

## Expert Forum on Criminal Justice

# National experiences with quasi-coerced treatment of drug-dependent offenders

Overview of work undertaken 2007-2010  
and relevant national contributions

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## **PORTUGAL**

### **Alternative Measures to Imprisonment and Quasi-Coerced Treatment - a New Paradigm**

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In the absence of consensus on the definition of quasi-coerced treatment will be possible to approach the notion of a treatment, obtained the consent of the person concerned, that is ordered, motivated and / or supervised by public authority. That is, we have a treatment that is not purely coercive, has at its foundation a compulsory component capable of determining the person to consent to their own treatment, or else to keep it or restart it. This component consists of a coercive penalty or a sanction that itself is an evil, which can be avoided by accepting an alternative that is emerging as a lesser evil. In most countries the public authority is only the criminal justice system, but there are others, that allow the quasi-coerced treatment determined by a non-judicial system. This is the case of Portugal, where both systems co-exist, mutually independent and do not overlap, by which it can motivate, establish and supervise the treatment of drug users/addicts. They are the criminal justice system and the administrative system committed to the Commissions for the Dissuasion of Drug Addiction.

#### **The criminal justice system**

In Portuguese criminal system the quasi-coerced treatment is foreseen by the penal provisions of the execution of prison sentences, including the implementation of the suspension of the sentence and the application of probation. It is by these penal provisions of the sentence of imprisonment that it will be possible to order treatment, motivated and / or supervise it. This legal provision foreseen in the Penal Code (art. 50.º), allows the suspension of the sentence of imprisonment imposed to a penalty that not exceeding five years considering the personality of the agent, the conditions of his life, their conduct before and after the crime and it's circumstances. Before these conditions the court decide that the fact of censorship and the threat of jail, perform adequately enough for purposes of punishment. Such a stay of execution of sentence of imprisonment may be subject to duties for repairing the harm of crime and / or rules of conduct, to facilitate reintegrating of the offender into society. It's in the rules of conduct that the court may, after obtaining the consent of the person concerned, determine the medical treatment or cure in appropriate institution by supporting and monitoring the services of social rehabilitation, since the ultimate goal is to reintegrate the offender into society. The law provides also the possibility of suspension with probation, within which you can order the treatment. This scheme is ordered whenever the offender has not completed at the time of the crime, 21 years of age or when the term of imprisonment is suspended its execution has been applied to measure more than three years.

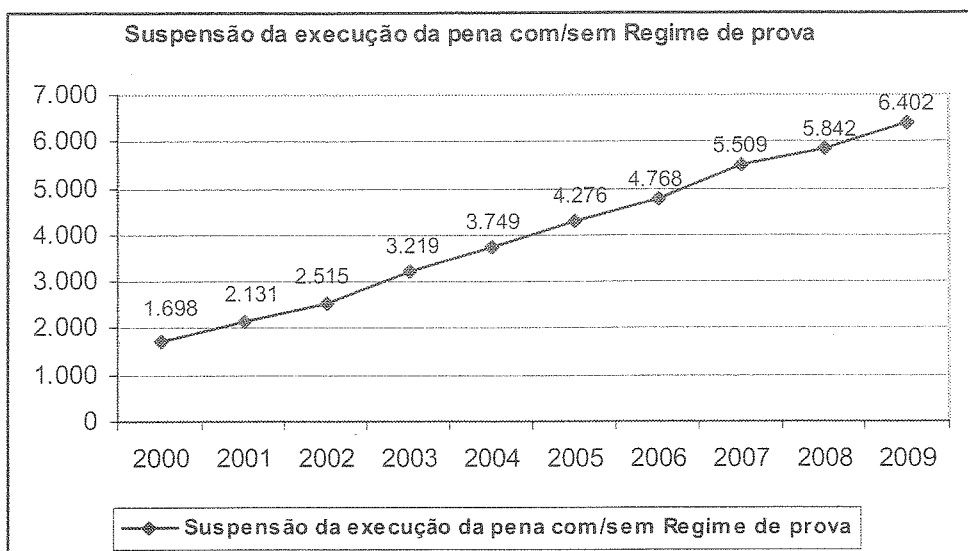
Finally, there is a special case for the convicted drug addict. In this case, the Drug Law (DL 15/93 of 22-01) specifically addresses the suspension of sentence and the "obligation of treatment", with the consent of the person concerned, and refers into the general scheme of the Criminal Code the other requirements for suspension of sentence. In particular, the quasi-coerced treatment, according to the Portuguese criminal justice system, has some structural features:

- The consent of the person concerned in their own treatment;
- The insertion of treatment into the philosophy and legal system of alternative measure to impisonment, and,
- Its ultimate goal is the reintegration into society.

The reasons of the requirement of consent of the person concerned are respect for self and personal integrity of the offender and the need for collaboration and voluntary participant to achieve success in treatment. From an ethical point of view, it is possible to question whether the consent required is indeed free, since it puts in its premises two "evils", with the heaviest prison than treatment. This question falls outside the scope of this presentation but emerges as a relevant approach. Regarding to its insertion into the system and the philosophy of alternative measure to imprisonment, the quasi-coerced treatment is placed in their historical and political-criminal aimed at replacing the term of imprisonment. This movement has signed a new paradigm in judicial practice and it is evident their progressive implementation.

As an example, we can see the recent evolution of the suspension of the sentence.

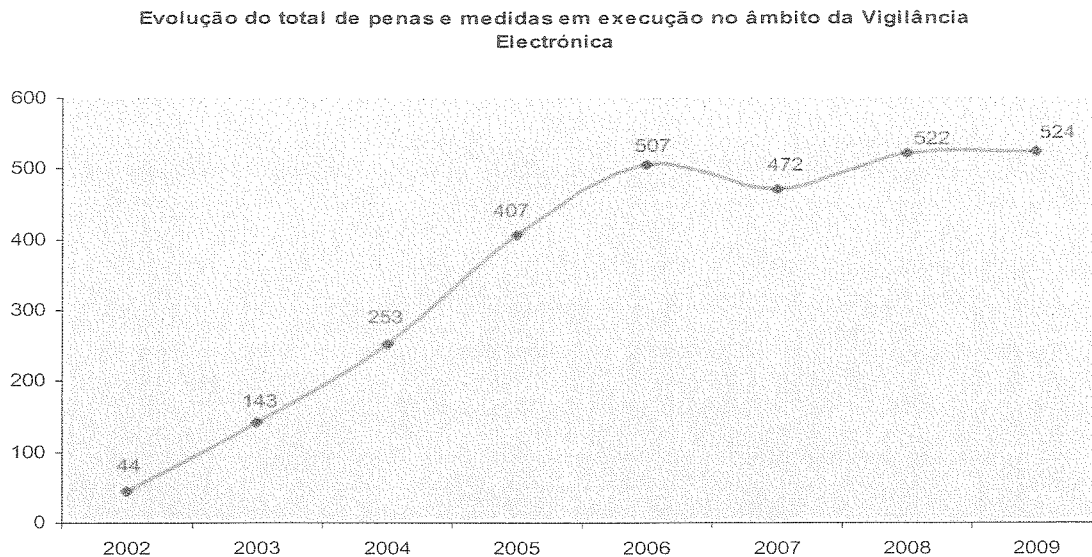
GRAPHIC 1 Suspension of sentence with or without probation



Unfortunately we have no indication of statistical treatments nor the expression of its success which certainly fall into the ascending curve, and therefore one can state that follow the same path increment. It must be mentioned that the alternative sentence of execution of sentence of imprisonment - in the realization of which is positioned quasi-coerced treatment - currently stands a conspectus broader entertainment solution with respect to prison and, all the mechanisms to avoid arrest actually used, originates in this way, a new and different mindset and praxis, not only of the judiciary but the general public, which, in turn, more power is given in practice this type of solution, within its proven success.

An exemple of its success is the increase of the substitution of imprisonment for the obligation to remain in housing monitored with electronic bracelet.

GRAPHIC 2 Evolution of the penalties and enforcement measures in the context of electronic surveillance



The clear expression of success is the guarantor of a new paradigm in which the coercive treatment falls. The final structural feature of quasi-coercive treatment, inserted in the structure and philosophy of the alternative sentence, is the effective reintegration of the person involved. This means that treatment is not an end in itself, it is a mean for achieving social reintegration of the offender. This feature has the advantage of ensuring the success of treatment because there is a monitoring and supervisory work in a motivating and protecting way.

### **The Commissions for the Dissuasion of Drug Addiction**

In 1999 the Portuguese government adopted the National Strategy for Combating Drugs, one of the thirteen options was for the decriminalization of drug use. Thus, in implementing this National Strategy was published Law No. 30/2000 of 29-11, that changing the rules hitherto in force, establishes the decriminalization of consumption, acquisition and possession for personal consumption, provided that the amount involved does not exceed that necessary for the average individual consumption for ten days. Exceeded this amount, the individual will commit a crime, punished and foreseen (investigation, prosecution and trial) by the criminal justice system.

Under the new regime established by Law n.º 30/2000, consumption, acquisition and possession of narcotics for personal consumption in limits alluded to, is no longer a crime and has become an administrative offense. The device created to evaluate and decide this new situation was called the Commissions for the Dissuasion of Drug Addiction. Imposed by administrative district (head City) and by each autonomous region, are composed of three elements: a chairman and two members with curriculum in the field of addiction, together with a multidisciplinary technical unit support of physicians, psychologists, sociologists, technicians, social services, among others. To meet the diverse situations of consumption that they are responsible, the Commissions for the Dissuasion of Drug Addiction have different types of responses, including sanctions.

It is noted that Law 30/2000 provides another type of treatment, known as spontaneous which simply removes the deterrence of law enforcement (art. 3.º). Regarding the treatment

no spontaneous, the law provides that the addict, once accepting the treatment, the Commission can provisionally suspend the process, from up to two years, extendable for another year.

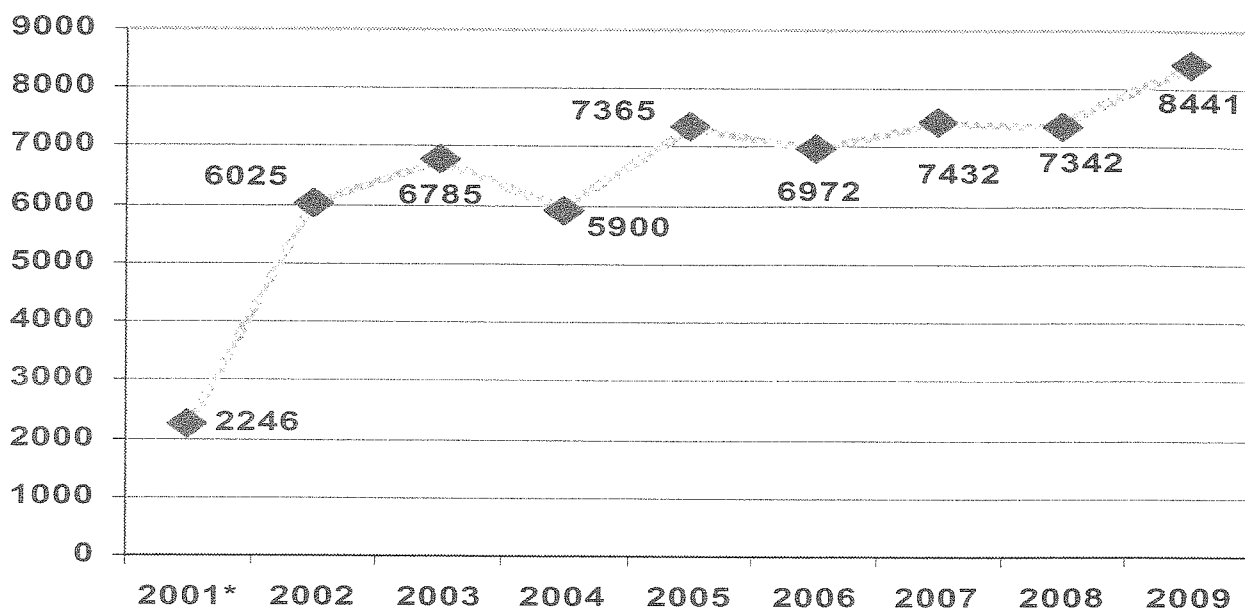
The suspension is even obligatory if the addict has no pre-registration process of administrative offense. Since registration, the suspension depends on the discretion power of the Commission. Later in the proceedings, when determining the penalty, it is also possible to suspend the actual determination of penalty in case of treatment. In this case, if the drug addict accepts submit to treatment, the Commission suspended until three years determining the penalty. If during period of suspension if the addict does not impose or discontinue treatment, the suspension is revoked. With no withdrawal, the case when the period of suspension ends is declared extinct. In this connection, administrative offense should retain the following structural characteristics:

- Verification of the drug addiction;
- Agreement of their own treatment;
- Treatment emerges as an end in itself.

The verification of the status of drug addict as a condition of treatment, it should be noted that this requirement is specific Laws for Drugs (DL 15/93 and L 30/2000) because the system of criminal law does not require the drug addiction for treatment. The logic of this distinction relates to the purpose of each scheme: in the criminal, treatment is a means to an end, the reintegration of the offender; different perspective is the regime's decriminalization aimed at health and social protection of people who consume drugs, in particular desideratum just the addict justifies coercive treatment, precisely because only this state of dependence requires treatment, all previous stages may, according Law No. 30/2000, be resolved to protect the consumer in other ways. Concerning the agreement referred to in his treatment that it is based on the same reasons for the same requirement in the criminal system and already alluded to earlier. In this point, I only report the particularity by the penalty are not determined and therefore the "evil" motivator not be realized that, somehow, can be seen as further coercion than a identified and established "evil".

Finally, treatment appears as an end in itself strictly as a perspective of social protection and health of the addict, is the appropriate technical solution, depleting the intervention of the Commissions. Law 30/2000 does not speak of cure or social rehabilitation, treatment and medical response is the objective. Only thus we can justify that the treatment of the consumer keep himself away from the application of the law of deterrence. The Commission also may decide to suspend the proceedings if a consumer without previous record on the central database register, accept an undergo treatment although under surveillance. Consider this type of treatment, with reference to the year 2009 draws to an upward curve in the cases committed to the Commissions.

Graphic 3 Annual distribution of cases



And with no prior registration.

TABLE 1 Cases opened in 2009

| Indicted        | N°          | %           |
|-----------------|-------------|-------------|
| Addict          | 778         | 12%         |
| Not an addict   | 3563        | 55,6%       |
| Pending unrated | 2076        | 32,4%       |
| <b>Total</b>    | <b>6417</b> | <b>100%</b> |

Regarding the indicted drug addicts, who can apply treatment almost compulsive, there is the following scenario.

TABLE 2 Indicted addicts

| Referral Type       | Indicted            |               |                 |            |             |
|---------------------|---------------------|---------------|-----------------|------------|-------------|
|                     | Treatment Unit Team | Health Centre | Other responses | Total      |             |
| Routing             | 179                 | 10            | 26              | 215        | 28,80%      |
| Forwarding          | 90                  | 1             | 3               | 94         | 12,60%      |
| Continued treatment | 376                 | 3             | 59              | 438        | 58,60%      |
| <b>Total</b>        | <b>645</b>          | <b>14</b>     | <b>88</b>       | <b>747</b> | <b>100%</b> |

And so we see that the new defendants almost compulsive drug treatment, suspension or suspension of the process of determining the penalty, had the expression of 96.6%. This significant expression of quasi-coerced treatment is only possible because the committees ensure a good relationship with local structures working in the field of drug abuse. Be aware that 28.8% of these addicts had never established contact with the treatment facilities which means a ready answer for Committees and the usefulness and effectiveness of response depends on this very timely.

### Conclusion

All European Union member states signed the action plan for drugs, the 2005-08 and the 2009-12. According to the plan established there, the treatment of the drug consumer/ addict deserves applause instead of punishment. However, the treatment in the criminal system comes residual in the measures applied, and, as seen from the Portuguese example, it is inserted into different items and thus appears "hidden" in official statistics. We must recall that the quasi-coercive treatment is for the criminal justice system a way to achieve the purpose of social rehabilitation, which is the ultimate goal of this system. Then it is understandable that the treatment is concealed by the institutions within which falls. But, as noted, treatment exists both in the criminal justice system and in the dissuasion's approach and notes in this a sharp upward curve. For dissuasion, quasi-coercive treatment is almost the end for a certain type of situations that arise in the boundary line of deterrence. Indeed, the main function of dissuasion is in the first level of consumption in which the Commissions have the first and decisive warning in relation to consumer protection. If this first approach is effective all the other levels are avoided, namely quasi-coercive treatment.