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**THE USE AND POSSESSION OF DRUGS, BETWEEN  
CRIMINALIZATION AND DECRIMINALIZATION :  
FROM A “HUMAN RIGHTS” PERSPECTIVE**

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The second CRIMPREV conference on the criminalization and decriminalization of the use and possession of narcotics was held on March 7 and 8, at Lille (France). During this second meeting, the participants shared their experiences and views based on papers presented by scholars from countries other than those that had been covered by the earlier October 2007 Brussels conference. The participants included: Jorge Albino Quintas de Oliveira from Portugal (University of Porto), Miklós Lévay from Hungary (University Eötvös Loránd), Josef Radimecký from the Czech Republic (Charles University, Prague) and Nathalie Lancial from France (University Lille 1). The presentation of the papers was preceded by an introductory “transnational” talk on the international control of drugs by François-Xavier Dudouet (University Paris Dauphine).



The aim of the seminar was to extend the exploration of the evolution of public policies and European legislative frameworks, as well as their implementation, to the field of criminalization and decriminalization of the use of drugs. In the course of the seminar, three transversal lines of research were highlighted.

### ***1 – DEFINING NATIONAL POLICIES ON THE BASIS OF INTERNATIONAL CONTROL***

At the 2007 Brussels seminar, it had been decided that an up-to-date review of the international control of narcotics would be made during the Lille seminar so as to consider each national perspective on the basis of requirements stipulated at this level – requirements which, according to the interpretation being used in the various countries, would obstruct the decriminalisation policies. F. X. Dudouet presented the results of his work on the initiation of international drug policies, stressing the social configurations and economic issues that have contributed to the development of international drug control. His paper tells us that the establishment of this international control represented a long process, which gradually defined the uses subjected to control and the authorized players, but we will specifically note that it focuses on supply and is quasi-blind with regard to the consumption of the products. Thus, far from being a prohibitionist policy, international drug control primarily undertakes to regulate the licit drug trade at the international level. In this regard, the key role of health professionals and Temperance Leagues should be stressed, especially with regard to the dissemination of the idea of limiting the supply of the products for medical use alone and as a consequence of this, the strict control of the markets. It is in fact, the principle of the strict regulation of supply for medical and scientific needs that in the 19th century enabled the recognition of the monopoly of doctors and pharmacists on the retail distribution of drugs.

As a result, when we successively examine the various international agreements between 1912 and to 1972, the importance of screening users seems chiefly to reside in identifying those who can participate in international supply and ensuring them various outlets. The study on the legal work accomplished by the League of Nations and later by the UNO, with a view to confining the licit production of drugs to medical and scientific purposes alone - study presented at the seminar - has shown that the bulk of the negotiations dealt with the distribution of the market share between the principal source countries. F. X. Dudouet, thus developed the hypothesis of an oligopolistic configuration of the licit drugs market, a configuration that is intentional (as it is linked to the signed protocols) but also based on market reality. He moreover points out that the bulk of the League of Nations' and UNO's work consisted in organizing the supply of narcotics at the international level, so as to distinguish the licit supply intended for medical and scientific use from illicit use by consumers not under medical control. In consequence, the criminalization of the



non-controlled use of drugs is both the direct consequence of international control and the *a contrario* justification of this oligopolistic organization of licit use.

Hence, it seems from the analysis presented at the seminar, that the international control of drugs is a global enterprise that regulates and classifies the reality, determines the uses, draws the boundaries and appoints the players. Underlying the very common belief that the regulation of drugs is based solely on the dangerousness of the substances, it is a vast, particularly constraining, social and economic organization that is at stake. Rarely examined for itself, international drug control however constitutes a precedent of international governance that is without equivalent. And F. X. Dedouet emphasizes that “If tomorrow a “global State”, with the possibility of monopolies, like our Western States, was to emerge, it would perhaps be appropriate to remember that the first of them would be on drugs”.

## ***II – THE ANALYSIS OF INFLUENCES INSIDE AND OUTSIDE THE JUSTICE SYSTEM ON THE CRIMINALIZATION AND DECRIMINALIZATION TRENDS IN DRUG CONSUMPTION : THE IMPACT OF THE CONCEPT OF HUMAN RIGHTS***

In the course of this seminar, in keeping with the general theme of this Workpackage, particular attention was paid to the process of induction of Human Rights into the legislative process and the public management of drug consumption. The national experiences presented at the seminar in this regard, highlighted the impact of Human Rights on the configuration of public policies vis-à-vis narcotics.

Thus, in the Portuguese system presented by J. Quintas, we can partly attribute the change in political strategy with regard to the criminalization of drugs, to the recourse to Human Rights and the adoption of the principle of the primacy of national fundamental rights over international agreements. After many years under a regime of criminalization of the use of narcotic drugs, Portugal decriminalized drug consumption in 2001, by replacing the traditional judicial process with a purely administrative reaction (based on reports). Without going into details here of the mechanisms that have brought about this reversal of perspective (nor into those that could have prevented it, especially at the international level), we will note the quasi-paradoxical recourse to the notion of “safety” in order to justify the endorsement of decriminalization. This new perspective, enabling the substitution of social rights for criminal rights, especially in terms of the concept of “social and sanitary protection of the user”, refers implicitly to an interpretation of the user’s individual liberty, which is distinct from the dominant concept prevailing in Europe. As a result, we can now say that today Portugal is one of the most liberal countries in Europe with regard to drugs.



The Hungarian strategy, presented by M. Lévy, appears to be based on a “rational prohibitionist” model. This model, which seeks to simultaneously reduce supply and demand, gradually came to adopt a public health approach in which therapy and integration are proposed. This system endeavours to position itself at the intersection of criminal justice and the socio-sanitary requirements of users, and in turn, is explicitly indexed to the greater recourse to Human Rights. Indeed, we note a gradual evolution in Hungary towards a relaxation of legislation regarding users, especially the recourse to treatment as an alternative to criminal prosecution. The considerable impact of the discourse on Human Rights, incorporated in the constitution and considered by the speaker as “one of the driving forces of legislative amendments in the field of drugs”, particularly through the intervention of experts, does not compare to the Portuguese experience. In reality the very concept of Human Rights has different interpretations that will either result in a decriminalization policy such as in Portugal, or help to maintain diverse forms of punishment, as in Hungary. Thus, in Hungary, the tendency to decriminalize misdemeanours linked to the social procurement of narcotics did not have any major impact, mainly because of a Constitutional Court ruling. Hence, the seminar also examined in detail this 2004 decision, on the constitutionality of the suppression of drug consumption. The Court justified the criminalization of the possession of drugs for personal use by saying that it was the duty of the State to safeguard Human Rights, thereby denying the right to be under the influence of drugs. This restrictive interpretation of individual liberty, contrary to the one proposed by the Portuguese government in 2001, perfectly illustrates the labile recourse to the notion of Human Rights and is an important research theme of the seminar.

J. Radimecký on his part has shown that in the Czech Republic, the recourse to the concept of Human Rights has to be examined keeping in mind the legacy of the past and the extent of the distance from the principles of the former communist regime. Important, and still recent, social changes have marked the emergence of the new Czech Republic and the issue of narcotics obviously has to be seen in relation to these in order to examine both the discontinuities and the continuities. Thus, contemporary challenges facing drug policy in this country are not able to completely free themselves from the old model in which governance with regard to drugs was carried out on a “paternalist” mode and where this issue benefited from its anchoring in a social control powerfully orchestrated by the public authorities. But over and above this relatively narrow perspective, we should also take into account the historic moment of severance that the 1989 “velvet revolution” represents and which, although short-lived, has also affected current policies and debates.

Thus, J. Radimecký recalls that, in the communist context, *Welfare* policies were used more for controlling citizens’ behaviour and the role of public opinion, like that of the media, had to conform to the



idea of “truth” endorsed by the establishment. The recourse to Human Rights consequently passed through two very distinct periods in the country, corresponding to successive political regimes. First, the communist period where this concept was instrumentalised in a demagogic manner in a context where the drug problem was not considered a real problem or at least was associated with the identification of “political enemies”. The approach to this social problem is rather simplistic and the only alternative it has is through criminalization. Thus, during this period, the drug taboo made sure that very little was learnt about the products, the conceptualization of the problem and the means of tackling it, a lack of knowledge whose effects can be felt even today. In addition, whenever there was a display of anti-conformist behaviour, public opinion was manipulated through various disinformation strategies aimed at stigmatising individuals and dissident groups so that there was no real understanding of the problem and the stakes involved.

Post-1989, we witnessed a veritable rediscovery of the concept of Human Rights via the development of the idea of individual freedom. This idea resulted in drug consumption being viewed as a private matter, which recognized freedom of behaviour and no longer insisted on the adoption of a criminalizing approach. Reinterpreted, Human Rights reinforced the demand for a less repressive policy. But the latter, rooted mainly in a post-revolutionary perspective, did not last long, as less than 10 years after the revolution a proposal to amend the legislation with the objective of re-criminalizing the possession of “large” quantities of drugs (left to the discretion of the judge) saw the light of day at the initiative of the Christian-Democrats. We note however the weakness on the ground of this reinvestment in repression, and this, even on the part of the field police, although they were the ones demanding that penalisation be restored. Drug users did not seem to receive any special attention from the forces of law and order. Having said that, there have been some symbolic cases, probably with a significant political component: a young man of 18, for example, was sentenced to 4 years imprisonment for having shared three marijuana joints with minors, who had smoked before.

### ***III – THE MODEST IMPACT OF LEGISLATIVE AMENDMENTS ON CONSUMPTION PATTERNS***

If the analysis of the recourse to Human Rights highlights the heterogeneity of their use, the analysis of public policies proposed during the seminar, highlights their modest impact on ‘consumer behaviour’. The impact of criminalization and decriminalization policies indeed does not appear to overly influence consumer habits and this, in particular, with regard to the threat of sanctions, considered quasi unanimously as ineffective. These conclusions, which correspond to the observations made at another CRIMPREV seminar on drug practices, held at Lille in July 2007, generally apply to all the countries



represented and transcend their social and political contexts. The impact on the assumption of responsibility for health care is however more marked, and enables us to consider (or not consider) risk-reduction policies, apart from illegal consumption. A problem continues to exist however with regard to the treatment of recalcitrant users who have gradually come to be defined as a “difficult” public, in relation to which decriminalizing efforts have to be re-interpreted. The question of freedom versus mandatory medical treatment once again raises the Human Rights issue, however, allowing greater uncertainty to persist with regard to their interpretation. In this regard, however, we shall stress in passing the paradoxical impact of the decriminalization applied in Portugal, which has led to an increase in police repression towards hashish smokers, as well as an increase in the legal guardianship of consumers. This trend, completely the reverse of the one observed in the Czech Republic, is therefore important to analyse.

Again with regard to the impact of policies, we observe that like other countries studied at the seminar, in the Czech Republic, the effect of the new, more restrictive legislation on drugs does not lead to a decrease in the supply and demand of drugs. As regards consumption patterns, combining marijuana with other more dangerous products seems to be on the rise, as well the increase in the THC levels found in home-grown drugs. As a result, a bill was introduced in order to divide the products and the punishments associated with them, into two categories, on the basis of public health and social risk criteria, quite similar to the perspective adopted in Belgium (studied in the previous seminar). This bill is still under discussion, especially because of the rather half-hearted actions of the Christian-Democrats in the name of the “war on drugs”.

Another problem raised during the seminar is the fact that the consumer has not been considered in the strictly penal legislation, which still does not seem to be influenced by developments in the field of public health and the assumption of psycho-medical responsibility. We must point out however that to document the impact of public policies on consumption patterns, it is necessary to compare the analysis with various types of consumer careers and reasons leading to the drug habit. The role played by the media in this context is relatively ambiguous. Because of their focus on current events, they sometimes bring to light new behaviour patterns and practices, but the fact remains that – and it is quite commonplace to stress this – they greatly contribute to the construction of stereotypes, or at least the homogenization of the perception one has of users.

N. Lancial presented a French study on the products consumed in a festive environment (synthetic drugs, etc.) and their monitoring. This study was based on direct meetings with users and on observations. An analysis of the media discourse on this particular type of consumption, carried out earlier, highlighted the uniform perception



of these consumers (which is however different from the perception of users of other products), despite the diversity of consumption patterns and choices observed on the ground. French research presented at the seminar hence enables us to identify three user profiles, regarding which diversified strategies can be brought into play. The first profile refers to users who are completely turned on by parties and music and go in for limited consumption at specific periods. The second profile involves individuals who use drugs more out of curiosity or simply imitate others in a context where socialization is weak and the importance given to consumption is less marked. Lastly, the third profile involves product-related behaviour, eventually leading to addiction. In this regard, we note that, from the point of view of policy, only a socio-medical approach focusing on the reduction of risk, takes this complexity into account, largely absent from the criminalization/decriminalization debate. All said and done, highlighting the complexity of the trajectories perfectly illustrates the fact that the prohibitionist strategies are not well rooted in the concrete modalities of consumption and its effects, although rather obviously diversified.

*The third and last seminar winding up the “drug” theme examined in WP3 of the CRIMPREV project, will take place in San Sebastian (Spain) in October 2008. The working group will follow up on the analysis and comparison of the various national experiences, this time taking up the Greek, Italian and German cases. The transversal benefits of the seminar as a whole will be envisaged at the close of the third meeting, especially in view of the publication of a collective volume and the decision on the possible continuation of the constituted network.*



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