

Submission on human rights challenges in addressing and countering the world drug problem in Italy.

1. Violations to PWUDs' right to health.

Harm reduction (HR) has been recognized as a fundamental component of the right to health, as well as of the right of everyone to enjoy the benefits of scientific progress. It has been explicitly endorsed as an essential measure for PWUD on numerous occasions by the UN General Assembly,[1] the Human Rights Council,[2] and other UN agencies [3][4][5][6].

In Italy, the right to health based on HR services availability and accessibility is not guaranteed all over the country, even if these services would be, according to the national law, public essential health services (LEA). In spite of this, no steps have been taken by the governments to guarantee the implementation of these HR services: from 2015 on, only 12 out of 20 regions had harm reduction services in place, but only in 6 these are stable. 6 regions had no harm reduction services while 2 regions did not provide data [7]. This involves high health risks (overdoses, HIV and HCV infections, other harm related to i.v. use) and critical differences in the enjoyment of the right to health by PWUD in those many regions which don't guarantee HR programs.

1.1 Discrimination against migrants, refugees and asylum-seekers who use drugs

In Italy registered migrants have the right to access all services provided under the SSN (National Health System), while all migrants without a legal permit have a right to access 'primary care'.

As HR and drug treatment are recognized as 'primary care', both legal immigrants and migrants without a legal permit should be able to access Public Drug Units. In practice, however, many professionals obstruct migrants' access to services citing bureaucratic reasons; and many residential treatments discriminate against migrants without a regular permit, prioritizing Italians or legal immigrants. Recent amendments to the national immigration and asylum policy have had a negative impact on the right to health of asylum-seekers and refugees. These laws introduce a more repressive and restrictive regime which is causing many asylum-seekers to lose their temporary regular permit. As a consequence, they risk expulsion and imprisonment. Service providers believe that the combination of their illegal status and the stigma associated with it prevent them from accessing essential HR and treatment services.

1.2 Harm Reduction services in prison

The only harm reduction service currently available to prisoners in Italy is OST, which is provided to those identified as 'drug addicted'. In the event of withdrawal symptoms, provision is often not timely, continuity of care from outside to within the prison and vice versa – or in case of a prison transfer - is often delayed or not ensured. Maintenance therapy is often lacking in prison. All other HR services are not allowed.

2. Criminal justice and PWUD criminalization

Imprisonment for simple drug use was removed by popular referendum in 1993 (with the complaint of INCB [8]), but the repressive structure of the law has remained. It is possible to search without a

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www.forumdroghe.it | www.fuoriluogo.it | segreteria@forumdroghe.it

Sede Operativa: Via San Salvi, 12 - Palazzina 35 | 50135 | Firenze | Italia | Tel/Fax +39 055 6587433

Sede Legale: Piazza di Bellosguardo, 6 | 50124 | Firenze | Italia

C.F. 97118590583 – P. IVA 06196441007

warrant on mere suspicion of possession of substances, and possession is sufficient to lead to arrest and prosecution: the thin distinction between personal use and dealing, due to very low 'active substance' limits (250mg heroin, 500mg THC, 750mg cocaine), is indeterminable for users. Ethnic profiling by the police is reported in several cases [9]. In the everyday practice of courtrooms, users have to prove personal consumption (reversal of the burden of proof). Thus, the weakest, and among them migrants, end up crowding the prisons.

In Italy at the end of 2021, 18.884 people - 35% of all prisoners - are in jail for drugs. Twice the European average and much more than the world average. 7/10 end up in prison for very minor offences. 30% of them are foreigners, mainly migrants.

36% of people entering prison are drug addicts. The number of those in prison at the end of 2022 reached a record high compared to the incarcerated population: 28.16%.

Alternative measures to prison ultimately turn out not to be an alternative but an enlargement of the area of penal control: there are poor quality data, anyway we do know that 3600 are drug or alcohol addicts.

Drug laws and stigma are central to many deaths due to police violence during stops and arrests, and in prisons as in the cases of Federico Aldrovandi, Stefano Cucchi, Aldo Bianzino or the 13 deaths in prison in the 2020 riots during the first COVID lockdown.

2.1 Criminalization and stigmatization of drug use

Administrative sanctions are not simply fines, they are punitive and marginalizing measures, such as the driving license and passport revocation, even without the person having engaged in any dangerous conduct (i.e., driving under the influence of drugs). All that affects the right to work, as well as the possibility to move freely.

About 1,500,000 Italians have been signaled for these measures since 1990. Reports for drug use remain on police records without a time limit: an entire generation has been kept on file, with the stigma that follows.

There are several cases of suicide linked to the repression of consumption. The most heartbreaking was that of a 16-year-old who committed suicide after the police found him in front of school with a few grams of cannabis and took him home for a search in the presence of his mother.

By law, personal use is not applicable to cultivation, although the Supreme Court has introduced this in its jurisprudence, this does not prevent people who grow cannabis from being prosecuted, even if they are then almost always acquitted. The penalty is up to six years in prison.

Expulsion from the migrant hosting system is also possible for people with humanitarian protection who are reported for substance use.

3. Right to health and psychotropic substances

Only since 2010 Italy has recognised palliative care and pain relief as an inviolable right of every citizen. Some critical issues remain with respect to the use of substances for therapeutic use in the country. The availability and use of the epidural for painless childbirth 24/24 7/7 is limited to some regions.

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In recent years, the Ministry of Health has been unable to secure medical cannabis to meet the increasing demand for treatment. This has caused serious problems for patients who in many cases have had to suspend their treatment plans. It has happened that patients have cultivated cannabis to make up for these shortcomings and have been prosecuted for it.

4. Cultural and religious rights

In 2009 the organizer of Europe's biggest reggae festival, Rototom Sunsplash, was charged for 'facilitation of drug use' following an investigation by the Carabinieri in Tolmezzo, Friuli. In 2015 he was discharged [10] while the festival had meanwhile moved to Spain and Italy lost an important cultural event.

In 2022, Italy included ayahuasca and the plants from which it is derived in the tables of prohibited substances. The appeal to administrative justice by the Italian Church of the Eclectic Cult of Universal Light - Iceflu Italy was dismissed on the grounds that the supposed protection of public health (for a substance not in the Conventions schedules) was superior to the right to a religious cult.

5. The right to participation of communities and civil society

CESCR General Comment no. 14 stresses that the right to health also requires “the participation of the population in all health-related decision-making at the community, national and international levels”[11] as well as in the provision of health services.[12] The International Guidelines on Human Rights and Drug Policy clarify that everyone – and particularly those directly affected – has a right to meaningful participation in the design, implementation, and assessment of drug laws, policies, and practices[13]. The level of CSO participation in drug policy in Italy is one of the worst in Europe [15]. With regards to the participation of PWUD in drug policy decision-making and evaluation processes, this is almost non-existent. This is mostly due to the stigmatizing attitudes linked to the mainstream drug policy approach based on a repressive and pathologizing paradigm.

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Contact: Susanna Ronconi susanna.ronconi@gmail.com , +39 339 4155985

[1] In its resolution 65/277.

[2] In its resolution 12/27.

[3] See the Committee's general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health.

[4] In CEDAW/C/GEO/CO/4-5 and CEDAW/C/CAN/CO/8-9.

[5] In A/65/255.

[6] In A/HRC/22/53.

[7] Relazione annuale al Parlamento sul fenomeno delle tossicodipendenze in Italia anno 2016

<http://www.politicheantidroga.gov.it/media/1095/1-relazione-annuale-al-parlamento-2016-sullo-stato-delle-tossicodipendenze-in-italia.pdf>

[8] See Report of the International Narcotics Board for 1994 par. 314, p. 52:

https://www.incb.org/documents/Publications/AnnualReports/AR1994/AR_1994_E.pdf

[9] See <https://progettoyaya.org/>

[10] In 2011, one of the Carabinieri involved in the investigation was convicted of dealing the drugs seized there.

[11] Para 11 and 54

[12] Para 17

[13] General principle 4

[14] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52012XG1229%2801%29>

[15] A study by the University of Hamburg, in the framework of the European project Civil Society Involvement in Drug Policy, CSI-DP, evaluated the level of CSOs participation, <https://csidp.eu/assessment/>

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