



# **CANNABIS CONSUMERS' RIGHTS**

## Know Your Rights

## **Who we are**

Born in 2014, the Italian Coalition for Civil Rights and Liberties (*Coalizione Italiana per le Libertà e i Diritti Civili –CILD*) is a network of 35 civil society organizations fighting to defend and promote everyone's rights and liberties by combining advocacy activities, advertising campaigns, and legal actions. CILD mainly focuses on migrants and refugees, discrimination, criminal law, freedom of expression, and privacy.

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## **The reasons for this guide**

There are many defects in the Italian criminal law system which continue to compromise rights and civil liberties in our country. CILD chose to begin its battle for a legal system that can achieve actual equality by starting with drug policies and advocating for the reformation of the judicial system through a campaign. Some of the objectives include the enactment of new legislation regarding drugs, and may also deal with issues regarding the penitentiary system, inefficacy in the protection of fundamental rights, the refusal of access to health care, and the lack of a precautionary approach.

Through our campaign “Non me la Spacci Giusta”, for quite some time now we have advocated a non-ideological debate on the subjects of drugs, and have provided data, information, and detailed studies. Now, with this guide, we intend to provide cannabis consumers with an instrument allowing them to have a clear and exhaustive view of the legal framework and to know – and to exercise – their own rights.

This guide was realized in cooperation with lawyers Mr Gennaro Santoro and Ms Elia De Caro.

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## Cannabis consumers' rights

### 1 Is the personal use of soft drugs forbidden?

No. However, [administrative sanctions](#) will be inflicted by the Prefect (Prefetto) on the place where the consumer resides.

### 2 What are the differences between detention for personal use and for drug dealing?

A clear distinction between drug consumption and drug dealing does not clearly emerge from law.

In order to ascertain whether to apply a criminal or an administrative sanction the judge – and before them, the police – will decide on the basis of certain elements: the quantity and the related [active principle \(THC\)](#), the presence of knives or other cutting tools, precision scales, packaging materials, and/or an amount of cash which is unjustifiable with respect to its owner's income.

Quantity is not per se sufficient to implicate drug-dealing.

In order to ascertain personal use, the [active principle](#) must not exceed around 1/1.5g of [THC](#). Therefore, for hashish and marijuana the maximum quantity detained must be around 10–15g, with an [active principle](#) of around 10%.

However, this can vary from court to court and in accordance with the income of the drug holder; in other words, there is the presumption that someone with a high-income can afford to spend more money to purchase drugs for personal use.

### 3 What are the criminal penalties for the possession of soft drugs with the intent to sell and hard drugs?

According to the Consolidated Drugs Act (Testo Unico Stupefacenti – DPR 309/1990) whoever possesses [soft drugs](#) with the intent to sell them to third parties shall be

punished with detention from 2 to 6 years, and for the possession of [heavy drugs](#) with the intent to sell between 8 to 20 years.

#### **4 Which are the criminal penalties for the possession of a 'small amount' of soft drugs?**

In cases of a 'small amount', there is no difference in the penalties to be inflicted on the basis of the kind of drugs, and detention shall be between 6 months to 4 years.

A '*small amount*' is ascertained when their use must be considered occasional, when the quantity is irrelevant (around 50/100g of hashish, but the quantity may vary from court to court), and when the modalities of the fact configure the fact as non-professional or rudimental, in case of minor sales, etc.

#### **5 What should a soft-drug consumer expect from an administrative suit?**

When detention for personal use is ascertained, a summons for a meeting with the Prefecture (Prefettura) is received. If the person is underage, his or her parents are also summoned.

At the meeting, the following scenarios may occur: a) nothing happens and only a warning is issued to not use drugs again; b) a document is suspended and confiscated (driving license, passport, residence permit) for a period of one to three months.

#### **6 In addition to the summons from the Prefecture, what happens?**

Besides the summons from the Prefecture, the consumer will also receive a summons from the [Ser.d](#) for an informative meeting. This meeting is discretionary but, if one enters into an educative programme (for soft drugs) or a therapeutic programme (for heavy drugs), and such a programme has a positive outcome, all sanctions are revoked.

Customarily, however, a summons from the [Ser.d](#) occurs only once all sanctions have been served; their revocation therefore remains a formal provision with no positive consequence for the person involved.

## **7 What happens when the possession of soft drugs has been ascertained?**

Police officials and officers can conduct controls, searches, and personal inspections if they deem the possibility of finding drugs on a specific person or in a specific place warranted. In such cases, officers have no duty to obtain the prior authorization of the Judge, but can proceed independently. If they actually find drugs, they must draft confiscation minutes and ask the Public Prosecutor for validation within 48 hours.

In such cases, the consumer should state that the drug was only destined for personal use and that they themselves are a drug consumer. If the consumer possesses a large amount of drugs, he or she should state that such an amount constitutes a reasonable amount for personal consumption.

## **8 What are the consumer's rights in the case of searches or personal inspection?**

In the case of searches or personal inspections, every person is guaranteed that such activities be carried out in the presence of a lawyer or otherwise trustworthy person who is promptly available.

Police officers, however, do not always wait for the lawyer's arrival; in such cases, one should carefully pay attention to everything that is happening and, if possible, note what is written in the sequestration minutes. Before signing, the minutes should be read in order to verify that the operations have been carried out in the manner so reported; if not, it is better not to sign.

In any event, police officers and officials must respect the person's dignity, refrain from using methods or techniques aimed at jeopardizing the individual's

capability for choice, and respect the person's privacy rights; in addition, they must provide a copy of the search (and sequestration) minutes. Finally, only female officials can carry out personal inspections on women.

## **9 What should the consumer do to prevent the officers from accusing them of dealing?**

A consumer, first and foremost, should remain cooperative and willingly provide each drug and any related paraphernalia (chilums, rolling papers, etc.) that may help to prove personal consumption.

The minutes should exclusively state the intended personal use of any detained drugs.

It is also important to remember that splitting drugs into different pieces, as well as the possession of precision scales, knives, and other packaging materials, are considered useful instruments for drug dealing.

## **10 At the end of the search, is the consumer informed as to whether they have been accused of the criminal offense of drug dealing or only the administrative offence of drug possession?**

At the end of the search, the officers, if they believe there is no intention to deal, provide the person involved with a report where the violation pursuant to Art. 75 DPR 309/1990 (*Testo Unico Stupefacenti*) is contested.

On the other hand, if the person involved is believed to have had the intent to deal, they may be arrested or released on bail. In the latter case, a report is provided which indicates the domicile chosen (pursuant to Art. 161 of the criminal procedure code) and specifies violation of Art. 73 DPR 309/1990; it also asks the person involved to choose a lawyer and to state where they intend to receive all the documents related to the criminal proceedings.



### **11 Is smoking a joint with a friend or buying cannabis for a group of people a criminal offense?**

As of today, offering drugs for free is considered a criminal offense; therefore, passing around a joint or buying drugs on behalf of third parties is considered a crime. In such circumstance, you should state to police officers that the purchase of the drug had been previously agreed upon for group consumption.

However, in order to ascertain group consumption, a criminal trial will almost certainly be initiated. Group consumption is, in fact, a category of case law and consists in the phenomenon of more than one person specifically agreeing to the purchase of drugs for their joint consumption. In such cases, the Judge can rule these behaviors to be personal consumption, and, therefore, subject to administrative sanctions and not criminal ones.

### **12 Is marijuana cultivation a criminal offense even if intended for personal use only?**

Yes, cultivating even a single plant for personal use is considered a criminal offense if the plant has even a minimal potential for stupefaction (in other words, if it has [THC](#)). The possession of seeds or plants without any active principle, however, is not punishable by law.

In terms of those activities leading up to personal use, following the [1993 referendum](#) only drug possession, importation/exportation, and purchase remain criminal offenses. Consequently, production, fabrication, extraction, etc. – and even cultivation – will always be considered crimes independent of the amount produced, planted, extracted, etc.

This does not, however, mean that someone who cultivates marijuana for personal use will always be convicted. There will be a trial to prove that production was indeed destined for personal use.

Nonetheless, it is important to remember that, even if such is proven, the charge may not always be thrown out as jurisprudence often considers drug cultivation in

itself a crime (reato di pericolo) as it increases the quantity of the drug in existence as well as its potential for circulation on the market, even if intended only for personal use.

### **13 Is there any kind of hemp cultivation which is not prohibited by law?**

Yes. Hemp flour can be legally cultivated as long as the plants and seeds used are those provided and included in the list under Art. 17 of CE Directive n. 53/2002. This principle is provided under Italian and EU law relating to hemp plantation (l. 242/2016 and EU Directives 2002/53/CE and 2002/57/CE).

The percentage of the active principle (THC) in cannabis plants' flowers must be between 0.2% and 0.6% in order to be legally sold, purchased, and possessed. Again, one cannot cultivate for personal consumption, however.

Italian law on hemp cultivation states that it must be destined for either:  
a) plantation and transformation, b) incentivization to the use and final consumption of hemp semi-finished products deriving from local production chains; c) the development of territorial integrated chains aimed at enhancing research results, local integration, and actual economic and environmental sustainability; d) food, cosmetics, or the production of biodegradable raw materials for manufacturing activities in different industries; or e) the realization of bioengineering works, land recovery, and educational activities.

### **14 What kind of products can be obtained from legally cultivated hemp?**

According to l. 242/2016 regarding legally cultivated hemp the following products can be obtained: a) food and cosmetic products that respect the legislation of their respective industries; b) semi-finished products such as fiber, dusts, oils, fuels, or wood chips with which to supply manufacturing activities and artisans in different sectors, including energetic ones; c) materials destined for eco-friendly manure; d) organic materials destined for bioengineering works or products used for eco-

friendly housing; e) materials used in phytoremediation for the restoration of polluted sites; f) cultivation for the purpose of teaching and research activities from public and private institutions; g) cultivation for the purpose of nursery gardening.

### **15 Is the therapeutic use of cannabinoid medicines lawful?**

Yes. In Italy, the therapeutic use of cannabinoid preparations is allowed, subject to unrenewable medical prescription released by a general practitioner or any other doctor. The therapeutic use of self-produced inflorescence or those produced under Law 242/2016 is not allowed (see question 13).

### **16 In which cases is the medical prescription of cannabinoid medicines allowed?**

Pursuant to the ministerial decree of 9 November 2015, cannabis may be prescribed for the treatment of chronic pain and the pain related to multiple sclerosis and spinal cord injuries; to nausea and vomiting caused by chemotherapy, radiotherapy, and HIV therapies; as an appetite stimulant in cachexia, anorexia, loss of appetite in relation to oncologic or AIDS patients, and nerve anorexia; to the hypotensive effect in glaucoma; and to the reduction of involuntary body and facial movements in Gilles de la Tourette's syndrome. Always pursuant to the aforementioned decree, prescriptions can be made when conventional or standard therapies are ineffective.

### **17 Is it possible to establish a Cannabis Social Club to consume and form a cultivation group?**

No. In Italy at present Cannabis Social Clubs (CSCs) remain illegal. Originating in Spain and Belgium as an alternative model for regulating the production and consumption of cannabis, CSCs exist for adults who are already cannabis users to associate with one another in order to produce cannabis for their own consumption without profit. CSCs are, in fact, non-profit associations which

organize collective professional cultivation of a very limited amount of cannabis sufficient only to meet the personal needs of club members and, at the same time, carry out study and research work on its various uses.

In Europe, the European Network Consumers Of Drugs (ENCOD) – which brings together various drug users and/or drug policy makers – has been the promoter of this “non-mercantile production model since 2007 and of this cannabis distribution system reserved for adults”.

It is possible, however, to create associations in Italy that promote the study and research of the various uses of cannabis as well as stimulate the debate that legitimates cannabis cultivation groups as a concrete antidote to drug trafficking and to all other problems related to the prohibition of self-cultivation (see question 12).

## **18 What happens if a case of driving under the influence of drugs is ascertained? What happens in the case of a road accident?**

Article 187 of the Road Code (Guidelines for the driving under the influence of drugs) provides the following sanctions: a fine from 1,500 to 6,000 euros; arrest from 6 months to 1 year; confiscation of the vehicle if it is property of the

driver; suspension of the individual's driving license from 1 to 2 years (doubled if the vehicle is not property of the driver); a reduction of 10 points from the driving license; pecuniary sanctions are increased by 1/3 to half if the offense was

committed between the hours of 10 p.m. and 7 a.m. Sanctions are also increased by 1/3 to half if: the driver is less than 21; the driver has not been driving longer than three years from the date of receiving their B driving license; they are professional drivers during service hours (bus drivers, taxi drivers, vehicle drivers with a total mass of more than 3.5-ton loads and vehicles with 10 or more seats).

It is possible to convert the prison sentence and fines into social work.

In case of refusal to submit to investigations, the same penalties for those that are found positive to drug tests shall apply, together with the revocation of the license for those who have already been convicted for this kind of offenses in the previous two years.

If an accident occurs under the influence of drugs, sanctions are doubled and the driving license will be revoked.

For buses, heavy or complex vehicles, or for multiple offences over the three-year period, your driving license will be revoked and will not be obtainable for the following three years.

Furthermore, according to the Civil Code and some national contracts, the revocation of a professional driver's license is considered a just cause for being fired. The administrative and penal sanctions described above apply to drivers of any kind of vehicle (including motorcycles and / or bicycles).

## **19 How is the influence of drugs ascertained?**

Article 187 of the Road Code clearly states: "*Driving under the influences of drugs*", so that the conduct of the drug user who is driving in an altered state will be punished. Therefore, unlike alcohol, there is no precise limit with respect to the presence of drugs in one's blood or urine that attests the level of the severity of their effects.

This argument has often been used when people who were not under the influence at the time of driving nevertheless show positive results of the presence of drugs in their blood or urine.

It is important to note that some drugs can remain traceable in one's urine for quite some time – hashish and marijuana up to 30 days – so that judges have sometimes acquitted people for whom no medical or toxicological consultancy or medical examination attested to their being under the influence at the moment of being checked, but only a positivity to the drug's presence.

**20 What happens if I am not currently driving a motor vehicle but, at the time of inspection, do indeed possess a vehicle?**

If at the time of the inspection the consumer is in possession of a motor vehicle, his or her driver's license will be withdrawn for up to 30 days by the police and, if a motorcycle, an administrative stop of the vehicle will be enacted. If you are operating a vehicle, you will be subject to those penalties listed in question 18.

## Glossary

### Soft and heavy drugs

According to Italian legislation (Consolidated Drugs Act, DPR 309/1990 and followings amendments) drugs and psychotropic substances are divided into five Schedules (classifications): heavy drugs and barbiturates belong to Schedules I and III while cannabis (light drugs) and benzodiazepines to Schedules II and IV. The V Schedule, instead, includes medicines. Ministerial decrees decide how to classify a substance and this has several consequences in terms of sanctions, which are more severe for heavy drugs and barbiturates than for cannabis and benzodiazepines.

### Social Work (LPU)

Since 2010 it has been possible to replace prison sentences and fines with the sanction of the LPU. Social work may be carried out by public bodies or social associations and cooperatives which have entered into an agreement with the Court where they are located. Public works are carried out at the place of residence but for work and/or study reasons it is possible to ask to carry them out in other districts once those needs are ascertained. One day of social work replaces one day of arrest and/or 250 euros of pecuniary penalty and consists of two hours of work. The person concerned may ask to take more than 6 hours a week; in any event, it is never possible to complete more than 8 hours of social work in a single day. The positive performance of public works involves a number of favorable circumstances for those who apply for it: the nullification of the offense, the halving of the suspension time of one's driving license, the restitution of goods confiscated. A person can ask for social work only once in their life.

### Law N. 49, dated 21 February 2006, the so-called “Fini Giovanardi” Law

A statute that has strongly upheld the Consolidated Drugs Act (DPR 309/1990) and which was largely declared unconstitutional by the Constitutional Court in Ruling 32/2014.

This statute made the sanctioning of light and heavy drug dealing equal, reintroduced the quantitative concept to distinguish between personal consumption

and dealing, and upheld the administrative sanctioning of treatment for the use of these substances.

### Active substance and THC

A substance with a therapeutic effect (drugs), beneficial effect (vitamins, probiotics), or toxic effect (poisons). The active substances can be synthetic, semi-synthetic, or natural extracts from plants. Plants of the genus cannabis contain between 400 and 750 active substances at various concentrations: only THC has psychoactive effects and thus the entire sanctioning system provided by law refers not to cannabis itself but to the degree of THC present in cannabis and its derivatives.

### 1993 Abrogative Referendum

The 1993 popular referendum established the de-criminalization of all narcotics consumption and the provision of administrative sanctions for the consumer. In addition to consumption, some preparatory activities to consumption such as the holding, purchase, import and export (but not the cultivation and other practices) of narcotics have been decriminalized only in the case of subsequent consumption.

### Criminal sanction and administrative sanction

Criminal sanctions are applicable only for crimes of particular seriousness. They may consist in the restriction of personal freedom for a short or extended period of time, or in the payment of a fine or a penalty. Administrative sanctions are applicable for less serious offenses. They may consist of paying a sum of money or in other more serious forms of punishment such as the withdrawal of an individual's driving license or passport.

### Ser.d

Services for Addictions (Ser.d) are public services providing psychological and social support; they also monitor the state of health and disease associated with (drug) addiction, manage pharmacological and non-detox treatments, and implement technical and recovery programs including sending those with substance abuse problems to rehabilitation programmes.



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