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The policy for the fight against drugs and drug addiction in Portugal: recent developments

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In Portugal drugs and drug addiction are commonly identified in opinion polls as one of the citizens' greatest concerns. Of course, people have hazy opinions on the problem and often confuse some aspects that are not strictly caused by addiction and the consumption of illicit drugs. For example, petty crime, which has only slightly increased in a country with low indices of criminality, is the crime that is most commonly felt by the citizen in the street and it is normally associated with drug addicts.

The subject of drug addiction raises fears and insecurities. It is not by mere chance that it is repeatedly regarded as an issue that should not be fought on a party-political and ideological level. This is also why there is a constant appeal for agreement rather than disagreement. This is an area where radicalism is undesirable. Whosoever adopts this stance will be regarded as an outsider in the discussion both by the citizens and by politicians in general.

Based on these premises any reform in this area requires a special strategy. Fanning the fire of people's fears should be avoided. The approach, even if based on concrete steps forward, needs to have a conservative anchor. Let us take a look at what this means in the case of Portugal.

A new paradigm – sick not criminal

Let us review the essence of the reform carried out in Portugal in 2000 and 2001.

The approval of Law no. 30/2000 of 29th November, which came into force on 1st July 2001, established a new paradigm in which the consumer or drug addict is essentially considered to be sick rather than criminal.

Consumption continues to be prohibited by law, although it is considered illicit merely in administrative terms and is subject to penalties and specific measures by administrative rather than judicial authorities. Therefore, it was decided not to send consumers to prison but rather to consider them as people requiring treatment or, should they refuse it, to sanction them by administrative means namely through community work as a penalty for illicit behaviour.

It should be noted that, in taking this approach, the message that drug consumption is prejudicial, prohibited and not socially acceptable has not been abandoned.

Likewise trafficking continues to carry penalties, ensuring that the police forces can carry out an increasingly determined fight. The positive results of this policy have become evident over the last years.

There are many reasons for this new approach and it cannot be denied that it is an option that carries risks although these are consciously taken.

A failing system

The fact is that the situation that existed until quite recently was no longer acceptable and was the equivalent of 'hiding one's head in the sand'. The previous legal framework, which labelled the consumer a criminal, existed for around 30 years without producing clear results in controlling the systematic increase of consumption. It therefore became evident that the desired dissuasive effect did not work and that the law enforcers, the police forces and law courts, saw their hands increasingly tied in applying it. The idea that repressive measures were useless gradually established itself.

As an example of the situation regarding the application of the old law it is sufficient to say that few consumers of illicit drugs were ever detained by the police. Of these only a minority were charged and a very small percentage of them were brought to court and sentenced.

In 1999 only 1074 people were subject to a penalty for consumption. Less than 7% of these were sent to prison and the overwhelming majority (over 90%) were given fines, warnings, suspended prison sentences and suspended fines.

Furthermore, it became evident that the illicit drug consumer was either sick or a person at risk of becoming sick however much the law insisted in classifying him as a criminal.

This opinion gained increasing social support except in some fringes of the more conservative political spectrum and even here, the rejection of this stance became less strident. Much of this was due to the great contribution made by the scientific community as well as by the debate which gained pace in society namely through the support of the President of the Republic.

Many in the Catholic Church also made their contribution, some for, some against and others raising doubts.

Consequently the new framework, born of humanist principles, rests on the cornerstone of treatment, prevention and the attempt to dissuade new consumers rather than on punishment.

This paradigm shift rests on the view that the legal apparatus should concentrate its attention and employ the resources available first and foremost in the fight against illicit trafficking of drugs and money laundering while the fight against consumption should be carried out above all in terms of prevention, treatment and social reintegration.

Compatibility with international treaties

Concern has been expressed in relation to the possible incompatibility between this option and international treaties to which Portugal is bound.

We believe that these concerns are unfounded. The solution adopted scrupulously respects the international

Conventions, namely the Single Convention of 1961, the Convention on Psychotropic Substances of 1971 and the Convention of the United Nations against the Illicit Trafficking of Narcotics and Psychotropic Substances of 1988.

As I mentioned previously, the model adopted is not part of a liberal approach. For us this is very clear. To take this stance would isolate Portugal within the international community as well as putting us in the position of failing to fulfil our duties and undertakings.

Furthermore, it would go against the provision set out in the National Strategy, which specifically promotes understanding the global dimension of the problem, in turn requiring an answer on an international level through strengthening the articulation between national strategies and international policies.

The Portuguese model

The law that decriminalises the consumption of illicit drugs was the object of a far-reaching and vigorous public debate and was subsequently approved by Parliament.

"Comissões para a Dissuassão da Toxicodependência" (CDT) (Commissions for Dissuasion from Drug Addiction) were specifically created for the implementation of the new law. There is one in the district centre of each of the 18 districts into which Portugal is divided. A commission was also established in both the Autonomous Regions of the Azores and Madeira.

These commissions are responsible for processing administrative offences and applying the corresponding penalties. However, their work does not stop here given that the fundamental objective is to dissuade new consumers and steer them towards treatment. There are two distinct situations we are dealing with: that of occasional (or so-called recreational) consumption and consumption by existing drug addicts. These two situations require different approaches, both in terms of the law and the response.

The commissions must be composed of members with diverse skills and backgrounds. Therefore one of the members is a lawyer and the other two are chosen from doctors, psychologists, sociologists and qualified members of the social services.

The police authorities are responsible for identifying the consumer/drug addict, seizing the substances found and preparing the report on the incident.

When the police verify that consumption is taking place they notify the consumer that he must present himself to the commission responsible for the area, fixing the date and time at which this should take place. This should not exceed the 72 hours following the incident. It may happen that, given the physical or psychological condition of the offender the police authorities need to encourage that person to contact the public health services for the required therapeutic treatment. In extreme cases, the offender may be detained for identification purposes or in order to ensure their appearance before the commission.

On the date and time specified the commission convenes and the offender may have a counsel of their own choosing. In cases where the person in question does not appear, the proceedings follow their course although the opportunity for defence is always open.

The commission looks at the whole situation in order to determine the degree of addiction. This investigation should reveal the subject's consumption profile, the circumstances of the consumption, family and socio-economic situation etc. Complementary medical examinations may be required in order to determine the nature of the subject's consumption and the person in question can, if they wish, ask for a therapist of their choice to participate.

The commission may summon the family of the offender either in order to obtain more information, namely on any therapeutic measures previously adopted, or to seek their help in collaborating in a therapeutic programme. Likewise the commission may invite the person in question to present himself periodically with a view to encouraging his adherence to treatment or the decision to abstain.

It is a key role of the commission to do all it can to help the person adhere to a treatment programme. This is particularly important in the case of drug addicts and implies establishing a strong network of articulation with the public or private health services, the Services for the Prevention and Treatment of Drug Addiction and the services for social reintegration

The various stages of the procedure may not exceed 25 days. The aim is that it should be a fast process and in most cases a decision is taken before the deadline is reached.

Penalty options

In establishing the penalties to be applied the greatest number of factors possible should be taken into account with the constant objective of preventing future consumption in cases of occasional consumers or of treatment in cases of drug addicts. The former may be fined or, alternatively, may be subject to a non-pecuniary penalty. In terms of the latter only non-pecuniary penalties may be applied.

When, at any moment in the proceedings, a drug addict accepts to undergo treatment, the commission shall strive to ensure that this begins as soon as possible, provisionally suspending proceedings and periodically verifying whether the treatment is ongoing or not. If the treatment is undertaken, the proceedings are dropped. On the other hand, if during this period of suspension the drug addict interrupts the treatment, the suspension is revoked and the respective penalty applied.

In cases where treatment of the drug addict is not viable, or when he does not accept it, the commission may suspend the application of the penalty. However, it will then impose a regime of periodic presentation to the health services with a view to improving the offender's health conditions as well as establishing other recommended solutions according to the nature of the case.

In cases of occasional consumers appearing before the commission for the first time, the proceedings may be provisionally suspended (for up to two years) or, as an alternative to a fine, an (oral) warning may be given alerting the consumer to the consequences of his behaviour. Fines vary between 25 and 341 euros.

There are various alternative or principal penalties:

- banning from practicing of a profession or business, namely those subject to licensing requirements.

- banning from frequenting certain places, accompanying, housing or entertaining certain people;
- banning from leaving the country;
- periodic presentation at specified place;
- removal of a licence to use or carry fire arms for defence, hunting or other purposes;
- seizure of personal belongings which represent a risk to the individual or the community or which encourage criminal practice;
- deprivation of the right to manage subsidies granted by public entities.

User or dealer?

One question that is often raised is related to the distinction between consumers and traffickers or even consumer-traffickers since this is fundamental for establishing whether the procedures described above are applied or whether it is a criminal case and, as such, subject to legal intervention.

The law in force establishes that when the substances found in the possession of a consumer do not exceed the quantity necessary for the average consumption of an individual over ten days, the person should be handed over to the commissions and, as such, treated as a consumer. There are technical ratings that, for each kind of substance and based on epidemiological data for habitual use, determine the maximum limit of each average daily individual dose.

The road to reform

In order for reform to happen, all the following needed to be established or identified:

- need;
- political will, independently of the level of support;
- leadership;
- support in society;
- support from the scientific community;
- standards;
- clear message.

a) There was a **need** for reform. Thirty years of considering drug consumption as a crime (from 1970 onwards) failed to prevent the increase of consumption from the 70's to the 90's with a peak during the 80's. It did not prevent the dramatic proliferation of problematic usage. And it provided no brake for the decline into new standards of consumption geared towards synthetic and designer drugs. Consequently, the police increasingly lost confidence in the law and tended more and more towards turning a blind eye to most consumers. Likewise, the courts and judges tried and charged fewer and fewer people for the consumption of drugs.

b) The need for reform was also the result of a humanitarian emergency and a demand for proportionality.

From the humanitarian point of view it was essential to prevent the real criminals, the traffickers, being held in the same prison cells as the victims of the crime, the consumers, many of whom were in situations of unstable health and the passive objects of all the traffickers' violence.

From the point of view of proportionality, applying criminal sanctions to those who, above all, needed medical help was manifestly inappropriate. Sending a drug consumer to prison, whether an addict or not, is maintaining or increasing the risk that he will continue to consume. In some cases it creates objective conditions for somebody who previously was just experimenting once in a while with soft drugs to become a compulsive consumer of hard drugs.

c) Political will must exist for risks to be taken. No miraculous solution has yet been found in the fight against drugs and drug addiction. Many of the policies put forward don't work. Launching a new policy in this area means running a great risk of failure and losing elections.

d) Also drugs is an area where social and political conservatism reigns and where new ideas are not normally well received but rather considered with distrust and scepticism.

What determines political will must be doubly strong and based on a great conviction that permits risks and possible long-term lack of support to be faced. Reform in this area cannot be undertaken at the end of a government's term of office.

e) Reform needs **leadership**. It is not easy to define leadership in the area of the fight against drugs and drug addiction. Normally many ministerial departments are involved and are naturally concerned with their own responsibilities (health, justice, internal affairs, education, social issues, youth and others). Defining and empowering a figurehead and leadership for reform who can make all departments pull in the same direction, is hard. We found one way to do this in Portugal. The Prime Minister was made responsible for the reform although he acts through another member of the government bound to him.

f) The possible lack of consistent and unequivocal support from society must be overcome by solid **technical and scientific support.** Politicians cannot promote change when they appear to stand alone. Even if the change is controversial we must be supported by respected members of universities, scientific associations and opinion-making circles.

g) In Portugal we appointed a work group that included teachers, qualified professionals from various areas, opinion leaders and senior members of the public administration who were charged with developing a new vision that would break away from the past and give new life to our policy.

h) We do this frequently. But this time we did not stop at asking a scientific commission for a study that would cover us whatever path we chose to follow even if it diverged from the one suggested. We decided to follow the suggestions almost to the letter, even those that were more controversial (and that were possibly put forward by the commission because they thought we did not have the courage to accept them) or surprisingly progressive.

i) A reform must have standards or anchors. In other words, one or two measures, which although not the quintessence or the most important, are the factors that mobilize and activate debate and are the signs of changes.

We chose two standards: de-criminalization and the risk reduction policy.

For some these are not the most relevant aspects of a reform, nor the most efficient measures. But these standards demonstrate our strong will, our commitment to change, to doing something new and different. They were the instruments we used to stimulate discussion and mobilise people towards a new attitude. Never had the subjects of drugs been so widely discussed in Portugal as at that

moment.

But these two standards were also important because of the solution they presented for two problems:

• De-criminalization is our way of changing how society and people look at drug addicts. Today it is quite clear that it is only possible to reduce the problem of drug addiction and drug addicts if people recognise that they are sick and need care, treatment and rehabilitation and not exclusion. If members of the community continue to have reasons for thinking that consumers of illicit drugs are criminal everything will be more difficult.

• The risk reduction policies (syringe exchange, low threshold methadone, supervised injection centres and others) are essential for facing our biggest problem in Portugal. Although we have one of the lowest indices of consumption in Europe for most drugs, we have a very high incidence of problematic drug use with all the accompanying consequences.

• Reform must be served by a **clear** message – and a message that both makes a difference and affirms change, that comforts people's conservative tendencies and calms their fears. The message should underline a clear objective of reform, with which the majority of people feel comfortable although they may disagree with the means of achieving it. The terms of our communication strategy, repeated to exhaustion, were basically the following:

• Re-affirmation of the opinion that consumption should be prohibited (all drugs are pernicious). This provoked disillusion among the more radical who would have liked us to be different and possibly legalise cannabis. But that, in the context of Portuguese society, would have destroyed our stance.

• Ongoing affirmation of the belief in the fight against trafficking and drugs (improved by freeing up the police from tasks related to finding and dealing with consumers).

• Emotional appeal: a drug addict is a person like us (our father, son, brother).

• The drug addict is more a victim than a practitioner of crime.

• The drug addict is a sick person not a criminal.

• The idea that providing treatment may solve the problem, locking people up perpetuates it.

Results so far....

Although not enough time has passed since the law came into effect to reach strong conclusions, it is possible to observe some facts.

Firstly, the set up of the Commissions took place as if normal and natural with only a few voices of resistance from the more conservative who had opposed this new model from the outset.

Secondly, and this was crucial, from the very beginning the security forces showed their general and overall support for a new model of procedures and new routines and attitudes.

On the other hand there are no signs in terms of the level of consumption that lead us to believe that we have given a message that drug consumption is now easier and more permissive.

Cooperation with the various sub-systems for support and treatment has also gone well despite some initial resistance which fell away very quickly.

The Commissions' work has been carried out although we must admit that despite the care taken regarding the training of their members and technical support teams, there are some procedures not yet fully established. However, it is to be expected given that this is a new paradigm, which must shake off old procedures while trying not to advance too quickly.

As for the data available, the following was provided on 6th March 2002:

• total number of cases: 3488, of which 191 repeated the offence in the meantime; (According to the data from the first months of 2002 we can see a certain trend towards an increase in the number of notifications by the police force. We believe this is normal given that the law only came into force in July 2001 and adjustments to procedures and attitudes had to be made).

• distribution of cases by type of substance, hashish 40.9%; heroin 29.8%; cocaine 4.2%; ecstasy 0.5%, drug cocktails 8.4%; others 0.5%; non identified 12.2%.

• the overwhelming majority are male (around 94%);

• around 65% belong to the 16-29 year old age group, rising to 80% for those between 16-34;

• although Portugal is a country with a great deal of tourism and a strong presence of many Africans, only around 5% are not Portuguese and of these the majority are from Angola, Mozambique and Brazil;

• around 50% were awarded provisional suspension of the penalty (non-drug addicts) and around 30% have provisional suspension of the penalty on account of having started a treatment programme (drug addict). (It should be noted that when it is the first time non-drug addicts come before the Commission the proceedings are generally suspended provisionally.)

Policies for harm reduction

This new approach to drug addiction cannot be disconnected from a whole other network of interventions, particularly the policies of primary prevention, which have been implemented for a long time, and on the programmes for the prevention and reduction of risks and the minimisation of damage. Here we felt a need to act quickly and in a way that would produce results.

The figures for the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) for 1996 to 1999 show that Portugal had the second highest incidence of HIV infection amongst consumers who inject drugs.

In the light of this situation failure to act would be irresponsible.

The future?

It is too early for evaluation. We need at least two years. Contrary to our hopes, the legislation was interrupted half way through and as a result there has been no time to consolidate this reform. It remains to be seen if the next government will want to go back on it even without having made this evaluation. It's a risk and, in my opinion, it would be a shame.