



EMAIL: AROD@ARODPOLICIES.ORG

WWW.ARODPOLICIES.ORG

Diego García-Sayán
Special Rapporteur on the independence
of judges and lawyers
OHCHR

12 May 2019

Complaint against Judge V.A. de Gaetano of the ECtHR for denying 40 million European Citizens a Fair Trial and an Effective Remedy

Dear Sir.

We are an organization dedicated to the rule of law and the end of unjust persecution. Our focus is the relationship between human rights and the drug laws, and we wish to direct your attention toward this topic, as well as a flawed ECtHR decision.

As you well know, there can be no doubt that drug users and other drug law violators represent the largest, most vilified and most extensively persecuted group in UN member States. Across the world, some 300 million are singled out for intimidation and the drug laws legitimize the continued oppression of this group.

Even so, as the destructive force of the prohibition paradigm is becoming increasingly obvious, more and more are questioning the premises behind such legislation. At the Council of Europe, for example, officials are now waking up to the reality of unjust persecution as the Parliamentary Assembly's Legal Committee is preparing a baseline study on the problem of drug policy and human rights. Recognizing that there is a gap between human rights commitments and reality, the Pompidou Group, for its part, is encouraging member states to follow up with their own human rights analysis,¹ and also the UN has begun the process of coming to terms with the problematic relationship between human rights and drug control conventions.

In this regard, we contact the Special Rapporteur on the independence of judges and lawyers because the ECtHR was in a position to end the unjust persecution of drug law violators seven years ago but, because of a corrupt decision, failed to do so.²

Hence, we ask that the Special Rapporteur investigate the situation.

It our estimate, it is difficult to find examples of a decision that has cost the European people more dearly, and the integrity of the judiciary has clearly suffered as a result. As Special Rapporteur on

¹ We add our complaint to the European Court of Human Rights (appendix 3) which speaks to this situation.

² As you can see from appendices 1 and 3, the judge V.A. de Gaetano had an obligation to give the European people a fair hearing and an effective remedy in the case against the drug laws, but shied away from his responsibilities either for reasons of powerpolitics or unconsciousness.



the independence of judges and lawyers, you have an important part to play in helping the system react to obvious deficits. And as more and more constitutional courts are doing the job that de Gaetano failed to do, the decision of the Court is becoming increasingly difficult to defend.

After all, any proper human rights analysis must recognize the implications of first principles. These are principles of autonomy, equality, proportionality, dignity, and the liberty presumption, and our organization has completed a report demonstrating how these principles invalidate the prohibition paradigm.

This report is called *Human Rising: The Prohibitionist Psychosis and its Constitutional Implications*, and it is a translation of the argument that was prepared before the de Gaetano Court. While it has been updated, the basics are the same, and as you will find it attached the Special Rapporteur now have an idea of the extent to which first principles invalidate the drug laws. Even more, you also have an idea of the extent to which de Gaetano failed to recognize the rule of law, and as it is the closest thing to a baseline review so far, we believe that it will be of interest to the special rapporteur.

At the very least, the special rapporteur on the right to health (see appendix 3) has noted that there is a gap between talk and action at the UN and that anchoring human rights discourse in principled reasoning is of utmost importance. Hence, we hope that it will be of service and that it will help inspire greater confidence among those fighting to end human rights violations.

Not only that, as the Special Rapporteur shall “identify ways and means to improve the judicial system, and make concrete recommendations thereon”, we believe that the framework for constitutional thinking presented will be of further use. It not only shows how the “War on Drugs” represents a crime against humanity, but that the morality of the prophets and the founders was one and the same, making it clear what direction officers of law must aspire if they are to interpret higher law.

Indeed, documenting how powerpolitics and unconsciousness have informed the evolution of drug policy, this work should serve as a wake-up call. And as the scapegoating phenomenon—our eagerness to blame vulnerable groups for problems that are a collective responsibility—ensures the continuation of the status quo, it should be obvious why states of the world must seize and desist persecution of drug law violators.³

If we are to build integrity at the nation level, this is what we must do. We must accept a moral overhaul according to the demands of first principles, but like de Gaetano few judges and lawyers have the integrity to connect with their implications. As demonstrated by appendix 2, a case study done on constitutional challenges to the drug laws revealed that no more than 10 percent of judges have the capacity to come to terms with constitutional demands. And as you are to “study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers and court officials”, this finding is of great importance.

After all, for a more evolved system of law to commence, we must have judges who will accept the implications of principled reasoning. This is the only way to build integrity at the nation level, and as the progression of society depends upon the extent to which institutions like the UN adapt

³ As it stands, we are dealing with a mass movement gone wrong, a daft beast of unconsciousness which ensures the proliferation of organized crime and the unjust persecution of hundreds of millions. The independence of judges can hardly be relied upon in times of moral panic, and this work explains the principled reasoning that will lead us back to constitutional shores.



to emerging knowledge, we expect not only that you will end the impunity with which judges violate constitutional demands, but that you will help world leaders find the courage to stand with first principles.

When it comes to this, *Human Rising* covers much disputed ground, but to deflect naysayers we also include *To Right a Wrong: A Transpersonal Framework for Constitutional Construction* (2016).

This book completes the discipline of constitutional law, adding psychology to the already accepted framework of political theory. It presents a model that systemizes the forces that act upon us, both individually and en masse; it explains why some will embrace a system of principled law while others will prefer a system of arbitrary law; and it exposes the qualitative difference between the worldview of these two groups of people, the reasoning that goes with either position, and its implications for society.

This work, then, has the power to recalibrate the legal systems of UN member states into better structures, more aligned with the demands of first principles. It is a map-forming study, and the UN should consider its repercussions in its quest to complete the 2030 Agenda for Sustainable Development.

This is what has been commissioned, and you now have the tools to do away with a legal tradition that long has undermined progress of the rule of law.

This being so, we hope that our documentation will prompt the Special Rapporteur into action and that you will not shy away from the task of resurrecting the rule of law at the ECtHR, nor helping government officials overcome the cognitive dissonance that comes with the territory. The information provided is more than sufficient to show that the drug laws are *Contra bonos mores*, and as there is no stronger link among men than an oath, we trust that that you will let the voice of the voiceless be heard and assist the UN in the process of untangling the drug laws from our legal systems.

Yours sincerely,

A handwritten signature in black ink that reads 'Roar Mikalsen'. The signature is fluid and cursive, with the first name 'Roar' and last name 'Mikalsen' clearly legible.

Roar Mikalsen
President of AROD

Appendices:

- (1) MIKALSEN, HUMAN RISING: THE PROHIBITIONIST PSYCHOSIS AND ITS CONSTITUTIONAL IMPLICATIONS (2019)
- (2) MIKALSEN, *TO RIGHT A WRONG: A TRANSPERSONAL FRAMEWORK FOR CONSTITUTIONAL CONSTRUCTION* (2016)
- (3) Complaint to the European Court of Human Rights (2019)