

Report by Francesca de Marinis on Drug Laws in Italy since 1990.

- Law n. 162/1990 (T.U. n. 309/90)

- **Art. 72 T.U.** provided an absolute prohibition for the consumption of drugs, but the ban was not associated to any sanction. For this reason, the norm was considered a kind of 'manifesto' of the drug policy of that period.

- **Art 73 T.U.** (the main provision) pointed out (and still does) all the conducts that led to a criminal sanction: "whoever purchases, offers, offers for sale ...".

For the behaviors related to 'hard drugs', the sanction provided were of prison detention from 8 to 20 years and a fine from about 25.000 to 250.000 euros; for 'soft drugs', the prison detention was of 2 to 6 years and the fine from about 5.000 to 25.000 euros.

This provision also provided that the possession of psychoactive substances under a "**daily average dose**" (that corresponded to the average amount of drugs consumed by a drug user per day), as it was supposed to be **for personal use**, was considered an administrative offence, therefor subjected to the sanctions provided by **art. 75 T.U.**

- **Art. 73, par. 5, T.U.** provided more lenient penalties in case the offence was of minor entity: detention from 1 to 6 years for 'hard drugs' and from 6 months to 4 years for 'soft drugs'.

- Referendum in 1993

The result of the referendum that took place in 1993 was the abolition of the art. 72 TU (the 'manifesto' norm) and the **possession for personal consumption was decriminalized regardless the amount owned**, thus the dividing line between criminal and administrative conducts lays on the purpose of the detention.

- Law n. 49/2006 (also known as law "Fini-Giovanardi" from the name of the proponents)

This law - probably the most repressive in the Italian panorama of drug policies - introduced several changes:

- **Art. 73, par. 1 T.U.** didn't differentiate anymore "hard drugs" from "soft drugs", and introduced for all the criminally relevant conducts (e.g. to cultivate, to purchase, to produce ...) just one sanction: detention from 6 to 20 years and a fine from 26.000 to 260.000 euros.
- **Art. 73, par. 1 bis T.U.**, introduced by this law, provided a list of conducts considered abstractly compatible with **personal use**, and punishable just as administrative offences, in case the personal use was verified; in case the personal use was not the

'exclusive' reason that motivated the conduct, instead, the punishment would have been the same established for the par. 1 of the same article.

Therefore, under the new law provided at art. 73, par. 1, all the conducts that were considered *ex se* criminal offences, regardless of the possibility that the conducts would have been realized just for personal use, while at art. 73, par. 1 *bis* identified the conducts that could be linked to personal use.

From the latter were (and still are) excluded cultivation and transport, that already in abstract are considered incompatible with personal use.

- **Art. 73, par. 5, T.U.** the penalties increased also for the less severe offences, also in this case the sanction provided is the same both for 'soft' and 'hard' drugs (1 to 6 years and a fine from 3.000 to 26.000 euros).
- **Art. 75 T.U.** provided all the administrative sanctions in case of being caught with a determined amount of drug for personal use
- **Art. 75 bis T.U.**, introduced by this law, provided heavy administrative sanctions to protect the public security (*a tutela della sicurezza pubblica*) from who has already been condemned for any drugs related crime, even if the conviction is not defined yet.

- Law n. 10/2014

- **Art. 73, par. 5, T.U.** was modified: the penalty was reduced (detention from 1 to 5 years) and it was considered not anymore a mitigating circumstance - as it was considered from 1990 -, but an autonomous crime referred to the conducts characterized by an offence of slight entity (*fatto di lieve entità*).

- Constitutional Court decision n. 32/2014

The Constitutional Court partially declared unconstitutional law n. 49/2006 (that converted the law decree n. 272/2005), so it was once again applied art. 73 as it was formulated in the previous legislation.

The principal innovation following the Court's decision was the reintroduction of the difference between the offences related to soft and to hard drugs.

- Law n. 79/2014

After the Court decision the Legislator reorganized part of the provisions regarding the drug legislation.

- **Art. 73 T.U.** provides the same penalties of the law introduced in the 1990.
- **Art. 73, par. 5, T.U.** is still considered an autonomous crime and the sanction has been reduced (detention from 6 months to 4 years). As a consequence of this qualification, actually it is forbidden the pre-trial detention for this kind of offences. It is worth noticing that the penalty is still the same for 'soft' and 'hard' drugs.

- **Artt. 75 and 75 *bis* T.U.** the wording of those articles has been changed, but the heavy (and criticized) administrative sanctions remained the same.