



The Responsibility of the Ministry of Justice for drug policy and human rights

The Ministry of Justice was informed of the problem of arbitrary persecution in drug policy in August 2009. It was Roar Mikalsen, later head of AROD, who warned of arbitrary persecution, but Minister of Justice Knut Storberget (Ap) did nothing. Not even when Grete Faremo (Ap) took over the ministerial post in 2011 was the issue taken seriously. On 22 November 2011, the ministry received documentation which showed that leading authorities in the drug field supported allegations of rights violations. Professor of Criminology Nils Christie believed that the appellant had presented "an excellent and clarifying work" and Ragnar Hauge, who led the Department of Drug Research (SIRUS) from 1975 to 1988, was "by and large in agreement". Hauge believed that the problem, as presented by the appellant, was "put forward in a clear and convincing manner,"ⁱ but the Ministry of Justice and the Storting's Justice Committee did not carry out additional investigations.

On March 30, 2012, therefore, the ministry received a new letter which illuminated the police's lack of interest in probing drug offences. In correspondence with the police, Mikalsen had volunteered to solve several drug crimes provided that the police supported human rights analysis, but the police [would](#) not hear about this. Mikalsen believed that the police had an obligation to investigate drug offences and, therefore, wrote to the Ministry of Justice. He pointed out to the ministry the importance of embracing the rule of law and explained, "[I]f the ministry is interested in looking more in depth at the relevance of human rights to the drug policy, I will do what I can to get a decent court



process around this topic started by assuming the responsibility of about two tonnes of drugs".

Mikalsen saw this as a contribution to the rule of law, but the Ministry of Justice did not respond. Since then, justice minister after justice minister has received letters from AROD. Justice Minister Anders Anundsen learned in 2013 that international authorities such as Douglas Husak, Professor of Law at Rutgers University, were fully in agreement with Mikalsen, and more than 250 inmates at Halden and Ullersmo prisons demanded that the quality of the drug law be assured. The ministry [received](#) questions that had to be answered for this to be done, but the request was ignored.

In this way, the rule of law faltered. Justice Minister Per Willy Amundsen continued to protect the drug law from scrutiny, but with the report of the Royal Drug Reform Commission in 2019, the nation was shown public panic, a phenomenon that the ministry had been made aware of 10 years earlier.

With the drug reform report, the rights-oriented debate therefore got a new life. This report showed that the political process had failed, and a handful of organizations contacted the Ministry of Health for clarification of rights. The Ministry of Health referred the Ministry of Justice and Emergency Preparedness as the proper authority, and Minister of Justice Monica Mæland was asked to safeguard the relationship with the constitution.

Even so, the Ministry of Justice did not want this burden, and responded by sending the responsibility back to Health, which also did not want to think about constitutional obligations and referred to the Storting's consideration. In this way, civil society's attempts to clarify rights were met with pulverization of responsibility, and AROD resorted to civil disobedience on 11 September 2021 in order for the courts to take action.

The courts set aside three days to clarify the connection between the drug policy and the arbitrary persecution of earlier times, but the prosecution did not want the defense to present evidence. The trial on 1 June 2022 was a mockery of law in which 200 years of legal history were invalidated, and the Supreme Court followed up by refusing an appeal without proper justification.

Nevertheless, as a matter of principle, the courts cannot reject an appeal without the objections having been countered (Hansen v Norway). Persecuted in the drug



field are entitled to a better justification than that it is "clear that the appeal cannot proceed", and the need for legal protection is obvious.

AROD therefore continued to violate the drug law. Protests outside the Storting and the Director of Public Prosecution's office reminded in 2022 and 2023 of the responsibility for legal protection, but charges were not brought, and on 16 November 2023 the Minister of Justice received cannabis in the post. A total of 200 grams of cannabis was distributed to the minister, the prime minister, and professionals who are positioned to promote the rule of law, and this is the starting point for legal proceedings.

AROD claims that the Ministry of Justice has failed in its professional responsibility for drug policy since the Criminal Law Commission published its report in 2002, and Minister of Justice Emilie Enger Mehl has been summoned to clarify the safeguarding of rights.

Questions to Justice Minister Emilie Enger Mehl (SP)

Since 2002, the Ministry of Justice has received advice on decriminalization of drug use, as well as reduction of penalties for more severe drug crimes, but the ministry has not been interested due to a concern of sending the wrong signal and fear of increased drug use. Even so, as the [report](#) of the Royal Commission shows, the use of punishment cannot be justified. While the gains of punishment are uncertain, the costs are enormous, and it is for the state to show a benefit. Both the COE and the UN put an obligation on member states to implement human rights into drug policy, and so how has the Ministry of Justice heeded its professional responsibility?

AROD claims that the Justice Department has failed in its obligation to align drug policy with human rights. In March 2019, the International Guidelines on Human Rights and Drug Policy were launched at the UN Commission on Narcotic Drugs in Vienna. These guidelines are supported by the COE Parliamentary Assemblyⁱⁱ and four UN agencies, and as is said on the right to an effective remedy:



Every State has the obligation to respect and protect the human rights of all persons within its territory and subject to its jurisdiction. . . . In accordance with these rights, States should: (1) Establish appropriate, accessible, and effective legal, administrative, and other procedures to ensure the human rightscompliant implementation of any law, policy, or practice related to drugs. (2) Ensure that independent and transparent legal mechanisms and procedures are available, accessible, and affordable for individuals and groups to make formal complaints about alleged human rights violations in the context of drug control laws, policies, and practices. (3) Ensure independent, impartial, prompt, and thorough investigations of allegations of human rights violations in the context of drug control laws, policies, and practices. (4) Ensure that those responsible are held accountable for such violations in accordance with criminal, civil, administrative, or other law, as appropriate. (5) Ensure that adequate, appropriate, and effective remedies and means of redress are available, accessible, and affordable for all individuals and groups whose rights have been found to be violated as a result of drug control laws, policies, and practices. This should include accessible information on mechanisms and processes for seeking remedies and redress, and appropriate means of ensuring the timely enforcement of remedies. (6) Take effective measures to prevent the recurrence of human rights violations in the context of drug control laws, policies, and practices.

AROD claims that Norway currently has a problem with points 3, 4, 5, and 6 because Norwegian drug users have been working to have their rights reviewed since 2008. Article 89 of the Constitution gives the courts the "right and duty" to control the political process, but in this country, "independent, impartial, prompt, and thorough investigations of allegations of human rights violations in the context of drug control laws, policies, and practices" have not been initiated and acted upon in accordance with international standards. Instead, the persecuted have been without basic rule of law protections for 15 years, and nine ministers of justice have ignored a requirement for the state to demonstrate that measures are necessary to achieve the objectives they are intended for and that no less restrictive means are available to achieve the same aims.



The Minister of Justice continues the tradition of supporting the prohibition paradigm, but considering that the burden of proof lies on the state, does it make sense to talk about human rights without including the possibility of a regulated market? Can politicians move from punishing drug use to making it a case of morbidity without emphasising human rights principles?

The Criminal Law Commission's report showed in 2002 that the prohibition was incompatible with the principles of criminal law. From that point, shouldn't the government have commissioned a new investigation which assessed a regulated market compared to a criminal market and examined whether the right to freedom was sufficiently emphasized against society's need for protection?

When the Storting rejected the Criminal Law Commission's report, did the Ministry of Justice do anything to anchor the drug policy constitutionally?

The defense believes that for 60 years the state has put research and legal principles aside in order to continue arbitrary persecution in the drug policy. Should the Ministry of Justice have ensured better professional management along the way?

It was not until 2018, almost 20 years after the Criminal Law Commission ended its work, that the legislature had to think about rights. It became more and more obvious that the prohibition made it worse, and international trends meant that drug reform was announced. The government wanted to move from punishment to help, and a new committee was commissioned to reassess the drug policy.

The Royal Drug Reform Committee was another defeat for the prohibitionists, but once again the legislature responded by rejecting its own commission, and what does this say about the political process? Shouldn't the Storting or the government, also this time, have arranged for a new investigation that assessed a regulated market compared to a criminal market and examined whether the right to freedom was sufficiently emphasized?

Throughout the drug reform, the Ministry of Justice was informed that politicians cannot simply go from criminalizing to making drug use a disease. If we look back, the Narcotics Act originated as a result of a state of emergency where the principles of the constitution were set aside to protect society from drugs, and the Drug Reform Report is clear that the state must defend punishment. 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 less invasive means must be selected. This is not controversial. As the Ministry of Health stated in [Prop 92 L \(2020-2021\)](#), section 5.3:

Pursuant to Section 102 of the Constitution and the European Convention on Human Rights (ECHR) Article 8, everyone is entitled "to respect for their privacy and family life, their home and their correspondence." Pursuant to Section 102, second paragraph, of the Constitution, "the state authorities (shall) ensure the protection of personal integrity." Interventions in the right to privacy require law and must be "necessary in a democratic society" to promote a legitimate purpose, including preventing disorder or crime or to protect health or morality. The condition that the measure is necessary in a democratic society means that the measure must be suitable to achieve the purpose in question and it must not be more intrusive than necessary. Furthermore, the measure must be proportionate, that is, the strains of the measure must be in a reasonable relationship with the benefits being achieved. Measures to prevent and limit damage as a result of drug use must be assessed against this right to respect for privacy.

The Ministry of Health transferred the responsibility for securing human rights to the Justice Department in the summer of 2020, but the Ministry of Justice has not explained why the lessons from alcohol policy cannot be transferred to other substances. Instead, after several years of silence, the Justice Department, in a [letter](#) dated July 1, 2022, defended punishment by referring to the Supreme Court's judgement of April 8, 2022, especially [HR-2022-731-A](#). AROD [responded](#) with a letter that refuted the justification for punishment, but the Ministry of Justice has not followed up. The defense has called Nora Bergsjø, acting advisor in the Ministry's law department, to testify as to why the Ministry of Justice will not comment on AROD's invalidation of punishment in the Norwegian drug policy. Perhaps she can elaborate, but we must go to the letter of 1 July to understand why the Ministry believes that rights protection is possible within the framework of drug prohibition. It is important that the Minister of Justice can vouch for the prohibition paradigm, and so we shall examine the correspondence between the Ministry and AROD.



The Justice Department's defense of punishment

When it comes to the drug prohibition's relationship with human rights, the Ministry of Justice referred to the Supreme Court's judgment of April 8, 2022. The Justice Department claims that "the judgments shed light on the question of whether punishment for drug offenses is in violation of human rights," as the Supreme Court finds that "punishment for possession of drugs generally pursues a legitimate purpose". On the basis of this, the ministry claims that it is "clear that punishment is in accordance with the law", and it must have been a relief for the government that the Supreme Court finds came to the rescue.

We remember from NRK's *Folkeopplysningen* in 2016 that Minister of Justice Amundsen used an unpublished thesis from a Swedish medical student to defend the drug policy. The Royal Commission on Drug Reform has since confirmed the lack of a basis for punishment, but the Minister of Justice wants a prohibition, and the Supreme Court's judgment is used as confirmation that punishment fulfils a legitimate purpose.

The question is whether the Supreme Court's judgment reflects a dignified legal process or is the result of public panic, and as we shall see, the Supreme Court has made serious mistakes. In Prop. 92 L (2020–2021), the ministry followed up the Royal Commission on Drug Reform's proposal by proposing changes to the Health and Care Services Act, the Criminal Code, the Criminal Procedure Act, the Police Act, the User Rooms Act and the Medicines Act. The ministry believed that criminal liability for the use of drugs and the acquisition and possession of a small quantity of drugs should be abolished.

In the ministry's view, such involvement with drugs should be met with an offer of help, not with punishment, see point 6.4 on pages 33–34. In the ministry's opinion, it is clear that punishment cannot be defended and that all objections that have been brought in through the hearings are wrong. Could the Supreme Court not have benefited from this updated assessment rather than [Ot.prp.nr.22](#) (2008–2009)? When a legitimate purpose is to be assessed, is it not natural to emphasize the findings from extensive investigations more than shallow political objections? That the Supreme Court emphasizes two sides of political opposition rather than



two comprehensive investigations that show the problem with the political process, is this not a warning that something is wrong?

The Supreme Court's assessment is based on [Ot.prp.nr.22](#) (2008–2009). Section 4.2.2.5 on page 93 highlights the harmful effects of drug use for the users' family and social environment, for society's economy and for general security and peace. On page 94 the department points out that criminalization is important for reasons of prevention and to highlight fundamental values in society - and because the protection of public health is a central purpose behind the criminal provisions on drug offences, the Supreme Court believes that the ban does not conflict with the Constitution and human rights.

The Court overlooks that [Ot.prp.nr.22](#) (2008–2009) rejects a major professional work based on shallow contradictions, and in the following we shall look at how the Supreme Court believes that the prohibition fulfils a legitimate purpose - even if punishment cannot be defended and the state has not met the burden of proof.

If we look at the Supreme Court's verdict section 38, the signal effect is emphasized as a sufficiently good reason to look away from sources such as the Criminal Law Report and Prop. 92 L (2020–2021). Because a political majority is concerned about the signalling effect of decriminalization, the Supreme Court sees it "so that the criminalization of dealing with drugs still has a legitimate purpose". But if investigations for 20 years have rejected punishment, and the UN and an increasing number of countries assume that the cure is worse than the disease, shouldn't the court emphasize a bigger picture?

When the Supreme Court concludes "that the criminalization of dealing with drugs still has a legitimate purpose", the judgment refers to page 7 of the health and care committee's recommendation to the Storting, where members from the Labor Party, the Center Party and the Progress Party oppose drug reform and the proposal for a general decriminalization of drugs. It is worth noting that the Supreme Court overlooks cognitive dissonance in this regard, because when all of the committee's members agree on page 1 that "The drug reform is an acknowledgment that drug problems are essentially a health challenge and therefore a matter for the health service, and not for the justice sector", on what basis will the majority continue punishment? If drug problems are not the area of the law, on what basis do drug offenses occupy 40 percent of the offenses dealt with by the district courts?



The basis for punishment, as Prop. 92 L (2020–2021) makes clear, does not exist. We will look into that more, but in light of the Royal Commission on Drug Reform's demonstration of public panic, as well as the fact that for 40 years professionals have pointed to the scapegoat mechanism as the engine of drug policy, what is the signal effect for law and order that the Supreme Court bases its verdict on sources and methods that are without credibility? Doesn't the Supreme Court's judgment appear to be a commissioned work from the supporters of prohibition?

It should be noted that this was not the first time that the Supreme Court had been asked to secure the drug policy. Three times since 2010, drug users have invoked constitutional protection, but three times the Supreme Court has refused to decide whether the prohibition fulfils a legitimate purpose. A total of nine Supreme Court judges have protected the prohibition from constitutional scrutiny, and is this in line with the responsibility delegated by the Constitution? Aren't the courts given judicial competence, and shouldn't the courts protect the individuals' rights?

It is the duty of the courts to protect minorities against majority rule. Both the Criminal Law Commission, the Royal Commission on Drug Reform, and the Courts Commission proposed such protection, but we have seen that the Supreme Court in HR-2022-731-A emphasizes majority rule at the expense of its constitutional mandate. How is the rule of law safeguarded?

500,000 drug cases have gone through the legal system since 2010, and could all of them have been avoided if not for the Supreme Court's loyalty to the drug prohibition? Is it possible that a properly conducted rights analysis, at this time, could have confirmed allegations of rights violations, and that Norway as a nation could have put a collective trauma behind?

We will look more at the weaknesses of the Supreme Court's judgment, but before HR-2022-731-A, all the Justice Department could refer to in dense of punishment was its own assessment in Ot.prp.nr.22 (2008–2009). The Supreme Court builds on this assessment when the court asserts that punishment fulfils a legitimate purpose, and we must go to [Ot.prp.nr.22](#) (2008–2009) for clarity in the error that the Supreme Court committed by relying on the political process. On pages 93 and 94 of the proposal, the Ministry of Justice presents its view as to why the ministry will not accept the proposal from the Criminal Law Commission to decriminalize the use of drugs. Good reasons are needed to reject an expert panel



that pointed out the lack of grounds for punishment and differential treatment between users of legal and illegal substances. Still, this is the Ministry of Justice's assessment:

The majority in the Criminal Law Commission maintains that since the use of alcohol and tobacco is without punishment, the use of drugs should also be with impunity. The ministry does not share this view. As the minority in the Criminal Law Commission, the ministry believes that even if the use of certain types of drugs is permitted, this is something that speaks against rather than allowing more harmful substances.ⁱⁱⁱ

We see that the Ministry of Justice rejected the proposal from the Criminal Law Commission because the ministry did not want to risk more damage. Does the Justice Minister believe that a ban on substances other than alcohol and tobacco provides a benefit to public health? On which grounds?

Consideration of public health has been central to drug policy. The Ministry of Justice emphasizes this in its rejection of the Criminal Law Commission's majority, and the Health and Care Committee did the same in its recommendation to the Drug Reform. Still, we must not forget that the prohibition began with a disregard for constitutional principles. The fear of drugs was great and the legislature assumed in 1961, when the UN Single convention was signed, that the world would be drug-free within 25 years. It did not work out that way, and over time it has been shown that the prohibition does not reduce supply and demand. Instead, organized crime has grown, and the more energy the state spends on drug control, the more stigma, crime, violence, deprivation of liberty, morbidity and mortality society has received back. This has happened without much positive evidence to show for it, so how can the ban be defended against cost-benefit considerations?

The defense thanks you for your reply. We understand that the question is difficult as no investigation has been carried out. Nevertheless, an overview shows that drug policy not only costs Norwegian taxpayers NOK 6.5 billion annually, but that the more the state has fought a war against drugs, the more distress, suffering and death we get back. Since the 1980s, the price measured in overdoses and deprivation of liberty has been clear, and is this money and police power well spent when more and more evidence indicates that the intrusions into privacy have a high price and less intrusive measures are better suited? On what basis is it



necessary to subject users and society to criminalization? Why is it necessary to treat alcohol and other drugs differently?

The need for the protection of children and young people has always been the prohibitionists' mantra. The fact that we allow one harmful drug does not mean that it is wise to unleash more, is the argument that the Justice Committee and the Ministry of Justice used in 2009 to reject the Criminal Law Commission's proposal for decriminalisation. The argument is repeated by the Labor Party, the Center Party, and the Progressive Party in their rejection of Prop. 92 L (2020–2021), but every lawyer knows that there is a presumption of innocence in the Constitution, so what maintains the distinction between legal and illegal substances? On what basis is the burden of proof reversed?

(Here the minister will most likely answer "international obligations", "protection of public health", "danger of spread", or "signal effect".)

The Minister of Justice exposes the same prejudices that built the prohibition, and it is not just the minister who struggles to defend the distinction between legal and illegal substances. Neither the Supreme Court nor Justice Department have explained why users of illegal substances must be criminalised, and we do not know why the findings from the alcohol policy cannot be transferred to other substances. All we know is that the Supreme Court and the Justice Department agree that punishment pursues a legitimate purpose, by referring to each other's treatment, but *how* remains unexplained. Can the Minister of Justice therefore say more about why we need a ban to help cannabis users, but not a ban to limit the damage that alcohol causes to society and the local environment? Why is such discrimination necessary?

The Minister of Justice's answer appears to be in conflict with Prop. 92 L (2020–2021) and the Royal Drug Reform Commission's report, which concluded that punishment for use cannot be defended. Neither the Supreme Court nor the Ministry of Justice has shown that the Royal Commission or the Ministry of Health and Welfare are wrong, and the treatment of the criminal issue does not satisfy the requirements for rights protection. All the Supreme Court does in [HR-2022-731-A](#) is to refer to the Ministry of Justice's "overall assessment", but is it sufficient to defend punishment by referring to the need for "overall prevention", "protection of public health", or "fundamental values"? Fair enough that the prohibition seeks to achieve a legitimate purpose, but must it not also be fulfilled?



More and more people, including the Royal Commission, claim that the prohibition has not reduced supply or demand, but led to increased crime, stigmatization, deprivation of liberty, morbidity and mortality, without much to show for it. If this is the case, doesn't the drug policy have a problem? Before the Ministry of Justice or the Supreme Court decides the question of legitimate purpose, must it not be clarified whether punishment has ensured public health or further reduced the quality of life for all involved?

It is established law in matters of coercion and deprivation of liberty that it is not considered sufficient that the intervention can be justified according to permitted purposes. The intervention must also be proven to have been "absolutely necessary", and Professor of Law Jørgen Aall says of the necessity assessment that there must be "an urgent social need for the intervention and, moreover, that it is in relation to the purpose".^{iv} To the extent that the cure is worse than the disease, can punishment be suitable to pursue a legitimate purpose?

The Supreme Court confirms in HR-2022-731-A that the drug law seeks to achieve a legitimate purpose, which is obvious, but whether a criminal or regulated market is best for public health is uncertain. The Director of Public Prosecutions has [himself](#) abandoned a drug-free ideal in favour of more rational considerations, and internationally we see a movement towards state control of the cannabis market, precisely because the prohibition has caused major problems and little gain.

The status in this bigger picture is that Norway must reassess constitutional obligations, so is the Justice Department wise in building authority on the Supreme Court's judgment?

We have seen that rather than emphasizing two major investigations that reject criminalization, the Supreme Court takes the politicians' wisdom for granted. This despite the fact that both commissions showed the problem with the political process and that the Criminal Law Commission called for more in-depth judicial control.

It follows that to the extent that HR-2022-731-A is used to defend punishment, one risks continuing the prejudices that built the law, so what does the minister think of the Ministry of Justice's attempt to establish a platform for punishment



in this way? Can the professional responsibility for section 231 and 232 of the Norwegian Penal Code be said to be maintained?

The status is that rather than emphasizing 20 years of investigations that reject punishment, the Supreme Court accepts the assurance of the Justice Department that good reasons exist and that the drug law rests on solid constitutional ground. By using HR-2022-731-A to defend drug prohibition, the Ministry of Justice in turn continues the bigotry that built the ban, but should the Supreme Court have emphasized the "legislative signal" in its judgement when the Royal Commission has detected public panic? After works such as the Criminal Law Commission, the Royal Drug Reform Commission, and the Director of Public Prosecutions' investigation into minor drug cases made clear a problem between the Constitution and majority rule, shouldn't the Supreme Court have made an assessment based on human rights principles?

No independent or competent court would ever use the opinion of politicians as a moral compass for human rights analysis. Instead, the Supreme Court shows poor judgment in its loyalty to the political majority, not the rule of law. As the defence intends to show, there is a connection between public panic and human rights violations. To the extent that panic has characterized politics, principles such as self-determination, equality, proportionality, and presumption of innocence will not be sufficiently emphasized, and society will have an oversized penalty- and control apparatus. This is what ARÖD believes is the situation today, and had the Supreme Court done an analysis based on human rights principles, the distance between the drug prohibition and constitutional law would have been decided. Instead, by emphasizing the Labor Party's, the Center Party's and the Progressive Party's rejection of the drug reform, the Supreme Court allows public panic to continue and the persecuted remain without effective remedy.

So what does the Minister of Justice think about the Supreme Court's approach? When rights are dealt with, should the court examine whether the basis for persecution is appropriate or listen to a political majority that punishes on refuted premises? Are human rights subject to the dictatorship of the majority, or the force that is to deal with totalitarian tendencies?

It is worth noting that the way the Supreme Court's safeguarding of rights works, rights cannot be secured until ten representatives in the Storting gain better judgement. To the extent that ten politicians from the Labor Party, the Center



Party or the Progressive Party come to their senses, there will be a political majority for drug reform and the Supreme Court can conclude that the prohibition no longer fulfills a legitimate purpose. But what about the right to an effective remedy? Should the oppressed be dependent on collective psychoses drifting away on their own, or do the courts have a duty to protect persecuted groups?

Constitutional law is clear that the Supreme Court fails by letting the legislature define the outcome of rights analysis. To the extent that the court does not protect marginalized groups, the principles of the rule of law are abandoned, so is the Minister of Justice concerned? Can arbitrary persecution continue because the rule of law is not recognized?

Following the Supreme Court's judgment, and the Ministry of Justice's reluctance to answer AROD's letter of 4 July, we must look to the ministry's discussion in [Ot.prp.nr.22](#) (2008–2009). The Supreme Court refers to this treatment when the question of a legitimate purpose is to be decided, but it is not reassuring reading. In Ot.prp.nr.22 (2008–2009), the ministry explains that "the narcotic substances are . . . in a different historical and cultural position", but does the Minister of Justice think that culture is a sufficient reason to punish?

Culture is not in itself a good enough reason to retain punishment. In that case, it would not be possible to criticize totalitarian regimes, and human rights require a justification that is better founded. We must therefore look for other reasons, and the Ministry of Justice refers to the importance of sending the right signal:

The ministry also adds considerable emphasis on the fact that decriminalization will send an unfortunate signal to young people. Decriminalization can be perceived as meaning that drug use is no longer considered harmful or dangerous, cf. Ot.prp.nr.90 (2003–2004) page 89. Such a signal is unfortunate when the action is still considered undesirable.^v

The defense therefore asks the Minister of Justice: If an act is undesirable, must it be criminalized? Does the state have to criminalize tobacco smoking, overeating, pornography, and lack of truthfulness in order for people to realize that better habits are preferred? Is the lack of criminalization of such behaviour a sign that the state encourages destructive patterns of life, or does it indicate that the state respects the limits laid down by law?



The ministry's emphasis on the importance of sending the correct signal is anchored in [Ot.prp.nr.90](#) (2003–2004), but according to the Royal Commission, continuation of punishment has a questionable norm-forming status. The report of the Royal Commission shows that public panic has shaped politics, that prohibition must be defended, and that the basis for punishment does not measure up. The investigation is the most thorough work carried out by the Norwegian authorities and finds no connection between punishment and drug use.

In the committee's assessment, the best available knowledge provides a fairly clear basis for establishing that the criminalization 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 means of action. Following this, the committee cannot see that the justification requirement for penalizing these actions has been met. (p. 30)

It is therefore likely that the prohibition signals paternalistic bureaucratic oversight and that citizens should take responsibility for their own use. The Ministry of Justice and the Royal Commission disagree on whether the state's efforts for public health do more harm than good, but one thing is certain: To the extent that the policy is based on failed premises, prohibition signals the opposite of what the Storting, Government, and the Department of Justice wants. Rather than protecting the community, all agencies of government will instead perpetuate a destructive cycle, and is this in line with the intention of the law?

Integrity is a key if society is to build a bridge over the gap between theory and practice. The values, ideals, and principles that follow from our constitutional heritage are the compass that shows the way out of totalitarian waters, and it is difficult to imagine that the Ministry of Justice is served by the current situation. We therefore ask, what kind of "signal" does a policy send that criminalises unproblematic drug use, makes drug use more dangerous than necessary, and punishes sellers of less dangerous substances than those distributed by the state?

Traditionally, punishing people for behaviour that is less harmful than legally regulated behaviour is a sign of religious fanaticism more than reason-based concern, so can the minister explain how drug policy differs from arbitrary persecution? How do different quantities of substances determine whether users



are to be pathologised or demonized? And when the danger of drugs is no greater than for alcohol, how to justify punishment of up to 21 years?

Because the distinction between legal and illegal substances is culturally conditioned, and not based on reason, this is a question that is impossible to answer. Therefore, it comes as no surprise that neither the Ministry of Justice's nor the Supreme Court's treatment of the law provides an answer. The Supreme Court's assessment of the equality principle in HR-2022-731-A refers to the Storting's treatment of the drug reform, where the issue did not receive attention, and the court does not shed light on the differential treatment between users of legal and illegal substances. Nor is the Ministry of Justice's overall assessment in Ot.prp.nr.22 (2008–2009) satisfactory. We only know, based on this, that "something" speaks against equal treatment in the drug policy, and that "the Department agrees with the Association Against Drug Addiction that society's need for protection against an ever-increasing drug traffic, accompanying social problems, crime for profit and insecurity, strongly argues for continuing to impose penalties".^{vi}

We see here that the ministry uses the problems that come with a prohibition to justify punishment in the drug policy. Does the Justice Minister think this makes sense?

Elsewhere in the world, the control of the drug trade by criminal organizations, accompanying social problems, crime for profit and insecurity, are the reason why more and more state leaders want to regulate the drug market. In September 2022, Colombia's president referred to the prohibition on drugs as "genocide" and [told](#) the UN that "democracy will die" if the state does not take control of the market, and so the Ministry of Justice's assessment is, to put it mildly, controversial.

The ministry justifies its assessment by saying "that the Sanctions Committee in NOU 2003: 15 at pages 268-269 assumes that dealing with drugs – use and possession – is such a serious offense that the qualification requirement for applying punishment is met", but the ministry should not emphasize this report. Since NOU 2003: 15, the Royal Commission's NOU 2019: 26 has concluded the opposite on a far more informed basis, and according to the Royal Commission, "the introduction of penal-like administrative fees may, depending on the circumstances, come into conflict with the citizens' right to privacy etc. and the



right to health".^{vii} If this is disproportionate, what about the current penalty framework? Why is a drug dealer so much worse than a drug user?

Facilitating use is usually charged less than the use itself. For alcohol, for instance, it is socially stigmatized to abuse but not to sell alcohol. Why is it different for illegal drugs? If the liability principle is emphasized, shouldn't addicts be more frowned upon than recreational users and dealers? Why is there one way of thinking for alcohol and a completely different one for illegal drugs?

Several constitutional courts have anchored the right to cannabis use in self-determination, and if there are good enough reasons to choose, why interfere with drug use? Can the Minister of Justice say anything about this that is not transferable to alcohol?

The minister may point out the differences between the substances and that all drug use is not unproblematic. Nevertheless, [according](#) to independent researchers, alcohol is the worst of all drugs,^{viii} so why should drug users risk punishment and the problems that result from an illegal market? Can the prohibition be defended when it makes the world more dangerous and the drug reform committee "cannot see that the justification requirement for punishing these acts is met"?

Questions like this clarify rights and the protection of disadvantaged groups is a fundamental part of the state's responsibilities. The Criminal Law Commission made arrangements for such protection, but the Ministry of Justice believed in Ot.prp.nr.22 (2008–2009) that the majority applied "too narrow an understanding of the harm principle" by emphasizing only the drugs' "direct harmful effects"^{ix} towards the users. The Ministry of Justice has a problem with such argumentation because the same is the case for alcohol use, overeating, abortion, and motorcycling: to the extent that such activities increase in scope, a certain amount of harm will follow, so on what basis is such logic reserved for illegal substances in particular? If women's right to control their own bodies weighs so heavily that husbands, children, family members, or society have no say in a decision about abortion, how can the state deny self-determination in matters of drug use?

How can section 231 and 232 of the Criminal Code be defended when the prohibition makes drug use more dangerous than necessary, and the Royal



Commission "cannot see that the justification requirement for punishing these actions is met"?

Casting uncertainty on the future has been a strategy that has helped the prohibitionists resist the liberalization of drug policy. For 60 years, supporters of punishment have used the damage from the prohibition policy as an argument that less intrusive measures do not work, but isn't this evading the requirement of the burden of proof?

It is not without reason that AROD holds the ministry responsible for arbitrary persecution. For 60 years, there has been a growing divide between professionals and politicians, and the ministry has chosen the wrong side. We see this reflected in the treatment of the work of the Criminal Law Commission (NOU 2002: 04). Its report not only showed how punishment was incompatible with the principles of criminal law, but cast doubt on the politicians' moral compass:

It may (...) appear that the legislator in many contexts has had an overly optimistic belief in what can be achieved with punishment. In many cases, it may appear to have been a short route from a type of action being disliked by the governing authorities, until it has been charged with punishment. The relationship between the punishment's beneficial effects and costs has not always been adequately assessed in this context.^x

The criticism of the Criminal Law Commission is reinforced by the Royal Commission, which points out the same. The drug reform report not only shows the failure of the political process, but in its entirety constitutes a settlement with the arguments for punishment, and the Royal Commission says this about the rejection of the Criminal Law Commission's majority:

Decisive arguments for the ministry's decision not to accept the proposal for decriminalization thus seem to have been that criminalization marks that drugs are undesirable in society, and that criminalization for citizens, especially young people, [helps to get people] to refrain from experiment with drugs. Whether there was empirical evidence that the use of punishment had actually had a preventive effect, and whether deterrence had been an effective means of reducing drug use among young people, was not discussed in this connection.^{xi}



Thus, for 20 years the Ministry of Justice has ignored its professional responsibilities. Assisted by the Supreme Court and superficial reasoning, the Ministry of Justice has stressed political manoeuvring over human rights considerations and allowed public panic to continue. This phenomenon not only implies a distance between theory and practice, but that the distance is not dealt with due to systemic disregard for rights law, and since 2009 the executive and the legislative branch have arrested the realization of human rights in drug policy. The Royal Commission's report chapter 3 shows the disdain for research and data that accompanies the drug prohibition, and the reality is that the Ministry of Justice continues punishment on false premises.^{xiii} Not only is "culture" used several times to justify discrimination, but the ministry's assessment provides an outdated attitude towards punishment. As the department states:

It's not just about the deterrent function of the penalty. In the Ministry's opinion, the criminalization of drug use is also important to mark basic values in society. The punishment thus constitutes an important element of the educational influence that society otherwise stands for, for example in home and school.

This is what we are left with when the defense of punishment is reviewed. The Justice Department refers to prohibition and punishment as necessary for the protection of society, but does this represent values that the Ministry of Justice should convey?

(Here, question 1 or 2 based on the answer given)

(1) It is good to see that the Minister of Justice is less confident in her defense of punishment. The belief in the educational effect of violence has long since expired in psychology, criminology, and the sociology of law, and we assume that the employees of the ministry do not use such instruments against their own children. In drug policy, more and more people understand that punishment is damaging, so doesn't Norway deserve a legal system that accepts responsibility?

(2) It is striking how difficult it is for the Minister of Justice to reconsider her position. Nevertheless, the belief in the educational effect of violence has long since expired in psychology, criminology and the sociology of law, and we assume that the Minister of Justice does not use such means against his own



children. In drug policy, it is obvious that punishment hurts, so doesn't Norway deserve a minister of justice who accepts responsibility?

The Norwegian drug policy and human rights

Having looked at the Justice Department's argument for prohibition, the defence turns the attention to the Norwegian state's unwillingness to build drug policy on constitutional principles. Paul Hunt, the former UN Special Rapporteur on the right to the highest attainable standard of health, [once said](#) that the international drug control and human rights systems exist in parallel universes. A convergence of the two systems is underway, and the UN is moving ever further in the direction of a regulated market. As Volker Türk, UN High Commissioner for Human Rights, stated on 5 February 2024:

To turn an economy away from the cultivation of illicit crops, it is important that communities – including farmers, women and Indigenous Peoples – are meaningfully consulted on options for alternative livelihoods. We also need measures that can take control of illegal drug markets, such as responsible regulation that can eliminate profits from illegal trafficking, criminality and violence.

Considering that the international community is moving in the direction of regulation in order to fulfil obligations under international law, while the government's Drug Enforcement Committee heads in the other direction, is Norway's rule of law threatened?

If we look at the political process, the mandate of the Royal Commission was to assess the human rights situation associated with the proposed legislation. The proposed law meant punishment for anything above user doses and lawyers know that there is a presumption of innocence in the Constitution. Does this not mean that the prohibition must be questioned? If the state has the burden of proof, does it make sense to talk about human rights without considering a regulated market?

The Norwegian government equates prohibition with solidarity in practice, but we are more likely talking about a destructive force. That is why the report of the Royal Commission was so discouraging for the legislature, and both the input of the Oslo police and the Oslo State Attorney to the Drug Enforcement Committee are in line with AROD. The public prosecutors recognize that the current situation



involves demanding rules to deal with. They therefore ask the committee to clarify whether or not the police should investigate and uncover the use of drugs, which entails a rights analysis.

The Oslo police district also supports clarification because the current state of the law makes it difficult to treat cases equally. The police therefore ask the committee to take a "decision on whether the principle of equality also implies a sharp reduction in the level of punishment for recreational users", and if the answer is negative, the police want the committee to take a "decision on whether the differential treatment is actually proportionate", which involves a rights analysis that weighs the individual's right to freedom against society's need for protection.

It is therefore clear that the Ministry of Justice's and the Supreme Court's treatment of rights is not reassuring to the police and prosecutorial authority. The dubious basis for punishment creates uncertainty and the law enforcement authorities ask that the relationship with the Constitution be clarified. The question is crucial for a comprehensive drug reform, which the Hurdal Platform is clear that the government must put forward, so how does the Drug Enforcement Committee protect rights? Wasn't this committee created to smooth over all shortcomings?

The Minister of Justice has worked to undermine the Royal Commission. In a representative proposal, the minister [draws](#) into doubt the Commission's conclusion that decriminalization will hardly affect the use of drugs in society. The problem, like [other](#) researchers have pointed out, is that the minister relies upon sources that reverse the burden of proof and as a lawyer and Minister of Justice, why not respect the presumption of innocence? Why use questionable research to justify punishment? If the prohibition does not have the right of life, why not follow science and legal principles?

The presumption of freedom and the presumption of innocence are two sides of the same coin and a fundamental part of the rule of law. Because the legislature in the 1960s assumed that drugs would destroy society unless the state fought this evil by all means, the legislature took for granted that the principles that build the rule of law had to give way, but we see in [Prop 92 L](#) (2020-2021) that the Ministry of Health accepts the Royal Commission's criticism of punishment. In section



6.3.2 of the proposal to parliament, the Ministry of Health assesses the knowledge base for the effect of the punishment:

Many of the consultation bodies comment on the committee's principled assessment that punishment cannot be defended, based, among other things, on an assessment that the threat of punishment is not suitable for preventing and reducing drug use in society. Several also comment on the committee's conclusion that there is no knowledge base that indicates that the threats of punishment for the use and possession of drugs for personal use have the general preventive and individual preventive effect that must be the basis for an act to be criminalised. The fact that the committee did not find empirical evidence indicating that the use of drugs in the population will increase as a result of abolishing criminal responsibility alone is also commented on by some authorities. The Director of Public Prosecutions is one of the consultation bodies which, on this basis, believes that punishment is not sufficiently justified. Especially for established drug users, punishment appears to be unsuitable, as the Director of Public Prosecutions states about this:

"For a number of drug addicts, the general preventive considerations have been weighted too heavily in relation to the negative effects of the punishment for the individual. The Director of Public Prosecutions therefore agrees that punishment is not sufficiently justified for many of these, as the beneficial effects of punishment are not greater than the harmful effects. Society should therefore meet the drug addicts in a different way than today. ... In other words, we are today in a situation where the use of punishment is in principle difficult to defend, and in addition has a very variable and uncertain effect. The criminal court can hardly operate with a threat of punishment for some, but not all, for the same type of action. The criminal justice system is therefore not desirable to use, and for many, not suitable, to counteract unwanted drug-related behaviour."^{xiii}

On the basis of such input, the Ministry of Health "assumes that a better effect can be achieved by using health and social work methodology than the threat of punishment to prevent and limit drug use."^{xiv} Several consultation bodies were



against, because they believed that punishment has a beneficial effect that exceeds the disadvantages, but the Ministry of Health's assessment is that "the knowledge base that continued prosecution of use etc. of drugs helps to reduce drug use, or to keep use still low in the population, is uncertain." The defense therefore asks: If, after 60 years of prohibition, there is no evidence that punishment works, doesn't the presumption of freedom imply that the right to self-determination must be assessed?

The extent to which self-determination must be emphasized depends on how big the problem with cannabis and psilocybin really is, and how well the prohibition protects against problems. In other words, the enemy image of drugs is a factor that must be addressed. To the extent that drugs are not all bad, autonomy interests must be recognised, and the Director of Public Prosecutions have noted the paradox of differential treatment in drug policy. In his consultation response to the Royal Commission, the director not only reflects on the double standards implications for law, but comments on the lack of empirical evidence that punishment works. As he states:

The investigation [of the commission] refers to research, which is commendable. It is not easy to find research-based counterarguments, simply because relevant research does not exist. For example, we have little exact knowledge about the effect of punishment and threats of punishment. Much is based on general considerations, experiences and "common sense".^{xv}

It is therefore clear, after 60 years of prohibition, that there is no documentation that punishment works. All the arguments of the Labour Party, the Progress Party, the Christian Democrats, the Police Directorate and other consulting bodies used to continue punishment boil down to personal concern (or a desire to retain disproportionate state power), and this characterizes their disregard for the presumption of freedom. This disregard is accompanied by a resolve to ignore a problem between means and ends, and threshold values have become a way of preserving a blind spot so that the prohibition can continue. So, let's talk about the threshold values.



The Supreme Court 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. 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?

There are many indications that the legislature is out of step with the people. In autumn 2022, NRK conducted a survey in which over 5,000 people participated, and 90 per cent preferred a regulated market. As we have seen, there are good reasons for regulation, but the legislature will not reconsider. Public panic instead defines the political process, and threshold values were set by the Supreme court in 2021 to give the legislature's signals legal weight. Even so, can the minister defend any principled basis?

No one has explained how different quantities of substances determine whether users are to be pathologised or demonized, and both "signal effect" and "danger of spread" remain weak grounds for punishment, without empirical evidence. We have seen that the Minister of Justice cannot explain the differential treatment in the drug field, and it does not take much to realize that threshold values are useless 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?

This seems to be the case. The Supreme Court has used "signals from the legislature" to work out a limit for the amount of illegal drugs that disqualify for punishment: as decriminalisation moves forward – and the legislative wisdom evolves – this limit can be expected to be raised until the last prohibitionist have died and the world can conform to a more wholesome standard of morality and



human rights. In this way, those responsible for a failed social experiment can ignore the parallels to other social experiments gone wrong – but is such a strategy a valid solution? Is it not making the victims bear the oppressors guilt?

Prohibitions do not appreciate the human rights paradigm because they have twisted the law of supply and demand into a victim and abuser context. This is how drug users are disenfranchised and drug dealers are demonized. However, is it not the same law of supply and demand and the same varying patterns of use applicable to both legal and illegal substances?

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

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 abuse a product, not those who profit from its sale: Why is a dealer of cannabis more to blame than its abuser? Why do drug dealers deserve worse sentences than murderers and people who rape children?

While the legislature and police previously portrayed all use of illegal substances as abuse, few do the same today and research indicates that there are the same varying patterns of use as for alcohol. But if not all use is abuse, why is supply and demand twisted into a victim and abuser context? Why are the drug dealers so bad?

Prohibitionists can hardly answer, as tyranny and autonomy are opposites in a meaningful universe. We know that drug 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?

We touch here at the Achilles heel of the prohibition, the morality that defends persecution. As the Director of Public Prosecutions acknowledged in his consultation statement, the differential treatment of drug users is a paradox, which



undermines the law's authority: Can the idea of good and bad morality be turned on its head? Could that be the cause of panic being perpetuated, and can principled thinking heal society?

The point of the drug policy, just not stated, is to make drug use as dangerous as possible. All use is considered abuse, there is no quality assurance, and the worse it is for the users, the less lucrative it is for others to become "addicts". Prohibition supporters are therefore betting on punishment to keep drug use down, but can people trust the political process? If the distinction between legal and illegal substances is not rational, can citizens learn anything from drug policy other than seeing through hypocrisy?

The police's citizen survey shows that out of 100 respondents, 72 have confidence in the police. The director of police is satisfied, but critics believe that if only those with experience had been asked, then trust would have been equal to zero. Does the Minister of Justice think that drug legislation has strengthened trust in the police or weakened it?

The police's citizen survey confirms that trust is declining depending on how much contact you have with the agency. The proportion is lowest among those who have experienced unwanted sharing of images/videos (39 per cent), blackmail (43 per cent) and sexual abuse/violations (43 per cent). 47 percent of those who have been victims of rape believe they were taken seriously, but what percentage of drug users experience the same? How many are grateful for the police? How many feel that the intervention of the police is necessary and proportionate?

All users with whom the defense has been in contact claim that the police's efforts make things worse. This is compatible with all collective insights that take society away from punishment. The UN and the Council of Europe want to end the drug war, but the Center Party wants to give the police more powers and talks about prevention. What lies in this term and how do the police's actions in the drug policy make the world a better place?

What indicates that the legislator knows better about matters of drug use than the individual citizen? Have not the legislators several times looked away from expert committees in order to continue policy on refuted premises? Did not the handling of the Corona pandemic in 2021-23 show how easily freedom rights are discarded and how eagerly totalitarian solutions are embraced?



The Director of Public Prosecutions says in his submission to drug reform that "If it concerns actions that lie on the periphery of what should be punishable, the rationale for using punishment should be challenged on a regular basis so that it can be explored whether it still stands."

Now, after 60 years, the status is that no one can demonstrate the benefits of drug prohibition. What the prohibitionists recite is their own fear-based belief, while the harm resulting from the policy is obvious. Based on this, the Royal Commission on Drug Reform and the Ministry of Health come to the conclusion that punishment for drug use cannot be defended, so how can we trust the political process? Doesn't the electricity price show that German railways have better representatives in Parliament than Norwegian citizens? Does drug policy not continue its crooked course because political will to deal with reality is lacking?

During the testimony, we have seen that the official reasons for punishment are without weight. We have seen that several reports confirm the defence's claims and we will look more into how the principles of the constitution have been disregarded, but has the ministry or the Storting at any time carried out a rights analysis?

So for over 20 years, investigation after investigation has confirmed the lack of grounds for punishment, but neither the Justice Department nor others have investigated the costs of the prohibition? No one has wondered if the price is worth the effort? No one has wanted to clarify whether the cure is worse than the disease?

It is hard to imagine that the lawyers in the law department have not talked to each other. It is difficult to imagine that report after report can be rejected without the lawyers gaining distrust in the political process. When more and more countries regulate cannabis to protect public health, international courts find a right to cannabis use, and the UN supports regulation to remedy the damage of the control regime, it is hard to believe that the lawyers in the legal department have not realized that a cleanup must come, and all employees were made constitutionally liable on 25 February 2021. Has no one contacted the Minister of Justice with concerns about the rule of law?

It is difficult to imagine that the lawyers in the law department support criminalization or decriminalization because the only way is through invalidating the principles of the constitution. Since the Criminal Law Commission's report,



the lack of scientific basis for punishment has been clear, but all investigations have been told not to consider alternatives to a prohibition. Haven't the ministry and politicians, in this way, made an effort not to clarify whether the prohibition fulfils a legitimate purpose? Isn't it striking how a blind spot is maintained?

Could a culture of fear be the reason why employees have not more openly asked questions about the prohibition? Six out of ten police officers complain of such a culture of fear and wear muzzles to avoid unpleasantness. Could the situation be the same in the legal department?

The Center Party talks about prevention. On this basis, the Minister of Justice maintains that the police must be given coercive measures which the Director of Public Prosecutions believes are disproportionate, but how many millions of kroner has the Norwegian state spent on prevention and what have we got in return? Can the Center Party, the government or the Ministry of Justice show any quality assurance?

We therefore do not know whether those who have gone through punishment have understood what the state wants to teach them. We do not know how many robberies, kidnappings, rapes, homicides, and violent episodes are linked to the illegal market, and we do not know how many of the overdoses are linked to the prohibition. However, we know that the police involve child protection services in around 10,000 cases each year due to illegal drug use, and that this is a form of additional punishment. Has such effort been assessed based on cost-benefit or ethical considerations? For example, have attempts been made to find out how many children have lost their parents? In the cases where it has happened, do we know whether the corresponding use of alcohol would have led to a loss of contact? Do we know how often children experience the childcare services' as better than their parents? Do we know how often parents and family members feel that the efforts of child protection services are necessary and proportionate? Have the Norwegian authorities produced data that ensures the quality of such interventions?

We know nothing about this because for 60 years the prohibitionists have ignored the harm that comes with the policy. What about the urine test regimen? Requirements for drug testing are often made as a condition for visiting and driving licences. Many users perceive the practice as unreasonable and offensive. Has this regime been considered against less invasive measures?



There is zero tolerance for intoxication in traffic as long as drivers are not using legally acquired medicine. The zeal to prevent deaths is so great that the state annually punishes thousands who are not intoxicated, and have the Norwegian authorities considered cost-benefit or ethical considerations?

Of course not. We therefore do not know how many lives are saved by the state's zero tolerance, neither in traffic nor otherwise. Perhaps there is no one, but we know that Norwegian citizens find the practice unreasonable and that young people have killed themselves precisely because of this regime. Doesn't that indicate that the control regime is going too far? Shouldn't the questionable basis of the law arouse a desire for clarification?

On 9 January 2024, the Minister of Justice received questions from MDG about how the minister will follow up the Supreme Court's judgment of 6 December 2023 (HR-2023-2307-A) on the use of cannabis and driving licenses. The Supreme Court believes that it is up to political or professional bodies to ensure an update of the current thresholds for driver's license confiscation, and MDG wanted the Minister of Justice to take action as the practice is not in line with the knowledge base around possible intoxicating effects from cannabis. In this country, no one should be punished without guilt, but this is what happens when the legal limits are so low that people who are not affected are punished. Despite this, Mehl responded on January 18th by taking no action, so is the Justice Minister happy with a justice system that convicts the innocent for general deterrence? Isn't a burden of proof turned on its head a perfect recipe for judicial murder?

It is no longer taboo to transfer the principles of the law to the drug policy, and more and more people are coming out against a regime that is struggling with the Constitution. Lawyer Anne Kristine Bohinen has stated that the low criminality threshold in the Traffic Act entails a "parade of violations" for people who choose an alternative drug to alcohol, and it is known that the limits are based on a lack of scientific basis. While there is a clear connection between blood alcohol levels and impairment of driving skills, the same cannot be said for cannabis, but still 28,000 drivers have been punished for drink driving, even if they have not necessarily been intoxicated. Isn't this contrary to the basic principle that the state only punishes citizens who have shown reprehensible behavior?



In connection with the Supreme Court's treatment of the limit values for THC in traffic, lawyers woke up to the dubious state of law and justice. Lawyer Torkjell Øvreboe told of a law professor who compared the situation to the witch trials:

In a witch trial from the Middle Ages, a defender had stated that there were no witches. The judge had replied that of course there are witches, since laws against them had been introduced. The same type of argument is also encountered today. The court concludes that they are under the influence of drugs because the law states that they must be considered intoxicated. However, this is a claim without scientific support, in the same way as claiming that witches exist.

What does the Minister of Justice think about such parallels? Is the lesson relevant and can historical context help the present?

Credit to lawyers who see the connection to past arbitrary persecution, but why stop the insight at the limit values in traffic? If one recognizes that the traffic regime is not necessary and proportionate, how is it possible to avoid seeing the same problem for the prohibition in general?

Seen from the perspective of the Constitution, not recognizing a bigger picture shows cognitive dissonance. After all, it is not only in traffic that limit values are without scientific support and that punishment is continued in violation of the principles of the rule of law. Also for cannabis use in general, there is a lack of empirical evidence that defends punishment and the prohibition is continued because the principles of the Constitution are without weight. Seen from the perspective of the law, the state's margin of discretion is greater for interventions in traffic than in the home, so does this not reveal a problem for drug policy in general?

As we have covered, input to the Drug Enforcement Committee from the Oslo Police District, Oslo State Attorney's Office, the Police College, and a number of other affected actors show that a review of rights is necessary. Because no investigation has been carried out, a blind spot remains, but your predecessor has admitted that there are "very demanding assessments, evidence assessments and discretionary assessments" that the police have to decide on when dealing with drug users, and that a police lawyer is not always available. We see from the Director of Public Prosecution's report that the police's assessments have been systematically inadequate, so is the Drug Enforcement Committee suitable to



protect drug users? Can drug users not expect that invasive procedures such as stripping and searches still depend on whether they meet a policeman from the former NNPF community?

What about the likelihood of drug addiction? The Director of Public Prosecutions has issued directives, and the Drug Enforcement Committee sets legal boundaries, 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 behavior? Is this a job that the Ministry of Justice wants for the police?

What about the distinction between use and sale? Five grams of hashish can be sold as much as 20 grams can be for a person's own use, so how to distinguish between personal use and criminal behavior? Is this a job that the minister wants for the police?

This is not a job that the Oslo police themselves want. In input to the Royal Drug Reform Committee's report, the Oslo police district points out the following:

In terms of experience, dealers adapt to what is currently the threshold limit. If you have not been able to prove resale, you now have the option of punishing the "presumed" seller with a detention order. Oslo Police District assumes that the same challenges with the evidence will be linked to whether the substance is for personal use or not. The police have neither the capacity nor the resources to investigate what is for their own use or what is intended for resale, in which case it would require a disproportionate use of resources compared to the investigation of other criminal cases that the police should and must prioritize.

The fear of the police has become a reality through the threshold values. As the Supreme Court emphasizes the legislator's signal more than considerations of principle, threshold values distinguish punishment from impunity, but no one has shown how this system prevents arbitrariness. As long as this is the case, the danger of rights violations is great, and neither citizens nor the police can be on safe ground. We know after 60 years of hunting for drug users that there is an unculture in the police, and a state attorney from the former Norwegian Narcotics Police Association (NNPF) has claimed that the Director of Public Prosecutions' guidelines will not change much. It is primarily representatives of the former NNPF who want to punish on refuted premises, while LEAP Scandinavia represents an opposite pole. The latter grouping has long worked for a holistic and



open-minded drug policy, and isn't it logical to look to this environment if the police's name and reputation are to be improved? After the conclusions of the Committee for conduct, integrity, and conflict of interest in law enforcement, shouldn't the police and prosecutor's efforts in the drug policy be reformed in line with the values of the Constitution?

We have seen the problem with threshold values and the Director of Public Prosecutions has accepted the principle of moving from punishment to help in major drug cases. As stated in the 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 others who have committed an offense against Section 232 of the Criminal Code? Research suggests that the idea of the drug shark is political fiction and that the majority of those serving long sentences are users. Studies also show that the longer the sentence, the more difficult the path back to society, and isn't it reasonable to assume that society benefits more from a suspended sentence than years in prison? Preventatively, this seems to be the best solution, so why maintain severe penalties? Are there general preventive considerations?



Few judges will emphasize general preventive considerations in a rights analysis. Criminologist Sverre Flaaten has pointed out that most judges are personally very skeptical of the idea that the prohibition has an individual or general preventive effect, and if such considerations are used to retain punishment, it means that someone is sacrificed so that others will not do the same. Yet the demonization of drug sales relies on twisting supply and demand into a victim and abuser context, and no one can explain why. Instead of punishing out of old habit, shouldn't prohibition be ended? When half of the citizens of Europe and large parts of the United States have legalized similar actions, what else but despotism and slave morality upholds the law?

The work of Ronald Keith Siegel, an American psychopharmacologist who was an associate research professor in the Department of Psychiatry and Biobehavioural Sciences at the University of California, Los Angeles, betrays the idea of a legitimate state interest. Throughout his career, Siegel was a consultant to several government commissions on drug use. His research focused on the effects of drugs on human behaviour, including numerous clinical studies in which human volunteers took drugs such as ketamine, LSD, cannabis, mescaline, psilocybin, and THC, and when testifying in 2005 on the long-term effects of methamphetamine and cocaine use at the Robert Blake murder trial, the jury foreman in the trial, described Siegel as "one of the most compelling witnesses".

In his book *Intoxication*, Siegel claims that seeking altered states of consciousness is a natural part of our biology, much like the drives for thirst, hunger, and sex. He considers this as a fourth drive, and if we recognise that intoxication is a part of our biology, does criminalization make sense?

In *Human Rights and Drug Control*, Melissa Bone, a teacher of Criminal Law at the university of Leicester, connects Siegel's argument to human rights. Speaking of drug use as a fourth drive, she says:

This notion corresponds with human rights foundationalism and the idea that human rights are entrenched in human nature itself. This perspective acknowledges that human rights have humanity at their source as there are certain appetites, social senses and needs which are shared across all cultures, thus some needs are not local but human. Though human rights foundationalism is subject to criticism, the consideration that human rights



derive from our human nature is worth considering. Indeed, if human rights respond to the human condition by design, and human drug use is a naturalistic phenomenon rooted in our common humanity, then human rights could be utilised to respond to human drug use as a human need; in a way that could help human beings grow and flourish.^{xvi}

If drug use is a natural part of human life, this explains why drugs have won the drug war. The notion of a fourth drive can explain why 60 years of rigorous state effort to eradicate drug use has failed, and cannot the minister see a bigger vision for humanity than waging a war on the human condition?

The Justice Department, in letter of June 1, says that "the government is opposed to a general decriminalization of drugs", and the defence understands this. Decriminalization is difficult to distinguish from state-protected mafia activities, as the criminal market will increase in scope while the fight against drugs becomes meaningless. No responsible public official will give organized crime a better position, but why not look to alcohol policy?

In a criminal market, there is no quality control 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. For example, the Minister of Justice want to prevent young people from being recruited for criminal gangs, but the prohibition cultivates crime. Many 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.^{xvii} 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?

The government claims to be on the youth side, but 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 Minister of Justice has nothing but emotions to go by as no investigation has assessed a regulated market. Equally, few experts believe that use will increase significantly, and more likely that crime will drop to the level it was in the 1950s, before the war on drugs accelerated the statistics. At least that's what the Dutch authorities concluded after looking into the case (Human Rising p. 136). It is therefore in the cards that the Ministry of Justice should be interested in clarifying whether a right to use cannabis includes a regulated market. Public panic has been demonstrated, and isn't it natural that stigma, ostracism and overdoses are connected and that the prohibition creates more problems? Can't equal treatment with alcohol contribute to safer drugs and an increased incentive to seek help? Can it not reverse a development that turns users into criminals?

We see that there are good reasons for considering a legal cannabis market. Still, the legislature does not want to reassess a criminal market, and the Supreme Court's and the Ministry of Justice's treatment is a mockery of law. The defense therefore asks, can people take for granted that the prohibition is good and that



those who undermine it are evil? Is the goal of a drug-free society a worthy ideal when the methods create an ever-increasing hell?

Section 94 of the Constitution states that "No one may be imprisoned or deprived of their liberty in any other way except in statutory cases and in the manner prescribed by law. Deprivation of liberty must be necessary and not constitute a disproportionate intervention", but investigations show that the benefit of punishment is uncertain, that the costs are enormous, and no one has demonstrated a beneficial effect. What is then left of the signal effect? What kind of signal is sent by punishing on disproved premises?

The minister has not explained why users of substances other than alcohol should be criminalised and it remains to be seen how the prohibition fulfils a legitimate purpose when more and more countries are regulating cannabis to protect public health. The Royal Drug Reform Commission is clear that punishment has not prevented the spread of drugs and there are good reasons for a regulated market. The most important is, as the commission concluded, that "the justification requirement for punishing these actions has not been met". If the justification requirement for punishment is not considered fulfilled, is this not a good reason to regulate the market? Isn't this all the reason needed?

There are also other reasons to end the prohibition, as we did with alcohol. We know that prohibition has large social costs, that it forces users into contact with criminals, and that the illegal market poses a huge threat. For half a century, the drug trade has corrupted institutions that are supposed to ensure an open society, while at the same time sacrificing a large percentage of the population. These are costs that receive little attention, but what does dignity entail: Is it a drug-free life, or a life where self-determination is emphasized?

If the Minister of Justice emphasizes a drug-free life over self-determination, the link to the repressive campaigns of the past will be less obvious. Nevertheless, the essence of tyranny is always the same and the drug-free ideal reveals clear historical parallels: To the extent that Norwegians have embraced its call, society has produced authoritarianism. In pursuit of this ideal, hypocrisy and double standards has promoted persecution; the masses have supported abuse and rebuke; the police force has broken down doors looking for scapegoats; and rule of law principles have been set aside. How is the dynamic in Norway different from Orwell's dystopian literature? To the extent that the drug-free ideal gains ground,



have we not been exposed to the same social dynamics as Germany during the Second World War?

To the extent that the double standards in the drug policy are accepted, the link to the repressive campaigns of the past will appear absurd. Just as the Nazis saw Jews as a threat, the prohibitionists will see drugs as a problem, but it will be difficult to see a connection. The defense therefore offers Professor of Political Science Bernt Hagtvet's insight:

We often forget that Nazism was not an appeal to brutality and hatred. To those who came within its radiance, Hitler appeared as the epitome of selflessness, patriotism, longing for purity, dream of harmony and national rebirth. That is why Nazism gained such an attraction. It was not experienced as a confrontation with decency. Nazism masked its brutality as idealism. Nazism's fatal attraction lay in an aesthetic-political program to create the new Aryan man against the hideous Jew.

We need only replace Germany's enemy images and superhuman ideas with the dream of a drug-free society to see the dynamic behind drug policy. Let's rephrase:

We often forget that the prohibition was not an appeal to brutality and hatred. To those who came within its radiance, the drug-free ideal appeared as the epitome of selflessness, patriotism, longing for purity, dream of harmony and national rebirth. That is why the prohibition gained such attraction. It was not experienced as a confrontation with decency. Prohibition masked its brutality as idealism. Prohibition's fatal attraction lay in an aesthetic-political program to create a clean society free of the hideous drugs.

We see why the prohibition has such appeal. We also understand why the NNPF celebrates the killing of drug dealers in other places in the world, because to the extent that the drug-free ideal is enticing, will not the prohibitionists kill to keep society safe?

We see that both prohibitionists and Nazis are so characterized by enemy images and a longing for purity that in both cases the end justifies the means. We therefore have laws to promote a drug-free society and this ideal is pursued with religious zeal. It does not matter that society is further away than ever, nor that professionals confirm that less invasive measures are better suited; the prohibitionists will punish until they have reached paradise, whatever the price, and that is the essence



of a dynamic that invalidates the Constitution. Isn't the problem then the drug-free ideal?

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](#) the 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.^{xviii}

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 can the intervention be proportionate if there are no good reasons for punishment? If an intervention does not cure, but causes side effects, can it be necessary?

What does the Minister of Justice 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?

The Director of Public Prosecutions has abandoned the drug-free ideal in favor of more rational considerations. The UN's human rights apparatus and an increasing number of heads of state believe that sensible regulation is needed, so should the government find new advisers?

No one has explained how the double standards in the drug policy is compatible with constitutional considerations, but nine ministers of justice have protected the prohibition against constitutional criticism: Don't the state and society deserve a bigger clean-up, and don't employees in the police and prosecution authorities



deserve an apology? What will the Justice Department do to build expertise and integrity?

It is not just the Justice Department who has neglected responsibility. Drug offenses are the largest category of criminal sanctions in court and liberty rights require particularly vigilant protection. Despite this, nine Supreme Court judges have prevented judicial scrutiny and 500,000 criminal cases are contested after the Supreme Court in 2010, for the first time, protected the prohibition against criticism. None of these judges has shown the integrity that the position requires. All of them have shown the same contempt for the rule of law as the politicians they were supposed to control, so what does the Minister of Justice think about toxic culture in the state? Can public panic shape drug policy for 50 years without toxic culture being a problem?

What does the Minister of Justice think about corrupt culture in management? Can public panic continue decade after decade without a failure of leadership? Has it become a tradition in the drug-fighting machinery to find leaders who support the drug law regardless of legality? Have 60 years of prohibition promoted a culture where the preservation of prestige, budgets and means of power define the debate?

In the autumn of 2022, the Center Party played politics for more means of force and more punishment by claiming that drug use had increased after the Supreme Court meted out sentence waivers for heavy drug users and the Director of Public Prosecutions limited the police power. It has since been revealed that the Center Party used undocumented claims, or what others would call lies, to gain traction for a policy that violates human rights. According to the UN, impunity is the biggest problem for the protection of human rights, so why not hold party colleagues accountable?

If the minister does not want to emphasize the signal of holding colleagues in the Starting responsible for human rights violations, but continues to use undocumented allegations for punishment, is this not a signal that the political process has failed and that a corrupt culture has developed where powerful people are above the law? What is left of the rule of law?

To the extent that punishment cannot be defended, and to the extent that the Minister of Justice has not taken responsibility for persecuted groups, the Accountability Act applies. Based on the answers, it must be decided whether the Minister of Justice has acted in line with the requirements of the constitution, and



in the the Committee for conduct, integrity, and conflict of interest in law enforcement's report part 4.2.2, Police management - governance and responsibility, central democratic values that guide the functioning of public organizations are described. First of all, emphasis is placed on "consideration of citizens' personal freedom and the authorities' responsibility that public organizations, such as the police, have mechanisms that prevent transgression of the limits of personal freedom and responsibility". Does the Minister of Justice feel that such mechanisms have worked? Why possibly not?

As the the Committee for conduct, integrity, and conflict of interest in law enforcement noted, it is not a lack of guidelines that has made it possible for an corrupt culture to exist, but a systemic incentive to put administrative law ahead of rights law. To the extent that rights law is de-prioritized, the Minister of Justice will have a problem, and it is a rule of law that the longer the sentence, the stricter the requirements of the law. Stricter punishments therefore require better justification and control, and the Norwegian legal system regularly sentences drug offenders to the law's most severe punishment. We therefore ask: What punishment does the production and sale of one kilogram of cannabis deserve? What punishment does the production and sale of 100 kilos of cannabis deserve? And what punishment does the production and sale of one ton of cannabis deserve?

The answers to such questions will depend on whether a Norwegian, Canadian, Thai, German, or Dutch minister of Justice is examined. While the Norwegian Minister of Justice see no fault in applying the law's strictest sentence, such activities are legal in Canada, Thailand and Germany, and will also soon be regulated by law in Holland.

A minister of Justice from Holland, Germany, Thailand, or Canada would therefore consider the Norwegian minister's position as old-fashioned and ill-considered – and they would be right. As seen in this light, considering that it has been known for 20 years that the prohibition makes things worse, but that politicians maintain a market for organized crime, should not small-scale cannabis farming be considered vigilantism? What has a grower of cannabis done other than challenging the state's drug monopoly by offering less harmful substances?

AROD argues that that it is the politicians, not the growers of cannabis, who have failed in their social responsibility. These producers secure their health and



finances, they create a basis for others to do better, and the product they offer is sought after. Despite this, Norwegian citizens face life-destroying consequences from the criminal justice system for dealing with the cannabis plant, even though 95 percent of users have a well-functioning relationship with their drug. On the whole, cannabis creates a healthier and safer alternative to alcohol, and is all the aggression from the state worth it? Is it the concern of criminal law whether 5 or 10 percent of the population uses this substance?

Everything indicates that society can keep the drug use at a manageable level without punishment, so what social benefit is there in using budgets and state power on a control grid that makes it possible to intervene in buying and selling of drugs, imprison dealers and collaborators, and take away their houses, children, and property? Are these values that the Justice Minister should want to represent?

What about medical cannabis? Several hundred patients must travel abroad because the Norwegian authorities do not vouch for treatment. In a country where the Norwegian Health Authority finds it justifiable to prescribe opioids to more than 10 per cent of the population, why is it unjustifiable to offer a less harmful alternative?

Medical cannabis is recognized as a safe drug in many parts of the world. Globally, over a million people get cannabis on prescription, and the problem in this country is not cannabis but harmful double standards and supporters of prohibition who refuse introspection. Medical users therefore become prey for a system that clamps down on behavior that is less harmful than legally regulated behavior, but on an increasingly ludicrous basis. Can you imagine, with back, neck, head or skeletal pain, paying NOK 250,000 a year to travel to the Netherlands every month for medicine that you could grow yourself or get from a pharmacy? Can you imagine living in fear of child welfare and the police because of medication you need? Why are medical users treated as second-class citizens? Why do they lose their driving licence, when others who are prescribed heavier drugs do not?

We find the same unfair discrimination in the LAR system. Opiate addicts experience a life where they are denied adequate pain treatment, are forced to take medication that is more harmful than illegal substances and are disempowered in relation to their own everyday life. Why do the authorities insist on the use of



drugs such as methadone and buprenorphine, when in many ways this causes more harm than heroin, cannabis or other drugs?

Opiates have a bad reputation because of the physical dependence. Many believe that regulation of cannabis is appropriate because this drug is more widespread and less addictive, but no one suffers more than opiate users under the prohibition. No one serves longer sentences for smaller amounts of drugs, no one has more health problems, and no one is exposed to a more destructive dynamic. Does this minority not deserve a rights analysis when 300 lives a year depend on it?

The Ministry of Justice has referred to obligations under international law as a basis for continuing a prohibition. Nevertheless, in the last ten years the interpretation of drug policy conventions has gone from emphasizing a drug-free ideal to emphasizing the intention behind the conventions, which is the protection of public health. It is also stated in the drug policy conventions that they only apply as far as compatible with constitutional principles and a rights analysis is needed to determine this. How can the ministry then present Norway as bound to the prohibition?

The fact that the prohibition was introduced for Norway to comply with obligations under international law is not an argument for the continuation of punishment. Punishment is continued on disproved premises and the morality that upholds the prohibition reveals a problem for the authority of the law. The Director of Public Prosecutions draws attention to this in his consultation response to drug reform. He acknowledges "that for many there are positive aspects to a certain drug", "that the idea of a drug-free society or zero tolerance for drugs is no longer a real ideal that can guide how we should deal with drug use", and that "it can be perceived as a paradox that alcohol is recognized as an acceptable intoxicant, while others - and often substances which, when used correctly, 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 highlight. Human rights prohibit unfair discrimination in the criminal law, and as the Director of Public Prosecutions points out "a recurring theme in the debate about alcohol versus other drugs is that alcohol abuse has much more devastating social effects than other milder narcotic drugs". Based on this, what else but scapegoating results in punishment for cannabis users but not for alcohol users? Why not ensure quality controlled goods and regulated markets? Is it reasonable to subject users and society to such a burden?



The fear of addiction is great among prohibitionists. They assume that the prohibition maintains morality and that far more people will succumb if society is not protected. How does this fit with the situation in the Netherlands, where after 50 years of legalized sales of cannabis, no major problems have been noticed?

It is worth noting that the epidemic model which in the 1960s ruled the understanding of drug addiction no longer holds weight. Today, drug abuse is seen as the result of traumatic events more than pharmacological properties, and sociologists such as Ted Goldberg claim that large parts of the population (around 90 percent) are immune to a career of abuse. The last 10 percent are the group that will most eagerly seek intoxication no matter how much coercion and violence we use, so how does prohibition equal solidarity in practice? Doesn't the prohibition make it difficult to return to a normal way of life, and could we not do better by building a policy on individual responsibility?

Supporters of prohibition are right that addiction is problematic. Job, family, health and quality of life are at stake, but even if someone becomes addicted, does the state have a responsibility to prevent this experience? Isn't personal growth, which includes the building of integrity, dependent on freedom? Can we grow as people without space to experience and explore, and isn't it the business of the state to provide the safest possible framework?

Not only is personal growth dependent on autonomy, but users know their health and it is up to them to take responsibility. The same applies to alcohol. There is always the possibility that people will drink themselves to death, but we know that criminalization makes things worse, so what reasons other than the hunt for scapegoats perpetuate the need to punish? Why subject cannabis users to such low threshold values that they must deal with criminals daily? Why not offer a much safer framework?

Prohibitionists will say that drugs are dangerous, and that prohibition is the safer framework, but in 1996 the Dutch erected a commission consisting of eight experts from a variety of disciplines that looked at the consequences of a fully regulated drug market. They published their findings in *Drug Control Through Legalization – A plan for regulation of the drug problem in the Netherlands*, and their insights were noteworthy. It was estimated that all out legalization would have little effect upon the prevalence of users; that society would save billions; and that prohibition was an ineffective, unjust, unnecessary, and destructive



endeavor. This is what the commission noted on the effect a legalization would have on crime:

[A] general legalization of drugs in the Netherlands will result in a reduction of the criminal money circuit by about 1 billion Dutch guilders and of total crime by about 50-80%. This unprecedented decrease will reduce the crime rate back to the level of the late seventies. This illustrates that the ever-increasing rate of crime has not been merely a natural phenomenon, to be attributed to factors that are hard to influence, such as the disintegration of traditional religious and socio-political organizations, divorces, tv-violence, immigration, unemployment etc. The rise of crime appears to have a clear and rectifiable cause: The prohibition of drugs.^{xix}

Do the Justice Minister presume that prohibition has done a better job in Norway?

In 1971 a Dutch commission concluded that drug policy should be completely separated from criminal law in order to avert a never-ending and increasingly escalating conflict. The Hulsman Commission observed that once criminal law was to be applied to drug policy, "the investigatory apparatus will expand into a vast, well-trained and highly 'weaponised' unit, which must be continually improved and expanded upon in order to maintain the pace of the never-ending escalation".^{xx} As Loek Hulsman, the head of the Dutch commission, stated:

If we choose to make criminal law the main means of deterring drug use, then this choice is not only inadequate, but therefore also extremely dangerous. Time and time again, it shall prove to be an inadequate means, which will lead those in favour of applying penalties to plead for even harsher measures until investigatory activities will become a hundred times more intense than they are under the current situation. [...] They will exacerbate the polarisation between various groups in society, which can result in an increase in acts of violence.^{xxi}

In hindsight, this prophecy appears to have come true. Hasn't also the warning of criminologists materialised in the Norwegian drug policy? Hasn't the prohibition been an equally inadequate remedy here at home despite a manifold escalation of the capacity for violence?



In the 1970s, Norway was blessed with having a robust criminology tradition. Still, the drug-free ideal was stronger, and while the Dutch Government listened to its experts and came up with the coffee-shop system, the Norwegian Government has ignored all opposition to the drug laws for 50 years. Looking back, should the Justice Department have done things differently? Should the Ministry of Justice have taken Professor Nils Christie seriously when in 1996 he [referred](#) to those responsible for drug policy as "fanatics" and maintained the importance of them being kept "under as strong humanistic control as possible"? Couldn't a rights analysis at this time have saved the Norwegian people much pain and suffering?

The defence has drawn attention to the lack of a basis for punishment and that the presumption of freedom remains ignored. Proponents of prohibition will claim that without punishment everything would be worse, but in those areas of the globe where cannabis has been legalized for a while, such as in Uruguay and Colorado, few want to return to disenfranchisement and coercion. Hence, there are adequate examples that responsible regulation is possible – and it does not bode well, either for the police, drug users, or citizens in general, that a regulated market is excluded from scrutiny.

For cannabis users and producers, this is obvious. They have the right not to be unfairly disadvantaged as compared to alcohol users and producers, but don't the police have the right to be the best possible version of law enforcement? Do not employees of the prosecution have the right to work with the law without a nagging sensation that something is rotten? Do not justices and prison authorities have a right to be free from the role of executioner for the community's tendency to look for scapegoats? Should not children have the right to grow up in a world where double standards and unduly invasive laws do not ensure the loss of their mother, father, sister, or brother? Don't parents have a right for their children to grow up without propaganda or the destructive pull of the illegal economy?

As to the integrity of the justice system, Douglas Husak, Professor of Law at Rutgers University, has noted that "War has been declared on drugs. If war is to be declared on something, one would first hope that two conditions would be satisfied. First, the enemy should be clearly identified, Second, the special



significance of the enemy should be demonstrated. Unfortunately, neither condition is satisfied by the war on drugs".^{xxii} If this is so, does not the drug law disparage justice?

It does not bode well, neither for the police nor the citizens, that a regulated market is excluded from investigation. According to the [Police Act](#), the police must "not use stronger means unless weaker means must be assumed to be insufficient or inappropriate, or without such having been tried in vain". If a regulated market has not been considered, how can citizens be sure that the police use the least intrusive means against the population? How have less intrusive remedies been vainly attempted?

If we look back in time, the problems with cannabis, psilocybin, and other substances were far less disturbing before the prohibition. In other words, everything indicates that a regulated regime is more appropriate than a criminal market, so how can the means of force be "necessary" and "in relation to the seriousness of the situation, the purpose of the Police Act and the circumstances in general"? How can the Minister of Justice say that responsibility for law and justice is ensured, when less intrusive measures have not been considered?

International studies [demonstrate](#) a connection between the police's intervention in the illicit drug market and damage to the local community.^{xxiii} It is well-known that much extortion, kidnapping and murder are related to conflicts in the drug market, and the meddling of the police increase the chances of it happening. We also see this in Norway, where the strict approach to law and order in the 1980s resulted in more stigma, diseases, crime, and mortality. The drug market became more organized and ruthless in response to police efforts, while recruitment into crime continued. There are many indications that the rise in crime is linked to drug policy, and if we are to protect children and young people from the drug market (as required by the Convention on the Rights of the Child), isn't it time to think again?

The defence supports the fight against organized crime. In this respect, we believe that legalization is far better than criminalization and decriminalization, as this is the most effective way to drive capital and personnel out of the illegal market. The Norwegian police [have](#) described the ever more organized drug smuggling as



"a local and national concern", and claim "that by removing the drugs we also avoid exposure and recruitment".^{xxiv} However, it has been a long time since police operations made a difference in the market. Despite several large seizures in recent times, the market remains saturated, and it is also not a given that the world will be better off without cannabis.

The last time there was a drought, during the Covid-19 pandemic, the [visible](#) effect was more violence and robbery,^{xxv} and the police [described](#) a shift towards harder drugs.^{xxvi} The police therefore do not "prevent exposure and recruitment" through seizures, but [increase](#) the chances of conflict, so how have the police's efforts made the situation better?

The Supreme Court uses "danger of spread" as the starting point for a system of threshold values, and this concept forms the basis of the penalty frameworks in drug cases. Still, only as long as supply and demand are twisted into a victim and aggressor context does the threat appear real. There is no talk about how much wine we can have in the cellar before it creates social problems, nor about how many beers you can buy in the shop, and compared to alcohol, the problems with cannabis use are smaller. Of the challenges that may arise, impure substances, psychosis, dealings with criminals, criminal intrigues, and problems with the police and child protection services are most relevant. The burden that a perpetual state of war imposes on society can be added, but all of this is linked to prohibition. Does it then make sense to talk about the risk of spread in a traditional context? Doesn't the real danger lie in the prohibition ideology? Isn't it this ideology that makes blind to a bigger picture, that depends on double standards and enemy images to persist, that divides society and is the source of so much suffering?

It is important to remember that the justification requirement for penalizing use and possession has not been met. As the Director of Public Prosecutions points out, the differential treatment of legal and illegal substances is instead a paradox, because the spread of cannabis also has positive aspects. The effect can make people more creative, connected, and interested in personal growth. The altered state of consciousness can increase the quality of social interaction, provide insight, improve the quality of life, and ease ailments. This applies not only to most users but also to those with daily needs, and isn't it time to reconsider the



notion of proliferation risk so that the law can be shaped in line with less misleading terms?

Through announced actions in the period 2022-24, AROD has distributed around 500 grams of cannabis. The police and the Director of Public Prosecutions have not intervened, and what does it mean for the state's authority that AROD can distribute cannabis undisturbed for six hours in Oslo's Main Street? Does it suggest that the prohibition is over? Is the relationship with the Constitution so inflamed that the Director of Public Prosecutions will not enforce the government's policy, or can the Minister of Justice think of other reasons for the deviation from the rule on punishment?

The Norwegian professor of law Hans Fredrik Marthinussen has said that the government has blood on its hands for opposing the drug reform. He has also [stated](#) that "the alleged threat of spread is an example that the rule of law does not apply in drug cases",^{xxvii} and he is right. Because public panic has prevailed, this concept remains the basis for judicial mistreatment, but it is not the mission of the police to continue the hunt for scapegoats. According to the Police Act, the police must "be a part of society's overall efforts to promote and strengthen the citizens' legal security", "and either alone or together with other authorities protect against anything that threatens the general safety of society". Is there anything that threatens "the citizens' legal security" more than public panic? Isn't this phenomenon, historically, that which has undermined law and justice to the greatest extent?

What does public panic mean for the Minister of Justice? Does the minister agree that there is a gap between theory and practice, and that the gap is not settled due to a failure of leadership? In that case, what should the police do when public panic is detected?

The Minister of Justice has been [concerned](#) on social media about how the police "elsewhere in the world" are used by "totalitarian states to enforce cruel laws that restrict fundamental rights". What should the police do in such states as Iran, where the clergy expects the police to enforce a regime of abuse? Should laws be enforced that deny women choice of clothing?



In the public debate, AROD has [shown](#) parallels between the clergy in Iran and the Norwegian authorities.^{xxviii} If the discrimination from alcohol cannot be defended, it can hardly be worse to deny women a right to self-determination over clothing than it is to refuse self-determination in the area of drug use, but for 60 years the Norwegian police have made life miserable for users. More and more police officers feel a discomfort associated with this, so what should they do? Should they work for better management internally, sell cannabis to bring focus on rights (as the Danish policeman Lars Kragh Andersen did in 2011), or refuse to enforce the drug law? Isn't all this legitimate opposition to a system that rejects the rule of law?

What is the Justice Minister's opinion on extremism? Does such ideology only exist in Iran and other distant nations or is it also found in Norwegian drug policy?

According to the [UN](#), extremism is "extreme ideas or actions in which violence is considered an acceptable means of forcing through dramatic social changes and achieving political, religious or ideological goals".^{xxix} Isn't this a description of the prohibitionists?

Is it the prohibitionists or the legalization supporters who have split families and thrown tens of millions of people in prison? Who has used violence to achieve a goal that is further away than ever?

If we look back, legislation against race, homosexuality, vagrancy, and other witch hunts all have in common that the followers wanted to free society from alleged evils. Because the end was supposed to justify the means, the police justified horrible actions, but can't the same be said of the prohibitionists? What distinguishes the Minister of Justice from other extremists?

"Extremism" is a negatively charged term and it is understandable if the minister does not agree. Despite this, the definition transferred to Norwegian conditions is clear: According to the Great Norwegian [Dictionary](#), "a society like Norway is characterized by very broad support for democracy, human rights and the distribution of power as laid down in the Constitution", and it will be "political extreme" to deprive "minorities or opposition fundamental rights, as these are defined in the Constitution and international agreements on human rights".^{xxx} Isn't that exactly what the supporters of prohibition have done?



(don't wait for a reply)

To save the world from drugs, prohibitionists have disenfranchised drug users and demonized sellers, they have made drug use as dangerous as possible, facilitated organized crime, encouraged snitching to the police, used violence, split families, thrown people into prison, and mocked dissenters. Good reasons for doing this have been hard to find, but nothing has caused the prohibitionists to reconsider. Rather than respond to criticism and ensure human rights protection, the prohibitionists have set aside 200 years of legal tradition. For 15 years, the guarantees of the rule of law have been absent because the supporters of the drug law refuse to admit failure, so how can the Minister of Justice avoid seeing the connection with the arbitrary persecution of the past? How is the minister's opposition to self-determination different from that of the Iranian clergy?

It is possible the minister sees the splinter in the eyes of others and not the beam in her own, but the Royal Commission leaves little doubt about the lack of basis for punishment. This report showed that public panic has shaped the drug policy. To the extent that panic has characterized the development, the state will provide an unduly oppressive service, and more and more people [recognize](#) the ban as a continuation of the scapegoat mechanism. Shouldn't the Minister of Justice clean up in her own house rather than criticize regimes on the other side of the earth?

The German Psychiatrist Wilhelm Reich once noted: "It is in the nature of a political party that it does not orient itself in terms of truth, but in terms of illusions, which usually corresponds to the irrational structure of the masses. Scientific truths merely interfere with the party politicians' habit of wriggling himself out of difficulties with the help of illusions".^{xxxi} Does the minister see this quote as relevant for the Norwegian drug policy?

The quote is relevant because professionals such as Nils Christie, Thomas Mathiesen, 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. What does the Minister of Justice think about witch-hunting in drug policy? Do psychological defense mechanisms in prohibitionists play a role in the continuation of punishment?



AROD believes that there is a connection between the Royal Commission's detection of public panic and human rights violations, which means that to the extent that panic has characterized the development, autonomy, equality, proportionality and the presumption of freedom will not be emphasized. What does the Minister of Justice think about the connection between public panic, human rights violations, and past arbitrary persecution? Does the connection appear obvious or is it impossible to spot?

If the Minister of Justice does not see the connection between public panic, punishment on rejected grounds, and human rights violations, AROD's documentation [identifies others](#) who do,^{xxxii} and from the point of view of society, we cannot assume that prohibition is necessary to protect public health. 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 15 years, the Ministry of Justice 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 should have been stopped long ago.

Despite this, the government has its own idea of what it means to take responsibility for persecuted groups and does not want decriminalisation. However, so far we have not received any good answers as to why it is reasonable to discriminate: Does the Minister of Justice still think that people who experiment with cannabis need the police's "help", while others who experiment with alcohol can be left to their own judgement? Is there something we have not covered that opens the door to discrimination?

For obvious reasons, proponents of prohibition have a lot invested in politics. As long as a criminal market exists, there will be prestige, budgets and powers in the war against drugs, but the defense reminds us of page 26 of the Royal Commission's report where, for reasons of principle, the committee does not propose authorizations for treatment by coercion, or for providing health care without the person's consent. The UN's working group against arbitrary



imprisonment is also clear that users should not be forced to help, so does the government's proposed drug reform violate rights on a full scale?

The minister has not explained why a distinction between legal and illegal substances must be continued or the difference between the supporters of prohibition and the clergy in Iran. From a constitutional ethical point of view, the Ministry of Justice, the Storting, and the government tread on the same principles as totalitarian regimes elsewhere in the world, so shouldn't the Accountability Act be emphasized? Wouldn't that ensure a good signaling effect if the goal is to secure the rule of law?

The Courts Commission is clear in NOU 2020:11 that "For the sake of the rule of law, it is important to protect the courts as society's central conflict resolver and to ensure the population's access to the courts". The Ministry of Justice is responsible for the judiciary and prosecution, and every public prosecutor must promote the administration of justice in accordance with the values and principles on which a rule of law is based, including legal certainty, equality before the law and the individual's fundamental freedom and autonomy. The right of judicial review was codified in Section 89 of the Constitution to ensure that rights are not infringed, and will a public prosecutor who opposes the right of judicial review in the courts act in line with the legislator's will?

In 2022, the courts set aside three days to clarify whether the prohibition fulfils a legitimate purpose. Police prosecutor Vilde Humlegård and State prosecutor Henriksbø objected to this and claimed that "it is not the court's duties to assess whether Norwegian drug policy is correct or reasonable at an overall level". The Police Act is clear that the institution's "responsibility and aim" is [to] be a part of society's overall efforts to promote and strengthen citizens' legal certainty, security and general welfare (Police Act § 1, second paragraph), and is this compatible with a right of judicial review? Have Henriksbø and Humlegård failed the legislator's intention, the persecuted, and society in general?

It should be mentioned that Henriksbø is a politician in KrF, which worsens the undermining of the Constitution. Henriksbø used his role as public prosecutor to protect his political party's drug policy from constitutional criticism, and in light of the police scandals that was linked to conflict of interest in law enforcement, what does the Minister of Justice think about a public prosecutor who went against his own ethical guidelines and 200 years of legal development? Is it possible that



arbitrary persecution continues, and that the judiciary is being demolished on the Minister of Justice's watch?

The Minister is responsible for the police and prosecution, and the Norwegian Police Directorate's ethical guidelines emphasize that the role of "society's civil power apparatus" makes it "especially important for employees in the police to have a conscious relationship with ethics, and what is good morals and how one should act". The prosecution's ethical guidelines are clear that every employee must promote the administration of justice in accordance with the values and principles on which a rule of law is based, "including legal certainty, equality before the law and the individual's fundamental freedom and autonomy", but neither the Chief of Police, the Police Directorate nor the Director of Public Prosecutions has reprimanded Henriksbø. What will the Justice Department do to ensure that unfaithful police and prosecuting lawyers do not invalidate rule of law guarantees with impunity?

In the ethical guidelines for the civil service, the Ministry of Justice's responsibility to ensure that the police force holds a high moral standard is emphasized. Nevertheless, the Committee for conduct, integrity, and conflict of interest in law enforcement concludes that the police have not taken sufficient responsibility for a practice that has provided fertile ground for violations of law. The committee raises questions about what has made this development possible: Why has the management not exercised sufficient control to ensure compliance with basic police norms? Must law and order be rebuilt after 60 years of panic?

The Committee for conduct, integrity, and conflict of interest in law enforcement sees the criticism of the police and the NNPF "in light of the changing times in drug policy we live in", and claims that "the problems that are now being pointed out can partly be understood on the basis of the fact that there are now ways of thinking about drugs and drug policy, which in smaller degree than before coincides with the NNPF's drug policy view". How does the Minister of Justice's drug policy perspective differ from the NNPF's? Don't both want more tools for the police and stricter punishments in the fight against drugs? Is there something about NNPF's message that the Minister of Justice finds problematic?

The Committee for conduct, integrity, and conflict of interest in law enforcement claims that it is not a lack of regulations, but a lack of supervision and management that is to blame for the crisis of confidence in the police. Is a minister of justice who stands for the same as the NNPF suitable to deal with the toxic



culture that the Committee for conduct, integrity, and conflict of interest in law enforcement highlights? What has the Minister of Justice done to follow up on the report? Hasn't the Minister warned against taking its conclusions seriously? Rather than doing something about the cause of declining trust, hasn't the Minister of Justice been concerned with "talking up" trust?

The drug-free ideal is the basis for both the Minister of Justice's and NNPF's drug policy attitudes. The Director of Public Prosecutions, the UN, the Council of Europe, and more and more countries have abandoned this ideal because the prohibition does not work. They have realized that the more energy the state spends on fighting drugs, the more damage is caused, and can criminal legislation based on incorrect scientific foundations be necessary and proportionate? Is it not a minimum requirement for a legal system that it is based on a set of regulations that have a scientific basis?

The Criminal Law Commission pointed out 22 years ago the lack of grounds for using the law's strictest punishment against drug offenders. Not only that, but in chapters 3.2 and 3.3 of the Royal Commission's report, words such as "public panic", "disproportionate representation", "misleading ideas", "incorrect investment in punishment", and "reality-resistant wrongdoing" are used 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 60 years if principles such as equality, proportionality, autonomy, and the presumption of freedom were sufficiently emphasised?

The report of the Royal Commission of Drug Policy Reform is the most thorough work done in the area by the Norwegian authorities. In the five years that have passed since it was published, has it been difficult to promote punishment when the premises have been so carefully countered? Has the minister at times found it problematic to put the Center Party's party program ahead of the Royal Commission's conclusions?

It is important to emphasize that human rights do not begin to take effect the day the state recognizes them. Human rights take effect from the day that persecuted groups demand an effective remedy, which was fifteen years ago, and the Accountability Act makes it clear that it must be impeached when members of the Council of State, the Supreme Court or the Storting have breached their



constitutional duties. Section 10 of the [Accountability Act](#) punishes with fines or imprisonment of up to 2 years the member of the State Council who shows ignorance or negligence in her activities, and in ethical [guidelines](#) on the relationship between political leadership and civil service the following is made clear:

The civil service shall facilitate efficient use of resources and exercise its work as efficiently as possible. Within the framework of the Cabinet's overall responsibilities and management, the civil service shall ensure good governance and management. Efficiency is about both cost-effectiveness (doing things right), purpose efficiency (doing the right things) and prioritization efficiency (prioritizing between different goals, purposes, or policy areas (which can conflict with each other) so that the highest possible degree can be achieved of goal achievement.

It is difficult to imagine a policy that has greater moral, human, and economic costs, as well as less goal achievement than drug policy. After 60 years of punishment, the overall [insight](#) shows that the more the police intervene in the drug policy, the more violence, desperation, overdoses, and insecurity [occur](#) in the local area, so how has the Ministry of Justice taken care of its obligation for the consideration of professionalism and continuity over time?

In Prop 92 L (2020-21), the Ministry of Health's review of the drug reform makes it clear that no research supports punishment, and if the Minister of Justice has carried out her duties in line with the Accountability Act, why is panic continued? Why has no cost-benefit or rights analysis done?

To the extent that there are no good answers, the Accountability Act applies. Both the Council of Europe and the UN state that the use of punishment in the drug policy has major negative effects and call for better human rights protection, but the Ministry of Justice has refused to investigate. The commitment to professionalism means that the civil service must use professional criteria as a basis, but several times the experts' advice has been overlooked for political reasons. How are professional responsibilities taken care of?

The ethical [guidelines](#) on the relationship between political leadership and civil service states the following:



In some cases, the law can be unclear or ambiguous and allow for interpretation. In such cases, it is important that the civil service, also to the minister if he or she is to make the decision, explains this uncertainty and the legal room for action. Furthermore, it must be announced what interpretations have been made of the regulations, including what moments and facts that have been emphasized as the basis for the conclusion. The obligation involves, among other things, that the civil service must ensure that the bill that the government promotes to the Storting does not violate the Constitution.

How has this responsibility been handled? As more and more international courts confirm a right to self-determination for cannabis use and more and more countries justify a regulated market with the protection of public health.^{xxxiii} How can the Ministry of Justice be sure that human rights obligations can be defined within a paradigm of prohibition? Has the minister presented all relevant facts to the Storting and been open about uncertain information, uncertain calculations, and on unclear law?

The fact is that since 2009, the Ministry of Justice has been eager to ignore human rights. ARÖA has presented a coherent argument for rights protection, but for 15 years nine ministers of justice have refused to illuminate a blind spot. In this way, the Ministry of Justice has contributed to political arguments being given a false academic cloak, as well as to political positions being presented as the best or the only professionally acceptable solutions, even if other solutions are professionally acceptable. The rule of law dictates that the ministry must promote the least intrusive solution, and that there must be a credible relationship between ends and means, but for 22 years Norwegian studies have confirmed the lack of a basis for punishment in drug policy, and for over 100 years international reports have the same, so on what basis has the Justice Department taken care of its responsibility?

Also relevant to the Minister of Justice's testimony is § 11 of the [Accountability Act](#), which states that "Whoever, as a member of the Council of State, in a manner other than that mentioned in the other provisions of this Act, by action or omission causes something that is contrary to the Constitution or the laws of the kingdom, shall be punished with fines or imprisonment for up to 10 years".



The Minister of Justice has not only opposed the Royal Commission's report and subverted the Constitution; the minister is the supreme protector of a culture that continues arbitrary persecution 15 years after the persecuted sought the protection of the rule of law, and the situation can only go unpunished as long as the system as a whole fails in its responsibility for the protection of minorities. Is that why the Minister of Justice warned against spending too much time on the Committee for conduct, integrity, and conflict of interest in law enforcement's report? Does the Government's fear that rights law will be taken seriously?

For the defence, it appears obvious that the Committee for conduct, integrity, and conflict of interest in law enforcement's [focus](#) on a conflict between governance law and rights law, where human rights have been undermined,^{xxxiv} reveals a problem that a truth and reconciliation commission must remedy. Isn't the deprioritisation of rights law the cause of the crooked course of drug policy? Doesn't that explain why the Criminal Law Commission's recommendations and the Royal Commission's detection of public panic were overlooked? Doesn't the priority of administrative law confirm the lack of rights protection, and doesn't the deprioritisation of rights law link the Director of Public Prosecutions' findings of systemic human rights violations in minor drug cases to a bigger picture?

If we look back, the Criminal Law Commission, the Royal Drug Policy Reform Commission, the Committee for conduct, integrity, and conflict of interest in law enforcement, and the Director of Public Prosecutions' investigation into minor drug cases have highlighted challenges in the drug field. Despite this, the legislature, Ministry of Justice, police, prosecution and courts have maintained a blind spot. 500,000 criminal cases have been instituted on constitutionally dubious grounds after the Supreme Court in 2010 dismissed the right to judicial review without proper justification, and an open wound in legal history must be healed.

It remains to be seen whether an impartial and competent court will determine that the prohibition is necessary in a modern society, but what are the Minister's thoughts? Does the prohibition signal necessary protection or does the state's efforts for public health do more harm than good? Is the legislature free to deny autonomy, or is it better that citizens take responsibility for their own use? What will be the verdict of history on punishment in drug policy?

What are the Minister of Justice's thoughts on the need for a truth and reconciliation commission? Can such a commission shed light on the impact that



sections 231 and 232 of the Criminal Code have had on individuals, families and local communities? Can it shape drug policy more in line with essential values, and will the minister be in favour of such a commission?

The Minister of Justice has not yet apologized to the victims of police brutality in minor drug cases. Will the minister do it today?



Notes

- ⁱ Private correspondence, sent to the European Court with other case documents in 2011.
- ⁱⁱ <https://pace.coe.int/en/files/28769/html>
- ⁱⁱⁱ NOU 2002: 04 section 4.2.2.5
- ^{iv} AALL, *RETTSSTAT OG MENNESKERETTIGHETER* (2008) 128
- ^v Ibid.
- ^{vi} Ot.prp.nr.22 (2008–2009) punkt 4.2.2.5
- ^{vii} NOU 2019: 26 s. 176
- ^{viii} David J Nutt, Leslie A King, Lawrence D Phillips, on behalf of the Independent Scientific Committee on Drugs, *Drug harms in the UK: a multicriteria decision analysis* (2010)
- ^{ix} Ot.prp.nr.22 (2008–2009) punkt 4.2.2.5
- ^x NOU 2002: 04 section 4.2.3.4
- ^{xi} NOU 2019: 26 p. 53
- ^{xii} The Justice Department's defense for punishment is found here: https://www.arodpolicies.org/_files/ugd/a479b9_46549803c67a49fa8fc1287633063e86.pdf
- ^{xiii} Prop 92 L (2020-2021) 25
- ^{xiv} Prop 92 L (2020-2021) 34
- ^{xv} <https://www.riksadvokaten.no/document/horningsuttalelse-om-rusreform/>
- ^{xvi} Melissa L. Bone, *Human Rights and Drug Control: A New Perspective* (Routledge 2021) 36
- ^{xvii} Canada, Germany, and other nations have used the Convention on the Rights of the Child to defend the regulation of the cannabis market. In Canada, Germany, Colombia, and Mexico the Government has argued that the legalization of the cannabis market is necessary to protect children from the harms of cannabis use and to prevent them from accessing it. These countries have all cited the Convention on the Rights of the Child as a key factor in their decisions to legalize or decriminalize cannabis use and possession.
- ^{xviii} <https://rett24.no/articles/-vi-far-se-hvordan-det-gar-i-parker-og-friomrader-utover-sommeren>
- ^{xix} <http://www.druglibrary.org/schaffer/Library/studies/nlplan/index.htm>
- ^{xx} Cohen, Peter, *The earnings model for illegal drugs and the prescient view of the Hulsman Commission. A brief history of an Inquisition* (2021) p. 1
- ^{xxi} Ibid.
- ^{xxii} DOUGLAS HUSAK, *DRUGS AND RIGHTS* (1992) 20
- ^{xxiii} Dan Werb, Greg Rowell, Gordon Guyatt, Thomas Kerr, Julio Montaner, Evan Wood, *Effect of drug law enforcement on drug market violence: A systematic review*, *International Journal of Drug Policy*, Volume 22, Issue 2, March 2011, 87-94
- ^{xxiv} <https://www.vg.no/nyheter/innenriks/i/oWrbXB/narkobeslag-paa-mer-enn-50-kilo-to-tenaaringer-i-varetekt>
- ^{xxv} <https://www.akersposten.no/jeg-skulle-kjope-meg-hasj-men-sa-var-det-ingenting-a-fa-kjopt/s/5-142-51547>
- ^{xxvi} <https://www.nrk.no/mr/flere-prover-farligere-narkotika-pa-grunn-av-koronapandemien-1.15103723>
- ^{xxvii} <https://twitter.com/HFMarthinussen/status/1542083262566334466>
- ^{xxviii} https://www.morgenbladet.no/ideer/debatt/2022/10/07/justisministerens-manglende-selvinnsikt/?fbclid=IwAR312-97hUQ_h-x6z1asg9Fm7u4Mh12JEd9HWmcShn2vscPQ8gC6slmZEKI
- ^{xxix} <https://www.fn.no/tema/konflikt-og-fred/ekstremisme-og-terrorisme#:~:text=Ekstremisme%20er%20ytterligg%C3%A5ende%20forestillinger%20eller%20handlinger%20der%20vold,skyldes%20en%20ekstrem%20virkelighetsforst%C3%A5else%20eller%20en%20ekstrem%20moralforst%C3%A5else>
- ^{xxx} <https://snl.no/ekstremisme>
- ^{xxxi} WILHELM REICH, *THE MASS PSYCHOLOGY OF FASCISM* (1970) 210

^{xxxii} Phil Lord, *Moral Panic and the War on Drugs*, 20 U.N.H. L. Rev. 407 (2022). Se også Michael Vitiello, *The War on Drugs: Moral Panic and Excessive Sentences* (April 2020). *Cleveland State Law Review*, Vol. 69

^{xxxiii} Countries that justify a legal cannabis market with the protection of public health include Canada, Uruguay, and several states in the US, including Colorado, Washington, Oregon, Alaska, and California. These countries have implemented regulations that are designed to protect public health, including restrictions on advertising, product packaging, and product testing. Additionally, these countries have implemented taxes on cannabis products, which can help to fund public health initiatives.

^{xxxiv} As chapter 4.2.1 summarizes the relationship between governance law and rights law: *“The norms for the police's behaviour must be seen in the light of the police's overall role in society. The modern police role is at the intersection of two different ways of exercising power, the democratic and the rule of law. The tension between the democratic exercise of power and its constitutional binding has been conceptualized by historians and jurists as a tension between two different legal paradigms, governance law versus rights law. Originating in the principle of popular sovereignty, governing law sees the court as a tool for the executive and legislative power. Rights law, on the other hand, sees the court as a tool to ensure citizens' personal integrity and freedom, with the help of rights that the state cannot interfere with without having very good reasons. Both paradigms have as a common premise that the exercise of power must be based on respect for basic human rights, democratic principles and rule of law values, but the criteria for assessing, for example, the importance of individual rights, can be quite different from a rule of law perspective and a democracy perspective, respectively.”* It is in this area that the Norwegian authorities have failed the rights law and those persecuted in the drug field. As the report continues: *Good role understanding involves . . . an expectation that the employee balances various considerations in their daily work. An ongoing balancing of different sets of values is essentially a good and hallmark of a modern and trust-inspiring state administration and thus police administration. For the police area, this means that such tensions are a feature of the system, and that the individual employee must balance different and often complex role elements. When it comes to the police's more concrete purpose in society, it is clear from the Police Act that the institution's "responsibility and aim" is, through preventive enforcement and assistance activities, [to] be a part of society's overall efforts to promote and strengthen citizens' legal security, security and general welfare in general”.* The Committee for conduct, integrity, and conflict of interest in law enforcement: *Police and understanding of conflicts of interest: The relationship between the police and the Norwegian Narcotics Police Association* section 4.2.1