The Portuguese Approach and the International Drug Control Conventions

Werner Sipp, President of INCB

Public Health and drugs policy - the Portuguese Case
Vienna, 9 December 2015
The Portuguese Approach

Law 30/2000:

• “decriminalises” the acquisition and possession of drugs by persons who consume drugs
• establishes a mechanism aiming primarily at the dissuasion of drug use.
Misinterpretations:

• "Decriminalisation approach" in Portugal is innovative, but not totally unique: trend in many countries

• Unique = specific institution outside the criminal justice system: Commissions for the Dissuasion of Drug Abuse (CDT)
The Portuguese Approach

Misinterpretations:

• Neither "form of legalisation" nor "window into legalisation".

• Possession of drugs for non-medical use - including for personal consumption - continue to be prohibited, not legalised
The Position of INCB I

Mission to Portugal in 2004:

• “Acquisition, possession and abuse of drugs has remained prohibited.”

• “Practice of exempting small quantities of drugs from criminal prosecution is consistent with the international drug control treaties.”

INCB Annual Report 2004, paragraph 538

WDR 2009, page 168
Mission to Portugal in 2012:

• “CDT are an important element of the demand reduction mechanism”

• “Appreciates that primary prevention of drug abuse is strengthened, with special emphasis on cannabis”

• “Government is fully committed to the objectives of the treaties”

INCB Annual Report 2012, paragraph 113
Basic obligation according to the conventions:

• To limit the possession of drugs exclusively to medical and scientific purposes

• Possession of drugs shall not be permitted except under legal authority

Art. 4 para 1(c) 61-Convention; art. 5 para 2 71-Convention
Art. 33 61-Convention; art. 5 para 3 71-Convention
Legal Perspective II

Response to unlawful behaviour (= non-medical use)

• Possession of drugs for non-medical use shall be a "punishable offence".

• Serious offences shall be liable to adequate punishment

Art. 36 para 1 (a) 61 - Convention
Limitations to the obligation to establish as "punishable offence"

- Constitutional limitations of the State Party
- Possession for personal consumption = criminal offence, but subject to constitutional limitations and the basic concepts of the legal system of the State
- Offences of minor nature shall not necessarily be liable to punishment
Legal Perspective III

Alternatives to conviction or punishment:

Abusers having committed such offences shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration.

Art. 36 para 1 (b) 61-Convention;
art. 20 para 1 and art. 22 para 1 (b) 71-Convention;
art. 2 para 4 (c and d) 88-Convention
Acquisition and possession of drugs is still deemed an offence

Possession of small quantities for personal consumption:

sanctioned primarily by administrative measures rather than by criminal punishment
Legal Framework in Portugal

Commissions for the Dissuasion of Drug Abuse (CDT):

Evaluation of possible treatment, education and rehabilitation measures

Imposition of penal sanctions continues to be possible but is not the primary objective
Legal Framework in Portugal

Procedure for the Dissuasion of Drug Abuse

can be considered as an alternative measure of education, treatment, after-care, rehabilitation and social reintegration

that is in full compliance with the three drug control conventions
Legal Framework in Portugal

Portuguese approach is a model of best practices:

fully committed to the principles of the drug control conventions

putting health and welfare in the centre

applying a balanced, comprehensive and integrated approach

based on the principle of proportionality and the respect for human rights,
The Portuguese Approach and the International Drug Control Conventions.

Thank you for your attention

Werner Sipp