LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

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SELECT COMMITTEE ON A NORTHERN TERRITORY HARM REDUCTION STRATEGY FOR ADDICTIVE BEHAVIOURS

Public Hearing Transcript

8.00 am to 8.45 am, Tuesday, 12 March 2019
Litchfield Room, Parliament House, Darwin

Members: Mr Jeff Collins MLA, Member for Fong Lim
Ms Sandra Nelson MLA, Member for Katherine
Mr Gary Higgins MLA, Member for Daly

Witness: Dr Nuno Capaz – Commission for the Dissuasion of Drug Addiction, Lisboa

GENERAL DIRECTORATE FOR INTERVENTION ON ADDICTIVE BEHAVIOURS AND DEPENDENCIES (SICAD) – PORTUGAL

Dr Nuno Capaz, Vice-President, Commission for the Dissuasion of Drug Addiction of Lisboa

Mr CHAIR: While we are chasing up the other two we might get started anyway. Nuno, on behalf of the committee, I welcome you to this public hearing into a Northern Territory harm reduction strategy for addictive behaviours. I welcome Dr Nuno Capaz, Vice-President, Commission for the Dissuasion of Drug Addiction of Lisboa. Thank you for coming before the committee. We appreciate you taking the time to speak to us and we look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made available for use by the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you say should not be made public, you can ask the committee to go into closed session and take your evidence in private. Could you please state your name and the capacity in which you are appearing?

Dr CAPAZ: My name is Nuno Capaz. I am one of the members—the Vice-President—of the Dissuasion Commission of Lisboa that works under the Ministry of Health.

Mr CHAIR: Thank you. Would you like to make an opening statement?

Dr CAPAZ: Well, I am not sure. It might be better if you start with some questions and eventually—I am really not sure where to start.

Mr CHAIR: We understand that. We have some questions we have drafted, but the tendency is that these things go off on tangents, as you are probably aware, as the conversation evolves.

Dr CAPAZ: All good.

Mr CHAIR: To begin, based on your experience in Portugal, what would you say has been the biggest challenge to adopting a system of decriminalisation and how has that been overcome? Then, leading from that, what do you say to concerns that decriminalisation leads to an increase in illicit drug use and drug-related crime?

Dr CAPAZ: The biggest challenge we had in the beginning when we decided to change the law that criminalised drug usage was to make people understand the difference between decriminalising and regulating because, precisely your second question, the people's biggest concern was that decriminalising drug usage might increase the accessibility to illicit substances and therefore, be used. Actually, it did not because decriminalising does not mean you are making the substance more accessible.

What we mean by decriminalising is that, basically, we downgraded what was considered a criminal offence into an administrative offence. So, legally, we are only messing with the demand side and not the supply side. So, decriminalising for us meant that we basically downgraded the possession of an illicit substance from a criminal offence to an administrative offence, very similar to, for example, driving without a seat belt or talking on a mobile phone while driving. Those acts are considered illegal in Portugal, but they are not considered criminal offences. They are administrative offences and therefore, there are sanctions that can be applied to them, but not criminal ones.

That was the main problem we had in the beginning because the public debate about decriminalising and the option we had about treating possession for personal usage. There was a lot of popular speech based on fear that it would increase the usage of illicit substances. It did not because, basically, nowadays in Portugal when someone wants to buy an illicit substance for personal usage they still have to go to the black market. It is exactly the same as it was before.

The difference is that if you are caught while buying an illicit substance for personal usage, the drug dealer will be sent to a court of law because it is a criminal offence, but the user will be sent to the Dissuasion Commission under the Ministry of Health, which are, basically, administrative authorities in power to apply sanctions. We have to make an assessment of the user and eventually decide which sanction should be applied to them. The range of sanctions, as I said before, are exactly the same as a driving offence. For

example, if I am caught in Portugal driving without a seat belt, it is considered an administrative offence and probably the police officer who catches me doing that will issue me with a financial fine, probably, that I can ask to be changed to community service, for example. That is exactly what we do at the Dissuasion Commission.

The main concern was, basically, in the beginning, and the biggest challenge, was to explain to the public that it would not have any sort of effect on usage.

Mr CHAIR: Okay. Your experience with any increase in illicit drug use or drug-related crime? What have been your observations in those areas?

Dr CAPAZ: There was not an increase in usage. The usage figures we see nowadays in Portugal are pretty much in line with all the other western European countries where some also decriminalised drug users. Some maintain it as a criminal offence, but came up with some sort of diversion scheme to avoid sending users to court or to the criminal system. But the usage did not go up. Well, it did go up in some substances, but as I mentioned, just like all the other countries. So, I would not say that decriminalising has any sort of effect in terms of usage.

Mr CHAIR: Okay.

Dr CAPAZ: The basic criminality associated with drug usage generally went down in Portugal since 2001. But my personal opinion is that is not the consequence of decriminalisation. In a way, it is a direct consequence of decriminalising if we no longer consider the possession for personal usage as a criminal offence. Automatically, those crimes are not counted anymore.

In associating criminality with usage, normally petty theft or some sort of small-time dealing to make money for personal usage, we saw a decrease from that, but basically, it is because we managed to increase accessibility to treatment. Therefore, if a drug addict is in treatment, he will not need as much money as he used to do before entering some sort of therapeutical option. Therefore, the criminality will also go down.

We had a huge decrease in usage. The problem we had in the 1990s was, basically, heroin usage. The heroin usage went down significantly since 2001 for several reasons. One of them is because it is not a fashionable drug at all amongst youngsters. Heroin addiction is a very expensive one. Because we managed to decrease usage figures for heroin, we also managed to decrease the criminality associated with it.

Mr CHAIR: Okay. We have also had Sandra Nelson join us. Sandra is the Member for Katherine.

Dr CAPAZ: Welcome.

Ms NELSON: Bom Dia, Dr Capaz.

Dr CAPAZ: Ola. Bom Dia.

Ms NELSON: [The member spoke in Language].

Dr CAPAZ: Yes, exactly.

Mr CHAIR: Our only member who speaks Portuguese.

Ms NELSON: I have a couple of questions, if I may, through the Chair, since you have raised it just now in regard to the criminal activity related to drug use. Has the decision to decriminalise had an impact on other laws in Portugal—criminal charges, criminal laws, those sorts of things?

Dr CAPAZ: Basically, we decriminalised by changing one law—the law that qualified the possession for usage. We made a new one that also created the Dissuasion Commission as the commission with authority and power to apply sanctions in those cases. But in the legal framework it did not have a huge impact because, basically, it was just one law that was changed.

There was a lot of changes being made, more or less at the same time. That is one of the reasons why I personally think we had some good results in drug usage. It was because we changed a lot of laws, more or less at the same time. But the decriminalisation specifically was just one law.

Ms NELSON: Just the one law. Okay.

Dr CAPAZ: Yes.

Ms NELSON: The reason I am asking is, obviously, to allay some of the concerns in the broader population in that if we decriminalise drugs, for example, that somehow that will weaken our criminal justice laws. In your experience in Portugal, that has not done that at all?

Dr CAPAZ: Well, it did not theoretically and it did not in practice because what was happening in practice, in real day-to-day police and court work, was that a lot of drug users were not being processed by the criminal system. Either the police officer would not do the paperwork or would turn a blind eye because there was really no point in catching the same drug addict over and over again and sending him to the same court over and over again.

Actually there are more people being sent to the Dissuasion Commission now than they were being sent to a court of law before we decriminalised drug usage. So, in a way, you can consider that our law is now more punitive than it was before. Before, what was happening was the police were turning blind eyes to the simple possession for usage.

In a way, yes, it weakens the criminal system, but that was the point when we decided to decriminalise drug usage. What we wanted was to remove drug users from the court and judicial system. In a way, I will have to say yes to that question.

Ms NELSON: I guess it makes sense because the focus then comes on the criminal act and not the drug use.

Dr CAPAZ: Yes.

Ms NELSON: To put it more …

Dr CAPAZ: What happens normally is that the police do not target drug users, they target drug dealers. What they normally also do is catch drug users because it is the easiest way to get information about the drug dealers.

Ms NELSON: Right.

Dr CAPAZ: What was happening in Portugal is that normally drug users were rounded up as witnesses against the drug dealer and they go to court for possession for usage to eventually give testimony that will allow the court to convict the drug dealer. But in the end, the judge has a problem because those people went into court and assumed that they were drug users. So, they were basically assuming that they were criminals.

So, what was happening in Portugal before 2001 was that basically people were not being arrested for the possession for usage, because normally they were cooperating with the justice system. Nevertheless, they were getting criminal records because they were going into court and said that they were drug users. They would eventually come off court with a suspended jail sentence or something like that, or a fine or some community service—but a criminal record also, because it was considered a criminal offence.

Mr CHAIR: How do you …

Dr CAPAZ: So, the criminal …

Mr CHAIR: Sorry. Go on.

Dr CAPAZ: The baseline for us to decriminalise was that the drug users who were being sent to court for possession for usage as witnesses, in the end, they were getting out with a criminal record.

Mr CHAIR: How do you find the police now get that information? You were saying that previously they would round them up and send them to court and, as part of that process, they would get information out of them. Do police have a better relationship with users? I am assuming they still try to get that information from users about who the suppliers are?

Dr CAPAZ: Yes. But now they tend to get it at a more informal level. Because it is not considered a criminal offence it is much easier for a police officer on the street to have a more pedagogic approach to the situation

and eventually avoid doing the paperwork and getting the same information they would, but without taking the person to the police station and arresting them. Basically, they get the same information but at a more informal level.

Mr CHAIR: Good. Okay.

Mr HIGGINS: I will ask one question about the treatment. In your submission, you talk about people who are ordered to undergo treatment and if they do not accept that they go to the technical unit for 'motivation work'. That is an interesting one in regard to a comparison to our alcohol problem and how you get people to undergo treatment. I am interested to see how that technical unit actually works. What sort of things do they do to convince these people?

Dr CAPAZ: Let me correct something. We cannot order anyone to go to treatment. The treatment has to be voluntarily accepted by the person. What we can do is suspend the procedure based on that acceptance of treatment.

What the technical supporting team does is basically an assessment of the user. We use the ASSIST test (Alcohol, Smoking and Substance Involvement Screening Test**)** that allows us to determine the risk level of the user from low risk, medium risk or high risk. Normally, high risk means that it is a drug addict. Low risk means it is recreational user that basically does not have any problem with the substance they are using, apart from it being an illicit substance—an illegal one.

The medium risk are the ones with whom we normally do that motivational work. The motivational work is based on the motivational interview by Miller and others. What they imply is some sort of early stage interventions and some quick interventions and referrals, not to treatment—for instance, for counselling or some sort of structure that might address some issues that person has.

By that, I mean, for example, if it is a long-term unemployment situation or if it is an early drop-out of school. It does not mean that the person actually has a problem with the substance they were using, but because they might have those other side issues, we try to address those. That motivational interview basically means that it is giving the person information about structures being state, private or NGO-related about the issues we identify on that first assessment.

Mr HIGGINS: Is that assessment done all the time or is it only done if someone does not want to undergo treatment?

Dr CAPAZ: The assessment is done all the time.

Mr HIGGINS: Yes. Righto.

Dr CAPAZ: When someone comes in contact with the Dissuasion Commission. When someone is caught by a police officer and notified to present at the Dissuasion Commission, the first contact they have there is with one of our technical support team members, meaning psychologists or social workers. They do that assessment all the time.

Mr HIGGINS: Yes. Then the treatment that might follow after they have been to the commission is optional?

Dr CAPAZ: Yes. The treatment is optional. It is not done at the Dissuasion Commission. The treatment is done either at a treatment facility run by the Portuguese state—by the Ministry of Health—or by some private sector companies recognised and licensed by the Portuguese state.

What we do in those cases where we identify that there is a need for treatment is the referral for that structure. Then we have to check regularly—normally every three months—if the person is still going to that treatment that was established with the treatment centre. We need to know if the person is still going there. We do not need to know regularity or what sort of program they are undergoing. That is with the treatment centre.

Mr HIGGINS: But when you follow up then on them attending that treatment centre and you are getting information back that they are or are not, what do you end up doing with that? If they do not attend, do you actually then try to persuade them or motivate them a bit more to go? Or do you just collect it for information only?

Dr CAPAZ: When we refer someone for treatment, our goal is to eventually avoid applying a sanction to that person. A condition for us to suspend the procedure is if that person voluntarily undergoes treatment. So, we

check if that person is still going there. If we get a negative response from the treatment centre saying that the person has not shown up in the last two months or something, then we recall them into the Dissuasion Commission and try to evaluate what happened and what went wrong with that referral and follow-up. Yes, then we try to motivate the person to restart or reconnect with the treatment facility.

Mr HIGGINS: What happens if they ultimately just say, 'No, we are not going to accept any treatment at all', and just walk out the door?

Dr CAPAZ: We apply a sanction.

Mr HIGGINS: What sort of sanction would you apply? What would that entail?

Dr CAPAZ: Again, the same as the driving offences—a financial fine, community service, regular presentation. If the person is receiving any benefit from the state, we can revoke the management of that benefit. If the person has a profession that requires a specific permit because they might endanger a third party, we can revoke that permit. Again, the list of sanctions we can apply are exactly the same as the administrative offences related with driving offences.

Mr HIGGINS: Okay, thanks.

Ms NELSON: Dr Capaz, I have a couple of questions. I am curious and interested in the mandatory treatment. Has Portugal ever had a mandatory treatment policy or program?

Dr CAPAZ: No. There is that possibility of mandatory treatment, but it is basically only applied regarding violence and violent behaviour associated with mental illness. We do not have mandatory treatment for drug addiction. The treatment has to be accepted by the person.

Ms NELSON: Exactly. We all know as well that for a treatment program to be successful, the participant has to be willing to accept it.

Dr CAPAZ: Yes, exactly.

Ms NELSON: Exactly. All right. That negates my second question, because I would have asked if you did have it before, whether you have any comparative data. It would be really interesting to see the data regarding treatment before the decriminalisation laws came into effect and afterwards and how the treatment has been handled, I guess.

Dr CAPAZ: There is some statistical data. It is not very easy to do that comparison because what also happens—when we decided to decriminalise drug usage, it started with a political process that changed all our drug policy. So, along with the decriminalisation of drug usage, we also took a lot of measure regarding treatment accessibility.

We expanded the treatment options. We expanded the methadone program, for example, because, as I said before, the main problem we had was heroin usage. We included some other options like buprenorphine or suboxone treatment programs. We devised specific campaigns to change people from injecting heroin to smoking heroin, to increase the age of first try of all illicit substances, which normally means a lower risk in the end.

There were all these different measures that were taken more or less at the same time. I do not think we can relate the treatment statistics with just decriminalising. Decriminalising made everything else easier to do, but by itself it does not have any sort of effect on treatment. Whatever good effect in accessibility to treatment was that we decided not only to decriminalise drug usage, but also to create this administrative structure to deal with these legal procedures under the Ministry of Health.

My boss is the same boss as the treatment facility has. For example, if I get a drug addict coming in and he says, 'I was already thinking of going to treatment, but I do not know where to go, which paperwork to bring, at what time should I show up?' I can do that referral with one phone call because the treatment centre works under the same umbrella structure as I do in the Ministry of Health. So, the communication between us is basically a horizontal one, which is much faster than a vertical one.

If I work for the Ministry of Justice, for me to do a referral for a facility under the Ministry of Health, it would take two or three weeks just for the first fax to leave my service and eventually get to the other one. It does not mean that it would be read right away.

The biggest measure that made everything else possible was that we decided to create this umbrella structure under the Ministry of Health, which is called SICAD now. It was called IDT a few years back. It is the same thing as a general secretariat under the Ministry of Health, but specifically to deal with drug policy issues. They have a prevention campaign unit, harm reduction unit, treatment units, the Dissuasion Commission, specific housing programs for drug addicts leaving treatment. Everything is basically done under the Ministry of Health.

If you want comparison statistical data, they are available. You can see a lot of them in English on the SICAD site. They have a lot of it in English, but you should be careful when comparing the statistical data with the single fact of decriminalising because decriminalising only solved one problem, which is the criminal record.

Ms NELSON: Yes. This select committee's focus is obviously harm reduction strategies. The biggest issue we have in the Northern Territory comes down to misuse of alcohol and all of the consequences associated with that. It is interesting.

How do we—Portugal has had some great success with this program, but I am looking at how we can translate that to address our biggest substance abuse issues, which right now is alcohol, which is, of course, a legal substance. Did you have those issues in Portugal as well? What is the alcohol use rate?

Dr CAPAZ: Yes, we do have a problem with alcohol. We are producers of various types of beverages from beer, wine to spirits …

Ms NELSON: Yes, [the member spoke in Language].

Dr CAPAZ: … so it is culturally accepted. Therefore, yes, alcohol is a problem for us. What we did a few years back is have some specific alcohol treatment centres. They were also included in the structure under the Ministry of Health. The treatment centres are not the same, but because it is also an addictive behaviour it is also under that structure.

Now we are coming up with specific programs—for example, for gambling, which is also a problem in Portugal, what we now call addictions without substance, which means screen addiction, Internet and things like that. They are all being dealt with under this same structure.

I am not sure how it is in the Northern Territory of Australia, but in some states there is similar structure—mainly in Queensland there is a very similar one which is related with HIV, for example. Because HIV came up a fairly short time ago, what normally governments did was create a specific structure just to deal with HIV. That structure normally deals with prevention campaigns and treatment accessibility. They keep a record of people who tested positive. They have reinsertion programs, all specifically made for HIV-infected people. The structure we came up with to deal with the drug policy is a similar one.

Ms NELSON: Okay. That is really interesting.

Mr CHAIR: That answers that question 4, which I would have asked.

Ms NELSON: Oh, sorry. Thank you. Sorry, I have just one really quick question. This is great while we have you on the phone. I definitely want to get as much out of this as I can. In Portugal, when this was introduced, you—how do I articulate it?—there was not scale, no slow steps? You made a decision in Portugal that you would decriminalise for this reason and you just did it. You did not introduce a law that would lead to decriminalising? Is that right?

Dr CAPAZ: No. The law was just passed in parliament and the law was passed in June or July—no, sorry. The law was voted in parliament in October and then the law said it would start in effect in July next year and that is what it did. That time was for the establishment of the Dissuasion Commission. What the law said was that possession of illicit substance would no longer be dealt with in a court, it would be dealt under this structure. So, we had to put them together.

Ms NELSON: Okay. So, there was not any …

Dr CAPAZ: But it was a fairly fast one.

Ms NELSON: Yes, very. Obviously, there was not any slow transition? For example, in Australia some states and territories are considering decriminalising marijuana for medicinal purposes as a way to introduce this

decriminalisation of drug use. You did not do that in Portugal? What was the reaction in the general populous in Portugal when this happened?

Dr CAPAZ: In the beginning there was—the whole process took two years. It was like the government decided to put together a group of experts and asked them to make recommendations about what we should do with our drug policy. That group of experts worked for one year or a year-and-a-half. They promoted a lot of public debates. They explained a lot of what the measures meant and what would happen. There was, of course, political debate—and not a very accurate one because drug policy sits well if you want to have a popular speech based on fear, because people are afraid of drugs.

So, there was some concern in the population that decriminalising would mean that people would eventually use more drugs, but when the law started taking effect because decriminalising does not have any effect on supply, it did not change all that much. After the law, in fact, there were not any bit problems about that.

In the public debate before, yes, there were concerns from the public that it would increase the usage, but because it did not—you still have to go the black market, basically. There is no stores open where you can just walk in and buy any sort of illicit substance. You are not allowed to use it openly on the streets. If a police officer comes across someone using an illicit substance, he will still be apprehended, exactly the same way as it was before—the paperwork, the police work is the same as it was before.

The difference is where it gets to the part where they have to notify the person to go to a court of law, they notify the person to go to the Dissuasion Commission. The police work is basically the same and the user's work to acquire the substance is exactly the same also.

There was not that big change that people were afraid of when talking about decriminalisation. The problem with decriminalisation is that people confuse it with regulating. Decriminalising is easy. Decriminalising is just where you have the law that says it is illegal to have in your possession substances A, B and C.

When you get to the sanctions part, if you remove the jail sentence, you decriminalise drug usage. You no longer apply a criminal record to the person and you can still maintain the financial fine, the community service and so on to sanction them. That is what we did.

Ms NELSON: Yes, great. [Portuguese]

Mr CHAIR: We have to wind it up now and let you get to bed, Nuno. Is there anything else you would like to tell the committee at this point?

Dr CAPAZ: Occasionally, people make a huge fuss about the Portuguese model and the way we decided to decriminalise drug usage. It is really quite simple if you decided to deal with it as a healthcare issue. It is simple to understand. You do not treat any other diseases in the criminal justice system.

For example, you do not send a diabetes patient to court because he was caught eating a cake, right? You send him to a medical doctor, and the doctor will probably not moralise that person. He will try to eventually explain what they were doing wrong and what that might mean to their health. But they are not there to punish them, although they know they are doing something wrong. It is the same thing with French fries, burgers, drinks and things like that.

Ms NELSON: Yes.

Mr CHAIR: Yes. All right. Thank you very much for your time and having a chat with us. It has been really informative. It reinforced some of the things we spoke about in 2017 for me, and gave the other members of the committee a good insight into what happens in Portugal. Thank you very much for your time.

Dr CAPAZ: My pleasure. You have my contact if you need to do this again or if you have any more questions. It is easier for me to talk in English than to write in English. So, if you want to do this, this hour is not that bad for me.

Mr CHAIR: All right. It is okay for us as well.

Ms NELSON: That is the same for me. It is easier for me to talk in Portuguese than it is to write it.

Dr CAPAZ: That is right. I am really good at speaking English, not that good at writing English.

Ms NELSON: I understand.

Mr HIGGINS: Thanks for that.

Mr CHAIR: Thank you very much, Nuno.

Dr CAPAZ: My pleasure.

Mr CHAIR: Thank you.

Ms NELSON: Bye, bye.

The committee concluded.
