

PADA

How far is legislation helping us to fight drug abuse

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Pharmacists, doctors and members of the Caritas Rehabilitation Centre participated in a Forum entitled 'How Far is Legislation Helping Us to Fight Drug Abuse'. This forum was chaired by pharmacist, Mary Ann Sant Fournier, who is also a member of the Caritas Core Group for Drug Prevention and Action.

The subject was ably tackled by Magistrate Dr David Scicluna, the magistrate who hears all the drug cases on the island except those that involve trafficking of drugs on a large scale, and Dr Joseph Zammit McKeon, a lawyer who is experienced in this field and who has delivered a number of interesting talks on this subject. This was another activity in the 'Pharmacists Against Drug Abuse' campaign being run by the Chamber of Pharmacists.

TO COMBAT THE PROBLEM OF DRUG ABUSE

Magistrate Scicluna opened his speech by saying that "Legislation on its own is insufficient to fight drug abuse and one must not overestimate, its importance." In order that any programme to prevent drug abuse be effective, there has to be simultaneous action in at least five different areas:

1. Utopically eliminating, but in practice reducing the supply of drugs from abroad.
2. Increasing the effectiveness of the police force. These two are interrelated and call for a well-trained and efficient police force and custom personnel, who must be properly equipped and staffed and with a free hand.
3. More effective programmes to treat and rehabilitate addicts like Caritas Rehabilitation Centre.
4. Mounting health education programmes on the dangers of drug abuse for youngsters, parents and teachers.
5. Tightening control on the distribution of prescription drugs.

Specific Legislation

A strategy comprising all these separate actions would be incomplete without specific legislation — intended to have a deterrent effect. The principal laws are the Medical and Kindred Professional Ordinance and the Dangerous Drug Ordinance. Recent amendments to these two laws regarding the punishments that are prescribed by the law are very high and a great deal of discretion lies in the hands of the court; penalties inflicted in the Magistrates' Court being substantially lower than those in the Criminal Court.

Do Legislative Measures serve as a Deterrence?

Quoting what was said in Parliament to describe the pusher: "annimal feroċi li għandu jiġi maqful għal termini twal u jiġi ikkastigat bl-aktar mod sever, biex b'dan nagħmlu lezzjonj minnu", harsh penalties are enacted in order to act as a deterrent.

The punished offender is likely to be put off from committing the same offence again, once a severe penalty is imposed on him. Under our Law, a person committing a subsequent offence is deemed to be a residivist and the court besides applying the harsh penalties which are prescribed under that particular law is also authorised to increase the punishment. But one has to be cautious for if a very severe penalty is imposed for a smaller crime, then that individual can become dangerous to society because he will bear a grudge towards it. For a number of people in any society, the deterrent effect lies in the probability of detection and conviction rather than the kind or amount of punishment. Malta being a small community, one can talk more of deterrence than in a larger country.

The deterrent element is not effective against the professional criminal, where the risk of prison is part of life, and whose concern is not to get caught. One reason why a person returns to pushing drugs is that it is a very lucrative activity. All pushers know that addicts will never give evidence against them.

Impart Justice

The punishments give quite a degree of discretion to the court because there is a minimum and a maximum, and besides the court can also

Criminal Court	Imprisonment	Fine
In the case of selling and dealing in psychotropic drugs	4 years — 20 years	Lm1,000 — Lm50,000
Possession of psychotropic drugs	12 months — 10 years	Lm 200 — Lm10,000
Magistrate Court	Imprisonment	Fine
In the case of selling and dealing in psychotropic drugs	6 months — 5 years	Lm 200 — L 2,000
	—	Lm 100 — Lm 1,000
Possession of psychotropic drugs	3 months — 12 months	—
	3 months — 12 months	Lm 100 — Lm 1,000

go below the minimum. It can impose no punishment at all by placing an individual on probation or else discharge him conditionally. This in many cases can have a deterrent effect.

Magistrate Scicluna said that fortunately, what they are trying to do is examine each particular case on its own merit. Sometimes the court does not impose punishment prescribed by law but gives an individual a second chance (soft option).

"I believe that it is the duty of every Judge and Magistrate to impart justice rather than apply the law."

When a person is brought before the court, his social and family background, his age, whether a first time offender, or with a previous record of criminal offences, are looked into.

Traffickers are considered by court, as murderers, as they can kill with the drugs they're providing, and imprisonment and hefty fines are imposed.

Most of the cases reaching the courts are of addicts. An addict needs help. He is put under probation under the care of a probation officer, and ordered to attend the Rehabilitation Centre run by Caritas. In these cases it is important for the court to carry out follow up programmes on these individuals. Magistrate Scicluna mentioned the example of a youth who was brought before him a year ago, and who has now made a success of his life after attending the Rehabilitation Centre run by Caritas.

THE LATEST AMENDMENTS BORDER ON THE UNCONSTITUTIONAL

Dr Zammit McKeon commented whether the law today reflects what Magistrate Scicluna is trying to do. The Magistrate's approach to the problem of Drug Abuse is humane; in that he

Some of the youngsters besides being charged with possession are also charged with trafficking. The court is giving a very wide interpretation of the words 'trafficking' and 'dealing', the question of profit or not is not important. If the circle of drug abusers has increased even though no profit has been made, then he is a pusher. An example is a case of when a group of youngsters pass a joint around. The difference lies in the punishment; a hefty fine being imposed as against imprisonment.

There is the anomolous situation of when a person is brought to Court and is proved to be a **registered addict**. The law authorises the court not to pass sentence but to send him to an institution as is designated by the Minister of Health for carrying out his rehabilitation, i.e. the court can only send them to Mount Carmel Hospital.

Food for Thought

These are some recommendations which Magistrate Scicluna would like to see implemented. In U.K. there is an interdepartmental group of Ministers which is advised by a council. The idea is to ensure co-ordination between the various departments in order to set up a proper plan of action. This group in turn is advised by a council composed of experts in the various fields: education, medical, etc. "It is something which we do not have, something which I would like to see in the future."

understands the case, goes to the root of the problem and goes out of his way to meet the offender. The latest amendments are everything but humane. They are an emergency law. Is the

Problem of Drug Abuse in Malta an emergency situation so that we should depart from certain constitutional safeguards which a person has?

Powers of Attorney General

Our Constitution is a hybrid between the accusatorial and the inquisitorial. Through the amendments, the powers given to the attorney general could border on the unconstitutional. The attorney general has powers to impose on the court itself the mode of punishment. It is upon the discretion of the attorney general to decide to which court, whether a magistrate or criminal court (trial by jury) the accused is brought to. The powers of the attorney general are widespread. This is also the case in the method of appeal. Normally he can appeal in 7 or 8 cases which are basically points of the law. Under this law he can also appeal on a point of fact.

Element of Conspiracy

In these amendments, the element of conspiracy (organised crime) has been introduced. Nevertheless the law does not distinguish a 17 year old pusher from the person who organises the whole traffic. While Magistrate Scicluna tackles the case from a humane aspect, another judge/magistrate could look at it from a different aspect. The penalties that are prescribed by the law are too harsh.

Principle of Extra Territoriality

These amendments to the Dangerous Drugs Ordinance created the principle of extraterritoriality. A person, who is a citizen of Malta or a permanent resident dealing in trafficking of drugs or conspiring (promotes, organises, finances) with others outside these islands, is liable to conviction and punishment under this law. Various problems can arise as a lot may depend on what is happening abroad, e.g. on foreign experts, and control by authorities.

Law is Creating a Deterrence, But no Redemption

In cases of both trafficking and promotion of conspiracy, the court at the request of the prosecution, orders forfeiture of any immovable property. If the trafficker is not the owner, then it imposes a fine. It forfeits all the money which would have been earned from these dark dealings even if they are in the hands of a third party. Notwithstanding that we have a system where the accused is presumed to be innocent, until he is proven guilty, the court at the request of the prosecution, freezes the transfer of im-

movable property. There is a provision to allow a maximum of Lm6,000 for his needs and his family to live on.

These forfeitures whether money or property go to the Maltese Government. The law is erecting a deterrence, but is not erecting an element of redemption. One would expect it to be used in the Rehabilitation Centre run by Caritas, or one run by the Government or else by the police to help them tackle the problem.

Detention During Enquiry

While the enquiry is going on the court does not give a person the right to bail. This is normally the case only in crimes leading to life imprisonment or against safety of government. Even the court has a limited time of 20 days to handle the case

There is diminution of punishment by 1 or 2 degrees if a person helps the court. The courts still have the right to go under the minimum. Another exception in these laws is that the evidence of an accomplice is enough to grant conviction (normally evidence of accomplice is not admissible unless corroborated by other witnesses).

Elimination of Drug Abuse

Dr Zammit McKeon commented that the deterrent element could be effective on certain people but not on organised crime. These provisions by themselves do not eliminate the possibility of organised crime in this country. When we start legislating for the exception, abuse can be created. Principles of equality, freedom of movement, right of a fair trial are being questioned. The Attorney General has a lot of power and it is difficult for a defence lawyer to handle a drug case under these situations. A drug problem cannot be eliminated or reduced by having legislation for our emergency situation or one that gives emergency powers to one party to the prejudice of the other.

DISCUSSION

Which are the drugs most abused of locally?

New prescription forms of narcotic and psychotropic drugs were introduced in 1984, to curtail the abuse of prescription drugs. Computerisation of these prescriptions was envisaged so that problem areas could be detected. However, to our knowledge no processing by computer is being done. From the 1st February 1987, those patients who are in need of psychotropic and narcotic drugs will require a Control Card issued

by the superintendent of Public Health in order to obtain their prescribed requirement. Is the Department introducing something which it is not prepared to handle or able to handle but fails to do it? These control cards are going to involve pharmacists and doctors with increased paperwork. Patients are going to be subjected to a lot of useless anxiety, and are given an emergency supply of three days, until the card is issued. It also discourages doctors from prescribing the medicine they consider best for their patient. The needs of the genuinely sick under doctor's care are being sacrificed

The Real Problem

A number of participants believe that our local problem is heroin addiction, and not psychotropic drugs. Drug addicts obtain heroin illegally as it cannot be prescribed. Heroin is a far superior drug to morphine, in myocardial infarction and terminal cancer, yet it is **not** available for use for medicinal purposes.

Though we know that there are heroin addicts, these are seldom prosecuted — due to failure of the police and custom forces. Most of the cases brought before the courts are Cannabis addicts.

Registered drug addicts are known to the police force and they are subject to continuous surveillance. A register with the list of Heroin addicts does not exist at the Police Department and presently three cases are pending in court of registered drug addicts charged of being in possession of Heroin.

A lot of regulations are made and though they may impress, in reality they achieve very little to fight the problem of drug abuse. The Dangerous Drug Ordinance does not distinguish, between one drug and another. The penalties given for someone convicted of being in possession of Cannabis sativa is much lower than that of possession of Heroin, so the court without realising is making a distinction between hard and soft drugs.

If we have a drug problem we have to define it, as suddenly everything becomes a drug. If we put them in their proper perspective alcohol comes first followed by cigarettes. Psychotropic drugs like Benzodiazepines are of more benefit than harm to society if used correctly. They help a person to go from a nervous wreck, back to normal life style.

Education

Our major concern is to educate the public both young and old on the problems of drug abuse. As a former drug addict said in a recent

forum, if he had known the facts, he would never have started on drugs. Pharmacies and doctor's clinics can become distribution points of leaflets on information on the drugs of abuse.

Conclusion

This forum was an initial effort and other activities should be organised for all pharmacists and doctors so that together they discuss a subject which is of interest to both professions.

LETTER FROM KENYA

(continued from page 8)

F.I.P. Assembly of Pharmacists met on Wednesday 3rd September. This assembly was created by the new statutes of F.I.P. in order to offer members an opportunity to participate in a broadly based discussion. The items discussed were:—

- (a) Presentation of the results of the council meeting and of the activities of the Federation over the past year by Mr. L.G. Felix Faure, Administrative Director.
- (b) F.I.P. involvement in continuing education by Prof. Breimer, Scientific Secretary.
- (c) New International Code of Ethics for Pharmacists by Mr. A. Bedat, President F.I.P.

A declaration was adopted by the members of the council and Assembly of Pharmacists. (See page 9)

This year's F.I.P. Third World programme discussed the theme:— "Treatment and Prevention of Diarrhoea Diseases Pharmaceutical Involvement" under the Chairmanship of Prof. P.F. D'Arcy, Vice President F.I.P. speakers included Dr. M.H. Merson, Director Diarrhoea Diseases, Control Programme WHO Geneva.

The Congress ended with Sectional Dinners on Thursday 4th September 1986 and Final Dinner/Dance at the Dipoli Centre on Friday 5th September 1986.

The newly elected President of F.I.P. is Dr. J. Oddis of U.S.A. The next Congress will be held in Amsterdam, Holland 1—5 September 1987 to mark the 75th Anniversary of F.I.P.

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