

The Declaration of Argentine Judges, Prosecutors and Public Defenders for Drug Policy that respects Human Rights¹

Executive Summary

August 29, 1986, the Supreme Court of the Nation declared the unconstitutionality of the persecution of crimes for possession of narcotics for personal consumption. The case was about the raiding of the home of guitarist Gustavo Bazterrica, member of the band Grandfathers of Nothing and musician Charly García, which occurred in 1981, when the police seized a few grams of substances for personal consumption and which the lower courts had sentenced a prison sentence and fine.

The Supreme Court held that the sentence should be invalid, since the persecution of the crime for possession of narcotics for personal consumption was in violation of article 19 of the Constitution, in so far as it violates personal freedom, exempt from the authority of State entities.

Despite the forcefulness of the ruling, the country sustained identical criminalization in the legislative reform of 1989 (Law 23.737), penalizing the crime of possession for personal consumption.

Twenty years later, the Corte returned to declare the unconstitutionality of the persecution of users with the law (ruling “Arriola” of 2009), returning to the precedent of “Bazterrica”.

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Thirty years have passed since the highest court of the Republic has set the foundations of jurisprudence on respect for freedom, individual autonomy, privacy, and self-determination of people using prohibited substances. Three decades without that which would advance legislative reform that would clearly prevent unconstitutional persecution of drug users, preventing their criminalization and stigmatization, despite the presentation of scores of draft legislation before the National Congress with this framework.

The debate over drug policy has advanced in quality and contains more beyond the claim by the delayed decriminalization of behaviors related to consumption, addressing matters such as harm reduction, medicinal use of controlled substances, and strategic legalization and regulation, the humanitarian treatment for people who use drugs, the proportionality of penalties and alternatives to incarceration, among others.

The “Asociación Pensamiento Penal (APP)” has redacted a document titled “the Declaration of Argentine Judges, Prosecutors and Public Defenders for Drug Policy that respects Human Rights”, which has been signed by more than 260 from around the country. There it presents the reasons for which there are recommended new approaches that lead to drug policies which are more effective and humane.

Recommendations of the Declaration:



The so called “war on drugs” has produced more harm to society than that which it has sought to reduce. The public policies based in criminalization and repression, have proved to be a resounding failure in our country and worldwide, without reducing the consumption of narcotic substances or efficiently prosecuting organized crime, ensuring the right to health of people who use prohibited drugs, nor guaranteeing access to substances for those who need them for medicinal, therapeutic or palliative purposes for pain. In the words of former Secretary General of the Organization of American States (OAS-2013), José Miguel Insulza, *“it takes questioning the policies in place until now, under the paradigm of penalization and criminalization, reducing further harm than what they produce”*.

The statement analyzes each of the pending matters in drug policy, arriving with the following conclusion, that are proposed as recommendations:

- Beginning with legislative debate and approval of law that does not criminalize users of prohibited drugs, through the effective repeal of the types of penalties that directly or indirectly sanction behaviors related to personal drug use (Law 23.737). Among such assumptions, contemplating the repeal of figures such as simple possession, possession for personal use, ostentatious consumption and cultivation for personal use. If chosen to establish a system of thresholds (quantities) to proceed depenalization, they should obey a reality of consumption and market, not establishing trace amounts that do not adjust to reality and permit the continuation

of criminal prosecution. The possession of drugs that supersedes the thresholds, should not be considered as a test for the entire commission of major crimes (commerce, trafficking, etcetera), without accessory testing and complementaries that melt the accusation. International experiences, whose flawed standards of decriminalization have produced antagonistic effects to those intended (cases in Mexico and Brazil, for example).

- Repeal the compulsive methods of treatment contained in the Law 23. 737, for not conforming to the standards in terms of human rights and tackling problematic drug use, according to international and local regulations (Law 26.657 and Law 26.934). The so-called Drug Treatment Courts (DTC) implemented in some countries and normally mentioned in local debate, resulting in improper measures that make enduring threats of criminal or administrative sanctions against consumers, who compelled them to be treated, and wastes administrative and judicial resources that live on past their persecution. Therefore it is unadvisable that continue on with these approaches.
- Regulate Law 26.934 “Comprehensive Plan to Approach Problematic Consumers”, bridging the fundamental contents that sustain a public policy in approaching the problematic consumers.
- Balance the budget assigned to methods surrounding the lessening of demand for the consumption of substances, in line with the granted assignments towards the counteracting of supply. .



- Establish an effective and consistent system of institutional control over the public and private establishments that provide the assistance and treatment for problematic substance use, ensuring that they comply with respect to human rights of the consumer according to the international and local regulations.
- Articulate the necessary methods to bring to people deprived of liberty with problematic drug use, the supplying of various comparable methods of intervention in the matter of attention and care on the base of diversity, contemplating the contexts for which present addictions, their characteristics and the uniqueness of the person.
- Develop policies for harm reduction, supplying content operatives to the established public policy and demanded through Law 26.934 (article 10 section d).
- Proceed to repeal the so-called “Law of De-federalization” (Law 26.052).
- Consider the possibility of applying the law of human trafficking to the so-called “mules” in your consideration of possible victims, in order to place them below the protection of the law, decrease penalties, create alternatives to incarceration and policies of amnesty and pardon. In the case that there remains the penalty of imprisonment, it should be contemplated, the possibility, that the foreign women will complete the totality in their country of origin, if at all to conserve contact with their family.
- Establish alternatives to incarceration and lower the legal minimum sentences for nonviolent crimes related to drugs, like retail sales, to provide proportionality and flexibility to the system.



- Consider the development of policies for regulation of substances currently prohibited, taking them out of the hands of organized crime networks.
- Ensure access to the currently prohibited substances, to the people that require them for medical, therapeutic or palliative purposes for pain. Promoting scientific research for the potential medical therapies of these substances.
- Locate the individuals in the center of the politics of drugs. The legislation should respect the principles of the legality of the criminal law, pro hominem, harmfulness, vexatiousness and proportionality (article 75.22 CN).

We place this in the consideration of the public authorities and society at large the Declaration, understanding that a reform to the politics with an intersection of health and respect for personal liberty of the individuals who use prohibited substances, is an extended debt of our democracy.