

“Rather Treat Than Punish

The Portuguese Decriminalization Model

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Portuguese law: a historic overview

The first drug laws in Portugal date back to 1924 and 1926 and remained unaltered until 1970. They aimed to regulate drugs import and export and associated drug addiction with mental illness treatment, since drug use was unexpressive at the time.

After the 1975 April 25th Revolution, which fostered the freedom and the loosening of social habits, and the ensuing decolonization process, drug consumption rose. The Portuguese institutions were not ready to respond to that outbreak, since law enforcement agencies had been centered on a repressive model and there were no specifically targeted health structures. Heroin injection in particular became problematic.

Due to the emergence of an alarming drug consumption pattern, a specialized government structure was created in November 1976; the Centre for the Study of Drug Prophylaxis (CSDP) in view of addressing the problem specificities and the difficulties faced by care and treatment institutions.

Historical references to drugs decriminalization date back to the foreword of Law Decree No. 792/76 that created the CSDP. Albeit indirectly, Portugal introduced then for the first time in the drugs legislative framework the issue of drug use decriminalization, since the legislator expressed the need to revise the concept of drug use as a criminal act, a concept strongly consolidated in the legal framework, and to replace it, when justified, by a set of norms designing it under a regulatory administrative ordinance.

The Preface of Law Decree No. 792/76 clearly stated that ideally the penalty criminal model should be replaced by the consumer's clinical treatment and qualification of the drug user as patient and not as criminal, since drug use leads to *“a weakening, and even an enslavement of the will and, therefore should be immune to a [...] imputation of guilt* (Preamble of Law Decree No. 792/76).

An alternative to the criminal model

To understand the development of drugs policies in Portugal from a drug consumption criminal model to the decriminalization of drug consumption, with the purpose to signal precociously and motivate recreational and regular drug users and to foster drug addicts for treatment, it is necessary to map public and private evolutionary attitudes expressed by legislators step by step.

This evolution culminated in the acceptance of a legal framework whereby the crime of consumption – typified under Law Decree's No. 15/93, of January 22, Article 40 as criminally punishable, took on a new legislative intent, and the consumption of illicit drugs, the acquisition and possession for personal consumption of up to an average amount of ten days was decriminalized.

It is precisely under this perception that decriminalization, aimed to achieve "*a new model, without penalties or fines, on long-term future*" (Poiares, C., 2001, p. 68), is to be understood as an alternative to the criminal model in force until June 2001. Convening this idea of drug use decriminalization as an alternative model to the criminal model is to recognize and be aware of the merit of stirring to a solution while maintaining a ban that keeps drug users away from the inescapable weight of the criminal law enforcement by limiting their mechanisms to the implementation of a deterrent power (Quintas, J., 2006).

Multidisciplinary research

In 1992 the Ministry of Justice's Drug Fighting Office, the competent structure for drugs and drug addiction study and research, commissioned a multidisciplinary research program in partnership with the Oporto University to research and study drugs and crime relationship in Portugal. As conclusions were only published in Portuguese therefore international partners and scientific community are unaware of its findings.

It concluded that there is not a thorough relationship between drugs and crime; that social and economic conditions do not necessarily determine drugs and crime association; that some drugs are prevalent to specific economic and social extracts; that among middle and upper class levels drug addiction could be maintained for more than ten years without others being aware of drug use.

The study and research outcome, composed by 12 reports (Da Agra, Cândido, 1996), were presented in October 1996 at an enlarged conference with members of the scientific and academic community, field practitioners and people interested.

In the mean time, the awareness that prosecution and imprisonment were not a solution for drug consumption grew among judges and law enforcement officers. Drug users presented to Courts were sent home with a suspended sanction in most cases not associated with other crimes or just a petty crime, or plainly associated with drug consumption or drug possession for personal use. But that would obviously let them alone to continue with their drug consumption. In cases associated with a crime, judges would frequently suspend penalty conditioned to a treatment obligation. The feeling that there should be some other way to address drug use was steadily growing.

After the presentation of the multidisciplinary research study, the Prime Minister swore a commission composed of eminent field practitioners and academics, presided by a renowned scientist unrelated with the drug field, and gave them the task to study the drug institutional arrangement and legal framework and to present a report, which was the main ground for the 1999 Portuguese Drug Strategy (Presidência do Conselho de Ministros, 1999).

The Portuguese Drug Strategy

Based on the Commission's Report, which explicitly excluded drug liberalization and trade regulation scenarios (2002, Valente, p. 10), the 1999 Portuguese Drug Fighting Strategy (1999 PDS) was drafted, being published in April 1999. Among its most innovative aspects were the qualification of drug addiction as a disease, the creation of a harm reduction network and the expansion of drug users outreach structures. As a consequence of the stronger orientation for treating drug users and drug addicts, the public treatment network was enlarged. The 1999 PDS was implemented through a 30 measures Action Plan to be accomplished by 2004.

Drug decriminalization

Following the 1999 PDS the decriminalization law was proposed by the Government, discussed and approved by the Parliament and published in November 2000, entering into force in July 1st 2002.

The law proposal incorporated all the Commission's recommendations, namely the decriminalization of drug use and drug possession up to a maximum average amount for personal use of less than ten days (Article 2 of Law no. No. 30/2000), which until then was considered a crime, became an administrative infraction. Maximum limits for each individual average daily dose of illegal drug plants, substances or preparations are referred in Ordinance No. 94/96, of March 28. Situations in which the specific quantity of substance for individual consumption exceeds the ten days average dose are considered a crime and the offender is guided to the criminal system.

The decriminalization framework approved by this law does not apply to cultivation of psychotropic substances (Article 28, Law No. 30/2000), which remains crime.

Thus this decriminalization model, which Portugal pioneered, maintains *the legal and social disapproval* of drug use but within the sphere of administrative offences (Santos, A., 2004), limiting only the field of criminal jurisdiction in this matter. "Decriminalization does not mean legalizing" (1999 PDS, 1999,).

Under this understanding, it is referred that the main goal should be to promote conditions that enable the presumed offender's acquaintance of their motivation and subsequent referral for treatment, while also ensuring the definition of reintegration measures. (Poiares, C., 2007).

This amendment to the drugs legal system reflected a change in attitudes no longer considering the drug user as a delinquent but rather as a patient needing treatment. It incorporated a set of principles established by the PDS such as Humanism and Pragmatism that steer the intervention of the Drug Addiction Dissuasion Commissions (DADC). *"To this extent, the law created instances of genuine legal-psychological intervention, giving them a voice: knowledge is a normative integral and explicit part."* (Poiares, C., 2002, p. 35).

Operationalising drug decriminalization

The sphere of operating procedures that accompany decriminalization was translated into a conceptual tool designed as a mediator devoid of stigma or criminal punishment, through which new approaches are proposed to drug consumers or addicts in order to drive them to treatment.

Other than treatment the application of this model also allows detecting new drug use trends and patterns, which otherwise would not be grasped by the institutional system until a later stage, and laid down the prospect of possible institutional referrals and socio-psychological follow ups (Quintas, J., 2006).

This legal change, based on a constructive model, replaced the enforcement of judicial and criminal mechanisms for a legal-psychological intervention, focused on the needs of the presumed offender, be it a preventive, a health or a therapeutic response or an administrative sanction, as provided for in Law 30/2000. Thus, the law consecrated an alternative to the penal model based on therapeutic pre-clinical assignment, which is the primacy of the jus-psychological intervention (Poiares, 2000).

The model for the decriminalization of drug use had its practical application with the creation of Drug Addiction Dissuasion Commissions, regulated by Law Decree N. 130-

A/2001 of April 23, under the direct and common competence of Ministers of Justice and Health.

Drug Addiction Dissuasion Commissions: what they are and what they do

Commissions are composed of three members, one of which is the Chairman. It is mandatory that one of its members be a jurist. The Commission members' status is defined by Ordinance No. 428-A/2001 of April 23. Each Commission is assisted by a multidisciplinary team provided by the Institute on Drugs and Drug Addiction, P.I. (IDT, P.I.). The multidisciplinary team is composed of psychologists, sociologists, social workers and lawyers as well as administrative assistants who prepare and support decision making and monitor the implementation of measures, be it therapeutic or administrative oriented. The multidisciplinary team is responsible for analysing presumed offender assessments, which are sent by police and/or courts, supporting decision making and monitoring the implementation of therapeutic and administrative oriented measures.

Based on territoriality and citizen's centrality principles each administrative district in Portugal is provided with a DADC. Though imposing sanctions, DADC are neatly distinguishable from courts. DADC are reinforced by the fact that they are assisted by a multidisciplinary team

Motivation for treatment

After process instruction, the individual's consumption circumstances are discussed with the Commission members, who decide the most adequate measure to be applied within a wide range, among which referral, psychological support, treatment and administrative sanctions. Before the audition, the technical support team assesses the psycho-social situation and verifies prior infractions registry. Different measures are applied depending on the presumed offender situation regarding addiction – just experimenting, recreational or intermittent use and abuse.

Consumers who are addicted to drugs are motivated to attend specialized treatment services. There is national coverage of the public network run by the Institute on Drugs and Drug Addiction, P.I. (IDT, P.I.) with functional units, ambulatory treatment care centers, treatment teams, outreach teams, and partner health centers and hospitals. Treatment is provided free of charge. In order to ensure universal coverage IDT, P.I. also established agreements with private units care centers to which patients may be sent.

Treatment structures in Portugal: an overview

Portugal created in 1990 a government structure to grant drug addicts treatment by moving to the Ministry of Health the health aspects of drug addiction, which until then had been functioning within the competence of the Ministry of Justice. However, public drug addiction specialized treatment had started much earlier, in the 80's. In 1987 the Ministry of Health opened the Taipas Center incorporating in-patient, emergency, detoxification and day center units.

From 1997 a major organizational shift occurred in view of providing drug addiction full country coverage, establishing a network of Drug Addiction Treatment Centers' (SPTT).

In 2006 another change of paradigm was introduced, incorporating Demand Reduction activities, including treatment, in functional units called Integrated Responses Centers that replaced former Drug Addiction Treatment Centers', thus exploring synergies and practitioner's skills.

The leading motto of DADC's action is "rather treat than punish," which incorporates a set of principles and a strategic paradigm of deterrence based on an integrative constructive and complementary approach within demand reduction. It transcends a mere decriminalization approach and focuses on various levels of presumed offenders individual needs without incorporating blame for a punishable behavior or illegal demeanor. The ban on consumption through repression and detention marginalized drug users and conditioned their contact with health institutions and other social assistance organizations, depriving them of receiving appropriate information and follow-up such as that is currently provided by DADC and other network associated services.

The presumed offender must present him or herself at his/her home area DADC. He/she is not regarded as a criminal but rather seen as a patient needing of treatment. That facilitates occasional or regular drug users' contacts with treatment and treatment support structures and specialists. Predominance is given to grant greater protection to the presumed offenders human dignity and health's.

In the case of minors under 16 years decriminalization enables them to be signaled but DADC are not allowed to open a file, so they are forwarded to the appropriate authority – the National Commission for Children and Youth Protection.

As regards referrals, several agencies with a wide range of responsibilities involving law enforcement agencies (including courts¹) and a network of public services and institutions, such as courts, social security, training and employment public structures, civil governments, local authorities, health centers, hospitals etc. provide adequate responses to the presumed offender's needs.

Presumed offenders presented to DADC's find answers through the application of motivation measures, enforced through periodic presentation, weekly or biweekly, at the DADC, and submitting to the commitment of visiting a qualified psychologist or attending a social service DADC.

Within the decisions issued by DADC on administrative processes for drug consumption the most common in the past nine years was Provisional Process Suspension, applied to consumers or to drug addicts (distinction established by the law). As the law goal is to dissuade consumption this action proved to be the best measure once the presumed offender accepts to undergo treatment.

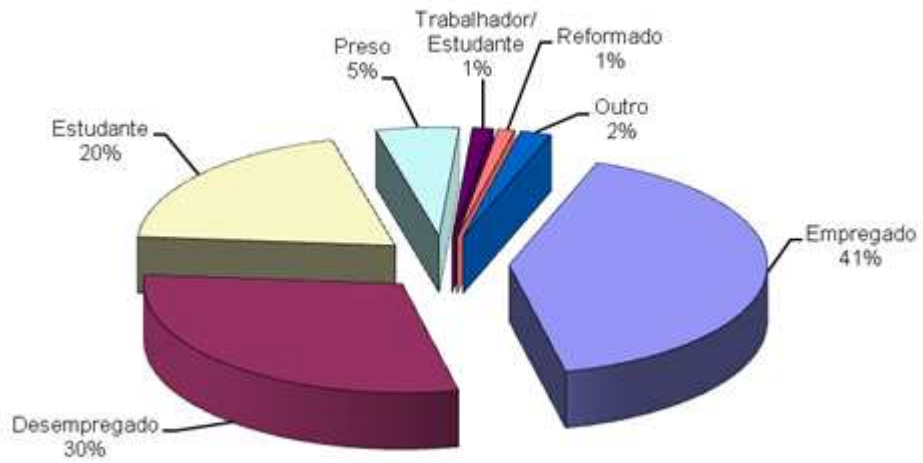
If the presumed offender does not accept to undergo treatment or psychological consultation or if having accepted stops it, the dissuasion process moves to the imposition of an administrative sanction, bearing in mind a later adhesion or return to treatment.

In this case sanctions most frequently applied are Periodic Presentation to the DADC technical team, followed by Admonition, Community Service and Forbiddance of Attending Certain Places. Monetary sanctions are never imposed to drug addicts. If the presumed offender accepts treatment, sanctions imposed are suspended.

Most of the presumed offenders are employed, as the following graph for 2009; a total of 41% were employed and just 30% unemployed.

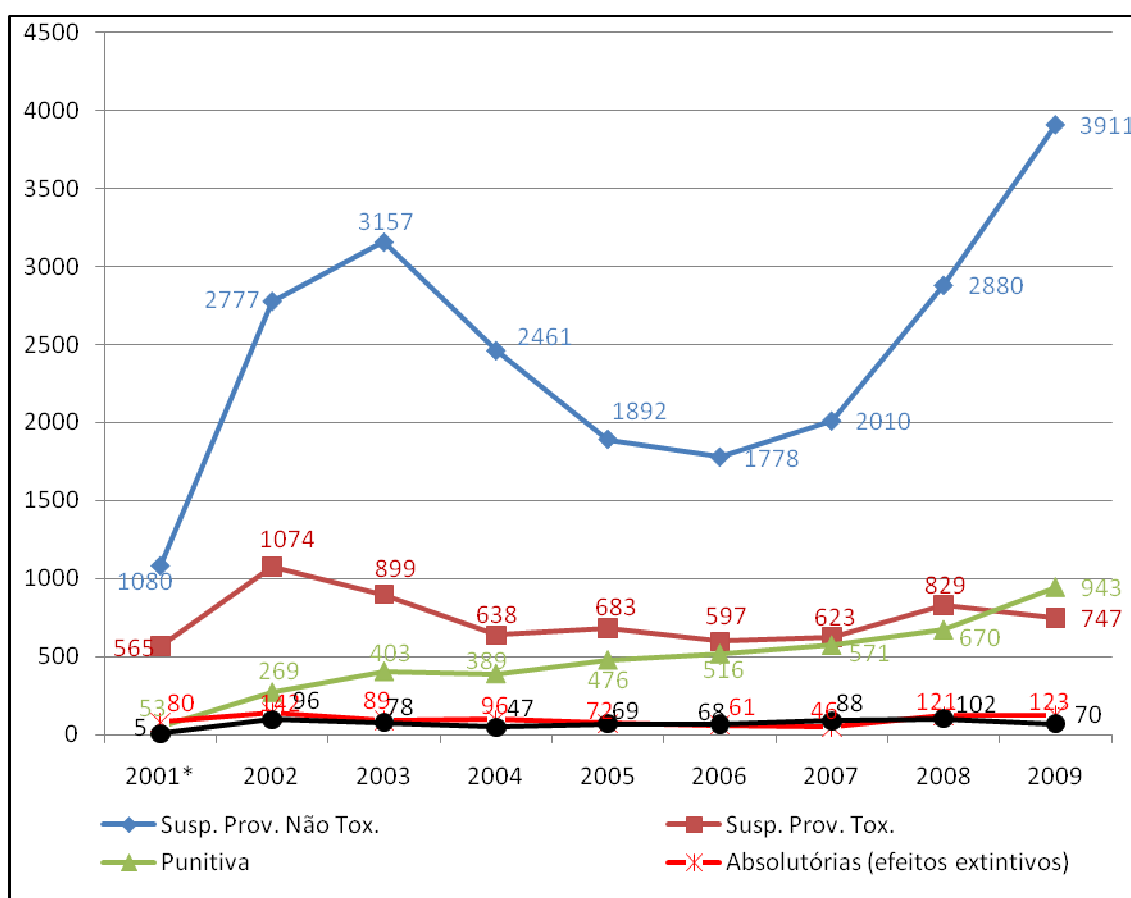
¹ Courts may send presumed offenders present to them for criminal offenses when they are also drug consumers.

Presumed offenders' Employment Status in 2009



Source: GAD/IDD, PI, 2010

Decisions issued by DADC from 2001 a 2009



Source: Data from 2001 until 2008, Annual Reports on the Situation on Drugs and Drug Addiction, IDT, PI. 2009 data from GAD/IDT, PI

Data and studies on the impact of decriminalization indicate a growth in treatment demand and a decrease in consumption, especially on younger population (GAD/IDT,PI), which is attributed to the concentration of efforts on demand reduction actions rather than on law enforcement.

In 2009, there was an increase of about 15% in the prosecution of misdemeanor by consumption of illegal substances in the country, with a total of 8441 cases, partly due to awareness-raising work carried out with the police authorities.

As in previous years most presumed offenders consumed cannabis, representing 73%, followed by heroin consumers, nearly 12%. Polydrug users represented about 8% and cocaine users nearly 10%.

International impact

As for decriminalization, the INCB originally accused Portugal of disrespecting the UN drug control Conventions, but after two missions to Portugal INCB recognised some of the benefits of the law.

Later, the 2009 World Drug Report noted that 'Portugal's decriminalisation of drug usage in 2001 falls within the Convention parameter'.

The 2009 EMCDDA Annual Report, launched last October, recognized that decriminalization has not fostered an increase in drug use or drug tourism in Portugal.

Just a few months before, in April 2009, Washington's Cato Institute presented the Greenwald Report "Drug Decriminalization in Portugal", subtitled "Lessons for Creating Fair and Successful Drug Policies".

Due to the innovative aspects of the decriminalization policy and to the results published, scholars, State administrations, think tanks, NGO's and journalists have been requesting interviews and field trips to be acquainted with the Portuguese National Coordinator, the Institute on Drugs and Drug Addiction PI and CDT's members, as well as oral presentations.

We are glad that the decriminalization policy attracted so much attention. It is not of course a merchandising product that can be reproduced like a franchise, but we do believe there is a potential in our humanistic and pragmatic approach. The political institutional environment must be evaluated and adapted, colligations must probably be established, but there is much gain, in our view, to start on this road.

Conclusions

The innovative Portuguese drug decriminalization model has shown to be effective in fostering drug users treatment, as Vasconcelos, Miguel and Duran, Domingos case study research, also published in this publication, attests. The policy fosters access to a type of responses based on territorialized and agency networking that steers presumed offenders to treatment facilities and other appropriate structures.

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