



## Statewatch briefing

### Italy:

#### New drugs law heralds the mass criminalisation of drug users

*“Taking drugs is ... an act of rejection of the most fundamental duties of individuals towards the communities in which they ... live”.*

Deputy prime minister Gianfranco Fini, the general secretary of *Alleanza Nazionale* (AN, the right wing National Alliance party) has presented a draft law that would lead to the wholesale criminalisation of drug users, removing the distinction between “soft” and “hard” drugs and criminalising the personal use and possession of relatively small amounts.

To punish drug users, the government wants to extend the use of “administrative sanctions” (such as the temporary withdrawal of passports, the suspension of driving license and the confiscation of mopeds or motorbikes) for offences deemed “not serious”, while tightening the criminal law and sending more drug offenders to prison. The draft law was approved by the council of ministers (the government cabinet), and is now due to be examined by parliament. The measures introduced by the new law would reform the 1990 *Iervolino-Vassalli* law, which originally envisaged criminal sanctions for the possession and consumption of illegal substances above a specified average daily dose, but was amended by presidential decree following a referendum on 18 April 1993 in which the public voted for the decriminalisation of possession of drugs for personal use.

In the report containing the proposed law, Fini dismisses the libertarian notion that taking illegal substances is a matter of personal choice:

*“taking drugs is not a harmless exercise of freedom that does not tolerate interference, but rather, it is an act of rejection of the most fundamental duties of individuals towards the communities in which they ... live: the institutions [state] have a duty to respond to such behaviour with a complex framework of measures”*

He also explained that the reform of drug legislation was necessary as a result of recent judicial decisions, including a ruling by the Court of Cassation (Italy’s highest appeal court) that found that possession of a larger amount of

hashish than could be justified for “personal use”, purchased jointly by a group of persons who were going on holiday together, did not amount to dealing.

### **Mass criminalisation of drug users**

The proposed law seeks to overhaul drug legislation through the wholesale criminalisation of *consumption* and *possession* of drugs, rather than *supply*, and by eliminating the distinction between hard and soft drugs (such as cannabis and hashish), which Fini describes as “misleading”, due to the fact that some substances derived from cannabis have higher contents of THC than was the case in the past. On the basis of Fini’s generalisations, and only ten years after 55.4% of Italian voters supported the de-criminalisation of possession of small amounts of drugs for personal use and consumption, such acts are now set to be punished.

The complex “framework of measures” that Fini called for was approved unanimously by the Council of Ministers (the government cabinet) on 13 November 2003. It establishes an interministerial national committee to coordinate activities to counter drugs, headed by the Prime Minister, involving all of the ministers whose competencies are affected (art. 1.2). It places the National Observatory on Drugs under its control and also strengthens the centralisation of drugs fighting services under the *Direzione Centrale per i Servizi Antidroga* (DCSA, Central Direction for Anti-drug Services) - a high level police body responsible for coordinating and organising police services and activities to prevent and combat trafficking in illegal substances. The DCSA will have to be informed of any activity to counter drugs that is undertaken by any law enforcement agency, and will be expected to establish a database and to conduct studies “on each part of every drug haul” that is intercepted.

In order to dispel any uncertainty as to what is to be considered a criminal offence, the draft law would introduce two tables (article 14) of drugs and medicines that contain active psychotropic elements, and of the thresholds that turn the “administrative” offence of possession into a criminal offence (see below). Table I includes opium, opiates and related substances, coca leaves and related substances like cocaine, amphetamines, LSD, cannabis and related or synthetic products producing similar effects. Table II includes medicines that contain such substances, that have similar effects or induce addiction. It is divided into five sub-sections.

At the same time, the thresholds for possession will be lowered to levels to apply to any users. “Objective standards” will be set for each drug, with those caught in possession of less than the threshold charged with administrative offences, while those who have more than the “objective standard” would be charged with criminal offences carrying possible prison terms of up to 20 years. Under the suggested thresholds, the amount of cocaine that an individual would have to be caught with to be charged with a criminal offence is of 500 mg (half a gram), when the smallest amount that is generally available for purchase is twice as much (one gram). Any cocaine

user would be liable, at one time or another, to be caught in possession of the amount of cocaine required for him/her to be considered a criminal. The same applies to cannabis and its derivative products: any amount with above 0.25g of THC (their active chemical) is to be viewed as evidence of a criminal offence. The figures for heroin and amphetamine are 0.2g and 0.05g.

An investigation by the *Università Vita - Salute of San Raffaele* hospital in Milan found that 42% of teenagers aged between 14 and 19 had used illegal substances, soft drugs in 90% of cases. These figures, alongside the low thresholds introduced by the new law, illustrate the risk that it may lead to the criminalisation of large numbers of young people, and to an increased police presence in places where they gather (see below).

### **The European context**

A comparative study by the European Legal Database on Drugs entitled “The role of the quantity in the prosecution of drug offences” (April 2003), compares the importance of quantities in defining drug offences in national legislations in EU countries. It finds that only four countries, Netherlands, Portugal, Finland and some German Landër define specific quantities as thresholds for criminal proceedings to be taken, and they are systematically higher than in the Italian government’s proposal. In Portugal, possession of up to ten daily doses (1g of heroin, 2g of cocaine, 25g of marijuana, 5g of hashish, 0.5g THC content, and 1g of amphetamine) represents an administrative offence. In Finland, sanctions are waived if the amounts are under 10g of hashish, under 15g of marijuana, under 1g of heroin or 1.5g of cocaine. In Germany, prosecution is waived mandatorily for the possession of up to 6g of hashish, and it may be waived for amounts of up to 30g (in one Landër, Hessen). In the Netherlands, possession of up to 5g of soft drugs results in dismissal, with coffee shops allowed to trade in soft drugs if their trading stock is of under 500g.

Nine other countries mention small quantities but leave them undefined, allowing discretion by the judiciary, and five do not consider quantity as a criterion for the offence. The study provides tentative guidelines based on jurisprudence and policy recommendations. In Austria, a 1980 Committee of Health recommendation considers 2g of THC, and 1.5g of cocaine, to be small quantities allowing the deferral of prosecution. In Belgium, the law does not distinguish between types of drugs and quantities, although a justice ministry policy guidelines indicate that “no further action” should be taken against persons caught in possession of small amounts of cannabis, and that a distinction should be made between personal use and provision. A later draft directive was under discussion to introduce a 5g limit for personal use with regards to cannabis. In Denmark the main consideration affecting prosecution is the distinction between consumption and sale: a warning for possession of under 10g of hashish, and then fines for quantities of up to 100g, are applicable, as well as fines for up to 5g of heroin amphetamine or cocaine. On the other hand, drug dealing (involving 10-15kg of cannabis, or 25g of heroin or cocaine) may result in up to 6 years’ imprisonment (which may be raised to ten in extreme cases). Measures introduced in 1997 against street dealers

made it possible to sanction the possession of 0.001g of cocaine or heroin as dealing, but only if there is concrete evidence of dealing or intent to sell. In France, there is no formal legal distinction between possession and trafficking, although a 1999 justice ministry directive indicates that possession may be sanctioned with imprisonment for up to 1 year, and trafficking with up to 10 years. In Greece, the main distinction is between addicts and non-addicts with imprisonment applicable to the former for possession of drugs for personal use, and fines applicable to the latter. In Ireland, possession for personal use carries more lenient punishment than possession with intent to supply. Luxembourg also distinguishes between personal consumption and dealing, with fines applicable to possession of cannabis, and related activities such as purchase, transport or possession of cannabis are de-criminalised. In Norway, a fine or imprisonment for up to six months is applicable for possession for personal consumption, although the criminal code envisages up to two years imprisonment; aggravating circumstances, including the possession of large amounts, may entail up to ten years' imprisonment. In Spain, the main distinction, in terms of prosecution, is between drug trafficking (involving 1kg of cannabis, 100-120g of cocaine, 60-100g of heroin), dealing (which may carry sentences of between 1 and 3 years for drugs not deemed particularly dangerous, and 3 to 9 years for particularly harmful drugs) and personal consumption, which entails a dismissal of charges or acquittal. Sweden considers possession of under 60g of cannabis, 5g of amphetamine or 0.6g of cocaine as "petty" offences, which may be sanctioned by fines or up to six months' imprisonment. In the UK, quantities are not specified but a distinction is made between possession and dealing, and between hard and soft drugs (A, B, or C class).

### **Definition of offences and sanctions**

After eliminating the distinction between soft and hard drugs, the proposed Italian law also does away with the distinction between dealing and personal consumption. Article 72.1 forbids the taking or any kind of use of any proscribed drugs and psychotropic substances. Article 73 of the draft law envisages drug offences carrying prison terms of between six (the previous minimum was eight) and 20 years, "for anyone who... grows, produces, extracts, refines, sells, offers or makes available for sale, cedes, distributes, trades with, procures for others, sends, passes on, or sends in transit" amounts exceeding the minimum thresholds for possession to be considered a criminal offence. The new article 73.1 *bis* reintroduces punishment for the possession of drugs, "anyone who imports, exports, buys, receives in any capacity, or in any manner illegally holds" the proscribed substances, and fixes a threshold that for the amount that represents an administrative offence and a criminal offence (see above). Elements such as "presentation, ... overall gross weight,... divided packaging,... or other characteristics..." will be considered in deciding whether "they appear to be destined for third parties or otherwise for use that is not exclusively personal". The new article 73.5 decrees that for offences of "slight importance", due to their characteristics and the amounts involved, prison terms of between one and six years are applicable, alongside fines of between €3,000 and €26,000. The

prison terms may be substituted, on request from the accused, by community service lasting for the same time as the prison sentences, but no more than twice.

The draft law would also abolish the warning (equivalent to a “caution” in the UK) that is currently applicable to first-time offenders, extending the use of administrative sanctions applicable to people caught in possession of small quantities of drugs, listed in article 75. They include the suspension of their driving and/or firearms licenses, the withdrawal of residence permits given to foreigners for tourist purposes, and the administrative detention of two-wheel motor vehicles (moped or motorbike) that the person in question may be using. These sanctions will be applicable for a period running from one to twelve months (the maximum was previously four months). Offenders will also be systematically invited to undergo drug rehabilitation programmes. Article 76 deals with additional sanctions that are applicable to repeat offenders or those who have shown evidence of dangerous behaviour (including traffic offences, and offenders who have been found guilty of offences against people or property, regardless of whether an appeal has been filed), such as the obligation to report to a police station twice a week, curfews, driving bans, or bans from leaving their town of residence. The *questore* (the local head of police in a provincial capital, who reports to the *prefetto*, police chief) has discretion for ordering any of these measures that s/he may deem necessary, for up to two years. Contravening any of these additional administrative sanctions taken for public safety reasons can lead to the arrest of people charged with “administrative” offences for between three and 18 months. With regards to non-EU foreign nationals, their status is set to be further undermined. Under the proposed law, administrative offences are set to be “taken into account” in relation to the renewal of their residence permit (and thus may lead to it being revoked), whereas criminal offences will result in their immediate expulsion.

### **Alternative sentencing and private drug rehabilitation**

The proposed law on drugs seeks to establish a framework of alternative sentencing measures for offences that are deemed to be “not serious” (carrying sentences of between one and six years), which is aimed at getting drug users and addicts into rehabilitation programmes. The increased role that private rehabilitation centres are set to play is likely to turn drug therapy into an increasingly profitable business. Patrizio Gonella of *Associazione Antigone*, criticised the fact that private companies will be granted the power to take decisions concerning the state of addiction of offenders that may have penal implications, arguing that this may be unconstitutional. He also notes that drug addicts make up 28% of the Italian prison population, rising to 39% considering people detained for drug offences. He notes that the proposed law may have the effect of “filling prisons beyond their capacity”. After extending the applicability of prison sentences for the consumption and possession of soft drugs, the draft law introduces the possibility of substituting these with drug rehabilitation treatment and house arrest. Article 89 decrees that under certain circumstances (excluding cases involving high-security detention conditions, or involving organised or subversive criminal

activities), the judge may order house arrest for the accused, if the person in question is undergoing therapy in a state or recognised private rehabilitation centre for addiction to drugs or alcohol. Article 90 envisages a five-year suspension of sentences that have been passed for crimes committed in relation to an individual's condition as a drug addict if the person is undergoing therapy, as well as the suspension of any fines if the individual's economic situation is particularly bad. After five years, if no further offences have been committed, the sanction is deemed to have expired. Otherwise, the suspension will be revoked.

Article 114-122 of the draft law increase the role of private rehabilitation centres alongside existing public structures (SERT), by envisaging the creation of regional registers of centres that are recognised by the public administration. These centres will be regulated by conventions with regional government which may include requirements for periodic updates on their results and evaluation of therapies. The proposed new article 89.6 of the drugs law is liable to break the bond of trust between drug addicts and drug rehabilitation personnel. It makes the person in charge of a drug rehabilitation centre responsible for "informing the judicial authority of any violation committed by a person undergoing therapy... if it constitutes a crime". The punishment for failing to report such behaviour is that the centre's activity may be suspended, or it may be struck off the register of recognised drug rehabilitation centres.

### **Information campaigns, informers and surveillance**

The government intends to compound its prohibitionist policies with information campaigns on the negative effects on health that result from the use of drugs and psychotropic substances, and on the seriousness and extensiveness of the criminal phenomenon of the trafficking of these substances. The campaigns, on which the government will spend €5,160,000 per year (drawn from national anti-drug funding), are to be issued through public and private television and radio broadcasters, the daily and periodical press, through posters, and telephone or online services.

The proposed law wants the fight against drugs to permeate civil society. Article 79 introduces sanctions of between three and ten years in prison and fines of between €3,000 and €10,000 for anyone who sets up, or permits the setting up, of "public establishments, private clubs of any kind or any place where people gather" who make illegal use of drugs, medicines or psychotropic substances included in the tables I (see above) and II, section A (including substances with medicinal purposes and painkillers such as morphine, methadone and codeine). Prison sentences of between one and four years, and fines of between €3,000 and €26,000 are envisaged for the owners of public establishments for the illegal use of substances included in table II, section B (including barbiturates and diazepam) on their premises. Thus, the owners and managers of any public establishment or club will face crippling sanctions for the fact that someone uses drugs in their venue, encouraging them to adopt stringent surveillance measures. These measures are likely to be used to justify police raids or undercover activities against

social centres. The social centre phenomenon grew in the early nineties out of squatted buildings used by youths to organise political and cultural activities. They have become popular meeting places for young people in many Italian cities, but are one of the government's pet hates due to their political activism, and have been repeatedly criticised by members of the government coalition for being places where young people gather and consume drugs.

Article 97 of the law decree introduces immunity for police officers from drug squads involved in undercover activities who commit drug offences, or use false documents, "for the sole purpose of acquiring evidence of crimes". This immunity also applies to any informers or go-betweens that they may use in such operations. There will be no need for prior judicial permission, as prosecuting magistrates will only have to be informed about any such operation 48 hours after it begins, whereas the DCSA will have to be informed "immediately". Article 97.5 seeks to introduce sanctions carrying prison sentences of between two and six years for anyone who unduly reports or divulges the names of officers involved in such operations.

### **Drug operations in schools**

Schools may also bear the brunt of the government's prohibitionist drive. Police searches in the houses of students of the *Virgilio* secondary school in Rome on 1 October 2003, a few days after Fini unveiled his plans for a tough stance against the use of soft drugs, highlighted the possible implications of the proposed law. The searches led to the detention of six persons, one of whom was charged with drug dealing and possession, and five others were identified as users, in an operation which saw the confiscation of ten grams of hashish. The police operation was criticised after evidence surfaced that undercover surveillance operations had been going on in the *Virgilio* since the start of the school year. On 6 October, the *Democratici di Sinistra* (DS, Democratic Left) MP Leoni asked in parliament whether it was true, as alleged by a police officer, that

*"from the start of the school year, [the police] has obtained... the authorisation to use some rooms in the school, introducing agents disguised as workmen and then as caretakers into the school; after several days' surveillance the agents spotted and photographed a group of students who periodically met up in a corner of the school's courtyard"*.

A representative of the *Verdi* (Greens) in the Lazio regional assembly criticised the operation as disproportionate:

*"It is the beginning of a police state, the minors have been treated like criminals, searched in their houses, photographed and video-recorded" in a sophisticated operation that would be more appropriate for "big-time, dangerous drug dealers"*.

The incident in the *Virgilio* is far from isolated, as noted by MP Titti de Simone in parliament on 23 October, who spoke in response to an order by the head of police Gianni De Gennaro which called for the taking of "necessary

pre-emptive measures” in the form of the “surveillance of places where young people gather” after the research by the *Università Vita - Salute*, indicating the high proportion of teenagers who use soft drugs, were released (see above). De Simone listed a number of police operations in secondary schools, arguing that they are suffering a progressive “militarisation”. In Turin, there was a four-day police presence at the gate of the *Einstein* school; in Florence, there was a heavy-handed police search in the *Galileo* for which the police chief later apologised, and a police raid with dogs in a school in Borgo San Lorenzo (Florence); in Milan, a police raid with dogs during which students were searched took place in the *Beccaria*, and a headmaster who refused to authorise a raid in her school in Rho (Milan) was charged of allowing drug use in her school.

## Conclusion

If approved, the proposed reform of the Italian drugs law will result in the mass criminalisation of the large number of Italian citizens who are drug users. Not only does this prohibitionist approach contradict the Italian public’s support for the de-criminalisation of possession for personal use which was expressed in the referendum held in 1993, it also introduces the toughest regime of sanctions (alongside Greece) against drug use in Europe. It seeks to establish drug users as an underclass in Italian society who do not fully enjoy the rights associated with citizenship, such as the freedom of movement (through the confiscation of passports), as well as the extension of offences for which imprisonment may be applied. The low thresholds that are envisaged for a drug offence to be construed as “criminal” mean that a growing number of people will be imprisoned (when the prison system is already facing a crisis due to overcrowding), or subjected to alternative sentencing measures such as community service, drug therapy, probation periods, curfews, house arrest, or the confiscation of motor vehicles, which may affect them at a personal and professional level. The law would also pave the way for increasingly pervasive and interventionist policing and surveillance activities, particularly in places where young people gather (see above). It also dismisses the lessons that can be learnt from the effects of the prohibitionist drive against immigration, whereby increased profit margins have provoked a proliferation of organised crime networks specialised in people smuggling. Steve Rolles of the *Transform Drug Policy Institute* (see below) argues that at the international level, increased profit margins result in a proliferation of international drug trafficking organisations, whereas at the local level, they produce territorial battles between dealers, inflated street prices which result in more violent crime committed by addicts to fund their addiction, and the weakest links (small-time users) bear the brunt of drug enforcement activities.



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For further information see: [www.fuoriluogo.it](http://www.fuoriluogo.it)

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