

DEBATE WANTED ABOUT LEGALISATION OF DRUGS

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Shortly the cabinet is introducing a new drug bill, in which particularly the policy on cannabis will be sharpened further. Will the bill announce experiments permitting the unimpeded growing of weed, as proposed by twenty boroughs led by Tilburg's mayor, J. Stekelenburg? Or is former police chief R.H. Hessing going to have his wish, namely the end of the tolerant Dutch policy on drugs? In any case, the voice of 'the Law' will be heard predominantly throughout the new bill. The Netherlands is "too criminal", according to Minister Korthals; the international drug trade has found an ideal base of operations in the tolerant climate of the Netherlands and that has to change. A good reason therefore for - in addition to Euroapol - also setting up the new judicial organisation Eurojust in The Hague?

The Netherlands does everything to uphold and defend its present tolerant policy, engineered by the Department of Public Health, against 'outside' attacks. But at the same time, it wants to be right beside the US in the war on drugs. In February, the UN drug agency (INCB) published a - for the Netherlands - positive report: we are doing our utmost to 'fight' the drug problem and are very successful in doing so. Not so hard, one would think. If such huge amounts are produced and traded in such a small area, one would have to be blind in both eyes not to stumble across 'objectionable' practices. You can set your watch by it. As soon as the US releases an alarming report about increased production of Ecstasy in the Netherlands and extensive export to the US, a triumphant police report citing an unbelievably great drug haul or the discovery of a score of laboratories will invariably follow a few days later. Does it have any impact?

Afraid to enter into the debate

Recently, the Committee for Public Health and Care and the Committee for Social Development, two advisory agencies of Minister Borst, published a study about the advantages and disadvantages of legalising drugs. The findings of this report were not that the Netherlands should legalise drugs right away but even the tenability of the present tolerance policy was criticised. That notwithstanding, the authors of the report do seem to think that a debate about legalisation would be extremely useful. For now, in The Hague, one hopes that also this little storm will soon blow over.

It is not difficult to fathom that the tolerant policy in the Netherlands is not easily explained to its own citizens, and certainly not to the countries abroad. But even if we would succeed in it, we're still not there. More importantly, is such a policy tenable in the long run and what would be the results? Nobody can show that this policy has led to the production of *fewer* drugs and that trade has *decreased*. Rather

the opposite has happened, although it is awkward to uncover causal connections here. Citizens and their mayors are left with trying to make sense of how it is possible that something that is permitted - buying and using - may not be supplied. And, how to explain that an economic, and for the public health increasingly important sector such as the production and trade in drugs, by declaring it illegal, remains totally *exempt* of any social control?

On international level, the drug policy of the Netherlands was one of the most progressive. This vanguard position has existed over twenty-five years and found its roots in the tolerant way in which the government reacted to the use of cannabis by young persons in the second half of the sixties. Reactions to this positive climate could be found in the famous reports of the Baan and Hulsman commissions. They advised the government to approach drug use and addiction as a health problem and adjust judicial and political policies accordingly. Furthermore, doubts were expressed whether the law against the consumption of cannabis should be upheld since the consequences of the prohibition were more negative than the primary risks of the drug itself. In 1976, the broad social basis of support for a subtle approach to cannabis led to a change of the Narcotics Law. The optimism of the seventies, reflected by both reports, was also expressed in the suggestion that aside from cannabis other drugs as well should possibly be legalised in the long term. Later it turned out that there was much less support for the latter.

Presently, the Dutch government is frightened to death from even entering into a *debate* about legalisation, let alone taking the initiative. Such a thing can't be explained to other countries, which already are so critical of the drug policy of the Netherlands. For the officials, having to defend the Dutch policy in international forums, this is considered like a 'stab in the back'. But with that, the government is closing its eyes from reality; at present it has very little influence left on use patterns, quantity of consumption, production, as

well as import and export of drugs. Moreover, the amount of different types of substances is increasing and the line between natural products and psychopharmaca is no longer clear. With the lack of a realistic public grip on production, distribution, and consumption of drugs, the drug market has unwittingly turned into the ‘most privatised sector’ of the Netherlands. A sector, which is exempt of any *social* intervention and control.

Pragmatism is trump

The Dutch policy is insofar ‘pragmatic’ as it continuously knows how to follow the facts. However, it never and nowhere sets the pace, provides leadership, hardly influences positive developments. It has no or hardly any influence on consumption, kind and the quality of drugs used, preferences, risks and no influence whatsoever on the opinions of the users. When something is positive, it is often an unintentional effect, which is too easily attributed to ‘the policy’. The government has only influence as far as interventions in visible and tangible phenomena are concerned, such as coffee shops (these can be closed down, or – on the other hand - opened). The phenomenon as such is a private initiative.

Another striking fact is that the Netherlands has made very little effort to mould the international treaties and adjust them to the existing practice. The creativity of the government is, what critics experience as ‘legal niggling work’, a supple interpretation of the own legislation.

The principle of discretionary powers (on basis of which the Public Prosecutor forebears prosecution) and the tolerance are, above all, escape routes to adjust the policy to the practice and legitimise it. Policymakers themselves are responsible for the policy unintentionally and unforeseeably having contributed that the commercialisation, increase in scale and differentiation of the offer of hemp products seem to be negative consequences of the drug policy. The far-reaching commercialisation of the cannabis market today is an accomplished fact – remarkably many Dutch citizens are also involved in the organised international trade. They hereby follow in the footsteps of the merchants of previous centuries, who transported coffee, tobacco, opium, coca leaves and brandy without worries from one part of the world to the other.

Why are drugs still illegal?

Is the war on drugs and drug use in the long term without chance? Based on the principles of free will and the free market, citizens believe to have a right to determine themselves what they consume, as long as it does not harm others. The moral authority of the government is questioned here. In any case, the increasing consumption on global scale speaks volumes.

It is absolutely clear that the discussion about the drug policy must begin with the fundamental question: “Why are certain drugs illegal”? The presumption ‘because they

are *dangerous*’ by far can not always be upheld. Users also know from own experience when the danger criterion takes root - they do not trust the official information. The argument that the illegal substances are ‘addictive’ can be countered with the answer that this applies precisely to the legal substances, alcohol and tobacco, and to a much lesser extent to cannabis, Ecstasy, and even cocaine. That illegal substances have negative *social* consequences is certainly true but does this not also apply to many other unwise forms of human behaviour? The proponents of legalisation propose to let go of the idea of a drug-free society.

In view of the enormous variety of psychoactive drugs that are available today and will be in the future, the government - in my opinion – has an obligation to look for the best way how to regulate production, distribution and consumption. Under the umbrella term ‘legalisation’, an answer must be found for this very complex issue. Naturally the definition, which is attributed to legalisation is of great importance. For me, legalisation does not mean the mere ‘legalisation’ of production, distribution and consumption of drugs. Under legalisation I rather understand taking these activities out of the penal law and their subsequent *regulation* within the framework of existing or new legislature.

International discussion wanted

The content of the international treaties is very clear and the Netherlands has committed itself to comply with them. Unilateral, far-reaching steps in the direction of a *de jure* legalisation unequivocally implies that the Netherlands becomes subject to international debates and conflicts. Steps which are necessary and desired must therefore be taken in close consultation with international institutions.

The Netherlands can not legalise cannabis and the other drugs unilaterally, unless it backs out of its contractual obligations and accepts all the consequences with regard to its international position. Politically, this can be completely undesired. A drastic expansion of the tolerance policy also carries the risk that the Netherlands will be proclaimed as a ‘drug nation’. At present, the mere initiation of an international debate is the most realistic option in order to create room for a new drug policy, such as experiments which are aimed at studying the practical effects of legalisation. The Netherlands certainly has the right to take the initiative here.

The need for a debate about legalisation can be very easily explained to ‘other countries’. Moreover, it is best to hold such a debate within EU and UN context. Countries elsewhere are struggling with the same problems and there too is a need for discussion and a rational drug policy, which is not based on fear and ignorance.

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legalisation of drugs (Een nieuw drugsbeleid? Voor- en nadelen van de legalisering van drugs.) Publisher: Committee for Public Health and Care / Committee of Social Development; Zoetermeer, 2000; ISBN: 90-5732-053-3. A summary of the report can be found at <http://www.rvz.net/>