

## Effects on business and administration of resolution 12 - 2015 on criminal policy in Ecuador.

Efectos en negocios y administración de la resolución 12 – 2015 en la política criminal en Ecuador

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### ABSTRACT

The objective of this research work is to demonstrate that the Reform No.001-CONCEP.CD.2015 or Drug Table of 2015 has not given good results and that what it has generated is that there is an increase in the number of people arrested for carrying controlled substances and they are established as traffickers. The research methodology used is the documentary - bibliographic method, since a database of the last years of Public Entities was used and information was collected from several texts that had reference to the subject. In addition, the research concludes that the State should return to the previous Table to avoid the criminalization of consumers and that the table should be raised within the Comprehensive Organic Penal Code, and that the implementation of the 2015 Table has not made any change in the Ecuadorian criminal policy and has only brought the problems to increase.

**Keywords:** drugs, reform, criminalization, drug users, prisoners

### RESUMEN

El presente trabajo investigativo tiene como objetivo planteado el demostrar que la Reforma No.001-CONCEP.CD.2015 o Tabla de drogas del 2015 no ha dado buenos resultados y que lo que ha generado es que haya un crecimiento de detenidos por portar sustancias sujetas

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a fiscalización y se los establezca como traficante. La metodología de investigación que se utilizó es el método documental – bibliográfico ya que se utilizó base de datos de los últimos años de Entidades Públicas y se recogió información de varios textos que tenían referencia al tema. Además, dentro de la investigación se concluye que el Estado debería volver a la Tabla anterior para evitar la criminalización de los consumidores y se la tabla sea planteada dentro del Código Orgánico Integral Penal, y que la implementación de la Tabla del 2015 no ha hecho ningún cambio dentro de la política criminal ecuatoriana y que solo ha traído que los problemas se incrementen.

**Palabras clave:** drogas, reforma, criminalización, consumidores, prisioneros

## INTRODUCTION

This paper makes an analysis and criticism of the different reforms of the drug tables that have occurred and that have affected the country, mentioning that the latest reform, Resolution No. 002-CONSEP-CD-2015 issued by the National Council for the Control of Narcotic and Psychotropic Substances published in Official Register Supplement 628 of November 16, 2015, has not provided solutions and has created problems in the political and legal spheres, among others. Being that in the political sphere there has been a lack of interest on the part of governments that have not provided solutions to the problem of drugs and their consumption, and have not created public policies that help drug addicts to face this problem.

In the legal area, it is necessary to establish that the Organic Integral Penal Code does not stipulate the scales or ranges of drugs that are allowed and only contemplates a sanction divided into four scales, but this is stipulated in another regulation.

The justification for this work is that there has been confusion in society about this issue, since it is thought that the table allows consumption, when this is not the case. It is necessary to clarify that the table delimits drug trafficking to make it easier to establish a sanction for those who commit the crime and to make it clear that these frameworks used are affecting consumers who use different narcotics for their consumption.

Eliminating the table does not solve micro-trafficking, nor will it stop this activity, nor will it make drug addiction disappear. It must be analyzed here that trafficking is related to a social sphere due to the fact that many of the small-scale traffickers are poor, receiving an exaggerated penalty for the crime committed.

The aim is to make it known that the percentages established in the 2015 table do not have any technical determination, therefore, a meaningless regulation is being proposed by establishing low levels and that it is sanctioning in a hasty manner, when it is the duty of the Prosecutor's Office to establish that the person who carries a controlled substance is with the purpose of trafficking it, resulting in not differentiating between

consumers and micro-traffickers, violating the due process for detainees and creating overcrowding in prisons.

## **MATERIALS AND METHODS**

The research is a qualitative type that is based on an analytical method and uses the collection of data obtained from different sources that provide specific information needed to argue and analyze within this work. The information was obtained from the National Service of Integral Attention to Persons Deprived of Liberty and Adolescent Offenders, the Resolutions applied on the drug threshold and the legal bodies cited as the Constitution and the Organic Integral Penal Code, these are the materials that are going to be occupied and cited to argue in this work.

## **RESULTS**

The issue of drugs and their possession or carrying has been of great relevance within the Ecuadorian context, being necessary to create laws that regulate the possession and for what purposes these substances will be used to avoid micro-trafficking. In context, there are laws proposed since the 50's to deal with illicit trafficking, reforms to these laws were developed, but we will analyze the latest Resolutions that have existed, thus the Table of quantities of Narcotic and Psychotropic Substances is given to punish what is illicit drug trafficking at different scales, cataloging them into four: minimum, medium, high and large scale, established on July 14, 2014.

### **Drug table established in 2014.**

This 2014 Resolution establishes a threshold for the possession of substances, giving a maximum amount of drugs that a person can carry or have, either for their own consumption and that will not be punishable, in case this amount exceeds the established amount, it is understood that the purpose is the commercialization or trafficking of drugs. With this type of Resolutions it was intended to establish a difference between what is considered as a consumer and what is considered as a trafficker or micro traffickers. Applying a penalty established in another regulatory body to the crime committed and distinguishing four types of scales helps to have greater clarity in the participation and that trafficking must be proven for a penalty to be given.

It is important to mention Art 220 of the (Código Orgánico Integral Penal, 2014) which mentions the penalties for illicit trafficking of substances of Minimum scale of one to three years, Medium scale of three to five years, High scale of five to seven years and Large scale of ten to thirteen years. This clarification within a legal body prevents the application of extreme penalties as existed in previous laws (Resolution 001-CONSEP-CO-2013).

The Reform allowed for the correction of the existing Penal System, since the principle of favorability was applied, resulting in the release of more than 2,000 people arrested for minimum and medium scale trafficking, decongesting the prisons.

Now, problems began to be encountered with respect to the interpretation of the tables, which led to the decision to change the table, especially when there was a large

consumption of the substance known as "H", giving way to the Ecuadorian Government to resume the high penalties and not to differentiate between consumers, drug addicts and micro-traffickers, which had already been achieved. New thresholds for substances and their possession were created.

As the 2013 thresholds for consumption are in force, the amount that a person can possess or have for heroin use is 0.01 grams; however, the counter-reform establishes that 0.01 grams of heroin will be the parameter from zero to consider the existence of minimum scale trafficking. (Paladines Rodriguez, 2015).

This counter-reform has caused consumers to be considered micro-traffickers because the table takes such low amounts for personal consumption to differentiate the consumer from a possible crime, this is one of the benefits of establishing a table of drug possession or carrying, but it is emphasized that within the country there is a table with a low threshold in comparison with other countries. It is also necessary to establish that these tables are made or established with the purpose of making it easier to establish the people who are trafficking, this has been said, but in practice it has generated more problems than solutions and has not achieved its objective, but has created confusion within society and the authorities.

#### **Thresholds for possession or carrying of substances for personal consumption in other countries.**

To approach this comparison, cannabis, which is one of the most consumed drugs, will be taken and its possession or possession allowed in other countries will be analyzed to show the existing difference in the threshold in Ecuador compared to other countries. Starting with Colombia, the permitted dose for personal use is no more than 20 grams. (Castañeda M, 2020, p. 20). In the case of Mexico, the percentage of possession or carrying is 5 grams (Gómez, 2019, p. 43). (Gómez, 2019, p. 43). On the other hand, Uruguay establishes a maximum of 40 grams for personal consumption for one month and there are three ways to obtain cannabis, either by sale in pharmacies, by self-cultivation (6 female plants are allowed) and by membership clubs, which are a new way to commercialize cannabis (Corda & Filomena, 2019, p. 43). (Corda & Filomena, David., 2019, p. 9) Finally, we take the example of the Netherlands, a very developed country in the issue of consumption or possession of drugs such as cannabis and its commercialization.

Another example is Holland has created a consumption policy that seeks to decriminalize consumers and give them an ease when consuming and "safe" places to do so, thus achieving that the State has control of the places that commercialize cannabis through the well-known "coffeeshops" where 5 grams per person per day are sold, these are places for consumers to have safe access to cannabis and prevent them from coming into contact with other types of drugs that are prohibited in the country. (Gómez, 2019, p. 45).. This country aims to avoid the criminalization of consumers by establishing high thresholds for possession or carrying of drugs for the consumption of drug-dependent people.

### **Difference between drug addicts and consumers.**

Within the work, it is necessary to establish the difference between these two types of people involved in the issue at hand. First of all, we start by defining what drugs are, for the World Health Organization they are

any therapeutic or non-therapeutic substance that, when introduced into the body by any route of administration (inhalation, ingestion, friction, parenteral or intravenous administration), produces an alteration, in some way, of the natural functioning of the individual's central nervous system and is also susceptible to creating dependence, whether psychological, physical or both, according to the type of substance, the frequency of consumption and permanence over time. (Drug Dependency Prevention Program, 2022).

Substance addiction (substance use disorder) is a disease that affects a person's brain and behavior, and results in an inability to control the use of illicit drugs or medications. (Medline Plus., 2021)

We understand that drug addiction is defined as the frequent consumption of narcotic drugs or psychotropic substances that become addictive in a short time, also defined as a chronic disease suffered by people dependent on substances despite the damage it causes. (Medline Plus., 2021). Drug addiction is the compulsive use of a drug voluntarily with knowledge of the health consequences.

On the other hand, we have substance users, defined here as people who consume substances casually and in a controlled manner with a self-control of the substances, often used recreationally using soft drugs such as marijuana or cannabis.

### **Criminalization of consumers.**

It is understood why the States seek the necessary measures to fight against drug trafficking, as it is a problem that remains over time, creating anti-drug policies and tables of possession or carrying of these substances, taking as a reference what is established by the International Organizations regarding this issue.

These agencies seek to eliminate narcotic and psychotropic substances, but among the struggle to eradicate these substances, there is little interest in consumers and the criminalization they suffer for being drug addicts and having the need to carry a substance for personal consumption. This creates a fine line between regulating drug use and people's freedom, taking into account that Ecuador's Constitution establishes that addictions are a health problem and not a criminal issue.

Ecuador, as a measure to divide between consumers and traffickers, created the Drug Table, but the thresholds for possession or carrying, as we have already seen, are very low compared to others, giving rise to another problem and making it difficult for the justice system to differentiate between consumers seeking to satisfy their dependence on these substances and traffickers whose objective is to commercialize narcotics.

### **Constitution of the Republic of Ecuador.**

Article 364 of the Constitution states that addictions are a problem that corresponds to public health and therefore, it is the responsibility of the State to seek public policies, develop information and prevention programs, offer treatment and rehabilitation to help

drug addicts and not to criminalize these people who consume. (Constitution of the Republic of Ecuador, 2008).

Interpreting this article, it can be seen that the purpose or objective is to protect several principles and inherent rights of the people, being thus that this article is in harmony and concordance with others found within the Constitution, for example, article 3 and 10, since these mention the constitutional rights of the people, the ownership and enjoyment of these. Article 11 mentions the principle of equality and non-discrimination by any type of distinction, which has the purpose of impairing or nullifying the recognition, enjoyment or exercise of constitutional rights. (Constitution of the Republic of Ecuador, 2008). In the case of the Constitution of the Republic of Ecuador, the existing relationship with article 364 is seen when it mentions that consumers should not be discriminated against for the fact of being consumers or dependent of controlled substances.

It is important to mention article 76 of this body of law because it focuses on the right to freedom and the guarantee of the state of innocence. This should guarantee that consumers who are found with controlled substances will be treated as consumers and not criminalized and brought to justice as micro-traffickers without the necessary investigations to see if this was the main objective of these persons arrested.

#### **Increase in the number of persons deprived of liberty for drug possession since the last reform.**

As a result of this low threshold, there has been an increase in the number of persons deprived of liberty for carrying or possessing small quantities of narcotic and psychotropic substances, which, in many cases, are only for personal consumption, but being within one of the scales of the table, these subjects are considered as micro-traffickers and are given a penalty, generating an agglomeration within the prisons of Ecuador.

With the Resolution of the Drug Table of 2015, a process of punitive hardening was achieved with reference to the drug policy that existed in the country, generating that 80% of the flagrancies for possession and drug trafficking end in preventive imprisonment, something that had not been happening with the Resolution of the Table of 2014.

The Inter-American Court of Human Rights observes that drug policies in Ecuador are an example of measures that favor incarceration, and that would contribute to overpopulation in Ecuadorian prisons, with drug-related crimes constituting the main cause of incarceration in Ecuador in 2021, with 28.19% of the prison population. (Table of penalties for drug trafficking has led to stiffer sentences, 2021)..

It can be seen then that the Ecuadorian State simply created criminal policies to toughen penalties and did not see the problems caused by the 2015 Drug Table. Taking information provided by the Ministry of Government, in 2020 approximately 80,000 arrests were made, being 14% of these, arrests for trafficking of controlled substances, it should be noted that, if the arrests specify drug trafficking, it should be taken into

account that the thresholds of the current table are so low that what can be considered possession for personal consumption, is considered as micro-trafficking of substances. In the following year, the data revealed by the Ministry of Government on people who were arrested is that approximately 56,000 people, 14% were arrested for substance trafficking. With all this information collected by International and National Organizations, it is demonstrated that having a low threshold has led the State to have consequences within the prison system and that if consumers are criminalized.

## CONCLUSIONS

Analyzing all the aspects involved in this research, it is concluded that the Ecuadorian State, in order to cope with the problem of overcrowding in the country's prisons, should reestablish the Reform No. 002 CONCEP- CD- 2014 or the 2014 Drug Table, based on what has been exposed in the figures of the increase in prisons for possession or carrying drugs after the Table of 2015.

With this last reform, all types of drugs have been imposed a very low threshold of possession or possession for people who use them for personal consumption, being that the fact that the generator of this table was the scale of consumption that was occurring in the country with the "H". Thus, in my personal opinion, our country is considered one of the least permissive at the time of establishing drug thresholds, when the drug that is causing significant damage is the aforementioned "H".

The criminal policy established in our country, regarding the drug issue, has major shortcomings due to the fact that less importance is being given to the "H" and no strategies are created to address the consumption of this, but rather, a drug table has been established to handle the problem of drug trafficking, with the only result that drug consumption remains the same and has only generated costs for the country to have more PPL, costs within the legal processes and that there is a precarious due process for the inmates.

This scale of consumption of this substance should be treated as a social and health problem by the authorities and not enter into a "demonization" of the other drugs that are categorized in the table. Reestablishing the 2014 table will help consumers to stop being criminalized as it has been done in recent years, and it is also clear that the current table has not achieved radical changes, but rather added more problems for the authorities.

Likewise, the State should reform or expand the margins of the tables to establish it within a single legal body that would seem correct to have it within the Organic Integral Penal Code that already has established the penalty depending on the scale of trafficking that is being dealt with, and that it is clear that the table should be created in order to delimit drug trafficking.

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