

DECRIMINALISATION

Portuguese legal framework
applicable to the consumption
of narcotics and
psychotropic substances



SICAD

Serviço de Intervenção nos
Comportamentos Aditivos
e nas Dependências

DECRIMINALISATION

Law n.º 30/2000, of 29 November

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Defines the legal framework applicable to the consumption of narcotics and psychotropic substances, together with the medical and social welfare of the consumers of such substances without medical prescription.

The Assembly of the Republic hereby decrees the following, in accordance with paragraph c) of article 161 of the Constitution, as a general law of the Republic:

Article 1

Aim

1 – This law defines the legal framework applicable to the consumption of narcotics and psychotropic substances, together with the medical and social welfare of the consumers of such substances without medical prescription.

2 – The plants, substances and preparations subject to the framework established here are those listed in tables I to IV attached to Decree-Law no. 15/93 of 22 January.

Article 2

Consumption

1 – 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.

2 – For the purposes of this law, the acquisition and possession for own use of the substances referred to in the preceding paragraph shall not exceed the quantity required for an average individual consumption during a period of 10 days.

Article 3

Spontaneous treatment

1 – The provisions of this law shall not apply when the consumer or, in the case of a minor, certified or disqualified person, his legal representatives, request the assistance of public or private health services.

2 – Any doctor may notify the State health services of the cases of the abuse of plants, narcotic or psychotropic substances which he encounters in the course of his professional duties, when he believes that treatment or healthcare measures are justified in the interest of the patient, the members of his family or the community, for which he or she lacks the resources.

3 – In the cases provided for in the preceding paragraphs there shall be a guarantee of confidentiality, the doctors, technical staff and other health workers who care for the consumer being subject to the duty of professional secrecy, and such persons shall not be obliged to testify in inquiries or judicial proceedings neither to provide information on the nature and evolution of the therapeutic process or on the identity of the consumer.

Article 4

Seizure and identification

1 – The police authorities shall identify the consumer and may also proceed to search him and seize the plants, substances or preparations referred to in article 1 which have been found in the possession of the consumer, which shall be forfeit to the State, drawing up the respective police report, which shall be forwarded to the relevant territorial commission.

2 - Whenever not possible to identify the consumer at the place and the moment of the occurrence, the police authorities may, if necessary, detain the consumer in order to ensure that he or she appears before the commission, in accordance with the legal rules on detention for the purpose of identification.

Article 5

Powers to process, apply and enforce

1 – Offences shall be processed and the respective penalties applied by a commission referred to as "commission for the dissuasion of drug addiction", especially created for this purpose, operating in the premises of the civil governments.

2 – The Governo Civil ¹ shall have powers to enforce fines and alternative penalties.

3 – In districts with a greater concentration of proceedings, more than one commission may be created by order of the member of the Government responsible for coordinating drug and drug addiction policy.

4 – The Governo Civil and the IPDT (Portuguese Institute on Drug and Drug Addiction) shall provide the commissions with administrative support and technical support respectively.

5 – Expenses relating to the members of the commissions shall be borne by the IPDT.

Article 6

Central Register

The IPDT shall keep a central register of proceedings relating to the offences provided for in this law, which shall be kept in accordance with regulations issued by the Minister of Justice and the member of the Government responsible for the coordination of drugs and drug addiction policies.

Article 7

Composition and appointment of commissions

1 – The commissions provided for in paragraph 1 of article 5 shall comprise three persons, one of which shall serve as chairman, appointed by the member of the Government responsible for the coordination of drugs and drug addiction policies.

2 – One of the members of the commission shall be a legal expert appointed by the Ministry of Justice, and the Minister of Health and the member of the Government

¹ The Governo Civil is the administrative structure that represents the government in the districts.

responsible for the coordination of the drugs and drug addiction policies shall appoint the other two, who shall be chosen from doctors, psychologists, sociologists, social services workers or others with appropriate professional expertise in the field of drug addiction, who in the course of their duties shall guard against any possible direct therapeutic interest or ethical conflict.

3 – The Minister of Justice and the member of the Government responsible for the coordination of drugs and drug addiction policies shall issue regulations on the organization of the commissions, on their proceedings and procedures, and the status of the members shall be established by joint order of the Minister of Finance, the Minister for the Reform of the State and Public Administration and the member of the Government responsible for the coordination of drugs and drug addiction policies.

4 – The members of the commission shall be subject to the duty of secrecy with regard to the personal data contained in proceedings, without prejudice of the legal rules on the protection of public health and the criminal proceedings, where applicable.

Article 8

Territorial jurisdiction

1 – Proceedings shall be brought before the commission of the residence area of the consumer, except in case of unknown address, in which case the proceedings shall be brought before the commission of the area in which the consumer was found.

2 – Appeals against penalties applied by the commissions shall be brought before the court with jurisdiction at the head office of the commission in question.

Article 9

Cooperation with other bodies

1 – In order to undergo treatment voluntarily accepted by the consumer, the latter may use the public health services or duly licensed private services.

2 – In order to comply with the provisions of this law, the commissions and the Governo Civil shall request the assistance, as the case may be, of the public health services, the social welfare services, the police authorities and the administrative authorities.

Article 10

Judgement as to the nature and circumstances of consumption

1 – The commission shall hear the consumer and gather the information needed in order to reach a judgement as to whether he or she is an addict or not, what substances were consumed, the circumstances in which he was consuming drugs when summoned, the place of consumption and his economic situation.

2 – The consumer may request that a therapist of his or her choice takes part in the proceedings, and the commission shall establish the rules for such participation.

3 – In order to formulate the judgement referred to in paragraph 1, the commission or the consumer may propose or request that appropriate medical examinations be conducted, including blood or urine tests or any other tests as may be deemed appropriate.

4 – If the commission does not base its definition of the nature of consumption on the findings of a medical examination with the characteristics set out in the preceding paragraph, the consumer may request such examination, and the findings shall be analysed with a view to a possible reconsideration of the initial judgement reached by the commission.

5 – The commission shall have the examination conducted by a duly licensed health service, the costs being borne by the consumer if he or she chooses a private service, and the tests shall be carried out within a period of no more than 30 days.

Article 11

Provisional suspension of proceedings

1 – The commission shall provisionally suspend proceedings whenever a consumer with no prior record of offences under this law is deemed to be a non-addicted consumer.

2 – The commission shall provisionally suspend proceedings whenever an addicted consumer with no prior record of previous proceedings for offences under this law agrees to undergo treatment.

3 – The commission may provisionally suspend proceedings if an addicted consumer with a prior record of previous proceedings for offences under this law agrees to undergo treatment.

4 – The decision to suspend proceedings may not be impugned.

Article 12

Submission to treatment

1 – If an addicted consumer agrees to undergo treatment, the commission shall notify the public or private health service chosen by the consumer, who shall be notified of the alternatives available.

2 – If the consumer opts for a private health service he or she shall bear the respective costs of treatment.

3 – The organization referred to in paragraph 1 shall notify the commission every three months of whether treatment is continuing or not.

Article 13

Duration and effects of suspension

1 – Proceedings may be suspended for up to two years, which may be extended by one additional year by means of a decision with due grounds by the commission.

2 – The commission shall file proceedings, which may not be reopened, if:

- a) in the case of a non-addicted consumer, there is no repeated offence;
- b) an addicted consumer undergoes treatment and does not interrupt it unduly.

3 – Other than as provided for in the preceding paragraph, the proceedings shall continue.

4 – The limit period for the expiry of proceedings shall not be counted whilst its suspension.

Article 14

Suspension of penalties applied in the event of voluntary treatment

1 – The commission may suspend a decision to apply a penalty if an addicted consumer agrees to undergo, voluntarily, treatment in a public or duly licensed private service.

2 – Penalties may be suspended for up to three years.

3 – If during the suspension period, for reasons attributable to him or her, the addict does not undergo or interrupts treatment, the suspension shall be revoked and the penalty corresponding to the offence applied.

4 – The commission shall declare proceedings closed if, on expiry of the suspension period, no reason has been found which could lead to revoking the suspension.

5 – Refusal to undergo treatment under the terms of article 11 and the continuation of proceeding under the terms of article 13 shall not prejudice the provisions of paragraph 1 of this article.

6 – The provisions of paragraph 2 of article 12 and of paragraph 4 of article 13 are correspondingly applicable.

Article 15

Penalties

1 – Non-addicted consumers may be sentenced to payment of a fine or, alternatively, to a non-pecuniary penalty.

2 – Non-pecuniary penalties shall be applied to addicted consumers.

3 – The commission shall set the penalty in accordance with the need to prevent the consumption of narcotics and psychotropic substances.

4 – In applying penalties, the commission shall take into account the consumer's circumstances and the nature and circumstances of consumption, weighing up namely:

- a) The seriousness of the act;
- b) The degree of fault;
- c) The type of plants, substances or preparations consumed;
- d) The public or private nature of consumption;
- e) In the case of public consumption, the place of consumption;
- f) In the case of a non-addicted consumer, the occasional or habitual nature of his drug use;
- g) The personal circumstances, namely economic and financial, of the consumer.

Article 16

Fines

1 – In the case of plants, substances or preparations contained in tables I-A, I-B, II-A, II-B and II-C, the fine shall be fixed between a lower limit of PTE 5.000\$00 and an upper limit equivalent to the national minimum monthly wage.

2 – In the case of substances or preparations contained in tables I-C, III and IV, the fine shall be fixed between PTE 5.000\$00 and PTE 30.000\$00.

3 – The proceeds of fines shall be distributed as follows:

- a) 60% to the State;
- b) 20% to the SPTT (Drug Addiction Treatment and Prevention Service);
- c) 10% to the Governo Civil;
- d) 10% to the IPDT.

Article 17

Other penalties

1 – Instead of a fine, the commission may issue a warning.

2 – Without prejudice to the provisions of paragraph 2 of article 15, the commission may apply the following penalties, as an alternative measure to a fine or as the main penalty:

- a) Banning from the exercise of a profession or occupation, namely those subject to licensing requirements, when such exercise jeopardises the well being of the consumer or third parties;
- b) Banning from certain places;
- c) Prohibiting the consumer from accompanying, housing or receiving certain persons;
- d) Forbidding the consumer to travel abroad without permission;
- e) Presenting himself periodically at a place to be indicated by the commission;
- f) Disenfranchisement, removing the right to be granted or to renew a fire arms license for defence, hunting, precision shooting or recreation;
- g) Seizure of objects belonging to the consumer which represent a risk to him or her or to the community or which encourage the committing of a crime or other offence;
- h) Privation from the right to manage the subsidy or benefit attributed on a personal basis by public bodies or services, which shall be managed by the organization

managing the proceedings or monitoring the treatment process, when agreed to by the consumer.

3 – As an alternative to the penalties provided for in the preceding paragraphs, the commission may, if the consumer so agrees, instruct the consumer to make a financial donation to a public or private charitable organization or to provide community service free of charge, in accordance with the rules established in paragraphs 3 and 4 of article 58 of the Criminal Code.

4 – The commission may suspend enforcement of any of the penalties

provided for in the preceding paragraphs, replacing them by performance of certain duties, under the terms of article 19.

Article 18

Warnings

1 – The commission may issue a warning if, in view of the personal circumstances of the consumer, the type of consumption and the type of plants, substances or preparations consumed, it considers that the consumer will abstain from future consumption.

2 – The warning shall consist of an oral reprimand, with the consumer being expressly warned of the consequences of his behaviour and urged to abstain from consumption.

3 – The commission shall deliver the warning when the decision to apply it becomes definitive.

4 – The commission shall deliver an immediate warning if the consumer declares that he waives the right to bring an appeal.

Article 19

Suspension of enforcement of penalty

1 – In the case of an addicted consumer for whom there is no feasible treatment, or who refuses to accept treatment, the commission may suspend enforcement of the penalty, requiring the consumer to present himself or herself periodically at medical services, with the frequency deemed necessary by such services, with a view to improving his

health conditions, and suspension of enforcement may also be made conditional on the acceptance by the consumer of the measures provided for in paragraph 3.

2 – In the case of a non-addicted consumer, the commission may opt to suspend the penalty if, in the light of the personal circumstances of the consumer, the type of consumption and the type of plants, substances or preparations consumed, it concludes that this is the most appropriate form of achieving the aim of preventing consumption should the consumer agree to the conditions proposed by the commission under the terms of the following paragraphs.

3 – The commission may propose other follow-up solutions which may be particularly advisable in view of the specific nature of each case, in such a way as to ensure respect for the dignity of the individual and with the acceptance of the latter, such measures being chosen from those provided for in subparagraphs a) to d) of paragraph 2 of article 17.

4 – The rules governing periodic attendance as provided for in paragraph 1 shall be issued by the Minister of Health.

Article 20

Duration of suspension of enforcement of penalty

1 – Suspension shall have a duration of between one and three years as from the date on which a decision becomes final, not counting the time for which the consumer may be deprived of liberty due to coercive procedural measures, prison sentence or security measure.

2 – The commission shall determine the duration of the measures provided for in paragraph 3 of the preceding article, never exceeding an upper limit of six months.

Article 21

Periodic attendance

1 – In the case of suspension of the enforcement of the sentence with periodic attendance at health services, the commission shall notify the health centre of the consumer's area of residence or any other health service which may be agreed with him.

2 – The services referred to in the preceding paragraph shall notify the commission of the consumer's regular attendance or, when applicable, of his failure to attend, indicating any reasons of which it may be aware.

Article 22

Notification of measures

1 – The services and authorities whose cooperation is requested for the purpose of monitoring compliance with measures shall be notified of the decision to suspend enforcement of penalties.

2 – The services and authorities referred to in the preceding paragraph shall notify the commission of any failure to comply with measures, for the purposes of the provisions of paragraphs 2 and 3 of the following article.

Article 23

Effects of suspension

1 – The commission shall declare a penalty to have been set aside if, on expiry of the suspension period, there exist no reasons which would lead to revoking such suspension.

2 – Suspension of enforcement of penalty shall be revoked whenever, whilst such suspension is in effect, the consumer repeatedly fails to comply with the measures imposed.

3 – If suspension is revoked, the penalty applied shall be enforced.

Article 24

Duration of penalties

The penalties provided for in paragraph 2 of article 17 and the follow-up measures provided for in article 19 shall have a minimum duration of one month and a maximum duration of three years.

Article 25

Compliance with penalties and follow-up measures

The Governo Civil shall be notified of the decision to apply penalties or follow-up measures, and shall notify the services and authorities whose cooperation is required for the enforcement of such measures.

Article 26

Subsidiary law

In the absence of specific provisions herein, the general rules on administrative offences shall apply.

Article 27

Application in the Autonomous Regions

In the Autonomous Regions, the geographical distribution and composition of the commission, the powers to appoint their members, the definition of the services taking part in proceedings and the distribution of the proceeds of fines shall be established by regional legislative decree.

Article 28

Repeal

Article 40, save with regard to cultivation, and article 41 of Decree-Law no. 15/93, of 22 January, are hereby repealed, together with any other provisions which prove incompatible with the framework established herein.

Article 29

Entry into force

The decriminalisation approved herein shall enter into force throughout Portuguese territory on July 1, 2001, and all the regulatory, organizational, technical and financial measures needed in order to apply the treatment and follow-up framework herein provided for shall be adopted within 180 days from publication.

Approved on 19 October 2000. - The President of the Assembly of the Republic, António de Almeida Santos. - Promulgated on 14 November 2000. Publish. - The President of the Republic, Jorge Sampaio. - Countersigned on 16 November 2000. The Prime-Minister, António Manuel de Oliveira Guterres.



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