





# **A RIGHT TO DRUGS?**

**THE EUROPEAN COURT'S RESPONSIBILITY  
FOR HUMAN RIGHTS IN DRUG POLICY**

**-ROAR A. MIKALSEN-**

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**TO THE VICTIMS OF THE WAR ON DRUGS**



***"Ignorance, neglect, or contempt of human rights,  
are the sole causes of public misfortunes and  
corruptions of Government."***

**Declaration of the Rights of Man and Citizen, 1789**





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# Foreword

In this book, we will learn about the lack of a basis for punishment in drug policy by instituting a case in the European Court of Human Rights – an international court of the Council of Europe (COE) which interprets the European Convention on Human Rights. The Council of Europe was founded in the wake of World War II to uphold human rights, democracy, and the rule of law, and the European Court hears applications alleging that a contracting state has breached one or more of the rights enumerated in the Convention (ECHR). Norway is one of the 46 member states, and out of this country comes a complaint that is of great importance for the democracies of the Western hemisphere.

Together with neighboring Sweden, Norway is the last European country to leave the drug-free ideal behind. It is no coincidence that these two countries have been found at the top of European drug-death statistics for decades, and while Norway and Sweden remain established in the prohibition paradigm, other countries have been regulating the drug market to better respect human rights. Half of Europe's citizens will soon be living in a legalized market, but for Germany and other nations to regulate the cannabis industry, they must demonstrate that a right to cannabis use exists. European law releases the member states from taking measures against trade of drugs – including cannabis – if it is based on a right, and the decision of the European Court will

either arrest or assist the European trend towards increased regulation of drug markets.

Norway's prohibition stance may, therefore, do some good. In the past decade, the international drug policy conventions have gone from being interpreted in light of the ideal of a drug-free world to emphasizing the idea behind the conventions, which is to protect the welfare of humanity, and the European Court has a responsibility to 700 million people under its jurisdiction to ensure human rights protection. Considering that the drug free ideal no longer governs policy, society must choose between a criminal market or a regulated drug market, and more and more countries understand that the latter is better for the health of society. This is why Germany intends to regulate the cannabis industry. Not only do cannabis users have a right not to be disenfranchised by being held to a different standard than alcohol users, but the police have a right to provide a better service, the prosecution and the courts have a right to build on proper ethics, families have a right not to be torn apart by dysfunctional and toxic laws, and the nation has a right not to be split by an enemy image that thrives on ignorance.

Indeed, while meting out judgement to scapegoats undermines the integrity of the justice system, society has a right to be free from a morality which feeds on double standards to exist, and a civil disobedience campaign by the alliance for rights-oriented drug policies (AROD) presents an opportunity for the European Court to rule on the validity of

the prohibition experiment. In other drug cases before the Court, the applicant has accepted that the drug law is necessary to protect society, but AROD claims that sections 231 and 232 of the Norwegian Penal Code (i.e., the drug law) mark an unreasonable distinction between legal and illegal substances, that this is a case of arbitrary persecution, and that there is no way around a truth and reconciliation commission.

AROD believes that this is the prescribed therapy for Norway. Such a commission is necessary for society to move on after a major trauma, because that is precisely what drug policy is. As more and more people now understand, the law has wreaked havoc on our morality, and the prohibition of drugs must end for the rule of law to make sense. In this manuscript, a case against punishment will be presented, and there are more than 100 questions that must be answered for prohibition to be continued.

These are the questions into which the Norwegian justice system has stopped all inquiry. Even so, no proper legal reason has been provided for the courts' refusal to deal with the relationship between the drug law and human rights, and it is time for the European Court to provide a more solid judgement.

AROD's complaint to the Court was lodged on 3 March 2021, and news regarding the proceedings can be found on ARODs website as well as the author's blog at Life Liberty Books.

Now, let us look at AROD's way through the Norwegian justice system and how cannabis prohibition is understood to violate human rights.

# 1

## Rights adjudication

*"Looking back the system of Transatlantic slavery didn't need better regulation; it didn't become out of date; it didn't need reforming; exceptions were not needed to exclude more 'races'. No! The system was wicked, corrupt, immoral and needed abolishing – Just like Prohibition!"*

—Julian Buchanan, Professor of criminology (ret.)—

ACCORDING TO THE Lex Superior principle, human rights are above all other legislation. This means that principles of equality, proportionality, autonomy, and the presumption of liberty form a framework that ensures protection against abuse by the state, and a proportionality analysis weighs the right to freedom against society's need for protection. To the extent that disenfranchisement, punishment, and deprivation of liberty are to take place, weighty interests must be demonstrated. The intervention must not only have a legitimate purpose but must also be the least intrusive of all means suitable to achieve the goal, and the right to challenge the law is a cornerstone in the interface between the state and civil society.

In the United States, the principle of judicial review was established in 1803 by *Marbury v. Madison*. America has the oldest living constitution in the world, but the Norwegian constitution of 1814 is the second oldest, and the country's Supreme Court was also the second in the world to judicially review legislation. Since 1822, Norwegian law has built a tradition for the courts' duty to accept the right to judicial review,<sup>1</sup> and it has come to be regarded as both a safety valve and an emergency brake for democracy. Johs. Andenæs – a professor of jurisprudence at the University of Oslo from 1945 to 1982 – considered the right to judicial review as being "at the core of the rule of law" and "one of the West's most important contributions to the world".<sup>2</sup> For this reason, it was codified in the Norwegian constitution in 2015, and in the summer of 2022 the alliance for rights-oriented drug policy (AROD) was given three days in the Oslo district court to show a connection between public panic, human rights violations, and the arbitrary persecution of the past.

The connection lies in the scapegoat mechanism, which means society's disposition to blame disadvantaged individuals or groups for problems that we have a collective responsibility to solve. More shall be said about this phenomenon, which throughout history has resulted in enormous human rights violations. To put it simply, an ancient sacrifice to the gods in order for society to free itself from sin continues in the modern world. From witch hunts and slavery to race, homosexuality, and vagrancy laws, there is the same urge to draw upon double standards to position oneself



as superior at the expense of others, and a lack of integrity in today's population is why punishment in drug policy continues.<sup>3</sup> As Criminologist Evy Frantzen noted in 2002:

*We forgot the lessons from the vagrancy legislation the minute it was abolished – and what is worse, it could be abolished because a minority of this population, through drug legislation, would be vilified and subjected to even harsher punishment. In this way, society's need for scapegoats is sustained. The level of control, however, puts its unmistakable mark on the persecuted groups, and this is well known within criminology. Every day an army of untouchables are reborn. This is the real problem with drug policy.*<sup>4</sup>

This has been known for 40 years in criminology<sup>5</sup> and sociology of law<sup>6</sup>, and in the last 30 years, there has been increased discord between professionals and politicians.

This disagreement has been highlighted in several studies which call into question the use of punishment, and AROD has asked the Norwegian courts whether it is necessary to continue a criminal market when half of Europe is in the process of regulating cannabis: *Is it the case that Norway needs the prohibition law to protect society, or are Norwegians better served by removing sections 231 and 232 of the Penal Code? Are there good reasons for punishment in the domain of drug policy, or would it be better to acknowledge the hunt for scapegoats and the arbitrary persecution of earlier times?*

This question must be answered for drug prohibition to continue. An effective remedy lies at the heart of human rights law, and the definition of arbitrary detention is simple: we are dealing with arbitrary arrest when the law is not within constitutional limits. To be within constitutional constraints, the law must be measured against principles such as equality, self-determination, proportionality, and the presumption of liberty; the law must promote a legitimate purpose, be the least intrusive of all available instruments, and reflect a well-adjusted balancing of the right to freedom as measured against society's need for protection. It is the state's responsibility to show that this is the case, but no one has documented that punishment is a good idea. Politicians have imagined drugs as the enemy at the gate, an evil against which war must be declared, but whether the enemy must be fought by tyrannical methods is disputed.

While prohibitionists see punishment as necessary to protect public health, it has not reduced supply or demand. Prohibition has instead made drug use as dangerous and destructive as possible, while at the same time giving organized crime increased influence, and the more the police interfere in gang activity, the more violence and insecurity also arise.<sup>7</sup> Columbia's president told the UN in September 2022 that "democracy will die" if the drug market is not regulated, and the relationship between ends and means is increasingly contested.

When it comes to human rights, this relationship is of great significance. A cure that is worse than the disease has no right to exist, and while representatives of the Norwegian state claim that punishment is necessary to protect the children or preserve public health and safety, this requires them 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.

This has not been shown. Instead, courts from Argentina, Colombia, Mexico, Georgia, Alaska, and South Africa have recognised autonomy for cannabis use, and there is not a politician who believes in his or her heart that punishment works, that it can lead to a drug-free society, or that a criminal market is better than a state-regulated market. As Julian Critchley, a former senior civil servant who was responsible for coordinating the British government's anti-drugs policy, noted in 2008:

*I think what was truly depressing about my time in UKADCU was that the overwhelming majority of professionals I met, including those from the police, the health service, the government and voluntary sectors held the same view: the illegality of drugs causes far more problems for society and the individual than it solves. Yet publicly, all those intelligent, knowledgeable people were forced to repeat the nonsensical mantra that the government would be*

*'tough on drugs', even though they all knew the government's policy was actually causing harm.<sup>8</sup>*

The same phenomenon can be seen in Norway and elsewhere. In times of moral panic, integrity is punished because the government depends upon an exaggerated enemy image to stand a moral ground, and it takes courage to break rank. In the 1980s, when the war on drugs was running rampant, few dared to speak up but by the 2000s, the cultural climate had matured to a point where prohibitionists could not that effortlessly claim the moral high ground. It had been evident for 30 years that the emperor had no clothes, and if integrity was rare, Norwegians got a display in 2008, when Willy Pedersen, a professor of sociology who had previously defended the drug law, rejected his former position in the media. Prohibitionists were quick to express their emotions over this betrayal, but they could no longer elevate themselves above others simply by questioning their loyalty.

As more and more experts came forward, it was clear that the data overwhelmingly favored an argument for legalization and a resistance had formed which wanted to do away with a dysfunctional policy. Consisting of professionals and activists from a varied background, this opposition was tired of being dismissed as frauds (or drug users) whenever they questioned the premises of prohibition—and one of those who spoke out was Svanaug Fjær, a former board member of the Norwegian drug research institute (SIRUS). Coming to the professor's defense, she mentioned how former leaders at SIRUS had

been punished for questioning basic premises and wrote the following on the politicization of science:

*As scientists have accepted a role as guardians of state-policy, evidence-based drug policies have become a taboo for SIRUS. Because of this, researchers find themselves in a situation where the focus remains technically advanced epidemiological studies. Tough questions must be avoided. . . . The demand for scientific neutrality has resulted in a special kind of loyalty which in turn has made it difficult to study objectively the premises of prohibition. Serious research into alternative forms of regulation is virtually non-existent. [As seen in this case of the Norwegian professor,] the psychological need to conform to the status quo is so great that researchers will attack their own whenever they question the party line. Rejecting his argument as being 'oversimplified' and 'seducing', the article from the researchers at SIRUS . . . shows how they are part of an environment that is dominated by the will to continue a certain kind of policy. The study of the premises of this policy is neglected.<sup>9</sup>*

As an accomplished scholar of Norwegian policy, Fjær had previously noted these obstacles when presenting her research project. As she said in 2005, after studying the development of Norwegian policy:

*For those who study drug policy, it is easy to be dragged into a common understanding of the problem, one that demands clear answers. It has been difficult to establish an independent, inquisitive position without becoming alienated. . . . It has been difficult for researchers to find any other role than as a supplier of politicalized data. If you question the premises, they will question your professionalism as well as your moral constitution. This has been evident for a long time, even though it has become more obvious over later years. . . . drug policy is not rational but the result of public opinion.<sup>10</sup>*

According to Fjær, Norwegian policy reminded of a "totalitarian solution,"<sup>11</sup> and she was right. After the moral panic had reached its zenith in the 1980s, Norwegian experts knew very well that policy had been informed by irrational fears, and more and more people were getting the picture.<sup>12</sup> Even a former Justice of the Supreme Court, Ketil Lund, went public, calling the Norwegian drug policy "a reality-resistant transgression" accompanied by "extremely damaging costs", and added: "It has been horrifying coming to understand and acknowledge my participation in this – and, unlike those who only now begin to grasp the drug war's massive and pointless expenditures, I cannot claim that I did not know any better."<sup>13</sup>

According to this Justice, the zero-tolerance approach had not only ensured the rise of organized crime; it had "ensured a dehumanizing impact en masse, and its most disgraceful result

was all those lives that had been destroyed because of prohibition."<sup>14</sup> Hence, it should come as no surprise that ARODs civil disobedience has many supporters, including the former Supreme Court Justice, and the increasing divide between the experts and the politicians speaks volumes. This divide is a testimony of the extent to which drug prohibition has failed to deliver on its promises, and so let us see how this has resulted in increased tension between Norwegian policy makers and professionals.

# 2

## Conflict between experts and legislators

*"I don't think there is any malice behind it. I think there is a lot of idealism, but idealism carried forward with a force as strong as this can lead to terribly dangerous results, and it is important to keep idealistic fanatics – and I think our drug politicians are fanatics – under as strong humanistic control as possible."*<sup>15</sup>

—Professor of Criminology Nils Christie, 1996—

THAT PUNISHMENT IN drug policy does more harm than good has been known for a long time. In Norway, criminologists Nils Christie and Ragnar Hauge, together with sociologist of law Thomas Mathiesen, realized in the 1970s that the hunt for scapegoats made drug prohibition continue, and by the 1990s, leading jurists caught on.

Legally, the conflict began with the Criminal Law Commission's majority which pointed out the lack of basis for punishment in 2002. This commission was set up to bring the Norwegian Penal Code in line with modern considerations,



and the commission's report not only showed that the prohibition on drugs was incompatible with basic principles but it also cast doubt on the politicians' moral compass.

The commissioners stated that "the legislature has had an overly optimistic belief in what can be achieved with punishment", that "in many cases it appears to have been a short route from a type of action that has been disliked by the governing authorities, until it has been punished", and that "the relationship between the benefits and costs of the punishment has not always been sufficiently assessed".<sup>16</sup> The commission believed that "society will be better protected against ill-considered populist trends if the courts control the level of punishment than if politically elected representatives are responsible for a regulation of the penalty reactions", and that "in the same way as with the use of alcohol, tobacco, inhalants and doping agents, according to the majority, the use of narcotic substances should also be without punishment".<sup>17</sup>

The Criminal Law Commission's majority asserted that "such use must be combated by means other than criminal sanctions", but the legislature would not listen. Already when Minister of Justice Odd Einar Dørum accepted the proposal, he made it clear that it was "totally out of the question for the government to do anything to legalize drugs".<sup>18</sup> The Minister of Justice did not even consider the arguments for reform. It was determined in the declaration of the coalition government that the government would oppose any legalization of drugs, and Johs. Andenæs, a member of the Norwegian Criminal

Law Council for 41 years, objected. He replied that "Dørum speaks before he thinks» and called it "old-fashioned when the government does not even want to discuss the legalization of drug use".<sup>19</sup>

These were strong words, but Andenæs had realized in 1996 that "the verdict of the future most likely will be that our drug policy has been the century's biggest misinvestment in punishment".<sup>20</sup> Professor of criminology and drug researcher Ragnar Hauge, who was also a member of the Criminal Law Commission, called the averseness to a principled debate "a democratic problem"<sup>21</sup> but in the dispute between experts and lawmakers, the latter did not listen to reason, and the Justice Committee and the Justice Department rejected the work of the commission.

This is how punishment continued, but it was at least clear that the political process had failed the drug users. As shall be seen in the next chapter, they therefore looked to the legal system for adjudication, but it was not until the Royal Commission on drug policy reform in 2019 that rights got the attention of the government. Unfortunately, the rights of those with more than a few user doses were overlooked, but when considering the basis for punishing drug use, the report stated:

*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.*<sup>22</sup>

The Royal Commission's report is therefore a problem for those who want to continue punishment. Punishment must be justified, otherwise it is abuse, but the report is not reassuring. The myth of the drug fiend is summarised as "political fiction", and words like "unbalanced views", "misleading perceptions", "misapplication of punishment", and "reality-resistant iniquity" summarize the development of drug policy. We are dealing with a debate characterised by "stereotypical representations", "moral indignation and revenge urges", and one in which, a "scientific understanding of the drug problem has played a minor role". "Panic" is used several times and this catastrophe of a political process is behind the Norwegian law's highest penalty.

This should worry authorities. In 2002, the Criminal Law Commission objected to the disproportionality of punishing drug dealers more severely than murderers and child rapists and proposed a maximum sentence of no more than six years for cannabis related offenses. Even so, the Norwegian justice system regularly hands out sentences three times as high, and this is problematic. The stricter the sentencing, the greater is the duty of the state to show that punishment is proportional and just – but if compulsory rehabilitation, blood samples, and

searching through the phone and underwear of drug users is disproportional and unjust, as the Royal Commission and others suggest, how can even more invasive procedures be defended?

To this day, no answer exists. A blind spot remains but the Parliamentary Assembly of the Council of Europe has noted "that strong evidence suggests that purely repressive policies which ignore the realities of drug use and dependence have been counterproductive and generated large-scale human rights abuses. These include highly damaging spillover effects in terms of public health and mortality rates, violence and corruption, discrimination, stigmatisation and marginalisation, disproportionate sentencing and prison overcrowding",<sup>23</sup> and Michelle Bachelet, UN High Commissioner for Human Rights, has called for "tackling the discriminatory application of criminal law at every step, including by bringing drug-related laws that have discriminatory outcomes into line with international human rights standards".<sup>24</sup>

It is about time. 25 years has passed since a group of 770 academics wrote to the UN Secretary General in 1998, declaring that "the global war on drugs is now causing more harm than drug abuse itself", and asking the bureaucrats "to initiate a truly open and honest dialogue regarding the future of global drug control policies; one in which fear, prejudice and punitive prohibitions yield to common sense, science, public health and human rights".<sup>25</sup>

Since this letter, more and more professionals<sup>26</sup> have noted the connection between moral panic and human rights violations, and the European Court has a responsibility to the people under its jurisdiction to provide guidance. Within few years, most Europeans will live in a country that regulates the cannabis industry, and the Court must decide (1) if there is a right to use cannabis and (2) if this right includes access to a safe supply. Both the COE Parliamentary Assembly and the Pompidou Group have lamented the lack of guidance from the Court,<sup>27</sup> and it is time to bring light to a long-ignored area of law.

As mentioned, several courts have provided judgements, finding that human rights principles invalidate punishment for cannabis use and possession. No court has yet confirmed a right to safe access, but the wickedness inflicted on society by alcohol prohibition was nothing compared to the prohibition of drugs, and it is therefore not possible to talk about human rights without allowing for a regulated market.

Considering the importance of this case, it should be labelled for more expeditious processing as an "impact" case under the European Court's new category IV-High. The conclusion of the case might not only lead to a change in or clarification of international or domestic legislation or practice but deals with an emerging or otherwise significant human rights issue, and all criteria are fulfilled.

The willingness or ability of Norwegian officials to answer the questions of the rights-oriented debate should inform the

Court's reasoning, and in the balancing of scales no one should be surprised if the drug dealer is found to be an agent of autonomy, while the policeman is shown to be an agent of tyranny. If so, reparations must be made, and the moral code of society must be calibrated towards more wholesome ideals, values, and principles through a recognition that drug prohibition has been a crime against humanity—a mass-movement gone wrong.

# 3

## Moral panic and civil disobedience

*"I do not think that prohibition will lead to a situation that you have no drug problem. Never. Prohibition is more likely to enlarge the problems than to reduce the problems. We have in this country of 16 million citizens about 600,000 people use soft drugs, incidentally or more frequently, and we do not have a problem with it, the police. None whatsoever".<sup>28</sup>*

—Jan Wiarda, Chief of Utrecht Police, 1996—

AS SEEN, PROFESSIONALS have argued for many years that drug prohibition makes the problems associated with drug use worse. Still, there are many people who fear the consequences of increased drug use, and this has been the case for many years. In the 1960s, the American war on drugs became international, and a fear set in. To purge the world of drugs, the UN Single Convention was established, and it was believed that the scourge would be eradicated within 25 years. This did not happen but to wipe out drug use an immense control apparatus was put into effect. By the 1980s, Norway

had Europe's greatest police force per capita dedicated to keeping drugs away from the youth, but the only visible result was more overdoses, inmates, and devastation.

Criminologists noted with horror the destructive path of drug policy. They had seen it coming, for not only had a Dutch commission in 1971 concluded that drug policy should be completely separated from criminal law in order to avert a never-ending and increasingly escalating conflict, but 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".<sup>29</sup> 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.*<sup>30</sup>

Still, the drug-free ideal was strong, and while the Dutch Government listened to its experts and came up with the



coffee-shop system, the Norwegian Government ignored all opposition to the drug laws for 50 years, and it was not until 2018 that the government commissioned a study to look at the rights of drug users. The Royal Commission on drug policy reform worked for a year and confirmed in 2019 that moral panic had informed the development of policy, that punishing drug use was incompatible with principles of law, and that decriminalization was recommended. This finding was consistent with the 2002 report of the Norwegian Criminal Law Commission, but prohibitionists ensured that the work of both commissions were ignored.

Throughout the period from 2019 to 2021, therefore, the Norwegian drug reform was hotly debated. The report of the Royal Commission put responsibility for human rights on the state, and AROD and other NGOs made it clear that it was not possible to go from criminalising to pathologising drug users without emphasising human rights principles. In hearings and over 80 articles in the public debate, AROD pointed out that rights were disputed and that the state was compelled to carry out a general human rights analysis – one that did not contend itself with looking at the rights of only single-dose users, but also those with many doses.

This was the mandate that the Royal Commission failed to act upon. It was appointed to inquire whether the proposed legislation was within the limits of human rights, and as the proposed legislation entailed punishment for those with more than a few grams of illegal drugs, the commission should have

enquired if this was compatible with the rule of law. Instead, because the government was adamant that the prohibition was beyond reproach, the commission omitted to look at rights in general. The result was a planned system of decriminalization, where drug users with a few grams of illicit substances were beyond the reach of the criminal law. This system of threshold values, which still marked out those with more drugs for punishment, was without a principled basis, and to provide the Norwegian drug reform with a legitimate foundation AROD approached the Standing Committee on Health and Care Services, the Royal Commission on drug law reform, the Ministry of Health and Care Services, the Ministry of Justice and Public Security, the Standing Committee on Scrutiny and Constitutional Affairs, and the Prime Minister's Office. All parties and politicians were informed of the responsibility for securing human rights, but constitutional limits were ignored.

The Standing Committee on Scrutiny and Constitutional Affairs would not interfere with the work of the Standing Committee on Health and Care Services. The Ministry of Health also did not want to get involved and transferred the responsibility for the persecuted to the Ministry of Justice following pressure from civil society. The Ministry of Justice responded by shifting responsibility back to the Department of Health, which after several inquiries failed its professional responsibility and referred the matter to the Norwegian Parliament. In this way, disclaimers of responsibility marked the political process, and rather than offering a human rights

analysis, or answering questions about rights, the drug policy continued on totalitarian terms.

Thus, AROD announced a campaign of civil disobedience, and the main police station in Oslo was chosen to provide the police with an opportunity to support the rule of law. During the drug reform, it was revealed that the police had a toxic culture of using illegal and unduly repressive sanctions against drug users. A study done by the Director of Public Prosecutions in 2020-2021 showed a pattern of human rights crimes. Even so, this study, like the Royal Commission, only looked at minor cases and there was a blind spot which the police were invited to shine a light on.

Reports from the COE's Parliamentary Assembly and the Pompidou Group, along with accepted guidelines, were clear that the state had to provide better human rights protection.<sup>31</sup> The Royal Commission put the responsibility on the state to show that the system of prohibition was rational and just, and on September 11, 2021, AROD set up a table with cannabis and psilocybin products at the main police station in Oslo. With this event, the drug policy was brought to the courts' attention, and AROD was allowed three days in the district court to show a connection between moral panic, human rights violations, and the arbitrary persecution of the past.



*ARODs civil disobedience at the main police station in Oslo on 11 September 2021*

With the assistance of documents, witness testimony, and documentary movies, it would be shown that panic had been detected by reports from a variety of countries. It would be demonstrated that already 25 years ago, there was enough evidence to do away with the system of drug prohibition and that a human rights analysis could have saved many lives and much suffering, but the Norwegian police did not want to review the law.

In direct conflict with the ethical guidelines, the prosecutor would not "promote a legally secure and trust-inspiring criminal justice system in accordance with the law and legal order". The guidelines states that "the reference to law and order is intended to cover all rules and guidelines given in or pursuant to law and the constitution". This means that the prosecution must respect "fundamental values and principles on which the administration of justice is based, including the rule of law, equality before the law and the individual's fundamental freedom and autonomy",<sup>32</sup> but the prosecution asserted that the courts were not the place to discuss drug policy, and the judge accepted this argument. On May 4, 2022, the district court therefore decided to cut off all the evidence of the defence; on May 16, 2022, the defense appealed this verdict; on May 31, 2022, the appeals court rejected the request to maintain the evidence, and while a plea immediately was filed for the main hearing to be postponed, the defense did not get to try the justness of this decision.

The day after, on June 1, 2022, trial was held in the district court, chaired by the same judge that had denied the evidence. Due to a lack of confidence with regards to the competence and impartiality of the judge, a complaint was put on record, but the trial continued despite objections. Throughout the proceedings, the appellant's right to judicial review of the law was ignored. Neither witnesses, documents nor documentary films were allowed to be presented, and the district judge defended the decision by saying that "we must distinguish between the law and assessing a conflict with the constitution and human rights".<sup>33</sup>

No court who recognizes the importance of human rights would agree, but on June 14, 2022, the district judge presented a 15 days suspended sentence and a fine of 5000 N.KR (€500). According to the judge, this was just and proportional, and the appeals court agreed. On October 26, 2022, therefore, the appeals court rejected the arguments raised by the defense and on December 20, 2022, the Supreme Court followed up, rejecting the right to try the law.

No legal reasoning was provided, which is incompatible with 200 years of Norwegian legal development. Since the 1970s, liberty and autonomy rights have held more sway in the constitutional hierarchy than economic rights, meaning that they shall be reviewed more carefully. Yet, while the Supreme Court has interfered with the political process when the Norwegian shipbuilders and the real estate industry's economic rights were at risk, the court refuses to do the same

for a disenfranchised and persecuted minority in drug policy, and this is a clear violation of the right to a fair trial and effective remedy.

# 4

## Fight against windmills

*"Maybe [some nations] need a problem, just to continue political and social debate. And these happy countries in the northern part of Europe do not have so much real problems in day-to-day life. And so [they think], if we succeed in making a problem from drugs, then we have something to problematise about."*<sup>34</sup>

—Jan Wiarda, Chief of Utrecht Police, 1996—

IT MUST BE mentioned that ARODs civil disobedience was not the first time Norwegian activists had taken to the courts or that Norwegian officials were held responsible for human rights violations. In August 2009, the Justice Department and the Director of Public Prosecutions had been contacted with claims that drug policy was driven by moral panic and that a human rights analysis was needed to ensure that the drug laws were within the limits of human rights. According to the complaint, which was made by the appellant, drug prohibition had failed to protect society. Rather than eliminating supply and demand, it had created a criminal market which threatened to undermine the security of the state and the foundation of democracy; it had brought stigma, alienation,



criminality, sickness, and death without much positive in return, and from 2008 to 2010 the appellant requested the courts to provide an effective remedy.

The same human rights argument that is put forward today was at trial, but the lower courts did not listen and the Supreme Court Appeals Committee reasoned in 2010 that the legislative branch was free to do as it saw fit. In matters of drug policy, the state was left a wide margin of appreciation, and so activists continued to push on the Justice Department and the Justice Committee to deal with the problem of arbitrary persecution. As to the Ministry of Justice, 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,"<sup>35</sup> 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 needed to be answered for this to be done, but the request was ignored.

In this way it continued. Justice Minister after Justice Minister failed to take responsibility for punishment in drug policy and looking back 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's 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 look at the use of punishment in drug policy, and while Professor of law Henriette Aasen, a member of the Royal Commission, has noted that AROD brings up "important perspectives", the Director of Public Prosecutions has also failed in his responsibilities. As mentioned, the prosecuting authority was informed about the lack of a basis for punishment in 2009, but Director Tor-Aksel Busch rejected the right to judicial review. According to the director, it was impossible to demonstrate a problem between the prohibition and human rights – an argument that has been shown to be incorrect by a handful of international courts. On March 1, 2019, therefore, after the Royal Commission had shown drug policy to be informed by moral panic, AROD contacted the Director of Public Prosecutions and referred to previous

correspondence where the director was invited to support the right to an effective remedy, as well as his answer that this was an issue better left for the courts and the legislative branch.

That response was clearly not good enough. By 2019, these institutions had shown that in times of moral panic they could not be trusted to uphold the rule of law, and in hindsight the Higher Prosecuting Authority should have heeded its own guidelines. As is stated about goals and values: "The criminal justice system, including our own actions, must at all times withstand a critical light. The humane aspect of criminal justice has an intrinsic value which must be retained, and legal certainty in the broadest sense is of decisive importance." Add to this that the the Police Act requires law enforcement to "be a part of society's overall efforts to promote and strengthen citizens' legal security", and "either alone or together with other authorities protect against everything that threatens the general safety of society", and the responsibility of the Director of Public Prosecutions becomes plain.

After all, nothing threatens the citizen's legal security more than public panic. To the extent that panic is present, the rule of law will be compromised, and it is therefore, as the Director of Public Prosecutions has stated, "no fundamental conflict between good crime fighting and human rights". Instead, the two follow as one from an understanding that is built over time, and more and more officers of the law feel increased uncertainty. In 2019, therefore AROD informed the director

that several hundred thousand citizens had rights that remained overlooked. AROD also mentioned that as a result, the respect for law and order had been severely damaged, and a proposal was made. Since the Director of Public Prosecutions, ten years earlier, had denied the right of judicial review to serious drug offenders, AROD proposed to supply the prosecution with the amount of cannabis that the Director of Public Prosecutions deemed appropriate to trigger rule of law guarantees, but the director did not follow up.<sup>1</sup>

AROD therefore looked forward to Director Tor Aksel Busch's departure and delivered a new letter on June 10, 2020, when Jørn Sigurd Maurud took over the direction of the prosecution. In this letter, AROD thanked the new director for his involvement in the drug reform (where the director had advised decriminalisation) and called for accountability. At that time, the fight for human rights had been going on for over ten years. The Ministry of Justice, the Ministry of Health, the Justice Committee, and the Standing Committee on

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<sup>1</sup> Before this, in 2009, the Higher Prosecuting Authority had declined a human rights defense because 300 kilos of cannabis were involved and the Director of Prosecutions had no doubt that the defendant deserved to be in prison. In this way, the principle that the stricter the punishment, the greater the demands placed on the law was overlooked. The appellant therefore offered the Oslo police and the Ministry of Justice two tonnes of cannabis crimes if the right to fair trial and effective remedy was emphasized, but no one wanted to consider human rights. Based on this, AROD in 2019 challenged the director on what amount was considered appropriate to activate the right to judicial review.

Scrutiny and Constitutional Affairs were all informed of arbitrary persecution, but no action had been taken to protect human rights. Not only had state prosecutors and judges in four court hearings from 2008 to 2010 rejected the right of judicial review by leaving drug policy to the legislature, but the Supreme Court's Appeals Committee did the same in 2010, ignoring a jurisprudence going back to 1822, and more and more drug users wanted an effective remedy.

In the summer of 2020, medical users of cannabis had contacted the Director of Public Prosecutions and stated that they cultivated cannabis under the emergency law principle, and AROD was aware that several would report themselves to the police. AROD, therefore, requested a circular with guidelines for the prosecution in the cases where recreational users, sellers, and manufacturers had contacted the police to promote a human rights argument. Had the director provided such guidance, it is unlikely that the prosecution would have claimed that "It is outside the court's duties to assess whether Norwegian drug policy is correct or reasonable at an overall level",<sup>36</sup> as the police attorney and state attorney have done in ARODs case, but the reply was that AROD's inquiry "does not occasion measures or comments from the Director of Public Prosecutions".

AROD, therefore, responded with a cease-and-desist letter on July 15, 2020. In this letter, AROD held Director of Public Prosecutions responsible for continuing the sentencing

scheme on scientifically rejected grounds and offered a way out. The appellant wrote:

*In order to speed up the political process and limit the damage that post-constitutional conditions inflict on the people, we want to activate the judiciary's obligations to the persecuted groups. As the head of an organisation dedicated to this purpose, I, therefore, keep a small amount of cannabis products and will hand them over to government officials at the appropriate opportunity. It is up to the Director of Public Prosecutions and his office how the arrest/handover may take place. You can either arrange this in a decent way, one that does not further ruin the life of my immediate family, or you can kick in doors. In any case, you know how to get hold of me, and that I will exercise my right to a human rights defence. The Director of Public Prosecutions also knows that I have an arguable claim of human rights violations, one that coincides with the conclusions of the Royal Commission. In addition, the Director of Public Prosecutions has been informed about the points where Norway does not satisfy international guidelines in the area of drug policy, that I take this step because the persecuted have been denied an effective remedy for 10 years, and that the damage that follows in the wake of a drug policy based on totalitarian premises is too large to ignore. I, therefore, will do my civic duty. I do not ask to be considered in the mildest possible manner,*

*but for a legal process worthy of the rule of law and on behalf of the persecuted groups, AROD hopes for constructive cooperation to ensure that we do not fall outside the rule of law again.*

AROD looked forward to hearing from the director, but nothing happened. Nor did another letter which dealt with the shortcomings in the Director of Public Prosecutions' investigation into means of force in less serious drug cases have any consequences, and so AROD began civil disobedience and invited the director to support this mission. As stated in a letter August 18, 2021:

*This occasion is a unique opportunity to support the rule of law, and we ask that it not be wasted. As of today, it may be controversial to stand up for a comprehensive human rights analysis but within 5- 10 years, the situation will be different. By then, the regulation of cannabis will have reached a wider scope, and there will be far more controversy if Norway still, on autopilot, maintains the law's most severe punishment for actions that are legally regulated in countries we can compare ourselves with. Legally and morally, it is simply not sustainable. The AROD will use our civil disobedience campaign to get an international focus on the issue. We already have the support of a former Justice at the Norwegian Supreme Court, professors of law, and the representatives of the police. We therefore ask the Director of Public Prosecutions to*



*endorse a human rights analysis in our time so that Norway can become a pioneering country rather than a mockery in the area of drug policy.*

It should come as no surprise that the director failed to show his support for human rights. Instead, the Director of Public Prosecutions watched as his subordinates undermined 200 years of legal progress and this, in addition to a detail in the prosecution's case, ensured more activism. Because there were no buds (smokable material) on the cannabis plant that was set up outside the main police station in Oslo on September 11, 2021, the prosecution did not want to include the plant in the indictment, and this was a breach of a long tradition that continues in the country's courtrooms.

AROD insisted that the plant was to be included, because it had the potential to become several kilos of cannabis product. It is not uncommon for citizens who keep cannabis plants, even seeds, to be prosecuted in this manner. The police can include leaves and twigs, which is non-smoking material, and on this basis, people are sentenced to months and years in prison. AROD therefore wanted to clarify the issue, so that arbitrary imprisonment does not occur, but the prosecution would not include the plant in the district court's hearing on June 1, 2022.

In less publicised cases, however, drug users could not expect the same treatment and on 22 September 2022, AROD joined forces with the patient association for safe cannabis use (PASCAN) for another civil disobedience, where a batch of

cannabis plants was delivered to the Storting. This was done so that either the politicians or the courts could take responsibility for a lawless room that had evolved in drug policy, but despite a promise from the chief of security at the Storting that the matter would be reported to the police, charges have not been brought, and the Director of Public Prosecutions will not indict.



*AROD and PASCAN civil disobedience on 22 September 2022 at the Norwegian Storting.*

On 20 April 2023, AROD and PASCAN will therefore carry out a new civil disobedience outside the Director of Public Prosecutions' office to promote legal development. The director has been informed, and it is to be hoped that the prosecuting authority understands the pressing need for

statutory review. As to the Norwegian society, much stunted growth can be overcome if the director emphasizes rule of law guarantees. After the Supreme Court did away with 200 years of legal development, integrity is needed more than ever, but the assistance of the European Court appears to be essential. While the director has demonstrated better than an average interest in maintaining the rule of law, his support for decriminalisation has made him numerous enemies in the police community, and moral panic continues to stifle constitutional commitments.

It therefore appears as if progress for human rights has come to a stall. On one side, the leader of AROD will not budge and is determined to bring justice to the persecuted groups or go to prison for activism. On the other, the courts, the Storting, the Justice Department, and the Director of Prosecutions refuse to face the problem of moral panic and will rather see the situation for the rule of law deteriorate than come to terms with unjust persecution. Even so, the Norwegian society can go from being engaged in a struggle against itself to becoming a far more coordinated organism if the European Court intervenes, and we shall now see how the drug law is connected to human rights violations.

# 5

## Violations of the ECHR

*"Prohibition will work great injury to the cause of temperance. It is a species of intemperance within itself, for it goes beyond the bounds of reason in that it attempts to control a man's appetite by legislation, and makes a crime out of things that are not crimes. A Prohibition law strikes a blow at the very principles upon which our government was founded."*

—Abraham Lincoln, U.S. President. Speech, 18 Dec. 1840,  
to Illinois House of Representatives—

ARTICLE 6 OF the European Convention on Human Rights (ECHR) sets out requirements for certain minimum rights in criminal proceedings. Article 6 (2) obliges the state to show that the beneficial effects of punishment are clearly greater than the harmful effects, and Article 6 (3) includes a right to call witnesses. It is on this basis that AROD has challenged the law. If anyone can vouch for punishment and the merits of the Norwegian drug policy, it must be the witnesses, and in addition to the Director of Public Prosecutions, AROD wanted the Ministry of Justice (represented by the current and former Justice Minister) as well as the Ministry of Health

(represented by the current and former Minister of Health) to testify in court.

This is in the interest of not only the nation but also the Ministry of Justice, the Ministry of Health, and the Higher Prosecution Authority. The Criminal Procedure Act is subordinate to human rights, which everyone is obliged to promote, and the duty to testify is supported by the Director of Public Prosecution's own guidelines for the prosecuting authority. In this letter "it is emphasised that in the criminal proceedings of the police and the prosecuting authority, ethical reflections and professional objections shall be encouraged." Furthermore, 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. The legal order also includes fundamental values and principles on which the administration of justice is based, including the rule of law, equality before the law and the individual's fundamental freedom and autonomy."

It sounds nice on paper but is not the actual status. Neither rule of law, equality before the law, individual's fundamental freedom and autonomy, nor ethical reflections on this, have had consequences for the penal regime. Instead, the

prosecuting authority continues punishment on discredited terms, and the European Court has an opportunity to rectify the sins of the past. Since the Norwegian Supreme Court failed to provide due process in 2010, some 500,000 drug cases have been processed by the police and prosecution authorities. Constitutionally, these cases are controversial, and this is probably one reason why the Norwegian prosecution and justice system decided to call off the evidence. Since 2015, AROD has attempted to have questions answered, but the Ministry of Justice, the Ministry of Health, and the Director of Public Prosecutions will not respond. The Supreme Court has even set aside 200 years of legal development to assist an emperor with no clothes, which indicates the power of moral panic. No doubt, the defenders of punishment feel stuck between a rock and a hard place, for as Bent Høie, the former Norwegian Minister of Health, noted:

*Today's penal system has failed. The weight of documentation indicates that this has no positive effect but, on the contrary, many negative consequences. Punishment has major harmful impacts and a socially skewed effect. In other words, it is those who claim and believe that Norway should continue to punish the use of drugs in the way we do today who should find the scientific documentation to proceed with something that has been proven to not work. So far, they have not been able to come up with qualified evidence for their claims.<sup>37</sup>*

It remains to be seen whether prohibition can be shown to be necessary in a modern society, but the COE Parliamentary Assembly noted in its baseline study on drug policy and human rights that "Strong evidence suggests that the consequences of purely repressive policies include also death, violence, ill-treatment, discrimination, stigmatisation, marginalisation, absence of fair trials and inadequate sentencing," and the burden of proof rests with 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.

This has yet to be shown and this is why AROD wanted three days in court to do lay out the evidence for human rights crimes. Nevertheless, assisted by shallow reasoning, the prosecution and the courts ensured that no evidence which supported the allegation of arbitrary persecution were allowed. This means that there has been no effective remedy, for as the Pompidou Group noted on the need for a constant review of human rights:

*Proportionality also speaks to the importance of evaluation and review. The question of outcomes is key. Even if a restriction is deemed proportionate to the legitimate aim in the development of an intervention, it still needs to remain under review if rights are to be fully respected. After some time it may transpire that the intervention in question is not achieving its aims. By definition, a measure that has not or cannot achieve*

*its aim is disproportionate to any restrictions on human rights it may entail. It cannot be 'necessary' for the achievement of an aim.*<sup>38</sup>

As such, there can be no doubt that the right to a fair trial and effective remedy has been denied, which brings us to other articles of the ECHR that invalidate the prohibition regime.

### **ECHR Article 3**

AROD claims that the application of section 231 of the Norwegian Penal Code is incompatible with Article 3 of the ECHR, which states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment".

"Inhuman" and "degrading" are associated with arbitrariness. Therefore, to the extent that principles of equality, proportionality, autonomy, and presumption of liberty are not observed, that we are dealing with unreasonable discrimination in the field of intoxicants, and that we have allowed double standards to define policy, there will be a violation of Article 3. That is the case unless the questions posed by the rights-oriented debate are answered.

### **ECHR Article 5**

The application of section 231 of the Norwegian Penal Code is incompatible with Article 5 of the ECHR which states that "everyone has the right to personal liberty and security. No one shall be deprived of his liberty except . . . in accordance with a procedure prescribed by law."



"Prescribed by law" means that section 231 must be within a framework as defined by the principles of human rights. The law must reflect an informed balancing of the individual's right to freedom as measured against society's need for protection. However, in this context, drug policy is characterised by public panic. This means that there is a mismatch between section 231 and human rights. The professional responsibility for the law is not being maintained, and the law is more intrusive than fair. As a society, without good reason, we expose an outgroup to evils that we do not wish for the ingroup, and this is a violation of Article 5 – unless the questions raised by the rights-oriented debate are answered.

### **ECHR Article 8**

The application of section 231 of the Norwegian Penal Code is incompatible with Article 8 of the ECHR, which states that "Everyone has the right to respect for his private and family life, his home and his correspondence." It continues that "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

"Necessary in a democratic society" is the key. Traditionally, the state has had a wide margin of discretion, but the Royal

Commission documented that there are no good reasons for punishing drug use. Therefore, the courts are increasingly invalidating the drug law with regard to Article 8. The Royal Commission elaborated on this but did not consider the implications for distribution, as the government ruled out a regulated market. However, deprivation of liberty is an intrusive tool and if less invasive means are better suited to deal with the problem of drug abuse, it is difficult to see the necessity of a cure that hurts worse than the disease.

In fact, professionals warn against the side-effects of the drug prohibition as one of the greatest challenges of our time and in this regard, no one has identified any necessity. For this reason, it can be argued that positive human rights obligations include a regulated market, and the court must weigh the state's reasons for demonising and imprisoning those who possess more than a minimum of user doses. *Are there good reasons for this? Is it vital for the right to self-determination whether people have 1 or 20 grams, or does the state enact an arbitrary division to be able to continue a policy that depends on scapegoats to survive?*

### **ECHR Article 9**

The application of section 231 of the Norwegian Penal Code is incompatible with Article 9 of the ECHR which states that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in

worship, teaching, practice and observance." It goes on to say that "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others."

This means that a human rights analysis is needed to assess the interference with freedom of thought, conscience, and religion. Principles of law put the bar for criminalisation high, and the state cannot be granted any margin of discretion as long as vital questions remain unanswered. Public panic, after all, has been proven and there is no doubt that cannabis and psilocybin use does offer something positive. There is also no doubt that these substances play an important role for seekers of the divine – and if those responsible for the drug policy cannot respond to the questions of the rights-oriented debate, the prohibition is invalidated by Article 9 of the ECHR.

### **ECHR Article 14**

The application of section 231 of the Norwegian Penal Code is incompatible with Protocol 12 and Article 14 of the ECHR, which states that "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

"Other status" is crucial. The summary is not exhaustive, and any discrimination must withstand a human rights analysis if there is deprivation of liberty. Therefore, to the extent that there is an irrational distinction between legal and illegal substances and in the approach to different users, there will be a violation of Protocol 12 and Article 14. We will be dealing with arbitrary persecution – which will be the case if the questions remain unanswered.

Space considerations make the treatment short but all the articles are connected and reflect on each other. To the extent that drug prohibition violates the principle of equality, proportionality, or autonomy, there will be arbitrary persecution; it will be a discriminatory, disproportionate, and unduly infringing practice for which an effective remedy will be urgently needed.

# 6

## Effective remedy

*"Current policy is strongly contradicted by our knowledge of these drugs and their users. It causes harm to people who are already fragile, and it strengthens tendencies in the state's control apparatus that should not be encouraged. Worst of all, it distracts us from discussing issues of principal and practical concern, issues that needs attending. 92 . . . The next generation will wonder how we, especially in Norway, could be led astray to embrace policies so damaging to a group of society's most vulnerable."*<sup>99</sup>

—Nils Christie, Professor of Criminology, 1985—

AN EFFECTIVE REMEDY is the task of the European Court. The Norwegian state has shown no interest to elucidate on the relationship between human rights and the Norwegian Penal Code sections 231 and 232, and it only remains to be seen whether anyone can reasonably show that the application of punishment has any utility. For that to happen, the state must demonstrate good reasons to discriminate in the field of drug policy. Cannabis and psilocybin users must be shown to pose a greater threat than, for example, alcohol users. Otherwise,

only "culture" can be used as a reason and it is not a proper legal justification.

It should be mentioned that it was on this basis that former Prime Minister Erna Solberg in 2021 defended the drug law during a philosophical debate and that former Justice Minister Anders Anundsen, in 2016, looked like a fool on national television when *Folkeopplysningen* examined the basis for the criminalisation of cannabis.<sup>40</sup> Not only did he exhibit the double standards that drive politics forward, but also after much searching, all that the Ministry of Justice could find was an unpublished master's thesis from a Swedish medical student.<sup>41</sup>

AROD does not expect any better this time. It is, after all, an extraordinarily thin argument that the supporters of drug prohibition have put together, and if interference with the right to privacy and family life shall be compatible with Article 8 of the ECHR, the requirement of necessity entails that the intervention corresponds to an urgent societal need. The drug-free ideal must not only be worth fighting for but also have suitable means to achieve the ends, and that is difficult to contend with as the legalization of cannabis moves forward. After all, in Uruguay, Canada, and American states where cannabis has been legal for many years, the vast majority find that life is better. In Colorado, USA, for instance, it has been ten years since cannabis was regulated, and we just need to listen to the population to understand that responsible

regulation of cannabis is possible. This is what Jared Polis, Colorado's Governor states:

*Colorado's positive experience showing that not only did people's worst concerns never materialize but showing it could be oriented in a positive way. Reducing underage use. Driving drug dealers out of business. Making our communities safer. Empowering people to make the choices they want to make to recreate or to treat themselves for medical conditions. Colorado did what no one had done before. With voter approval of Amendment 64, we made history.<sup>42</sup>*

Polis was previously against legalization, but now he believes that it is a far better solution. The same applies to Michael Hancock, mayor of Denver, Colorado, who says: *"I'm a convert today. I was wrong 10 years ago. We can do this right and do this responsibly."*<sup>43</sup>

John Hickenlooper, a senator who was formerly mayor of Denver, Colorado, as well as Governor, is another converted legislator:

*I feel pretty darn sure now that this is such a better – in terms of almost every measure – such a better societal decision than what I grew up in. I've personally gone and talked to either the General Assembly or the governors in a half-dozen states. What about this? What about that? And literally, there is no attack, no anxiety, that we don't have a pretty good answer for.<sup>44</sup>*

As we can see, former skeptics admit that they were wrong. Not only does it make sense to regulate, but the presumption of freedom is on the side of self-determination, and Norway must follow suit. This becomes plain when international guidelines are considered. 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 Assembly<sup>45</sup> and four United Nations agencies, including the Development Programme (UNDP), the World Health Organization (WHO), the Joint Programme for HIV/AIDS (UNAIDS) and the Office of the High Commissioner for Human Rights (OHCHR). In 2020, the Colombian Constitutional Court resorted to the guidelines in a judgment on the destruction of coca plants with glyphosate in order to validate its negative position, 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.*

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, we cannot say that "independent, impartial, prompt, and thorough investigations of allegations of human rights violations in the context of drug control laws, policies, and practices" have been investigated 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 much depends on the European Court taking control of a political process that is beyond the rule of law.

The work of the Norwegian Royal Commission was not the first time that moral panic has been shown, nor the first time that politicians refused to listen to the expert committees. In an international context, professionals have pointed out for over a hundred years that punishment for cannabis use is disproportionate,<sup>46</sup> which also President Nixon's National Cannabis Commission concluded in 1972. It would be 50 years before President Biden took the commission's wisdom to heart. In the meantime, more than 40 million Americans had to suffer imprisonment, precisely because of the public panic, and it would have made a huge difference if the US system of justice had handled its business correctly when constitutional challenges went to court. There have been more than 100 such challenges in US history to date, and a case study shows that the courts have mishandled all requests for an effective remedy. Citizens have attacked the prohibition in every imaginable way, but the courts have responded with the same superficial treatment that the Norwegian legal system has put forward in AROD's case.<sup>47</sup>

Still, flaws in the legal system do not invalidate the principles that the courts are set to defend, and if only one of those voices that stood up for rights had been heard, the US war on drugs could have been stopped long ago. A whole society would have had better conditions for growth, and it is unquestionable

that the courts have failed their responsibility by leaving questions of punishment to the legislature.

There is also much for the European Court to learn from this. In the more than a hundred constitutional cases presented before the US courts, only around ten percent of the judges knew how to apply the law, and these mostly had to settle for dissent.<sup>48</sup> Thus, in times of moral panic, reason is rejected by the majority and a system of arbitrary law protects the drug law from inspection. This standard has been applied also to ARODs case and the European Court should not deny a competent tribunal to the people under its jurisdiction.

It must be understood that both the Storting, the Ministry of Justice and the courts in their assessments have taken for granted that obligations to the UN drug policy conventions require Norway to maintain criminal provisions against certain forms of dealing with drugs. This characterizes their analyses, but the UN conventions attack illegal trade, not a state-regulated market, and the measures proposed regarding the illegal handling of narcotics and psychotropic substances is subject to the principles enshrined in the constitution and the basic features of the legal order. Norway's drug policy commitments therefore only go as far as compatible with the constitution, and as the drug conventions have gone from being interpreted in the light of a drug-free ideal to emphasizing real considerations, which is the protection of public health, it is not possible to retain cannabis prohibition by referring to international obligations. A constitutional

hierarchy exists between human rights and drug policy conventions, and in the event of a conflict, the former prevails.

# 7

## The role of the court

*"An addiction to drug laws is caused by an inadequate understanding of individual rights and the vital role such rights play in deciding matters of legality. As a result, policies are implemented that cause serious harm to the very individuals whom these policies were devised to help and to the general public."*<sup>49</sup>

—Randy E. Barnett, Professor of Law—

It remains to be seen whether a prohibition can be said to be necessary in a modern society. The Norwegian prosecution and justice system has shied away from the obligation to resolve this issue, claiming that "It is outside the court's duties to assess whether Norwegian drug policy is correct or reasonable at an overall level",<sup>50</sup> but this is high treason. The burden of proof rests with the state, and it is clearly the role of the courts to control the political process. As Professor of Law Ole Kristian Fauchald describes the sphere of law and politics, "the relationship between law and politics (...) is two-sided. The basic elements of the law in the form of legislation and international obligations are the result of political processes, and the law again sets the framework for the

subsequent political processes. There is therefore an interaction between law and politics; an interaction which implies a continuous dynamic".<sup>51</sup>

That is the way it should be. A human rights organization has asserted that section 231 and 232 of the Penal Code are contrary to basic moral values, and constitutional legal rules undoubtedly lay down guidelines for the legislature's freedom of action. In democracies, the law (ideally) functions as a guarantee against the abuse of political power, and it does not make sense to attribute an absolute margin of discretion to the state. When panic has been demonstrated, it can in fact be established that the legislature has mismanaged the trust that has been given and it is the task of the law to guide in principle, so that people do not have to suffer from established prejudices.

This is the basis for the rule of law. That is why there is a right to judicial review and a principle of separation of powers, because traditionally certain groups have more influence than others and can get laws passed that are not warranted. Such laws can be characterized by double standards, or good intentions that are not achieved, and it is the task of the courts to protect citizens against political deprioritization and bureaucratic paternalism. Historically, scapegoating has been the phenomenon that to the greatest extent promotes totalitarian tendencies. Lawlessness occurs when the system of justice will not give to burdened groups the right to trial,

and the court is therefore – conscious of its role – an instrument of democracy.

The court must ensure representation and participation in the political process for those who lack a political voice, and in human rights issues it is therefore not possible to separate law and politics. The more marginalized a grouping is, the greater are the chances of error in the political process, and it falls to the court to ensure the quality of legislation. Law as a discipline depends on this. We can say that the legislative branch aims to promote ideals of the rule of law, but it is the task of the court to make sure that it actually does so. The question is therefore not whether the court is making a mistake by controlling the political process, as many judges fear, but how effective the law is in ensuring the citizens' freedom.

In this context, the Norwegian courts' treatment of AROD's civil disobedience demonstrates that something is seriously wrong. As Professor of Law Jørgen Aall has stated, under Norwegian law "the competence to test the law's relationship to the constitution and the convention rests with the ordinary courts, not separate constitutional or administrative courts as in many other countries. And it is not just with the Supreme Court; the deputy judge in any town can set the law aside as contrary to the constitution".<sup>52</sup>

The district Judge was made aware of this. She was informed that the responsibility for 30,000 criminal cases a year rested on her shoulders but would not allow AROD to challenge the criminal law. Rather than assessing the relationship between

ends and means, the district court and the court of appeal took for granted that punishment was constitutionally acceptable and looked for confirmation in the legal sources.

Now, anyone who looks at the jurisprudence of the courts for confirmation that laws can be defended will easily find the arguments they want. Despite that, when panic is shown, it is important to emphasize principles rather than sources of law, and drug policy is a good example. For 60 years, this policy has been driven by people with an extreme ideology, where disenfranchisement, alienation, demonization, and violence have been established practices. It is becoming increasingly clear that this makes the problem worse, not better, but the prosecution and the courts have sided with tyranny.

Norwegian authorities may beg to differ but their willingness and capability to answer the questions of the rights-oriented debate reveals their true colours. Unfortunately for the state, the doctrine of human rights does not begin when rights are recognized by the government but when the disenfranchised and criminalised claim human rights protection, which is 15 years ago. It is also a problem for the state that superficial examination does not fulfil legal obligations, and since the Supreme Court rejected the right of judicial review in 2010, by giving the politicians absolute discretion, several hundred thousand criminal cases are constitutionally disputed.

It was therefore a tragedy for drug users as well as the Norwegian justice system that the courts in 2022 again failed to protect the rule of law, and the Standing Committee on



Scrutiny and Constitutional Affairs has been called upon to intervene with the conduct of the Norwegian courts. The legislator's intention when codifying the right to judicial review in 2015 into the Norwegian constitution § 89 was to ensure effective minority protection, and there can be no doubt that the courts have failed in their legitimate control function vis-à-vis the Storting.

It can also be no doubt that the European Court should ensure not to repeat a mistake of the past. In 2010, the Court was asked to deal with the Norwegian courts' disregard for human rights in drug policy. The complaint was supplemented by letters of support from Norwegian politicians and experts on drug policy, as well as several hundred citizens, but a single judge decided that "in the light of all the materials in its possession, and in so far as the matters complained of were within its competence, the admissibility criteria set out in Articles 34 and 35 of the Convention" had not been met.

Now, the judicial reasoning was most thorough, the applicant qualified, and there was nothing of relevance in these articles to vindicate the decision of the Court. Speaking of the argument, it was vetted by professors of law, and the judge presented no good reasons for dismissing the case. The failure of the European Court to provide an independent, impartial, and competent tribunal is demonstrated by the fact that more recent courts have looked at this issue as it refers to the possession and use of cannabis specifically, and the reasoning

presented by these courts is fully in line with the applicant's analysis, only eclipsed by his perspective.

While other courts have validated the right of drug users to be free from unjust persecution, the appellant held that this rule should also apply to drug dealers and producers. The argument is controversial because we are living in times of moral panic, but simple: Western constitutional heritage puts principles of autonomy, equality, proportionality, dignity, and the liberty presumption at the core of our conventions, and the state must show good reasons for denying autonomy. Like alcohol users, however, most cannabis users are functioning citizens, and as there are recognized autonomy interests involved when it comes to a choice in drugs, society has no business persecuting drug users.

This is the understanding that explains the international trend towards decriminalization of drug use. It is a good thing but if we recognize that there are legitimate autonomy interests involved when it comes to drug consumption, this dispels the notion of a legitimate purpose behind the prohibition law, and we must recognize that the idea of persecuting drug dealers and producers makes no sense. It makes no sense because, as Lysander Spooner noted, these people are merely accomplices of the user, and it is a rule of law, as well as reason, that if the principal in any act is not punishable, the accomplice cannot be.<sup>53</sup>

Having discarded the idea of drug users as people that need to be protected from themselves, there is simply no legal basis

for the continued persecution of drug dealers and producers. Instead, society must awaken to the realization that, when all is said and done, the drugs themselves are neither good nor bad, but substances that can be used for better or for worse, and that there is the same law of supply and demand (and the same patterns of overall unproblematic use) involved when it comes to licit and illicit drugs.

Despite the effect of moral panic, some judges have connected the dots. As Justice Kavanagh of the Supreme Court of Michigan held in 1972:

*I [state] the conviction that the government has no constitutional authority to proscribe possession and private use of marijuana. The right to possess and use something, however, has little meaning unless one also has the right to acquire it, and hence proscription of sale cannot be reconciled with a right to possess and use. It may be that some legitimate public interest may be served by the regulation of traffic in marijuana, but a statute which absolutely forbids the sale of marijuana is as offensive to the right of privacy and the pursuit of happiness as a statute which forbids its possession and use.*<sup>54</sup>

There are also other judges who have covered this topic,<sup>55</sup> and from a constitutional perspective therefore, the average drug dealer should have less to fear from the European Court than the average policeman and legislator. For decades, the legislative branch has failed to provide safe and reasonable

access to a product of high demand, while the police have arrested those who did not comply. Violence has assisted the state in maintaining a monopoly on the sale of drugs, but many people still prefer cannabis before alcohol, and this ensures much to do for the criminal justice system.

This also includes much unnecessary suffering. Due to a toxic culture, the Norwegian Narcotic Officers' Association (NNPF) has been the most influential lobbyist in drug policy for 30 years, and after a series of scandals in the press the Ministry of Justice appointed a committee to investigate. The Committee for conduct, integrity, and conflict of interest in law enforcement released its report in January 2023 and found that a lack of leadership had allowed the narcotics police to undermine the integrity of the political fabric and that in the tension between two different legal paradigms, governance law versus rights law, the latter had come out short.<sup>56</sup> 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 prosecution in ARODs case failed to respect human rights, because the problem cannot be located to the narcotics police but to the drug-free ideal. This is why 13 Ministers of Justice have done nothing to protect the political machinery from the influence of NNPF, and the prosecution in ARODs case was characterized by this dysfunctional culture.

Not coincidentally, the narcotic officers' association is opposed by LEAP Scandinavia, an organization of police

officers who want to regulate the drug industry. While the latter is on the side of the rule of law, the former remains more powerful, and this is why Norway continues to inflict punishment in drug policy. This is also why a blind spot remains, twenty years after the Criminal Law Commission deprived prohibition of a moral platform. In October 2022, four defendants received a total of 48 years in prison for cannabis related activities that are legally regulated in an increasing number of countries, and while the governments of Thailand, Canada, and several US states have expunged criminal records and pardoned hundreds of thousands of inmates, Norway continues as before.

### **7.1. A legitimate purpose?**

To put the country's drug policy in perspective, imagine criminalising fireworks. Currently there is a debate about this in Norway and it could lead to less harm for society. It is difficult at this point to weigh the pros and cons of criminalisation, but if in 50 years it can be seen that a prohibition of fireworks has not reduced supply or demand but has resulted in a social dynamic that has generated more crime, stigmatisation, alienation, violence, deprivation of liberty, morbidity and mortality, it would be folly to let the fireworks police continue to define policy. If the means and ends are in a mismatch, the law does no good, and this also applies to a prohibition of drugs.

It is well-known that criminalization in certain areas can lead to dramatic consequences changes in overall crime, and that

this was the result of the alcohol prohibition after the First World War. The desire behind the legislation was to get rid of all the injury, social tragedies, and crime associated with alcohol consumption, but prohibition created so much new and unintentional criminality that after a few years it was realized that the desired effects of the legislation were modest compared to the unwanted ones. This is today indisputable, and the same applies to the illicit drugs, and so what else but the hunt for scapegoats maintains punishment in drug policy? Why does the Norwegian Supreme Court subject cannabis users to threshold values so small that they must associate with criminals several times a week? Why not offer cannabis users and society a much safer framework?

In his consultation response to the Royal Commission, the Director of Public Prosecutions noted the paradox of the double standards in drug policy, but he remains reluctant to come to terms with its ramifications. The director is opposed by NNPF, and internal struggle in the police and prosecution ensures that the ethical guidelines are ignored. Still, the rule of law demands an examination, because when policemen in Canada can legally smoke cannabis and drive to work a few hours later, why are Norwegian citizens punished for driving up to five days after consuming cannabis,<sup>57</sup> when the experts agree that the intoxication is short-lived, and that people can drive after four hours? Why rely on THC values that are

invalidated by international standards? Why not use common sense and let more reliable testing<sup>2</sup> determine driveability?

These are but a few questions that must be answered for drug prohibition to continue. The hunt for scapegoats is a wound that will not heal until the gap between theory and practice is acknowledged and addressed, and the European Court must decide if punishment in drug policy pursues a legitimate purpose. We have seen why. The Norwegian courts have applied flawed legal reasoning to protect the legislation from human rights, but there is a blind spot which is revealed by the sociology of law. While the doctrine of the courts in ARODs civil disobedience neglects the distance between ideals and reality, the sociology of law uncovers whether the legal rules work as expected, and this is the essence of the dispute. In ARODs case, therefore, the courts have failed to arrive at a reliable conclusion, and the requirement for an effective remedy demands a broader analysis, one that looks at the relationship between means and ends.

This is the area of human rights law, and the reasoning of the Norwegian justice system needs attention. The court of appeal asserted that "What the district court had to decide concretely during the main hearing was whether [the defendant] should

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<sup>2</sup> Three validated tests by the US National Highway Traffic Safety Administration (NHTSA) are (1) the horizontal gaze test, which involves following an object with the eyes (such as a pen) to determine characteristic eye movement reaction, the walk-and-turn test (heel-to-toe in a straight line), and the one-leg-stand test.

be sentenced for breaching Section 231 of the Penal Code – possession of drugs – and what the penalty for such possession would possibly be. [The defendant's] views of a general and political nature are not appropriate for illuminating the case that is to be adjudicated". This is absurd. The defendant did not object to politics in general but against arbitrary persecution and specific violations of the ECHR, and the folly of the appeals court's attempt to mark out a line between politics and law becomes plain when we consider that the state attorney in ARODs case was also deeply involved in politics, representing the Christian Democratic Party – extremists which wanted no drug reform.

It does not matter if the defendant was given one hour in the district court to discuss the problems with human rights, when the prosecution and the judge did not care whether the drug law failed the test of reason. As the defence made clear in the plea for a retrial, the court should have assessed whether the legal sources used by the district court were relevant, and this was not done. Neither the district court, the appeals court, nor the Supreme Court's Appeals Committee made any independent assessment of whether the political purpose and the intended effect were in correspondence, or whether it entailed unintended effects, and the principle of contradiction was breached.

The rule of law is, after all, clear on the importance of both legal and extrajudicial factors. In addition to legal practice and opinions, real considerations are a central component of law,



and this means assessments of the goodness of the result. Principles and values come into play at this point, but the Norwegian court wanted nothing of it. This is not acceptable when the court is instructed to rule on the link between public panic, human rights violations, and the arbitrary persecution of the past. Criminal laws, as Professor of Law Inger Johanne Sand has pointed out, must be seen as "connections between political and legal communication",<sup>58</sup> and it is to be hoped that the European Court will act. While legal dogma remains totalitarian states' best defense, human rights law is their biggest problem, and sound legal development depends on the Court considering human rights violations. The Norwegian court of appeal's "clear view that the conditions for interception of evidence according to section 292 of the Criminal Procedure Act have been met," is a helping hand to ministers who refuse to confront the distance between theory and practice, and a rights analysis is needed to determine whether ends and means are in a meaningful relationship.

The Norwegian court of appeal has previously, in a similar case, recognized this. In a judgment handed down on October 8, 2010, the court overturned a decision to refuse an appeal against a district court judgment where the question of rights was not properly dealt with.<sup>59</sup> Because the defendant maintained that none of the cannabis crimes were punishable "based on an understanding and analysis of the human rights situation", the court of appeal accepted the request for reversal, because the issue had to be tried fully – and this in a far more serious case, involving more than 300 kilos of

cannabis. The court of appeal's decision 13 years ago, measured against AROD's case, shows a strange lack of consistency. Because the application of the law was contested, the court of appeal found in 2010 "that there are special reasons which should lead to the refusal being overturned", and the appeal was referred to processing under section 325 of the Act.

Thus, it is clear that principles of criminal law, including the right to contradiction and equality of arms, have not been observed. According to Article 34 of the Convention it therefore follows that the case must be tried by the European Court and that Norwegian authorities must be compelled to defend the drug law. The right to call witnesses is essential to a fair trial and is in the interest of the Norwegian state to ensure that punishment fulfils a legitimate purpose.

The increasing tendency among international courts to verify a legitimate autonomy interest in drug use contradicts a legitimate state interest in prohibition, and AROD has a list of more than hundred questions that must be answered if the activities of the police and prosecution authority are to be compatible with human rights. AROD also have a list of questions to the Ministry of Health and the Ministry of Justice, which is much similar in scope, and in the next chapter the questions to the Director of Public Prosecutions will be presented. Only by answering these questions can the director take responsibility for drug policy, and coherent answers are needed for the rule of law to be ensured.

Now good answers are difficult to find. As Thomas Paine noted, "when a man in a wrong cause attempts to steer his course by anything else than some polar truth or principle, he is sure to be lost. It is beyond the compass of his capacity to keep all the parts of an argument together, and make them unite in one issue, by any other means than having this guide always in view",<sup>60</sup> and so there is a silence from Norwegian authorities, seven years after AROD began asking questions. Nevertheless, the disenfranchisement and deprivation of liberty in drug policy must be defended. Not only guarantees of legal certainty, but developments in the rest of the world mean that Norway must reconsider the prohibition paradigm and bad answers are as useful as good ones. In any case, the testimony of responsible officials will illuminate a confused legal and political landscape, and the Director of Public Prosecutions and the Minister of Justice has a choice between leading the nation or leaving office.

On social media platforms, drugs have won the drug war. Citizens openly broadcast drug consumption paraphernalia, even drug use, while state attorneys who deny human rights protection are portrayed as quislings, and the polarizing trend in drug policy will continue until double standards no longer define drug policy. Surveys conducted by Norway's national television indicate that around 90 percent of the people realize that a regulated market is better than a criminal market,<sup>61</sup> and the state's authority is becoming damaged under a regime that has played its part. Since 2009, those persecuted by the drug policy have waited for an effective legal remedy, and for just

as long the Ministry of Justice and the Director of Public Prosecutions have postponed a settlement that must come.

The verdict of the European Court can help the Norwegian people reconcile with the fact that for more than 20 years, drug policy has been without a moral foundation and that the drug free ideal has been a beast of biblical proportions. In its grip, society has failed to separate right from wrong, but the basics of tyranny are always the same: 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.

This has been the case for a long time. In the name of the drug-free ideal, parents have reported their children to the police, brothers have become enemies, and families have been torn apart. The double standards that promote drug prohibition have ravaged society like a plague, but it has been no less devastating for the state. A toxic culture has taken hold where budgets, power and prestige have come before human considerations. To the extent that drugs could be seen as evil, the prohibitionists have been convinced of their moral ground, and it is impossible to measure the damage that has been caused by the cultivation of an enemy image.

Forgiveness is nevertheless a key to healing, and we can all add to the process of reconciliation that integrity which is needed to help society out of a collective psychosis. This is

what the drug prohibition really is, and in addition to the Director of Prosecutions Jørn Sigurd Maurud, Minister of Justice Emilie Enger Mehl, Minister of Health Ingvald Kjerkol, former Minister of Health Bent Høie, Chief Public Prosecutor Runar Torgersen, and acting legal adviser Nora Bergsjø from the Justice Department, the Court could use more witnesses, such as Prime Minister Jonas Gahr Støre and the Progress Party's (Frp) justice policy spokesman Per Willy Amundsen. As Minister of Health in 2013, Støre was held responsible for human rights violations in drug policy but would not open Pandora's box. Nevertheless, according to insiders in the Labour Party, the Prime Minister really wanted a drug reform, but was pressured to oppose decriminalisation.

There are also other Norwegian politicians who should be compelled to testify, but Per Willy Amundsen (Frp) is particularly relevant. As Minister of Justice in 2017, AROD held Amundsen accountable for the continuation of human rights violations, and he is a proper example of the blinders that are needed to continue punishment. It is because of politicians like Støre and Amundsen that the reputation of the police is only getting worse, but it is not the sole responsibility of law enforcement to follow the legislature. 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", and few threaten "the citizens' legal security" more than politicians such as Støre and Amundsen.

There is also few who threaten the rule of law more than the prosecutors and judges involved with ARODs case. Even the Norwegian Storting acknowledges that "in cases brought before the courts, the courts have the right and duty to examine whether laws and other decisions made by the state's authorities contravene the Constitution",<sup>62</sup> and we will now see how the testimony of the Director of Public Prosecutions is not only critical for assigning accountability, but redemptive for a national trauma.

# 8

## Questions to the Director of Public Prosecutions

THE DIRECTOR OF Public Prosecutions has been involved in drug reform, and the report of the Royal Commission shows why. This report shows that public panic has been influential in the formation of drug policy, that punishment for drug use cannot be defended, and that human rights considerations require new thinking. Does it follow that the Director of Public Prosecutions is against punishment for drug use, including recreational use?

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

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

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

The report of the Royal Commission showed that public panic has shaped Norwegian drug policy, that punishment must be defended, and that the basis for punishment does not hold up. 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 Health and the Minister of Justice will not stop punishing users. Do the Minister of Health and the Minister of Justice put the political program of their parties above constitutional obligations on this basis?

Chapters 3.2 and 3.3 of the drug reform report use words such as "public panic", "disproportionate representation", "misleading ideas", "incorrect investment in punishment", and "reality-resistant wrongdoing" to summarise the development of drug policy. We are dealing with a policy characterised by "stereotypical representations," "moral indignation and motives for revenge," one where "scientific analysis of the



drug problem have played a minor role". "Panic" is used several times. Could public panic have been shaping drug policy for 50 years if principles such as equality, proportionality, autonomy, and the presumption of freedom were sufficiently emphasised?

The Director of Public Prosecutions says in an interview with Kapital magazine that "the prosecuting authority has a special responsibility to ensure that the legal basis is justifiable when we decide to prosecute our citizens".<sup>63</sup> How, then, does it feel to be at the helm of prosecution in times of public panic? What is it like to see the Minister of Justice and the Minister of Health insist on punishment after the report of the Royal Commission? Is this perceived as problematic?

The Royal Commission was not the first to oppose the prohibition paradigm. In 2002, the Criminal Law Commission also rejected its inherent double standards, and for 20 years 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.<sup>64</sup> 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 prosecution in ARODs case failed to respect human rights, because the problem cannot be located to the narcotics police but to the drug-free ideal.

This is why 13 Ministers of Justice have done nothing to protect the political machinery from the influence of the NNPF, and the Director of Public Prosecutions has a special responsibility for ensuring that the quality of criminal proceedings respects human rights. The Committee for conduct, integrity, and conflict of interest in law enforcement noted the failure at top to deal with a dysfunctional culture, and after its detection of a conflict between governance law and rights law, where rights law has been given lower priority, what will the director 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 concludes that the police have not taken sufficient responsibility for a culture that has provided fertile ground for both potential and actual role mixing. The committee raises questions about what has made this development possible: Why has the Director of Public Prosecutions not exercised sufficient control that could have prevented the mixing of roles, including ensuring compliance with basic police norms?

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 case have claimed

that "it is outside the court's duties to assess whether Norwegian drug policy is correct or reasonable at an overall level",<sup>65</sup> and on this basis, the Norwegian justice system has gone against 200 years of legal development. Does the Director of Public Prosecutions 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?

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 prosecution authority ensure the rule of law, or is arbitrary persecution in drug policy possibly 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.<sup>66</sup>*

It appears from AROD's case that the Norwegian court and the prosecuting authority have failed in their responsibility to clarify the relationship to human rights. Since 2009, the

prosecution has undermined legal development, 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 director 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 Director of Public Prosecutions 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?

For obvious reasons, prohibitionists have much invested in politics. As long as a criminal market exists, there will be prestige, budgets, and powers in the war on drugs, but the defence recalls page 26 of the Royal Commission's report in which the committee for reasons of principle does not propose coerced treatment or provision of health care without the person's consent. The UN working group against arbitrary imprisonment is also clear that drug users should not be forced into recovery.<sup>67</sup> Therefore, what does the Director of Public Prosecutions think about the current drug reform? Does it secure human rights?

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

The Director of Public Prosecutions touches here on the blind spot that AROD wants to illuminate. Human rights prohibit unjustified discrimination in the field of criminal law, and as the director points out, "A recurring theme in the debate on alcohol versus other drugs is that alcohol abuse has much more destructive societal effects than other 'milder' narcotics"

do. Based on this, what else but the hunt for scapegoats results in penalties for cannabis users, but not for alcohol users? What are the reasons for this discrimination? Is culture a good enough argument, or do human rights demand a larger perspective?

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

The 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".<sup>68</sup> Do you see this quote as relevant for the Norwegian drug policy?

AROD believes that human rights violations are connected to public panic, which means that to the extent that panic characterises development of drug policy, principles such as

autonomy, equality, proportionality, and the presumption of freedom will not be sufficiently emphasised. What does the Director of Public Prosecutions think about AROD's argument for a regulated drug market based on human rights? Can the director see a connection between public panic, human rights violations, and the arbitrary persecution of earlier times, or is today's policy well secured?

If the Director of Public Prosecutions does not see the connection between public panic, punishment on rejected grounds, and human rights violations, AROD's documentation identifies others who do,<sup>69</sup> and from the point of view of society, we cannot assume that prohibition is necessary to protect society. Instead, the question becomes as follows: Has the war on drugs reduced supply and demand? Has it promoted unity, healthy values, and good research or done the opposite? Could the prohibition have fostered a collective psychosis, much like the Salem witch trials?

For over 14 years, the Director of Public Prosecutions has had information that indicates the latest. The connection between public panic, human rights violations, and the arbitrary persecution of earlier times is documented in Human Rising, a report forwarded to Norwegian authorities in 2010, and the use of force in drug policy is, therefore, extremely problematic. From the point of view of human rights, goals and means must be credibly related, and if less intrusive measures are better suited, the presumption of freedom dictates that the state of nature be emphasised. For thousands



of years, people have used cannabis and other illicit substances with impunity, so why not take insights from the alcohol policy? Why live with threshold values so low that users must deal with criminals almost daily? Why not ensure quality-controlled substances? Is it reasonable to expose users and society to such a burden?

When it comes to punishment and human rights, the Ministry of Justice has professional responsibility. The Law Division has defended punishment in the drug policy by referring to HR-2022-731-A, as the Supreme Court finds in this judgment that "punishment for possession of drugs generally pursues a legitimate purpose", but the defense disagrees. As an outspoken supporter of the principles that build a liberal rule of law, does the Director of Public Prosecutions believe that the human rights analysis in HR-2022-731-A is well executed, or are there weaknesses?

The Supreme Court concludes in HR-2022-731-A 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.<sup>70</sup>*

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 Director of Public Prosecutions believe that a ban on substances other than alcohol and tobacco provides a benefit to public health?

Considerations of public health have been vital to the legislature. The Ministry of Justice emphasizes this in its rejection, but 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 Singel 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 Director of Public Prosecutions think that cannabis prohibition can be defended measured against cost-benefit considerations?

The defense 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 measured in overdoses and deprivation of liberty has been clear, and is this money and 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 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 freedom in the law, and does the Director of Public Prosecutions believe that this has been sufficiently stressed?

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."*<sup>71</sup>

On the basis of such input, the Ministry of Health in Prop 92 L (2020-2021) "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."<sup>72</sup> 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 for 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 assessed, but the Director of Public Prosecutions has also noted the lack of empirical evidence that punishment works. As the director states in his consultation response to the Royal Commission:

*The investigation [of the commission] largely 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".<sup>73</sup>*

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. To the extent that there is a fear of increased use, this will affect analyses, which we also see in the Director of Public Prosecutions' consultation response. While the Director of Public Prosecutions acknowledges that there is no good data to maintain punishment, the director continues as follows:

*We would also like to note that much of the research that the committee refers to is based on surveys and applies to changes in the law in one direction – namely the reduction or abolition of punishment, and then primarily for cannabis (the investigation p. 157). For that reason, we raise the question of how solid the research foundation for the committee's model is, especially as the model goes considerably further than the reforms it refers to. By maintaining the threat of punishment, a normative effect is continued which we believe that punishment undoubtedly has. It also avoids the educational challenge of having to explain – including getting the public to understand – the difference between decriminalization and legalization.*

We shall hear more about the normative effect that the Director of Public Prosecutions believes "punishment undoubtedly has", but for the defense it is clear that decriminalization and legalization are two completely different things. It appears obvious that decriminalization implies control of the market by criminal gangs, while legalization means government control. Decriminalization

therefore means more dangerous substances and unsafe neighbourhoods, as well as exposing users to a dynamic that first turns them into sellers and then inmates. It involves meeting out thousands of years in prison, huge expenses for the control industry, and all that the citizens receive in return is more alienation, suffering, disease and death and a society in constant war with itself.

The difference between decriminalization and legalization is therefore clear, as the consultation input from Marborg and RIO points out. It also appears obvious that a regulated market is better than a criminal, so does the "pedagogical challenge" lie in explaining why the state chooses the latter? Is there something other than the double standard in the drug policy that constitutes "the educational challenge of having to explain – including getting the public to understand – the difference between decriminalization and legalization"?

The defense is asking because for 50 years there has been increased discord between professionals and politicians, because this disagreement is reflected in two expert studies which conclude that punishment for drug use cannot be defended, and because the Ministry of Justice over the past 20 years has stressed political manoeuvring over human rights considerations. We have seen this reflected in the report of the Committee for conduct, integrity, and conflict of interest in law enforcement, and we also see this in the treatment of the Criminal Law Commission's work. 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.*<sup>74</sup>

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.*<sup>75</sup>

Thus, for 20 years there has been general consensus from a professional perspective that punishment cannot be defended, but the legislative branch has insisted on a strict line of punishment, and got away with it, because the Ministry of Justice prioritizes political games over reason-based considerations. This is what happened when the Ministry of Justice rejected the report of the Criminal Law Commission's majority because the Government had determined in the Soria Moria declaration that it must pursue a restrictive drug policy, and after the Royal Commission's report the Ministry again looked away from the problem of punishment with the principles of the rule of law because the Solberg-government through the Jeløya-platform made it clear that the prohibition would stand.

This is what we can expect in times of public panic. 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 for over 20 years the Storting and government have arrested the realization of human rights in drug policy. The Royal Commission's NOU 2019: 26 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.<sup>76</sup>

This puts not only citizens, but the police and prosecuting authority in a difficult situation, because neither the Supreme

Court nor the Ministry of Justice's treatment of human rights satisfies requirements for an effective remedy. All the Supreme Court does in HR-2022-731-A is to refer to the Ministry of Justice's "overall assessment", but is it sufficient to defend punishment by referring to "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".<sup>77</sup> 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 Director of Public Prosecutions 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 defense has shown how for 20 years the Ministry of Justice has taken the legislator's side in a growing gap between professionals and politicians. Should the Supreme Court have emphasized the "legislative signals when determining the reaction" when the Royal Commission has found that public panic has been leading? To the extent that public panic has shaped drug policy, won't this perpetuate the problem?

It is as the defense will show a connection between public panic and human rights violations. To the extent that panic has characterized politics, principles such as autonomy, equality,

proportionality and the presumption of freedom will not be sufficiently emphasized, and society will have an oversized punishment and control apparatus. This is what the defense believes is the situation today, and after the drug reform report, which shows the problems with the political process, shouldn't the Supreme Court have made an assessment based on human rights principles?

The defense believes that if the Supreme Court had carried out a human rights analysis, the distance between the law and constitutional ground would have been settled. Instead, by emphasizing the legislature's signals and the Ministry of Justice's rejection of the Criminal Law Commission's work, the Supreme Court ensures a continuation of public panic, because the ministry's discussion in Ot.prp.nr.22 (2008–2009) is not reassuring reading. In this proposal, the ministry explains that "the narcotic substances stand . . . in a different historical and cultural position",<sup>78</sup> but does the Director of Public Prosecutions 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 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.<sup>79</sup>*

The defense therefore asks the Director of Public Prosecutions: If an action is undesirable, must it be criminalised? Does the state have to criminalize tobacco smoking, overeating, watching porn, and lack of truthfulness in order for people to understand that better habits are preferred? Is the lack of criminalization of such behaviour a sign that the state encourages destructive patterns of life, or does it indicate that the state respects the limits laid down by law?

The ministry's emphasis on the importance of sending the correct signal is anchored in Ot.prp.nr.90 (2003–2004), but according to NOU 2019:26, continuation of punishment has a questionable norm-forming status. The drug report 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 bureaucratic overreach 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 policy is based on failed premises, prohibition signals the opposite of what the Storting, the Ministry of Justice, the Supreme Court, and The Director of Public Prosecutions 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 Directorate of Public Prosecutions is served by the current situation. Even so, the director seems confident in his consultation response that the threat of punishment continues to have a normative effect. 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 Director of Public Prosecutions explain how drug policy differs from arbitrary persecution? 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?

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, and 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".<sup>80</sup>

We see here that the ministry uses the problems that come with a prohibition to justify punishment in the drug policy. Does the Director of Public Prosecutions 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 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, 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".<sup>81</sup> If this is disproportionate, what about the current penalty framework?

Several courts have anchored the right to cannabis use in self-determination, and if there are good reasons to choose drugs other than alcohol, why should the state use its power to interfere with drug use? Can the Director of Public Prosecutions say anything about this that is not transferable to alcohol?

The Director of Public Prosecutions 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,<sup>82</sup> so why should users of other drugs risk punishment and the problems that result from an illegal market?

Through this and other testimonies, we will look at the reasoning that underpins the prohibition. The Court must review the answers to the questions that 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"<sup>83</sup> 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 mission to assess the Director of Public Prosecutions' reply, as well as the Storting and the Ministry of Justice's treatment of rights. It is nevertheless not without reason that these actors are held responsible for a failure to end arbitrary persecution in drug policy. As we have seen, the

ministry has chosen the wrong side in a growing rift between professionals and politicians, and not only is "culture" used in Ot.prp.nr.22 (2008–2009) several times to defend differential treatment in the drug policy, but the ministry's assessment reveals an old-fashioned attitude to punishment. As the ministry states:

*It is not just about the deterrent function of the punishment. In the ministry's opinion, the criminalization of drug use is also important for highlighting basic values in society. Punishment thus constitutes an important element in the pedagogic guidance that society otherwise exhibits, for example at home and school.<sup>84</sup>*

This is what we are left with when the defense of punishment has been reviewed. The Justice Department refers to prohibition and punishment as necessary for the protection of society's morals, but are these values that the Director of Public Prosecutions want to convey? Belief in the educational effect of violence has long since been out of date in psychology, criminology and the sociology of law, and the defense assumes that employees of the prosecution do not use such means against their own children. In drug policy, more and more people understand that punishment hurts, so isn't it time to face the consequences?

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 of prohibition, 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 in Prop 92 L (2020-2021) 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 is the situation better in the more serious cases?

What punishment does a cannabis grower deserve? What has he done other than challenging the state's drug monopoly by offering less harmful substances? Is it the offender or the politicians who have failed in their social responsibility?

When it has been known for 20 years that the prohibition makes things worse, but the politicians maintain a market for organized crime, should not cannabis farming be considered vigilantism? 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, they 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 Director of Public Prosecutions wants to represent?

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 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 incremental 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.<sup>85</sup>*

Do the Director of Prosecutions presume that prohibition has done a better job in Norway?

The defense has drawn attention to the lack of a basis for punishment and that the presumption of freedom remains ignored. We know that the 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, 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 judges 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".<sup>86</sup> If this is so, does not the drug law disparage justice?

The Director of Public Prosecutions has a special responsibility to ensure that the use of the police power is justified, and 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 Director of Public Prosecutions 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.<sup>87</sup> It is well-known that much extortion, kidnapping and murder are related to conflicts in the drug market, and the meddling of the police increase the chances of it happening. We also see this in Norway, where the strict approach to law and order in the 1980s resulted in more stigma, diseases, crime, and mortality. The drug market became more organized and ruthless in response to police efforts, while recruitment into crime continued. There are many indications that the rise in crime is linked to drug policy, and if we are to protect children and young people from the

drug market (as required by the Convention on the Rights of the Child), isn't it time to think again?

The defense 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".<sup>88</sup> 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,<sup>89</sup> and the police described a shift towards harder drugs.<sup>90</sup> The police therefore do not "prevent exposure and recruitment" through seizures, but increase the chances of conflict, so how have the police's efforts made the situation better?

The Supreme Court uses the danger of drugs as a justification for a system of threshold values, and this concept forms the basis of the penalty framework. Still, the supply and demand of drugs must be twisted 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 you can

buy in the shop, and compared to alcohol, the problems with cannabis use are smaller. Of the challenges that may arise impure substances, psychosis, dealings with criminals, criminal intrigues, and problems with the police and child protection services are most relevant. The burden that a perpetual state of war imposes on society can be added, but all of this is linked to prohibition. Does it then make sense to talk about the danger of proliferation 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?

We know that, after a thorough review, the Royal Commission does not find that the justification requirement for penalizing use and possession has 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 danger of proliferation is an example that the rule of law does not apply in drug cases",<sup>91</sup> 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 Director of Public Prosecutions? Does the director 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 (including employees of the Higher Prosecution Authority) act when public panic is detected?

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 director 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.<sup>92</sup> 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 Director of Public Prosecutions' 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".<sup>93</sup> 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 Director of Public Prosecutions 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".<sup>94</sup> 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?

The defense has demonstrated how the risk of proliferation is uncritically used to justify a prohibition and how, on the basis of this, the Supreme Court has established a regime with threshold values. Nevertheless, thousands of human rights violations have been uncovered as a result of the Director of Public Prosecutions' report on the use of force in minor drug cases and the threshold values do not prevent arbitrariness. Instead, thresholds are a way of preserving a blind spot, allowing the prohibition to continue – so, let's talk about the thresholds.

The legislature, the Supreme Court and the Director of Public Prosecutions 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 director 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 dangers of drugs" 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?

According to the Royal Commission, even "the introduction of penaltylike administrative fees may, depending on the circumstances, conflict with the citizens' right to privacy and the right to health".<sup>95</sup> If this is disproportionate, what about current penalties? Why depart from the traditional measure of culpability? Normally, be it knives, axes, explosives, or legal drugs, social scorn and moral blameworthiness are reserved for those who abuse a product, not those who profit from its sale: Why is a dealer of cannabis more to blame than its abuser?

Proponents of drug prohibition have twisted the law of supply and demand into a victim and abuser context. This is how users are pathologised and dealers demonised. However, is 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 Director of Public Prosecutions cannot deny that the same law of supply and demand and the same varying user patterns are involved, is it proper to turn supply and demand into a victim and abuser context? Does this not reveal a blind spot that should be illuminated? The Royal Commission's report shows that the idea of the drug shark is political fiction

and that punishment must be defended: if penalties for drug use are exposed as disproportionate, should not penalties for sale be subjected to the test of reason? Does the Director think that this is the case today?

In a criminal market, there is no quality 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. Politicians, for example, want to protect the young, but prohibition promotes 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. 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?

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

The Director of Public Prosecutions has to go by his gut, as no report has assessed the pros and cons of a regulated market. Nevertheless, few experts believe that drug use will increase significantly, and it is more likely that crime will fall to the level of the 1950s, before the war on drugs accelerated the statistics. This was at least what the Dutch authorities concluded after examining the case.<sup>96</sup> Therefore, it only makes sense that the director, like everyone else involved in

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

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

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.<sup>97</sup>*

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

There are also other reasons for regulating illicit drugs as we did almost a hundred years ago with alcohol. We know that prohibition comes with major societal costs, that it forces users to have contact with criminals, and that the illegal market threatens society. For half a century, slowly but surely, the drug trade has corrupted law and order and the institutions intended to safeguard an open society while, at the same time,

sacrificing a larger percentage of the population. These are dynamics that receive little attention, but what does dignity entail: is it a drug-free life or one where self-determination is emphasised? And if we are not distorting the law of supply and demand, why are drug dealers so bad?

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

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

The point of drug policy, just not stated, is to make drug use as dangerous as possible. Proponents of the prohibition see all drug use as abuse. There is no quality assurance, and the

worse-off the users are, the less lucrative it is for young people to become "drug addicts". Thus, prohibitionists insist on punishment to keep the youth from becoming drug addicts, but can citizens trust the political process? If there is no rational distinction between legal and illegal drugs, can citizens learn anything from drug policy other than to see through its hypocrisy?

The Government's advisers in drug policy are former Director of Public Prosecutions Tor-Aksel Busch, retired judge and public prosecutor Iver Huitfeldt, and others who measure proportionality based on a drug-free ideal. This tradition is much defined by the moral panic documented by the Royal Commission, and the contrast to the Director of Public Prosecutions is noteworthy. This is how Huitfeldt answered 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.*<sup>98</sup>



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

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

What about the office of the Director of Public Prosecutions? Are the director and his staff reasoning from a position of principle? Are the requirements of the rule of law sufficiently emphasised by the higher prosecuting authority?

In *Kapital*, we could read that the director "constantly thinks about how we defend the use of punishment, and how we can defend the levels of punishment we set for different types of crime".<sup>99</sup> The defence assumes that this is the reason the Director of Public Prosecutions has supported drug reform, but is decriminalisation enough? If we recognise that people do not choose intoxicants only for pathological reasons and that the humanisation of drug users makes it problematic to prosecute, what about a criminal market? Is it necessary to expose drug users and society to the problems that come with criminalisation? Are there good reasons to punish, when we have abandoned the ideal of a drug-free society, or do we have

to acknowledge the connection to the arbitrary persecution of earlier times?

Because no investigation has been made, there is a blind spot, but the 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?

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 the director 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 Director of Public Prosecutions 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.*<sup>100</sup>

The dread of the police has become reality through the system of threshold values. As the Director of Public Prosecutions and the Supreme Court both emphasise 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.<sup>101</sup> 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?

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 Committee for conduct, integrity, and conflict of interest in law enforcement, should not the police 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 Director of Public Prosecutions believe that this is the case today?

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 the Minister of Justice and politicians be held accountable? Wouldn't that ensure a proper signalling effect if the goal is to secure the rule of law?

In the autumn of 2022, the Center Party tried to win votes on the need for more means of force and more punishment by claiming that drug use had dangerously 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,<sup>102</sup> to gain support for a policy that violates human rights. According to the UN, impunity is the biggest problem for securing human rights, so why not hold politicians and ministers personally responsible?

If the director does not want to emphasize the signalling effect of holding politicians and employees of the Ministry of Justice 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? How can the prosecution expect the people's respect?

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,<sup>103</sup> so shouldn't the leadership more actively listen to the latter? And shouldn't NNPF be abolished?

What does the Director of Public Prosecutions think about toxic culture in the state apparatus? Can public panic shape drug policy for 60 years without the dysfunctional culture being a problem? Can we trust that human rights violations will not be perpetuated, even after the director's guidelines in minor drug cases?

What does the Director of Public Prosecutions think about the toxic culture in the upper echelons? Can public panic continue decade after decade without leadership failure? Has it become a tradition in the drug fighting machinery to find managers who support a prohibition regardless of legitimacy? Has 60 years of prohibition promoted a culture in which the preservation of prestige, budgets, and powers defines the debate?

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

reasons fail, the court must recognise a parallel to the arbitrary persecution of earlier times.

Addressing the problem of arbitrariness is crucial, and the integrity of the department is one reason Are Frykholm, the leader of the Norwegian Association for Police Lawyers, is calling for leadership.<sup>104</sup> Equally important are the rule of law's guarantees for the persecuted groups, and should the director not accept responsibility for the drug policy's incompatibility with human rights and work for a more holistic approach?

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

*Today, we have reached a point where even very serious drug offenses are met with alternative punitive measures if it is considered the best individual prevention. In a Supreme Court ruling in August last year, a 46-year-old woman who had been abusing drugs for about 30 years was sentenced to probation on terms of a drug program with court control for dealing with nearly 10 kilos of methamphetamine. The alternative unconditional prison sentence, and the subsidiary punishment for violation of the condition, was imprisonment for six years. The Supreme Court considered that such a conditional reaction made it far*

*more likely that she would not fall back into drug use and new crime, and it became decisive for the result (in addition, a long time had passed since the act was committed). The Director of Public Prosecutions considers the ruling as a result of the increasingly common view that long-term drug addicts who are motivated for change need a different follow-up and a different content in the sentence than what serving a prison term entails. The verdict is thus an expression of the approach we share, namely a shift from punishment to help.*

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

If general preventive considerations are used to retain the most severe punishment of the law, it means that some are punished so that others will not do the same. Even so, as we have seen, the demonisation of the sale of drugs depends on turning the law of supply and demand into a victim and abuser context, and no one can explain why. Rather than punishing



out of old habit, should not the Director of Public Prosecutions take care to justify the moral distinction between use and sale? When half of Europe and large parts of the United States have legalised similar actions, how is the requirement of proportionality met?

As mentioned in the introduction, for 14 years, the Director of Public Prosecutions has been informed about prohibition's problem with human rights, and the defence will go into more detail about the argument as presented in 2009. This is to clarify the state's liability over time, for as the appellant wrote in a letter dated September 9, 2009, "It is [the director's] responsibility to ensure that the police carry out orders that do not crash with law enforcement ethics and human rights, and it is also [the director's] responsibility to ensure that subordinates have guidelines that do not violate human rights conventions such as the European Convention of Human Rights (ECHR) and the UN human rights treaties".<sup>105</sup> Is this controversial?

In 2009, the appellant held that "there is an unreasonable distinction between legal and illegal substances, as this distinction cannot be legitimised from either a perspective of health or any other rational point of view", and that "such unreasonable discrimination is contrary to the principle of equality" (ECHR Art. 14 and ICCPR Art. 26). Should the Director of Public Prosecutions have done more than trust the political process? Does not the director have a positive obligation to take alleged human rights violations seriously?

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

If several courts have found a legitimate interest in cannabis use, does that not contradict the idea of a legitimate state interest in prohibition?

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.<sup>106</sup>*

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 director see a bigger vision for humanity than continuing the hunt for scapegoats?

After the Higher Prosecution Authority in 2009 failed to respect human rights, Director Tor-Aksel Busch was reported to the special unit for police matters.<sup>107</sup> The case was dropped, but from that time onwards, the office of the Higher Prosecution Authority was sufficiently informed to know better. Not only had the appellant explained the Director of Public Prosecutions' responsibility but also the effect of the enemy images and the comparison to the arbitrary persecution of the past were emphasised. The appellant wrote as follows:

*Although, for example, the leaders of Hitler's Germany believed that it was necessary for the stability of the state to treat Jews as they did, it did not legitimise the treatment of the Jews, and the same can be said about South Africa's treatment of the blacks under the apartheid regime, as well as about the Norwegian state's treatment of the Sami people and Tatars up to less than half a century ago. In order for such discrimination to be legitimised, the state must show that it is necessary – i.e., that it is not arbitrary – and that it is reasonable from the point of view of overriding societal considerations. The state must be able to show that the degree of social control is appropriate, because otherwise it is repressive, and considering that it can be proven that a health policy approach is a far more sensible and appropriate solution to the problem of drug use, it is not up to state representatives to a system of prohibition because it is in the perceived interests of existing agencies. Citizens' interests must*

*take precedence over the agencies' hunger for powers and government subsidies. The drug laws must be said to serve the community, and if they demonstrably have an unfortunate social function and consequence they must be abolished if the state wants to appear as a defender of human values and the integrity of its citizens.*

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

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

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

*empirical evidence that decriminalisation of use or possession for own use will necessarily lead to a significant increase in the use of drugs. In light of the total amount of international research that is now available, which does not document any clear connection between changes in criminal law and the use of drugs in society, there is considerable doubt in the assumption that penalties against drug use and possession of drugs for own use as a whole has a preventive effect that cannot be achieved with other, less intrusive measures. The committee has therefore come to the conclusion that the best available knowledge as of today does not form the basis for any certain expectation that decriminalisation of drug users will lead to a significant increase in the use of drugs in the population.<sup>108</sup>*

In other words, all indications are that less intrusive measures are better suited as a foundation for drug policy. The Ministry of Health's assessment in Prop 92 L (2020-2021) was the same,<sup>109</sup> and the defense assumes that this was the reason that the Director of Public Prosecutions concluded that the use of force was disproportionate in minor drug cases. Is that right?

Still, a blind spot exists. The Royal Commission concluded that the punishment for use was disproportionate but did not investigate more serious circumstances. Politicians did not want the human rights situation in major drug cases to be elucidated, and the Director of Public Prosecutions followed

up by limiting the investigation to minor drug cases. Despite this, the more severe the punishment is, the more stringent are the requirements for the law. This is a basic principle of law, and so should not the legislation for sales and manufacturing be subject to control? Should it not be evaluated on the same terms as the Royal Commission examined drug use and possession?

This is exactly what the defendant asked for 14 years ago. As the appellant wrote to the Director of Public Prosecutions,

*As you know, I have the right to be heard in an independent, impartial, and competent court if I claim that rights have been violated (according to Article 13 of the ECHR), and shall have the opportunity to prove my claims (that there is an unreasonable discrimination of analogous cases, and that the drug laws represent a drug political/racial divide), while the state in turn must be able to show that the drug laws are proportionate (well-tailored and necessary/reasonable) interventions, and that their goal (a drug-free society) is meaningfully connected with the means. Even if our leaders had therefore chosen to ban tobacco and alcohol as well, and in that sense had avoided violating the [principle of equality], I would still be able to prove that drug laws were unlawful, since it is easy to demonstrate that the drug prohibition has had far more unfortunate consequences for society than drug use itself. I would like to remind the Director of*

*Public Prosecutions that although the political debate does not exactly reflect this fact, this was established as true for cannabis prohibition in an independent court in The Hague on 1–2 December 2008 (the cannabis tribunal). I do not think that drug use is a human right because drugs are unproblematic. I believe that drug use is a human right because it can be shown that the cure (drug prohibition) is worse than the disease (drug use); because no matter how much effort we put into the drug-free social ideal, we will never succeed; and because we can do far more for society and each other by embracing a health policy approach. There are Norwegian doctors who believe that the overdose statistics in this country can be cut by up to 90 percent if politicians switch to a health policy approach (Ole Martin Larsen, Mellom alle stoler, 2008). Thus, it appears clear that the drug-free ideal kills, and citizens can say that the current drug policy is a crime committed by the state against the citizens, as prohibition at no time could be said to serve society's interests, but nevertheless remains fixed and indisputable strategy.*

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



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

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

*with the right to respect for privacy, etc. promote a legitimate purpose and be necessary in a democratic society. . . . [Although] states have a wide margin of discretion in assessing whether interference with the right to privacy and family life in this regard is compatible with Article 8 of the ECHR, [implies] the requirement of necessity. . . nevertheless that it must be demonstrated that the intervention corresponds to an urgent social need ("pressing social need"). It must also be shown that the intervention is proportionate to the purpose of the intervention, taking into account relevant interests that must be weighed in the assessment. It is primarily the responsibility of the state parties to make these assessments, but the ECtHR can review whether the arguments that are claimed to justify the intervention are relevant and proportionate and whether the rights were sufficiently respected in the decision-making process that led to the adoption of the intervention.*<sup>110</sup>

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

The Director of Public Prosecutions is to be commended for the efforts in this area, but apart from the light that the Director's report shed on a few weeks' work of the Norwegian police, the politicians, prosecution authority, and the courts have preserved a blind spot. As a result, 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 director's gut feeling? Does the prohibition signal a benign and necessary guardianship, or do the state's efforts for public health do more harm than good? Are the politicians free to deny citizens' autonomy, or is it better for citizens to take responsibility for their own use? What does the Director believe will be history's verdict on punishment in drug policy?

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

# 9

## Let justice be done

*Fiat jūstitia ruat cælum – Let justice be done though the heavens fall.*

— Latin legal Maxim—

WE HAVE REVIEWED the basis for punishment and it is unlikely that the drug policy can be defended. It remains to be seen when the Norwegian state will accept the connection to past arbitrary persecution, but citizens and officials can make an effort to promote human rights nonetheless. Only to the extent that illegal drug users accept discriminatory treatment from alcohol can the prosecution and courts continue on autopilot, only to the extent that people vote for political parties that continue punishment can the legislature continue on a constitutional side-track, and only to the extent that public servants turn a blind eye to human rights violations can the Supreme Court, the Minister of Justice, the Director of Public Prosecutions, and the Director of Police continue to set the rule of law aside.

A collective psychosis can only last as long as there is no integrity. People may think that the double standards in the

drug field are not relevant to their lives, but we are all affected in one way or another by drug legislation. Parents are especially influenced because it is their children's upbringing and future that is at stake. Without the prohibition, 15-year-old Jonatan would not have taken the life of someone who sold him bad hash,<sup>111</sup> nor would he have stabbed and killed a passing mother of two. Without the ban, he would not have taken his life in prison six years later, and his mother and father would not have been left with a loss that few can imagine.

Unfortunately, Knut Røneid, a policeman from Sogn and Fjordane, who found his son dead on the bathroom floor, can imagine such loss. Kristoffer, aged 18, experimented with hashish and took his own life in 2015 after the police had searched his home on suspicion of cannabis use. It goes without saying that Knut Røneid is familiar with the shadow side of Norwegian drug policy, and that he supports a regulated drug market. So do many others who have felt the side-effects of the prohibition, because criminalization means that children do not dare to talk about what is most important.

Jonatan (15) did not dare to tell his parents about the money he had lost after being cheated in the hashish market. Kristoffer saw himself through society's eyes and could not deal with the shame. Criminalization is the basis for a constant stream of disaster, and it will not end until society comes to terms with the double standards inherent in the drug policy.

This is AROD's mission. Opposition to public panic is necessary for personal and systemic growth, and several hundred Norwegian lives a year depend on a new drug policy. No one can know when and where the next tragedy will strike, but we can prevent it by working towards a more holistic vision. Within a few years, it is certain that the battle will be crowned with victory, and AROD is available to those who want help for human rights defense. We are also available to others who want to give voice to human rights in drug policy. A thousand forces are pulling in the same direction – and for the sake of the rule of law, let's hope that the European Court does not reject its responsibility.









## **About the author**

Roar A. Mikalsen is the author of nine books dealing with drug policy, human rights, constitutional interpretation, social engineering, power politics, consciousness research, self-help, mysticism and cosmology. He is the founder of the Alliance for rights-oriented drug policy (AROD), an organization with a focus on human rights in drug policy, and nominated for two human rights awards. (Vaclav Havel and Martin Ennals). A platform for his work is Life Liberty Productions, a publishing and consulting company dedicated to the Spirit of Freedom. On the website [lifelibertybooks.com](http://lifelibertybooks.com), you will find books that are recommended by professionals and that have the potential to help humanity into a new age.



# Endnotes

<sup>1</sup> Eirik Holmøyvik & Dag Michalsen (eds), *Lærebok i forfatningshistorie* (Pax Forlag 2015) 333–334; formalised later in 1866: see Eivind Smith, *Konstitusjonelt demokrati* (Fagbokforlaget 2009) 311–312

<sup>2</sup> *"To the basic principles that stand above the rule of the majority, belongs the principle of independent courts and the courts' right to review laws and administrative decisions. The fact that independent state bodies have been created to judge also in disputes between the state and the individual is a core point in the rule of law. I consider it one of the West's most important contributions to world culture."* JOHS. ANDENÆS, *ETTER OVERVEIELSE - ARTIKLER I UTVALG 1983-1992* (1992) 170

<sup>3</sup> For more on the problem of drug policy with human rights, see ROAR MIKALSEN, *HUMAN RISING: THE PROHIBITIONIST PSYCHOSIS AND ITS CONSTITUTIONAL IMPLICATIONS* (2019)

<sup>4</sup> Evy Frantzen, *Are We Killing Drug Addicts?* January 9, 2002 [http://www.uib.no/sites/w3.uib.no/files/attachments/dreper\\_vi\\_de\\_narkomane\\_-\\_evy\\_frantzen\\_-\\_09.01.2002.pdf](http://www.uib.no/sites/w3.uib.no/files/attachments/dreper_vi_de_narkomane_-_evy_frantzen_-_09.01.2002.pdf).

<sup>5</sup> NILS CHRISTIE OG KETIL BRUUN, *DEN GODE FIENDE* (1985)

<sup>6</sup> THOMAS MATHIESEN, *OM MORALSKE PANIKKER* (1986)

<sup>7</sup> 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

<sup>8</sup> Julian Critchley: *All the experts admit that we should legalise drugs*, *The Independent* 14 August 2008

<sup>9</sup> Gjengedal, *Narkotika og straff*, 26. februar (2003)

<sup>10</sup> Kveim, *Narkotikapolitikk og folkelig fornuft*, 12. desember (2005)

<sup>11</sup> Gjengedal, *Narkotika og straff*, 26. februar (2003)

<sup>12</sup> As Professors Waal and Pedersen wrote in 1996: *"After more than a decade of research, one can conclude that Norwegian police went*

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*somewhat amuck in the 1970s and 1980s. We know that drug use rates were dropping and still there was a period where those in congress outdid themselves as exponents of harsher punishment until the Constitution made it impossible to aim higher.” PEDERSEN & WAAL, RUSMIDLER OG VEIVALG (1996) 222*

<sup>13</sup> Strøm-Gundersen & Foss, *Vil avkriminalisere narkotika*, Aftenposten, February 14, 2010

<sup>14</sup> Id.

<sup>15</sup> Brennpunkt, I beste Mening, del 2 (28 min)  
<https://tv.nrk.no/serie/brennpunkt/1996/FALM12006596>

<sup>16</sup> NOU 2002: 04 section 5.2.1.5.3

<sup>17</sup> NOU 2002: 04 section 4.2.3.4

<sup>18</sup> <https://www.nrk.no/norge/vil-avkriminalisere-narkotika-1.504484>

<sup>19</sup> <https://www.dagbladet.no/nyheter/dorum-er-gammeldags/65793752>

<sup>20</sup> <https://www.morgenbladet.no/ideer/debatt/2009/11/06/vi-trenger-ny-narkotikapolitikk/>

<sup>21</sup> <https://www.aftenposten.no/norge/i/zrOm5/frykter-hasjdebatten>

<sup>22</sup> NOU 2019: 26, p. 30

<sup>23</sup> <https://pace.coe.int/en/files/28769/html>

<sup>24</sup> <https://www.ohchr.org/en/statements/2022/06/aligning-drug-policies-human-rights>

<sup>25</sup> <http://www.drugpolicy.org/publications-resources/sign-letters/public-letter-kofi-annan/ungass-public-letter-kofi-annan-signato>

<sup>26</sup> 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

<sup>27</sup> Committee on Legal Affairs and Human Rights Drug policy and human rights in Europe: a baseline study (2019) [www.assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2019/AS-JUR-2019-25-EN.pdf](http://www.assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2019/AS-JUR-2019-25-EN.pdf)

<sup>28</sup> <https://tv.nrk.no/serie/brennpunkt/1996/FALM12006596>

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<sup>29</sup> 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

<sup>30</sup> Ibid.

<sup>31</sup> <https://pace.coe.int/en/files/28769/html>

<sup>32</sup> Kvalitetskrav til straffesaksbehandlingen i politiet og ved statsadvokatembetene, Riksadvokaten Oslo, 8. november 2018 (rev. 21. februar 2019) 4

<sup>33</sup> For audio from the district court hearing: <https://www.rodpolices.org/audio-from-the-district-court>

<sup>34</sup> <https://tv.nrk.no/serie/brennpunkt/1996/FALM12006596>

<sup>35</sup> Private correspondence, sent to the European Court with other case documents in 2011.

<sup>36</sup> 22-120070AST-BORG/04, Judgement of the appeals court (Borgarting lagmannsrett) delivered 26.10.22

<sup>37</sup> <https://www.adressa.no/midtnorskdebatt/i/8QaMkx/hjelp-ikke-straff>

<sup>38</sup> *Drug Policy and Human Rights in Europe: Managing Tensions, Maximising Complementarities* (2018) p. 17. Background paper for the Pompidou Group of the Council of Europe, prepared by Damon Barrett, Director, International Centre on Human Rights and Drug Policy, Human Rights Centre, University of Essex; and doctoral candidate, Faculty of Law, Stockholm University

<sup>39</sup> CHRISTIE & BRUUN, *DEN GODE FIENDE* (1985) 131

<sup>40</sup> <https://tv.nrk.no/serie/folkeopplysningen/2016/KMTE50009615>

<sup>41</sup> [https://www.nrk.no/norge/kritiserer-anundsens-\\_cannabis-bevis\\_-\\_brukte-upublisert-eksamensoppgave-1.13126432](https://www.nrk.no/norge/kritiserer-anundsens-_cannabis-bevis_-_brukte-upublisert-eksamensoppgave-1.13126432)

<sup>42</sup> <https://coloradosun.com/2022/11/07/colorado-marijuana-legalization-history-amendment-64/>

<sup>43</sup> Ibid

<sup>44</sup> Id.

<sup>45</sup> <https://pace.coe.int/en/files/28769/html>

<sup>46</sup> Indian Hemp Commission report 1893-94

<sup>47</sup> ROAR MIKALSEN: *CONSTITUTIONAL CHALLENGES TO THE DRUG LAW: A CASE STUDY* (2017)

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<sup>48</sup> See MIKALSEN, *CONSTITUTIONAL CHALLENGES TO THE DRUG LAW* (2017)

<sup>49</sup> Randy E. Barnett in JEFFREY SCHALER (ED.), *DRUGS: SHOULD WE LEGALIZE, DECRIMINALIZE OR DEREGULATE?* (1998) 172

<sup>50</sup> 22-120070AST-BORG/04, Judgement of the appeals court (Borgarting lagmannsrett) delivered 26.10.22

<sup>51</sup> LENA GIPPERTH OG CHARLOTTA ZETTERBERG, *MILJÖRÄTTLIGA PERSPEKTIV OCH TANKEVÄNDOR. VÄNBOK TILL JAN DARPÖ & GABRIEL MICHANEK* (2013) 238

<sup>52</sup> JØRGEN AALL, *RETTSSTAT OG MENNESKERETTIGHETER* (2011) 92

<sup>53</sup> <https://theanarchistlibrary.org/library/lysander-spooner-vices-are-not-crimes-a-vindication-of-moral-liberty>

<sup>54</sup> *People v. Lorentzen*, 194 N.W.2d 827 (1972) 182 (Kavanagh J., concurring in part, dissenting in part)

<sup>55</sup> *State v. Baker*, 56 Haw. 271, [535 P.2d 1394](#) (1975) (Majority opinion) (“An assured right of possession would necessarily imply some adequate method to obtain not subject to destruction at the will of the State.”); *Crane v. Campbell*, 245 U.S. 304 (1917) 308 (“An assured right of possession would necessarily imply some adequate method to obtain not subject to destruction at the will of the State.”); Hinds, *Morality Enforcement Through the Criminal Law and the Modern Doctrine of Substantive Due Process* (1977) 383 (“It is absurd to talk about a right to use a product when it remains illegal to purchase the product and illegal to transport it to the place where it may rightfully be consumed.”); Grosman, *Drugs under the Constitution* (2011) 14 (“If we believe there is a right to use drugs as part of our autonomy, we cannot prosecute drug provision, which is instrumentally necessary to perform the conduct protected by such right. The fact that drugs can be found all the same is no valid answer for the State, since that is so despite its attempts to prevent it. Moreover, it could not be claimed that the State adequately protects this right if it pushes the user to the illegal market as the only way to access the drug.”)

<sup>56</sup> 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

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<sup>57</sup> In an article from Dagsavisen 14 April 2023, for driving at a speed that was measured at 92 km/h in an 80-zone, a man was sentenced to sentence was imprisonment for 15 days, which was suspended with a probationary period of two years. In addition, he was sentenced to pay a fine of NOK 64,000. He also lost his driving license for 12 months and must take a full new driving test to get it back. This because blood sample was collected on the same day and showed that the man was under the influence of cannabis, corresponding to a blood alcohol level of between 0.5 and 1.2. As the Judgement held: "The court therefore believes that the accused has undoubtedly behaved as described in the charge and further believes that the accused acted negligently in that he should have realized that the hashish intake could lead to him being under the influence of drugs five days later. It is common knowledge that THC can be detected in the body for a long time after consumption, so that you can be affected without necessarily noticing it yourself."

<https://www.dagsavisen.no/rogalandsavis/roganytt/2022/04/14/tatt-i-92-kmt-i-80-sone-ma-betale-64000-kroner/>

<sup>58</sup> Inger Johanne Sand: *Hva er rettens rolle i dag?* Forholdet mellom rett, politikk og makt, belyst ved nyere teori og eksempler fra globaliseringsdiskusjonen og Makt- og demokratiutredningen». I: Kristian Andenæs, Anne Hellum & Inger-Johanne Sand, *Rettsliggjøring, kvinner, makt og politikk*. Stensilserien nr. 101. Oslo: Institutt for kriminologi og rettssosiologi (2005) 172

<sup>59</sup> 10-140153AST-BORG/04

<sup>60</sup> THOMAS PAINE, *RIGHTS OF MAN* (1996) 78

<sup>61</sup> [https://www.nrk.no/nordland/sture-pedersen-gar-hardt-ut-mot-venstres-ruspolitikk-\\_vil-opne-rusklinikk-for-13-aringar-1.16141706](https://www.nrk.no/nordland/sture-pedersen-gar-hardt-ut-mot-venstres-ruspolitikk-_vil-opne-rusklinikk-for-13-aringar-1.16141706)

<sup>62</sup> Norwegian Constitution section 89

<sup>63</sup> [https://www.kapital.no/portrett/2020/06/02/7524464/maurud-pasikt-bryter-okonomisk-kriminalitet-ned-samfunnstrukturene?zeph\\_r\\_sso\\_ott=cTUo3z](https://www.kapital.no/portrett/2020/06/02/7524464/maurud-pasikt-bryter-okonomisk-kriminalitet-ned-samfunnstrukturene?zeph_r_sso_ott=cTUo3z)

<sup>64</sup> 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*

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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

<sup>65</sup> 22-120070AST-BORG/04, Judgement of the appeals court (Borgarting lagmannsrett) delivered 26.10.22

<sup>66</sup> <https://www.regjeringen.no/no/dokumenter/politi-og-rolleforstaelse/id2958426/?ch=1>

<sup>67</sup> Study of the Working Group on Arbitrary Detention, Arbitrary detention relating to drug policies (2021) A/HRC/47/40

<sup>68</sup> WILHELM REICH, *THE MASS PSYCHOLOGY OF FASCISM* (1970) 210

<sup>69</sup> 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*



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and *Excessive Sentences* (April 2020). *Cleveland State Law Review*, Vol. 69

<sup>70</sup> NOU 2002: 04 section 4.2.2.5

<sup>71</sup> Prop 92 L (2020-2021) 25

<sup>72</sup> Prop 92 L (2020-2021) 34

<sup>73</sup> <https://www.riksadvokaten.no/document/horingsuttaelse-om-rusreform/>

<sup>74</sup> NOU 2002: 04 section 4.2.3.4

<sup>75</sup> NOU 2019: 26 p. 53

<sup>76</sup> The Justice Department's defense for punishment is found here: [https://www.arodpolicies.org/\\_files/ugd/a479b9\\_46549803c67a49fa8fc1287633063e86.pdf](https://www.arodpolicies.org/_files/ugd/a479b9_46549803c67a49fa8fc1287633063e86.pdf)

<sup>77</sup> AALL, *RETTSTAT OG MENNESKERETTIGHETER* (2008) 128

<sup>78</sup> Ot.prp.nr.22 (2008–2009) punkt 4.2.2.5

<sup>79</sup> Ibid.

<sup>80</sup> Ot.prp.nr.22 (2008–2009) punkt 4.2.2.5

<sup>81</sup> NOU 2019: 26 s. 176

<sup>82</sup> 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)

<sup>83</sup> Ot.prp.nr.22 (2008–2009) punkt 4.2.2.5

<sup>84</sup> Ot.prp.nr.22 (2008–2009) punkt 4.2.2.5

<sup>85</sup>

<http://www.druglibrary.org/schaffer/Library/studies/nlplan/index.htm>

<sup>86</sup> DOUGLAS HUSAK, *DRUGS AND RIGHTS* (1992) 20

<sup>87</sup> 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

<sup>88</sup> <https://www.vg.no/nyheter/innenriks/i/oWrbXB/narkobeslag-paamer-enn-50-kilo-to-tenaaringer-i-varetekt>

<sup>89</sup> <https://www.akersposten.no/jeg-skulle-kjope-meg-hasj-men-sa-var-det-ingenting-a-fa-kjopt/s/5-142-51547>

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<sup>90</sup> <https://www.nrk.no/mr/flere-prover-farligere-narkotika-pa-grunn-av-koronapandemien-1.15103723>

<sup>91</sup> <https://twitter.com/HFMarthinussen/status/1542083262566334466>

<sup>92</sup>

[https://www.morgenbladet.no/ideer/debatt/2022/10/07/justisministeren-s-manglende-selvinnsikt/?fbclid=IwAR312-97hUQ\\_h-x6z1asl9Fm7u4Mh12JEd9HWmcShn2vscPQ8gC6slmZEKI](https://www.morgenbladet.no/ideer/debatt/2022/10/07/justisministeren-s-manglende-selvinnsikt/?fbclid=IwAR312-97hUQ_h-x6z1asl9Fm7u4Mh12JEd9HWmcShn2vscPQ8gC6slmZEKI)

<sup>93</sup> <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>

<sup>94</sup> <https://snl.no/ekstremisme>

<sup>95</sup> NOU 2019: 26 p.176

<sup>96</sup> MIKALSEN, *HUMAN RISING* (2019) 136

<sup>97</sup> NOU 2019: 26 p. 30

<sup>98</sup> <https://rett24.no/articles/-vi-far-se-hvordan-det-gar-i-parker-og-friomrader-utover-sommeren>

<sup>99</sup> [https://www.kapital.no/portrett/2020/06/02/7524464/maurud-pa-sikt-bryter-okonomisk-kriminalitet-ned-samfunnstrukturene?zephrosso\\_ott=cTUo3z](https://www.kapital.no/portrett/2020/06/02/7524464/maurud-pa-sikt-bryter-okonomisk-kriminalitet-ned-samfunnstrukturene?zephrosso_ott=cTUo3z)

<sup>100</sup> Prop 92 L (2020-2021) 33

<sup>101</sup> <https://rett24.no/articles/avviser-at-riksadvokatens-redegjorelse-gir-vesentlig-kursendring>

<sup>102</sup> <https://www.dagbladet.no/nyheter/ga-udokumenterte-pastander/77575721>

<sup>103</sup> <https://www.politiforum.no/gjor-stores-eventyrhistorie-at-politiet-sover-bedre-om-natta/213784>

<sup>104</sup> <https://www.dagbladet.no/nyheter/kritiserer-lappeteppelosning-en-han/75796443?articleToken=75db0c4db55af6cdf7eb36046892a8f57f8107e09e9b50bddccb2b7d60af0308>

<sup>105</sup> Correspondence is found at pages 339-353 in the 2010-edition of *Human Rising*. Can be found here: <https://www.yumpu.com/no/document/read/20295113/roar-mikalsen-human-rising-radiofr>

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<sup>106</sup> Melissa L. Bone, *Human Rights and Drug Control: A New Perspective* (Routledge 2021) 36

<sup>107</sup>

[https://www.aronpolicies.org/\\_files/ugd/a479b9\\_192b0b7fe24849f5a0f681caf96706a3.pdf](https://www.aronpolicies.org/_files/ugd/a479b9_192b0b7fe24849f5a0f681caf96706a3.pdf)

<sup>108</sup> NOU 2019: 29 p. 29

<sup>109</sup> *"Punishment is society's strongest tool for condemning an action and requires a solid justification. The positive effects of punishment must clearly outweigh the negative ones, both intended and unintended, in order to be legitimized. At the same time, it must be clear that the same effect cannot be achieved with more flexible measures. There are many and complex reasons for the extent of drug use in society. The ministry 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".* Prop 92 L (2020-2021) 34

<sup>110</sup> NOU 2019: 26 p. 181

<sup>111</sup> [www.vg.no/spesial/2022/jonatan/](http://www.vg.no/spesial/2022/jonatan/)