



PRESS RELEASE

WOLA / TNI DRUG LAW REFORM PROJECT

Promoting more humane, balanced, and effective drug laws in Latin America

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Argentina's Supreme Court Rules Sanctions for the Possession of Marijuana Unconstitutional; One More Step Toward a New Paradigm

Washington, D.C., Amsterdam, Lima (August 26, 2009) – The Argentine Supreme court ruling that declares unconstitutional the imposition of criminal sanctions for the possession of small quantities of marijuana for personal use represents an important step toward distinguishing between drug use and drug trafficking. This judicial decision adds to the recent changes emerging throughout the continent (Mexico, Ecuador, Brazil) to improve current drug policies, which have been disproportionately aimed at combating the supply of drugs, according to the Washington Office on Latin America (WOLA), the Research Center Drugs and Human Rights (CIDDH), and the Transnational Institute (TNI).

“It is significant that the ruling was unanimous,” says Martin Jelsma, Drugs and Democracy Program Coordinator at TNI. **“It confirms the paradigm shift seen throughout the continent, which recognizes that drug consumption should be treated as a public health issue, unlike in the past when everyone involved, including the users, were seen as criminals.”**

TNI, CIDDH and WOLA support the emphasis made in the ruling for the need to implement more policies in the areas of health and social development in order to prevent and reduce the problems associated with illicit drug markets. The Court urges:

“All instances of government to ensure a State policy against illicit drug trafficking and to adopt preventative health measures – including information and education to dissuade people from drug use – geared primarily at vulnerable groups, especially minors, in order to adequately comply with the international human rights treaties to which our country subscribes.”

The Court Order refers to a specific case of youths sentenced for possession of marijuana. At issue was the application of article 14, paragraph 2, of Argentine law 23,737, which establishes sentences from one month to two years for possession for personal use. Although the Court Order does not specifically reference other substances, most of the arguments are applicable to other kinds of drugs, thus opening the judicial door to drug law reform in Argentina.

It is expected that a bill will soon be introduced in the Argentine Congress, which, if approved, would decriminalize the possession of drugs for personal use. In many countries, such initiatives have raised fears of an increase in drug use or crime. However, countries that have gone through similar processes demonstrate that in reality the opposite is often the case.

“Latin America is disappointed with the results of the current drug policy and is exploring alternative policies,” says Ricardo Soberón, Director of the Lima-based Research Center Drugs and Human Rights. **“There is no need to make speculations based on fear. Rather we should study the countries that have decriminalized drug possession for personal use and analyze the results.”**

Last week, **Mexico** enacted a law decriminalizing the possession of small quantities of drugs for personal use, and a similar effort is being developed in **Ecuador**. The law in Mexico can serve as an example for the

continent as to what should and should not be done with regards to these kinds of laws. This Mexican law is positive in that it decriminalizes the drug user and brings drug addicts closer to the health system; however it places too much emphasis on the amount of drugs found on an individual, establishing very specific small quantities (less than 0.5 grams of cocaine, 0.05 grams of heroine, 5 grams of marijuana, etc.). This leaves open the possibility that consumers who possess a little more than the quantities stipulated will be considered small-scale traffickers and will thus be wrongfully imprisoned, and even sanctioned with harsher sentences introduced in the new law. In the case of Colombia, the Constitutional Court declared in 1994 that imposing sanctions for drug possession for personal use goes against constitutional principals and made reference to the quantities of 20 grams of marijuana and 1 gram of cocaine.

A great number of countries focus on identifying the *intention* of the individual in possession of drugs, instead of simply the quantities possessed. In Uruguay, for example, judges have discretion to determine whether the intention of the person is to consume or sell the drugs. Brazil decriminalized possession of drugs with a law that came into effect in 2006. Last year, a court in Sao Paulo declared that imposing sanctions for possession of drugs for personal use was unconstitutional and it also recognized that the quantity of the drug in possession should not be a determining factor for distinguishing between a user and a trafficker. To read more about this case, see the [new publication](#) in the WOLA/TNI Series on Legislative Reform of Drug Policies.

“Decriminalization allows for the distinction between a user and a drug trafficker,” says John Walsh, Senior Associate for the Drug Policy Program at the Washington Office on Latin America (WOLA). **“This allows governments to focus their efforts on reducing the terrible harm caused by the large criminal networks and the violence related to illicit trafficking, instead of repressing users and small-scale traffickers.”**

To read more on this issue, see the TNI article published in [Nueva Sociedad](#). More information is available at: www.wola.org and www.ungassondrugs.org.

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