**Best practices in alternatives to prison – Portugal**

Alternatives to prison are a non-issue in Portugal. There is no public debate on the matter, nor any studies on which to base such a debate. The Ministry of Justice shows no interest in the idea. Where there is debate at the judicial administrative level as to anything beyond incarceration, the discussion centres on the growing use of electronic monitoring promoted by the General Directorate of Probation and Prison Services (Direção Geral de Reinserção e Serviços Prisionais). Even here the debate has only arisen as a consequence of the recent house arrest of some high profile public figures, and tends to be of little substance. Also hindering this project’s WS1 attempt to collect pertinent information for an analysis of existing programmes and/or alternatives to prison is the lack of collaboration on the part of General Directorate of Probation and Prison Services.

That said, we have been able to identify two examples of interesting practices promoted, in collaboration with the judicial system, by organizations and/or services completely independent of that system, which, if yet only marginally employed in Portugal, we believe have the potential to inspire a much broader approach to alternatives to prison. These are a) the system arising out of the Portuguese policy of decriminalization to handle the people which are administratively dealt with for use or possession of illicit substances; and b) the approaches to prevention of domestic violence organized by NGO’s in two districts with the support of the municipalities.

**1. Commissions for the Dissuasion from Drug Addiction**

The Commissions for the Dissuasion from Drug Addiction (Comissões para a Dissuasão da Toxicodependência) or CDTs, as they are commonly known in Portugal, are overseen by SICAD – Services of Intervention in Addictive Behaviours and Dependencies (Serviço de Intervenção nos Comportamentos Aditivos e nas Dependências), a government body charged with “promoting the reduction of the consumption of psychoactive substances, the prevention of addictive behaviours and the reduction of dependencies.” The CDTs were created in 2001 as the core of the mechanism for implementing Law n.30 of November 29, 2000, generally known as “the law of decriminalization.” This law instituted a dramatic shift in how the state dealt with the use of illicit drugs. From a criminal infraction, the use or possession of drugs up to a certain limit became a civil/administrative infraction. The law decriminalizes the purchase, possession and consumption of all drugs up to a predetermined maximum amount stipulated as the average 10 day consumption for each particular drug. It “defines the legal regime applicable to the consumption of narcotics and psychotropic substances, as well as the sanitary and social protection of individuals who consume such substance without medical prescription,” structuring the decriminalisation (not legalisation) of the consumption of drugs policy while maintaining the criminal status of drug dealing/trafficking. Decree-law n. 130-A/2001 of April 23, 2001, establishes the organization as well as operating parameters and procedures of the CDTs, giving these commissions the authority to handle the relevant civil processes and related sanctions.

Decriminalization of consumption deviates drug users from the criminal justice system, sparing them the stigmas associated with its sentences. Based on the “rather treat than to punish” principle, offenders, as possession and consumption continue to be illegal, are channelled by the competent authorities through a system which puts them in touch with specialized support services, be they health services, social services, educational services or employment services.

The CDTs are mediation platforms, departments of the Ministry of Health, established at the local level to determine the degree of need and type of services indicated for each drug user sent to them by the enforcement authorities, be they the police or the courts. They offer advice based on an evaluative process that permits them to have some idea as to whether the individual is a recreational, at risk or problematic user, and direct those who may need it to a variety of services with which each CDT develops partnerships and protocols in an effort to mobilize any local community resources that may contribute to their dissuasive and preventive purpose. They are a response based on offering options and empowering the individual.

There are 18 CDTs, one per capital of district, covering the whole of mainland Portugal and Autonomous Regions of Acores and Madeira. Each Commission is made up of three members (in practice many have only two) nominated by the Ministries of Health and Justice. It is the responsibility of these commission members to apply the law, based on the principles of promoting health and dissuading consumption. Each Commission is also supported by a multidisciplinary team of technicians, such as clinical psychologists, social workers, lawyers, sociologists, administrators, etc., who are responsible for all the preparatory work – making a detailed psychological evaluation of the individual, collecting an history of use and underlying motivational factors, evaluate motivation for particular models of specialized follow-up, facilitate links with appropriate support structures, offer preventive instruction tailored to the individual’s particular circumstances – leading to the Commission’s decision.

Most people are directed to the CDTs by the police forces. When encountering individuals in possession or consuming illicit drugs, the police must issue a summons, for no more than 72 hours from its issuance. With each summons the officers must also elaborate a report, to be forwarded to the nearest CDT, containing all the relevant information pertaining to the facts of the contact with the individual, type of drug, amount, observations, etc. **But in what is a true alternative to prison, the Commissions also receive a number of individuals sent to them by the Public Prosecutor’s Office (Ministério Público) or the criminal courts. This generally happens in cases where the individuals are found by the police with more than the amount of the relevant drug allowed by the “law of decriminalization,” and therefore having committed a crime, but the Prosecutors’ Office or the Court decides that the public interest is better served by the dismissal of the criminal case and the redirecting of the individual to the public health system (i.e. CDTs) (it can also happen, and here there is a lot of room for this alternative to expand, in cases where the crime was some other offence brought on by drug use).** Between 2010 and 2013, the CDTs received on average 7,879 cases per year, of which 1,172 (14.9%) were sent to them by the Public Prosecutor’s Office or the courts.

The CDTs intervention method is based on using the evaluation and motivation of drug users to incentivise behaviour modification processes, dissuasion from consumption, health promotion, improvement of quality of life and engagement with specialized prevention support systems both for treatment and social integration. There are three phases of intervention:

1. Evaluation of the individual: through a semi-structured interview and collection of case history, evaluation of motivation, and evaluation of consumption risk (involving, in part, the application of the ASIST – Alcohol, Smoking and Substance Involvement Screening Test) based on prior level of consumption which can be considered either low, moderate or high;
2. Motivational intervention tailored to the individual;
3. Re-evaluation and follow-up.

The first appearance before the Commission in any five year period never implies a sanction. Consumers judged not dependent can be sanctioned with a civil fine (coima) if sent to the CDT more than once in five years, although typically a non-pecuniary sanction is applied. Dependent consumers can never be subjected to a pecuniary sanction, regardless of how many times they may be referred to the CDT in any given period. In either case, sanctions, if applied, are so with the aim of meeting the evaluated needs of the individual. If the person does not voluntarily enrol in a programme judged by the Commission to be appropriate for her/his particular case (there is always the option to refuse participation in any of the commission’s suggestions), the sanction imposed may be the obligation to go to the location of the recommended programme and sign in once a week for a certain period of time. This strategy aims to bring the individual closer to services which s/he may eventually choose to take advantage of despite initial resistance. Although the sanctions applied, as well as the programmes recommended, vary depending on the resources developed by each CDT, the law foresees the following: Periodic checking in at the CDT or other location (ex. health clinic); admonition; community service; prohibition to frequent places or socialize with certain people; Imposed subsidy management; prohibition/revocation of certain licences (ex. Hunting); fine. In most cases, after the initial appearance in front of the Commission, the case is suspended for a period of time during which the individual is expected to comply with the recommendations of the Commission. At the end of that period a re-evaluation is conducted, and if the individual is deemed to be heading in the right direction and/or has met the commission’s requirements and/or sanction the case is archived. It is important to note that failure to comply with ***any*** recommendation and or sanction can never result in incarceration.

Among its many benefits, this alternative carries a much lower processing cost for the state. The 2013 estimated cost for processing the same case through the courts is 580€ to 800€, compared with 200€ to 390 € to processes it through the CDTs.

SICAD and its CDTs have been the subject of a great deal of attention and various international studies as an example of a unique good practice in the “war on drugs” (see Silvestri, A. 2015, Gateways From Crime to Health: The Portuguese Drug Commissions. London: WCMT and PRT). The Portuguese approach is being considered in the preparatory discussions, at the UN, for the reform of prohibitionist policies.

**2. Contigo Programme**

The Contigo (with you) Programme is a psychosocial rehabilitation project for domestic violence perpetrators launched in Ponta Delgada, Açores, in 2010 by the Support to Women in Vulnerable Situations Network (Rede de Apoio à Mulher em Situação de Risco). In mainland Portugal, also in 2010, Cascais followed the same technical/scientific model to create the Contigo Cascais. It was this latter programme that we had opportunity to research.

The Contigo Cascais Programme is based on a local inter-institutional network developed by the Cascais Municipal Forum Against Domestic Violence (Fórum Municipal de Cascais Contra a Violência Doméstica). It consistes of a partnership between Cascais Municipal Authority (Câmara Municipal de Cascais), The General Directorate of Probation and Prison Services (Direcção Geral de Reinserção e Serviços Prisionais) and the Portuguese Foundation for the Study, Prevention and Treatment of Drug Addiction (Fundação Portuguesa para o Estudo, Prevenção e Tratamento da Toxicodependência). Its objective is to help individuals end violent behaviour within conjugal relationships, to diminish reoccurrences and prevent victimization. The number of individual participating in the programme has progressively increased. The programme is organized in three stages:

1. Evaluation – People can join the programme either by self-referral or, more commonly, are referred to it by the courts (as a sentence imposed by the judge), by the Public Prosecutor’s Office (Ministério Público) (individuals charged with a domestic violence offence), by the General Directorate of Probation and Prison Services (DGRSP). They are then submitted to an evaluation process out of which a report recommending or not recommending participation is issued.

On DGSP referrals the evaluation is done by DGSP technical staff. Interviews are conducted with the person and, if possible, with family members, friends, members of the community, and especially the victim in order to develop an adequate social, family and violence profile and evaluate whether the individual meets the programmes requirements. The decision to propose the individual for the programme is always presented and discussed with the subject and, if possible, the victim.

Referrals by the courts or by the Prosecutor’s Office involve a schedule of requirements judged adequate to each particular case. The individual can be directed to mental health care, drug counselling, family therapy, etc., in addition to the programme itself. Motivational counselling and monitoring of the individual´s progress in the programme are required. Throughout the process the individual is under the responsibility of the Probation Department.

1. Individual supervision and monitoring – it is at this point that the Prosecutor’s Office or the Judge decides whether to authorize or deny participation in the Programme. In the case of voluntary candidacies this is also the moment when the programme begins. Candidates are made aware of the decision and of the period allocated for compliance with the measure(s). The programme involves individual monitoring and completion of a Psycho-Educational Module (Módulo Psico-Educacional or MPE) composed of 18 group sessions. The groups are made up of individuals at different phases of the process, something which has proven useful, especially for those just getting started. There are other activities that can be made part of the process when possible and justifiable for particular cases.
2. Follow-up – Two years after completion of the programme an evaluation is conducted. This evaluation involves the victim, new partner if the perpetrator is involved in another relationship, police services, the courts, and other services so as to determine if the individual has relapsed into aggressive behaviour.

The fact that the programme brings together individuals at all phases of the therapy as well as those who volunteered with those who are mandated to attend has demonstrated to be a positive stimulus for those who are initially less committed to the programme. Seeing the commitment and progress made by others is a great incentive and helps many overcome resistance to the aims of the programme.

**As an alternative to prison, it is important to highlight those who arrive to the programme through the Prosecutor’s Office as requirement associated with a *suspended case* alternative (Suspensão Provisória do Processo[[1]](#footnote-1)). The Prosecutor’s Office can propose this measure as an alternative to proceeding to the trial phase and potential prison sentence. Of a total 64 participants in the programme between 2010 and 2014, 32 or 50% were enrolled as part of this alternative.**

In evaluating outcome of programme participation, the following are assessed as being positive results:

* Voluntary participation
* Positive group dynamic toward new participants
* Development of a new concept of self and of being within the dynamic of significant emotional relationships (i.e. a non-violent interactive dynamic)
* Identification and recognition of past violence and aggression as well as a growing understanding of the impact that these have of the victim(s), as well as oneself
* Empathic growth in family, social and work relations
* Wish to share the positive experience of participating in the programme with (ex)partner (wife, girlfriend, etc)

According to the programmes technicians, after the two year follow-up, there have been two cases of recidivism in the history of the programme (judged by the re-incidence of domestic violence).

**For those individuals sent to the programme by the Prosecutor’s Office as part of a suspended case, after a positive two year follow-up evaluation, the case is archived (dismissed).**

Although the programmes are relatively small in scope, we conclude that the examples presented of Alternatives to Prison have been consistently efficient in their results. Both examples demonstrate that the individuals given the opportunity to participate benefited from the “voluntary” dynamic of the experience, regardless of the degree of their problematic behaviour. Portugal has not benefitted from the potential diminution in prison population such alternatives promise because as of yet they exist at the margin, as the more common approach to “alternatives,” here as elsewhere, prevails. We propose that the collaborative/curative model represented by these programmes could be expanded and explored in relation to many other offences, with benefits for the individuals and society as a whole.

1. **Suspende case: if the crime is punishable with a prison sentence not superior to 5 years or with a sanction other than prison, the Prosecutor’s Office, of its initiative or at the request of the accused or of the assistant, determines, with the agreement of the magistrate, the suspension of the case contingent upon compliance with rules of conduct, anytime that the following conditions are present: a) the agreement of the accused and the assistant; b) the absence of a previous guilty finding for a similar crime; c) the absence of a previous suspension of case for a similar crime; d) There not being reason for detention as a security measure; e) absence of a high level of culpability; and f) being reasonable foreseeable that compliance with injunctions and rules of conduct will sufficiently satisfy the requirements for prevention particular to the case.** [↑](#footnote-ref-1)