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Gianni Buquicchio
President
European Commission for Democracy through Law
Council of Europe

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Drug Policy and Human Rights: on the fundamental Incompatibility between the two paradigms and the importance of an Effective Remedy

Dear Sir.

We are an organization dedicated to the rule of law and the end of unjust persecution. Our focus is the relationship between human rights and the drug laws, and we wish to direct your attention towards this topic.

As of today, there can be no doubt that drug law violators represent the largest, most vilified and most extensively persecuted group in Council of Europe member States. In Europe alone, some 40 million are singled out for intimidation and the drug laws legitimize the continued oppression of this group.

Nevertheless, as the destructive force of the prohibition paradigm is becoming more obvious, more and more are questioning the premises behind such legislation. For more than ten years European drug users have claimed that their persecution is a human rights violation, and both the UN and COE have committed to drug policies firmly established within the human rights paradigm.

Even so, not much is known on the relationship between human rights and drug policy. While more and more constitutional courts are invalidating drug laws (in 2018, Mexico, South Africa, and Georgia), neither the UN, ECtHR, nor any individual country have looked at the implications of principled reasoning applied to the status quo. This is a great problem, and as a remedy the COE's Committee on Legal Affairs and Human Rights is preparing the report "Drug policy and human rights in Europe: a baseline study".

As noted by this resolution, the Pompidou Group and the signatories recognize that it is "not possible at present to give an authoritative and comprehensive view on the human rights dimension of drug policy." As such, the rights of millions of people remain deeply contested and this coming report will prepare the ground for a better understanding of how the principles of human rights law apply to drug policy.



When it comes to this, our organization has finished a major work in this area, and we hereby forward our report *Human Rising: The Prohibitionist Psychosis and its Constitutional Implications* (2019)

Building on first principles, this report documents how principles of autonomy, equality, proportionality, dignity, and the liberty presumption invalidate the prohibition paradigm. It has been vetted by professionals and we bring this to your attention because it offers what has been missing so far: a baseline overview of the human rights situation in relation to drug policy.

As President of the Venice Commission, you should be familiar with its contents, and we also forward our communication with the COE and UN. If you want more information on the status of the rights-oriented debate and its implications, we recommend a look at our website www.arodpolicies.org. As you can see, the rights-oriented debate poses five questions that must be answered to the satisfaction of an independent, impartial, and competent tribunal. Only in doing so, can prohibitionists claim a just cause, and yet, at the national level, we find that leaders will rather ignore the call for a justification of the status quo than let the drug law suffer human rights analysis.

Thus, contrary to the rule of law, drug users have been denied access to an effective remedy and it is our request that the Venice commission will focus its attention on this serious human rights problem, either through its capacity as an advisory body on the COE report, or on its own initiative, in accordance with its primary statute, article 3.1. As documented by *Human Rising*, only powerpolitics and unconsciousness sustain the prohibition paradigm; the rule of law demands an effective remedy, and if there is anything we can do to help you help citizens across the world have their rights determined, please let us know.

Yours sincerely

A handwritten signature in black ink that reads 'Roar Mikalsen'. The signature is written in a cursive, flowing style.

Roar Mikalsen
President of AROD

Appendices:

- (1) *Human Rising: The Prohibitionist Psychosis and its Constitutional Implications* (2019)
- (2) Letter to the Pompidou Group, November 27, 2018
- (3) Response from Denis Huber, Executive Secretary, December 14, 2018
- (4) Letter to COE Secretary General, December 21, 2018
- (5) Follow-up letter to the Private Office of the Secretary General, March 15, 2019
- (6) Response from Leyla Kayacik, Director, Private Office of the Secretary General, April 21, 2019