

CITYWIDE DRUGS CRISIS CAMPAIGN



**SUBMISSION TO THE COMMITTEE ON JUSTICE, DEFENCE AND
EQUALITY**

**ALTERING THE PRESENT APPROACH TO SANCTIONS FOR
POSSESSION OF DRUGS FOR PERSONAL USE**

31st JULY 2015

Introduction

Citywide Drugs Crisis Campaign is a national network of community organisations that are involved in addressing the drugs issue and it represents the community sector on the National Committees of the National Drugs Strategy(NDS). The consultation process carried out during the development of our Strategic Plan in 2012 highlighted the concern in our communities about the negative impact of criminalisation on drug users and their families and for the first time Citywide called in the 2012 plan for an open debate to take place about decriminalisation in Ireland. As a first step in opening up the debate, Citywide organised a conference in May 2013 called “Criminalising Addiction – is there another way?” Speakers outlined the current legal situation in Ireland and how it works, presented evidence about the impact of criminalisation on the lives of drug users and looked at the emerging trends in decriminalisation across a number of other countries. Following the conference Citywide launched a leaflet which was circulated widely to generate informed discussion on the issue of decriminalisation and we have continued to debate the issues through our community networks, through political briefings and in public and policy statements on the drugs issue.

Citywide very much welcomes the initiative of the Oireachtas Committee on Justice in travelling to Portugal to see at first-hand the experience of decriminalisation in that country and in calling for submissions on altering the present approach in Ireland to sanctions for possession of certain amounts of drugs for personal use. It is Citywide’s view that drug use should be decriminalised and should be addressed as a social and health issue rather than as a criminal justice issue. We do not believe any person should be deemed a criminal simply because he/she uses a drug.

This paper is set out under the following headings:

1. The distinction between decriminalisation and legalisation
2. Negative effects of criminalisation in Irish drugs policy
3. Background to the International experience of decriminalisation
4. The experience of decriminalisation in Portugal
5. What Ireland can learn from the experience of Portugal
6. Conclusions and Recommendations

1)Distinction between decriminalisation and legalisation

Based on our experience to date of debating and discussing the issue of decriminalisation, it is important at the start of the discussion to make a clear distinction between decriminalisation and legalisation, as the two are often confused and conflated. **Decriminalising** drugs means that the actual use of a drug would not be a criminal offence; a person found in possession of drugs for personal use would not be given a criminal conviction, although administrative or civil sanctions can apply.

This is clearly distinct from the concept of ‘**legalising**’ drugs, where using, buying, importing and selling drugs would become a market regulated by the state in the same way as alcohol and tobacco. With decriminalisation, the individual drug user and his/her use of a drug is no longer treated as a criminal offence but the drugs trade remains illegal and subject to criminal law and no drug that is currently illegal is made legal.

In our experience of debating the issue over the last few years, the vast bulk of objections to decriminalisation arise as a result of confusing it with legalisation and are not about decriminalisation per se.

2) Negative effects of criminalisation in Irish drugs policy

- Citywide works in partnership with drug user and service user groups and is keenly aware of the stigma and discrimination that is experienced by drug users because of their involvement in an activity that our society deems to be criminal. Families also share in this stigma and discrimination and fear of criminalisation of a loved one can be a serious barrier to looking for help. Stigma and discrimination against drug users is wrong and decriminalising their use of drugs is an important step in working to end it.
- In 2012 almost 72% of convictions for drug offences in Ireland were for possession of drugs for personal use. Most convictions for possession do not result directly in a prison sentence; however, there is a significant cost to the state through use of police, legal aid, DPP and court resources. There is no evidence that conviction for drug possession reduces drug use and these resources would be better invested in social and health services.
- This conviction stays with a person for their whole life and has a potential negative impact on them in many aspects of their lives, including employment, accessing training, future travel, getting a visa, and getting insurance. In addition, in recent times, an increasing number of employment positions and voluntary activities in Ireland require Garda vetting – many former drug users will not even consider applying for positions that require Garda vetting as they believe most potential employers will not give them a chance if they see a drugs conviction on a vetting form.
- Recent research carried out by Citywide has highlighted the barriers to rehabilitation, including criminalisation, which are experienced by people on Drug Rehabilitation Projects and how time, effort and resources are invested by the projects and their participants in working to overcome these barriers. This experience highlights how different branches of the state are currently at odds in their policy objectives in relation to drug use. On the one hand, the NDS promotes rehabilitation and re-integration of drug users as a key objective but, on the other hand, the current policy of criminalising drug users acts as a barrier to meeting this objective.

- This conflict of objectives is also evident in relation to youth work services. The aim of these services, in particular in our most disadvantaged communities, is to divert young people away from the criminal justice system, yet under our current laws if a young person is found to be using drugs, they will be channelled in to that system. Criminalisation for drug use is particularly inappropriate and damaging for a young person whose key needs are for support and diversion.
- Increasing the involvement of service users through local, national and regional fora is also an objective of the NDS. Criminalisation is a serious barrier to supporting and promoting the development of a strong drug user voice to inform the development of services and policies and the absence of the drug user voice in our NDS is a serious gap.

3)Background to the International experience of decriminalisation

Citywide participates in a number of EU and global networks, including the EU Civil Society Forum on Drugs, the IDPC and the VNOGC. Our participation in these networks has enhanced our knowledge and understanding of the international situation in relation to decriminalisation and the extent to which policies of decriminalisation are being enacted in many countries across the world. It is not just a recent trend; some countries have had decriminalisation policies in place since the early 1970s and others never criminalised drug use and possession to begin with.

A country that decriminalises is no longer the odd one out but rather part of a growing evidence-based trend. There are between 25 and 30 countries now having some form of decriminalisation in place and in the past 15 years, a new wave of countries have moved in this direction. This recent trend towards decriminalisation has not been centred on one continent or in richer or poorer nations. Countries as disparate as Belgium, Chile, the Czech Republic, Estonia, Jamaica, Mexico, Portugal, Switzerland and Uruguay among others, have all adopted some form of decriminalisation policy in the last decade or so.

There has been no significant increases in overall levels of drug use evidenced as a result of this broad increase in decriminalisation. Our colleagues in Release, International Drugs Policy Consortium (IDPC) and Transform are making a submission which provides greater detail on the international experience.

4)The experience of decriminalisation in Portugal.

Portugal introduced decriminalisation in 2001, as a result of a growing consensus among law enforcement and health officials that the criminalisation and marginalisation of people who use drugs was making the Portuguese drug problem

worse, and that under a new, more humane, legal framework it could be better managed. Portugal decriminalised the personal possession of all drugs; this means that it is no longer a criminal offence to possess drugs for personal use, but it is still treated as an administrative violation, with a civil or administrative sanction.

The specific penalty to be applied is decided by 'Commissions for the Dissuasion of Drug Addiction', which are regional panels made up of legal, health and social work professionals. The intervention in Portugal, as the name of the Commissions imply, is still based on directing people away from drug use and on the view that a professional assessment process is likely to be far more effective at doing this than a criminal justice intervention.

The most recent figures that are available on the drugs situation in Portugal since drug use was decriminalised show the following:

- Levels of drug use are below the European average
- Drug use has declined among those aged 15-24, the population most at risk of initiating drug use
- Rates of past-year and past-month drug use among the general population – which are seen as the best indicators of evolving drug use trends – have decreased
- Between 2000 and 2005 (the most recent years for which data are available) rates of problematic drug use and injecting drug use decreased
- There are significant decreases in drug-related deaths, HIV, Hep C and B amongst drug users

5)What Ireland can learn from the experience of Portugal

There is a significant body of evidence now available on the Portuguese experience of decriminalisation which can help to inform our discussions here in Ireland. Citywide believes that there are some key elements of the Portuguese model that are of particular relevance to the Irish context.

- Concerns have been expressed that removing the criminal sanction in Ireland for drug possession for personal use will mean that there will be no intervention to prevent a person, in particular a young person, from going on to develop a more serious drug problem. But it is clear that, in Portugal, the fact that possession for personal use is no longer a criminal offence does not mean that there is no intervention. What has changed under decriminalisation is that it is now a public health intervention rather than a criminal justice intervention.
- The intervention which takes place requires the person to take part in an assessment process. This process enables a distinction to be made between first time drug use, repeat drug use and problematic drug use. This is important, as different types of service will be appropriate depending on the nature of the

drug use. Citywide has consistently made the case that we don't have just one type of drug use or drug problem in Ireland, we have a range of types of problematic drug use that are different in nature. Therefore it is important that people are directed at the earliest stage towards the level of service that is most appropriate to their needs. This leads to the best outcomes for the drug user and is also the most effective use of resources.

- When decriminalisation was introduced in Portugal, it was recognised by government that it needed to be accompanied by a significant level of investment in services. The Dissuasion Committees are made up of a legal expert, a health professional and a social worker, supported by a team of psychologists, sociologists and social workers. The engagement of a range of professionals is intended to provide a comprehensive service for drug users and to provide the opportunity to address any underlying issues. We need to be realistic in recognising that this level and range of services is not available in Ireland and a significant increase in investment in services would be required to put anything like this level of service in place.
- The Portuguese experience has highlighted the importance of local availability of services as part of an effective response. Under the NDS Ireland has also favoured a model of having locally based services, but recent years have seen serious challenges to maintaining this model. There have been significant cuts in the budgets of existing community services and a lack of development of new services. There are also many parts of the country where there are effectively no local services and these gaps need to be urgently addressed.
- A key feature of the Portuguese model is the pro-active approach to providing employment opportunities for recovering drug users, with incentives to employers to take on and support people in their transition. This is in marked contrast to the Irish experience, where increased expectations are being placed on drug users to progress into employment without a pro-active approach to increasing the job opportunities that are available to them. Recovering drug users are at a disadvantage in a competitive employment market and it is not enough to leave their chances to the market; the Portuguese experience demonstrates the value of a more pro-active intervention by the state.
- In Portugal one of the key difficulties that emerged for reintegration of drug users into the community was lack of housing and this is very much mirrored by the current experience in Ireland. Lack of access to decent affordable housing is currently a major barrier to rehabilitation and reintegration. Again in Portugal the need for a specific intervention was recognised and access to transitional housing is provided.
- The Portuguese model is crucially dependent on an interagency approach based on co-operation across state departments and agencies engaged in social, health, education, justice, employment and housing services. This will sound familiar to us in Ireland, where an interagency partnership approach is set out as underlying the implementation of our NDS. However, the major

difficulties in implementing this interagency approach over recent years have been well documented by Citywide and others and it is essential that these difficulties are addressed if we are to have any chance of providing an effective context for decriminalisation.

- In Portugal there has been a strong national structure (formerly the Institute of Drugs and Drug Addiction, now General-Directorate for Intervention on Addictive Behaviours and Dependencies), responsible for overall co-ordination and implementation of the interagency approach and headed by a Director with overall responsibility for the national drugs strategy. The clarity of co-ordination, accountability and leadership that is required has not been evident in the Irish NDS for some time, despite the existence of structures, and this needs to be urgently addressed.
- It is important to note in looking both at Portugal and Ireland that decriminalisation does not operate in a vacuum from other broader social policies. Like Ireland, Portugal has experienced severe economic recession in recent years and there is a real risk that significant reductions in health and welfare budgets will undermine many of the drug-related health and social improvements that have come about since decriminalisation.

6)Conclusions and recommendations

Those who are responsible for drugs policy in Portugal do not overclaim for decriminalisation and do not present it as a solution to the drugs problem. However, it is viewed as a crucial element of an overall policy and Citywide concurs with this view and believes it is time to introduce decriminalisation in Ireland. The introduction of decriminalisation will provide a legal framework for our response to drug use to be implemented through a social and public health approach rather than through a criminal justice one, and all the evidence from Portugal and elsewhere in the world shows this to be the more effective approach.

Implementing a decriminalisation policy means that the capacity is required to direct people who use drugs away from the criminal justice system and into health and social services. This will only be effective if the relevant services are in place. The Portuguese experience shows us that it is essential to invest significantly not only in drugs services but in a broad range of health and social services and securing this level of investment represents a major challenge in the Irish context.

The importance of interagency working is also highlighted through the Portuguese experience, as indeed it has been in Ireland throughout successive NDSs. It is essential that in parallel with the introduction of decriminalisation, there is strong political leadership in reviving the interagency partnership approach which has not been supported in recent years and in putting in place the day to day leadership within the NDS structures to ensure that this approach is implemented in reality.

The introduction of decriminalisation in Portugal in 2001 was an acknowledgement that criminalisation and marginalisation often go hand-in hand and it coincided with a significant expansion of the Portuguese welfare state in an effort to counter marginalisation and poverty. While it was recognised in Ireland in the mid 1990s that massive state investment in disadvantaged communities was the real solution to the serious drugs problem, any political commitment to implement this has long since disappeared. Citywide believes that we should use the decision to introduce decriminalisation in Ireland as an opportunity to refocus and re-invest in our national drugs strategy and also to refocus on the underlying social and economic causes of the drugs problem.

We recommend that a time-limited Working Group is established to be chaired by the Minister with responsibility for the NDS, who works across both Health and Justice departments, to draw on all the relevant expertise both in Ireland and internationally to discuss and agree the key elements of introducing legislation for decriminalisation.

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