

COMPARISON BETWEEN ITALIAN AND PORTUGUESE LEGISLATION

SUMMARY: *Introduction; 1.History; 1.1.Italian legislation; 1.2.Portuguese legislation; 2.Actual Italian drug policy; 3. Portugal's drug situation; 4. Similarities and differences between Italian and Portuguese drug policy; 4.1. Conducts that constitute administrative offenses; 4.2. Penalties; 4.3. Portuguese Dissuasion Commission and Italian Prefect; 4.4.Phase of treatment and rehabilitation; 5.Conclusion*

INTRODUCTION

The debate about drug policy is often represented as a polarized choice between two options, “prohibition” and “legalization”. The reality is that there are multiple options that are in no way reducible to a simple dichotomy between these two extremes.

Moreover, the choice of a path rather than another one, could produce a lot of different and unexpected effects. So a comparative analysis will be built up in order to analyse advantages and disadvantages connected with each national legislation.

We want to demonstrate that the only prohibition is not a solution. The main purpose of such a law, in fact, looks that of penalizing, frightening and repressing young consumers of drugs. So it is not given the right importance to the rehabilitation aspect.

The evidence that a zero tolerance approach has failed on its own terms is overwhelming – drug use and drug markets continue to expand.

For this reason, it is very important to analyse and compare the different national legislation regulating the consumption and the trafficking of illicit drugs, in order to derive their effects on economy and society, and assess the best practices.

The same problem has been in fact analyzed and contrasted in different ways by each Country and is remarkable studying the logic behind any strategy.

In particular it is interesting to analyze the legislation of Portugal. Surprisingly, in fact, Portugal—a small country known for its conservative values, strong Catholic tradition, and recent emergence as a democracy—has become an international model for drug policy reform¹.

What makes the Portuguese case special is that decriminalization was not, as in other countries, associated with an increasing prevalence of cannabis use among young people and the consequent difficulties for law enforcement bodies in coping with it. In Portugal, problem drug users — mainly heroin users — were the focus of the policy discussions and it was with them (and their problems) in mind that it was decided to change the law in 2000. It is understood that behind the use or abuse of drugs there is a discomfort and health problem to treat rather than a crime to be punished.

The second aspect that can be clarified from this policy profile is that the decriminalization of drug use should be understood as only one element of a larger policy change that has:

- progressively removed responsibilities from the Ministry of Justice to give them to the Ministry of Health;
- led to more integrated and detailed plans;
- highlighted the importance of evaluation as a policy management tool; and

¹ Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use; Artur Domosławski, June 2011

- brought alcohol and drug policy closer together.

These changes have a strong public health orientation and this might be the best way to characterize the Portuguese drug policy today.

The positive effects of Portugal's experiment with drug policy have been corroborated by research, and the Portuguese people's reactions to it have been verified by reliable surveys; this experience can and should be a lesson for a world caught up in a failed "war on drugs." The innovative nature of the Portuguese approach proves that it is not generals, police officers, or criminal court judges, but rather doctors, social workers, and researchers who need to address drug-related issues.

1.HISTORY

1.1.ITALIAN LEGISLATION:

Italian legislation regarding drugs is divided in different steps:

1. **The overture of Italian legislation is represented by Laws previous the reform of 1975.**

This step is characterized by a very repressive behaviour. Not only is the dealing of drug punished but also the consumption and the detention in order to consume.

The penalization and repression prevail on therapeutic and social approach.

2. **The second step is represented by Law 685 of the 22nd of December 1975.**

This phase includes the period from 1975 to 1990.

According to this law the drug user, who is not at the same time a drug dealer and doesn't hold a large quantitative of drugs, was considered like a patient and so like a subject to cure and to rehabilitate. The punishment was subordinated in whether the subject held more than the detained threshold or a "modest quantity". The problem was that this threshold was not precisely determined beforehand.

3. **The third step is represented by Law n.162 of the 26th of June 1990.**

This law was coordinated with the "Testo unico delle Leggi in materia di stupefacenti- decreto Presidenza Repubblica 9 ottobre 1990 n.309".

This legislation inverted the previous logic and expressed a negative judgement regarding trafficking, dealing and moreover the consumption of drugs, which was sanctioned with an administrative penalty.

Even the detention of drugs had the same penalty as if the limit of the "daily dose" was exceeded.

Reasons of this reform were:

- The gravity of this phenomenon;
- Penalization was not effective in downsizing it;
- The widespread proliferation of AIDS, that imposes to give relevance to health services and diseases prevention.

4. **The fourth step started with the Referendum to repeal the Law of 18-19th of April 1993.**

Through that Referendum the following decisive articles of Law 162/1990 were re-appealed.

The consequences were that :

- personal use of drug without therapeutic reason, before forbidden by art. 72, were not sanctioned by criminal law.
- Instead any activity concerning drugs not destined for personal use, were sanctioned by art.73.
- Importation, purchase and detention of drugs because of personal use were sanctioned just with an administrative sanction by the Prefect who was the only authorized in intervening; however the reform had the consequence of depriving him of a concrete dissuasive power.

5. Finally the fifth step started with Law 309 of 28th of February 2006, that has emended the DPR of 9th of December 1990 n.309.

The Law 309 of February 2006, known as Fini-Giovanardi Law, has a lot of critical aspects as regarding the method, because of his approval in the Act in preparation for the Winter Olympic Games of Turin, as about the merit, which will be shown later.

1.2.PORTUGUESE LEGISLATION²:

1.The origin of Portuguese legislation: the 1920s.

In 1920 Portugal had decided on adapting its own national legal framework to the recommendations of the International Opium Convention of 1912, but for almost 40 years after that (until the treatment of "drug addiction" was mentioned in the 1963 mental health law) no other legislation was passed on illicit drugs.

2. Drug use became visible as a health problem: the 1970s

a)The first law to regulate the production, traffic and use of narcotics (Decree-Law 420/70) was approved in 1970, providing the legal framework for the criminalization of drug use.

Main aspects:

- The concept of **narcotic drugs** was legally defined;
- Personal possession offences** would be punished with up to two years' imprisonment or a fine of PTE 5 000 to 50 000 (EUR 25 to 250).
- Traffickers**: could be sentenced from **two to eight years in prison**.
- Consumption** causing danger or encouraging others to consume: would be punished **by six months to two years in prison or by a fine**.

b)One year later, Portugal ratified the 1961 UN Single Convention on Narcotic Drugs and a first addiction treatment service was opened in 1973.

Political debates at that time focused on the moral aspects of drug use.

It was considered the source and cause of crime and of the increasing social opposition to the political regime.

The main purpose was stopping the phenomenon from spreading, because it was seen necessary to keeping Portuguese young people out "physical and moral degradation".

c)The first changes were made to Portuguese drug policy following the democratic revolution of 1974, when there was a sudden increase in experimentation with drugs, which was associated with the idea of new-found freedoms.

In reaction to this, **two governmental bodies** were established under the Council of Ministers:

- the **Centro de Estudos da Juventude** (Youth Studies Centre) for developing prevention and treatment research;
- the **Centro de Investigação Judiciária da Droga** (Drug Criminal Investigation Centre), concerned with law enforcement and supply reduction.

² Drug Policy Profiles, Portugal, European Monitoring Centre for Drugs and Drug Addiction, June 2011.

d) In 1976, the notion of drug use decriminalization was introduced for the first time in the national legal framework.

The foreword to a legal text that enlarged the mandate of the Youth Studies Centre suggests that the “concept of drug use as a criminal act” should be revised and replaced ‘when justified, by a set of norms’ to bring it under an administrative offence framework. The response to drug use would thus move from a criminal penalty model towards ‘clinical treatment and the qualification of the drug user as a patient and not as a criminal’³.

3. In 1982 with the growing visibility of drug problems, services created during the previous decade were re-structured and responsibility for them was moved, for budgetary and operational reasons, to the Ministry of Justice. This brought the whole area, including treatment and prevention, closer to the criminal justice system.

4. In 1983: Decree-law 430/83.

Main Aspect:

- The new law adapted the national legal framework to the 1971 UN Convention on Psychotropic Substances (which Portugal had ratified in 1979);
- increased the repressive focus on drug trafficking.
- maintained that the use of illicit drugs was ‘socially condemnable’, thus retaining its status as a crime.

-the law recognized the drug user as a patient in need of medical care, stating that the priority was to treat and not to punish. This brought the Ministry of Health into the drug policy area and allowed for the opening of its first treatment centers. Most treatment centers and prevention services, however, were still under the auspices of the Ministry of Justice.

5. In 1987, following increases in heroin problems and in drug trafficking operations, a first National Programme to Fight Against Drugs, Projecto VIDA, was adopted.

The programme, overseen by the Council of Ministers, was a major drug policy development, being the first indication of a comprehensive and integrated drug policy in Portugal, covering both demand and supply reduction. It also reflected a stronger and increasing political commitment to addressing drug problems.

6. In 1993, a new drug law was adopted and remains today the primary Portuguese law on supply reduction.

This law transposed the recommendations of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, focusing on drug money laundering and control of drug precursors. It maintained the criminalization of drug use but developed a specific approach to it.

7. In 1998, the government appointed the Commission for the National Strategy to Fight against Drugs, with the mandate to produce a report with guidelines for the ‘fight against drugs and drug addiction’, namely on the topics of prevention, treatment, social reinsertion, training, research, risk reduction and supply control. The Commission had nine members, including five recognized (legal or health) experts/researchers in the drugs area, two from the relevant public bodies in the Health and Justice Ministries. The Commission made use of its broad mandate and delivered its report to Parliament the same year, recommending the decriminalization of drug possession and use

³ Rather Treat Than Punish, The Portuguese Decriminalization Model, Fátima Trigueiros, Paula Vitória and Lúcia Dias, 2010

for both “hard” and “soft” drugs as the most effective way of limiting drug consumption and reducing the number of drug dependent persons⁴. The committee recommended that, along with the legal changes, the government should concentrate on prevention and education, harm reduction, broadening and improving treatment programs for drug dependent persons, and activities that helped at-risk groups and current drug users maintain or restore their connections to family, work, and society.

8. The Parliamentary Committee on Drugs unanimously approved the report and, one year later, the Council of Ministers formally approved its content, which became the 1999 National Strategy for the Fight Against Drugs (Portuguese Government, 1999).

9. One important proposal of the new drug strategy was the decriminalisation of drug use that was discussed and approved by Parliament and implemented with Law 30/2000, which entered into force on 1 July 2001.

This law established a system of ‘dissuasion commissions’ that is unique in Europe and managed by the Ministry of Health, rather than the Ministries of Justice or the Interior

10. A new legal basis for harm reduction measures was also adopted, in the form of Decree-law 183/2001, on 21 June 2001. This comprehensive law regulates harm reduction interventions overall, as well as drop-in centres for drug addicts, refuges and shelters, mobile centres for the prevention of infectious diseases, low-threshold substitution programmes (methadone and buprenorphine), syringe and needles for heroin-injecting exchange schemes⁵, programmes for supervised drug use (though none was set up), contact and information units and street workers.

Even if you only compare the historical excursus we find the first differences between Italy, which has continually changed its strategy, often “going back on his feet”, and Portugal who had a much more consistent path.

⁴ Results were presented in the content of the “Portuguese Drug Strategy,” 1999

⁵ Needle exchange is a well-documented intervention and is supported by major health institutions, such as the World Health Organization and the National Institutes for Health (United States). In a recent review of needle exchange in Australia between 2000 and 2009, it was estimated that around 27–31 million needles were given out, avoiding an estimated 32,050 HIV infections. For every dollar spent, the government saved four dollars in short-term health care costs. See: National Centre in HIV Epidemiology and Clinical Research, *Evaluating the Cost Effectiveness of Needle and Syringe Programs in Australia*, 2009.

2. ACTUAL ITALIAN DRUG POLICY

The main aspects of **Law 309 of 28th of February 2006, that has emended the DPR of 9th of December 1990 n.309** are:

- 1) The harshness of sanctions relative to behaviours of productions, traffic, illicit detention and use of drugs.
- 2) All drugs receive the same treatment by Law with abolition of any distinction between soft drugs (as Cannabis) and hard ones (as Heroin and Cocaine).
- 3) There are 2 tables of substances and not 4 as before.
- 4) It has been again introduced the concept of “quantity” to distinguish between personal use and drug pushing.
- 5) It is punished whoever buys, receives or illegitimately detains drugs which seem destined not for a personal use, or by considering quantity, (for example if superior to the highest limit indicated by the Decree of Department of Health promulgated according with the Justice Department after having heard the Presidency of Ministers) or by the way of presentation (for example the gross weight or the packaging) or by other circumstances of the action.
- 6) Possession of Cannabis is punished in the same way as Cocaine or Heroin: imprisonment from 6 to 20 years.
- 7) Attenuation for circumstances of lesser extent is preserved: imprisonment from 1 to 6 years.
- 8) New art.73, as emended by Law, establishes that in case of sentencing for cases of lesser extent if there is not the possibility of benefitting from a suspended sentence, community service could be asked instead for a period correspondent to the punishment inflicted. There is an appropriate Local Office that has the duty of verifying the real carrying out of the community service. In case of violation the Judge could revoke his decision and restore the substituted penalty. Community services can substitute the original penalty for no more than 2 times.
- 9) For personal use an administrative sanction is always established, that could reach 1 year.
- 10) For consumers that at the same time are considered a dangerous person for the society measure of safety are established such as a) the obligation of presentation to Police; b) the prohibition of going to public places; c) the prohibition of driving vehicles.
- 11) The house arrests become the rule, instead of custody, for the drug addict who is following a treatment of cure(or that has the intention of starting it) in Public centres or authorized private centres.
- 12) Therapeutic foster for attempt are extended until 6 years.
- 13) The certification the status of drugs addiction can be given not only by public services but also by private structures in order to obtain measures that are alternative to prison or necessary for the suspension of punishment.

Consequences of these changes:

1. First of all, there is less emphasis on harm reduction and therapeutic programmes. Questionable, moreover, is putting at the same level private structures and traditional SERT (Services for Drug Addiction) with a strong economic incentive for the former.
2. Secondly, the main purpose seems that of penalizing, frightening and repressing young consumers of drugs
3. Finally the Government does not seem really interested in the rehabilitation of the subject.

Regarding the last point it is particularly evident analyzing the new version of the Article 75 of Italian law, especially if compared with the old text. The most critical aspect of the new version of Article 75, in fact, consists in the fact that it is preferred a purely punitive-repressive aspect rather than educational or rehabilitation.

Article 75 is included in Title VIII, entitled "ACTIVITY OF REPRESSION OF 'ILLEGAL.'"

To better understand the innovations of the reform it is appropriate to compare the old and the new text of art. 75 following the December 30, 2005 Decree-Law No 272 into law, with amendments by Law 21 February 2006, no 49).

| | PREVIOUS VERSION OF ARTICLE 75 | NEW VERSION OF ARTICLE 75 | MAIN ASPECTS |
|------------------------------------|--|---|--|
| Conduct held to be illegal. | <u>To make personal use, illicit import, purchase or hold psychotropic drugs.</u> | Illicit import, export, purchase, receive or hold at any title drugs or psychotropic substances. | |
| Administrative sanctions | a) suspension of driver's license, b) and license to carry firearms, c) passport and any other document or equivalent, d) being a foreigner, a residence permit for tourism or the prohibition to obtain these documents, (1) for a period of two to four months, in the case of drugs or psychotropic substances included in Tables I and III referred to in Article 14, and (2) for a period of one to three months, in the case of drugs or psychotropic substances included in Tables II and IV under the same Article 14. | a) suspension of driver's license or prohibition of obtaining it; b) suspension of a license to carry firearms or prohibition of pursuing it; c) suspension of the passport and any other equivalent document or prohibition of achieving them; d) Suspension of a residence permit for reasons of tourism or ban non-EU citizens if they achieve it. | Administrative penalties are identical to those of the previous Article 75, but change the period of sanctions, ranging from one month to one year, <u>without any discrimination between soft and hard drugs.</u> |
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| Power to apply administrative sanctions | Prefect of the location where the fact was committed. | The Prefect responsible for the area in relation to 1) place of residence or, 2) in the absence of domicile of the person and, 3) where these are unknown, in relation to the place where the fact was committed. | |
| Procedure | <p>a) If the acts provided for in paragraph 1 covers the substances listed in Tables II and IV and use elements such as to suggest that the person will abstain in the future from committing again, instead of punishment, and for first time offenders, the prefect defines the procedure with the formal invitation to make no further use of the substances, .</p> <p>b) Ascertain the facts, the judicial police carry out the dispute if possible, and without delay report to the Prefect.</p> <p>c) Within five days from the report before it convenes the Prefect or his delegate to ensure the person indicated, after discussion, the reasons for the violation, and to find useful measures to prevent further violations. In this activity, the Prefect is assisted by a staff consisting of a core OS in each prefecture.</p> <p>d) The judicial police</p> | <p>a) The person concerned that meets the prerequisites, is 'invited to follow the treatment program and social rehabilitation of Article 122 or other educational program, and customized information in relation to their specific needs, prepared by the Public Service Addiction responsible for the area similar to the provisions of paragraph 13 or by a private facility authorized under Article 116.</p> <p>b) Make sure the facts referred to in paragraph 1, the organs of Police carry out the dispute if possible, and report without delay and no later than ten days, with the results of toxicological testing carried out on substances seized at the public referred to in paragraph 10, the competent Prefect pursuant to paragraph 13.</p> <p>c) Within forty days after receipt of the alert, the Prefect, if it considers the assessment based, will approve a convening order, either by law enforcement agencies, in front of him or his delegate, the person reported: - To assess, as a result of the interview, the administrative sanctions to be imposed and their duration; - And, where appropriate, to formulate the invitation referred to in paragraph 2</p> | <p>As before, there is the formal invitation of the Prefect to follow a specific program of rehabilitation, designed specifically in relation to the case and the person.</p> <p>The critical aspect, however, is that the new law with the rehabilitation program is no longer an alternative to sanctions that are imposed in all case and it is only the subject of a general invitation to the person. Consequently, it is not easy to identify the rationale behind this strategy, because they will be subject to sanction in any case and is unlikely to opt for rehabilitation.</p> <p>Compared to the previous version it seems almost as if the moments of promoting rehabilitation and recovery, managed as part of the interview referred to the Prefecture and take charge of the subject by the department for drug addiction, are overshadowed by the repressive function</p> |

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| | <p>may ask the person against whom the complaint was made immediately to report immediately, if possible, before the Prefect or his representative to proceed to the interview.</p> <p>e) The Prefect, where the person concerned voluntarily requested to undergo counseling and social rehabilitation of Article 122 and if it thinks fit, suspends the proceedings and provides that the applicant is sent to the Public Service for Addiction for the preparation of the program, setting a deadline for the acquisition and taking care of the necessary data to assess the overall behavior during the execution of the program, subject to the confidentiality required by the regulations for the purposes of any provision of this consolidated act.</p> <p>f) The Prefect makes use of local health units and any other structure located in the province that carries out activities of prevention and recovery. Can obtain information at the same structures, in order to assess the</p> | <p>e) If it appears that the person concerned is subject has successfully completed the program referred to in paragraph 2, then Prefect will proceed with the revocation of the sanctions, by giving notice to the Chief Justice of the Peace and the competent authority.</p> <p>f) If the acts provided for in paragraph 1, particularly in the case of tenuous nature of the violation, use items such as to suggest that the person will abstain for the future from committing again, instead of punishment, and only for first time offenders, the Prefect can define the procedure with a formal invitation to make no more use of the substances.</p> | <p>attributed to the sanction.</p> |
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| | <p>appropriateness of treatment.</p> <p>g) If it appears that the applicant has implemented the program and comply with the relevant requirements, and has concluded, the Prefect will proceed with the archiving of the documents.</p> <p>h) If the applicant does not submit to the public service for drug addiction within the time indicated, the program does not start according to the requirements laid down, or is interrupted without justification, the subject is summoned again for a new invitation.</p> | | |
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3. PORTUGAL'S DRUG SITUATION

a. New drug strategy of Portugal

One important proposal of the new drug strategy of Portugal is the decriminalisation of drug use that was discussed and approved by Parliament and implemented with Law 30/2000, which entered into force on 1 July 2001.

With decriminalization the state would maintain the rule of prohibition but impose sanctions for drug use outside the framework of criminal law. Decriminalization, in fact, differs from depenalization because the purchase, possession, and consumption of illicit drugs remain criminal offences and carry criminal sanctions⁶.

The new law of 2000 **maintained the status of illegality for using or possessing any drug** for personal use without authorisation. **However, the offence changed from a criminal one, with prison a possible punishment, to an administrative one.**

Moreover, Portugal's reforms have not been limited to treating drug possession as an administrative offence; it also **includes a wide range of measures** such as prevention and social education, discouraging people from further use of controlled substances, harm reduction, treatment for drug dependent people, and assistance in reintegrating them into society.

This law established a system of **Dissuasion Commissions**⁷ that is unique in Europe and managed by the Ministry of Health, rather than the Ministries of Justice or the Interior⁷, and this was an important symbolic step that reflected the new approach to drug policy⁸.

The commissions seek to inform people and dissuade them from drug use and also have the power to impose civil sanctions for non compliance and to refer consenting persons to treatment.

When a person is caught **in possession of no more than 10 daily doses of drugs** (their corresponding gram limits had already been established in a regulation: (the law stipulates the permissible amount in detail—in grams or pills—of each drug: cannabis, 25 grams; hashish, 5 grams; cocaine, 2 grams; heroin, 1 gram; LSD or ecstasy, 10 pills), and the police have no suspicions or evidence that supply offences are involved, the drug will be seized. The case will then be transmitted to **the Commission for the Dissuasion of Drug Abuse (CDT)**, of which there is one in each of Portugal's 18 districts.

The CDT is composed of **three members** appointed by the Ministries of Justice and Health (the member appointed by the Ministry of Justice has to be **a legal expert**, the other two usually being a **health professional and a social worker**).

⁶ According to the EMCDDA: "Decriminalization" comprises removal of a conduct or activity from the sphere of criminal law. Prohibition remains the rule, but sanctions for use (and its preparatory acts) no longer fall within the framework of the criminal law. [By contrast], "depenalization" means relation of the penal sanction provided for by law. In the case of drugs, and cannabis in particular, depenalization generally signifies the elimination of custodial penalties. For a fuller discussion of the differences between decriminalization and depenalization, see Greenwald, G. (2009), *Drug Decriminalization in Portugal; Lessons for Creating Fair and Successful Drug Policies*, The Cato Institute, p. 2.

⁷ Drug Policy Profiles, Portugal, European Monitoring Centre for Drugs and Drug Addiction.

⁸ Prior to this there were two different structures coexisted: the Portuguese Institute on Drugs and Drug Addiction, under the Council of Ministers Presidency, and the Cabinet for Planning, Coordination and Fighting Against Drugs under the Ministry of Justice.

These Commissions evaluate each case with the help of a technical team to assess whether the person is an occasional or a dependent user, or a dealer.

Several options are available to the CDT when ruling on the drug use offence, including **warnings, banning from certain places, banning from meeting certain people, obligation of periodic visits to a defined place, removal of professional licence or firearms licence**⁹. Sanctioning by fine, which may vary by drug involved, is an available option (though not for addicts) but it is not the main objective in this phase.

When the quantity of controlled substances in possession is **larger than 10 daily doses or if a person is charged with selling drugs (also in case it is less than max. quantity for personal possession), he/she will be send to the criminal court.**

Behind the change of approach toward drug consumption there was recognition of the need to respect human dignity, understand the life choices and social circumstances of others, and uphold the constitutional right to health¹⁰.

From the viewpoint of Portuguese policymakers, drug dependence was a disease that society must take efforts to prevent, and drug dependent persons were patients needing help, not dangerous criminals needing to be locked away from society.

A policy was formed which could, it was thought, bring positive results only when all its elements worked well and there were no “gaps.” It had to be comprehensive and include all the issues directly and indirectly related to drug use. These main issues could be divided as follows: prevention; Dissuasion Commissions; risk and harm reduction; treatment; and return to life in health and in society¹¹.

The **overall responsibility for drug policy coordination lies with the Inter-ministerial Council**, a coordinating body chaired by the Prime Minister and comprising the National Drug Coordinator and 10 ministers (Assistant Minister of the Prime Minister and the Ministers of Justice, Health, Education, Welfare and Employment, Home Affairs, Foreign Affairs, National Defence, Finance and Cities and Environment. This list could vary slightly according to government restructuring). The Inter-ministerial Council set up an Inter-ministerial Committee, chaired by the National Coordinator and comprising representatives designated by the Ministers themselves.

The **Institute on Drugs and Drug Addiction (IDT)** is located under the Ministry of Health and is in charge of implementing the National Strategy and the Action Plan. The President of the IDT is the National Drug Coordinator for both demand and supply issues, although the Criminal Police (*Polícia Judiciária*) at the Ministry of Justice coordinates interventions and information on supply reduction.

In 2010, the coordination mechanisms’ arrangements were revised to include a mandate on the definition and implementation of policies on alcohol misuse. The Ministries of the Economy, Labour and Agriculture were added to the newly renamed Inter-ministerial Council for Drug-related

⁹ For a full list of available sanctions, see Law 30/2000.

¹⁰ The Portuguese Drug Strategy, 1999, provides: “The guarantee of access to treatment for all drug addicts who seek treatment is an absolute priority of this national drug strategy. The humanistic principle on which the national strategy is based, the awareness that drug addiction is an illness and respect for the State’s responsibility to satisfy all citizen’s constitutional right to health, justify this fundamental strategic option and the consequent mobilisation of resources to comply with this right.”

¹¹ Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use; Artur Domosławski, June 2011

Problems, Drug Abuse and the Harmful Use of Alcohol, and the national drugs coordinator is now also the national coordinator for the harmful use of alcohol. The coordination mechanisms now have an explicit responsibility to promote the integration of drug- and alcohol-related policies.

The National Council for the Fight Against Drugs, Drug Addiction and the Harmful Use of Alcohol is an advisory body, chaired by the Minister of Health. It is composed of representatives of the regional governments of Madeira and the Azores, the Judiciary, the General Prosecutor and civil society, as well as five personalities designated by the government. It advises the government on the national strategies and action plans, and follows reports of their implementation.

b. Positive results¹².

So far, the Portuguese system has yielded positive results.

According to a study from 2001, 7.8 percent of the Portuguese population had tried an illicit drug in their lifetime, whereas according to a study from 2007 the number has increased to 12 percent¹³.

Drug consumption, especially cocaine, has increased in all age groups, but there is an exception and it has a special meaning. According to the analysis of the 15–24 age group, drug consumption from 2001 to 2007 has risen from 12.4 percent to 15.4 percent with a substantial increase among 20- to 24-year-olds. However, the level of drug use in the most “sensitive” group (15–19) has decreased from 10.8 percent to 8.6 percent. This result gives hope to Portuguese practitioners and specialists,³⁶ as the late period of adolescence, between 15 and 19, determines if a person will use drugs later or not. Moreover, studies conducted among two age groups of school pupils (13–15 and 16–18) have also shown that drug consumption decreased after 2001.

While the spread of the HIV epidemic among injecting drug users (IDUs) had largely increased up to 1997, the numbers of infections caused by drug injection have subsequently consistently gone down.

The number of individuals accused and convicted for crimes against the drug law has also significantly reduced between 2003 and 2009, hence removing a heavy burden on the criminal justice and prison systems. Since the fear of arrest and incarceration has disappeared and the levels of stigma attached to drug use have decreased, more drug users agree to access the health care services they need. Currently, over 38,000 people follow a drug dependence treatment programme. With regards to law enforcement activities, as police and customs forces have more time and resources at their disposal, they are able to target high level traffickers more efficiently, and increase the number of annual drug seizures.

In terms of impact, it took almost a decade for the Portuguese model to attract international attention.

It is the 2008 report from the Cato Institute that put the Portuguese model at the forefront of the drug policy reform debates. In Australia, for example, the report captured the interest of policy makers, after years of inability from the centre-right government to discuss drug policy issues. However, some scepticism was expressed as to the message of the report – some participants felt that the report put too much importance on decriminalisation and tended to ignore the fact that **decriminalisation in Portugal is part of a more complex policy** aimed to provide health and social services to those in need.

¹² Informal Drug Policy Dialogue, Lisbon 21-22 January 2011, IDT.

¹³ IDT study (Nucleo de Estudos e Investigacao), Portugal—Drug Research and Trends in DrugUse since 2001.

According to Portuguese and international experts, these positive trends are rooted in a drug policy that offers treatment to people who are drug-dependent, instead of treating them like criminals. Levels of drug consumption in Portugal are currently among the lowest in the European Union¹⁴.

As far as cannabis consumption is concerned, Portugal is “behind” Belgium, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Luxembourg, the Netherlands, Norway, Spain, and Sweden, according to a study covering the years 2001–2005. In the case of cocaine consumption, Portugal is only “ahead” of Greece, Lithuania, Luxembourg, Poland, and Romania; other EU countries have a higher or much greater consumption of this drug.¹⁵

This trend did not decrease in subsequent years as the studies published by EMCDDA confirm. The 2010 statistical bulletin shows that only 8 out of 28 European countries studied have a lower cannabis consumption than Portugal, 10 of 27 countries studied have a lower cocaine consumption, 4 of 27 a lower amphetamine consumption, 4 of 27 a lower ecstasy consumption, and 5 of 23 a lower LSD consumption¹⁶.

Finally, the success of the Portuguese model has been recognized at an international level. At first concerns were raised by the International Narcotics Control Board¹⁷ and others (e.g., the United States) that Portugal was in breach of UN drug conventions in adopting the decriminalization policy.

¹⁴ The European Monitoring Centre for Drugs and Drug Addiction (hereafter, EMCDDA), *Statistical Bulletin 2010*, “Lifetime prevalence of drug use in nationwide surveys among the general population.” Only 8 out of 28 surveyed countries have a lower cannabis consumption than Portugal, 10 out of 27—cocaine, 4 out of 27—amphetamine, 4 out of 27—ecstasy, 5 out of 23—LSD.

¹⁵ IDT, *Annual Report 2007*, as quoted in: Greenwald, G. (2009), *Drug Decriminalization in Portugal*, Cato Institute.

¹⁶ EMCDDA, 2010, *Statistical Bulletin 2010, Lifetime Prevalence of Drug Use in Nationwide Surveys among the General Population*, available at: <http://www.emcdda.europa.eu/stats10/gpstab1b>.

¹⁷ See INCB, 2001, *Report of the International Narcotics Control Board for 2001*, pp. 167–169, E/INCB/2001/1.

4. SIMILARITIES AND DIFFERENCES BETWEEN ITALIAN AND PORTUGUESE DRUG POLICY.

From what mentioned above shows that the Italian law on drugs is very different than Portuguese one. However, it is interesting to compare the more detailed consideration of possible similarities and differences and to verify the possibility to import in our winning the right aspects of Portuguese law.

4.1. Conducts that constitute administrative offenses.

1.a) The Art. 75 of Italian Law n.309 of February 2006, considers the following behaviors as administrative offenses: unlawful to import, export, buy, receive or hold title to any drugs or psychotropic substances outside of the assumptions referred to in Article 73, paragraph 1 - ca, and medicines containing narcotic or psychotropic substances listed in Table II, sections B and C outside the conditions laid down in Article 72, paragraph 2.

The premise for its application, therefore, is that the ducts are outside the assumptions referred to in Article 73, paragraph 1-bis (Import, export, buy, receive or otherwise in any way illegally stocking) or drug psychotropic and quantity, are not exclusively intended for personal use; b) medicinal products containing narcotic or psychotropic substances listed in Table II, section A, which exceed the quantity prescribed. In this latter case, these sentences have declined by a third to a half) and outside the conditions laid down in Article 72, paragraph 2 (which allows the therapeutic use of medicinal preparations with a basis of narcotic or psychotropic substances, properly prescribed according to the needs of care in relation to particular pathological conditions of the subject).

The threshold of criminality is found not only personal use, without further specification, creating too much uncertainty in the determination thereof.

- The decision on this element must be conducted on the basis of all the criteria mentioned in regulation, then taking into account not only exceeded the limits indicated at the ministerial (relative, however, the amount of active ingredient and not the weight itself) but also all other circumstances of the action.
- They may, indeed, be cases where, although exceed the maxima of the active ingredient of other circumstances showing the destination of the substance for personal use only, with application of only one administrative penalty.
- It is also possible that, although not mentioned exceeded the percentage limits, other factors demonstrate the use of the substance to a personal use, with the consequent application of criminal punishment.

1.b) The article 2 of Portuguese Law no. 30/2000, of 29 November establishes that the **consumption, acquisition and possession for own consumption** of plants, substances or preparations listed in the tables referred to in the article 1 (plants, substances and preparations subject to the framework established here are those listed in tables I to IV attached to Decree-Law no. 15/93 of 22 January.) constitute **an administrative offence**.

It follows, therefore, that our right, as the Portuguese, respectively, provides in Article 75 Law 309/2006 and Art. 2 of Portuguese Law no. 30/2000 that certain conducts do not constitute a crime administrative offence. The premise is the personal use.

However, first differences are detectable immediately because while in Italian law the practical definition of "personal use only", is delegated to the Courts¹⁸, art. 2 of the Portuguese legislation continues providing a specification and providing that "For the purposes of this law, the acquisition and possession for own use of the substances referred to in the preceding paragraph shall not exceed the quantity required for an average individual consumption during a period of 10 days(their corresponding gram limits had already been established in a regulation: (the law stipulates the permissible amount in detail—in grams or pills—of each drug: cannabis, 25 grams; hashish, 5 grams; cocaine, 2 grams; heroin, 1 gram; LSD or ecstasy, 10 pills).

4.2. Penalties.

2.a. Article 75 provides the following sanctions for a period not less than one month and not exceeding one year:

- a) suspension of driver's license or prohibition of obtaining it;
- b) suspension of a license to carry firearms or prohibition of pursuing it;
- c) suspension of the passport and any other equivalent document or prohibition of achieving them;
- d) Suspension of a residence permit for reasons of tourism or ban non-EU citizens if they achieve it.

2.b) Portuguese Law no. 30/2000, of 29 November establishes **several options** available to the CDT when ruling on the drug use offence, including **warnings, banning from certain places, banning from meeting certain people**, obligation of periodic **visits to a defined place, removal of professional licence or firearms licence** (For a full list of available sanctions, see Law 30/2000.).

Art 15 in fact establishes that "Non-addicted consumers may be sentenced to payment of a fine or, alternatively, to a non-pecuniary penalty". Non-pecuniary penalties, instead, shall be applied to addicted consumers. Moreover is specified that the Commission shall set the penalty in accordance with the need to prevent the consumption of narcotics and psychotropic substances and that in applying penalties, the Commission shall take into account the consumer's circumstances and the nature and circumstances of consumption, weighing up namely:

- a) The seriousness of the act;
- b) The degree of fault;
- c) The type of plants, substances or preparations consumed;
- d) The public or private nature of consumption;
- e) In the case of public consumption, the place of consumption;

¹⁸ The ruling of the Court of Verona July 24, 2006 n.1339/06 sanctioned as also in the system introduced by the recent reform of the rules still have a quantitative parameter value purely circumstantial evidence not only personal use of the drugs.

Even the Supreme Court-Sixth Criminal Chamber, Judgement n.17899/2008 has ruled on the matter, stating that is not punishable who holds drugs intended for personal use only, even if exceeding the limit of small amount set by law . The Supreme Court, explained that the new wording of the Act punishes possession of narcotic drugs only when the same "are likely to use not only staff, regardless of the quantitative limits are exceeded (and raised) by the law with the consequence that the detention of consignments intended for personal use can not be subject to criminal penalties.

The reform was therefore criticized as the absence of clear and defined parameters can not easily detect that use staff not only determine the criminality of the subject. This can sometimes go to the same (as the sole active ingredient is not determines not only personal use), but in most cases is not so because of the excessive uncertainty in delineating a clear boundary line.

- f) In the case of a non-addicted consumer, the occasional or habitual nature of his drug use;
- g) The personal circumstances, namely economic and financial, of the consumer.

Art.16, instead, determines the scale of the penalty:

1. In the case of plants, substances or preparations contained in tables I-A, I-B, II-A, II-B and II-C, the fine shall be fixed between a lower limit of PTE 5.000\$00 and an upper limit equivalent to the national minimum monthly wage.
2. In the case of substances or preparations contained in tables I-C, III and IV, the fine shall be fixed between PTE 5.000\$00 and PTE 30.000\$00.

Also peculiar is the way in which the penalty is distributed: “The proceeds of fines shall be distributed as follows:

- a) 60% to the State;
- b) 20% to the SPTT (Drug Addiction Treatment and Prevention Service);
- c) 10% to the Governo Civil;
- d) 10% to the IPDT”.

4.3. Portuguese Dissuasion Commission and Italian Prefect.

An element of great differentiation between the two disciplines is surely represented by those who have been placed in charge of the procedure.

3.1 In the Italian administrative system, the Prefect is an organ, representative of the government in the province, called the office in charge of a prefecture-territorial office of the government, under the Ministry of the Interior.

The Prefect is hierarchically under the Minister of the Interior, but the President of the Council of Ministers and other Ministers, in exercise of the power of political-administrative, may issue special directives to the Prefects.

According to Art. 11 D. Decree No 300/1999 prefecture-Local Government, without prejudice to their duties (in the time allocated by multiple law), ensures the coordinated operation of the administrative offices of the local state and ensures the sincere cooperation of these offices local authorities.

As the provincial public security authorities, the prefect has overall responsibility for public order and security in the province, and supervises the implementation of directives issued in this area; ensure unity of direction and coordination of tasks and activities of officers and agents Public safety has the police and other forces eventually placed at its disposal and coordinating their activities

Therefore the management of the proceedings relating to Article 75 of the Italian law is just one of many functions and duties of the Prefect.

This distinguishes it significantly from the Dissuasion Commission, a body created specifically for the purpose of administrating the Portuguese, with a unique composition and peculiarity.

3.2 Dissuasion Commissions, as previous referred, are composed of three members, one of which is the Chairman. It is mandatory that one of its members be a jurist. Each Commission is assisted by a multidisciplinary team provided by the Institute on Drugs and Drug Addiction. 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 analyzing presumed offender assessments, which are sent by police and/or courts, supporting decision making and monitoring the implementation of therapeutic and administrative oriented measures.

Moreover, Dissuasion Commission is managed by the Ministry of Health, rather than the Ministries of Justice or the Interior (as in Italy), and this was an important symbolic step that reflected the new approach to drug policy.

4.4.Phase of treatment and rehabilitation

On this point the Italian legislation and the Portuguese are poles apart.

3.a) Article 75, paragraph 2 provides that "The interested party which meets the prerequisites is **invited** to follow the treatment program and social rehabilitation of Article 122 or other educational program and information customized according to your specific needs, prepared by the public service for drug addicts responsible for the area similar to the provisions of paragraph 13 or by a private facility authorized under Article 116 ".

In light of the legislation, therefore, the rehabilitation program is no longer an alternative to sanctions that are imposed in all cases. And it is only the subject of a general invitation to the person.

Moreover, article 122 gives a "Definition of the therapeutic program and social rehabilitation" and establishes the necessary inquiries and consulting concerning the subject which can be assisted by a doctor authorized to attend also to the necessary investigations, define a customized treatment program that **can provide for initiatives aimed at social inclusion** through a full orientation and training, activities 'public utility' or of solidarity 'society. As part of treatment programs that require it, may adopt methods of cessation, as well as' psychosocial and pharmacological treatments appropriate. The service for drug addiction monitor the implementation of the program by the addict. Also it says that the program is formulated in respect of the dignity of the person, in each case taking into account the needs of work and study and living conditions of the family and social of the subject.

The program is implemented at facilities of public service or in private structures authorized under Article 116 or, alternatively, with the assistance of the medical officer.

3.b) As shown above, Portuguese law established a system of "**Dissuasion Commissions**" that is unique in Europe and managed by the Ministry of Health, rather than the Ministries of Justice or the Interior.

Offences shall be processed and the respective penalties applied by a commission referred to as "Commission for the dissuasion of drug addiction", especially created for this purpose, operating in the premises of the civil governments (Art.5)

- Art.10, moreover, establishes that:

1 The commission shall hear the consumer and gather the information needed in order to reach a judgement as to whether he or she is an addict or not, what substances were consumed, the

circumstances in which he or she was consuming drugs when summoned, the place of consumption and his economic situation.

2 The consumer may request that a therapist of his or her choice takes part in the proceedings, and the commission shall establish the rules for such participation.

3 In order to formulate the judgement referred to in paragraph 1, the commission or the consumer may propose or request that appropriate medical examinations be conducted, including blood or urine tests or any other tests as may be deemed appropriate.

4 If the commission does not base its definition of the nature of consumption on the findings of a medical examination with the characteristics set out in the preceding paragraph, the consumer may request such examination, and the findings shall be analysed with a view to a possible reconsideration of the initial judgement reached by the commission.

5 The commission shall have the examination conducted by a duly licensed health service, the costs being borne by the consumer if he or she chooses a private service, and the tests shall be carried out within a period of no more than 30 days.

If an addicted consumer agrees to undergo treatment, the commission shall notify the public or private health service chosen by the consumer, who shall be notified of the alternatives available (Art.12). If the consumer opts for a private health service he or she shall bear the respective costs of treatment. The organization shall notify the commission every three months of whether treatment is continuing or not.

Proceedings may be suspended for up to two years, which may be extended by one additional year by means of a decision with due grounds by the commission (Art.13).

The commission shall file proceedings, which may not be reopened, if:

- a) in the case of a non-addicted consumer, there is no repeated offence;
- b) an addicted consumer undergoes treatment and does not interrupt it unduly.

Other than as provided for in the preceding paragraph, the proceedings shall continue.

The limit period for the expiry of proceedings shall not be counted whilst its suspension.

Moreover it is important to consider the Decree-law no. 183/2001, of 21st June. The objective of this decree-law is to create programmes and social and health structures designed to raise awareness amongst drug users and to guide them towards treatment, as well as to prevent and reduce risk attitudes and to minimise the damage caused to individuals and society by drug addiction (Article 1).

It establishes that “with a view to the **protection of public health and the health of drug users**, and in compliance with international obligations, the State is duty bound to make available gradually to all drug users with attitudes or behaviour of risk such **programmes and structures**, as provided for in this decree-law, and as may constitute a priority in each particular case” (Article 2).

For that purpose (article 3) the decree-law governs the following social and health programmes and structures: a) Drop-in centres for drug addicts without social or family support; b) Refuges; c) Shelters; d) Contact and information units; e) Mobile centres for the prevention of infectious diseases; f) Low threshold substitution programmes; g) Syringe exchange schemes; h) Street teams; i) Programmes for supervised drug use.

The combination of the 2 above laws comes as efficient and successful.

5.CONCLUSION

The winning strategy of Portugal is first seen in having the use of drugs as a health problem, the other to have created a structure made by the Commission of deterrence and a whole series of social and health and Programmes structures.

Having recently considered this issue has made our legislation ineffective and harmful.

It is hoped, therefore, that from the experiences of Portugal actions can be taken in changing our strategy.