

Forum Droghe- Società della Ragione- Antigone, Coordinamento Nazionale Comunità di Accoglienza (CNCA)

(in cooperation with CGIL, Comunità di San Benedetto al Porto, Gruppo Abele, Itaca, ITARDD, LILA, Magistratura Democratica and Unione Camere Penali).

FIFTH “WHITE BOOK” on the 2006 Italian drug legislation and its consequences on the penal and prison systems

Edition 2014 from data collected in 2013

Executive Summary

Since 2010, Forum Droghe has been developing a project aimed at evaluating the anti drug legislation, approved by the Parliament in 2006, under the Berlusconi government (the so called Fini-Giovanardi legislation). During the years, several more Italian NGOs have joined the initiative.

The 2006 anti-drug legislation was abolished by the Constitutional Court's ruling in February 2014. Consequently, the previous 1990 legislation, as amended by the 1993 popular referendum, has been restored. The Fifth White Book provides a final evaluation on the consequences on prisons' overcrowding of the harsh legislation approved in 2006 under the Berlusconi's government.

Therefore, it offers a valuable and necessary assessment in order to develop a systematic reform of the anti-drug legislation.

Data in the Fifth White Book has been directly collected from the Ministry of Home Affairs (Ministero degli Interni) and the Department of Prisons Administration (Dipartimento Amministrazione Penitenziaria).

The adverse effects of the 2006 Law on prison overcrowding:

- **Over 30% of detainees were imprisoned for drug crimes.** While in 2006 (before the introduction of the Fini-Giovanardi Law) 28% of detainees were imprisoned for the main provision of the drug legislation (art.73), the rate rose to 30,5% in 2013 (with a peak of 32.4% in 2012).
- **Drug addicts in prison: 23.7% of the overall detained population.**
- **Therapeutic alternatives to incarcerated:** on December 31st 2013, 3328 drug addicts were in custody, versus 3852 in 2006. Although the number of alternative therapeutic programs has been slowly increasing after 2010, still most users are allowed to treatment only after a period of time spent in jail. The 2006 drug legislation introduced a shift in the “philosophy” of therapeutic alternatives: until 2006, most addicts were directly sentenced to treatment, without spending any time in jail. Since 2006, the opposite trend is registered: people released from prison to undergo treatment largely outnumber free persons ruled to alternative programs. In 2005, 2.900 addicts were directly sentenced to alternative therapeutic programs versus 951 released from prison; in 2013, 983 addicts were directly sentenced to treatment versus 1918 released from prison to undergo alternative treatment.

Law enforcement on drug crimes:

- **Escalation of drug offences reported by the police is registered: 33.676 people were reported for drug crimes in 2013, versus 29.724 in 2006.**

Law enforcement focused on cannabis:

- **45% of the overall drug reports concern cannabis offenders, with an increase of 35% in the period 2005-2013. During the same period, police reports on cocaine, heroin and synthetic drugs have been decreasing.**

The burden of drug law enforcement on the judicial system:

- in 2011, 224.530 people were charged with drug crimes. The substantial increase (from 197.000 in 2006) shows the criminalizing effects of the 2006 drug legislation.

Punishment of drug users:

- **Administrative sanctions for drug use are reported on the rise:** in 2006, 8.180 administrative sanctions were inflicted. Since the introduction of the Fini Giovanardi legislation, the sanctions began to rise sharply (11.850 on the following year, 2007). In 2013, 15.977 users were sanctioned.

Drug law enforcement focused on minor drug crimes: the findings of an in depth study in Tuscany

In 2011, an in depth qualitative research was carried out by Forum Droghe in the Florence prison, aimed at figuring out the rates of prisoners (sentenced or charged) for minor drug crimes. In 2013, the in depth study was repeated in a higher number of prisons (Florence, Pisa, Livorno, Lucca and Prato).

Main results of the study:

-Minor drug crimes sum up to 30-40% of the overall drug crimes, but this rate is largely underestimated because it refers to sentenced prisoners only. In the 2006 legislation, no specific norm was established for minor drug crimes, except for a mitigating circumstance concerning crimes of “minor relevance”. Whether a mitigating circumstance can be applied or not, is up to the judge at the time of the trial. As a result, the files of prisoners in provisional arrest cannot offer any information about the relevance of the drug crime.

- Offenders for minor drug crimes are more likely to be caught and punished if foreigners: 6 out of 7 prisoners sentenced for crimes of “minor relevance” are foreigners.

- Law enforcement is aimed at imprisoning as more offenders as possible: as an incidental finding, the study revealed specific modalities of law enforcement for drug crimes. Police often prefers to report people caught with small amounts of drug for the main provision of trafficking/dealing (art.73) instead of minor charges, in order to put the offender under arrest straightforwardly. In fact, following the norms, provisional arrest for minor drug crimes should be motivated. To avoid a difficult or impossible motivation, police simply shifts to the main charge.

Conclusions and recommendations

The trends shown in the previous White Books are confirmed in this Fifth Edition: the impact of the 2006 anti drug law on the overall rates of imprisonment has been *the main reason for the overcrowding of Italian prisons in recent years (2008-2013)*. Minor drug crimes seem to be the favourite target of law enforcement and punishment is focused on cannabis crimes. This is consistent with the focus of the 2006 drug legislation, which set more severe penalties for cannabis offenders by upgrading the substance to Schedule I.

New evidence comes from the prisons data, after the Supreme Constitutional Court abolished the 2006 drug legislation in February 2015. A sharp decline in the number of prisoners is since reported (from 62.000 to 54.000, minus 8000 in about six months). Though the fall is also a result of specific norms introducing limits to the provisional arrest and widening the house detention, the impact of the Supreme Court's ruling is undisputed.

- **The coalition of NGOs which has released the Fifth White book is committed to a new evaluation of the data on imprisonment for drug crimes after the Supreme Court' ruling. It is a necessary step in view of a thorough revision of the Italian drug legislation.**
- **The coalition has also launched a campaign in favour of people sentenced with the unconstitutional drug norms ("La pena illegittima" Campaign).** Following the Supreme Constitutional Court's ruling, at the end of May 2014, the Court of Cassation decided that people sentenced and incarcerated under the illegitimate norms have the right to be resentenced. The decision may affect thousands of prisoners detained for cannabis crimes. *The campaign "La pena illegittima" started in July: fliers to inform prisoners on their rights and forms for the request to the judge have since been distributed in most prisons. Members of NGOs and volunteers working in Italian prisons are offering information and helping prisoners to file their requests to the judge to have their penalties reduced.*

(by Serena Franchi and Grazia Zuffa, Forum Droghe)