

Milestones on drug law reform in Colombia, 1994-2012

[Constitutional Court ruling in 1994](#): This sentence, which decriminalized drug consumption in the country, established that drug possession for personal use (minimum amount) “cannot be subject to any sanction” when it is done “in the exercise of personal and intimate rights [and] the accused does not affect others.” The court declared as unenforceable two articles from the Law 30, of 1986, including Article 51 (sanctions for possession of amounts for personal consumption) and Article 87 (treatment and rehabilitation). The court reiterated that possession of minimum amounts is licit and recognized that drug consumption is a personal decision and that it can lead to addiction. It was clear, however, that the problem is not a criminal issue and cannot be addressed with sentences, but “requires the application of therapeutic medical treatment before punishment, sentences or reclusion in a penal establishment.” The 1994 ruling was [ratified by the Supreme Court of Justice](#) in July 2009, just as the Congress was debating legislation to reform the constitution to once again criminalize possession and consumption.

There have been numerous attempts to eliminate the concept of minimum amount through referendums, laws, court rulings and even constitutional reforms. These efforts have failed, and the concept of minimum amount remains in place. Different moves include:

- In 1994, the government of then-President César Gaviria (currently a member of the Global Commission that is behind the idea of the “failure of the war on drugs”) insinuated that there was a need for a referendum to eliminate minimum amounts for personal consumption;

-In 2004, the Constitutional Court ruled in [Sentence C101/2004](#) that [Law 745, of 2002](#), was unenforceable. The law included fines for drug consumption in the presence of minors and sanctions for possession and consumption of minimum amounts;

-In 2003, with President Álvaro Uribe Vélez in office, the government closed the [Rumbos Program](#) (a presidential drug-prevention initiative) and supported a referendum that would criminalize possession and consumption of minimum amounts. The measure was defeated at the polls;

-In 2007, Law 1153 re-established Law 745, of 2002. The Constitutional Court once again declared it unenforceable through [Sentence C879/2008](#);

-In 2009, after seven attempts at constitutional reform, lawmakers allied with President Álvaro Uribe Vélez approved Legislative [Bill 002, of 2009](#), that eliminated the clauses in Article 16 of the Colombian Constitution that referred to possession and consumption of minimum amounts. While this legislation basically eliminated the concept of minimum amount, it has yet to be regulated for enforcement and faces legal challenges. There are additional details on the 2009 reform in [this report](#);

-In June 2011, the government approved Law 1453, or the [Citizen Security Law](#). Article 11 of the law criminalizes possession and consumption of minimum amounts of drugs. The Constitutional Court, however, stated only weeks after it was signed into law that minimum amounts cannot be criminalized. Article 11 modifies Article 376 of the Criminal Code, which concerns “trafficking, production, and possession of narcotics.” While the government was unsuccessful in criminalizing consumption in the 2009 reform, the Citizen Security Law provided another opportunity to apply tough sanctions on anyone possessing a minimum amount. According to [DeJusticia](#), the promises made during the 2009 reform that consumers would not go to prison proved false. The law does not distinguish between consumers or people possessing minimum amounts for personal use, and those making money from the sale of drugs. This change allowed authorities to begin criminal cases against people detained for possession or consumption of minimum amounts and might open the door for sentences between 10 and 30 years for people possessing small quantities of drugs for personal consumption;

-Sentence of the Constitutional Tribunal. Regarding the earlier norm, the Constitutional Court ruled

in [Sentence C-574, of July 22, 2011](#), that amounts for personal consumption are not criminalized. The court refrained from ruling on a core issue in constitutional challenge presented by a group of students and professors at the Universidad de los Andes, who argued that modifications to the constitution made during the Uribe government to “prohibit” quantities for personal consumption (Legislative Bill 02, of 2009) would allow for people apprehended with illegal substances to be jailed. The court categorically denied that this was the sentiment of the norm and, in the end, provided guidelines to interpret the concrete consequences of the 2009 reform. The court’s decision was clear on two important points: First, while drug possession and consumption are “prohibited,” the only actions that can be taken against people who violate the norm are “administrative” and need to be therapeutic in nature. In other words, no one can be jailed for using banned substances; Second, any measures adopted must be taken with the “informed consent of the person involved,” meaning that even if the person is a drug addict, he/she cannot be forced to stop using;

- Bill to regulate possession and consumption. The debate on decriminalization of minimum quantities of drugs has continued in Congress and is expressed in two clear trends – supporters of decriminalization and those who want drug users to submit to treatment. In August 2011, the Uribe bloc in the Senate (Senator Juan Carlos Vélez) presented a controversial bill that would regulate the constitutional reform regarding minimum amounts for possession and consumption. The bill was aimed at the state adopting concrete therapeutic actions to treat addicts. According to the bill, if an individual is apprehended possessing or consuming any amount of psychoactive substance, they would immediately be taken into custody for an assessment to determine if they are drug addicts and, if the assessment is positive, would be forced to receive treatment paid for by the state. “The state would be required to provide this (treatment) and they would be required to receive it.” The bill was not approved and it does not appear that it will be passed in the future, because a second bill with a different approach was tabled and approved in July 2012;

-Supreme Court of Justice ruling. In August 2011, the Supreme Court of Justice handed down a ruling in a case involving a young man in Tauramena (Casanare) who had been sentenced to five years in prison for possessing 79 grams of marijuana. The court stated that the concept of amounts for personal consumption had not been eliminated and that the 1994 ruling from the Constitutional Court, which prohibited jail sentences for people possessing minimum quantities, was legally valid. While it maintained the principle, the court ratified the sentence in this case because the amount of marijuana involved exceeded by nearly four times the amount allowed for personal consumption (20 grams).

-Bill presented to decriminalize minimum quantities. Lawmakers in favour of decriminalization presented in September 2011 legislation in opposition to the earlier bill with the aim of eliminating legal sanctions for possession and consumption of minimum amounts. The author of the bill, Senator Jorge Londoño, of the *Partido Verde*, said the initiative “is the ratification of what the Supreme Court of Justice has said and what the Constitution Court dictated ... amounts for personal consumption cannot be criminalized.” The bill has been attached to other legislative initiatives for penal reform that propose including the exception for personal use in the crime of trafficking, processing or possessing narcotics that was left out of the Citizen Security Law.

-Bill to declare drug addiction a public health problem. In June 2012, the House of Representatives approved a bill through which the Colombian state would recognize “consumption, abuse and addiction to psychoactive substances, whether licit or illicit, a public health issue.” As a result, addiction “should be treated as a high-cost disease that requires integral attention from the state.” According to [Senator Juan Manuel Galán](#) (Partido Liberal), this bill “adheres to the statements of President Juan Manuel Santos about the need to move toward a new drug policy, to take a new look at the problem of consumption and addicts, a view from the public health perspective, and from the policy of prevention.” The initiative also falls in line with the policies being designed by the Health Ministry, which wants to address the issue of consumption starting with school-aged children. In addition, treatment would be voluntary and addicts would not be forced to submit to a program. The Finance Ministry rejected this initiative for budgetary reasons.

This initiative has now been approved and signed by the president, becoming [Law 1566 in 2012](#). It calls for “passage of norms to guarantee integral attention for people who consume psychoactive substances” and creates the national award for the “entity committed to prevention of consumption, abuse and addiction of psychoactive substances.” The law is currently being enforced and is the normative framework for the discussion proposed by the mayor of Bogotá for mobile units to provide medical attention for addicts and centers where consumption can be regulated;

-New bill for constitutional reform concerning minimum quantities. The [initiative](#) was proposed in February 2012 by lawmakers from the *Liberal*, *Verde* and *Polo Democrático* parties. The bill is another attempt to modify [Article 49](#) of the constitution, which deals with the issue of drug addiction as a habit. It states that “possession and consumption of narcotics or psychotropic substances in minimum quantities is permitted. For preventative or rehabilitation purposes, this law will establish administrative measures and treatments focused on pedagogy, prevention and therapy for people who consume these substances as part of national public mental health policies and for reducing consumption of psychoactive substances and their impact. Use of these measures and treatments requires the informed consent of the person.” The bill was withdrawn by the authors on May 9, 2012;

-Ruling of the Constitutional Court concerning minimum amounts. In a ruling handed down in June 2012, the court’s full chamber determined that authorities [cannot bring charges against people who possess the minimum](#) quantity of drugs established for personal consumption. According to the court, the Citizen Security Law ignored the exception made in the constitution regarding amounts for personal consumption. The court said that there is an inconsistency between constitutional doctrine and the law in this case. This ruling, which reaffirms decriminalization in the face of opposition from some sectors that want to criminalize possession for personal consumption, has been attacked by [prohibitionist sectors, including Attorney General Alejandro Ordóñez](#). It was, however, welcomed by the public prosecutor’s office as a way of reducing congestion in the justice system. The congressional *Polo Democrático* caucus is preparing legislation that would bring the law in line with the Constitutional Court;

-In a move to provide integral treatment for addicts and reduce crime levels in Bogotá, Mayor Gustavo Petro launched in September 2012 a pilot project, Center for Medical Attention for Drug Addicts (*Centro de Atención Médica a Drogadictos*— [CAMAD](#)), that involves mobile units stationed in marginal areas of the city so doctors and social workers can provide attention to addicts. The program adheres to the view that the drug problem is a public health issue. For more on Camad, see the [TNI Briefing](#).