



CONSELHO NACIONAL DE ÉTICA PARA AS CIÊNCIAS DA VIDA

Report-Opinion 17/CNECV/96

On

Liberalisation of "Drugs"¹ and De-penalisation of their Consumption

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¹ Translator's note: in the titles and throughout the main text the word "droga" always appears within quotation marks. That is so for two reasons: first, because, in Portuguese, this is a slang word, or rather a slang idiom – used in the singular both individually and collectively, it denotes in convenient, albeit non-specific, manner every type of illegal drug. Secondly, it carries a strong negative connotation, which the author means to controvert. Dealers and addicts themselves often derive ironic effect from that connotation. All of this is lost in English, so I dropped the quotation marks in the main text and allowed the word to vary in number.



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PRELIMINARY CONSIDERATIONS

Over the past few decades drugs have become widespread in contemporary societies, bringing in their wake enormous social and individual damage. The drugs trade has become one of the most profitable areas of economic activity, mobilising large-scale international interests at the level of both production and commercialisation.

The international spreading of the phenomenon caused world-wide concern and a surge of efforts directed at restraining both the traffic and the consumption of drugs; governments particularly have engaged in that fight.

The United Nations subscribed a convention against the illicit traffic of narcotic and psychotropic substances in 1988, and the European Council did the same in November 1991, also aiming at drug traffic.

In spite of this multiplicity of efforts, some of which have not always been sincere or consequent, drugs did not vanish from societies: instead, they remain as one of the greatest social scourges of our time.

In Portugal, as elsewhere in the World, the phenomenon has shown a most worrying development since the early 70's, with occasional dramatic manifestations. Energies and resources were therefore mobilised to fight it, both at the level of illegal, clandestine traffic and at the level of consumption, which is also prohibited and punished by law.

Lately, some voices have come out in Portuguese society, similarly to what has been happening in other countries, throwing doubt upon the efficacy and the merit of the strategies so far adopted to curb the phenomenon. They suggest as an alternative that a change of legal attitudes and measures might diminish the perverse effects of the pervasiveness of drugs. Some of those voices go so far as to recommend the liberalisation of the traffic and consumption of drugs as the way to improve control of the manifestations of the phenomenon, so as to best attack its causes and damaging effects.

The National Council of Ethics for the Life Sciences deemed it to be its duty to take the initiative of issuing an opinion on that attitude and ponder the problem, so as to analyse its ethical implications. To that end, as in previous circumstances, it sought consultation with experts.

1. THE PROBLEM OF "DRUGS" IN PORTUGUESE SOCIETY

a) The great volume of traffic and consumption



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In spite of the efforts that both the State and society at large have exerted to combat the spreading of drugs, the phenomenon continues to be a serious social problem in Portugal, as elsewhere. Over the past few decades, its development has accelerated, affecting youth most particularly. Such continued growth poses, therefore, a serious challenge to public health and education.

Both traffic and consumption continue to show high indices, although there is no rigorous knowledge of the precise dimensions of the phenomenon. The illegal, clandestine nature of both trade and consumption impedes adequate visibility for the quantitative evaluation of the phenomenon. Judging from the analysis of its effects, however, it would appear that it has not ceased to grow.

The repression brought against the diffusion of drugs has achieved positive results, though well below those that would be desirable. Confiscations carried out by the different police forces are but the small, visible tip of an enormous iceberg.

Portugal, although it is not a producing country, is nevertheless on the trade route into central Europe: it is a point of entry and a transit zone for traffickers heading for other European states. The small size of the country, its geographic situation, the extension of its shoreline, and its scarcity of resources make it particularly vulnerable.

On the other hand, being a country where drug trading goes on leads to a generalised interpenetration of both sides of the phenomenon. The high cost of consumption favours the rise of small-scale dealers who are consumers, too.

b) The social consequences of drug traffic and drug addiction

The clandestine traffic of drugs favours a criminal monopoly of the distribution of narcotics, the development of an underground economy, of dirty business, of rapid accumulation of illegal wealth, of the “laundering” of illicit capitals, of active and passive corruption, in short of large-scale crime. Illegality blooms with the trafficking in narcotics, undermining the juridical foundations of societies and social relations. Economic processes, commercial circuits, financial and fiscal systems are all subverted and perverted by the large volume transactions of the clandestine and illegal drug trade.

On its side, drug addiction has manifestly harmful effects not only on health but also on society, such as the spreading of epidemics such as AIDS, the degradation of the population’s health, an increasing number of deaths by



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overdosing, and the growth of crime - both direct criminality, mostly small-scale theft and robbery for the acquisition of funds with which to buy drugs for consumption, and indirect or subsequent criminality, involving the creation of situations of social marginality (unemployment, disintegration, exclusion, prostitution).

Criminality, which, presently, is becoming more and more a youth-related phenomenon, owes much of its growth to the spreading of drug addiction.

c) Drug addiction: an eminently youth-related phenomenon

In effect, the majority of persons incriminated by dealing in or consumption of drugs are youths, and youths make up the majority of consumers.

That fact has to do, before all else, with the phenomenon of the “juvenilisation” of modern societies, that is to say: with, on the one hand, the increased period of transition between infancy and adulthood, with the prolongation of youth, as it were, by virtue of delaying the ingress into active life and its subsequent emancipation from the family of origin to constitute a new one; and, on the other hand, with the growing importance of youth in modern societies, which become thereby post-figurative culture societies – behaviour is no longer prefigured by the elders, being instead dictated by the young, who set down standards of relations and lead social change.

This “juvenilised” society is also a consumption-oriented society, where the processes of social identification have changed, being based less on actual belonging than on reference to a social group. That means that – with the diminished educational influence of family and school, and sometimes their diminished importance as instances of affection – young people form their self-identity and integrate themselves socially above all through mechanisms of consumption, being stimulated by excessive exposition to the mass media to unrestrained hedonism and to a disordinate increase of their expectations, which often leads them into states of anomie.

This “juvenilisation” and tendency to anomie of consumer societies render young people particularly vulnerable to the offer and to the consumption of drugs, especially when a deficient family integration or a precocious or deficient insertion in the work market has made them more fragile.

d) The juridical and normative framework

In Portugal, as in the great majority of countries affected by “drugs”, both their traffic and consumption are prohibited by law.



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Well before the phenomenon exploded, in the early 70's, Law no.1687, enacted on Dec.9, 1927, restricted the importation for consumption of opium, cocaine and products derived thereof. But the criminalisation of the personal use of narcotics only took place with the publication of Decree-Law no.420 / 70, on the 3rd of September of that year, which also imposed heavier penalties on illicit traffic.

More recently, Decree-Law no. 430 / 83 introduced regulations for the prevention and treatment of drug addiction and for the control of drug traffic. It was innovative insofar as it categorised that traffic as violent crime and insofar as it regards the drug addict as a sick person requiring medical assistance; it maintained the criminalisation and penalisation of consumption. A new law (Law no.15 / 93) introduced, in the case of consumers under the age of 21, suspension of the penalty and legal proceedings so as to allow for treatment.

Basing itself on the spirit of that law, jurisprudence has tended to penalise consumption less and less, so it could be said that tacit de-penalisation is already in force.

2. A NEW DEBATE ON THE PROBLEM

a) Growing doubts about the efficacy of the fight against drugs

Faced with the continued gravity of the problem of traffic and consumption of drugs in Portugal, some sectors began to experience in recent years some frustration with the "prohibition" strategy: with the fight against drug addiction based exclusively on penal legislation and compulsory abstinence. Even the thesis of the "lost war" against the narcotics traffic and drug addiction has been proffered.

That feeling rests mostly on belief in the insufficiency of police action to repress trafficking and consumption, a belief that has contributed to the outbreak of some popular reactions against dealers and consumers, in the guise of direct "popular justice", recently witnessed in several regions of the country. It is confirmed by the verifiable incapacity of the police to detect and stop the production and distribution circuits, which are too vast to be confronted without the collaboration of an international concerted effort.

Contributing towards such pessimism and disbelief, there has been the difficulty of achieving an efficacious therapy. The scarcity of resources and the long duration of treatments have been obstacles to the desired success, which has led many to the opinion that with the money spent on a very dubious repression, one could face much more effectively the demands of treatment.



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b) Experiments in liberalisation and de-criminalisation carried out abroad

In some foreign countries there have been innovative, though generally unsuccessful, experiments in liberalisation of the trade and consumption of drugs. Some have tried de-criminalisation of consumption and met with greater success. This has encouraged some voices to defend an identical solution in our own country.

The defence of liberalisation does not aim at achieving a decrease in consumption, but only at eliminating or reducing the fabulous profit margins that do so much to encourage the growth of the business. Actually, the experiments carried out in Switzerland and, more recently, in Holland served to prove that liberalisation of light drugs not only increased their consumption but also induced the increased consumption of the heavier drugs, whose traffic can hardly be separated from that of the first type. This has led already to a drastic change of attitude by the Swiss authorities.

On the other hand, the defence of the de-penalisation of consumption – implemented in Spain for the lighter drugs (prison sentences were replaced by administrative sanctions in 1983), as well as in Italy, where the de-penalisation of light drugs was the object of a referendum and later approved; recently also in Colombia, where consumers saw prison sentences equally replaced by fines and compulsory public services – the defence of de-penalisation, as we were saying, finds a larger number of advocates among us.

A few cities in the United Kingdom have put into effect the experimental distribution, of heroin to addicts, subject to a program and control, and to presentation of a medical prescription. This experiment has attracted attention and some opinions now endorse it.

All these innovative experiments, though unsuccessful, not only in terms of the limited objectives they sought but also in terms of the undesired side effects of spreading the drugs phenomenon, have not failed even so to mobilise the opinion of some health professionals and some other citizens, who have voiced openly their defence of abolitionism and of liberalisation.

c) The defence of abolitionism and of liberalisation

The advocates of abolitionism and of liberalisation argue, to begin with, that the black market propitiates an entire clandestine economy, in which great narcotics trade cartels exploit a large-scale business at the cost of human



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lives, an under-world of illegality, crime and corruption, and that simple legalisation would put a stop to the whole complex of evils that springs from the clandestine situation.

Beyond that, they argue, the illegality of the trade in light drugs forces prices up, serving as pretext for an expensive product, which provides large profit margins to dealers and triggers off a chain of criminality on the part of those who seek to buy. By lowering those profit margins through legalisation, the grosses of the trade would diminish, and this would have indirect effects on actual consumption.

Consumption would also benefit from such a legalisation, the argument continues, for the lack of transparency favours the criminal adulteration of the quality of drugs with mixtures that are the greatest cause of a rapid and large loss of human lives. Legalisation would make it possible to control with greater ease the genuineness and quality of the traded stuff. A clandestine situation, on the contrary, impedes the easy identification of the phenomenon and the resolution of the problem, in its various manifestations.

Actually, so argue abolitionists, besides inflating prices, illegality stimulates the attractiveness of the "forbidden fruit"; liberalisation, on the contrary, would make the consumption of drugs banal, not only price-wise but also symbolically – their consumption is ancient in human history, and it should be neither exorcised nor mystified.

Not all abolitionists understand liberalisation in the same way: many restrict it to light drugs, which they consider harmless. Total prohibition of use without differentiation of "light" and "heavy" drugs, they argue, ends up favouring the abuse of the most harmful type. In any case, they point out the incongruity between the legal admissibility of the consumption of tobacco and alcohol and the prohibition of the other drugs.

The advocates of liberalisation also defend that, with the abolition of prohibitionist structures, human and financing means would be freed for combating drugs in more efficient ways.

Lastly, liberalisation advocates uphold the principle that people must have the right to take in whatever they please as long as they do not harm others. For them the "drugs" issue is an issue of individual freedom and responsibility, and intervention by the State is uncalled for.

There are others who defend the liberalisation of socially integrated consumption, in other words, consumption moderated by social sanctions, which would presuppose an education in socially regulated consumption, as distinct from abuse. The latter ought to be socially (but not juridically) penalised. They trust in individual freedom and responsibility individual, and



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in education oriented towards self-contention, to control drug abuse, and even claim that there are individual advantages to a consumption thus socially self-limited.

d) The prohibitionist critique

To counter these arguments, those who advocate maintenance of the legal prohibition of both traffic and consumption, be it of light drugs or heavy drugs, reply that to abolish prohibition would diminish neither the traffic nor consumption, as shown by the experiments already carried out in some European countries – which, moreover, withdrew what they had allowed. On the contrary, they argue, experiments in liberalisation seem to have increased traffic, thus failing to diminish the profits and the volume of trade and consumption, facilitating instead drug initiation and propagation. Furthermore, even when the experiments were applicable only to “light” drugs they ended up favouring the development of “heavy” drugs – justifying the claims of “escalation theory” proponents, who maintain that the use of the first type leads necessarily to abuse of the latter. Besides, they argue, the very distinction between “light” and “heavy” drugs is highly questionable from a scientific point of view, and the same can be said of their differentiation from a commercial point of view: most drug addicts do not start directly on “heavy” drugs but begin their initiation on “light” drugs.

Legalisation and liberalisation of traffic and consumption would not solve, in the end, any of the serious problems that go hand in hand with drugs; instead, they would aggravate them. Also, the comparison with tobacco and alcohol is thought to be illegitimate, for their effects on individual and public are dissimilar to those of other, illicit, drugs, which are much more generative of the addict personality.²

Nor would it be legitimate to maintain that the prohibitionist strategy has failed, since the model is far from being exhausted: it has not been taken seriously nor has it been sufficiently or coherently applied. Besides which, the inefficiency of the fight against crime is no reason for admitting crime as an acceptable norm; just as what is spent in that fight is no reason to try the moral or juridical goodness of what is at stake.

Not to speak of the tremendous problems raised by the liberalisation of drug traffic and consumption, such as determining who was to control its quality and who was to sell what to whom.

e) Proposals for de-criminalisation

² I have rendered by the expression *generative of the addict personality* the single adjective “toxicomanogénicas”.



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Differing from the defence of total liberalisation there is the defence of the simple de-criminalisation of cases of possession of small doses, and of consumption for certain purposes, for certain age-groups, or of certain drugs.

Rather than being a criminal, the argument goes, the drug addict is a person in ill-health, and ought to be viewed as such. The criminalisation of consumption stigmatises consumers and poses obstacles to treatment. And prisons, far from permitting treatment or even recuperation, are actually points of intensive clandestine traffic and consumption.

Furthermore, criminalisation produces secondary effects which aggravate the primary effects of drugs, among which are the intensification of traffic, the growth of traffic-related crime, and accrued risks to public and private health.

Likewise, large-scale trading and possession of large stocks should not be placed on a par with the possession and transaction of small doses.

For all these reasons, some recommend that traffic should continue to be prohibited and repressed with prison sentences, typically imposed on criminal behaviour; but not consumption. That for consumption should be reserved punishments of a non-criminal type, such as administrative penalties or fines. Still others maintain that the penalties for possession and consumption should be progressive, varying with the quality and quantity of the drugs in consideration.

There is also no lack of proponents of differentiating by age groups the measures of drug repression that must be implemented, making them harsher for lower age groups and more permissive for elderly people, with arguments based not only on responsibility and capacity for self-protection but also on unequal social consequences.

3. DRUG TRAFFIC AND CONSUMPTION AS AN ETHICAL PROBLEM

a) The ethical appraisal of consumption, as concerns the individual

In ethical terms, the problem of drug consumption is primarily problem concerning the individual, arising out of the "ethical need for personal and social self-realisation (manifest in the conscience of the right and responsibility of each person in the construction of its own life, and that of others)," and out of the "freedom necessary to the full exercise thereof" – a need and freedom already emphasised by this Council in a previous opinion. Furthermore, as it was then added, such freedom "does not mean arbitrary



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choice, permissiveness or moral relativism. It does mean the possibility to fulfil all the potentials of the human person."³

In that sense, no one is free to stop being free. Every person is under an ethical imperative to act in conformity with his or her dignity as a human person. To that end, a person needs to be free, because the loss of freedom would entail the loss of that person's dignity.

Now, the compulsive consumption of drugs, because of the effects it has on the central nervous system, because of the physical and psychic dependence it induces, and also the social and sanitary damages that it causes, and especially because of the loss in time of one's own freedom and the injury to the freedom of others, is ethically illicit. In effect, the de-humanising sequels, such as the shirking of responsibilities and the loss of freedom and self-control, originate acts that harm not only the addict's own rights but also those of third parties, and the risks of loss of life have repercussions for third parties, too, often beginning with the descendants.

Furthermore, because the act of consumption is not merely individual, but also social, not only in its performance but also in its implications (for no one takes drugs without being taught, nor without consequences for third parties), the claim that a person may consume whatever he or she wishes as long as that does not harm third parties does not hold true for drug consumption.

b) The ethical / social appraisal of trade and consumption

The problem of drug trade and consumption is also, in ethical terms, a social problem. The respect due to one's own dignity is extensive to the dignity of others and to their freedom and self-realisation.

The ethical imperative that arises out of the respect for the other person, which places obligations upon one's own acts, impedes *a priori* the instrumentalisation of others, of any one person, who is an end in him/herself. Self-realisation must not be achieved with injury to someone else's.

Now, drug consumption is not an isolated act, merely individual. First of all, it cannot be dissociated from the traffic. If freedom of demand is consented, then, implicitly, freedom of supply is also consented. Furthermore, the act of consumption is an eminently social act, not only as regards acquisition but also as regards its performance and its implications.

³ *Relatório-Parecer sobre Reprodução Medicamentosa Assistida (3/CNECV/93)*, in *CNECV - Documentação*. Vol. I (1991-1993). Lisbon, Imprensa Nacional-CM, 1993, pp.88 and seg.
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Whether we face it in terms of the economic costs of cure recuperation, in terms of the waste of human capital, in terms of the degradation of the human resources of a society, or in terms of the risks of psychological and social contagion, individual consumption is ethically illicit, too, from a social point of view. If society is held responsible for the cure and recuperation of the patients, then it is equally the responsibility of society and its moral obligation to avoid the degradation of the health of its members, in preventive or repressive manner.

If drug consumption is socially unacceptable, from an ethical point of view, then *a fortiori* so is its trade, because of the harmfulness of the trafficked goods, and because of its speculation at the cost of human lives; and that is all the more serious for being directed at persons with less capacity to defend themselves against such manipulation, such as young people still in the process of formation of their personality and searching for human and social autonomy.

Furthermore, as the consumption of light drugs habitually opens the way to consumption of heavier drugs, and to an introduction into trade circuits that are common to both types, it does not seem possible, ethically-speaking, to defend the liberalisation of only one type while excluding the other.

c) The ethical appraisal of trade and consumption as concerns the public

From the point of view of the relation of the individual with the State, the problem of drug trade and consumption falls into the domain of justice. Now, it is not ethically just that the State may provide citizens with the opportunity for killing themselves or for degrading their physical and psychic health, especially because of the obligation it has to apply itself to their rehabilitation and reinsertion; the drug problem is not a problem of mere individual freedom; the State must discourage, and to that end may criminalise and punish, all behaviour that is suicidal or freedom-killing and has social repercussions.

The State, because of the obligation it has to safeguard public health, may not permit individual behaviour that contaminates public health and that, by chain reaction, disturbs public order.

The State has educational responsibilities to the young, by virtue of which it may not permit their exposure to risks of physical and psychic degradation.

The State may legitimately regulate or prohibit the traffic and consumption of substances that are dangerous to the life of its citizens.



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It would be ethically incomprehensible to see the State, upon which is incumbent the protection of the citizens' lives, distributing, selling, and controlling the quality of toxic products.

The Reporter:
Prof. Doutor Manuel António **Braga da Cruz**



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4. THE COUNCIL'S POSITION

Considering that drug addiction affects the freedom and dignity of the human person, the addict as much as third parties;

Considering the enormous moral and social damages, direct and indirect, and most particularly the cost in human lives, the increase in criminality, in social marginalisation exclusion, caused by drug addiction;

Considering that the phenomenon of drug addiction afflicts and victimises above all and especially the young, who, rendered more fragile by their process of formation, by their lesser experience and capacity for defence, are more exposed to the risks of degradation of physical and psychic health, individual as well as collective;

Considering that drug addiction, due to its social and public dimension, is not only a problem of individual freedom and responsibility but also, in effect, a social problem with wide-reaching range and consequences, so that the State must not ignore it, because it causes damage to third parties and society itself;

Considering that it the responsibility for the cure, recuperation and reinsertion of the drug addict is also incumbent upon society and the State, just as it falls upon them to assume the high economic and social costs involved, and that both have the corresponding right to defend the citizens' lives and the right to avoid those same costs, by means of adequate actions of prevention and prohibition and repression;

Considering that the known experiments in the liberalisation of drugs not only failed to diminish but also triggered off an actual increase in both the consumption and the traffic of drugs, thus failing to impede as well the growth of illicit profits and the growth of the volume of dirty trade;

Considering that it is an untenable argument to distinguish between light drugs and heavy drugs, and that, therefore, their differentiated commercialisation is impossible;

Considering that, in this matter, as always, it is imperative to seek the best and never exhausted methods that respect the human person and its reinsertion into society;

Considering the extremely serious ethical problems raised by assigning to the State the incumbence of selling, distributing and controlling the genuine quality of toxic products;



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Considering that the drug addict is a person in ill-health having the right to treatment, and that criminalisation stigmatises and places obstacles to treatment and reinsertion;

It is the opinion of the National Council of Ethics for the Life Sciences that legal measures for the liberalisation of drugs, be it total or partial, may lead to ethically grievous consequences, both from the point of view of the person, considered singularly, and from the point of view of society and the State.

However, it is the opinion of the Council that legal measures tending to decriminalise consumption are admissible from an ethical point of view, because they aim at the treatment and recuperation of consumers who are ill, so long as such measures guarantee the acceptance and the seeking of treatment and recuperation by the drug addicts themselves.

Lisbon, February 14th, 1996

The Reporter:

Prof. Doutor Manuel António **Braga da Cruz**

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