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UNIDADE NACIONAL DE COMBATE AO TRÁFICO DE ESTUPEFACIENTES

POLICE ACTION IN DRUG USE SITUATIONS

1 – In Portugal, with the entry into force of Act no. 30/2000 of 29 November, the use of narcotics and psychotropic substances was decriminalized, ceased being classified as an offence, becoming an administrative offence.

Act no. 30/2000 partially repealed section 40 of the Decree-Law 15/93, of 22 January, which considered drug use as an offence punishable with imprisonment up to 3 months or with a 30 days fine.

According to the established in section 2, paragraph 1, of Act no. 30/2000, ***“the use, acquisition and possession for one’s own consumption of plants, substances or preparations set forth in tables (I until IV in annex to the Decree-Law no. 15/93, of 22 January) are considered an administrative offence.”***

On the other hand, paragraph 2, section 2, establishes that ***“for the purposes of this Act, acquisition and possession for one’s own consumption of the substances mentioned in the previous paragraph shall not exceed the quantity needed for the average individual use during the period of 10 days.”***

According to the Portuguese Law (Ministerial order no. 94/96 of 20 March 1996) the average daily doses for the main types of drugs are the following:

- Heroin – 0,1 grams
- Cocaine (hydrochloride) – 0,2 grams
- Cannabis (leaves and flowering and fruiting tops) - 2,5 grams
- Cannabis (resin) - 0,5 grams
- MDMA (ecstasy) - 0,1 grams
- Amphetamine - 0,1 grams

Due to the wording of section 2, paragraph 2, of law 30/2000, the Portuguese courts consider that in those cases when users are found in the possession of quantities of drugs that exceed the quantity needed for the average individual use during the period of 10 days their behaviour is still considered an offence in accordance with section 40 of the Decree-law no. 15/93.

2 – Concerning the provisions of section 4 of Law no. 30/2000, police authorities shall identify the user and seize the drugs found in his/her possession, drawing up an



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incident report, which shall be submitted to the territorially competent drug addiction deterrence commission, which will be the one of the user's residence area.

As provided for by section 5 of Act no. 30/2000, the drug addiction deterrence commissions are administrative entities responsible for evaluating the drug user's behaviour and for taking decisions with regard to the application of possible penalties.

Each commission shall be made up of three persons designed by the government, and chaired by one of them. One of them shall be a legal expert, whereas the other two shall be chosen from among medical doctors, psychologists, social security experts or others possessing appropriate expertise in the area of drug addictive behaviour.

As provided for by section 10 of Act no. 30/2000, ***"the commission shall question the user and gather any other elements necessary to make a judgement of whether he is a drug addict or not, which are the substances consumed, under which circumstances he was consuming them when stopped for questioning, in which place and which his economic situation. The user may request a therapist of his choice to participate during the procedure; the commission shall be responsible for regulating the way in which this participation shall take place. In order to make the judgement as referred in subsection (1), the commission or user may propose or request appropriate medical exams to be carried out, including blood, urine or other analyses as may prove convenient."***

Sections 15 and 17 of this Act establish that users who are not drug addicts may be punished with an administrative monetary penalty or, as an alternative, with a non-monetary penalty. Users who are drug addicts shall be punished with non-monetary penalties. In all cases, the sanctions shall be determined according to the need to prevent the use of drugs.

In applying its sanctions, the commission shall consider the user's situation as well as the nature and circumstances of his use, specifically weighing: the seriousness of the act; the offender's responsibility; the type of plants, substances or preparations consumed; the public or private nature of use; the place of use; in case the user is not a drug addict, the occasional or regular nature of his use; the user's personal situation, namely economic and financially.



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3 – As regards LE action, every police authority faced nowadays with a consumption situation corresponding to an administrative drug offence, shall collect the user's identification data, conduct a bodily search if needed, seize the drugs in the user's possession, write an incident report and notify the user to appear before the drug addiction deterrence commission of his residence area.

4 - In the past, the consumption of narcotic drugs and psychotropic substances had always been considered an offence, and that use was typified, as mentioned above, under Article 40 of Decree-Law No.15/93, of 22 January, commonly referred to as the "Drug Law", being this offence punished with imprisonment up to 3 months or with a fine up to 30 days.

Accordingly, towards an event of a drug user being caught in flagrante delicto, it was up to the LE authorities to immediately arrest the author of the offence (drug user), to conduct a bodily search on him, to seize the drugs in his possession and, then, to identify him taking his fingerprints, to take his picture and to bring him before the Public Prosecution Service. In addition, it would be further needed to prepare the subsequent criminal inquiry, with the carrying out of the necessary procedures for evidence production, namely to take witness statements, the formal interview of the suspect, the forensic analysis of the seized product and, in the end, the final report to be submitted to the Public Prosecution Service for the indictment to be issued and the case to be committed to court for trial. Drug users were seen and held as criminals, being submitted by LE to the same procedures as the other perpetrators.

5 – With the entry into force of Act 30/2000, both LE services and the court structure apparently have benefited from significant savings in human and material resources, apart from a decrease in the level of conflicts as regards police action in the streets. Drug users stopped being looked at as criminals.

Towards this new reality, LE has been able to redirect its resources and efforts in the fight against drug trafficking, and, at that level, a significant increase of the results achieved over the last few years has been registered.

Albeit the aforementioned, it should be noted that police authorities continue very vigilant as regards the reality of drug use, namely in public places, being several legal mechanisms in place to enable police action on activities involving the use of drugs. The following are still considered punishable criminal offences according to the already mentioned Decree Law no. 18/93, of 22 January 1993: "Inciting the use of narcotic drugs or psychotropic substances" (section 29), "Drug trafficking and use



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in public or meeting places” (section 30) and “Abandoning of syringes” (section 32). In this regard, community policing plays a major role.

It should be noted that the potential dangers which some thought would arise in the aftermath of the decriminalization of drug use did not materialize.

In fact, there was no drug use “boom”, being the consumption values of the Portuguese population particularly low when compared with the European averages.

Likewise, the use of the Portuguese territory as a “drug tourism” destination did not occur.

At the time of entry into force of Act no. 30/2000, many officers faced the new reality with a lot of scepticism and some concern. Currently, and 16 years later, considering the achieved results and the occurred social evolution, we believe that the vast majority of the Portuguese officers now consider that the solutions adopted by that Act were the right ones.

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