work together to prioritise the provision of help to drug users over punishment.
- The new system has led to an improvement in the ability of the authorities to identify and intervene early in a young person's drug problem, and to deal with cases more quickly and cheaply than the courts were able to.
- Tens of thousands of drug users have been diverted from the criminal justice system in Portugal over the last 3 years, producing significant resource savings in the court and prison systems.
- The introduction of this new approach has not led to a significant increase in drug use in Portugal, or of drug users moving to Portugal because of the perceived lower risk of imprisonment.

Ultimately, the success or otherwise of this change of policy should be measured against the objectives of whether more actual (and potential) drug addicts are helped to reintegrate into society, and whether this more liberal approach has led to an overall increase in drug use. At this stage, the general indications are positive, but clear data does not yet exist on which to draw a firm conclusion.

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