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Decriminalisation in Europe?

Recent developments in legal approaches to drug use

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Concept and Definition of Decriminalisation

Decriminalisation. Decriminalisation takes away the status of criminal law from those acts to which it is applied. This means that certain acts no longer constitute criminal offences. With regard to drugs, it is usually used to refer to demand; acts of acquisition, possession and consumption. Following decriminalisation, it still is illegal to use, possess, acquire or in certain cases import drugs, but those acts are no longer criminal offences. However, administrative sanctions can still be applied; these can be a fine, suspension of the driving or firearms licence, or just a warning.

In contrast, *legalisation* is the process of bringing within the control of the law a specified activity that was previously illegal and prohibited or strictly regulated. Related to drugs, the term is most commonly applied to acts of supply; production, manufacture or sale for non-medical use. Legalisation would mean that such activities, and use and possession, would be regulated by states' norms, in the same way that it is legal to use alcohol and tobacco. There can still exist some administrative controls and regulations, which might even be supported by criminal sanctions (e.g. when juveniles or road traffic are concerned). From a legal point of view, any form of legalisation would be contrary to the current UN conventions.

Is mere drug consumption a crime in itself?

"Drug consumption per se" is a juridical concept referring to the mere use of illicit substances, separated from other illicit acts such as possession, cultivation, transportation or supply. It means that simply the act of smoking, injecting, inhaling, or swallowing a drug is a crime, distinct from the crime of possessing it. Of course, in practice it would be impossible to use a substance without possessing it. Nevertheless some countries' laws make this distinction, prohibiting drug use as a specific offence.

Table 1. Where drug consumption per se is prohibited and the corresponding punishment in law

	Offence	Punishment foreseen	Law
France	Simple consumption of all drugs	Imprisonment up to 1 year and a fine up to €3 000	Public Health Code Art. L. 3421-1
Finland	Simple consumption of all drugs	Fine or Imprisonment up to 2 years	Penal Code, Chapter 50: Section 1
Greece	Simple consumption of all drugs	Non addicted: from 10 days to 5 years and/or a fine. Addicted: invited to follow a therapeutic programme	Law 1987 (art.12)
Sweden	Simple consumption of all drugs	Minor offence: Fine or imprisonment for a maximum of six months.	Narcotics Act (1968:64)
Luxembourg	Simple consumption of cannabis and other drugs	Cannabis; fine only. Other drugs; between 8 days to 6 months imprisonment and/or a fine	Law of 27 April 2001
Belgium	Simple consumption in group of all drugs	Imprisonment from 3 to 5 years	Law 24 February 1921
UK	Smoking or using prepared opium	1 year imprisonment and/or fine (summary), 14 years and/or fine (indictment)	Misuse of Drugs Act 1971 art.9
Ireland	Smoking opium	1 year imprisonment and/or fine (summary), 14 years and/or fine (indictment)	Misuse of Drugs Act 1977 art.16
Spain	Simple consumption in public places of all drugs	Administrative sanctions only	Constitutional Law No. 1/1992, of 21 February, on the Protection of Public Safety, Chapter IV
Portugal	Simple consumption of all drugs	Administrative sanctions only	Law 30/2000 of 29 November 2000, Art 2

Decriminalisation of drugs in Europe

1. By law

Italy 1990 and Spain 1992. In these two countries for the last decade, possession for personal use of all drugs has not been subject to criminal prosecution. Nevertheless, when a person is caught in possession of a modest quantity of drugs and police have no further suspicions or evidence that more serious offences are involved, such as sale or traffic, the drug will be seized. The case will then be transmitted to the administrative authorities, so the person will receive a notification to attend a meeting with them. If found guilty of possession of drugs for personal use, they will be charged with a fine (in Spain) or with the suspension for 2-4 months of the driving licence (in Italy) - in both cases, especially if presenting signs of addiction, the person is invited to follow counselling or treatment.

In **Portugal** the law n.º 30/2000, of 29 November 2000, introduced the decriminalisation of possession and use of all drugs, effective from 1 July 2001. The previous system considered use and possession as a criminal offence, sanctioned by penal measures. Now, if an individual is caught in possession of a modest quantity of any drugs (below ten daily doses), and police have no further suspicions or evidence that more serious offences such as sale or traffic are involved, the drug will be seized and the case transmitted to a local Commission composed of 3 members (a lawyer, and two from a range of doctors, social assistants, and psychologists), supported by a technical team. The Commission meets the person in order to evaluate his/her situation and with the aim of eventually diverting the person from prosecution or sending them to treatment; sanctioning with fines, even if possible, is not the main objective in this phase. The procedures will be suspended following the first appearance in front of the Commission, provided the use is occasional or regular, but not habitual (addicted).

In **Luxembourg** the law passed in April 2001 decriminalises cannabis consumption, as well as its transportation, possession and acquisition for personal use. The law classifies substances into two categories; A (other substances under control) and B (hemp (cannabis)). The use of cannabis continues to be regarded as an illicit activity but the punishment will not include prison sentences. Thus, a cannabis user may be sentenced to pay a fine (€250 – €2 500). However, prison sentences from 8 days to 6 months can still be applied, if cannabis use happens in front of minors, in schools or at the workplace. Penalties increase up to 2 years of imprisonment in case of adults using cannabis with minors, and up to 5 years in case of medical doctors or pharmacists using cannabis in specific settings (e.g. prison, school, social services). Additionally, use or possession, acquisition, and transport for personal use of illicit substance(s) other than cannabis now incurs between 8 days to 6 months imprisonment and/or a fine of €250 – €2 500; previously the penalty was imprisonment between 3 months and 3 years and/or a similar fine. Nevertheless, between 1 and 5 years imprisonment and/or a fine of €500 – €1,250,000 are foreseen in case of illicit cultivation, production, fabrication, extract, import, export, sale and offer of type A and B drugs.

In January 2001, the Government of **Belgium** released a Political Note in which it expressed the intention to modify the main drug law in order to make non-problematic use of cannabis non-punishable. The Note stated the intention that “The criminal judge will no longer interfere in the lives of people who use cannabis on a personal basis and who do not create harm or do not show dependence.” A royal decree will be issued instructing prosecutors not to pursue people for possession of cannabis. The production, supply, sale and ownership of larger quantities will remain

actively prosecuted, as will the use of cannabis which leads to ‘unsociable behaviour’. Use and possession will still be prosecuted in cases involving minors, public nuisance, use in school premises, or in any place where the public order will be threatened. As of November 2001 the Decree has not been issued.

In **Ireland** possession of cannabis and cannabis resin is considered in a different way to other drugs. Possession of either of these two substances for personal use is punishable by a fine on first or second conviction. From a third offence onwards, possession for personal use of cannabis or cannabis resin incurs a fine and/or a term of imprisonment up to 1 year if convicted in a lower court (on summary), and up to 3 years if the case is serious enough to be sent for trial to a higher court (on indictment). Other substances can incur a prison sentence on first conviction.

In **Austria** the Federal Law n.112, in force from January 1998, facilitates the waiving of proceedings for minor cannabis possession and purchase offences. The option is given to waive proceedings if there is no need for health measures and no similar offence in the last five years. If the substance is not cannabis, the public prosecutor’s office should provisionally defer the charge for a conditional probationary period of two years.

In summary, in **Spain, Italy, Portugal, and Luxembourg**, there has been decriminalisation ‘by law’, meaning that the law does not foresee possession for personal consumption of some or of any drugs as criminal offences. The same framework will probably be applied in the near future in **Belgium**, after the announced law is issued.

Table 2 : Decriminalisation - which drugs, how and where.

Country	Law	Drugs involved	Acts decriminalised	Wording of the law
Spain	Law No. 1/1992, of 21 February art 25	All drugs classified by the UN Conventions	Use of all drugs in public places	“ is the consumption in public places of toxic drugs or narcotic substances or their unlawful possession; these offences may be penalized with the suspension of the offender's licence to drive a motor vehicle for a period of up to three months, or with the withdrawal of his firearms permit or licence”.
Italy	Law 309/90 of 26 June 1990 art.75	All drugs classified in the national lists	Possession, import and acquisition for personal use	“ Anyone who unlawfully imports, acquires or in any way possesses narcotic shall be liable to the administrative sanction of loss of driving licence, of arms licence, passport and any other equivalent document”
Portugal	Law no. 30/2000, of 29 November art.2	All drugs classified in the national lists	Use, acquisition and possession of all drugs	“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 offence.”
Luxembourg	Law 27 April 2001, art.7 B1	Only use of cannabis is decriminalized . Use of any other drugs can receive sentence of imprisonment	Use, and transportation, possession and acquisition for personal use	“Whoever has unlawfully used cannabis or its derivatives, extracts oils or resins, or has transported, possessed or acquired it for their personal use, will be punished with a fine of between €250 and €2500”
Belgium		Only cannabis use would be decriminalised , provided it is non-problematic.		

Ireland	Misuse of Drugs Act 1977, art. 3, art 27	<i>Cannabis or cannabis resin</i>	<i>Possession for personal use</i>	<p>“... where the relevant controlled drug [in possession] is cannabis or cannabis resin and the court is satisfied that the person was in possession of such drug for his personal use, ...”</p> <p>“... every person guilty of an offence under [the above] section shall be liable—</p> <p>(a) where the relevant controlled drug is cannabis or cannabis resin and the court is satisfied that the person was in possession of such drug for his personal use:</p> <p>(i) in the case of a first offence, to a fine on summary conviction not exceeding fifty pounds,</p> <p>(ii) in the case of a second offence, to a fine on summary conviction not exceeding one hundred pounds,</p> <p>(iii) in the case of a third or subsequent offence, to a fine on summary conviction not exceeding two hundred and fifty pounds or, at the discretion of the court, to imprisonment for a term not exceeding twelve months, or to both the fine and the imprisonment;”</p>
Austria	Federal Law no. 112	<p>1. Substances or preparations made from cannabis plant</p> <p>2. Any narcotic substance</p>	<i>Purchase or possession of small quantities for own use</i>	<p>1. “The public prosecutor’s office may waive the requirement for a report from the district administrative authority if a person is charged exclusively for purchase or possession of substances or preparations made from cannabis plant in small quantities for his own use and if there is no reason to assume that the person requires a health-related measure.”</p> <p>2. “Should a person be charged with purchase or possession in violation of existing regulations of a small amount of narcotic substance for his own use, the public prosecutor’s office shall provisionally defer the charge for a probationary period of two years under the conditions set forth hereafter.”</p>

The differences however persist. In Italy and Spain, possession is an offence but sanctioned administratively (no criminal proceedings involved); in Luxembourg, criminal prosecutions are only applied in specific situations (in front of minors, at school, in the workplace); in Portugal the criminal sanction has been substituted by the social and, when needed, therapeutic measures imposed by special Commissions; while in Belgium the prohibition of possessing cannabis privately for personal consumption could be removed in future, and no sanctions would be foreseen for “non-problematic” possession for personal use. In Ireland, possession of cannabis leads to a fine at first offence, an increased fine at second offence, and possible imprisonment only at the third or subsequent offence, and in Austria the sanction is suspended for a probationary period.

2. By Directive or Guideline

In **the Netherlands**, cannabis use is not legalised, only tolerated by the authorities. According to the Opium Act, possession of marijuana for personal use is a crime. However, the law distinguishes between drugs, to ensure a separation of markets; substances are classified as “hemp” (cannabis products) and “drugs of unacceptable risk” (other drugs). Toleration of hemp has led to a number of ‘coffee shops’ coming into existence over the years. Under guidelines issued by the Public Prosecution Service in 1996, these will not be prosecuted for selling cannabis under certain conditions (no minors, no more than 5g, no nuisance, no advertising, no hard drugs).

However, under Dutch law possession of drugs remains prohibited and punishable, particularly when above the tolerated quantities. The maximum sentence for the possession or sale of no more than 30 grams of hemp is 1 month in prison (and / or a fine), but a prison sentence of 4 years (and/or a fine) applies to imports and exports or professional cultivation. The maximum sentence for hard drugs is 1 year in prison (and / or a fine) for the possession of 'user quantities', while it is 12 years in prison (and / or a fine) for imports or exports. These maximum sentences can be raised by one third if the offence has been committed more than once.

In **Germany** the Constitutional Court decided in 1994 that prosecution for possession of very small quantities of cannabis might be waived as a rule in cases of occasional personal consumption, small quantities and where there is no danger to others. The federal Länder must provide uniform application of this provision.

In **Denmark** possession of narcotics is a criminal offence. However a guideline of 1971, on legal process in drugs cases, stipulates that it was not the intention of the drug law to criminalize the use of drugs and corresponding possession of drugs for own consumption.

In **France** prohibition and punishment of simple drug use has provoked a strong debate for decades. In June 1999 a Directive of the Ministry of Justice asked prosecutors to prioritise treatment approaches for petty offenders both related to drug use or to other small crimes. Particularly where problematic drug users are concerned, the recommendation of the Directive is to apply therapeutic alternatives to prisons to the largest extent possible, while "the imprisonment of drug users, not having committed other related offences, must be the last resort"¹.

Latest Developments

In the **United Kingdom** the British Home Secretary, David Blunkett, announced on 23 October 2001 that he would consider relaxing the laws on cannabis, reclassifying it from a Class B to a Class C drug. Class C drugs are considered the least dangerous of the three main categories A-C, and generally consist of mild amphetamines, steroids and some antidepressants. The move, expected in the spring of 2002, means that the maximum sentence for possession of cannabis would drop from five years in prison plus a fine, to two years, and the maximum for trafficking would be lowered from 14 years in prison plus a fine, to five years. Retention of such sentencing possibilities refute any suggestion of decriminalisation. However, a Home Office spokesman said that, although suspicion of cannabis possession would no longer be grounds for police to stop and search, nevertheless if a person was found to possess cannabis then offenders could be given an informal warning, caution, or reported for summons.

In **Greece**, in May 2001 five Members of Parliament, belonging to three of the four Governmental Parties, proposed a draft law concerning prosecution and punishment of use and users, as well as the improvement of treatment measures. The draft foresees to facilitate the non-punishment of first time offenders for possession of cannabis, and to re-scale the penalties for possession of small quantities of cannabis for personal use, fixing by law the concept of small quantity. The draft law should be adopted or rejected early 2002.

¹ Minister of Justice NOR JUN A 9900148 C, 17 June 1999