

The Portuguese drug policy framework

The development of legislation

In the late 1990s drug use became a serious problem in Portugal¹ that required systemic changes to the country's legislation.² This was mainly due to the injection of heroin and the risks of the spread of HIV/AIDS and viral hepatitis. In an attempt to solve this problem, on February 16, 1998, the government established the Commission for the National Strategy to Combat Drugs (Comissão para a Estratégia Nacional de Combate à Droga).³

The Commission was created to initiate a response to the increasing heroin-related drug problem in the 1990s, but it was not limited to it. During that decade the number of arrests for drug-related offenses in general and for the use of heroin in particular was on the rise. By 1998, more than 61% of arrests were for possession,⁴ and not for distribution or possession with intent to distribute (a total of 11,395 arrests for various drug offenses).⁵ The number of drugs confiscated during that decade also increased significantly.

In its 1998 report,⁶ the Commission recommended decriminalization as the best way⁷ to reduce drug use and drug abuse. It suggested that drug abuse as such and related diseases had become an out-of-control social problem. It also pointed out that the criminalization of drug use creates difficulties in accessing treatment and uses a significant amount of resources, which in turn prevents effective public policies from addressing these problems.

The proposed strategy recommended decriminalizing drug use and ranking possession and purchase as administrative offenses. The Commission decided that legalization as an alternative to decriminalization was not a viable option, largely because numerous international treaties⁸ oblige Member States to incorporate a ban on drug use into their national legislation. Decriminalization would not violate the ban, as the country's legislation⁹ would still prohibit consumption, but no longer rank it as a criminal offense.¹⁰

A year after the Commission published the report, the Council of Ministers of the Federal Government approved it almost entirely. The report laid the foundations for the first National Strategy to Combat Drugs and Drug Addiction (*Estratégia Nacional de Luta Contra a Droga e a Toxicoddependencia*),¹¹ which was approved on April 22, 1999. It contained key policy guidelines¹² on drug abuse in various areas, including primary prevention, treatment, social rehabilitation, training and research, risk reduction, and combating illicit trafficking.

In 2000 the Council of Ministers developed its own policy recommendations that were in line with those of the Commission and included a proposal for full-scale decriminalization. On November 29, 2000,¹³ the Parliament, with the President's support, adopted Law No. 30/2000,¹⁴ which guaranteed implementation of the Council's recommendations. When the law came into force on July 1, 2001, Portugal became the first European country¹⁵ to decriminalize the use and possession of all types of illicit narcotic drugs.

The legal basis of the Law

The provision of Law No. 30/2000,¹⁶ which formally establishes decriminalization, is set out in Article 2(1),¹⁷ which states:

“The consumption, acquisition and possession for own consumption of plants, substances or preparations listed in the tables referred to in the preceding article constitute an administrative offense.”

The interpretation of the key phrase **“for own consumption”** is given in Article 2(2).¹⁸ This is a quantity that **“shall not exceed the quantity required for an average individual consumption**

during a period of 10 days.” Decriminalization does not apply to “drug trafficking,” which remains a criminal offense and is defined as **“possession of more than average individual consumption during a period of 10 days.”**

Instead of criminalization, Portuguese law establishes the Commission for the Dissuasion of Drug Addiction (Comissão para a Dissuasão da Toxicodependência),¹⁹ which is responsible solely for making decisions on administrative penalties for drug-related offenses (Article 5).²⁰

If it is established that an offender uses drugs but is not addicted and has no prior record of offending, Article 11(1)²¹ instructs the Commission to “provisionally suspend proceedings” without imposing a penalty. The Commission can also “provisionally suspend proceedings” if an addicted person with a prior record agrees to undergo treatment (articles 11(2, 3) and 14).²² If the treatment is completed, and the patient does not reoffend, the case will be dropped after a certain period of time. At the same time, the Commission has no power to prescribe compulsory treatment.

Article 15 of the Law, entitled “Penalties,”²³ establishes administrative sanctions for drug-related offenses. The first part of the Article reads: “Non-addicted consumers may be fined or, alternatively, given a non-pecuniary penalty.”

Article 15(4)²⁴ sets out the factors to be taken into account by the Commission when determining which sanctions to impose. Among such factors are: the seriousness of the act; the type of plants, substances, or preparations consumed; the public or private nature of consumption; and the occasional or habitual nature of the person’s drug use. The Commission has every right to determine to what extent these factors should be taken into account and how they should influence the course of the case.

Paragraph (1) of Article 17, titled “Other penalties,”²⁵ states that instead of a fine, “the commission may issue a warning.” According to Article 17,²⁶ the Commission may apply a range of penalties as an alternative to a fine or as the main penalty. Among the measures are: banning from the exercise of a profession or occupation, namely those subject to licensing requirements (doctors, lawyers, taxi drivers); banning from certain places associated with risk (night clubs); prohibition from accompanying, housing, or receiving certain persons; periodically attending a place indicated by the Commission to prove the absence of drug addiction or abuse; prohibition from travel abroad without permission; withdrawal of state subsidies or benefits; and a verbal warning.

Decriminalization does not extend to drug trafficking, which remains a criminal offense and is defined as possession of more than the average amount needed for individual consumption over a period of 10 days. This offense carries a prison sentence of 1 to 12 years,²⁷ depending on the type of drug.

Implementation of the framework

Recognition of the need to respect human dignity, accept the life choices and social circumstances of others, and protect the constitutional right to health form the foundations of the new approach to drug use in Portugal. Today the decriminalization model is yielding positive results, as it covers all aspects of drug use: prevention; dissuasion; risk and harm reduction; treatment; and returning to life in health and in society.²⁸

The National Plan for Reducing Addictive Behaviors and Dependencies 2013–2020²⁹ recognizes the need for multi-age prevention within the family, at school, in entertainment and sports programs, in communities, in the workplace, in road safety, and in prisons. At a national level,

this strategy is the task of the General-Directorate for Intervention for Addictive Behaviors and Dependencies (SICAD),³⁰ which is assisted by regional health authorities.

Under the 2001 law, at least one Dissuasion Commission was established in each of the 18 administrative districts of Portugal to monitor administrative proceedings against persons found guilty of drug use or possession. According to Article 7³¹ of the decriminalization legislation, each Commission consists of three members:³² a lawyer, a medical professional, and social services professional (doctor, psychologist, and social worker).

Police officers who register a case of the use or possession of drugs are required to issue a notice of the violation to the offender, but they do not have the right to arrest him. A copy of the notice is sent to the Commission,³³ and an administrative case is launched. The offender must appear before the Commission within 72 hours after receiving the notice. In general, the Commission should focus on addressing health and treatment issues.

The main priority set by the National Plan for Reducing Addictive Behaviors and Dependencies 2013–2020³⁴ is to encourage and develop existing **harm reduction** models³⁵ and adapt them to the evolving forms of drug use. A network of harm reduction programs is currently operating in Portugal. It offers needle and syringe exchange (31 programs), low-threshold substitution therapy (18 programs), a drop-in center (1 program), and outreach workers (26 programs). These programs operate throughout the country in places of intensive drug use and help reduce the risk of infectious diseases, social isolation, and delinquency. Thousands of Portuguese pharmacies allow free exchange of used syringes for a set of new ones, which includes several syringes, condoms, spirit-soaked cotton wool, and a guide to rehabilitation.

Having freed the citizens from the fear of prosecution and imprisonment for drug use, Portugal has been able to more effectively direct consumers to the path of treatment. Resources that were previously spent on prosecution and imprisonment are now being allocated to **drug dependence treatment** programs. In Portugal, drug dependence treatment is funded by the State.³⁶ Three regional **reintegration programs** offer former and current drug users regular workshops on various psychological and social topics, and also help with finding work and housing.

Decriminalization outcomes

Statistics show that the abolition of criminal penalties, combined with the use of alternative methods of helping drug users, has reduced the burden on the criminal justice system and lowered the overall level of drug use.

Decriminalization has a positive impact on the level of crime. Changing the status of drug possession from a criminal to an administrative offense inevitably leads to a decrease in the number of people³⁷ arrested and transferred for criminal proceedings: in 2000 it was more than 14,000; in 2014 around 5,500. The proportion of drug-related offenses³⁸ (offenses under the influence of drugs and/or in the sphere of drug trafficking) dropped from 44% of all offenses in 1999 to just under 21% in 2012.

Decriminalization has not led to a rise in drug use in Portugal.³⁹ Its level remains one of the lowest in the European Union (EU),⁴⁰ especially in comparison with countries that practice strict criminalization. In general, the level of drug use has remained approximately the same or has even slightly decreased since decriminalization.⁴¹ The level of heroin use did fall though, despite being the greatest concern of the Portuguese government in 2001. The bulk of notices issued for drug-related crimes are still issued to people consuming marijuana.

Although the number of newly detected HIV cases among injecting drug users is significantly higher in Portugal than the European average, it has declined sharply over the past decade, falling from 1,016 to 56 between 2001 and 2012.⁴² During the same period, the number of new AIDS cases among people who inject drugs decreased from 568 to 38.⁴³ A similar trend is observed for cases of hepatitis C and B among clients of drug treatment centers,⁴⁴ despite the increase in the number of people wishing to undergo treatment. The level of drug-related deaths⁴⁵ is at 4.5 cases per 1 million people, which is about one-fifth of the EU average of 19.2.

The Portuguese have been convinced that decriminalization is effective; therefore, no political force in Portugal today is calling for a return to criminalization. Government officials responsible for the drug control policy are almost unanimous in their belief that decriminalization has allowed a much more effective approach to control drug use and its related social problems.

¹ http://www.emcdda.europa.eu/system/files/publications/148/NR2000Portugal_65264.PDF

² <https://www.loc.gov/law/help/decriminalization-of-narcotics/portugal.php>

³ [https://dre.pt/web/guest/analisejuridica/-](https://dre.pt/web/guest/analisejuridica/-/aj/publicDetails/maximized?p_auth=MguOwVr4&p_p_auth=YyURA4xc&diplomaId=3319678&mode=pdf)

[/aj/publicDetails/maximized?p_auth=MguOwVr4&p_p_auth=YyURA4xc&diplomaId=3319678&mode=pdf](https://dre.pt/web/guest/analisejuridica/-/aj/publicDetails/maximized?p_auth=MguOwVr4&p_p_auth=YyURA4xc&diplomaId=3319678&mode=pdf)

⁴ http://www.emcdda.europa.eu/system/files/publications/148/NR2000Portugal_65264.PDF

⁵ http://www.rand.org/content/dam/rand/pubs/monograph_reports/2005/MR1508.pdf

⁶ https://object.cato.org/sites/cato.org/files/pubs/pdf/greenwald_whitepaper.pdf

⁷ <https://www.loc.gov/law/help/reports/pdf/2016-013833.pdf>

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[https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The International Drug Control Conventions E.pdf](https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf)

⁹ <http://www.emcdda.europa.eu/html.cfm/index5174EN.html?country=PT&pluginMethod=eidd.countryprofiles>

¹⁰ <http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1198&context=ilr>

¹¹ http://www.sicad.pt/BK/Publicacoes/Lists/SICAD_PUBLICACOES/Attachments/71/ENresolucao.pdf

¹² http://www.rand.org/content/dam/rand/pubs/monograph_reports/2005/MR1508.pdf

¹³ http://www.sicad.pt/BK/Institucional/Legislacao/Lists/SICAD_LEGISLACAO/Attachments/525/lei_30_2000.pdf

¹⁴ http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=186&tabela=leis&ficha=1&pagina=1&

¹⁵ http://www.emcdda.europa.eu/attachements.cfm/att_137215_EN_PolicyProfile_Portugal_WEB_Final.pdf

¹⁶ http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=186&tabela=leis&ficha=1&pagina=1&

¹⁷ http://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf

¹⁸ http://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf

¹⁹ <http://www.sicad.pt/PT/Dissuasao/SitePages/cdt.aspx>

²⁰ http://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf

²¹ http://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf

²² http://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf

²³ http://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf

²⁴ http://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf

²⁵ http://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf

²⁶ http://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf

²⁷ <http://www.emcdda.europa.eu/html.cfm/index5174EN.html?country=PT&pluginMethod=eidd.countryprofiles>

²⁸ <https://www.opensocietyfoundations.org/sites/default/files/drug-policy-in-portugal-english-20120814.pdf>

²⁹

http://www.emcdda.europa.eu/system/files/Portugal%20National%20Plan%20for%20the%20Reduction%20of%20Addictive%20Behaviours%20and%20Dependencies%202013%E2%80%932014_EN.pdf

³⁰ <http://www.sicad.pt/pt/Paginas/default.aspx>

³¹ http://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf

³² <http://www.sicad.pt/PT/Dissuasao/SitePages/cdt.aspx>

³³ <https://www.opensocietyfoundations.org/sites/default/files/drug-policy-in-portugal-english-20120814.pdf>

³⁴

http://www.emcdda.europa.eu/system/files/Portugal%20National%20Plan%20for%20the%20Reduction%20of%20Addictive%20Behaviours%20and%20Dependencies%202013%E2%80%932014_EN.pdf

³⁵ <http://www.emcdda.europa.eu/country-data/harm-reduction/Portugal>

³⁶ <http://www.emcdda.europa.eu/countries/portugal>

³⁷ <http://www.tdpf.org.uk/blog/drug-decriminalisation-portugal-setting-record-straight>

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- ³⁸ <http://www.tdpf.org.uk/blog/drug-decriminalisation-portugal-setting-record-straight>
- ³⁹ <http://www.tdpf.org.uk/blog/drug-decriminalisation-portugal-setting-record-straight>
- ⁴⁰ http://www.issdp.org/wp-content/uploads/2015/09/jqintas_drugs_eurocrim2015.pdf
- ⁴¹ <https://ru.scribd.com/document/46235617/What-Can-We-Learn-From-The-Portuguese-Decriminalization-of-Illicit-Drugs>
- ⁴² <http://www.emcdda.europa.eu/data/2014>
- ⁴³ <http://www.emcdda.europa.eu/countries/portugal>
- ⁴⁴ <https://www.scribd.com/document/46235617/What-Can-We-Learn-From-The-Portuguese-Decriminalization-of-Illicit-Drugs>
- ⁴⁵ <http://www.emcdda.europa.eu/countries/portugal>