



President Marko Bošnjak
European Court of Human Rights

18. March 2025

Complaint against the ECHR for failure to protect human rights

As Germany and other nations regulate cannabis to protect public health, no state can take for granted that the prohibition is necessary. To the extent that a regulated drug market is better for the protection of public health, the prohibition clearly fails to fulfil a legitimate purpose, and the European Court has been tasked to look at this issue.

In the case *Mikalsen v Norway*, the appellant claimed that a right to use cannabis (which had been found by constitutional courts in Mexico and South Africa) included a regulated market. The complaint was supported by professors of law, and as the regulation of cannabis moves forward the need for legal development is plain. The EU has required that Germany and other nations must show that cannabis use is a right that includes safe access if they want to regulate the cannabis industry, and the Parliamentary Assembly and the Pompidou Group have lamented the Court's lack of guidance. Even so, the Court has three times failed its obligation to the European Convention, leaving 700 million people under the court's jurisdiction without an effective remedy.

Treason at the Court

On 13 April 2023, Madame Justice Lorraine Schembri Orland ruled that it was “manifestly ill-founded” to question the premises of cannabis prohibition. Nevertheless, as the UN human rights commissioner and heads of state recommend regulating drug markets to protect against the harms of drug prohibition, this judgment makes no sense. In no way, shape, or form has justice been seen to be done – and what is worse, Madame Justice Lorraine Schembri Orland is covering up the misconduct of her predecessor, Vincent Degaetano.

On 10 April 2012, in another case involving *Mikalsen v Norway*, the European Court of Human Rights ruled for the first time on the merits of the prohibition quest. The complaint was supported by professionals and professors of law, and yet Degaetano protected the drug law from scrutiny. The documentary *Moving a Nation Forward*¹ demonstrates that Norway and

¹ *Moving a Nation Forward* can be seen at: <https://www.youtube.com/@LifeLibertyProductions>



the European Court of Human Rights has failed its responsibility to the persecuted groups, and based on this evidence the European Court was asked to provide minority protection on 23 October 2023.

The complaint held that the European Court of Human Rights, due to a failure of two Maltese Justices, had shied away from its responsibility to persecuted groups. The evidence confirmed that the Norwegian justice system, with no proper justification, had set aside 200 years of legal development to protect the drug law from scrutiny and that the European Court of Human Rights had a responsibility to provide a judgement that respected the rights of 700 million people, but on 8 February 2024 Madame Justice Lorraine Schembri Orland ruled again that it was manifestly ill-founded to question drug prohibition.

This treatment will haunt the European Court and the Council of Europe until a better judgement is made. In situations where the domestic courts were called upon for the first time to determine the legal issue raised, a detailed examination of the applicable law is needed. The judgment must examine all the complainant's submissions on their merits, point by point, and give clear reasons for rejecting them, and this was not done.

Instead, principles of adversariality and equality of arms were breached. The refusal to inquire whether cannabis prohibition fulfils a legitimate purpose is evidently not objectively justified as Germany and other nations regulate the cannabis market to protect public health. On the contrary, ascertainable facts raise doubts as to the impartiality of the Court, and the Court must recognise the public's increased sensitivity to the fair administration of justice.

Effective remedy

To this day, no legal reasoning has been provided for the refusal to deal with the relationship between cannabis prohibition and human rights. Nevertheless, after 60 years of drug policy on totalitarian premises, the cure can be shown to be worse than the disease, and there is a problem between means and ends. This becomes more obvious as the legalization of cannabis moves forward, and the burden of proof rests on 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.

Since 2010, despite an obligation for member States to search for a fair balance between the demands of the general interest of the community and the protection of the individual's fundamental rights, Norway has shied away from its responsibility to perform such human rights analysis. A truth and reconciliation commission has been prepared to assist the Norwegian society through a paradigm shift, but the justice system is covering up gross human rights violations and the misapplication of justice must be undone.



The hunt for scapegoats is a wound that will not heal until the gap between theory and practice is addressed, and the European Court must ensure representation and participation in the political process for those who lack a political voice. The integrity of law depends on it, and the question of a legitimate purpose cannot be ignored without undermining the rule of law.

Several letters on this subject have received no response from the Registry and we ask the President of the Court to act. Effective measures are needed to remedy the corrupting influence that drug prohibition has had on the system of law, and the oversight and disciplinary procedures for judges should ensure the removal of Justice Schembri Orland. Arbitrary persecution continues across Europe because of her failure to safeguard human rights, and the Court must deal with this miscarriage of justice by making sure that the rights stated in the European Convention on Human Rights are protected and upheld.

If this is not done, the rule of law is threatened by justices who put the drug law above the constitution law, and we will contact the Committee of Ministers to begin the process of reforming the Court toward a higher vision for human rights protection. While the committee's primary function is to monitor the implementation of the Court's rulings, it also has a broader responsibility to uphold the overall functioning and integrity of the Convention system, including the Court itself. and it has the authority to address systemic issues within the CoE framework.

Time will tell if drug prohibition corrupted the Court to the point where this must be done. For 15 years, Norwegian prosecutors and justices have made a mockery of law, while the Court has failed to protect basic rights, and the ECHR can expect more cases coming from Norway until there is sufficient integrity to deal with Schembri Orland's obstruction of justice and to provide proper human rights protection. The Court cannot ignore the human rights atrocities that has followed in the wake of drug prohibition without abandoning principled ground, and the Court's president must demonstrate the courage of his convictions or expose a system deeply flawed.

Yours sincerely

A handwritten signature in black ink that reads 'Roar Mikalsen' in a cursive, flowing script.

Roar Mikalsen

President of the Alliance for rights-oriented drug policies