

LATIN JUDGES' STATEMENT ON DRUGS AND HUMAN RIGHTS POLICIES

PORTO DECLARATION 2009

1. Public drug policies have proved an outright failure, as they have neither achieved their desired goals of reducing drug consumption, nor been able to effectively persecute large criminal organisations.

The United Nations, in this year's UNODC 2009 World Drug Report-, firmly declared that "public health must not be sacrificed for public security", and that "universal access to treatment for drug addiction" must be the priority, as "one of the best ways of reducing the market of illicit drugs".

It also acknowledged that dogged supervision and control has created an illegal market of unknown macroeconomic proportions, which uses violence and has managed to corrupt State bodies.

2. The transnationalisation of criminal phenomena has managed to impose and give importance to penal provisions and legislative techniques alien to the receiving States, thus creating a legislative "colonization" which completely disregards the unique criminal features of each country.

3. International cooperation in criminal matters is one of the weakest areas of Criminal Law, with abundant bilateral and multilateral international instruments which show a general fragility, and which must be improved within a global framework in order to achieve the objectives for which they were conceived.

4. While the courts have been inundated with minor cases, the more serious ones don't reach them, which involve not only trafficking crimes or money laundering, but also corruption committed by government employees.

5. The former mentioned phenomenon implies that the State neglects state controlled areas such as the control and supervision of chemical precursors, the pharmaceutical market, the institutional system, the financial system, as it does with establishing and making time for compliance of preventive or educative policies and the implementation of alternative penalties.

6. From information gathered from various empirical studies, it is clear that on the whole only trivial and insignificant cases reach the judicial system, which has resulted in the overpopulation of the prison system and an extreme and unnecessary deterioration of the judicial system.

7. Drug legislation confronts the principles of legality in Criminal Law, the principles of pro homine, injury, offence, proportionality, all of which feature in the Human Rights Treaties to which our countries are signatories.

8. Drug legislation is an emergency legislation and as such lacks rights that ensure protection, has poor legislative techniques and a proliferation of verbs amongst other technical problems that have been identified by leading legal scholars.

9. The intended solution to a complex social problem, using the penal system in reality violates the right to access to health. This access is only possible-as has been pointed out by the Committee of the International covenant on Economic, Social and Cultural Rights (Obs. Gral. 14) - if members of a population have easy access to goods and public services which guarantee them minimum rights, therefore the repressive system must be reserved for the most serious cases.

10. The role of legislation in developing the protection of individual rights must be emphasized and dealt with in depth, positively addressing the question of how to reduce ethnic and urban violence and favouring multicultural harmony.

11. Where there is a collision of various legal rights, priority must always be given to that which shows most respect to human dignity, health, life, in accordance to the hierarchy of rights which prevail over the right to security in the Reductionist sense.

12. The lack of public policies on preventative issues from various governments of diverse political slants is directly proportional to the rise in hard-line propaganda or campaigns for Law and Order, which, in reality, prove to be mere illusions.

13. The prohibition of consumption through the repression of drug possession ostracizes drug users and conditions their contact with medical institutions or other social welfare bodies, as they identify these with police agencies and are thus deprived of the voluntary treatment and medication necessary for problematic consumption. They are also deprived

of accessing information on preventing related illnesses.

14. The concept of harm reduction must be changed, so that it is not diminished to a mere concept of welfare but instead represents one that works towards the reduction of violence exerted by government or state agencies over the population, either through their acts or their omissions, this must involve a change of paradigm.

15. Every drug user should enjoy the right to health. As for the voluntary treatment to be followed, their right to information and diagnosis are inviolable, as is the confidentiality of personal information. The treatments must be implemented quickly, employing suitable measures and medication for an individual's particular problem. Hospitalisation should always be the last option, when no other form of help will work.

16. Imposing compulsory therapy, whether as a security measure or an alternative punishment in accordance with the various current legislations, not only violates the principle of autonomy but has also been an inefficient tool for helping drug users, since statistics show us that these kinds of interventions have not managed to prevent an increase in relapses. This is why it is imperative that drug users are offered a wide range of support options.

Oporto, July 3, 2009

Martín Vázquez Acuña
Argentina

Mónica Cuñarro
Argentina

José Enrique Torres
Brazil

Rubens Roberto Casara
Brazil

Pablo Ruz Gutierrez
Spain

Clara Penín Alegre
Spain

Luigi Marini
Italy

Renato Finocchi Gherzi
Italy

Eduardo Maia Costa
Portugal

Antonio Cluny
Portugal