

DOES CANNABIS PROHIBITION
FULFIL A LEGITIMATE
PURPOSE?

QUESTIONS TO THE MINISTER OF JUSTICE





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. Justice Minister Knut Storberget did nothing to fix this problem, and when Grete Faremo took over in 2011, the appellant attempted yet again to convince the Ministry to consider human rights. In November 2011, the Ministry of Justice received documentation which revealed that leading authorities on the Norwegian drug policy supported the appellant's claims. 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, the appellant had volunteered to solve several drug crimes provided that the police supported human rights analysis, but the police [would](#) not hear about this. The appellant 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".



The appellant 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 the appellant, 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, human rights violations continued. Looking back, nine ministers of justice have failed to take responsibility for punishment in drug policy, and the Justice Department has [failed](#) its professional responsibility for the law for more than 20 years. After the Criminal Law Commission's report in 2002, the department should have taken its criticism to heart, but instead the ministry has prioritised political theatre over reason-based considerations. This is what happened when the Ministry of Justice in 2007 rejected the Criminal Law Commission's findings because the government had determined in the Soria Moria declaration that it would conduct a restrictive drug policy, and after the report of the Royal Commission in 2019, the Ministry of Justice again ignored the problem with punishment and the principles of the rule of law because the Solberg government, through the Jeløya platform, had made it clear that the prohibition of drugs was to be continued.

Thus, the Ministry of Justice has missed many opportunities for minority protection. To this day, the department will not reconsider the use of punishment in drug policy, and the Minister of Justice has been called upon to testify on the merits of the drug prohibition.



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? Have any evaluation of the pros and cons of a regulated drug market as opposed to a criminal drug market been done? Have there been any cost-benefit or human rights analysis?

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 2007. 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 more than a decade, 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?

For obvious reasons, prohibitionists have much invested in politics. If a criminal market exists, there will be prestige, budgets, and powers in the war on drugs, but the defence recalls page 26 of the Royal Commission's [report](#) in which the committee for reasons of principle does not propose coerced treatment or provision of health care without the person's consent. The UN working group against arbitrary detention [frowns](#) upon any such form of coercion and has expressed concern about disproportionate sentences. According to the Working Group, there is a problem with sentences that are longer than those handed down for serious violent crimes such as murder and rape, and so what does the Minister of Justice think about the Norwegian drug policy? Does it secure human rights?



Over the years, 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 for solving, and the Royal Commission's detection of public panic. What thoughts does the Minister of Justice have about scapegoating in drug policy? Do psychological defense mechanisms among prohibition supporters play a role in the continuation of punishment?

AROD believes that human rights violations are connected to public panic, which means that to the extent that panic characterises development of drug policy, principles such as autonomy, equality, proportionality, and the presumption of freedom will not be sufficiently emphasised. What does the Minister of Justice think about AROD's argument for a regulated drug market based on human rights? Can the minister see a connection between public panic, human rights violations, and the arbitrary persecution of earlier times, or is today's policy well secured?

If the 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,ⁱⁱⁱ 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 14 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 is, therefore, extremely problematic. From the point of view of human rights, goals and means must be credibly related, and if less intrusive measures are better suited, the presumption of freedom dictates that the 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", but the Supreme Court finds that punishment pursues a legitimate purpose by referring to the Ministry of Justice's assessment in [Ot.prp.nr.22](#) (2008–2009), and the problem with the fox guarding the henhouse becomes obvious.

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.^{iv}

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?

While the minister has endorsed punishment, the Ministry of Health agrees with the Royal Commission that there is no merit in its defense. Neither the Supreme Court nor the Ministry of Justice have explained why the Royal Commission is wrong, and the support of punishment in drug policy does not meet the obligations



for a constitutional argument. In [HR-2022-731-A](#), the Supreme Court refers to the Ministry of Justice's "overall assessment", but it is not sufficient to defend punishment by referring to "general concerns", "the protection of public health", or "fundamental values". 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".^v 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, but rather than determine whether there are good reasons for punishing, the Supreme Court takes the wisdom of the drug law for granted. 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 of the defense for drug prohibition is that rather than seeing if there are good reasons to punish, the Supreme Court accepts the assurance of the Justice Department that good reasons exist and that the drug law rests on solid constitutional ground. Furthermore, 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? Following the report of the Royal Commission, which shows the problem of the political process, 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 its true colours and remains loyal 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 AROD 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 legislator's signal and the Ministry of Justice's rejection of the Criminal Law Commission's report, the Supreme Court allows public panic to continue and the persecuted remain without effective remedy.

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, and we must therefore turn to pages 93 and 94 if we want to know more about the justification for punishment. Those who delve into these pages will not find the reading reassuring. 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.^{vi}

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 behavior 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.

It is therefore unclear whether the prohibition signals paternalistic bureaucratic oversight or whether citizens should take responsibility for their own use. The Ministry of Justice and the Royal Commission disagree on whether punishment is necessary or 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 a recommended state of affairs?



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?

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".^{vii}

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 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".^{viii} If this is disproportionate, what about the current penalty framework? Several courts have anchored the right to cannabis use in self-determination,^{ix} and if there are good reasons to choose drugs other than alcohol, why should the state use its power to interfere with drug use?

The minister may point out the differences between the substances and that all drug use is not unproblematic. Cannabis, for example, is a much safer drug than opiates, but [according](#) to independent researchers, alcohol is the worst of all drugs,^x so why should users of other drugs risk punishment and the problems that result from an illegal market? Can the Minister of Justice say something about this that is not transferable on alcohol?

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"^{xi} 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"?

It is the Court's task to assess the Justice Minister's, as well as the Ministry of Justice's handling of rights. However, it is not without reason that the Ministry is held responsible for arbitrary persecution, because [since](#) 2002 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.^{xii}

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.^{xiii}

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.^{xiv} 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? The belief in 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 shouldn't the minister accept 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 while Norway, together with Sweden, are the last European countries to leave behind the drug-free ideal, we must not forget that the laws against drug use, sale, and possession began with a



disregard of constitutional principles. The fear of drugs was widespread, and the legislature assumed in 1961, when the Single Convention was signed, that the world would be drug-free within 25 years.

It did not work out that way, and time has shown that the prohibition is not suitable for reducing supply and demand for illegal substances. Instead, organized crime has grown, and the more the state has fought a war against drugs, the more stigma, violence, deprivation of liberty, alienation, crime, morbidity, and mortality has been returned upon society. This has happened without much positive evidence to show, so does the Minister of Justice think that cannabis prohibition can be defended measured against cost-benefit and human rights considerations?

The defence understands that the question is difficult to answer, as no investigation has been carried out. Still, an overview shows that the 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 as measured in overdoses and deprivation of liberty has been clear, and is this money and the use of state power well spent when more and more evidence indicates that the intrusions into privacy have a high price and that less intrusive measures are better suited? On what basis is it necessary to expose drug users and society to the problems that come with criminalization?

The need for the protection of children and young people has always been the mantra of prohibitionists. The fact that we allow one harmful drug does not mean that it is wise to release more into society is the argument that the Justice Committee and the Ministry of Justice used in 2009 to reject the Criminal Law Commission's pitch for decriminalization, but every lawyer knows that there is a presumption of autonomy, innocence, and liberty in the Constitution, and does the minister believe that this has been sufficiently stressed?

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 Justice Department does not favour tyranny, why not review the unsettled relationship to constitutional law without bias?

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."^{xv}

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."^{xvi} 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".^{xvii}



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?

It is unclear whether the prohibition suggests benign guardianship or whether it is better for citizens to take responsibility for their own consumption. We do not know whether politicians' denial of autonomy is necessary or whether their efforts for public health do more harm than good, but due to the perceived risk of drugs, threshold values have become a compromise between those who want to remedy the damage of drug policy and those who do not want to think a new. Even so, can the minister defend any principled basis?

The Norwegian government equates prohibition with solidarity in practice, but we are more likely talking about bureaucratic mismanagement of an unusually destructive nature. That is why the report of the Royal Commission was so



discouraging for politicians, and "the risk of spread" and "fear of sending the wrong signal" remain weak justifications for punishment, for which there is no empirical evidence. In fact, constitutional courts have linked cannabis use to a legitimate autonomy interest, and if there are good enough reasons to choose drugs other than alcohol, why use police power against unproblematic drug use? Why should drug users risk penalties and the problems resulting from an illegal market?

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

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?

In his consultation input on drug reform, the Director of Public Prosecutions says that "If it concerns actions that lie on the periphery of what should be punishable, the rationale for using punishment should be challenged at regular intervals so that it can be explored whether it still stands." Now the status is, after 60 years, that no one can show a benefit of drug prohibition. What the prohibitionists recite are their own fear-based beliefs, while the damage that results from the policy is obvious. On this basis, the Royal Commission and the Ministry of Health come to the conclusion that punishment for drug use cannot be defended. The Director of Public Prosecutions' investigation into minor drug cases revealed an extensive overuse of force, but a blind spot exists, and if penalties for drug use are exposed as disproportionate, should not the harsher punishments for sale, production, and trafficking of drugs be looked at? Can the Norwegian people rest assured that section 232 of the Penal Code is proportional and just?

It is a basic principle of the rule of law that the longer the punishment, the stricter are the requirements for the law. More severe punishing demands better justification, and the Norwegian justice system regularly sentences people who grow cannabis to several years in prison. We therefore ask the Justice Minister: What punishment does a grower who has produced one kilo of cannabis deserve? What punishment does a grower who has produced 100 kilos of cannabis deserve? And what punishment does a grower who has produced 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 and Thailand, and will also soon be regulated by law in Germany and 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 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?

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".^{xviii} 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,^{xix} and the police [described](#) a shift towards harder drugs.^{xx} 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?



It is clear that some users go on to become dependent on drugs, but does the state have a responsibility to prevent this experience? Doesn't personal growth, which includes the building of integrity, depend on freedom from over-supervision? Can we really 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 the right to develop one's consciousness is central to the human rights tradition. Freedom of speech and thought is linked to this and users attest that substances such as cannabis and psilocybin have great value for moral, cognitive, and spiritual development. Yes, there is the possibility of cannabis addiction, but it is not a given that daily use is problematic. The consumers know their own health, and to the extent that cannabis use causes problems, it is up to the users to take action.

The same is true for alcohol. There is always a possibility that people drink themselves to death, but we know that criminalization in certain areas can lead to dramatic changes in overall crime, and that this was the result of the alcohol prohibition after the First World War. The intention behind the legislation was to get rid of all the disease, crime, social tragedy, and death caused by alcohol, but the prohibition generated so much new crime and social tragedy that after a few years the prohibition was repealed, because the desired effects of the legislation were modest compared to the unwanted ones. This is today indisputable, and there is a professional consensus that the same applies to drug prohibition. On such basis, what reasons other than the hunt for scapegoats maintains the need to punish? Why expose users to threshold values so low that they have to deal with criminals daily? Why not offer users and society 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.^{xxi}

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".^{xxii} 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.^{xxiii}

In hindsight, this prophecy appears to have come true. Hasn't also the warning of criminologists materialised in the Norwegian drug policy?

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?

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".^{xxiv} If this is so, does not the drug law disparage justice?

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? Why do we need a prohibition to help cannabis users but not to limit the damage that alcohol does to society and the local environment?

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.^{xxv} 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?

We see that there are good reasons for considering a legal cannabis market. Nevertheless, the Justice Department and the Storting will not look at the advantages and disadvantages of a regulated market measured against a criminal. Instead, the presumption of freedom is reversed, and public panic and human rights violations are continued. That is why the Minister of Justice is called in to testify. The Ministry of Justice has referred to international law obligations as a basis for continuing a ban, but in the last ten years, the interpretation of drug-political 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 it is compatible with constitutional principles,^{xxvi} and a human rights analysis is needed to determine this. Should the ministry present Norway as bound to the prohibition when no evaluation of its necessity has been done?

The fact that the prohibition was introduced for Norway to comply with international law obligations is not an argument for the continuation of punishment, especially not after the report of the Royal Commission. The report of the Royal Commission showed that public panic has shaped Norwegian drug policy, that punishment must be defended, and that the basis for punishment does not hold up. The punishment's lack of basis is confirmed by the Ministry of Health and Care Services in Prop. 92 L (2020-2021) but despite this, the Minister of Justice will not stop punishing users. Do the Minister of Justice put the political program of her party above constitutional obligations on this basis?

While the Minister leans towards authoritarianism, there are few experts who believe that drug use will increase significantly under a regulated regime, and it is more likely that crime will fall to the level of the 1950s, before the war on drugs accelerated the statistics. As seen, this was the conclusion of Dutch authorities after examining the case, and it only makes sense that the Minister of Justice



should be invested in clarifying whether there is a right to psilocybin and cannabis use, as several courts claim for the latter, and whether this right includes a regulated market. Public panic has been proven in the development of drug policy, and from the drug users' point of view, is it not natural that stigma, social exclusion, and overdoses are connected and that prohibition contributes to problematic drug use? Could not treatment equal to that for alcohol drinkers inspire more sensible drug use? Could it not have contributed to safer drugs and an increased incentive to seek help? Could it not have reversed a development that transforms drug users into criminals?

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

Opiates are special because of the physical dependence. Many people think that regulation of cannabis is relevant because this substance is more widespread and less addictive, but no one suffers more than opiate addicts under the prohibition. No one is serving 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 grouping not deserve a rights analysis when 300 Norwegian lives a year depend on it?

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

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



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

There are also other reasons for regulating illicit drugs as we did almost a hundred years ago with alcohol. We know that prohibition comes with major societal costs, that it forces users to have contact with criminals, and that the illegal market threatens society. For half a century, slowly but surely, the drug trade has corrupted law and order and the institutions intended to safeguard an open society while, at the same time, sacrificing a larger percentage of the population. These are dynamics that receive little attention, but what does dignity entail: is it a drug-free life or one where self-determination is emphasised?

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

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



Addressing the problem of arbitrariness is crucial. The integrity of the department is one reason why more and more police officers are calling for leadership,^{xxviii} but equally important are the rule of law's guarantees for the persecuted groups. As the Director of Public Prosecutions acknowledged in his response to the work of the Royal Commission, the differential treatment of drug users is paradoxical, which strains the authority of the law: Can the idea of good and bad morals be turned upside down? Could this be the cause of public panic and the continuation of punishment, and can principled thinking heal a divided society?

There is much to indicate that this is so. Chapters 3.2 and 3.3 of the drug reform report use words such as "public panic", "disproportionate representation", "misleading ideas", "incorrect investment in punishment", and "reality-resistant wrongdoing" to summarise the development of drug policy. We are dealing with a policy characterised by "stereotypical representations," "moral indignation and motives for revenge," one where "scientific analysis of the drug problem have played a minor role". "Panic" is used several times. Could public panic have been shaping drug policy for 60 years if principles such as equality, proportionality, autonomy, and the presumption of freedom were sufficiently emphasised?

In times of moral panic, it is vital to safeguard the legal system. Even so, neither the Supreme Court nor the Ministry of Justice has explained why illegal drug users must be disenfranchised or punished, and we therefore do not know why the basic lessons from alcohol policy cannot be transferred to other substances. All we know is that the Supreme Court and Ministry of Justice agree that punishment pursues a legitimate purpose, by referring to each other's treatment, but *how* punishment pursues a legitimate purpose remains unexplained. Nevertheless, the idea of a legitimate state interest in prohibition does not appear to be compatible with the findings of a legitimate autonomy interest in cannabis use, as shown by international courts. To ease this contradiction in terms, can the Minister of Justice explain why Norway needs a prohibition law to help cannabis users, but not to limit the damage that alcohol causes to society and local environment? In what way can such double standards be necessary in a modern society?

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.^{xxix}

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

What does the 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? Should the government find new advisers?

What about the Ministry of Justice? The Royal Commission puts the burden of proof is the state, which means that the Ministry is obliged to investigate a regulated market. After the Director of Public Prosecutions revealed systematic abuse in minor drug cases, the leader of the Police Lawyer's Association, Are Frykholm, has [called](#) for leadership and stated to the media that a patchwork solution does not hold up. The [report](#) of the Committee for conduct, integrity, and conflict of interest in law enforcement elaborates on the failure at top to deal with a dysfunctional culture, and does the minister see the need for a more basic review, or are the requirements of the rule of law sufficiently emphasised by the higher prosecuting authority?

The Minister of Justice has not explained why the double standards in the drug policy is compatible with constitutional considerations. Because no investigation



has been made, there is a blind spot, but the report on the use of force in minor drug cases shows that the assessments of the police have been systematically inadequate and that thousands of human rights violations occur every year: How does the current regime safeguard drug users? How can the director's efforts to ensure human rights protection for drug users in meeting with the police prevent arbitrariness? As it is, cannot the police easily justify strip searches by claiming suspicion of sale, whether that is the case or not? Should this question be up to the individual police officer?

In his response to drug reform, the Director of Public Prosecutions emphasises "paradoxes in society's attitude to various drugs". The director acknowledges "that for many people, drug use has positive sides", "that the idea of a drug-free society or zero tolerance for drugs is no longer a real ideal that can govern how we should meet drug use", and that "it can be perceived as a paradox that alcohol is recognised as an acceptable drug, while others – and often substances that during proper use do not have the same harmful effect on society as alcohol abuse – are not recognised".

The Director of Public Prosecutions touches here on the blind spot that AROD wants to illuminate. Human rights prohibit unjustified discrimination in the field of criminal law, and as the director points out, "a recurring theme in the debate on alcohol versus other drugs is that alcohol abuse has much more destructive societal effects than other 'milder' narcotics" do. Based on this, what else but the hunt for scapegoats results in penalties for cannabis users, but not for alcohol users? Why not ensure quality-controlled substances? Is it reasonable to expose users and society to such a burden?

Under the current regime, the police shall distinguish between criminals and addicts. The Director of Public Prosecutions has issued directives, but can we trust the police to assess the threshold for impunity in the best possible way? How should the police separate between health problems and criminal behaviour in the area of drug policy? Is this a job that the minister wants for the police?

What about the distinction between use and sale? Five grams of cannabis can be sold just as much as 20 grams can be for personal use, so how should the police



distinguish between personal use and criminal behavior in the area of drug policy?
is this a job that the minister wants for the police?

This is not a job that the Oslo police themselves want. In its consultation input to the Royal Commission, the Oslo Police District points out the following:

In terms of experience, sellers adapt to the limit for punishment. If we have not been able to prove resale, we have the option of punishing the "presumed" seller for possessing drugs. The Oslo Police District assumes that the same challenges with providing the evidence will be linked to assessing 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 which the police should and must prioritize.^{xxx}

The dread of the police has become reality through the system of threshold values. As the Supreme Court emphasises the legislator's signal more than principled considerations, threshold values distinguish between punishment and impunity, but no one has shown how these values prevent arbitrariness. As long as this is the case, the danger of human rights violations is profound and neither citizens nor the police can be on safe ground. We know, after 40 years of chasing drug users, that a toxic culture exists among the police and that a public prosecutor from the Norwegian Narcotic Officers Association (NNPF) has [claimed](#) that the Director of Public Prosecutions' guidelines will not change much.^{xxxi} We have seen the same disregard for rights law among the prosecution in ARODs case, and should it be crucial to the sense of justice whether drug users meet a liberal or conservative police officer or prosecutor?

It is primarily the NNPF that wants a policy that the Royal Commission and an increasing number of courts find unjustifiable, while LEAP Scandinavia represents their opposite. The latter has long [worked](#) for a comprehensive and open-minded drug policy, and is it not logical to look to this environment if the name and reputation of the police is to be saved? In wake of the report of the Committee for conduct, integrity, and conflict of interest in law enforcement, shouldn't the police force be reformed in line with constitutional values?



Not only do those responsible have a duty to take alleged human rights violations seriously. The state must protect against forces that threaten the open society and provide the police service that society needs. Does the Minister of Justice believe that this is the case today?

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

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

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



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

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.^{xxxii}

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?

Disrespecting rights and duties

The Criminal Law Commission and the Royal Commission are not the only reports that speak to the fact that the drug laws have been built on a sketchy foundation. In 2023, the Committee for conduct, integrity, and conflict of interest in law enforcement released its [report](#) and found that in the tension between two different legal paradigms, governance law versus rights law, the latter had come out short.^{xxxiii} This explains why the report of the Director of Public Prosecutions in 2021 discovered systemic human rights violations in minor drug cases. It also explains why the justice system in ARODs civil disobedience failed to respect human rights, because the problem cannot be located to the narcotics police but to the drug-free ideal. This standard is why thirteen ministers of justice have done nothing to protect the political machinery from the influence of the Norwegian Narcotics Officers Association (NNPF). This requirement is why nine ministers of justice, have ignored the call to protect rights, and as the Committee for conduct, integrity, and conflict of interest in law enforcement noted the failure at top to deal with a dysfunctional culture, what will the minister do to advance the rule of law?

In the [ethical](#) guidelines for the state service, the responsibility of the leadership to ensure proper execution of the police power is emphasized. Even so, the Committee for conduct, integrity, and conflict of interest in law enforcement concludes that the police have not taken sufficient responsibility for a culture that has provided fertile ground for both potential and actual abuse of power. The committee raises questions about what has made this development possible: Why



has the Minister of Justice not exercised sufficient control to prevent a private organization of prohibitionists from using the cloak of the police to shape policy?

When it comes to the purpose of the police, 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 (Police Act § 1, second paragraph). Despite this, the police prosecutor and state prosecutor in AROD's civil disobedience have claimed that "it is outside the court's duties to assess whether Norwegian drug policy is correct or reasonable at an overall level",^{xxxiv} and on this basis, the Norwegian justice system has gone against 200 years of legal development. Does the Minister of Justice agree that it is "outside the court's duties" to ensure that those persecuted by the drug policy have an effective legal remedy? Is that compatible with the right of judicial review?

The right of judicial review is a pillar of the rule of law and secured through Section 89 of the Norwegian Constitution. If the Supreme Court accepts the shipowners and the building industry's right to judicial review and yet denies reviewing the rights of drug users, does this not indicate a two-tiered justice system and is this compatible with the rule of law?

Since the 1970s, liberty rights have been considered to be more important and should receive greater scrutiny than economic rights. Yet, since 2010, the Supreme Court has protected the drug law from review and have the Justice Department at any point taken steps to ensure effective minority protection?

With good reason, the minister has been careful not to interfere with the independence of the judges. However, the minister is responsible for the police and prosecution, and in the Norwegian Police Directorate's ethical [guidelines](#) for the police, it is emphasized that the role of "society's law enforcement" 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 ethical [guidelines](#) of the prosecution authority are also clear that 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 fundamental freedom and autonomy of the individual". Therefore, in protecting the drug law from review, have the police prosecutor and the state prosecutor acted in solidarity with the legislator's intention when codifying the right of judicial review in Section 89 of the Constitution? Did the police and the prosecution's criminal proceedings abide by the [duty](#) to "facilitate for ethical reflections and professional objections" in ARODs case, or could arbitrary persecution continue to be a problem because the prosecution went against its own ethical guidelines and 200 years of legal tradition?

In section 4.2.2, the [report](#) of the Committee for conduct, integrity, and conflict of interest in law enforcement describes central democratic values that lay down guidelines for how the administration of law should function. First, emphasis is placed on the "consideration of citizens' personal freedom and the authorities' responsibility that public organisations, such as the police, have mechanisms that protect from undue infringement on the limits of personal freedom". Moreover, the committee goes on to say:

In addition to the principle of legality in domestic law, human rights form an important framework for the police's activities. Both the European Convention on Human Rights (ECHR) and the Constitution give citizens procedural rights to ensure that, for example, arrests and searches do not take place without sufficient reason, and that such interventions are proportionate and can be reviewed. The human rights protection of privacy can also be important. The protection of privacy can be particularly important in the case of preventive measures that appear to be intrusive to the person exposed to them. If a measure is considered to be an invasion of privacy, it must both have legal basis and be proportionate in the individual case.^{xxxv}

Again, we are reminded of the obligation to protect human rights. As the committee noted, it is not a lack of guidelines that has made it possible for a toxic culture to exist within the police, but a systemic incentive to put governance law before rights law, and while Norway twists the law of supply and demand into a victim and aggressor context to defend the law's strictest penalty, Germany and other nations intend to regulate the market to better ensure human rights



obligations. The Committee for conduct, integrity, and conflict of interest in law enforcement, together with three other Norwegian reports demonstrate that for 20 years the Norwegian drug policy have continued on a constitutional side-track, so what will the Minister of Justice do to rectify any damage?

The Committee for conduct, integrity, and conflict of interest in law enforcement states that not only must the Norwegian society be better protected from power groupings such as the NNPF, but notes that "public organizations must work actively to ensure that underrepresented groups are drawn into decision-making processes. The consideration of deliberation implies that the police leadership has a special responsibility to ensure that all points of view are brought forward, that they are taken up for consideration and become the subject of public debate".

This quote is of interest because AROD has contacted the Department of Justice more than 30 times since 2009 to inform about public panic, human rights violations, and a connection with past arbitrary persecution. How have AROD's views been brought forward, taken up for consideration or become the subject of public debate?

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".^{xxxvi} Does the minister see this quote as relevant for the Norwegian drug policy?

It is important to emphasize that human rights do not begin to work the day the state recognizes them. Human rights have an effect on the day persecuted groups require an effective remedy, which is fifteen years ago, but nothing has been done to inquire into a contested legal landscape. Even so, the Criminal Law Commission's rejection of criminalization as compatible with the principles of the criminal law in 2002, the Royal Commission's detection of public panic in 2019, the disclosure of systemic human rights violations in smaller drug cases by the report of the Director of Public Prosecutions in 2021, and the the Committee for conduct, integrity, and conflict of interest in law enforcement's account of a toxic



culture is interconnected. Public panic cannot be continued without a failure of leadership, and an analogy is relevant as there is a debate about banning fireworks.

It is difficult to say whether a prohibition of fireworks will work as intended. Good intentions can therefore defend the introduction of a law, but if for 60 years fireworks were criminalized to reduce harm and it has not reduced use but has resulted in more crime, alienation, incarceration, death, and injuries: If reports for 20 years have pointed out the lack of basis for penalties and the prohibition law has done so much damage that world leaders [refer](#) to it as "genocide" and "the end of democracy", is it justifiable to exclude change? Can leaders take for granted that a prohibition is within the framework of human rights, and can a demand for judicial review be ignored? If so, what is left of the framework and protection of the Constitution?

The problem is no different for section 231 and 232 of the Norwegian Penal Code. Section 94 of the Constitution states that "no one must be imprisoned or deprived of freedom in any other way without in statutory cases and in the way the laws prescribe. The deprivation of liberty must be necessary and not constitute a disproportionate intervention, but in 2002, the Criminal Law Commission noted that more than six years in prison for cannabis offenses were disproportionate. The Royal Commission puts the burden of proof on the state, and neither the Ministry of Justice nor the Supreme Court have taken responsibility, so how will the minister defend today's penalties when more and more European countries regulate similar activities?

To the extent that the Minister of Justice fails to provide a credible defense of the drug law, Section 10 of the [Accountability Act](#) applies. A member of the Council of Ministers is punishable with fines or with imprisonment for up to 2 years if the minister contributes to the state's properties or other funds not being used properly, or managed, or otherwise shows misunderstanding or negligence in its 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?

As seen in Prop 92 L (2020-21), the Ministry of Health is clear that there is no research to support punishment. Moreover, since NOU 2002: 04 the gap between experts and politicians have widened for 20 years, and both the Council of Europe and the UN human rights apparatus are clear that the use of the criminal law has major negative effects and calls for better human rights protection. Even so, has the Ministry of Justice made any investigation into the consequences of the prohibition and the need to protect human rights?

Section 98 of the [Constitution](#) states that “everyone is equal to the law. No human being must be subjected to unkind or disproportionate discrimination,” but [double standards](#) and [extremism](#) in the drug policy is a fact. Supply and demand are distorted to a victim and aggressor context, for only in this way can drug users be disenfranchised and drug dealers punished. Even so, section 102 of the Constitution requires the State ensures the protection of personal integrity, so how will the Minister of Justice defend the double standards in the drug policy? How does different amounts of drugs determine if users should be pathologised or demonized, and when the danger of distribution is no greater than for alcohol, how is punishment up to 21 years proportionate?

Section 10 of the [Accountability Act](#) is relevant because the commitment to professionalism means that the Justice Department shall base its case processing, decisions, and communication on professional criteria and highlight the effects of policies in its advice to political leadership, the Storting and in dialogue with other



parts of society. Nevertheless, the ministry takes for granted that the prohibition of cannabis is necessary in a modern society and relevant considerations have been ignored. For example, AROD claims that there is a connection between public panic, human rights violations, and the arbitrary persecution of the past, and that the pursuit of scapegoats has been known in criminology and sociology of law for 40 years, but has the Department of Justice investigated such accusations?

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:^{xxxvii} 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?

AROD claims that since 2009, the Ministry of Justice has been eager to ignore human rights. AROD has presented a coherent argument for the legalization of cannabis products and psilocybin mushrooms, but the deprioritization of rights law has postponed important issues. The obligation to professionalism means that the civil service brings the necessary objections to all types of cases as early as possible, but for 14 years the ministry has excluded rights and the Minister of Justice has not informed the Storting about the need to shed light on a blind spot.



In this way, the Ministry of Justice has contributed to political arguments getting a false academic cloak and that political views are portrayed as the best or the only professionally acceptable solutions, although other solutions are professionally acceptable.

In so doing, the Minister of Justice has failed obligations to the office. Rule of law guarantees direct the Ministry of Justice to promote the least intrusive solution, and that there must be a credible relationship between goals and means, but for 20 years Norwegian reports have confirmed the lack of basis for punishment in drug policy and for over 100 years international reports have said the same. Justice Minister Anders attracted attention after an [interview](#) on national television in 2016, where all the Ministry of Justice could [present](#) as support for its case was an unpublished master's thesis from a Swedish medical student, so on what basis can the Minister of Justice claim that the professional responsibility is being maintained? Should Norway, a country dedicated to a liberal rule of law, have a more repressive criminal policy than former police states such as Portugal and Thailand? On what basis are constitutional principles nullified?

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 does not only oppose the Royal Commission's report based on an understanding that reveres constitutional principles; the minister continues to protect a toxic culture and will not apologize to the victims of abuse in minor drug cases because she wants back powers that the Director of Public Prosecution has rejected as being disproportionate. In so doing, the Minister of Justice continues a long tradition of rights violations, as the ministry's disinterest in rights is made evident by the attempts to diminish the impact of several reports. Instead of being a professional secretariat for political leadership, the ministry has taken on the role of political secretariat, and the Minister of Justice appears content to continue the public panic and deprioritization of rights law that has been brought to light.



The Committee for conduct, integrity, and conflict of interest in law enforcement notes that it is "a democratic problem, and a rule of law problem, when police practice and police policy are developed by fiery souls in a private association, rather than being anchored and controlled by responsible police management centrally and locally", but the Justice Minister has supported NNPF's struggle to become a powerhouse in drug policy. Therefore, while the committee calls for leadership, the minister has been more concerned with hiding the scope of a systemic problem, and in the Storting's questioning on February 9, 2023, the minister warned that politicians should not take the report too far, as this could weaken the public's faith in the police.

Nevertheless, AROD contends that the Minister of Justice's loyalty to an outdated paradigm ensures a crisis of confidence. Despite considerable uncertainty about the use of the police power, punishment continues on rejected premises, and 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 means 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.^{xxxviii} 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?

In 1996, Professor Nils Christie [referred](#) to those responsible for drug policy as "fanatics" and maintained the importance of them being kept "under the strongest possible humanistic control". Despite this, the Supreme Court refuses to provide basic human rights protections. Instead, the justice system twists the supply and demand of drugs into a victim and aggressor context for the threat of proliferation to make sense. After all, there is no talk of how much wine we can have in the cellar before it creates social problems, nor about how many beers we 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?



The Norwegian professor of law Hans Fredrik Marthinussen has [stated](#) that "the alleged threat of spread is an example that the rule of law does not apply in drug cases",^{xxxix} 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?

Not only is panic detected by the Royal Commission. With its focus on the tension between governance law and rights law, the Committee for conduct, integrity, and conflict of interest in law enforcement has demonstrated that human rights remain ignored due to a systemic failure, and so how should the police and the prosecution act when public panic is detected? Should police officers and prosecutors accept orders from top or look elsewhere?

In the ethical [guidelines](#), "every employee of the prosecuting authority, must act in a way that promotes a legally secure and trustworthy criminal justice system in accordance with law and order. The reference to law and order is intended to cover all rules and guidelines given in or pursuant to law and the constitution. The rules of international law that the Norwegian authorities are obliged to follow are also covered." Based on these guidelines, should employees in the prosecution enforce section 231 and 232 of the Penal Code without worrying "whether Norwegian drug policy is correct or reasonable at an overall level", or does the responsibility for law and order dictate that employees make an effort to ensure the quality of criminal justice?

Political and administrative leadership has the ultimate responsibility for legislation, but if the Storting, Ministry of Justice and the Police Directorate fail,



the Police Act requires every policeman to "promote and strengthen citizens' legal security, security and general welfare in general". Considering that since 2009, the Ministry of Justice and the Director of Public Prosecution have been informed of arbitrary persecution, but no one has taken responsibility for the use of punishment, will the minister say that employees in the police and prosecution have a duty to oppose the failure of leadership?

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?

In the public debate, AROD has [shown](#) parallels between the clergy in Iran and the Norwegian authorities.^{xi} 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".^{xli} Isn't this a description of the prohibitionists?

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".^{xlii} Isn't that exactly what the supporters of prohibition have done?

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 14 years, the guarantees of the rule of law have been absent because the supporters of the drug law refuse to admit failure, so isn't the connection to the arbitrary persecution of earlier times obvious?

To the extent that the minister accepts the double standards of drug policy, the link to oppressive campaigns of the past may not be obvious. Nevertheless, the basics of tyranny are always the same and the drug-free ideal has been a beast of biblical proportions. In its grip, society has failed to separate right from wrong, but Norway has hypocrisy and double standards that promote persecution; susceptible factions who salute abuse and tell on their friends and neighbours; a police force that kicks in doors and uses violence in search of scapegoats; and rule of law principles that are discounted. How is Norway different from an Orwellian dystopia?

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?

We have seen that the Police Act requires the police not to use stronger means "unless weaker means must be assumed to be insufficient or inappropriate", but that less intrusive methods have not been tried. We have also seen that no one in charge can explain the principled difference between the supporters of prohibition and the clergy in Iran, or why a distinction between legal and illegal drugs is necessary. From a constitutional point of view, the Ministry of Justice violates the same principles as totalitarian regimes elsewhere in the world, so shouldn't politicians and officials be held responsible? Wouldn't that provide a good signalling effect if the goal is to secure the rule of law?

In the autumn of 2022, the Center Party (SP) tried to win votes on the need for more means of force and more punishment by claiming that drug use had increased after the Supreme Court had introduced threshold values and the Director of Public Prosecutions had ensured limited access to means of force. It has since been [revealed](#) that the Center Party used undocumented claims, or what others would call lies,^{xliii} to gain support for a policy that violates human rights. According to the UN, impunity is the biggest problem for securing human rights, and so shouldn't these public officials be held personally responsible?

If the Minister of Justice does not want to emphasize the signalling effect of holding politicians and employees of the ministry responsible for human rights violations, but continues to punish on disproved premises: is that not a signal that the rule of law has failed and that a culture has developed where powerful people are above the law? What is then left of law and justice?

Data indicates that the Storting is not in line with the people. In the autumn of 2022, NRK had a [survey](#) in which over 5,000 people participated, and as many as 90 percent preferred a regulated market. In another recent [survey](#), only 35 percent of the people supported punishment, but the legislature will not reconsider. Instead, public panic defines the political process, and so what does the Minister of Justice think about the culture in the upper echelons? Has it become a tradition in the drug fighting machinery to find managers who support a prohibition regardless of legitimacy? Has 60 years of punishment in drug policy promoted a



culture in which the preservation of prestige, budgets, and powers defines the debate?

We have seen that public panic implies a distance between theory and practice. It also means that the distance is ignored due to a widespread lack of culture, and LEAP is the faction of the police that has shown an ability for self-reflection. While the NNPF has crashed the drug reform by insisting on a need to maintain disproportionate means of power, LEAP wants to build a bridge to constitutional ground,^{xliv} so shouldn't the leadership more actively listen to the latter? And shouldn't NNPF be abolished?

Confidence in the police will not improve until the rule of law is assured and since 2015, the Ministry of Justice has ducked all questions related to human rights. In addition to AROD, the Minister of Justice has also [received](#) questions from the Green Party, but the Justice Department has not been forthcoming. Unless questions can be answered in a sensible way, shouldn't the minister accept the prohibition's problem with human rights and work for a drug policy that can be defended? Rather than adapting the territory to the prohibition map, as the government and the Ministry of Justice does, why not draw a map that respects the terrain?

Apart from the light that the Director of Public Prosecution's report shed on a few weeks' work of the Norwegian police, the politicians, prosecution authority, and the courts have preserved a blind spot. As a result, 500,000 criminal cases have been brought on constitutionally dubious grounds after the Norwegian Supreme Court in 2010 rejected the issue without justification and an open wound in the Norwegian legal history must be healed. It remains to be seen whether an impartial and competent court will rule that the prohibition is necessary in a modern society, but what is the minister's gut feeling? Does the prohibition signal a benign and necessary guardianship, or do the state's efforts for public health do more harm than good? Are the politicians free to deny citizens' autonomy, or is it better for citizens to take responsibility for their own use? What does the minister believe will be history's verdict on punishment in drug policy?

What are the Minister of Justice's thoughts on the need for a truth and reconciliation commission? Could such a commission bring light to the impact



that these policies have had on individuals, families, and communities? Could it bring the drug policy in line with more wholesome values? Could it provide a basis for justice and lead to more effective and equitable drug policies in the future? Will the minister advocate for such a commission?

The Minister of Justice has not yet apologised to the victims of police brutality in drug cases. Will you do so 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 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

^{iv} NOU 2002: 04 section 4.2.2.5

^v AALL, *RETTSSTAT OG MENNESKERETTIGHETER* (2008) 128

^{vi} Ibid.

^{vii} Ot.prp.nr.22 (2008–2009) punkt 4.2.2.5

^{viii} NOU 2019: 26 s. 176

^{ix} Several courts have anchored the right to cannabis use in self-determination. In the United States, the Alaska Supreme Court has recognized recreational cannabis use and the California Supreme Court has also recognized the right of individuals to possess and consume cannabis for medical and health-related purposes, citing self-determination as a factor in their decision. In South Africa, the Constitutional Court ruled in 2020 that the criminalization of marijuana use was unconstitutional and infringed on an individual's right to self-determination. Similarly, the Supreme Court of Mexico ruled in 2018 that it was unconstitutional to prosecute individuals for personal recreational use of cannabis, citing the right to self-determination as a key factor in the decision. In 2015, the Supreme Court of Colombia ruled that the criminalization of cannabis possession and use violated an individual's right to self-determination and autonomy.

^x 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)

^{xi} Ot.prp.nr.22 (2008–2009) punkt 4.2.2.5

^{xii} NOU 2002: 04 section 4.2.3.4

^{xiii} NOU 2019: 26 p. 53

^{xiv} The Justice Department's defense for punishment is found here: https://www.arodpolicies.org/_files/ugd/a479b9_46549803c67a49fa8fc1287633063e86.pdf

^{xv} Prop 92 L (2020-2021) 25

^{xvi} Prop 92 L (2020-2021) 34

^{xvii} <https://www.riksadvokaten.no/document/horingsuttalelse-om-rusreform/>

^{xviii} <https://www.vg.no/nyheter/innenriks/i/oWrbXB/narkobeslag-paa-mer-enn-50-kilo-to-tenaaringer-i-varetekt>

^{xix} <https://www.akersposten.no/jeg-skulle-kjope-meg-hasj-men-sa-var-det-ingenting-a-fa-kjopt/s/5-142-51547>

^{xx} <https://www.nrk.no/mr/flere-prover-farligere-narkotika-pa-grunn-av-koronapandemien-1.15103723>

^{xxi} <http://www.druglibrary.org/schaffer/Library/studies/nlplan/index.htm>

^{xxii} 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

^{xxiii} Ibid.

^{xxiv} DOUGLAS HUSAK, *DRUGS AND RIGHTS* (1992) 20

^{xxv} 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.

^{xxvi} The principle that drug policy conventions only apply as far as they are compatible with constitutional principles is stated in Article 3 of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Furthermore, the principle that drug policy conventions only apply as far as they are compatible with constitutional principles is also stated in the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances. Article 2 of the 1961 Single Convention on Narcotic Drugs states that "A Party shall, if in its opinion the prevailing conditions in its country render it the most appropriate means

of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug". This makes it possible for Germany and other nations to regulate the cannabis market, if that is perceived as the best way of protecting public health.

^{xxvii} NOU 2019: 26 p. 30

^{xxviii} <https://www.dagbladet.no/nyheter/kritiserer-lappeteppelosning-en-han/75796443?articleToken=75db0c4db55af6cdf7eb36046892a8f57f8107e09e9b50bddccb2b7d60af0308>

^{xxix} <https://rett24.no/articles/-vi-far-se-hvordan-det-gar-i-parker-og-friomrader-utover-sommeren>

^{xxx} Prop 92 L (2020-2021) 33

^{xxxi} <https://rett24.no/articles/avviser-at-riksadvokatens-redegjorelse-gir-vesentlig-kursendring>

^{xxxii} Melissa L. Bone, *Human Rights and Drug Control: A New Perspective* (Routledge 2021) 36

^{xxxiii} 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

^{xxxiv} 22-120070AST-BORG/04, Judgement of the appeals court (Borgarting lagmannsrett) delivered 26.10.22

^{xxxv} <https://www.regjeringen.no/no/dokumenter/politi-og-rolleforstaelse/id2958426/?ch=1>

^{xxxvi} WILHELM REICH, *THE MASS PSYCHOLOGY OF FASCISM* (1970) 210

^{xxxvii} 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.

^{xxxviii} 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

^{xxxix} <https://twitter.com/HFMarthinussen/status/1542083262566334466>

^{xl} https://www.morgenbladet.no/ideer/debatt/2022/10/07/justisministerens-manglende-selvinnsikt/?fbclid=IwAR312-97hUQ_h-x6z1asg9Fm7u4Mh12JEd9HWmcShn2vscPQ8gC6slmZEKI

^{xli} <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>

^{xlii} <https://snl.no/ekstremisme>

^{xliii} <https://www.dagbladet.no/nyheter/ga-udokumenterte-pastander/77575721>

^{xliv} <https://www.politiforum.no/gjor-stores-eventyrhistorie-at-politiet-sover-bedre-om-natta/213784>