

In some Italian cities passers-by are offered - along with the local equivalent of the 'Big Issue' publications whose titles would vaguely translate as 'The Joint', 'The Fix', 'The Stuff', 'Syringes'. While in some European countries drug use tends to be concealed as an embarrassing sign of individual failure, in Italy some drug users display their condition with a degree of ostentation. Such public display resonates with

Drugs and style in Italy

Vincenzo Ruggiero reflects on some of the differences in perceptions of drug misuse between Italy and Britain.

political grass-root initiatives which were prevalent in the 1970s and from which groups of drug users have inherited a conflictual, combative memory. However, the messages conveyed by these publications contain a number of intertwined elements which I will try briefly to untangle.

Different messages

First, there is a demand for help. The financial costs of providing help and support are said to be negligible compared with the waste of resources perpetrated by local administrators and central state agencies. Second, there is an implicit claim that drug use is not the worst of choices when the limited prospects available to the younger generation are considered. Dull, underpaid jobs are hardly an attractive alternative

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making a law-abiding existence worthwhile. Here, individual freedom is invoked in a way that John Stuart Mill would admire. Finally, there is an inherent 'condemnation of the condemners' whereby users exhibit themselves as proof of society's failure rather than their own.

It comes as no surprise that Italy is perhaps the only country where a Drug Anti-Prohibitionist Party (DAPP) was founded. The DAPP gained representation both in local councils and in the European Parliament. This political party marshalled the mixed claims and demands mentioned above, while its practical focus was on care, maintenance policies, decriminalisation and controlled legalisation. The party is still active, though most of its former members have now dispersed into other political groups. Readers may imagine the level of disbelief experienced by this author, who is based in the UK, when a member of New Labour was disciplined by the party for merely having mentioned the 'possibility' that the legalisation of cannabis ought to be discussed.

Different analyses

To someone straddling two national contexts there is another aspect of the drugs debate which causes a degree of disbelief. This is the predominance of different categories of analysis in different countries. In Britain, for example, categories such as poverty, inactivity, unemployment, exclusion, and so on, have acquired a taken-for-granted status among most researchers and commentators on the drug phenomenon. In Italy, on the contrary, it is wealth, hyperactivity, overwork, participation, and so on, which are often mobilised for the explanation of the drug epidemics experienced throughout the country. It should be noted that the spread of problematic drug use began in the fashion-capital Milan, whose average income is higher than the majority of British cities, and that drug use is particularly acute in places like Prato, Bergamo, Brescia, Parma, Perugia, Modena and Verona, whose visible wealth makes London appear like the capital of a 'third world' country.



Peter Dalrymple

Users' demands

I can now return to the vociferous groups of drug users producing their own papers. These groups, rather than hiding themselves, state that their requests are at least as legitimate as those of other social groups. Some users, therefore, consider their demand for public funds as part of their right to share the high standard of living which is granted to other sectors of society. Others may even regard their demands as part of their right to a freely-chosen form of consumerism.

The majority, however, articulate a message that can be summarised as follows. In most Western societies we are faced with a situation in which it is not so much drug use which is penalised, as drug intoxication. Many users, in fact, escape institutional attention while retaining their drug use habit undetected for years, some for a lifetime. Users who are known to official agencies are usually unable to manage their drug use in a safe environment, or to combine such use with other commitments which, in a sense, would dilute their using career.

The accumulation of a number of social disadvantages leads them to intoxication, and hence to increasing involvement in illicit markets. They are apprehended and punished because of the cumulative effects of such disadvantages. In other words, these politically active groups of drug users feel that they are not penalised because of their drug use, but because of their visibility and the disadvantaged conditions in which their drug use takes place. Hence they have made a variety of demands.

What is called for, amounts to a 'policy of redress', ranging from the establishment of self-managed rehabilitation projects to maintenance and free distribution of drugs to users. This range of opportunities, they suggest, should be offered on the basis of principles of justice and equality rather than as a response to need or social pathology.

Official responses

Institutional responses to these complex demands confirm some of the characteristic features of the country. At the local level, some municipalities and voluntary organisations are extremely active in providing a variety of services. Some city mayors have publicly expressed their support for forms of drug legalisation. Maintenance projects have been set up in Turin and elsewhere. However, though these local initiatives are tolerated in principle, they are denied the resources to fully achieve their objectives by national bodies. This constitutes a typical example of tolerance as inaction. This strategy is a consequence of the separation of civil society and its institutional representatives. Is it by chance that the very concept of civil society was so well developed by Antonio Gramsci when he tried to describe his country and the separation between its citizens and its state?

As a consequence, many Italian drug users move to other European cities, the drug problem being somehow exported along with style and fashion items. Among these European cities is London, where those who intend to continue their using career find that prices of drugs are lower, while those who intend to try rehabilitation find that services are more easily available. Ironically, in London they also find that the prevalent explanatory categories of their drug use are redefined in terms of disadvantage, exclusion, unemployment and the like.

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The Third Pillar

Anne Owers, Director of JUSTICE, talks to David Kidd-Hewitt



Julie Grogan

What links JUSTICE into current European debates?

JUSTICE is a lawyers' human rights organisation. We deal with issues where there are human rights or rule of law aspects that we find aren't being otherwise covered. This is an area where there is generally held to be quite a wide tradition of democratic deficit in Europe because there aren't the structures at European level and sometimes not the structures at national level to be

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able properly to scrutinise what's going on in this area.

We gave evidence to a House of Lords Committee which was looking at this and then decided that there was more work to be done, so we organised three seminars on European Union justice issues. One on the democratic deficit, the need for proper Parliamentary scrutiny of legislation going through in justice and home affairs, another on the judicial deficit, the fact that the European Court of Justice often isn't able to adjudicate at a high and consistent level on these issues, and the third on race discrimination and the treatment of what are called third country nationals. These are people who are not citizens of the European Union but have been legitimately settled in the Union for many years.

As a result of those seminars we produced three reports which have gone to all the governments involved in the intergovernmental process, and to the various institutions of the European Community. We have now set up a community of legal experts who will scrutinise proposed legislation mostly in the justice and home affairs area which has human rights implications.

What is the mechanism for examining these fundamental issues of justice in the European Union?

There is a lot of activity going on at the moment in the Intergovernmental Conference of the European Union much of which has impacts on justice throughout Europe. The so-called Third Pillar of the Maastricht Treaty covers all matters of justice and home affairs. These issues are dealt with by intergovernmental co-operation, by ministers and civil servants meeting together, agreeing common policies, common actions, occasionally agreeing conventions that are binding on them. That covers issues such as immigration and asylum, police cooperation and customs cooperation.

What are the difficulties and problems in dealing with issues of justice in Europe through this Third Pillar initiative?

I think the common problems in the Third Pillar derive from the fact that it is largely an executive driven exercise. There is a very limited role for the European

Parliament, and an extremely limited role or no role at all for the European Court of Justice. There is the ability for national parliaments to examine what is going on but sometimes they get information too late to be able to do so effectively. There is sometimes the ability for national courts to examine what is going on but they cannot do it in any kind of consistent way. So the process has not been very open, very transparent to the citizens of Europe. There hasn't necessarily been proper scrutiny of what's going on and it has been very difficult to mount effective challenges to what governments are doing.

What does the Third Pillar propose in terms of policing co-operation across the European Union?

The co-operation between different police and customs authorities pre-dates the Third Pillar because obviously there is a lot of criminal activity that goes on in Europe which is not confined within the borders of one country. Drugs crime, organised crime and terrorism are the three big issues where the police need to co-operate.

But there has been a lot of activity within the Third Pillar on police co-operation particularly the setting up of what is called Europol which is initially going to be a way of exchanging police intelligence and information. It's not at this stage designed to have an operational arm although many of the countries of Europe would like it to have one. The Europol convention set up the shell of an organisation which can allow police forces to exchange information about serious crime, drugs, terrorism.

Apart from the important issue of how to ensure democratic accountability for this initiative, serious consideration has to be given to the circumstances in which electronic data can be held about individuals and can be passed on between member states. Data protection guarantees and safeguards in European countries vary tremendously. The guarantees in this country for example, are not nearly as strong as they are in some other European countries.

Another project that we are undertaking which has a lot of European connotations is looking at the increased use being made by a lot of modern police forces of pro-active methods of

investigations. The police no longer feel that they can rely on evidence dropping into their laps by way of, for example, evidence found around the scene of crime, or witnesses, or confessions, particularly in dealing with serious crime and drugs related crime. There is an active attempt across Europe to use intelligence led methods. In other words surveillance, the use of informers, the use of infiltrators. Those kinds of policing methods are now very common in all countries and in many countries they have hit quite substantial problems of accountability because it sometimes becomes a little difficult to distinguish the policing activity from the criminal activity.

Sometimes it runs completely out of control and I think it is no accident that in Holland and in Germany as well as the UK, there have been major inquiries about particular instances. It is important that the exchange of information gathered through surveillance, through undercover methods in situations where the systems of accountability may not be very well developed, is regulated properly because otherwise you get unaccountable, unchecked information being passed through the system rather like Chinese Whispers. At each stage it becomes less reliable, less accountable and individuals become less able to check that what's held about them is actually true. You need to have a very clear and very tight systems of accountability for all of this.

How serious are shortcomings in the Union's ability to combat issues of racism in Europe?

There are two classic areas, both of which we hope are being looked at in the present Conference. Firstly, the fact that the Treaty of The European Union itself doesn't have any prohibition on discrimination on grounds of race. It does prohibit discrimination on grounds of sex in matters covered by the Treaty of Rome but it doesn't prohibit discrimination on the grounds of race, religion or cultural affinity. There is a rise in xenophobia and racism in various parts of Europe. The community really needs to tackle the issue head-on. We have very much supported the notion that this should be written into the Treaty.



David Kidd-Hewitt

The other problem is the position of what are called third country nationals in the Community. That means, people or their families who migrated to the Community sometimes a long time ago. They may not have acquired citizenship of the countries where they live. In some countries, for example, Germany, you do not automatically get citizenship by being born in the territory. You can be a second or third generation child of Turkish migrants and you are still not German. The position of those people is contradictory to the whole basis of the Union as it now is. The Union is supposed to be a single market, a single area without frontiers, where people can travel freely and work freely and accrue rights freely in different parts of the Community and that is why the internal frontiers are supposed to be going. That is not possible if you have within each country a group of people whose rights are different from their neighbours and whose ability to move is different. For example, in some countries those people have fewer rights to social benefits, in some countries they have limited rights of association.

What crime, justice and human rights issues are raised by the ambitions to create a Europe without internal frontiers? Immigration and asylum for example: what are the key issues here?

Clearly if you are going to say that internal frontiers become much less important than the Community as a whole has to have some kind of agreed approach to immigration and asylum. Immigration and asylum is one of the major areas dealt with under the Third Pillar. It is one of the areas where there is

most concern about scrutiny of what goes on because it has such a great political spin to it. Politicians in any country can get quite cheap political points by being anti-immigration.

I think a good example is the way that political debate in this country has focused on what are called 'bogus asylum seekers'. The word 'bogus' and 'asylum seekers' slide together rather too readily in political discourse as indeed do the words 'illegal' and 'immigrant'. But there are also areas which actually attach to fundamental human rights. If you talk about the right to asylum, the right to be protected from persecution and torture, this goes to the heart of people's right to life and right to liberty. There are also some pretty important issues like the right to family reunion, the right to work, the right of free movement. If you haven't got proper judicial control over that then what you get is political control and quite often, sadly, political rhetoric dominates the debate.

How did this situation develop in your view?

Refugees were central to the development of human rights mechanisms in Europe. It was because of what happened in Germany to Jews during the war that this really very odd notion emerged that states could not be relied upon to protect their citizens and you needed some kind of over-arching convention, such as the UN conventions or the European Convention on Human Rights. States were given a responsibility to provide a refuge for people fleeing political persecution in a way that they don't for example have a responsibility to provide refuge for people who are fleeing from economic starvation. After the

development of the 1951 Refugee Convention, refugees were considered to be the good guys. Immigrants generally, certainly in this country, have always had a bad press but refugees were very special.

This attitude survived until there got to be rather too many of them and states began to seek ways of minimising their responsibilities under the Convention. It is raised in a particular form in France with people from Algeria fleeing from the regime there, it is raised in Germany and also here in, for example, Kurds from Turkey. But in all European countries the proportion of people recognised as refugees under the 1951 Convention, is declining rapidly. Wherever possible, states will seek to prevent people arriving to Europe in the first place and they will also seek to minimise their commitments to provide protection to those who do come. You can believe in human rights quite cheerfully as long as it doesn't cost you much as a country.

So what are the key issues concerned with the problems of asylum protection in Europe?

In the treatment of asylum seekers, you see the most clearly institutionalised breaches of human rights in Europe. There's also recently been a very difficult link made between asylum and terrorism. Of course one person's freedom fighter is another person's terrorist and the reception of asylum seekers is not wholly divorced from states' political agendas. So although you must not make your country a haven for people who have committed crimes against

humanity (the European Convention is very clear about that), equally you should not simply accept that someone is a 'terrorist' because their government says that they are.

The problem with the Convention is that it has no court which is responsible for interpreting it. It requires states to grant protection to people who have been persecuted on a number of grounds including race, religion, nationality, membership of a particular social group or religion.

Now, what is persecution? Is it, for example, the case that a woman in Sudan who is going to be subject to female genital mutilation is persecuted? Is it persecution if the whole of society has broken down for example as in Somalia and one group of people is imposing its will and imprisoning, harming, torturing another groups of people? All of those things allow a great deal of interpretation for states. For example someone arrives with the marks of torture on their body. The authorities say 'Well yes we think you might have been tortured although of course you might have inflicted this yourself. But even if we accept that you were, were you tortured for a political reason? What was the motive of the person who tortured you, and secondly; how long ago was it?' Whereas a few years back the mere fact of coming from the Soviet Union would get you accepted as a refugee here. I am not aware that anyone ever asked Rudolph Nureyev precisely how he had been persecuted.

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Britain has been subject to the jurisdiction of the European Court of Human Rights in Strasbourg for over forty years - but most people are blissfully unaware of the fact. Even the majority of lawyers probably know little about the European Convention on Human Rights or proceedings under the Convention.

Britain was actually the first country to ratify the Convention in 1951. The right of an individual to bring a petition against Britain was first granted by the UK Government in 1965.

Only a tiny fraction of the petitions that are lodged end with

The European Court of Human Rights

Michael Zander demystifies the process of going to law in Europe.

judgment from the Court. Petitions are first sifted by the Commission. The great majority are weeded out and rejected at the first stage of sifting - usually on the ground that the complaint is out of time or that the complainant has not done what he could have done to get the

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Julia Grogan

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matter dealt with in his own country.

Of those that go forward, only a very small number get as far as the Court. The rest are disposed of by friendly settlement, or in a few cases, by the legal-political process of the Committee of Ministers.

By the end of 1996 there had been over 60 cases against the UK in which the Court had given a judgment and over half resulted in a finding of a breach of one or other provision of the Convention. Many cases concern issues such as asylum seekers, mental patients, immigrants, children in care, transsexuals, homosexuals, censorship and civil litigation.

Issues of judgement

The articles of the Convention that are mainly invoked in criminal justice complaints are Art. 3 (protection against torture, or inhuman or degrading treatment or punishment); Art. 5 (no deprivation of liberty save by lawful arrest, detention or conviction etc, prompt information as to reasons for the detention, being brought promptly before a court); Art. 6 (right to a fair and public hearing within a reasonable time, presumption of innocence, adequate time for preparation of case, legal aid if one cannot afford representation, the right to examine witnesses, the right to an interpreter) and Art. 7 (prohibition of criminal proceedings based on retrospective law).

Of cases that arise out of criminal justice matters, a significant proportion have concerned the position of convicted prisoners rather than the pre-trial or trial process. Britain has been found to have been in breach of the Convention in regard to Prison Rules about prisoners' correspondence, prisoners' rights of access to court or to lawyers, prisoners' disciplinary system and the system for taking parole decisions.

But judgments have also found breaches by the U.K. in cases involving failure to provide access to a lawyer to a suspect in the police detention, arrest without reasonable grounds for suspicion, length of detention of a suspect held for questioning without charges and failure to provide an appellant with a lawyer.

How to apply

Lodging an application is straightforward and over half are brought by individuals who do not have a lawyer. But to carry a case to a successful conclusion in practice usually requires the help either of lawyers or an organisation such as JUSTICE or Liberty. Legal aid is not available for the initial stages but once the complaint is sent to the respondent government for its observations, legal aid can be authorised. But the level of remuneration under the legal aid system is modest.

Sometimes judgment against the Government means that it has to change the relevant law or rules or procedures. That in itself has generally caused no very great problems. States comply with the Court's rulings.

Occasionally the Government avoids making such change by invoking the power to 'derogate' from the Convention. When the Court held the UK in breach of the Convention because of detention of a terrorism suspect for over four days (*Brogan and Others*, 1988), the U.K. used the power under Art. 15 to derogate 'in time of war or other public emergency threatening the life of the nation' so as to continue to hold terrorism suspects for up to seven days.

Justice delayed

The main problem about the Strasbourg process has been its intolerable delays. It takes more than five years for a case to reach the Court and the situation has

been getting worse with more states joining the system and the backlog of cases growing. (In 1985 there were 21 member states; by 1997 the number had grown to 33.)

In recent years various procedural changes have been made to try to speed up cases. The most radical of these, Protocol No. 11, is likely to come into effect in 1997. Its main feature is to abolish the Commission and to establish a system where all applications will be dealt with by the court itself either by a Committee of three judges, or a Chamber of seven judges or a Grand Chamber of seventeen judges.

But given the inexorable rise in the numbers of cases it is unlikely that this reform will

succeed in reducing the time it takes for cases to reach a decision by the Strasbourg court.

The most important potential reform for anyone in this country is therefore likely to be the Labour Party's promise to incorporate the Convention into our law. The effect of this would be to make it possible for the first time to bring a claim under the Convention in the ordinary UK courts.

It is expected that an act to incorporate the Convention into UK law would be introduced in the first session of a new Labour Government.

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