

**DECRIMINALISING DRUGS**  
AS A BASIS FOR **HUMANE AND EFFECTIVE**  
DRUG POLICY



ANALYSIS OF THE PORTUGUESE AND DUTCH  
MODEL OF DECRIMINALIZATION

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PUBLIC POLICY DOCUMENT

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# INTRODUCTION

In the past few decades, the use of drugs has been constantly on the rise throughout the world, despite the restrictive and prohibitive drug policies. Such traditional approach of prohibition and punishment for possession and use of drugs creates social injustice at individual level, as well as public-health problems and high social costs at macro level. The Republic of North Macedonia does not differ from the above approach with regards to the use of drugs. Thus, the Criminal Code prohibits organising, production, processing and selling of narcotic drugs, psychotropic substances and precursors.<sup>1</sup> In addition, the possession of narcotic drugs and psychotropic substances is prohibited, as well as their further sale, transport or mediation in selling drugs. The Criminal Code provisions do not prohibit possession for personal use, however there is a well-established practice of the institutions, such as the Ministry of Internal Affairs, the Public Prosecutor's Office or the courts, where persons convicted for possession of illegal substances are the very persons that have possessed the substances for their personal use (Boshkova, Tupanchevski 2014).

Such attitude of the criminal-justice system towards people who use drugs contributes to their further marginalisation, violation of their rights and limits their possibility to receive appropriate rights protection in front of the competent institutions. The documents and activities dealing with implementation of the drug policy at national level lack continuation (they are project based) and are inconsistent, which creates chaos in their implementation and effects. For instance, The National Drug Strategy 2014 – 2020<sup>2</sup> does not foresee legalisation of cannabis for medical purposes, and this was done solely by a political decision; while the minimal possession quantities have not been defined, despite the fact this was foreseen in the National Drug Strategy 2006 – 2012.<sup>3</sup>

The aim of this measure was to respect the rights of people who use drugs, not to be detained or imprisoned for possession for personal use and to lower the costs related to police actions and court processes. However, the practice of detaining people possessing drugs for personal use and their punishment still continues to this day.

1 „The Official Gazette of The Republic of Macedonia“ No. 37/96; 80/99; 04/02; 43/03; 19/04; 81/05; 60/06; 07/08; 139/08; 114/09; 51/11; 135/11; 185/1. Criminal Code, Article 215.

2 Government of the Republic of Macedonia. National Drug Strategy 2014 – 2020.

3 Government of the Republic of Macedonia. National Drug Strategy 2006 – 2012.

Many countries in the world have decided to apply new solutions, i.e. to create own decriminalization models; for all drug types - such as Portugal, or for certain drug types – such as The Netherlands, Uruguay etc. These modules could be the basis for identifying and providing solutions for improving the policies and the practice of the relevant institutions towards people who use drugs in the Republic of North Macedonia. They deal not only with abolition of the criminal persecution, but they also provide a wider perspective for reform of the overall drug – regulation system.

## WHAT IS DECRIMINALIZATION?

Decriminalisation of drugs is most often defined as the removal of criminal penalties for violations of drug laws, usually regarding personal possession and use of drugs, and rarely for acquiring drugs (EMCDDA 2018a).

Decriminalization is shifting the focus of the policies from the enforcement - judicial system to the health-social system. Such framework allows for creating supporting context and environment for the necessary public-health and social interventions offered to people who use drugs, and minimizing the negative consequences for persecution due to personal possession and use (Benfer et al. 2018, International Drug Policy Consortium 2016).

Depending on the goal a state wants to achieve, often, it is not sufficient to decriminalise possession and/or use of drugs, but other measures are to be put in place (Unlu et al. 2020). For instance, if the goal is lowering the number of HIV infections and the number of deaths from overdose, then changing only provisions in the law to decriminalize possession and use of drugs is not enough. In addition, it is important to develop and initiate programmes for harm reduction, such as sterile needle exchange, or distribution of Naloxone. Therefore, decriminalization of drugs should always be a part of a larger model or strategy for solving drug - use and addiction related problems.

## WHAT ARE THE BENEFITS OF DECRIMINALIZATION OF DRUGS?

Various scientific papers and analysis point to the fact that decriminalization leads to decreasing the health risks, deaths and financial consequences associated with the restrictive prohibition policies. Our analysis of the decriminalization models in Portugal and the Netherlands confirms the following:

- Decriminalization policies respect human rights of people who use drugs to a higher degree, than policies that criminalize personal use and/or possession of drugs.
- Social policies in countries with decriminalization models in place provide access to a higher array of benefits and services for people who use drugs, thus contributing to their social inclusion and employment.
- Decriminalization policies increase access to treatment and resocialization programmes for people who use drugs.
- Drug decriminalization policies accompanied with appropriate health and social programmes have influence on lowering HIV/AIDS prevalence and other blood and sexually transmitted diseases among people who use drugs.
- The policies of decriminalization of drugs lead to lower death rate related to drug use.
- The policies of drugs decriminalization lead to diminishing the stigma and discrimination against people who use drugs.
- The policies of decriminalization of drugs are financially more viable than policies that criminalize use and/or possession of drugs for personal use.

# PORTUGAL



In 2001, Portugal decriminalised procurement, possession and use of all types of drugs in quantities allowed within ten days. Thus, the use and possession of drugs for personal use are not criminal deeds and there is no incarceration as punishment for them.

As the Law on Decriminalization stipulates, this Law provides 'the legal framework for use of narcotics and psychotropic substances, aimed towards health and social wellbeing of the users of these substances'.

This Law is part of the vast Portuguese model in the approach to addictions, which introduces a set of measures and policies based on health and social policies, and respect for human rights. The Law on Decriminalization is based on the assumption that people who use drugs are citizens who need social and health support and assistance.

The Law created a Commissions for the dissuasion of drug addiction, whose task is to reach decisions with regards to eventual administrative or financial penalties; but foremost its aim is to talk to the person against whom a procedure is initiated and offer him/her options for assistance and help (Greenwald, G. 2009, OSF 2011).

The role of this Commission has a huge impact in implementation of Portuguese drug policies. When a person using drugs is caught by the police with the limit of permitted quantities, the police confiscates the drugs, collects his/her data and instead of bringing the person to the police station, it send him/her to the Commission for dissuasion. There, the person talks to the Commission over the reasons for his/her drug use, the history of use, family status, employment status etc. The aim of the Commission is, through a discussion, to raise awareness among users for the harmful consequences of drug use, including the possibility for further misdemeanors, as well as the fines related to them. On the other hand, the Commission informs the person of all the possible treatment and therapy options, tries to motivate him/her and introduce him/her to other assistance programmes when possible.

If the person fails to meet the Commission, an administrative fine could be given in his/her absence, such as monetary fine, withdrawal of his/her driving license, a social community task or impose a ban from accessing certain location (OSF 2011).

In addition to the Law on Decriminalization, the Portuguese model is based on introducing a huge array of treatment, resocialization and harm reduction programmes.

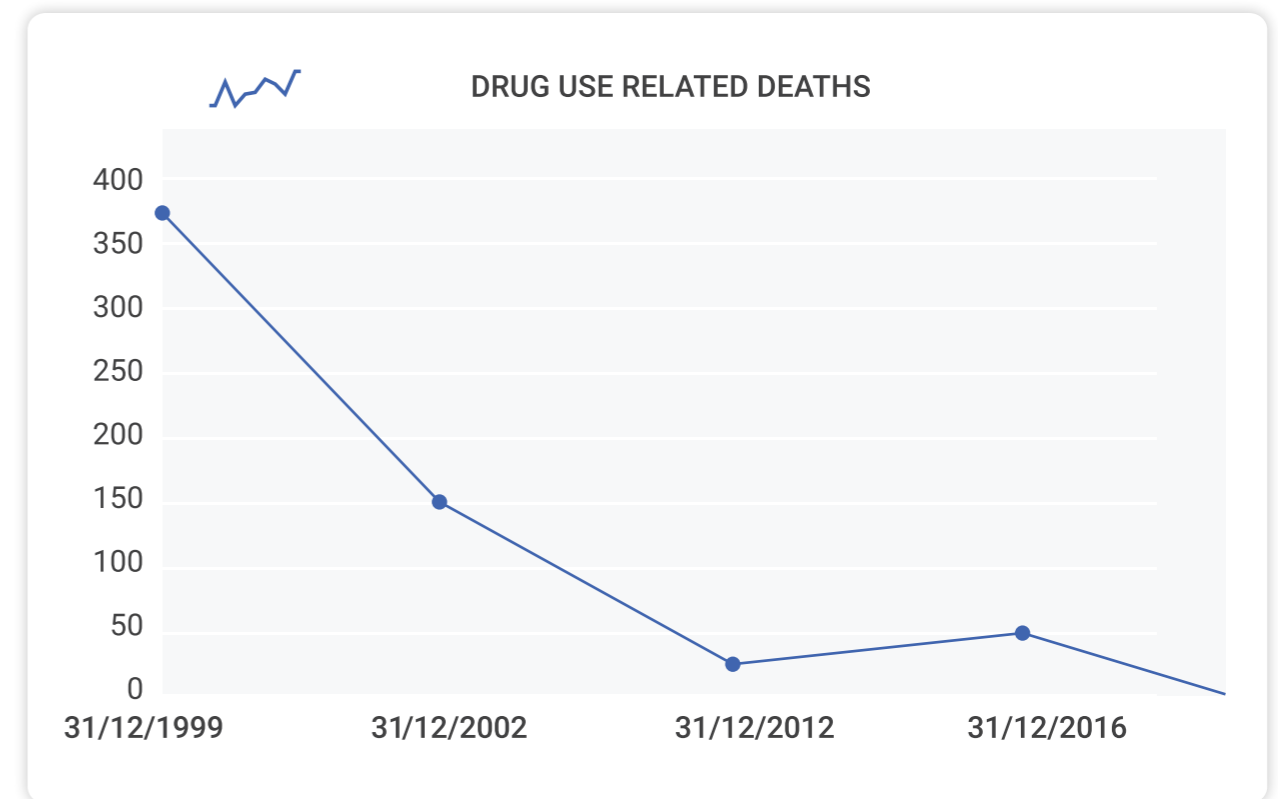
The research and analysis of the Portuguese model of decriminalization of drugs points to the following results and advantages:

- Lowering the level of drug use among the general population aged 15-64 years, and especially among the younger population - between 15-34 years of age;
- Reducing the number of problematic drug users (those who inject or use heroin, cocaine and/or amphetamines for a long period of time);
- Increased number of applications for treatment, especially by cannabis users;

- Reduction of drug-related deaths, thus from 369 cases in 1999 to 30 cases in 2016;
- Reduces the incidence of HIV among people who inject drugs, so from 1,016 cases in 2001 the number dropped to 21 cases in 2018;
- Reducing the number of prisoners for drug-related offenses from 44% in 1999 to 15% in 2018;
- Reducing the stigma towards people who use drugs and building attitude of acceptance among the population towards drug-related problems.

**GRAPH 1.**

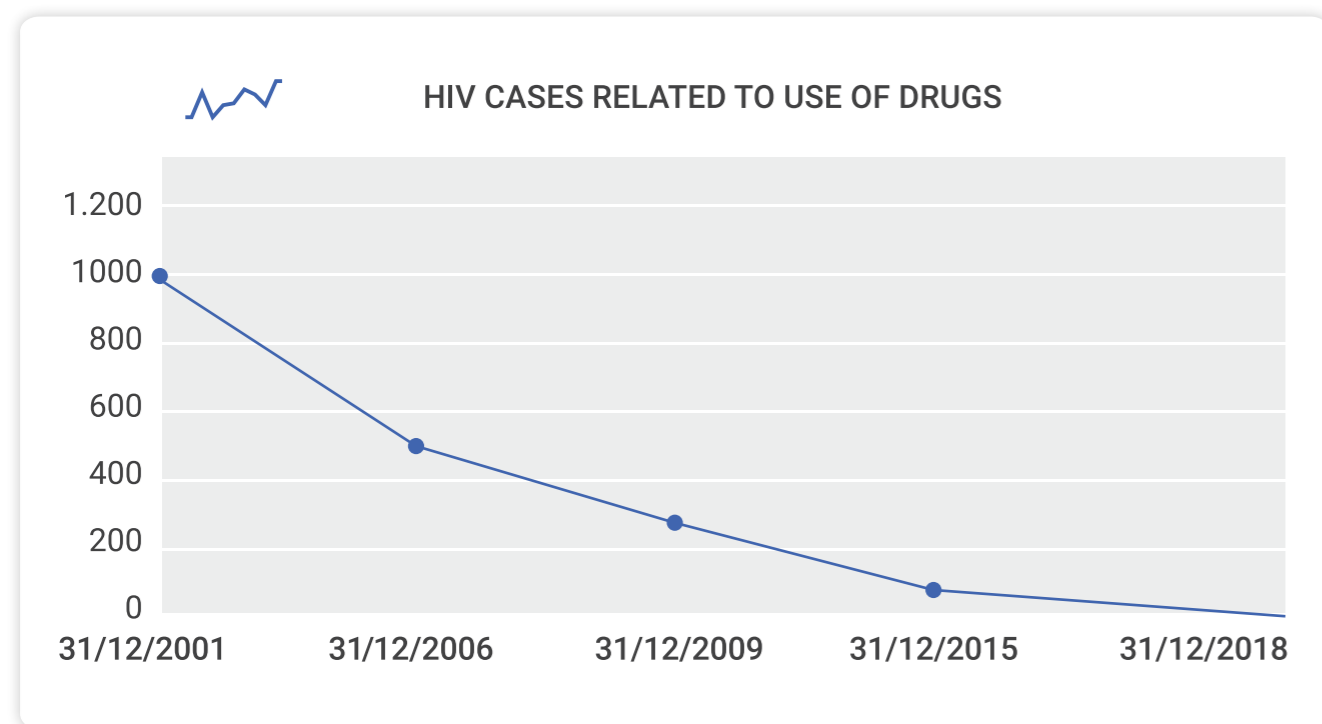
**Number of drug-related deaths in Portugal in the period before and after decriminalization of drugs 1999 – 2016**



Source: SICAD 2020

**GRAPH 2.**

Number of HIV cases related to drug use in Portugal in the period of decriminalization of drugs



# THE NETHERLANDS





The Netherlands is world-wide known as a progressive and a pragmatic country when it comes to drug policies; however there are many myths i.e. untruths that all of the drugs are legal. Holland is a typical example of what in theory is called de-facto decriminalization. In such decriminalization type, the use and possession of drugs are criminal or misdemeanor offences; however in practice they are tolerated, i.e. no sanctions are imposed, especially in cases of cannabis and hashish possession. Thus, the possession of cannabis for up to 5 grams or 5 plants for personal use will not be prosecuted by the police. Also, possession of cannabis products for personal use for up to 30 grams is not prosecuted (Opium Act, arts. 2C, 3C, 10(5), Opium Acts Directive, section 'Investigation and prosecution', p. 4).

The possession of other types of drugs for up to 0.5 grams is also tolerated, and no charges are brought against.

The police and the judiciary are primarily focused on combating trafficking of large quantities and production of drugs, while the cases regarding small quantities of petty dealers and of persons using drugs are not prosecuted (see The Principle of Practicality).

A central element of the modern Dutch drug policy is the Netherlands Opium Act, enacted in 1976. The aim of this legal act was to separate the drug market, i.e. legal and practical separation of the cannabis (List 2 - soft drugs or cannabis, carrying acceptable risks) from other drugs (List 1 - heroin, cocaine, LSD and ecstasy) carrying unacceptable risks, both for people who use drugs and the society. (OSF 2013, Trimbos Institute 2009). In 2008, magic mushrooms were added to List 1.

Another important trait of the Dutch model are the coffeeshops. Coffeeshops primarily enable separation of the drug market, the use of cannabis with the use of other types of drugs. (MacCoun 2011). In other words, there was an assumption that separating the supply of drugs would protect the users of cannabis from the supply of other, more risky drugs and reduce the possibility for their use.

## THE PRINCIPLE OF PRACTICALITY

The Netherlands is a unique example of implementing such a drug policy. There is tolerance for possession of drugs for personal use and tolerance for selling soft drugs in coffeeshops, although the law does not stipulate this. According to the Principle of Practicality, the Public Prosecutor's Office has the freedom to decide not to file charges for a drug-related offense, if it deems it is not in the best interest of the public. The Guide for Crime Detection and Prosecution, adopted under the Opium Act, lists the following priorities for initiating an indictment:

- Production and selling drugs in huge quantities;
- It is not a priority to detect and bring charges for possession of drugs for personal use from List 1 (for up to 0.5 grams), as well as for up to 5 grams of cannabis or other drugs from List 2;
- Coffeeshops which meet AHOJ-G criteria will not have charges brought against them if they sell up to 5gr of hashish or cannabis to a same person per day (Trimbos Institute 2009).

## KEY RESULTS FROM THE DUTCH DRUG POLICY

The drug policy in the Netherlands is aimed primarily at decriminalizing cannabis, possession and use of drugs, as well as harm reduction. It is practical, rational and humane policy providing results.

The separation of the market of cannabis and its products from the other types of drugs, decriminalization and the wide provision of treatment, resocialization and harm reduction programmes brought about the following results:

- The number of people using drugs, foremost heroin, is in constant decline;
- Injecting drugs as the most risky way of drug use is reduced to a minimum, thus only 7% of people using opiates inject them;
- Increased number of people seeking drug addiction treatments (over 70%, and in some cities over 80% of people who are addicts are in treatment programmes);
- Reduction of mortality caused by drug use;
- Reducing HIV / AIDS incidence among injecting drug users. HIV is almost non-present among this population in the Netherlands, thus only 4 new cases were registered in the period between 2006 – 2012, and one or 2 cases only were registered in 2016 – 2017 among these populations.

# RECOMMENDATIONS



## RECOMMENDATIONS

The existing drug policy of the Republic of North Macedonia is inconsistent and does not reflect the real needs of the society, it violates the rights of people who use drugs or are addicted to drugs. Therefore it is necessary that:

- The Assembly of the Republic of North Macedonia adopts an amendment to the Criminal Code that will clearly differentiate possession of drugs and psychotropic substances for personal use, and will prevent the persecution and punishment of people using drugs.
- The Ministry of Interior, Public Prosecutor's Office and courts should consistently respect the provisions of the Criminal Code that do not prohibit possession of drugs for personal use.
- The Government of the Republic of North Macedonia should start a process of wider consultation to reform the national drug policy, and involve in the process competent institutions, experts, associations, organisations and representatives of the people who use drugs. This will result in changes to the laws, policies and the practices of the institutions, with regards to drug use. The process should be based on a national research, scientific evidence and the best practices in the world, such as the experiences from Portugal and the Netherlands.
- The Government of the Republic of North Macedonia should establish an appropriate structure to manage the National Drug Policy.
- It should provide long-term and sustainable ways to fund harm reduction programmes and other services in order to implement drug policies based on human rights and public health.
- Open new and upgrade the existing programmes for rehabilitation, resocialization and reintegration of people who use drugs.
- Improve and upgrade the existing addiction treatment programs.

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