



European Court of Human Rights

12 March 2024

Failure at the European Court to protect human rights in drug policy.

As Germany and other nations regulate cannabis to protect public health, no state can take for granted that the prohibition fulfils a legitimate purpose.

To the extent that a regulated drug market is better for the protection of public health, the prohibition fails to fulfil a legitimate purpose, and last year the European Court was asked 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 experts and professors of law and presented the European Court with one of its biggest challenges. As the regulation of cannabis moves forward, the EU has required that Germany and other nations show that cannabis use is a right that includes safe access, and the need for legal development is plain.

Both the Parliamentary Assembly and the Pompidou Group have lamented the Court's lack of guidance, and yet the European court of Human Rights has three times failed its obligation to the European Convention on Human Rights, leaving 700 million people under the court's jurisdiction without an effective remedy.

Treason at the European 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 the drug market to protect against the harms that accompany 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, the European Court of Human Rights ruled for the first time on the merits of the prohibition quest. At that time also the complaint was supported by professionals and professors of law, and yet the drug law was protected from scrutiny.

The documentary [Moving a Nation Forward](#) demonstrates that the European Court of Human Rights has failed its responsibility to the persecuted groups. It also shows that Norwegian drug users have been denied an effective remedy for more than 15 years, and based on this evidence the European Court was asked to provide minority protection on 23 October 23.

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.

For fifteen years, despite an obligation for COE 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, the Norwegian state has shied away from its responsibility to perform such human rights analysis.

Hence, while the Norwegian Supreme Court safeguards the economic rights of the Norwegian ship owners and the building industry, a two-tiered system of justice is uncovered as basic freedom rights are ignored, and unless the European Court shall expose the same double standards that has ensured the downfall of Norwegian law, 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 of Human Rights 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.

As the Pompidou Group noted on the need for a constant review of human rights:

«Proportionality also speaks to the importance of evaluation and review. The question of outcomes is key. Even if a restriction is deemed proportionate to the legitimate aim in the development of an intervention, it still needs to remain under review if rights are to be fully respected. After some time it may transpire that the intervention in question is not achieving its aims. By definition, a measure that has not or cannot achieve its aim is disproportionate to any restrictions on human rights it may entail. It cannot be 'necessary' for the achievement of an aim». (Drug Policy and Human Rights in Europe, p. 17)

Therefore, to assist the rule of law, and to provide national and international accountability, Norwegian activists are openly violating the drug law. Again and again, cannabis have been brought to the Storting and the Office of the Director of Public Prosecutions to ensure legal proceedings, but the Norwegian Director of Public Prosecutions has refused to prosecute.

It speaks to the merits of the human rights argument that AROD has been allowed to distribute cannabis in the Main Street of Oslo for more than six hours without police interference. This year, to ensure legal development, AROD is [opening](#) a cannabis café in Oslo, and the authority of the state will continue to suffer until justice is done.

Article 6 of the ECHR sets out requirements for certain minimum rights in criminal proceedings. Article 6.2 obliges the state to show that the beneficial effects of punishment are clearly greater than the harmful effects, and Article 6.3 includes a right to call witnesses.

It is on this basis that AROD has challenged the law. Unlike other cases brought before the European Court, we do not accept that prohibition is necessary to protect society, and our [questions](#) to the Minister of Justice must be answered for prohibition to continue.



That is why we return to the European Court of Human Rights. It does not conform with standards of justice to protect drug prohibition from judicial review, and the Court must ensure that the rights of the 700 million people under its jurisdiction are effectively protected and upheld.

This can only be done by making sure that Mikalsen v Norway moves forward without obstruction from Madame Justice Lorraine Schembri Orland. Instead, a Grand Chamber should rule on a legitimate purpose and provide a judgement that deals with the legal territory accompanying drug prohibition and human rights.

This has not been done. Instead, Madame Justice Lorraine Schembri Orland has twice failed to uphold the principles and rights enshrined in the European Convention on Human Rights, thereby undermining the Court's mandate and the protection of human rights within the Council of Europe member states.

The European 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, and the oversight and disciplinary procedures for judges of the European Court of Human Rights should ensure the removal of Justice Schembri Orland.

The information [that](#) has been provided should guarantee the implementation of procedures that will safeguard the accountability and integrity of the Court's judges, and we ask that this is done.

With regards

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

Roar Mikalsen

Leader of the Alliance for Rights-Oriented Drug Policies