



Witness 5

Director of Public Prosecutions

Jørn Sigurd Maurud

Director of Public Prosecutions Jørn Sigurd Maurud has been a staunch supporter of principles that must weigh heavily if a liberal rule of law is to survive. That is why the Director of Public Prosecutions endorsed the decriminalisation of drug use as part of the Norwegian drug reform, and it was in the spirit of the same principles that AROD and Mikalsen set up a booth with psilocybin and cannabis products outside the main police station in Oslo. This was done in response to the fact that drug users have been demanding rights for almost 20 years but that all agencies involved with the drug prohibition have relinquished their professional responsibility.

With regard to the Directorate of Public Prosecutions, the head of the prosecuting authority was informed in 2009 about the lack of a basis for punishment.¹ Drug users had since 2006 argued for the invalidity of the provisions of the Penal Code, but the problem was ignored by politicians, police, and others who kept the drug law above criticism. Not only a district court judge but also a public prosecutor protected the

¹ The correspondence can be found on pages 339-353 in the 2010 edition of *Human Rising* and can be read [here](#).



Narcotics Act from principled objections, and the Director of Public Prosecutions, Tor-Aksel Busch, was asked to ensure effective redress. Mikalsen explained that personal integrity was the key to a systemic problem and requested the Director to support the rule of law, but Tor-Aksel Busch responded that the courts and politicians should take care of the current law.

Mikalsen wrote back that in times of panic, these institutions could not be trusted to maintain the rule of law, that the approach of the Director of Public Prosecutions betrayed the constitution and subordinates, and that the Norwegian people deserved better. Time should show AROD right, but Tor-Aksel Busch would not reconsider, and 10 years passed before AROD contacted the Director of Public Prosecutions again.

The background for AROD's attempt to re-establish communications in 2019 was the report of the Norwegian Royal Commission on Drug Reform, which gave new impetus to the fight for rights. With the detection of moral panic, the allegations that drug users had made 10 years earlier regained relevance, but a blind spot existed, as a regulated market was excluded from the commission's inquiry.

Chief Public Prosecutor Runar Torgersen, as chair of the Royal Commission, had accepted that the system of prohibition should not be questioned. This decree from the Norwegian government directly contravened the human rights mission of the committee, and AROD informed the Director that several hundred thousand citizens had rights that remained overlooked. AROD also mentioned that as a result, the respect for law and order had been severely tarnished, and a proposal was made to help the rule of law.



AROD also [stated](#) that as a result of this, the respect for law and order had been severely damaged, and a proposal was made to help the rule of law. Since Director of Public Prosecutions Busch had, 10 years earlier, denied the right to review the drug law to serious drug offenders, AROD proposed to supply the prosecution authority with the amount of cannabis that the Director of Public Prosecutions deemed appropriate to trigger rule of law guarantees but there was no response.

AROD, therefore, looked forward to Director of Public Prosecutions Busch's departure and wrote a [new](#) letter in 2020 when Jørn Sigurd Maurud took over. AROD thanked Maurud for his involvement in the Norwegian drug reform and referred to the report of the Royal Commission, which substantiated allegations of human rights violations. In this letter, AROD called for more responsibility from the Director of Public Prosecutions, as law and order had lost much of its weight. AROD wrote:

While politicians, police officers, judges, public prosecutors, and other officials have ignored international law obligations in the area of drug policy, drug offenders have come forward with offers to provide information that could lead to the investigation of several tons of cannabis imports. Not only have the police, as an agency, refused since it conditioned the authorities to stand behind the rule of law guarantees but hundreds of police officers and a justice minister have also declined the same offer because they did not want to consider the human rights of drug offenders.

This was the status of law and order in 2020. Medical users of cannabis had contacted the Director of Public Prosecutions and stated that they



cultivated cannabis under the emergency law principle, and AROD was aware that several would report themselves to the police. AROD, therefore, requested a circular with guidelines for the prosecution in the cases where recreational users, sellers, and manufacturers had contacted the police to promote a human rights argument. Had the Director of Public Prosecutions provided such guidance, the prosecutor in AROD's civil disobedience case would probably have thought twice before opposing the realisation of human rights, but Director of Public Prosecutions Maurud's regrettable reply was that AROD's inquiry "does not occasion measures or comments from the Director of Public Prosecutions". AROD, therefore, [responded](#) on 15 July 2020 with a cease-and-desist letter.

In this letter, AROD held Director of Public Prosecutions Maurud responsible for continuing the sentencing scheme on scientifically rejected grounds and offered a way out. Roar Mikalsen, the leader of AROD, wrote:

In order to speed up the political process and limit the damage that post-constitutional conditions inflict on the people, we want to activate the judiciary's obligations to the persecuted groups. As the head of an organisation dedicated to this purpose, I, therefore, keep a small amount of cannabis products and will hand them over to government officials at the appropriate opportunity.

It is up to the Director of Public Prosecutions and his office how the arrest/handover may take place. You can either arrange this in a decent way, one that does not further ruin the life of my immediate family, or you can kick in doors. In any case, you know how to get



hold of me, and that I will exercise my right to a human rights defence.

The Director of Public Prosecutions also knows that I have an arguable claim of human rights violations, one that coincides with the conclusions of the Royal Commission. In addition, the Director of Public Prosecutions has been informed about the points where Norway does not satisfy international guidelines in the area of drug policy, that I take this step because the persecuted have been denied an effective remedy for 10 years, and that the damage that follows in the wake of a drug policy based on totalitarian premises is too large to ignore. I, therefore, will do my civic duty. I do not ask to be considered in the mildest possible manner, but for a legal process worthy of the rule of law and on behalf of the persecuted groups, AROD hopes for constructive cooperation to ensure that we do not fall outside the rule of law again.

AROD looked forward to hearing from the Director of Public Prosecutions, but nothing happened. Nor did [another](#) letter which dealt with the shortcomings in the Director of Public Prosecutions' investigation into means of force in less serious drug cases have any consequences, so AROD began civil disobedience.

The Director of Public Prosecutions was [invited](#) to support this mission, which he never did. Therefore, to preserve the integrity of the law, AROD insisted that the Director had to testify before the District Court about the relationship between drug policy and human rights, but the defence was denied the right to present witnesses and other evidence.



Thus, the drug law remains protected from scrutiny. The loyalty of the District Court proved to be with power and not with principles, and the Director did not have to respond to AROD's allegations of human rights violations. Even so, the rule of law includes accountability, and these questions must be addressed by the Director of Public Prosecutions.

Questions to the Director of Public Prosecutions

The Director of Public Prosecutions has been involved in drug reform, and the report of the Royal Commission shows why. This report shows that public panic has been influential in the formation of drug policy, that punishment for drug use cannot be defended, and that human rights considerations require new thinking. Is this properly summarised?

Does it follow that the Director of Public Prosecutions is against punishment for drug use, including recreational use?

The defence agrees that punishment must be abolished and that decriminalisation only for long-term drug abusers is problematic. The principle of equality must be respected, and we agree that recreational users, as the Director of Public Prosecutions says in his response to the drug reform², "have no need or desire for health care at all". However, if this is true, what is the point of punishing drug use, as politicians want? Is the Director aware of good reasons for retaining a prohibition on drugs, or do human rights concerns point in a new direction?

² The Director of Public Prosecutions says this in his consultation [statement](#): "As mentioned, many people obviously need health care for their substance abuse disorder, while others - apartment addicts or" recreational users "as it is often called - have no need or desire for health care at all. Here, the report concludes that it becomes too demanding to distinguish between different users, and with decriminalization as a result for everyone. In other words, we are today in the situation that the use of punishment is in principle difficult to defend, and in addition has a very variable and uncertain effect. Criminal law can hardly operate with a criminal threat for some, but not all, for the same type of action. The criminal justice system is therefore undesirable to use, and for many people unsuitable, to counteract unwanted intoxication behaviour."



The mandate of the Royal Commission was to assess the relationship between human rights, but the proposed legislation entailed punishment for more than a few doses of drugs, and freedom is presumed in the constitution. Does this mean that the defenders of prohibition must prove its legitimacy?

If the burden of proof lies on the state, as the Royal Commission has noted, does it make sense to talk about human rights without including a regulated market? Can politicians move from punishing drug use to making it a case of morbidity without emphasising human rights principles?

The report of the Royal Commission showed that public panic has shaped Norwegian drug policy, that punishment must be defended, and that the basis for punishment does not hold up. Despite this, the Minister of Health and the Minister of Justice want the system of punishment to continue while objections are ignored. Do the Minister of Health and the Minister of Justice put the political program of their parties above constitutional obligations on this basis?

Chapters 3.2 and 3.3 of the drug reform report use words such as "public panic", "disproportionate representation", "misleading ideas", "incorrect investment in punishment", and "reality-resistant wrongdoing" to summarise the development of drug policy. We are dealing with a policy characterised by "stereotypical representations," "moral indignation and motives for revenge," one where "scientific analysis of the drug problem have played a minor role". "Panic" is used several times. Could public panic have been shaping drug policy for 50



years if principles such as equality, proportionality, self-determination, and the presumption of freedom were sufficiently emphasised?

The Director of Public Prosecutions says in an [interview](#) with Kapital magazine that "the prosecuting authority has a special responsibility to ensure that the legal basis is justifiable when we decide to prosecute our citizens". How, then, does it feel to be at the helm of prosecution in times of public panic? What is it like to see the Minister of Justice and the Minister of Health insist on punishment after the report of the Royal Commission? Is this perceived as problematic?

For obvious reasons, prohibitionists have invested heavily in politics. As long as a criminal market exists, there will be prestige, budgets, and powers in the war on drugs, but the defence recalls page 26 of the Royal Commission's report in which the committee for reasons of principle does not propose coerced treatment or provision of health care without the person's consent. The UN working group against arbitrary imprisonment is also [clear](#) that drug users should not be forced into recovery. Therefore, what does the Director of Public Prosecutions think about the current drug reform? Does it secure human rights?

In his [response](#) to drug reform, the Director of Public Prosecutions emphasises "paradoxes in society's attitude to various drugs". The Director acknowledges "that for many people, drug use has positive sides", "that the idea of a drug-free society or zero tolerance for drugs is no longer a real ideal that can govern how we should meet drug use", and that "it can be perceived as a paradox that alcohol is recognised as an acceptable drug, while others – and often substances that during



proper use do not have the same harmful effect on society as alcohol abuse – are not recognised".

The Director of Public Prosecutions touches here on the blind spot that AROD wants to illuminate. Human rights prohibit unjustified discrimination in the field of criminal law, and as the Director points out, "A recurring theme in the debate on alcohol versus other drugs is that alcohol abuse has much more destructive societal effects than other 'milder' narcotics" do. Based on this, what else but the hunt for scapegoats results in penalties for cannabis users, but not for alcohol users? What are the reasons for this discrimination? Is culture a good enough argument, or do human rights demand a larger perspective?

Over the years, professionals such as Nils Christie and Ragnar Hauge have linked the hunt for scapegoats to drug policy. AROD believes that there is a connection between the scapegoat mechanism, which means the tendency to blame individual groups for problems that we have a collective responsibility to solve, and the Royal Commission's detection of public panic. Does the Director of Public Prosecutions agree? What thoughts does the Director have about hunting scapegoats in drug policy? Do psychological defence mechanisms among prohibition supporters play a role in the continuation of punishment?

The report of the Royal Commission shows that public panic has shaped the drug policy and that punishment for drug use cannot be defended. AROD believes that human rights violations are connected to public panic, which means that to the extent that panic characterises development of drug policy, principles such as autonomy, equality, proportionality, and the presumption of freedom will not be sufficiently



emphasised. What does the Director of Public Prosecutions think about AROD's argument for a regulated drug market based on human rights? Can the Director see a connection between public panic, human rights violations, and the arbitrary persecution of earlier times, or is today's policy well secured?

If the Director of Public Prosecutions does not see the connection between public panic, punishment on rejected grounds, and human rights violations, AROD's documentation identifies others who do, and from the point of view of society, we cannot assume that prohibition is necessary to protect society. Instead, the question becomes as follows: Has the war on drugs reduced supply and demand? Has it promoted unity, healthy values, and good research or done the opposite? Could the prohibition have fostered a collective psychosis, much like the Salem witch trials?

For over 10 years, the Director of Public Prosecutions has had information that indicates the latest. The connection between public panic, human rights violations, and the arbitrary persecution of earlier times is documented in [*Human Rising*](#), a report forwarded to Norwegian authorities in 2010, and the use of force in drug policy is, therefore, extremely problematic. From the point of view of human rights, goals and means must be credibly related, and if less intrusive measures are better suited, the presumption of freedom dictates that the state of nature be emphasised. For thousands of years, people have used cannabis and other illicit substances with impunity, so why not take insights from the alcohol policy? Why live with threshold values so low that users must deal with criminals almost daily? Why not ensure quality-controlled



substances? Is it reasonable to expose users and society to such a burden?

Since the Norwegian Penal Code Commission ended its work in 2002, decriminalisation has been professionally recommended, but for just as long, the Ministry of Justice and the Storting have resisted the process due to the signal it would send and for fear of increased use. Now, as the Royal Commission's report shows, punishment and drug use are unconnected. On the contrary, while the benefits of punishment are uncertain, the costs are enormous and no one has demonstrated a beneficial effect. We, therefore, ask, what kind of "signal" does a policy actually send that punishes people who use a safer drug than alcohol and tobacco? Is it fine to criminalise unproblematic drug use, make drug use more dangerous than necessary, and punish sellers of drugs less dangerous than those provided by the state?

If the Norwegian drug policy is a good use of criminal law or a case of arbitrary prosecution depends on whether punishment can be defended, does it not? To the extent that the drug policy is based on refuted totalitarian premises, does the law not signal the opposite of what the Storting, government, ministry, and Director of Public Prosecutions want?

According to the Director, what does the drug law signal about power? Why do we need prohibition to help cannabis users but not an alcohol prohibition to limit the harm that alcohol causes to society and the local environment? In what way can prohibition be said to be necessary for a modern society?



The need for the protection of children and young people is the mantra of prohibitionists. "That we allow one harmful drug does not mean that it is wise to legalise other drugs", they say. Nevertheless, thousands of human rights violations have been uncovered because of the Director of Public Prosecutions' report on the use of force in minor drug cases, and the threshold values do not prevent arbitrariness. Instead, the upper limit values for decriminalised drug offenses are a way to preserve a blind spot so that the prohibition ideology can continue.

So, let us talk about threshold values. Politicians have worked out this system to distinguish between buying and selling, which it does not. One gram of cannabis can be shared with others in the same way that as much as 20 grams can be smoked alone, and the problem of arbitrary persecution continues. We shall have more to say on that, but if one does not distort the law of supply and demand into a victim and abuser context, why separate buying from selling? How does the possession of one gram or a hundred grams decide whether citizens are to be pathologised or demonised?

Fear of sending the wrong signal justifies a prohibition on drugs and the need to prevent the spread of drugs justifies threshold values. It is unclear whether the prohibition suggests benign guardianship or whether it is better for citizens to take responsibility for their own consumption. We do not know whether politicians' denial of autonomy is necessary or whether their efforts for public health do more harm than good, but due to the perceived risk of drugs, threshold values have become a compromise between those who want to remedy the damage of drug policy and those who do not want to think anew.



Threshold values are therefore central to the question of punishment. Despite this, no one in the government has explained how the basic right to life, liberty, and the pursuit of happiness is nullified by the possession of different amounts of substances, and if the spread of cannabis is less of a risk to society than that of alcohol, how can punishment of up to 21 years be justified?

The Norwegian government equates prohibition with solidarity in practice, but we are more likely talking about bureaucratic mismanagement of an unusually destructive nature. That is why the report of the Royal Commission was so discouraging for politicians, and "the dangers of drugs" and "fear of sending the wrong signal" remain weak justifications for punishment, for which there is no empirical evidence. In fact, several constitutional courts have anchored the right to cannabis use to the principle of self-determination, and if there are good enough reasons to choose drugs other than alcohol, why use police power against unproblematic drug use? Why should drug users risk penalties and the problems resulting from an illegal market? Can the Director of Public Prosecutions say something about this that is not applicable to alcohol too?

It does not take much thought to realise that threshold values are useless as guidelines for punishment, so what is their point? Are they the result of prohibitionists' unwillingness to deal with past mistakes? Do the values provide any other benefit than prohibitionists living without shame in a time of upheaval?

According to the Royal Commission, even "the introduction of penalty-like administrative fees may, depending on the circumstances, conflict



with the citizens' right to privacy and the right to health" (p. 176). If this is disproportionate, what about current penalties? Why depart from the traditional measure of culpability? Normally, be it knives, axes, explosives, or legal drugs, social scorn and moral blameworthiness are reserved for those who misuse a product, not those who profit from its sale: Why is a dealer of cannabis more to blame than its abuser? Can the Director of Public Prosecutions again say something about this that is not applicable to alcohol too?

Proponents of drug prohibition have twisted the law of supply and demand into a victim and abuser context. This is how users are pathologised and dealers demonised. However, is not the same law of supply and demand and the same varying patterns of use applicable to both legal and illegal substances?

If the Director of Public Prosecutions cannot deny that the same law of supply and demand and the same varying user patterns are involved, is it proper for law to turn supply and demand into a victim and abuser context? Does this not reveal a blind spot that should be illuminated?

The Royal Commission's report shows that the idea of the drug shark is political fiction and that punishment must be defended: if penalties for drug use are exposed as disproportionate, should not penalties for sale be subjected to the test of reason? Does the Director think that this is the case today?

In a criminal market, there is no quality assurance and no protection against fraud and robbery. If politicians want to "ensure a better life situation and dignity and reduce stigma for people with substance abuse problems" and seek to pursue a "knowledge-based" drug policy that



"makes it safe to ask for help", is it justifiable to exclude regulation? Could not a controlled market in drugs make everyday life safer for society and easier for the police? Could it not reduce crime, disease, violence, suffering, stigma, and death?

It appears that a more comprehensive drug policy would benefit the Norwegian people. Politicians, for example, want to protect the young, but prohibition promotes crime. Many young people prefer cannabis to alcohol, and criminalisation means that they must deal with criminals. The better the contacts in the criminal world, the better the quality of products on offer, but at the cost of chaos and uncertain future prospects. Most people who sit on longer sentences are therefore users, and the myth of the drug shark is political fiction. Yet, the prohibition of drugs turns users into sellers and, later, into inmates, while leaving a market worth hundreds of billions to criminals. Cannot young people be better protected through an alternative? Cannot a regulated market remove much of the allure of the banned substances?

The defence asks because thinking along these lines ensures that Canada, Germany, and other nations refer to the Convention on the Rights of the Child to defend the regulation of the cannabis market. A more holistic perspective could also save politicians the challenge of morally and legally separating drug users from drug dealers and problem use from recreational use. There are no good answers on how to solve this, but if the goal is to reduce overdoses and to help those in need, is not a regulated market most apt to remove the shame and stigma? Is it not a controlled supply that secures users the most?



Prohibitionists claim to be on the side of the youth. Even so, they are prosecuting people for behaviour that is less harmful than legally regulated behaviour, and this, historically, is a sign of religious fanaticism more than rational concern. How is modern drug policy different from the arbitrary persecution of the past?

Those who do not accept the ideal of a drug-free society regard the prohibition ideology as hypocritical. Users would rather deal with sellers than the police, and the prohibition experiment has led to a steady erosion of the authority of the state. Instead of inviting respect for law and order, the result of the drug law is that more and more people see illegal drugs as a symbol of freedom: Why not look at drug policy more holistically? Could not this have reversed the trend?

The Director of Public Prosecutions has to go by his gut, as no report has assessed the pros and cons of a regulated market. Nevertheless, few experts believe that drug use will increase significantly, and it is more likely that crime will fall to the level of the 1950s, before the war on drugs accelerated the statistics. This was at least what the Dutch authorities concluded after examining the case ([*Human Rising* p. 136](#)). Therefore, it only makes sense that the Director, like everyone else involved in drug policy, should be invested in clarifying whether there is a right to psilocybin and cannabis use, as several courts claim for the latter, and whether this right includes a regulated market. Public panic has been proven in the development of drug policy, and from the drug users' point of view, is it not natural that stigma, social exclusion, and overdoses are connected and that prohibition contributes to problematic drug use? Could not treatment equal to that for alcohol drinkers inspire



more sensible drug use? Could it not have contributed to safer drugs and an increased incentive to seek help? Could it not have reversed a development that transforms drug users into criminals?

We ask further, from the point of view of morality, can citizens readily assume that prohibition is good and that those who undermine it are evil? Is the goal of a drug-free society a worthy ideal? What is it about cannabis and psilocybin that makes the protection of law enforcement necessary?

It remains to be seen whether an independent, impartial, and competent court will rule that prohibition is necessary for a modern society. The Royal Commission is clear that punishment has not prevented the spread of drugs, and overall, there are very good reasons to consider a regulated market. The most important is, as the Royal Commission concluded,

In the committee's assessment, the best available knowledge provides a fairly clear basis for concluding that criminalisation of drug use has unintended negative effects. At the same time, there does not seem to be good empirical evidence for a possible preventive effect of the punishment, at least not an effect that there is no reason to believe can be achieved through the use of alternative measures. In light of this, the committee cannot see that the justification requirement for penalising these acts has been met.

(p. 30)

If the justification requirement for penalties for use and possession is considered unfulfilled, should not the creation of a regulated market be justified? Is this not all the reason needed?



There are also other reasons for regulating illicit drugs as we did almost a hundred years ago with alcohol. We know that prohibition comes with major societal costs, that it forces users to have contact with criminals, and that the illegal market threatens society. For half a century, slowly but surely, the drug trade has corrupted law and order and the institutions intended to safeguard an open society while, at the same time, sacrificing a larger percentage of the population. These are dynamics that receive little attention, but what does dignity entail: is it a drug-free life or one where self-determination is emphasised? And if we are not distorting the law of supply and demand, why are drug dealers so bad?

Prohibitionists can hardly answer, as tyranny and autonomy are opposites in a meaningful universe. We know that users would rather deal with sellers than with the police, and while the former have offered a product there are good enough reasons to use, the latter have offered coercion and deprivation of liberty. If human rights protect drug use, as more and more international courts are claiming, do not the police have a greater ethical problem than drug dealers do? Do not those who led the way in eradicating the "problem" have more to answer for?

The question touches the core of the drug law, the morality that perpetuates persecution. As the Director of Public Prosecutions acknowledged in his response to the work of the Royal Commission, the differential treatment of drug users is paradoxical, which strains the authority of the law: Can the idea of good and bad morals be turned upside down? Could this be the cause of public panic and the



continuation of punishment, and can principled thinking heal a divided society?

The point of drug policy, just not stated, is to make drug use as dangerous as possible. Proponents of the prohibition see all drug use as abuse. There is no quality assurance, and the worse-off the users are, the less lucrative it is for young people to become "drug addicts". Thus, prohibitionists insist on punishment to keep the youth from becoming drug addicts, but can citizens trust the political process? If there is no rational distinction between legal and illegal drugs, can citizens learn anything from drug policy other than to see through its hypocrisy?

The Government's advisers in drug policy are former Director of Public Prosecutions Tor-Aksel Busch, retired judge and public prosecutor Iver Huitfeldt, and others who measure proportionality based on a drug-free ideal. This tradition is much defined by the moral panic documented by the Royal Commission, and the contrast to the Director of Public Prosecutions is noteworthy. This is how Huitfeldt [answered](#) Rett24's question of whether a body search is a proportional intervention if the police perceive a person as intoxicated:

A state of intoxication in itself gives good reason for suspicion of possession and possession presupposes acquisition and again almost always import. Proportionality must be related to a standard. If the police find a slice of salami with narcotics, the case is thus not clarified and decided. A sausage slice must come from a whole sausage; therefore, the whole sausage becomes the standard. This is the case with all drug discoveries; the



proportionality must be assessed against a large, unknown quantity.

It is no wonder that the Labour Party's lawyers and the Director of Public Prosecutions clash. The former weighs proportionality on the basis of a drug-free ideal, but if there is neither a rational distinction between legal and illegal drugs nor good reasons for punishment, can the intervention be proportionate?

What does the Director of Public Prosecutions think about the legal tradition that derives proportionality from a drug-free ideal? Is this tradition suitable for protecting the rule of law, or can the judgment of history be brutal? Should the government find new advisers?

What about the office of the Director of Public Prosecutions? Are the Director and his staff reasoning from a position of principle? Are the requirements of the rule of law sufficiently emphasised by the higher prosecuting authority? In [Kapital](#), we could read that the Director "constantly thinks about how we defend the use of punishment, and how we can defend the levels of punishment we set for different types of crime". The defence assumes that this is the reason the Director has supported drug reform, but is decriminalisation enough?

If we recognise that people do not choose intoxicants only for pathological reasons and that the humanisation of drug users makes it problematic to prosecute, what about a criminal market? Is it necessary to expose drug users and society to the problems that come with criminalisation? Are there good reasons to punish, when half of Europe legalises cannabis, or do we have to acknowledge the connection to the arbitrary persecution of earlier times?



Because no investigation has been made, there is a blind spot, but the Director of Public Prosecutions' report on the use of force in minor drug cases shows that the assessments of the police have been systematically inadequate and that thousands of human rights violations occur every year: How does the current regime safeguard drug users? How can the Director's efforts to ensure human rights protection for drug users in meeting with the police prevent arbitrariness? As it is, cannot the police easily justify strip searches by claiming suspicion of sale, whether that is the case or not? Should this question be up to the individual police officer?

What about the likelihood of drug addiction? The Director of Public Prosecutions has issued directives, but can we trust the police to assess the threshold for impunity in the best possible way? How should the police distinguish between health problems and criminal behaviour in the area of drug policy? Is this a job the Director wants for the police?

The new practice in minor drug cases has been prepared based on the Supreme Court's assessment of rights. As both the Director of Public Prosecutions and the Supreme Court emphasise the legislator's signal more than principled considerations, threshold values distinguish between punishment and impunity, but no one has shown how threshold values prevent arbitrariness. As long as this is the case, the danger of human rights violations is profound and neither citizens nor the police can be on safe ground. We know, after 40 years of chasing drug users, that a toxic culture exists among the police and that a public prosecutor from the Norwegian Narcotic Officers Association (NNPF) has [claimed](#) that the Director of Public Prosecutions' guidelines will not change



much. Should it be crucial to the sense of justice whether drug users meet a liberal or conservative police officer?

What does the Director think about toxic culture in the state apparatus? Can public panic shape drug policy for 50 years without the dysfunctional culture being a problem? Can we trust that human rights violations will not be perpetuated, even after the Director's guidelines in minor drug cases?

What does the Director of Public Prosecutions think about the toxic culture in the upper echelons? Can public panic continue decade after decade without leadership failure? Has it become a tradition in the drug-fighting machinery to find managers who support a prohibition regardless of legitimacy? Has 50 years of prohibition promoted a culture in the system in which the preservation of prestige, budgets, and powers defines the debate?

We touch here at the Achilles heel of the prohibition, that morality used to justify the law's most severe punishment for victimless acts. Only by turning the law of supply and demand into a victim and perpetrator context does the prohibitionist ideology make sense, only in this way can the infantilisation of drug users and demonisation of drug dealers continue. Still, culture is not a good enough reason to punish, and if better reasons fail, the court must recognise a parallel to the arbitrary persecution of earlier times.

Addressing the problem of arbitrariness is crucial, and we ask the following:

- As a comparison of cannabis with alcohol and tobacco shows that the legal drugs are not only more harmful to health but also worse for



society, will the Director of Public Prosecutions defend the current drug policy? Can the Director, without building on a discriminatory practice, argue for a different approach to alcohol and cannabis use?

- As the same law on supply and demand dictates the use of legal and illegal substances and varying user patterns are the same regardless of substance, will the Director of Public Prosecutions defend the persecution and demonisation of offenders? What has a cannabis grower done that is worse than that done by a beer or wine brewer? What has a cannabis dealer done that is worse than that done by any other employee in the trading of goods? Is it anything other than double standards that makes prohibition an accepted policy?

- As drug researchers note that drug prohibition has had worse side effects than drug use itself and more and more organisations and professional panels publish reports that conclude the same, will the Director of Public Prosecutions, based on the evidence that the cure (prohibition) is worse than the disease (cannabis use), defend the application of Sections 231 and 232 of the Norwegian penal code? On what basis can 21 years of imprisonment be defended when large parts of the western world transition to a regulated market?

These are questions that determine human rights. It does not appear that the Director is defending the status quo with conviction, but the burden of proof belongs to those who want to punish, and the Norwegian drug policy's problems with human rights are receiving more and more attention. The media has had a lot to say about the police scandal that is unfolding, and the integrity of the department is one reason Are Frykholm, the leader of the Norwegian Association for Police Lawyers,



is [calling](#) for leadership. Equally important are the rule of law's guarantees for the persecuted groups, and if these questions cannot be answered, should the Director not accept responsibility for the drug policy's incompatibility with human rights and work for a more holistic approach?

We have seen the problem with threshold values, and the Director of Public Prosecutions has accepted the principle of turning from punishment to help in more significant drug cases also. The Director said the following in his consultation response to drug reform:

Today, we have reached a point where even very serious drug offenses are met with alternative punitive measures if it is considered the best individual prevention. In a Supreme Court ruling in August last year, a 46-year-old woman who had been abusing drugs for about 30 years was sentenced to probation on terms of a drug program with court control for dealing with nearly 10 kilos of methamphetamine. The alternative unconditional prison sentence, and the subsidiary punishment for violation of the condition, was imprisonment for six years. The Supreme Court considered that such a conditional reaction made it far more likely that she would not fall back into drug use and new crime, and it became decisive for the result (in addition, a long time had passed since the act was committed). The Director of Public Prosecutions considers the ruling as a result of the increasingly common view that long-term drug addicts who are motivated for change need a different follow-up and a different content in the sentence than what



serving a prison term entails. The verdict is thus an expression of the approach we share, namely a shift from punishment to help.

How is this different for other violators of Section 232 of the Penal Code? Research indicates that not only is the myth of the drug shark political fiction but that the vast majority of those who sit on long sentences are users. Examination also shows that the longer the sentence, the more difficult the road back to society, and it is reasonable to assume that all non-violent offenders will benefit more from a suspended sentence than from years in prison. Preventively, this appears to be the best solution for the individual, so why maintain severe penalties? Are there other considerations?

If general preventive considerations are used to retain the most severe punishment of the law, it means that some are punished so that others will not do the same. Even so, as we have seen, the demonisation of the sale of drugs depends on turning the law of supply and demand into a victim and abuser context, and no one can explain why. Rather than punishing out of old habit, should not the Director of Public Prosecutions take care to justify the moral distinction between use and sale? When half of Europe and large parts of the United States have legalised similar actions, how is the requirement of proportionality met?

As mentioned in the introduction, for 13 years, the Director of Public Prosecutions has been informed about prohibition's problem with human rights, and the defence will go into more detail about the argument as presented in 2009. This is to clarify the state's liability over time, for as the defendant (Mikalsen) wrote in a letter dated 9 September 2009, "It is [the Director's] responsibility to ensure that the police carry



out orders that do not crash with law enforcement ethics and human rights, and it is also [the Director's] responsibility to ensure that subordinates have guidelines that do not violate human rights conventions such as the European Convention of Human Rights (ECHR) and the UN human rights treaties".

Is this controversial?

The defendant held that "there is an unreasonable distinction between legal and illegal substances, as this distinction cannot be legitimised from either a perspective of health or any other rational point of view", and that "such unreasonable discrimination is contrary to the principle of equality" (ECHR Art. 14 and ICCPR Art. 26). Should the Director of Public Prosecutions have done more than trust the political process? Does not the Director have a positive obligation to take alleged human rights violations seriously?

The Director of Public Prosecutions' response was that Mikalsen was unable to distinguish between truth and validity. According to Director Tor-Aksel Busch, the allegation of human rights violations cannot be subjected to trial, but is this true? Have not several courts since then assessed the issue and ruled that the punishment for use is disproportionate?

After this incident, Mikalsen [reported](#) Director of Public Prosecutions Tor-Aksel Busch to the special unit for police matters. The case was dropped, but from that time onwards, the Director was sufficiently informed to know better. Not only had Mikalsen explained the Director of Public Prosecutions' responsibility but also the effect of the enemy



images and the comparison to the arbitrary persecution of the past were emphasised. Mikalsen wrote as follows:

Although, for example, the leaders of Hitler's Germany believed that it was necessary for the stability of the state to treat Jews as they did, it did not legitimise the treatment of the Jews, and the same can be said about South Africa's treatment of the blacks under the apartheid regime, as well as about the Norwegian state's treatment of the Sami people and Tatars up to less than half a century ago.

In order for such discrimination to be legitimised, the state must show that it is necessary – i.e., that it is not arbitrary – and that it is reasonable from the point of view of overriding societal considerations. The state must be able to show that the degree of social control is appropriate, because otherwise it is repressive, and considering that it can be proven that a health policy approach is a far more sensible and appropriate solution to the problem of drug use, it is not up to state representatives to a system of prohibition because it is in the perceived interests of existing agencies. Citizens' interests must take precedence over the agencies' hunger for powers and government subsidies. The drug laws must be said to serve the community, and if they demonstrably have an unfortunate social function and consequence they must be abolished if the state wants to appear as a defender of human values and the integrity of its citizens.

Is this controversial? Does the Director of Public Prosecutions disagree with any of this?



Mikalsen's arguments in 2009 were the same as repeated by the Royal Commission in 2019. The drug report states as follows on page 29:

The committee proceeds from the premise that punishment is society's strongest tool for counteracting and condemning the citizens' unwanted actions. Punishment is considered a means, not an end in itself. The use of punishment, therefore, requires a solid justification. It is the expectation of the overall consequences of the use of punishment that may possibly justify society's use of punishment. On the basis of this, the committee assumes that punishment can only be justified if the criminalisation is suitable for reducing the negative consequences of drug use. In addition, it must be required that other reactions and sanctions will be pointless or insufficient, and that the benefits of punishment are clearly greater than the harmful effects.

The Committee cannot see that there is empirical evidence that decriminalisation of use or possession for own use will necessarily lead to a significant increase in the use of drugs. In light of the total amount of international research that is now available, which does not document any clear connection between changes in criminal law and the use of drugs in society, there is considerable doubt in the assumption that penalties against drug use and possession of drugs for own use as a whole has a preventive effect that cannot be achieved with other, less intrusive measures. The committee has therefore come to the conclusion that the best available knowledge as of today does not form the basis for any certain expectation that



decriminalisation of drug users will lead to a significant increase in the use of drugs in the population.

In other words, all indications are that less intrusive measures are better suited as a foundation for drug policy. We assume that this was the reason that the Director of Public Prosecutions concluded that the use of force was disproportionate in minor drug cases. Is that right?

Still, a blind spot exists. The Royal Commission concluded that the punishment for use was disproportionate but did not investigate more serious circumstances. Politicians did not want the human rights situation in major drug cases to be elucidated, and the Director of Public Prosecutions followed up by limiting the investigation to minor drug cases. Despite this, the more severe the punishment is, the more stringent are the requirements for the law. This is a basic principle of law, and so should not the legislation for sales and manufacturing be subject to control? Should it not be evaluated on the same terms as the Royal Commission examined drug use and possession?

This is exactly what the defendant asked for 13 years ago. As Mikalsen wrote to the Director of Public Prosecutions,

As you know, I have the right to be heard in an independent, impartial, and competent court if I claim that rights have been violated (according to Article 13 of the ECHR), and shall have the opportunity to prove my claims (that there is an unreasonable discrimination of analogous cases, and that the drug laws represent a drug political/racial divide), while the state in turn must be able to show that the drug laws are proportionate (well-tailored and necessary/reasonable) interventions, and that their



goal (a drug-free society) is meaningfully connected with the means.

Even if our leaders had therefore chosen to ban tobacco and alcohol as well, and in that sense had avoided violating the [principle of equality], I would still be able to prove that drug laws were unlawful, since it is easy to demonstrate that the drug prohibition has had far more unfortunate consequences for society than drug use itself. I would like to remind the Director of Public Prosecutions that although the political debate does not exactly reflect this fact, this was established as true for cannabis prohibition in an independent court in The Hague on 1–2 December 2008 (the cannabis tribunal).

I do not think that drug use is a human right because drugs are unproblematic. I believe that drug use is a human right because it can be shown that the cure (drug prohibition) is worse than the disease (drug use); because no matter how much effort we put into the drug-free social ideal, we will never succeed; and because we can do far more for society and each other by embracing a health policy approach. There are Norwegian doctors who believe that the overdose statistics in this country can be cut by up to 90 percent if politicians switch to a health policy approach (Ole Martin Larsen, Mellom alle stoler, 2008). Thus, it appears clear that the drug-free ideal kills, and citizens can say that the current drug policy is a crime committed by the state against the citizens, as prohibition at no time could be said to serve society's interests, but nevertheless remains fixed and indisputable strategy.



Based on such serious allegations, should not the state have acknowledged the burden of proof? Should not an independent, impartial, and competent court or tribunal have considered whether prohibition is necessary for a modern society?

Again, Mikalsen's correspondence from 2009 echoes in the report of the Royal Commission. The committee was clear that public panic had plagued politics, that the state was responsible for rights, and that punishment was difficult to defend. Similar findings have been made in other countries, which the drug report says more about:

In several countries, including Mexico, South Africa and Germany, criminal prosecution of adults for possession of cannabis for personal use has been found to be incompatible with constitutional provisions on the right to respect for privacy or related provisions on the individual's right to autonomy as it is naturally seen in the context of the right to privacy under Article 8 of the ECHR and the right to free development of personality under the UN Universal Declaration of Human Rights Article 22. In Georgia, legislation authorizing civil sanctions against a cannabis ban was declared unconstitutional and invalid in 2018 it entailed a disproportionate interference with the citizens' autonomy, see discussion in Chapter 6. Interference with the exercise of the right to privacy, etc. can only take place "when this is in accordance with the law and is necessary in a democratic society for reasons of national security, public security or the country's economic welfare, to prevent disorder or crime, to protect health or morals, or to protect the rights and freedoms of others", cf. Article 8 no. 2. In order to be



compatible with Article 8 of the ECHR, interference with the right to respect for privacy, etc. promote a legitimate purpose and be necessary in a democratic society. . .

[Although] states have a wide margin of discretion in assessing whether interference with the right to privacy and family life in this regard is compatible with Article 8 of the ECHR, [implies] the requirement of necessity. . . nevertheless that it must be demonstrated that the intervention corresponds to an urgent social need ("pressing social need"). It must also be shown that the intervention is proportionate to the purpose of the intervention, taking into account relevant interests that must be weighed in the assessment. It is primarily the responsibility of the state parties to make these assessments, but the ECtHR can review whether the arguments that are claimed to justify the intervention are relevant and proportionate and whether the rights were sufficiently respected in the decision-making process that led to the adoption of the intervention. (p. 181)

Despite this, in 2009, the Director of Public Prosecutions would not support the right to review. Instead, Director Tor-Aksel Busch invalidated a defence against the Penal Code, and persecution continued. It was only after the report of the Royal Commission, with its chapter on human rights, that the Director of Public Prosecutions saw the need to deal with a toxic culture and then only in smaller drug cases.

The Director of Public Prosecutions is to be commended for the efforts in this area, but apart from the light that the Director's report shed on a



few weeks' work of the Norwegian police, the politicians, prosecution authority, and the courts have preserved a blind spot. As a result, 460,000 criminal cases have been brought on constitutionally dubious grounds after the Norwegian Supreme Court in 2010 rejected the issue without justification and an open wound in the Norwegian legal history must be healed.

It remains to be seen whether an impartial and competent court will rule that the prohibition is necessary in a modern society, but what is the Director's gut feeling? Does the prohibition signal a benign and necessary guardianship, or do the state's efforts for public health do more harm than good? Are the politicians free to deny citizens' autonomy, or is it better for citizens to take responsibility for their own use? What does the Director believe will be history's verdict on punishment in drug policy?

What are the Director of Public Prosecutions' thoughts on the need for a truth and reconciliation commission?