



DROGAS EN MOVIMIENTO

NUEVAS PERSPECTIVAS

Un proyecto de Espolea A.C. www.drogas-en-movimiento.org

From legal uncertainty to a growing repression against drug users in Spain

By: Ricardo Caparrós Casado *

During recent years, we have seen a phenomenal international debate regarding the legal definition of cannabis. Prohibition has been losing arguments against the increasing social demand for a change in drug policies.

Spain has not been unaware and has experienced very interesting initiatives favoring this change, like the so-called [Social Cannabis Clubs](#). On the contrary, if we focus on the rights of the people, we find a current trend from the Government to regulate the private sphere under moral grounds. Suffice to mention the approval of the current law on abortion to realize the important steps backwards in previously recognized rights. Thus, moral views from particular groups have imposed through legal processes.

Now, political leaders in Spain pretend to modify the Citizen Security Law, which imposes administrative sanctions to the illegal possession or consumption of drugs. The current attitude by the Government goes beyond the natural inertia and it clearly seems to be an improvised reaction to address the emerging phenomenon of the Social Cannabis Clubs, among other things.

Revisiting our history, Spain was the first European country to decriminalize drug use in private spaces since 1974. The Supreme Court determined that personal use of controlled substances was not catalogued as a crime against public health. Neither the preparation for consumption, like buying personal doses or growing marijuana. This law provides prison sanctions for those that promote, encourage or facilitate illicit drug use. But that law was not accompanied by other health and education measures to minimize the most harmful consequences of their use. It was until 1992 that the Citizen Security Law was approved, under which drug use and possession was administratively sanctioned with fines from 300 up to 1.000 euros, which may be suspended if the offender goes for addiction treatment.

The lack of clarity of the Law has led to considerable legal uncertainty that mainly affects the cultivation of cannabis and its transportation. The question that drug users are asking under this legal framework is how to legally acquire marijuana for a private legal conduct that is not criminalized nor sanctioned?

Courts have already established jurisprudence considering that drug use in groups is not a crime, which in fact allowed the creation of Cannabis Clubs. These are legally constituted non-profit associations, formed by former drug users that grow, dispense and use drugs in closed groups. The existence of these clubs in the Basque Country, Catalunya and other places have sparked different debate processes intended to decide on the viability of its regulation. So far, this has been the process in the Basque city of San Sebastian, and Barcelona is currently debating a project.



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Despite all these initiatives, police harassment is remarkable. In most cases, court rulings have been acquittals for promotion or drug trafficking, but police interventions at the behest of the prosecutor lead, in practice, to the momentary closing of the intervened clubs. Drug users again turn to the illicit markets for buying their drugs.

The situation is extremely contradictory. There is the case of clubs that have been robbed and, when denouncing the crime, are in turn reported by the police. There are also acquaintances and even in many cases, courts have ordered to return the drugs seized by the police. Facing this reality on the ground, the response by the Spanish government is translated into three clearly repressive initiatives carried out by the Prosecutor, the National Plan on Drugs and the Popular Party government.

The National Attorney General issued in 2013 an order urging all prosecutors to persecute all Cannabis Clubs and any marijuana cultivation. The government's delegate for the National Plan on Drugs, Francisco de Asís Babín, [recently declared](#) "legalizing cannabis would mean trivializing its use". This position is aligned with the [Draft Law on Citizen Security](#), called "gag rule" by large groups critical to hardening sanctions for offenses committed in the context of personal freedom.

The Draft Law proposes sanctions ranging from 1.001 € up to 30.000 € (when it used to be from 300 € a 1.000€) in cases of illegal possession or consumption at public spaces. It adds as a serious offense moving people in any type of vehicle in order to facilitate their access to drugs (called kundas) as well as growing and planting illicit drugs. On top of it, the substitution of fines for treatment disappears from the draft project.

Under the guise of expediting the slow Spanish justice, the government intends to further control the lives of people. The worst thing is that the State itself becomes judge and part reducing powers of the Judiciary. To introduce in the Draft Law that planting and growing illicit drugs will be punished eliminates the possibility of a trial to determine whether there is a crime or not. Recently, the General Council of the Judiciary negatively assessed the Draft Law: it believes that provides extensive intervention faculties to the government and recommends its adjustment to Constitutional boundaries.

It is of our understanding that this project entails a clear cut to the individual and collective freedoms (constant activities at the Clubs), an excessive tax collection effort and a well-defined commitment for repression, besides its intention to eliminate the right to health services in cases of addiction.

We must bring together a statewide cannabis movement to agree on the minimum standards and issue a common message including the current attacks on their practices, even when endorsed by Spanish jurisprudence. It would be desirable that movements against the Draft Law include in their claims those issues related to drugs and its health approach.



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If on the one hand the attacks against those projects for legalizing/regulating are persistent and aggressive, the heterogeneous cannabis movement in Spanish is not at its best moment either. In this sense, there are plenty initiatives proposing different alternatives for the supply of cannabis that beyond generating a public debate with common grounds or proposing minimum standards, are focused on externalizing their differences. The movement has lost the lead and is at the expense of the State's response.

Under such conditions, one of the major players may be compromised. We are letting by the opportunity to reverse the unfair situation in which drug users find themselves and propose responsible alternatives for regulation. Worst-case scenario, drug users will buy, once again, drugs in the illegal market.

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