

Decriminalisation and public health: the Portuguese approach to drug policy

Prof Alex Stevens, School of Social Policy, Sociology and Social Research, University of Kent, Medway, United Kingdom, ME4 4AG

Dr Caitlin Elizabeth Hughes, Drug Policy Modelling Program, National Drug and Alcohol Research Centre, UNSW, NSW, Australia, 2052

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Introduction

There has been huge international interest in the new direction that Portugal has taken in its drug policy since 1999. In that year, a new national drug strategy was adopted. This included a new law that decriminalised the possession of all illicit drugs, which came into force in July 2001 (Lei n.º 30/2000, de 29 de novembro 2000). It also included a broader expansion of public health, prevention and treatment services. The Portuguese approach has recently been described as a 'model of best practices' by the President of the International Narcotics Control Board (Sipp, 2015).

This chapter will describe these developments and will provide data that enables some assessment of their effects. It draws on research published in previous articles (Hughes & Stevens, 2010, 2012; Hughes & Stevens, 2007) and more recently published data¹. These studies themselves drew on secondary analysis of documents and data produced, as well as interviews with key stakeholders in Portugal in 2007 and 2009. It should be stated at the outset that there remains contestation about some of the outcomes from this reform (for an overview of the two most divergent accounts see Hughes & Stevens, 2012). It is also very difficult to identify whether the patterns in drug use and related problems have been *caused* by the new strategy, especially as little data is available on the situation prior to 2001. It is even more difficult to identify which parts of the strategy may have led to which particular outcomes. The Portuguese strategy must be seen as an integrated package of measures, rather than attributing any changes observed to decriminalisation alone.

The Portuguese decriminalisation and drug action plan

In 1998, a government appointed expert commission proposed to decriminalise illicit drugs for personal use and to introduce Portugal's first national drug strategy. The commission's report had the aims of abandoning idealist goals of a drug-free society in favour of providing a more comprehensive, public-health oriented and evidence-informed approach to drug use (Comissão para a Estratégia Nacional de Combate à Droga 1998). The legislative reform (Lei n.º 30/2000, de 29 de novembro 2000) and new national drug strategy were explicitly linked to these proposals. The decriminalisation provided a more humane legal context in which to provide interventions across the areas of prevention, harm reduction, treatment, social reintegration and supply reduction. The form of decriminalisation that was chosen was intended to provide a social and health response: including by directing minor drug offenders through to the drug treatment system. As such, the new law did not remove all penalties for drug possession. Rather, it stated that these would be administrative, rather than criminal offences. People caught in possession of illicit drugs are now ordered to attend specially devised Commissions for the Dissuasion of Drug Addiction (CDTs).

¹ The process of reform is inevitably complex. A full description of the context, drivers and initial impressions can be found at Hughes, C. E. (2006). Overcoming obstacles to reform? Making and shaping drug policy in contemporary Portugal and Australia. *Department of Criminology*, PhD Thesis, Department of Criminology, The University of Melbourne.

The CDTs are regional panels made up of three people, including lawyers, social workers and medical professionals. The CDTs discuss with the offender the motivations for and circumstances surrounding their offence. They are able to provide a range of administrative sanctions, including community service, fines, suspensions on professional licenses and bans on attending designated places. However, their primary aim is to dissuade drug use and to encourage dependent drug users to enter treatment. Towards this end, they determine whether individuals are dependent or not. For dependent users they can recommend that a person enters a treatment or education programme instead of receiving a sanction. For non-dependent users, they can order a range of sanctions, including provisional suspension of proceedings, attendance at a police station, psychological or educational service, or impose a fine. The CDTs also provide an important role in assessing whether the offender has any broader health or social issues such as in mental health, school, employment or housing (and can refer affected people to relevant support agencies).

This administrative process applies to use/possession of all illicit drugs - including cannabis, heroin and cocaine - but it is restricted to use/possession of up to ten days' worth of a drug (Lei n.º 30/2000, de 29 de novembro 2000). This amounts in practice to 1 gram of heroin or MDMA or amphetamines, 2 grams of cocaine or 25 grams of cannabis (Decreto-Lei n.º 15/93, de 22 de janeiro 1993; Portaria n.º 94/96, de 26 de Março 1996). Individuals found with more than this quantity (or with direct evidence of involvement in trafficking) will be charged and referred to the courts where they may face charges for trafficking or trafficking/consumption (where the offender is found in possession of more than the consumer amount, but deemed to have obtained plants, substances or preparations for personal use only) (Decreto-Lei n.º 15/93, de 22 de janeiro 1993).

It is very important to note that decriminalisation was not the only element of the strategy. There was also investment of public funds in expansion of treatment, prevention, education and re-integration services. This accompanied broader social reforms in Portugal, including improvements in welfare benefits and housing conditions for people living in areas of deprivation. The combined approach of decriminalisation and public health services has been continued in Portugal, despite economic challenges following the 2007-08 financial crisis. It forms the basis for the current *National Plan to Reduce Addictive Behaviours and Dependencies, 2013-2020 (SICAD, 2013)*.

Implementation of the new strategy

From 2002 (the first full year of operation) until 2006, the CDTs undertook about 6,000 processes per year. This has increased in more recent years, particularly 2012 and 2013, up to 9,000. There has been a shift in the profile of those referred. In the initial years the CDTs received a small but significant minority of offenders who were heroin dependent, but in recent years there are less dependent people, and more occasional users of cannabis. In 2014, 8,843 people were referred to these commissions. Of these, 5,417 (61%) were assessed not to be dependent on drugs. Cannabis is the drug involved in the majority of cases. The most common response to these people has been a provisional suspension of proceedings; this was applied in 87 per cent of cases between 2001 and 2013 (Qunitas, 2015). If these people do not reappear before the CDT, then no further actions is taken. Over the years, and particularly following the shift in the profile of offenders, some CDTs (including those in Lisbon and Porto) have developed brief, educational interventions for minor cannabis offenders.

For people who are considered to be dependent on drugs, the CDTs usually recommend that they enter some form of treatment. Trends in entries to treatment show that this increased after 2001, although it should be noted that the number of new entrants to treatment (i.e. those who have not previously been treated for drug dependence) has been falling since 1999. The overall numbers of people in treatment has also been falling in more recent years. This reduction is explained by Portuguese practitioners as being caused by a reduction in the number of people who are dependent drug users: particularly those dependent upon heroin.

Key stakeholders that we interviewed in Portugal in 2007 and 2009 suggested that the CDTs provided a number of advantages. These included: earlier intervention for drug users by a specialist panel of experts; the

provision of a broader range of responses; increased emphasis on prevention for occasional users; and increased provision of treatment and harm reduction services for experienced and dependent users. While these advantages were often dependent upon the simultaneous increase in collaboration and expansion of treatment places, decriminalisation and the CDTs in particular was deemed to have played a vital role in enabling a more public health oriented response.

Alongside the process of decriminalisation and diversion of offenders to CDTs, there was expansion of prevention, treatment, harm reduction and social reinsertion services. For example, the number of outpatient treatment units that were included in reports to the European Monitoring Centre on Drugs and Drug Addiction (EMCDDA) increased from 50 in 2000 to 79 in 2009. A comprehensive package of prevention initiatives has been developed, including universal, selective and indicated prevention activities. For example, in the school year 2012/13, the 'Safer Schools Programme' were delivered to 6,406 schools covering 765,778 pupils (Santos & Duarte, 2014).

Harm reduction activities have included the expansion of needle and syringe exchange programmes and opiate substitution treatment, free hepatitis B vaccinations, shelters, and pill testing programs (Moreira, Hughes, Storti, & Zobel, 2011; Moreira et al., 2007). In 2013, 16,401 people received opiate substitution treatment, with the majority receiving methadone and others receiving buprenorphine. Also in that year, 950,652 syringes were distributed (28,694 in primary care health centres, 899,662 by 35 non-governmental organisations and 22,296 by mobile units). There have also been more specialist activities, such as the creation of Kosmicare. This provides pill testing, drug alerts, and psychoactive substance crisis intervention at the Boom festival; the world's biggest trance music festival which takes place in Portugal every two years (Santos & Duarte, 2014).

Trends after 2001

Prevalence of drug use

The most controversial impact of the Portuguese decriminalisation has been in regards to drug use. In 2010, key stakeholders in Portugal were in general agreement that there has been small to moderate increases in overall reported drug use among adults. Since then, the data suggests that overall drug use has declined. However, there may be legitimate differences in interpretation of the data. These relate to whether the reported trends are: real, important and attributable to the reform.

Critics have argued that the decriminalisation led to a perception of acceptability of illicit drug use and *caused* an increase in illicit drug use, particularly cannabis. Supporters, in contrast, have argued that apparent increases are largely spurious, and have – in any case – been followed by apparent reductions. Initial increases may have represented more *reporting* of use due to a reduction in the stigma associated with drug use. They may also have reflected broader international or regional trends in drug use and hence not be specifically attributable to the Portuguese reform.

The absence of general population surveys prior to 2001 makes it difficult to examine the effects of the decriminalisation. Data do exist on trends in three relevant groups: the overall population, adolescents and problematic drug users. We judge trends in problematic use to be particularly important as any apparent increase in this population is potentially much more harmful and costly.

Figure one shows trends in rates of drug use in the past 12 months amongst the general population aged 15-64. This shows that this rate increased slightly between 2001 and 2007, but then decreased to levels below those reported in 2001 by 2012. Most of this fall in the use of any illicit drug is produced by the reduction in use of cannabis, as this has been – in Portugal as in most other countries – the most popular illicit drug. However, reductions were also observed between 2001 and 2012 for cocaine, MDMA and heroin. General population surveys are not a strong indicator of heroin use, as its use is relatively rare and the most vulnerable users may not appear in survey samples. It is nevertheless interesting that heroin use had become so rare by 2012 that the population survey finding rounded to zero per cent for this drug.

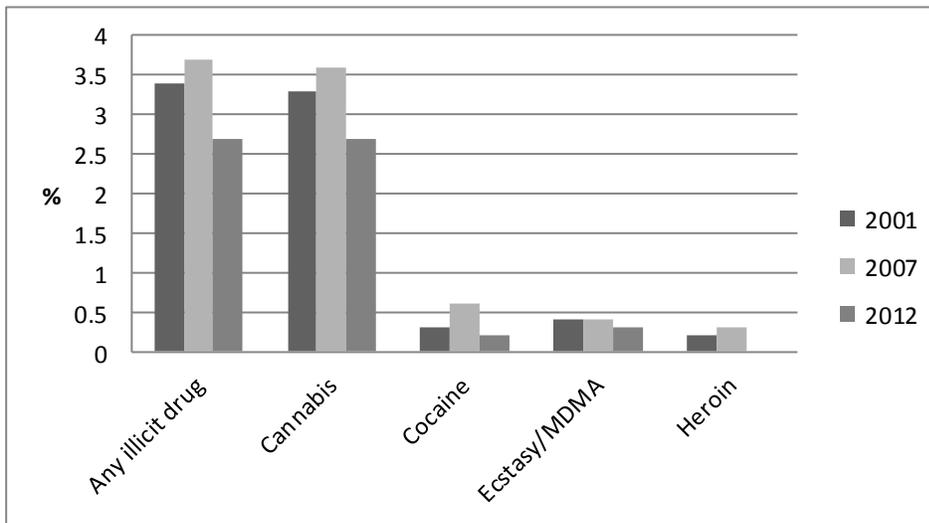


Figure 1: Reported prevalence of past year use of selected drugs amongst the Portuguese general population (aged 15-64), 2001, 2007 and 2012 (Source: SICAD, 2014)

There is also data on adolescents from a number of surveys, including from the European School Survey on Alcohol and Drugs (ESPAD). As shown in figure two, reported use of cannabis in the past year among Portuguese 15 and 16 year olds increased in the lead up to and immediately following the decriminalisation, but then declined to 2007, before rising again to 2011. The small increases in cannabis might be seen as attributable to the reform: perhaps through a reduction in stigma about the use of illicit drugs. However, this trend was very similar to the trends observed in other European countries, including Spain and Italy (Hughes & Stevens, 2010). For example, Poland has seen very similar trends in this indicator, despite having very different, more punitive policies in place (Krajewski, 2013). Shifts amongst the adolescent population may thus be unrelated to the reform.

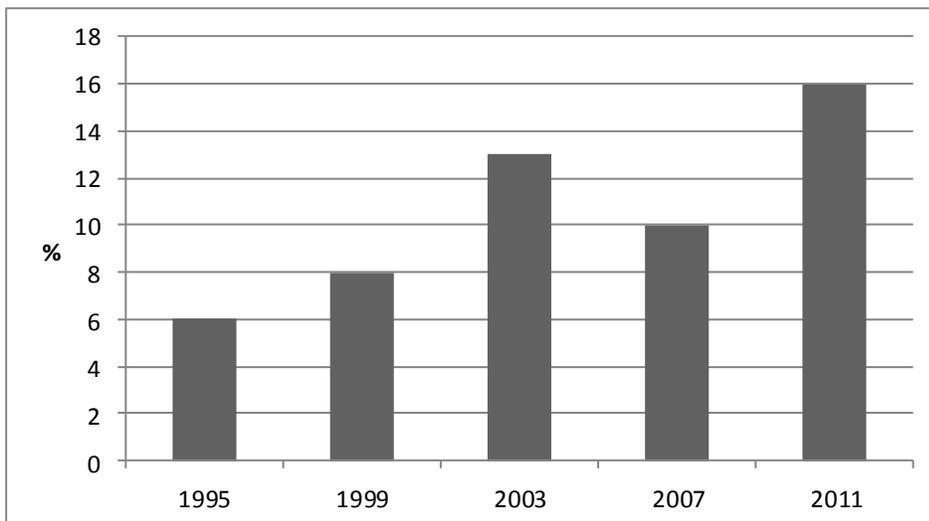


Figure 2: Reported rates of past year use of cannabis among 15-16 year olds (Source: ESPAD Key results Generator <http://www.espad.org/en/Keyresult-Generator/>)

Drug use among the general population, including occasional cannabis use by young people, may not be a great risk to public health. In contrast, problematic drug use (which can be defined as the frequent or dependent use of heroin or cocaine) was the major concern when Portugal introduced its new national drug strategy. After the adoption of the reform the prevalence of problematic drug use (PDU), particularly intravenous drug use, in Portugal is estimated to have declined. Using a multiplier method, based on the number of drug users in treatment, Negreiros and Magalhães (2009) calculated that between 2000 and 2005 the estimated number of problematic drug users in Portugal reduced from 7.6 to 6.8 per 1000 population aged 15-64 years. Since then, the number of problematic drug users seems to have continued to fall. For example, the proportion of new entrants to drug treatment services who reported injecting drugs fell to only three per cent in 2013 (SICAD, 2014).

Thus, while there appears to have been an increase in use of cannabis by adolescents since 2001 (in line with several other European countries), drug use in the adult population and problematic drug use both appear to have fallen since 2001.

Drug-related health harms

The major perceived success of the Portuguese reform has been its contribution to reductions in public health problems. There have been significant reductions in mortality, HIV, HCV and TB. For example, figure three shows the trend in deaths reported to be related to drugs, using the International Classification of Disease definition. It shows a dramatic and sustained reduction in drug-related deaths, despite a relatively small increase between 2005 and 2009. It may be that the number of deaths will start to rise again, as the cohort of people recruited into heroin use in the 1990s ages and becomes more vulnerable. This trend has recently been observed in England for the cohort of people who started heroin use in the 1980s (ONS, 2015). However, the dramatic reductions in drug-related death that was observed after 2001 is seen, in Portugal, as one of the major successes of the national strategy.

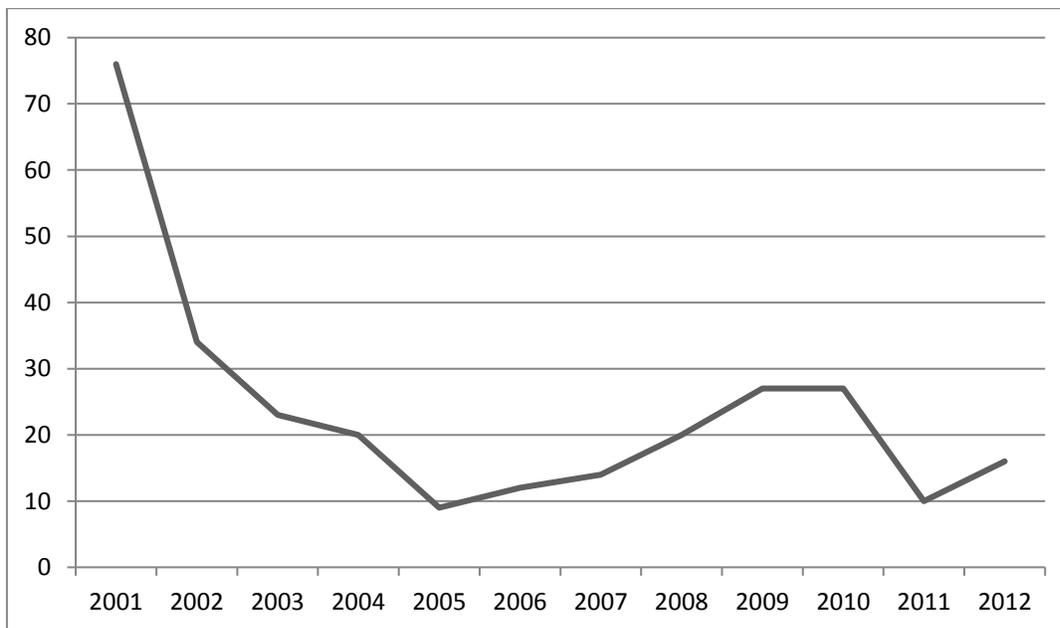


Figure 3: Drug-induced deaths in Portugal, 2001 - 2012 (Source: SICAD / Instituto da Droga e da Toxicodependência)

The reduction in drug-related deaths has been disputed by some commentators, who have used a different, less valid measure of this phenomenon. As we have explained elsewhere (Hughes & Stevens, 2012), using the

correct measure of death gives a positive picture of trends in death. In 2013, Portugal had a rate of drug-related death that was very low by European standards; three deaths per million aged 15 to 64, compared to the European average of 17.2 (EMCDDA, 2015).

Another important indicator has been the number of people becoming infected with HIV through intravenous drug use. This also fell rapidly, from over 1,000 new diagnoses in 2001 to less than 100 in 2013 (Santos & Duarte, 2014); a dramatic improvement in public health.

It should be noted that even these trends might not have been caused by the new strategy alone. Evaluation in Portugal has suggested that the measures taken did prevent thousands of new HIV infections (Santos & Duarte, 2014). But epidemics of drug use and viral infections also have a natural pattern of development, with downward trends usually following a peak in initiation or infection, even in the absence of prevention or treatment. The fact that new entries to treatment have been falling since 1999 (before the introduction of the new strategy) suggests that the epidemic peak of heroin use may have occurred in the late 1990s in Portugal. So it is difficult to disentangle the effects of the strategy's public health interventions from the natural, downward trend in deaths and infections.

Burden on the criminal justice system

Most of our interviewees were of the view that the decriminalisation had reduced the burden on the Portuguese criminal justice system and enabled police to refocus their attention on more serious offences, namely drug trafficking related offences. These views are supported by the data which shows a clear reduction in the burden on the criminal justice systems, including courts and prisons. For example, figure four shows that that the overall number of people arrested for drug offences was much lower post reform: albeit with a similar number of traffickers arrested pre and post reform. We look here specifically at impacts on the population in prison.

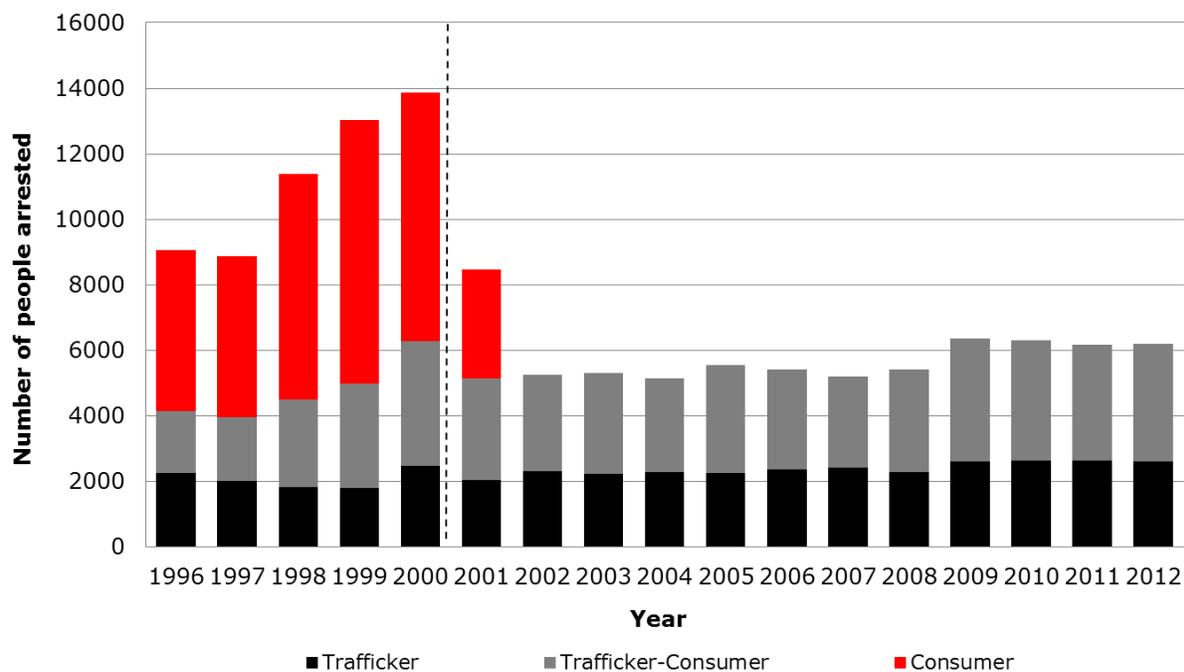


Figure 4: Numbers of people arrested for drug offences in Portugal, 1996 to 2012, by type of offence (Source: SICAD / Instituto da Droga e da Toxicodependência)

An immediate effect of the decriminalization of drug possession was to reduce the numbers of people who were arrested and who were sent to prison for drug law offences. This was very welcome, due to the historic overcrowding of Portuguese prisons. The prison density (prisoners per 100 prison places) of Portuguese prisons fell from 119 in 2001 to 101.5 in 2005 (Council of Europe 2007). As can be seen in figure five, there has been a sustained reduction in the number of people serving sentences for drug offences in Portuguese prisons. A survey of drug use and related problems in prison found that, between 2001 and 2007, the numbers of drug users and general rate of drug use within prisons had fallen significantly (Torres 2009). For example, use of heroin prior to prison had fallen from 44% to 30% and use within prisons from 27% to 13%. Rates of intravenous use before and inside prison had also fallen as had the prevalence of HIV amongst prisoners.

As shown in figure five, the prison population has risen again, since 2009. Importantly, this rise is due to non-drug offences. Since 2009, the Portuguese prison population has increased, due to rising use of prison for offenders sentenced for other crimes than drug offences. In 2000, 43 per cent of the sentenced prisoners in Portugal were convicted of drug offences. In 2013, this proportion was 20 per cent.

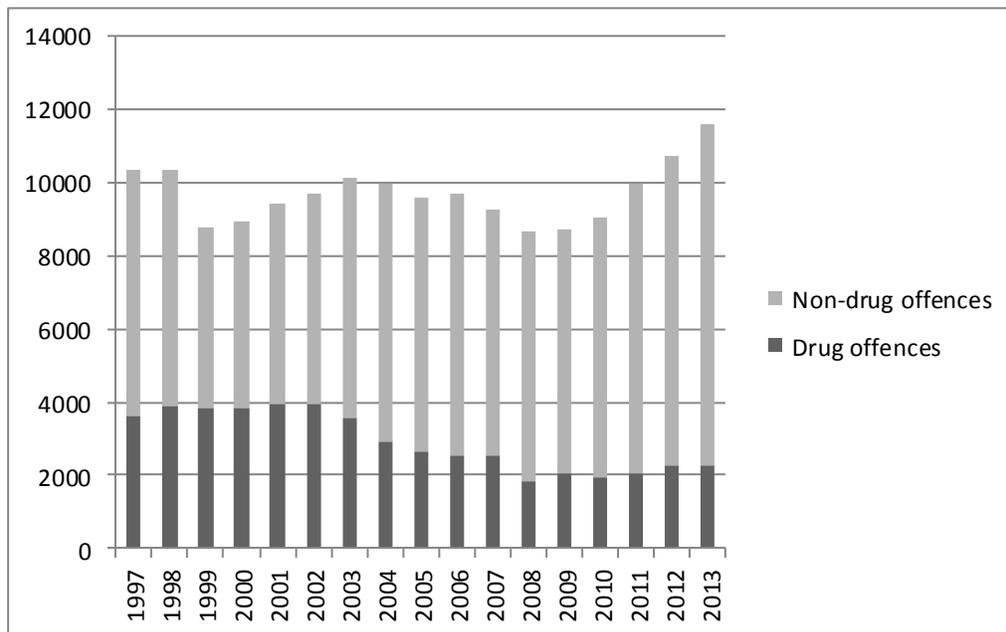


Figure 5: Number of people serving sentences in prison in Portugal for drugs and other offences at 31st December, 1997 – 2013 (Source: Council of Europe Annual Penal Statistics)

A recent American analyst has questioned the scale of the change effected by decriminalization, on the basis that the number of people being sent to prison for simple drug offences (with no trafficking) was already low before the new law of 2001 (Laqueur, 2014). However, figure five suggests that the new strategy – which included decriminalization – led to a reduction in Portuguese courts’ use of prison sentences for all drug offences. Further analysis by Jorge Qunitas provides an explanation for this. After decriminalization, the proportion of offenders dealt with for simple drug offences who were given a prison sentence fell from eight per cent to zero. This proportion for people convicted of drug trafficking offences fell from 70 per cent to 43 per cent (Qunitas, 2015). The reduction in the burden on the criminal justice system has included reductions in the use of imprisonment for all drug offences, not just through reducing the imprisonment of minor, possession offences.

Drug seizures

Some local interviewees told us that one of the aims of the decriminalisation was to enable the police to shift resources from low level drug users to higher levels of the drug market. Key informants put forward a number of views: first, that it contributed to a growth in the market and second that it contributed to increased law enforcement capacity to make a dent in the market. For example it was suggested that while the police were initially concerned that decriminalisation would reduce their ability to disrupt the drug market, they have found other apparently successful ways to target drug traffickers. The best indicators that can be used to examine these hypotheses come from data concerning drug seizures (number and weight of seizures) and retail drug price.

From 1997 to 2008 there was limited change in the number of seizures of illicit drugs in Portugal. The main exception was seizures of heroin, which declined from a peak in 1999 to a steady state in 2004. But there was an overall increase in the quantity of illicit drugs seized, particularly those destined for external markets. As one of the evaluation reports noted between 1995-99 and 2000-04 the amount of drugs seized increased by 499 per cent: 116 per cent for cocaine, 134 per cent for hashish, 219 per cent for heroin and 1,526 per cent for ecstasy (Direcção Central de Investigação do Tráfico de Estupefacientes 2004).

These large increases in amounts seized can be compared to more modest (if any) increases in the prevalence of drug use within Portugal. They suggest that the aim of the strategy to shift the attention of law enforcement away from minor drug offences to major drug trafficking was achieved in practice.

Discussion

As stated above, it is not possible to state definitively that any trends observed since 2001 have been caused by decriminalisation or the broader strategy. Nevertheless, the statistical indicators and key informant interviews that we have reviewed suggest that, since 2001, the following changes have occurred:

- Reductions in reported illicit drug use among the overall population.
- Increase in cannabis use in adolescents, in line with several other European countries.
- Reductions in problematic drug users.
- Reduced burden of drug offenders on the criminal justice system.
- Increased uptake of drug treatment.
- Reduction in drug-related deaths and infectious diseases.
- Increases in the amounts of drugs seized by the authorities.

A recent Portuguese study has estimated the social costs related to drug use (Gonçalves, Lourenço, & Silva, 2015). It found that these costs reduced by 18 per cent in the 11 years following the new strategy, through a combination of reductions in costs related to the legal system and to health. But the financial costs of drug use are not the only considerations here. Our interviewees in Portugal repeatedly insisted that the aim of the strategy was to create social solidarity; to bridge the divide between people suffering from drug problems and the rest of society. By reducing the punishment and imprisonment of drug offenders, by integrating drug users in treatment and re-integration services, by reducing mortality and viral infections, and by reducing the stigmatisation of drug use, the strategy seems to have succeeded in this aim.

It is possible, as previous analyses have shown, to come to different conclusions about the strategy; that it is either a 'resounding success' (Greenwald, 2009) or a 'disastrous failure' (Pinto Coelho, 2010) (see Hughes & Stevens, 2012 for a critique of these studies). We prefer to take a more nuanced view. It is impossible to prove that any of the trends we have presented were directly caused by the decriminalisation of drug possession. Decriminalisation alone seems to have no consistent effect on rates of illicit drug use (C. Hughes & Ritter, 2008; Rosmarin & Eastwood, 2012; Stevens, 2011). However, the evidence we have presented suggests that there have been improvements in social solidarity and public health following Portugal's combination of decriminalisation with expansion in prevention, treatment, harm reduction and reinsertion. This suggests that it may indeed offer a model for other nations that wish to provide less punitive, more integrated and effective responses to drug use.

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