

Illicit drug policy in Spain: the opinion of health and legal professionals

Política de drogas ilegales en España: la opinión de los profesionales del ámbito sanitario y del legal

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Abstract

The high frequency of criminal behaviour and related legal problems associated with substance addiction generates a field of interaction between legal and healthcare systems.

This study was developed as a multicentre project to investigate the opinions of professionals from legal and healthcare systems about policies on illegal drugs and their implementation in practice. A multiple choice questionnaire designed ad hoc was administered to a sample of 230 professionals from legal and healthcare fields working in the cities of Barcelona, Granada and Bilbao. The questionnaire included sociodemographic and work-related data, and assessed interviewees' information about the response to drug-related crime and opinion on drug policy issues. This article presents the results from Spain.

The main results showed that both groups of professionals value alternative measures to imprisonment (AMI) as useful tools to prevent offenses related to drug use and claim a broader application of AMI. They also evaluated positively the regulations on cannabis use in effect. Though the attitude of healthcare professionals towards the application of AMI is more permissive, both groups favour restricting these sanctions in cases of recidivism. Both groups show mild satisfaction with the current addiction healthcare system and express dissatisfaction with actual drug policies in Spain.

Keywords: Addiction; criminal liability; drug policies; decriminalizing; healthcare system.

Resumen

La elevada frecuencia de conductas delictivas y problemas legales relacionados con las adicciones a sustancias genera un terreno de interacción entre los ámbitos legal y sanitario. En este contexto se ha llevado a cabo un estudio multicéntrico de las opiniones de los profesionales tanto del ámbito legal como del sanitario sobre la legislación relacionada con las drogas y su implementación en la práctica de acuerdo al marco legal vigente.

Se administró a 230 profesionales tanto del ámbito legal como del sanitario de Barcelona, Granada y Bilbao un cuestionario de respuesta múltiple diseñado ad hoc, con datos sociodemográficos y laborales y preguntas para valorar la opinión de los encuestados sobre la respuesta a la delincuencia relacionada con drogas y su postura en relación con la política en materia de drogas.

Los principales resultados mostraron que ambos grupos de profesionales valoran las medidas penales alternativas (MPA) como herramientas útiles para prevenir los delitos relacionados al consumo, apostando por la ampliación de su aplicación. También coinciden en valorar positivamente la actual regulación del consumo de cannabis. Los profesionales del ámbito sanitario muestran una actitud más permisiva de cara a la aplicación de MPA, pero ambos grupos reconocen oportuno endurecer la sanción en caso de reincidencia delictiva. Los dos grupos muestran una satisfacción relativa con el sistema de atención a las adicciones en los aspectos estudiados y expresan insatisfacción con las políticas actuales sobre drogas.

Palabras clave: Adicción; responsabilidad penal; legislación sobre drogas; despenalización; sistema sanitario.

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Substance addictions and their treatment imply a challenge for professionals, given both the complexity and seriousness of their clinical characteristics as well as the secondary social and legal problems associated with their use. For a long time, delinquency related with substance use has been grounds for stigmatising addictions. The high frequency of criminal behaviour and the related legal problems in patients with addiction disorders generates a field of interaction between legal and healthcare fields (Esbec & Echeburúa, 2016). Current knowledge in the field of addictions allows for the unambiguous definition of certain criminal behaviours as a result of a more complex pathology. Therefore, we must advance our knowledge about and approach toward an issue of major relevance in terms of socioeconomic costs (European Monitoring Centre for Drugs and Drug Addiction, 2007).

A uniform judicial framework across the different countries of the European Union on the use of illegal substances is inexistent (European Monitoring Centre for Drugs and Drug Addiction, 2015). Member states, like Poland, criminalise substance use, wherefore a patient with a substance use disorder is considered the author of an offence at the time of committing a criminal act. In Spain, as we will address further below, the criminal act is independent: when they are for personal use, the production/distribution of a substance and the possession of drugs are not criminalised. This difference impacts the practice of both legal and healthcare professionals, and is reflected in these professionals' opinions on this issue.

Brief reference to the legal framework in Spain: regulation and available data

In reference to criminalisation, unlike other European and American jurisdictions, Spain's legislation has refrained from imposing criminal punishment for neither personal use of drugs nor for possession of drugs in small quantities for personal use. However, criminal punishment does apply for the cultivation, elaboration or illegal trafficking of toxic drugs, narcotics, and psychotropics (Chapter III of crimes against public health, Title XVII of crimes against public safety, from the Criminal Code approved by Organic Law 10/1993, dated 23 November). Administrative law, however, penalises illegal possession and the use of toxic drugs, narcotics, and psychotropics in public places (Organic Law 4/2015, dated 30 March, on the protection of civilian security).

Criminal law, furthermore, proposes differentiated, specific sanctions when the person that has perpetrated a crime has done so under the influence of drugs or as a result of addiction to these (Annex I). As a result of the application of this legislation, those individuals convicted for a crime with a drug-related problem detected prior to the conviction, included in the sentence as a mitigating circumstance, may

face one of the following situations as alternative measures: loss of liberty consisting of internment in a detoxication centre; participation in day treatment under parole or probation, in lieu of imprisonment; and suspension of imprisonment for drug addicts. This series of responses are included within a broader concept known as Alternative Measures to Imprisonment (AMI). In Spain, in 2013 the Sentence and Alternative Measures Management Service managed 24,865 AMI sentences, corresponding to suspensions and substitutions for convictions. Of these, 58% were for gender-based violence; 5% for crimes related with road safety, and 37% for other crimes, including those related with the use of addictive substances (DGPNSD - Governmental Delegation for the National Drug Plan, 2013).

Nevertheless, it is possible that the addiction-related problem goes undetected or unaddressed at the judicial level during sentencing, therefore resulting in the imprisonment of an offender as a result of addiction or addiction-related problems. In these cases, the penitentiary system offers several alternatives for prevention, risk reduction and treatment (Annex I). In 2014, 4,783 persons sentenced to prison were included in substance addiction treatment programs in the context of parole and the third grade prison regime (General Secretariat of Penitentiary Institutions, 2014).

The existence of sanctions other than prison that are sensitive to problems associated with substance addiction entails that there are persons who, in compliance with a judicial verdict, serve a sentence or fulfil security measures by participating in an out-of-prison detoxication treatment. This requires the multidisciplinary coordination of agencies and professionals from the judicial, penal enforcement, social, education, and healthcare systems to apply what simultaneously comprises a judicial verdict and medical treatment. In turn, this entails the presence of a technician, usually a psychologist or social worker, dependent on the General Secretariat of Penitentiary Institutions or the Justice Department in Cataluña, in charge of the execution of the judicial verdict and who, by following up with the corresponding healthcare professionals, reports to the judge as to the degree of compliance with said verdict.

In practice, this requires the cooperation of professionals from different backgrounds in terms of training and culture, and with objectives and rationalities that are not always in alignment: on one hand, professionals from the judicial or legal/criminal systems (judges, prosecutors, public defenders) and, on the other hand, healthcare or therapeutic professionals (doctors, social workers, psychologists, nurses). Specifically, the research findings highlighted below focus on the opinion of these diverse groups of professionals on the regulation and application of sanctions other than prison in response to drug addiction.

Therefore, based on the hypothesis that whether professionals belong to legal or healthcare fields would impact their opinion on the suitability of AMI aimed at offences

Annex I. Summary chart of criminal and penitentiary-related legislation specifically for persons dependent on toxic drugs.

	Institution	Applicable circumstance	Disposición normativa
Determination of criminal liability	Grounds for exemption of criminal liability	Complete intoxication or abstinence syndrome at the time of committing the criminal act, that impedes the comprehension of the act or of acting in accordance with that comprehension	Article 20.2, Criminal Code
	Grounds for incomplete exemption of criminal liability	Complete intoxication or abstinence syndrome at the time of committing the criminal act, without meeting all of the requirements for complete exemption	Article 21.1 in relation with Article 20.2, Criminal Code
	Mitigating circumstance of criminal liability	Acting as a result of a serious addiction to toxic substances	Article 21.2, Criminal Code
Specific sanctions	Internment in a detoxification centre as a security measure	Persons with complete or incomplete exemption of liability, Article 20.2 or 21.1, Criminal Code	Article 102.1 and 104, Criminal Code
	Parole or probation with the obligation of participating in an outpatient detoxification treatment program as a security measure	Persons with complete or incomplete exemption of liability, Article 20.2 or 21.1, Criminal Code	Article 106.1.k, Criminal Code
	Suspension of imprisonment with the obligation of participating in a detoxification treatment program	Persons sentenced to prison for up to 5 years, with the condition that they refrain from further offences and that they remain in treatment during the term of suspension	Article 80.5, Criminal Code
Specific responses of the penitentiary system	Specific programs in prison	Persons sentenced to prison and imprisoned in penitentiary centres may benefit from the following programs developed by the penitentiary authorities: Health prevention and education program; Needle exchange program; Methadone treatment program; Detoxification Program; and Social reinsertion program	General Secretariat of Penitentiary Institutions, http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/drogodependencia.html
	Serving the prison sentence at a detoxification centre	Inmates in the third grade prison regime with an addiction to toxic substances	Article 182, Penitentiary Regulations

committed by drug addicts, the IDDO-Europe project (Illicit drugs and drug offences - new challenges and developments for European criminal law politics) (Soyer & Schumann, 2015) was launched in Austria, Poland and Spain. Its objective was to evaluate the opinions of professionals from legal and healthcare fields on some aspects of drug-related legislation and its implementation in practice. This article presents the main findings of this study in Spain.

Materials and methods

This study's sample consisted of 230 professionals in direct contact with illegal substance users, from legal (prosecutors, judges, lawyers, police) and healthcare (drug addiction treatment centres: psychiatrists, psychologists, nurses and social workers) fields in Barcelona, Granada and Bilbao. They all completed an *ad hoc* self-administered, multiple choice questionnaire (Soyer & Schumann, 2015) that included (a) sociodemographic and employment-related data: age, sex, profession, position at the workplace, years of experience in the field of substance use, percentage of the job shift dedicated to issues related with delinquency and drug use; (b) opinion on the response to delinquen-

cy related with drugs in practice, specifically, factors that promote or hinder the implementation of AMI, types of offences that facilitate the application of AMI, response to recidivists; level and goodwill of actual cooperation between professionals from legal and healthcare fields; level of quality of the drug addiction treatment centres; (c) opinion of the professional as regards policies on drugs: opinion on sanctions for personal use of drugs; usefulness of AMI in crime prevention; suitability of current regulations on AMI; opinion on the degree of suitability of the application of AMI to offenders addicted to drugs; usefulness of decriminalizing substances like cannabis; suitability of Opioid Replacement Therapy (ORT) and opinion on drug-related legislation in force in Spain. The Clinical Research Ethics Committee of Parc de Salut Mar approved the study (20114420/1).

The SPSS Statistics 17.0 package was used for data analysis. The mean and standard deviation (SD) for continuous demographic data and frequencies for discrete, variable data were calculated. The Chi-squared test was used to calculate the differences of the various items included in the questionnaire according to profession. The significance level of $p > 0.005$ was set as the cut-off for the chi-squared distribution.

Results

Sociodemographic and employment-related characteristics

The mean age of the 230 interviewees was 43 (SD 9.2; range 21-65) and 122 (53%) were female. The professions were distributed as follows: 69 (32%) from the legal field (21 judges, 21 lawyers, 19 prosecutors and 8 police) and 161 (68%) from the healthcare field (71 nurses, 59 doctors, 16 psychologists, 15 social workers). Most of the professionals, about 73%, worked in direct contact with persons with legal problems related with substance abuse, while only 27% held management positions. Analysis by subgroups did not yield significant differences in the distribution by sex, except for the groups of police agents (100% male) and nurses, predominantly female (65%). As to years working in the sector of substance abuse-related problems, 24% of the professionals that completed the questionnaire had specific experience under 5 years, 30% between 5 and 10 years, 25% between 10 and 20 years, and, finally, 15% over 20 years.

Comparison of professionals from legal and health-care fields

Opinion on the response to delinquency related with drugs in practice.

The factors and substances object of abuse that promote or hinder the implementation of AMI and the opinion on the degree of suitability of the application of AMI to offenders addicted to drugs, according to the two groups of professionals, are described in Table 1. As regards the factors that favour the implementation of AMI, professionals from both fields consider that a stable social environment and employment are factors that favour the implementation of AMI. However, differences were found by profession as regards relevance whether the offence or AMI was the first one: legal professionals assigned higher relevance to the fact of an offence being an initial one and that the person had not previously been sentenced to serve AMI (Table 1).

Likewise, most of the professionals agree in considering that recidivism and the absence of a stable social environment are factors that hinder the application of AMI; however, their opinions differ as regards the lack of income or of having completed AMI previously: legal professionals consider that unemployment and a prior AMI impede the application of AMI (Table 1).

In relation to the type of substance implied, most legal professionals consider that AMI are pertinent for offenders who abuse cannabis, heroin and cocaine (54-75%), but only a minority consider that these are suitable in response to the use of amphetamines and other synthesis drugs (39%). To the contrary, healthcare professionals did not differentiate the substances, and considered that AMI are applicable to all (65-76%).

The majority of the interviewees considered that the application of AMI was dependent on the type of offence committed: possession/use and property crimes were the most likely candidates for AMI. Violent crimes are considered the least suitable for the implementation of AMI, though differences arise between both fields: legal professionals are less inclined toward applying AMI in these cases (Table 1). Likewise, the majority of the professionals from both groups (90 and 72%, respectively) consider that the most common reaction unto recidivists is the application of a more severe measure, while only 3% and 8% of these professionals consider that repeating AMI is applicable.

Most of the professionals advocate for a heightened cooperation across the fields of action, considering the current situation deficient both in terms of the existing cooperation as well as the willingness to cooperate of the two groups (Table 1).

Opinion on drug-related policies.

No substantial differences were found across both groups of professionals in response to questions on different aspects of Spain's drug-related policies in force. Therefore, as to their opinion on sanctions for personal use of drugs, merely a third of the interviewees considered this measure useful for preventing subsequent drug use, drug use by others, or for reducing drug-related crime. As to their opinion on the effectiveness of AMI for preventing recidivism, the majority of the professionals (97% of both legal and healthcare fields) considered that these could prevent crime. As to their opinion of Spain's AMI-related legislation in force, most of the professionals from both fields considered it inadequate and that the frequency of application of AMI should be increased (Table 2).

As to regulations on the use of cannabis in our country, about half of the professionals from both fields were in agreement with the current legislation, and only a minority (approximately 10%) considered the need for increasing its severity.

Finally, only 15% of legal professionals and 17% of healthcare professionals were satisfied with drug-related legislation in force.

Opinion on treatment for addictions.

The questionnaire included two questions addressing aspects about treatment currently offered for addictions. In this regard, professionals from both legal and healthcare fields were relatively satisfied - 58 and 54%, respectively - with the quality of the drug treatment centres. Likewise, over 80% were satisfied with current long-term Opioid Replacement Therapy (ORT) programs.

Table 1. *Opinions of interviewees on the response to delinquency related with drugs, according to professional field. Spain 2015*

	Legal (%)	Healthcare (%)	X2	p
Factors that favour the implementation of AMI				
Stable social environment	68	73	0,638	ns
Employment	58	62	0,250	ns
Substance abuse	44	42	0,069	ns
First offence	75	58	6,005	0,014
First AMI	67	33	22,438	0,000
Factors that hinder the implementation of AMI				
Fragile social environment	60	62	0,087	ns
Unemployment	1	26	19,288	0,000
Substance abuse	23	32	1,686	ns
Recidivism	77	80	0,321	ns
Prior AMI	52	38	4,042	0,044
Substances that favour the implementation of AMI				
Cannabis	75	76	0,028	ns
Heroin	65	70	0,421	ns
Cocaine/crack	54	66	3,064	ns
Amphetamines/other	39	65	12,777	0,000
Substances that hinder the implementation of AMI				
Cannabis	29	24	0,742	ns
Heroin	25	26	0,018	ns
Cocaine/crack	33	27	0,843	ns
Amphetamines/other	48	22	14,916	0,000
Types of offences that favour the implementation of AMI				
Possession/use	73	79	1,097	ns
Trafficking	42	40	0,104	ns
Property crimes	70	52	6,087	ns
Violent crime	3	15	7,298	0,007
Response to recidivism				
New AMI	3	8		
AMI + sanction	7	20	10,5	0,005
More severe sanction	90	72		
Existing level of cooperation between professionals from legal and healthcare fields				
Sufficient	23	8		
Insufficient	64	76	8,597	0,014
None	13	16		
Willingness to cooperate between professionals from legal and healthcare fields				
Sufficient	41	18		
Insufficient	52	72	12,721	0,002
None	7	10		
Sufficient level of quality of the drug addiction treatment centres				
Yes	58	54	61	ns

Note. AMI: Alternative Measures to Imprisonment.

Discussion

The evaluation of the opinions of professionals from both legal and healthcare fields on Spanish legislation in effect on drug use and drug-related crime demonstrates, first, that both groups share similar opinions on matters addressed by the study.

As to the application of AMI, healthcare professionals assign lesser relevance to the fact of whether or not the offence is the initial one, or whether or not AMI has been applied previously. Along the same lines, healthcare professionals' recognition of addiction as a chronic illness entailing recidivism possibly contributes toward their less punitive

attitude toward recidivist offenders with relapses in their drug use. For healthcare professionals, furthermore, the decision of whether or not to impose AMI is not dependent on the type of substance, while legal professionals associate the application of AMI to offenses related with the use of heroin, cocaine or cannabis more so than to those related with amphetamines or synthesis drugs. This is, probably, a reflection of the erroneous perception that amphetamines and other synthesis drugs are substances without analogous addiction-related problems, compared with other substances like heroin, cocaine and cannabis. In this regard, it is worth highlighting that the demand for treatment for the use of

Table 2. *Opinions of interviewees on drug-related policies, according to professional field. Spain 2015.*

	Legal (%)	Healthcare (%)	X ²	p
Opinion on punishment for personal use of drugs				
Adequate prevention of subsequent use	38	39	0,023	ns
Adequate prevention of use by others	35	31	0,275	ns
Contributes to reducing drug-related offences	33	29	0,481	ns
Usefulness of AMI for preventing delinquency				
Yes, always	10	7		
Yes, sometimes	87	90	0,58	ns
No, never	3	3		
Suitability of current legislation on AMI				
Yes	16	10	1,969	ns
The implementation of AMI should				
Be increased	75	72		
Be limited	13	13	1,215	ns
Remain the same	12	14		
Be abolished	0	1		
Usefulness of decriminalizing cannabis				
Yes, for personal use	24	34		
Yes, for selling	16	14	2,795	ns
No, legislation is adequate	50	41		
No, legislation should increase in severity	10	11		
Suitability of long-term Opioid Replacement Therapy (ORT) programs				
Yes	84	82	1,32	ns
Opinion on legislation in effect on drug-related policies				
Yes	15	17	0,116	ns

Note. AMI: Alternative Measures to Imprisonment.

amphetamines and other synthesis drugs is much lower than that demanded for heroin, cocaine and cannabis (DGPNSD - Governmental Delegation for the National Drug Plan, 2014). Likewise, both groups of professionals agree in the difficulty inherent to the application of AMI in cases of violent crimes and acknowledge that not only are offences of use and possession suitable for implementing AMI, but that property crimes are suitable as well. Most of the interviewees consider it possible to prevent recidivism, and advocate for broadening the scope of application of AMI. These results suggest that these professionals have a favourable opinion of the efficiency of a legal system, like Spain's, based on recognising addictions as illnesses and, consequently, promoting AMI as a key tool of the process for responding to drug-related crime, advocating for a more solid interaction across legal and healthcare fields in the face of drug treatment.

One particularly relevant result of the study is the opinion of the interviewees on the issue of decriminalizing cannabis. Most favour abolishing punishment for personal use and explicitly point out the usefulness of decriminalizing personal use of cannabis, in line with Spain's legislation in force. This fact is confirmed independently in that only a minority of the interviewees prefer more severe legislation. Given the current, international debate on the decriminalization/deregulation of cannabis use, this opinion shared by both legal and healthcare professionals as regards cannabis users in Spain (Babín Vich, 2013) may contribute information that

is interesting and relevant for other countries (Banys, 2016; Volkow et al., 2016; Wall et al., 2016).

Furthermore, bearing in mind that Spain is one of the countries with the broadest coverage of ORT programs, including its availability in prisons (Torrens, Fonseca, Castillo, & Domingo-Salvany, 2013), the fact that 80% of the professionals interviewed were satisfied with the characteristics of ORT programs available in our country also seems to support this vision more oriented toward considering the user a patient.

Finally, though both groups consider that their cooperation is insufficient, healthcare professionals feel so more strongly. In general, this perception of lack of cooperation may arise from the fact that, in practice, legal professionals do not communicate with healthcare professionals directly but rather through social workers, a minority group within the healthcare field. To the contrary, the fact that these intermediaries in the communication are not the healthcare professionals directly responsible for the clinical cases themselves facilitates the independence of medical decisions in relation to the legal situation.

When comparing our results with data obtained using the same methodology in Austria and Poland within the framework of the IDDO-Europe project, the attitude of legal policies for treatment in effect across the three countries is not the same: Spain's legislation is more permissive while that of Austria and Poland is more restrictive. In general,

healthcare professionals in all three countries are more critical as regards the effectiveness of criminalizing the management of addictions, though Spain's healthcare and legal professionals both advocate for the current legal system to consider the possibility of implementing AMI and request a subsequent review of current policies on illegal drugs.

The main limitation of this study is the representativeness of the sample, given that it does not encompass the entire country.

Nevertheless, this study of opinions on current legislation applicable to addiction to illegal substances from the perspective of healthcare and legal professionals demonstrates their similarity of opinions as well as main points of discrepancy as regards many of the aspects under study, and offers a framework for improving the interaction across both groups of professionals which would result, ultimately, in improving the approach toward addiction as an illness.

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Conflict of interests

The authors declare the inexistence of conflicts of interest.

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