

Canadian Senate's Standing Committee on Social Affairs, Science and Technology

Hearing, 3 May 2018

Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts

The Portuguese policy on drugs: the experience of Decriminalisation

Bonjour, Good morning, honourable senators. Thank you for the invitation to this presentation today, it's a great pleasure to be here this morning and to share some of our experiences as an input to the discussion on your legislation.

It is important to mention that Portugal is a small country (around 10 million inhabitants) located on the Iberian Peninsula, it is the westernmost country of mainland Europe and that we have a National Health Service, available for all citizens almost for free.

SICAD, for those who may not know of my organization, is the central body of the Ministry of Health integrated in the direct administration of the State, which supports the Government in the elaboration of the national strategy for reducing the use of psychoactive substances, the prevention of addictive behaviours and the decrease of dependencies. SICAD plans, implements and coordinates drug demand reduction interventions and collects, analyses and disseminates information on drug use and responses to it.

In recent years the Portuguese Drug Policy has attracted the attention of policy makers and media, due to an innovative approach regarding personal consumption and possession of any illicit substance and I reinforce any illicit substance, this means that we have no specific legal framework for cannabis.

Changes in the Portuguese policy date back to 2000, but the genesis of a more humane and pragmatic approach to drug use can be found in legal documents from 1976 and I will briefly explain you why, how and what are the results so far.

Until 1974, Portugal had a conservative, closed and isolated society, with few contacts with social and cultural movements happening in other countries. After a military coup d'état (the Carnation Revolution) it became a semi-presidential constitutional republic, allowing democratic elections and citizens' contact with other realities.

Drug use and abuse became socially visible from the late 1970's onwards. Associated with ideas of freedom, it spread partly due to the fact that large military

contingents and thousands of citizens returning from newly independent colonies (Angola, Mozambique and Guinea-Bissau) had been exposed to various illicit substances, chiefly cannabis. Experimentation was almost mandatory for young people, unprepared for this new reality. Heroin also became available and rapidly led an epidemic of addiction and associated problems, including an emerging epidemic of HIV infection.

Though Portugal continued to have one of the lowest levels of illicit drugs' consumption in Europe, by the end of the 80's and 90's we were one of the highest prevalence countries for problematic drug use. Drugs and drug addiction became an enormous social, health and political problem in Portuguese society. Prevention and treatment responses began; both at public and Non-Governmental levels, but the phenomenon did not seem to slow down. Most addicts were afraid of entering programs, as they feared referral to criminal justice.

In 1997, drug addiction was rated the first concern among the Portuguese people. By that time around 1% of the Portuguese population were problematic drug users; 98% of those in treatment were heroin addicts and more than 50% were injecting drug users; the HIV infection among drug users represented 60% of the total number of infected people and the rate of overdoses was 35 per million of inhabitants and increasing. The vast majority of drug addicts have no other crime associated, except the use of drugs and the law enforcement authorities considered that prison was "a school of crime" and not really helpful to them.

To face this problem, the Prime-Minister at the time (António Guterres the current General Secretary of the United Nations), created a Commission composed both by leading public officers and researchers in the field of drugs to study and present a report on the launching of a national strategy on drugs. The Commission analysed the problem based on several research available, the political and social actors were very active promoting a public dialogue at different levels concerning the need to a different approach to drug use and drug addiction, namely the President of the Republic, who supported seminars with large visibility to discuss the issue.

It is important to mention that the only boundary established by the Government to the work of the Commission was to keep any proposal to be presented within the limits defined by the three main international drug control conventions of the United Nations.

As a result of the work of the experts' Commission, the first Portuguese National Strategy on Drugs was developed and approved in 1999. The Strategy was based on 8 Principles, among which the Humanism and Pragmatism. It envisaged a balanced approach between supply and demand reduction measures, comprising a prevention program in partnership with municipalities and NGO's, a treatment network extended to the whole country, the development of a harm reduction network and reintegration programs aimed at recover drug users.

The Portuguese Strategy also advocated an innovative change of law, drug addiction was to be viewed as a disease and drug users as citizens in need of treatment. While

the National Strategy, published as a Council of Ministers' Resolution, was immediately adopted, a bill of law concerning decriminalisation was presented to the Parliament for adoption.

Four parties seated at the Parliament at the time, the Socialist Party, with a comfortable majority, approved it with the Communist Party, the Social Party abstained and the Christian Democrats rejected it. Despite that, drug decriminalisation came to be accepted by the social and political community and does not present nowadays a political issue.

A new Law was approved by the National Parliament and entered into force in the 1st July 2001 (Law 30/2000). This law introduced a radical change in the way of facing drug use and defines the legal framework applicable to the consumption, acquisition and possession for own consumption of narcotics and psychotropic substances.

Decriminalisation is different from liberalization, legalisation and regulation. The consumption, acquisition and possession for own use of narcotics and psychotropic substances is no longer a crime, but constitutes an administrative offence, in the cases that it does not exceed the quantity required for an average individual consumption during a period of 10 days (defined by law for each substance).

It is important to emphasize that drug use in Portugal is still illegal, but penal sanctions are no longer applied. The consumption and possession for use is still a reprehensible behaviour, no longer sentenced to an imprisonment penalty, but subject to administrative sanctions, such as fines or other limitation of rights (for instance the suspension of the driving licence),

The main purpose of the Law is the dissuasion of the consumption and the basic concern has been to give priority to treat offenders rather than applying sanctions (better to send a drug addict for treatment than to prison).

A most relevant aspect of this law is to allow an early and pedagogic intervention, among those, who, not being drug addicts had in any way experiences with drugs. This new regime doesn't promote the impunity of the consumers and traffickers, rather the contrary; it allows a quicker intervention among those who use drugs.

The decriminalisation Law reinforced the available resources for the demand reduction and it is another instrument to fight against the use and abuse of drugs, and it also represents a measure to fight the social exclusion. Drug addiction is considered a disease, with drug addicts being viewed as patients and not as criminals.

The most relevant aspects of decriminalisation Law are as follows:

- Drug use (acquisition and possession of drugs for personal use) is converted from a crime to an administrative offence;
- The scope of the concept of acquisition and possession for personal use is limited to the quantity necessary for average individual use during a ten day

- period;
- It is still considered a crime to grow drugs for personal use;
 - There is no distinction between occasional and regular use, except for the effects of choice of the sanction to be applied;
 - There is no distinction between consumption in public or in private, except for the effects of choice of the sanction to be applied;
 - There is no distinction between substances, except for the choice of the sanction to be applied and for the general framing of the fine;
 - Distinction is made between drug addicts and non-drug addicts for the effects of punishment of conduct: fines will never be applied to the former in any circumstances;
 - A simple warning can be applied as a specific sanction;
 - A punishment regime is established with the aim of “convincing” the drug addict to accept treatment; in this way:
 - Acceptance of treatment avoids a process being opened;
 - The acceptance of treatment, after a process has been opened, results in the provisional suspension of the process or the suspension of the sentencing.

Drug Addiction Dissuasion Commissions:

According to the Decriminalisation Law the offences related with the consumption, acquisition and possession for own consumption of narcotics and psychotropic substances are no longer judge in court. They are submitted to a Drug Addiction Dissuasion Commission, especially created for this purpose. The Dissuasion Commissions were established in 2001 in each capital of district (18) and in the Autonomous Regions of Madeira e Azores. Commissions hear all the offenders, found in possession or use of drugs.

The Commissions comprise three members, one of which shall serve as chairman. One of the members of the Commission shall be a legal expert appointed by the Ministry of Justice, and the Minister of Health appoints the other two, who shall be chosen from doctors, psychologists, sociologists, social services workers or others with appropriate professional expertise in the field of drug addiction.

There is also a multidisciplinary technical unit, 3 to 5 experts – psychologists, social service workers, lawyers and administrative workers - that prepare all the facts and made a previous evaluation to support the Commission’s decision.

The Commissions act as a “second line” of preventive interventions, evaluating the personal circumstances of drug users referred by police and directing them to the appropriate responses (treatment or others).

Procedure of Drug Addiction Dissuasion Commissions:

Since 2001, when an individual is caught with a small amount of drugs for personal use, and the police do not suspect or have evidence that this person is involved in drug selling or dealing, the drugs are apprehended and the case is sent to the Commission. The occurrence police report is carried out immediately and the offender is presented to the Commission with the competent territorial jurisdiction, in a delay of 72h. If the police authorities believe to be in the presence of a trafficking situation, they will send the matter to the competent judicial authorities, that is, the court.

The Commission makes a psychological and social evaluation of the offender and will then apply the appropriate decision according to the profile of the individual. If the offender is not willing to undergo treatment, the hearing is suspended and the offender is sent to the technical unit, in order to convince him/her to accept treatment, through motivation work. The offender is informed about the consequences of his/her acceptance or refusal.

The sanctions applied by the Commission can be a fine (applied to non-addicted users) and it can range between 25 € and 150 € or of a non-monetary sanction (applied to addicted users). The non-monetary sanctions can be:

- Prohibition to carry out a profession or activity;
- Prohibition to frequent certain places;
- Prohibition to accompany, lodge or receive certain people;
- Prohibition to leave the country with authorisation;
- Periodic presentation at a place to be specified by the Commission, etc.

The implementation of the Law is based on a network approach. Allocate resources and establish partnerships are of utmost importance to develop action and help the offenders to find their own way. The coordination between the services with responsibilities in this area, both on demand and on supply field, are fundamental for the good working of the Commissions and for the support to the offenders.

The articulation with the police authorities is essential, as are these forces that initiate the intervention procedure near the drug users. In fact, a bigger pressure of the police authorities upon the drug users has immediate effects on the number of administrative proceedings: this procedure allows an intervention near individuals, who have never been mentioned, but it also allows to know the true dimension of the repeated offence and the relapses, what can be decisive for the recovery process or intervention process near the offenders.

The assignment given by this Law to the police authorities has a very strong preventive component part; as it is a new type of approach, it needs a permanent articulation, in order to obtain better results within an integrated strategy in the fight against drugs.

A very important instrument for the work of the Commissions was created by legislation: the central register (a national database), which allows crossing the data of the offenders, who are presented to the Commissions. By consulting the proceedings related to the offences eventually committed by the same individual,

even if committed in different districts, as it is a population with great mobility, is possible to know all his/her antecedents, such as previous drug abuse, former penalties, what allows, in case of relapse to adopt new strategies, in order to convince the individual to accept treatment and future abstinence.

With such a Register it is possible to verify the prevalence of drug use and the profile of the drug addicts in each region of the country, and it is also possible to define the policy on drugs and drug addiction, based in a more accurate diagnosis.

Some results:

It is important to state that the approach to drugs problems in Portugal was not only by the decriminalisation. In fact, decriminalisation itself wouldn't be a solution to the severity of the problem. If today there is a general positive trend of all available indicators, it is due to a comprehensive package of responses that acquired bigger coherence and consistence in the decriminalisation framework.

In terms of "supply reduction", police and customs authorities continued to suppress trafficking, letting their resources, that use to be mostly allocated to pursuit single users, much more available to those tasks, which increased their efficacy. If usually they reported small apprehensions (grams or kilograms) of substances, now we have great amounts apprehended (tonnes).

In the area of "demand reduction", the availability of treatment has been extended, with a network of health care and socio-sanitary resources, private and public, providers of health care to population with problematic use of drugs, based on integrated multidisciplinary therapeutic approaches, articulated and complementary. It was clearly assumed the use, based on scientific evidence, of Opioid Maintenance Treatment (methadone, buprenorphine), along with other resources such as Therapeutic Communities.

Responses were developed in the area of "risk reduction and harm minimization" in a perspective of public health, focusing the intervention on the consequences that arise from the addictive behaviour. Definitely, give up of people is not an option, even when they are not able to stop consumption, so work is developed in order to accompany and help them to have a better quality and higher life expectancy. Outreach Teams, Support Offices, Home Centres and other structures are working focused in that objective, closely collaborating with teams of prevention, treatment and reintegration. These responses rely on a daily base work in close proximity with a population that, regarding it's characteristics of an enormous social fragility and with a profound inability to auto mobilize in order to seek for help, did not look for the conventional treatment structures.

Furthermore it has been carried out an intense work in prevention area, in schools, and amongst specific groups, whose main goal is to intervene on the causes that lead to the use of substances. It was possible to promote, not only knowledge about the phenomenon, but also to increase the scope, the effectiveness, the efficiency and the quality of prevention programs that were implemented.

Social reinsertion results in socialization and/or resocialization, in the pursuit of building a sustained life project, guided to personal fulfilment, through the involvement of the household and the community in general.

Seventeen years after the approval of the Decriminalisation Law we identify several gains:

- a decrease in drug use among adolescents and a small increase in lifetime drug use amongst adults, but drug use level still remain generally below the European average;
- the significant reduction of the number of problematic users;
- a considerable reduction in the prevalence of injecting drug use;
- a strong reduction of overdose numbers and infectious diseases;
- a reduced stigmatization of drug users;
- a reduced burden of drug offenders in the criminal justice system;
- an increase in the amounts of drugs seized and in the efficiency of Police and Customs.

In sum, Portugal decriminalised all drugs but didn't legalize them and the decriminalisation policy is part of a balanced and integrated approach that links prevention, treatment, harm reduction and social reintegration.

We are taking advantage of the preventive potential of the Drug Addiction Dissuasion Commissions, which provide an opportunity for an early, specific and integrated interface with drug users.

We are happy with the current legal Portuguese framework and with the positive evolution in the national situation. Anyway we will follow the international developments on the risk assessment of cannabis use in terms of its impact on health and of course we will be attentive to any change in its scheduling position that may be proposed in the future, but for the moment there is in our opinion a lack of scientific evidence.

Mr. Chair and members of the committee, I thank you again for this opportunity and I'd be happy to answer any questions that you may have. Thank you. Merci beaucoup.