

The Italian Supreme Court abolishes the 2006 antidrug legislation

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On February 12th, the Italian Constitutional Court ruled that the 2006 Italian drug legislation (the so called Fini Giovanardi law) is unconstitutional. Consequently, the 1990 legislation, as emended by the 1993 popular referendum (which decriminalized possession for personal use), has been restored. The legitimacy of the 2006 drug legislation was first challenged by *Società della Ragione*, an Italian NGO working in the field of justice and human rights, soon followed by many other NGOs. At the beginning of 2013, the *Società della Ragione* published a memorandum, drafted by the jurist and activist Luigi Saraceni, showing that the Fini Giovanardi drug legislation did not meet Italy's strict constitutional requirements for laws by decrees, as previously affirmed by the Supreme Court. In fact, Italy's 2006 antidrug law was surreptitiously introduced as a single article in a law by decree on a totally different matter (the funding of 2006 Turin Olympics). One more question of legitimacy was raised, concerning the harsher penalties for cannabis introduced in the 2006 legislation, by upgrading cannabis to Schedule I, with heroin and cocaine, in spite of the different levels of risk: the memorandum claimed that this was in opposition to the constitutional principle of proportionality in penalties.

Following the publication of the memorandum, several judges took the initiative to suspend trials for drug crimes and called for a decision from the Constitutional Court about the legitimacy of the anti drug legislation. A few days before the Court's decision, an appeal by sixty jurists and academics advocated the abolition of the 2006 legislation. To the same purpose, a rally with thousands of citizens, mainly drug users, took place in Rome. In the final audience before the Supreme Court, on February 11th, Giovanni Maria Flick, the prominent jurist and former Minister for Justice in the nineties, represented the plaintiffs arguing for the unconstitutionality of the law.

The Supreme Court decision has wiped out a legislation which has been widely recognized as one of the main reasons for the overcrowding of Italian prisons. As for the antidrug norms, as emended by the Court's ruling, the main change concerns the reintroduced distinction between cannabis and "hard drugs", with milder penalties for cannabis; the abolition of the "threshold" aimed at distinguishing between personal use and dealing; the decriminalization of drug possession (for personal use), to be punished with milder administrative sanctions (than in the abolished text); easier access to alternative therapeutic measures to incarceration. As for the consequences on imprisonment, people charged with drug crimes, but not yet sentenced or whose sentence is under appeal, will be tried according to the milder legislation. More than ten thousand people (charged with drug crimes) may be immediately affected by the Constitutional Court ruling. Taking official figures into account: in 2013, 20.718 were arrested out of an overall of 27.393 people charged with drug crimes: as about 40% of drug crimes concern cannabis, we can figure out about 12.000 people who will benefit from the change in drug legislation. It is questionable whether people who have already been sentenced and have exhausted the appeal process will benefit from the Court's ruling or not: some jurists advocate for a dedicated amnesty, to prevent thousands of appeals to be filed by single cannabis offenders.