

## COLOMBIA AND THE TRAFFIC OF ILLICIT DRUGS:

### A CASE OF HUMAN RIGHTS IN ITSELF

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#### Introduction

First of all, I want to thank specially the Drug Policy Foundation for inviting me once again to the Yearly Conference on Drug Policy Reform. Last year in Baltimore and Washington we had a great opportunity to expose our views on the subject and most importantly, to gain insight and meet colleagues with more profound and less parochial views than our own. But specially as a former government official who had to deal with judicial policy and now interested in drug policy, this invitation seems most relevant at a time of uncertain peace, uncertain policy and certain confusion within the Colombian society as to how to deal with the drug problem anymore.

DPF's invitation to this panel concerning Supreme Court Decisions on legalization of drugs for personal consumption certainly opens a door for extensive comment on a very controversial decision within Colombia, but allows also for a personal and general view of the drug policy debate within the country and abroad. I must make clear that my comments on the Court's Decision are not those of a lawyer or a judicial official since I am neither nor have I received training in the field. My comments are from a policy analyst's viewpoint and of a concerned citizen that has gained substantial interest in the subject.

#### The Decision

Before entering the decision's discussion we must be reminded that Colombia erected a new *Carta Magna*

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Friday, 14 November 2008 16:53 - Last Updated Monday, 20 December 2010 22:19

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in 1991 in the heart of a popularly elected Constitutional Assembly. This new

Constitution abolished a century old one which had been conceived by a few under a very conservative regime and in the midst of a civil war. Colombia's new constitution has a profoundly liberal and open character and is above all widely recognized by the population strengthening thus its legitimacy over the old and poorly known one. We have to understand that its legitimacy stands strongly on the bill of rights it conceived as a starting point and which permeated the whole document.

The Constitutional Court's decision to legalize possession of illegal drugs in personal doses for personal consumption arose from a citizen's quarry against law 30 of 1986 (in Colombia the Constitution provides for citizens to quarry laws or governmental decrees by bringing them to the Court for its decision); this law regulated all legislation dealing with drug policy after Minister Lara Bonilla's assassination in 1984 and the start of the drug war. The citizen quarried essentially with the punishments assigned when a person was found with the defined personal doses of drug be it marihuana, cocaine, hashish or metacualone.

The punishments referred in law 30 amounted to fines and mandatory jail sentences up to 30 days for first offenders and to one year for second timers. Offenders and non-offenders found "high" on drugs would not be incarcerated or fined, but would be mandatorily sent to psychiatric institutions for treatment. The government could then trust (or mandate) the care of the so called drug addict to his family or send him to a hospital for treatment until "cured"; "his state of mind" would be certified by a physician and the government itself in order to let him go free.

The decision reached by the Court declared unconstitutional the offenses of carrying a personal dose of drugs or being "high" on drugs (and therefore the fines and the mandatory jail sentences) as well as the mandatory requirements for treatment by the family or the government. The door was left open for the government to regulate the age, location and circumstance of drug consumption as it happens with alcohol and cigarette smoking. At the same time, the Court recommended education about drugs as the only realistic path to curve drug consumption.

The Court's decision was reached after evaluating three critical aspects of the bill quarried:

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1) the law as a way of regulating the drug user's behavior

2) the implications of the constitutional duty of taking care of one's health and one's community for the case in question, and

3) the validity of mandatory medical treatment and penal sanctions in this case

The first aspect debated was, whether one's own behavior (when it does not affect anyone else's livelihood in anyway) could be regulated by the law or whether it only concerned oneself. The Court concluded that only moral rules (one's own) may rule one's own behavior; the law can only regulate bilateral behavior.

For the Court, the implications of the constitutional duty of taking care of one's own health and one's community for this case were three fold. In the first place, it took into consideration the sense of belonging of a citizen to his family concluding it could not be mandatory for anyone to have it; secondly, it established a great similarity between alcohol, tobacco and drug use in respect to the plausible incorrect behavior that could arise from the use of either; and thirdly it stated that the spirit of the constitution regarding the referred duty could be considered wishful but never plausible of being punishable by the penal code.

The third aspect under which the Court arrived to its decision involved the validity of mandatory medical treatment for drug possession and or use. The Court found this 'punishment' unconstitutional for it violated the individual's will.

The basic and summary argument for the Court's decision lied under the Constitutional right of the 'free development of personality. This argument, as expressed in the Court's sentence "recognizes a person as autonomous and dignified; an end in itself and not a means to a end, with full capacity to decide over its own behavior and its own destiny".

### Analysis

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There are two basic view points from a policy analyst's perspective under which the Court's decision may be scrutinized: one is the policy for drug consumption within Colombia. The second is the evolution of drug policy overall within and outside Colombia.

I) The effect of the Court's decision on drug consumption

In terms of the policy of drug consumption in Colombia we will assume that its principal objective is to minimize drug consumption, drug abuse and drug addiction. The number brought up by the Minister of Health after the Court's decision revealed about 300,000 addicts and about 600,000 regular users of marihuana, cocaine, heroin and *bazuco* (the Latin American crack), all this within a population of 36 million. The appropriate definition of addict and user was, however, not revealed, in the same way, the Minister added that consumption had not decreased in the last few years, but neither had it increased. Numbers for people in jail for illegal possession of personal doses of drugs or of drug addicts undergoing mandatory treatment were not available.

Given these data and facts, I would conclude that the existing legislation (before the Courts' decision) to curb drug use and provide treatment to drug addicts had little effect on drug use or abuse simply because, although it was enacted legislation, it had to have a conscious effort to be implemented as this was simply not happening.

The only effect it could have had was a moral one, as society could have interpreted as an indication of the dangers of drug use and abuse. But probably this moral message has been based more on the mythical idea about the use and addiction to drugs. Drug use is believed to generate severe drug addiction and drug addiction to generate "degenerations" of all sorts. Popular belief at all levels has maintained the "supernatural" danger of drugs as if they all were the same and as if the psychological environments and the physiology of the users and users were equally identical. It may be this mythification which has kept further spread of drug use and abuse (if we assume present levels are not already alarming, and if such levels are real), but at the same time it has produced a great discrimination of addicts parallel to HIV infected discrimination. Equally this attitude produces legislation of the kind existing before the Court's decision with the ensuing poor results for consumers and addicts.

But getting back to the law enforcement issue, typically when policemen detected users or addicts, they would extort them instead of fining, jailing or sending them for treatment even if we could not to say that was the rule. This happened also as there are few national or city

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programs to treat addicts. I would say most addicts in Colombia are either helped by their own families or left aside to their own destiny; this is not to say that there is no direct or indirect government help, but institutional channels seem isolated and help is sought privately.

I confess ignorance on the budgets earmarked at the national, regional or local levels to educate about drug consumption and treat addiction; the first are mostly UNDCP moneys coupled to some DNE resources (for *Dirección Nacional de Estupefacientes*; the DNE's most important mission is to support administrative tasks in the drug war) but an objective evaluation of their efforts is hard to carry.

If the Minister's figure of 300,000 addicts is correct, it seems to reveal a very serious problem within the Colombian society, one which should be given certainly much more attention in terms of political priority, institutional help and budgetary allocations, much beyond the fines, incarcerations and/or mandatory treatments stated in the norm that prevailed.

First of all, more certain data, probably collected annually to make it consistent and comparable should be gathered. The overall existing data on drug consumption in Colombia does not seem to go beyond trying to set landmark numbers of trial, use and abuse.

The conclusion about legal possession of drugs for personal consumption in Colombia is that it will have little or no effect on consumption or use given that before the Court's decision personal consumption went literally unchecked in the terms stated by the law. We could probably say that the myth about drugs was taken even more seriously after the government and the media blitz of carrying through a referendum to end the legalization of personal use. And in that way the government's position had a correct effect. We can only hope that campaigns against use intensify intelligently and that the constitutional reform and the ensuing legislation put in place does not continue the path of segregation, untreatment and extortion drug users and addicts are subjected to today.

### **2) The effect on overall drug policy**

As to the effect of the Court's decision on the overall drug policy I would say that it was disastrous, specially for those of us who believe in alternative forms of fighting the drug war, or instituting some measures of decriminalization if not legalization of at least some parts of the

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production-processing-trafficking continuum of some drugs.

A year ago, Colombia had almost completed a 10 year war with the military successes and the consumption, corruption and laundering unsucceses known to us all. Colombia had suffered enormously but had won some important military battles "catching some big fish"; this showed ourselves and the international community we were not just on our knees to the

problem. But we reached after all these great successes a tremendous sense of tiredness with the war, the seizures, the senselessness of the seemingly unending process. When Gustavo De Greiff made his legalization statement in Baltimore last November, a gigantic controversy followed. Many Colombians disagreed with him, but as many agreed with him. Most importantly, a healthy debate was being carried on and the basic issues were being discussed. The cards had been finally put on the table if only to be looked at and not yet to be picked or taken. A great leap had been made.

Yet an important part of that leap was taken to the back kitchen when the Court's decision on personal consumption was issued. As I mentioned before I have no great quarrel with it;

positive things may emerge from that debate in terms of consumption. But in terms of putting on the table the decriminalization of marihuana traffic, or production of poppies a great deal of ground was lost and it will take a fantastic amount of political skill to rebuild the process to the place where it was before. The overall decriminalization "process" was

macarthysed and the public opinion more confused than ever.

Obviously other events have followed and worsened the situation. The most relevant was the narcocassette episode the day after the presidential election; great controversy has come out also of the negotiation scheme with the Cali cartel and of the so said short sentences given to surrendered narcotraffickers.

### **The Present State of Things in respect to drug policy**

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The overall feeling about the drug debate that I can sense as an ordinary citizen is that we have fallen back ten years to a pre-drug war scenario. We are a society tired of a problem proven to be unmanageable and we seem to start giving in bit by bit. We have known the horrors of narcoterrorism and before that of narco intimidation and even before that "those" of narco sweet life; and yet we seem to be decaying back to the sweet life of 1980 when business start to better themselves, when the hard to deal with farms were sold magically for good money.

That feeling is propelled by the isolation in which the country and the Colombian society find itself with the drug problem. We are aware that we are scapegoated as a society and if by chance the scapegoatism falls on the drug lords we feel equally powerless. I would say we are 'socially tired' with the problem first because of the personal risks involved in fighting the problem and second because of the awareness of the senselessness of the crusade.

We hear well about the power of the cartels. We understand what I would call their nonbombing-sweet-life message and their willingness (or ours?) to settle within a society that is surrounded again by its own lack of understanding of what goes on. The Court's decision essentially attacks the human rights violations of the drug users and abusers. But it becomes an incredible paradox that an effort to attack a violation of a human right ends up creating a gigantic wall to the advancement of a policy to attack a humongous human rights violation

affecting not the 600,000 users or the 300,000 Colombian drug addicts but an entire country. As we all know here we are subject to a problem that it is not ours and I wonder if the international relations jargon and conceptual scheme allows for the violation of the human rights of a country. If it did we could then justify the title of this paper: Colombia and the traffic of illicit drugs, a case of human rights in itself.

Can Colombia survive as a country and as a society with the size of a business like narcotraffic in its heart? We probably will, but the question turns from a yes or no answer to a with what kind of society? With whose values? Those of people who run a business on the basis of intimidation and murder? The final question at stake is peace. Peace among the members of a society brutally earmarked by the ways of conducting the most profitable business on earth. And peace among the members of a society who die to consume the produce of such business to band aid their miserable human and physical condition.

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To a considerable extent we need to redefine our diagnose of the problem; and if we find our diagnose was right, we need to urgently redefine the solution to the problem and specially its implementation. As I said before I find myself privileged to be here among you and I want to leave with you the thought of redefining our strategy to involve the affected people within his country but most importantly to involve the decision makers (high ranking government officials and elected officials) and the media who are the real sources of power and that could eventually help modify the present state of things.

Carlos Cavelier holds a B.A in anthropology and sociology from the University of Vermont as well as an M.P.A. from the Kennedy School at Harvard. He has been an elected official to his town's council, his state's senate and the Colombian House of Representatives. He has been advisor to the Minister of Agriculture for the National Program for Impoverished Areas and more recently was Secretary General of the Ministry of Justice. He taught at the Universidad de los Andes for sewn years and has published and edited several books and articles. Presently he manages a private business and conducts research and writing in drug policy.