

LEGISLATION ON TRAFFICKING AND CONSUMPTION OF ILLICIT DRUGS IN THE NETHERLANDS

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Abstract:

Most European countries have ratified the Single Convention of 1961 together with the Additional Protocol of 1972 and the Convention on Psychotropic Substances of 1971. But ratification of the Convention of 1988 has raised a much more difficult issue. The text calls for the adoption of a repressive policy against the consumption and trafficking of drugs. Or, most European countries are calling for a more moderate approach. It is especially the case of the Netherlands, often presented as a model of drug use legalization, but at the same time a model of tolerance of cannabis trade. Even if this policy has indisputably known some success, it is not devoid of reproval. The case of Spain shows that a disorganized, anarchic, legalization can have as many regrettable effects as the excessive ban.

The Netherlands' original position in Europe and among the international community is renowned. It is based on a tolerant and liberal approach to drug abuse problems. An approach that continues to attract criticism despite the positive health results.

Key words: traffic, consumption, drugs, illicit.

1. Brief History of Dutch law in matters of trafficking illicit drugs

Dutch legislation has its origins in the opium law of May 12th 1928³¹¹, which banned all operations relating to narcotic drugs, except for authorized operators and solely for medical uses. The law applies to: cannabis, products containing opium and cocaine, all of which are classified as narcotic drugs and substances. Possession, manufacture, trafficking, importing and exporting drugs are acts punishable by the same penalty: 4 years in prison or a fine. The law remains almost inapplicable. In the period between 1936 and 1960, only 38 convictions are handed down by courts³¹².

On the other hand, another law dated June 28th 1958, on medicines, governs the prescription and the release of pharmaceutical products. This law provides for moderate penalties of 6 months of imprisonment to which they can add a fine for any violation of its provisions. By the decree of April 7th 1971, these provisions

³¹¹ Opiumwet law of 12 May 1928, STB. 167, as amended at the end by the law of 6 November 1997.

³¹² HAMEP, National Report of the Netherlands, Drug abuse and its prevention, Rev. Ed. Int. Dr. Pen., 1973, p. 409.

have been extended for amphetamines, whose import and export are more rigidly punished³¹³.

Dutch authorities have launched indeed an overall reflection of the danger created by the consumption of various prohibited or legalized substances. In 1972, a government report, which reviewed the situation and the risks of drug use³¹⁴, proposes as criteria to ban or legalize drugs the risk to which society is exposed through drug consumption. This principle allows the distinction between *strong drugs* (heroin, cocaine, LSD, amphetamines), and *mild drugs*, mainly cannabis and its derivatives. For these products, the report takes into account a legal and controlled distribution by the state, which will set the prices and the maximum percentage of THC (between 1% and 5%). The advantage of this social control can be, according to the authors of the report, the removal of the illegal circuit and counter-culture which is associated to it, particularly in the case of young people. Inconvenience would be the increasing number of potential consumers. The string of events will, however, deny these projections.

The Opium Law of 1976 is the very base of the applied Dutch law. In its turn, the Law is based on two fundamental distinctions between consumption and trafficking on one hand, and between the drugs that pose an *unacceptable risk* and other drugs on the other hand. The priority of the penal action is the fight against strong drug trafficking at the international level. Possession of drugs with the purpose of consumption determines the deliverance of insignificant penalties. In practice, consumers are no longer subjects to prosecution. Even the trade of cannabis in small amounts is allowed, at the beginning in institutions receiving young people, from the "domestic suppliers", and later in "coffee shops".

This liberal policy will allow the suppression of the AIDS epidemic through the 1980's. The Netherlands have indeed developed, instead of repression, acts of prevention, care and social support. 95% of the funds dedicated to the fight against drugs will be allocated to health and social actions³¹⁵; a situation diametrically opposite to that of prohibitive countries like France or the U.S..

This controlled distribution of strong drugs aims at the socio-medical maintenance chronicle drug abuse individuals considered ill³¹⁶. In a first phase, a program of methadone distribution with no conditions or time limits, allows the heroin addicts to depend less on the illegal outlet market. In the second phase, the controlled distributions of heroin are experimented.

³¹³ Legal texts provide the imprisonment of 6 years and a fine of 100,000 greenfinch.

³¹⁴ Wergroep banners, Actergonden en Risico's van drugsgebruik, La Haye, 1972.

³¹⁵ Silvis, Hendricks and Gilmore, use Drugs and Human Rights in Europe, W. Pompe Institute for criminal law and criminology, Utrecht University Publishing House, 1992.

³¹⁶ Dutch legislator thinking has transcended the prejudices related to the problem consumer. It can be noted that it does not focus on how a person got addicted but that the addiction is pulling him out of his normal limits, it turns him into a sick person towards which states has the obligation to recover.

The Netherlands have played a crucial role in defining the policy of „risk reduction”, politic resumed much later by other European countries³¹⁷. They are also at the origins of the rules of changing the syringes and the policy of "substitution". Since 1982, the city of Amsterdam has launched into a local program of morphine distribution to registered heroin addicts³¹⁸. Prescribing methadone was then generalized and the *heroin distribution program* is extended to several cities. The ones concerned through this program are consumers are with minimum age of 25 years, dependent on heroin for at least 5 years and who have already been submitted to programs of replacing heroin with methadone for at least a month, with doses between 50 and 60 milligrams per day. Controlled distribution subsequently implies free distribution, under the control of medical authorities, of fixed quantities, provided that those involved will not consume from the black market.

The ideas that stood at the basis of these decisions were quite interesting. Municipal authorities did not have the ambition to win but only to reduce the harmful effects of drug trafficking - imprisonment, violence, disease. However, the authorities' choice to "reduce the risks" to the detriment of criminal punishment has had positive effects on the limitation of the contamination with AIDS virus for the drug addicts.

Netherlands reaction was a little harsher, as a result of international criticism, but only in the matter of fighting against international drug trafficking, in a closer collaboration especially with the neighboring countries.

2. Tolerated consumption

Drug consumption is not so harshly punished in the Netherlands. Like in the United States, *the sole possession for the purpose of consumption is incriminated*. The penalty depends on the substance possessed. Possession for the purpose of personal consumption of strong drugs appearing on the list I, is punishable by one year in prison and a fine. But the same offense is punishable with only a month of imprisonment and a fine if the drugs are "light" and they appear on the list II³¹⁹. This alleviated penalty concerns the tranquilizers, barbiturates and cannabis in quantities of less than 30 grams.

Possession for the purpose of consumption of a quantity equal to or less than half a gram, the equivalent dose of strong drugs and 5 grams of mild drugs is left outside incrimination, the owner receiving just a warning from the police. If one exceeds these amounts, the penalties can theoretically reach up to 2 months of

³¹⁷ Reducing risk is one of the four fundamental theories of combat and prevention of trafficking of illicit drugs

³¹⁸ DERKS, *The Amnsterdam Morphine-dispersing experiment*, The Netherlands Institute of Mental Health Publishing House, December 1985 – study.

³¹⁹ The list contains 2 Section II, Section A) comprises, since 2 July 1993, barbiturates and tranquilizers and section B) includes cannabis and its derivatives.

imprisonment for strong drugs and just a fine for mild drugs³²⁰. However, in practice, the consumer is not subject to any criminal prosecutions. Not even the cultivation of cannabis, although it is introduced in drug trafficking, is not punishable if it is intended to ensure personal consumption³²¹.

3. Banned consumption

Drug consumption is tolerated in the Netherlands provided that this offense does not prejudice a third party. Is the assumption of drunk driving. The Road Code does not distinguish between intoxication caused by alcohol and that caused by drugs but it considers it only a crime and it justifies the withdrawal of the driving license.

A more important issue is the suppression of crimes associated with drug use. The court may in general postpone the application of the penalty³²² provided that the subject in question is submitted to treatment. The convicted is proposed an alternative to imprisonment, in the form of a drug rehabilitation program in a closed environment. The duration of treatment can not exceed the conviction handed down.

A new draft law which should be adopted in the near future provides, under the title of criminal punishment, the forced rehabilitation of delinquent drug addicts that have several relapses for a period not exceeding two years. The nature of the criminal offenses will not constitute determinative criteria to justify the deliverance of a certain measure, but rather, the *frequency* of the crimes committed. However, we could be reserved towards the effectiveness of this type of treatment.

In the case of offenders sentenced to imprisonment, several ways of care are provided during the detention. Programs like „drug free zone” are developing within the prisons and a more elaborate medical treatments is available for addicted users³²³. Finally, we will state that possession of drugs in prison justifies detention in an isolated area on a period which may not exceed 40 days³²⁴.

Another problem which had to be resolved was that of fighting against drug tourism. This struggle takes many forms, as required by the Convention for implementing the Schengen agreements, which states that each member country should take the necessary measures in order not to be an obstacle for more repressive policies implemented in another Member State, and especially expected by the local authorities in an attempt to marginalize a large part of these tourists. Cooperation with countries of origin of these tourists is increasingly close. More

³²⁰ For possession of a quantity of less than 5g of the drug, the police can give the one in question even a simple advertisement. As the quantity increases law provides for proportional diversified fines.

³²¹ The statement provides punishment with only an advertisement for growing 5 feet of land with hemp. For growing between 5 and 10 feet of land a fine of 50 greenfinch / foot is proposed, knowing that prosecutions will be made only if public order is disturbed.

³²² Solution proposed also by the Romanian legislator by the new Penal Code, whose enforcement was postponed several times.

³²³ Article 47 of Gevangenismaatregel.

³²⁴ Silvis, Hendricks and Gilmore, read works, p. 125.

actions have been undertaken in collaboration with the French authorities in order to control transit axes between the two countries: the rail links and motorways³²⁵. As for the foreign drug consumer, he shall be forbidden to enter that territory³²⁶. In case his conduct should disturb public order, the ban may be accompanied by immediate expulsion³²⁷.

This new concern translates the care Dutch authorities to provide guarantees to the international communities regarding drug trafficking.

4. Illicit drug trafficking

The opium law defines more criminal offenses in the fight against trafficking. The first of these is the possession of narcotic drugs for the purpose of sale. The notion of possession is used in a very broad background in Dutch law. There is no need for the concerned subject to actually hold the drug, it is sufficient for him to control it³²⁸. Thus, the offense exists if the drugs are found in the vehicle³²⁹ or in the dealer's home³³⁰. However, this definition of possession, is not applied in the case of the owners or managers of bars that intentionally allow the development of traffic in their place, thus the facility of the consumption of narcotic drugs by the supply of a place is not incriminated. The provision applied in 1996 makes the difference between possession of drugs for purpose of consumption, the purchase for personal consumption, heavy traffic and the organized criminal network. In practice, the punishment is applied depending on the quantity of drugs seized and in the case of a sale of small quantities of drugs the duration of the illegal action is taken into account.

In addition to possession, the opium law condemns *production, distribution, transportation, import and export* of all drugs. The attempt to these crimes be punished and, since 1985, preparatory actions to commit these crimes are assimilated to attempt. The attempt, as well an offense, has an intentional character and is punishable only in the case of preparations for strong drug trafficking³³¹. The penalty applies even if the action takes place outside the borders, once the traffic is committed in the Netherlands, this measure is taken not to favor international traffic before the national one³³². And finally, under the influence of the international community, the acts of "money laundering" and trafficking of precursor have also been incriminated.

The penalties for various offenses are compiled according to the nature of drugs and the acts committed. Import and export of strong drugs are the most

³²⁵ See the bilateral police cooperation of 20 April 1998, Akkoord betreffende samenwerking op het Gebied police van veiligheid en tussen de regering van de Franse en Republick of regering van Nederland, 1998, nr.81, p. 5.

³²⁶ 21 Vreemdelingenwet (law on sanctions against foreigners).

³²⁷ Article 100, 4 Vreemdelingenbesluit (regulations on punishment of foreigners).

³²⁸ Supreme Court, Sept. 15. 1985, op., P. 822 - case law.

³²⁹ Supreme Court, Sept. 15. 1986, op., P. 359 - case law.

³³⁰ Supreme Court, 17 June 1980, op., P. 579 - case law.

³³¹ Article 10a Opiumwet.

³³² Article 13, sec. 3 Opiumwet

harshly punished: 12 years of imprisonment along with a fine. For sale, transport, production and distribution the penalty is 8 years in prison and only 6 years for attempt to any of these crimes and for money laundering and trafficking of precursors. In conclusion, possession of strong drugs in purpose of trafficking is punishable by merely 4 years of detention. The same penalty applies for import and export of light drugs. Imports and exports therefore attract a penalty of 3 times less, in the case of cannabis, but not of strong drugs. National traffic and possession of cannabis in amounts greater than 30 grams is punishable by 2 years of detention and a fine, while the same facts involving amounts of less than 30 grams, are punished by only one month in prison and a fine. But these penalties are generally only theoretical and they very rarely happen to be applied.

However, some aggravating circumstances are provided. Thus, in the case of crimes committed in relapse, the maximum penalty is increased by a quarter in the case of strong drugs and by a third for light drugs. If drugs are sold to people with disabilities, a minor or a person with mental impairments, the stipulations provide the requirement of the punishment superior to that provided for most offenders. The same principle applies if traffic takes place near a school or a hospital.

5. Tolerated drug trade

In drug trafficking, certain acts are tolerated in the Netherlands, either because these acts participate in the policy of "reducing risks", or because they are considered less serious offenses. The first category includes the so-called "injection rooms" or "consumption rooms". The stipulation of 1996 tolerates these places where consumers can inject themselves the drug on condition that the place does not provide drugs and does not cover traffic. The objective is to avoid social isolation of the consumer and strong drug consumption in public places, with all the health risks that are involved both for consumers and for the inhabitants. Nine Dutch cities³³³ have installed „rooms for consumption.”

The second category includes real traffic offenses for which indulgence represents the consequence of legalizing the drug use. Since the government has already allowed the consumption of cannabis, it also had to allow the means to achieve it: cultivation and sale. Thus, the cultivation of cannabis, even if in the criminal law it appears along with other offenses of drug trafficking and is liable to the same punishments, in reality it is considered as consumption. Cultivation of 5 feet of land is not subject to any punishment and growing 5 to 10 feet of land is punished with a fine of 50 greenfinch per leg. Moreover, consumers are never punished, even if large quantities are involved, as long as they do not sell the stuff and not disturb the peace. Regarding the sale of cannabis, it has been gradually allowed since 1978.

³³³ Amsterdam, Arnhem, Heerlen, Maastricht, Nijmegen, Rotterdam, Terneuzen, Utrecht and Venlo.

The stipulation of the enforcement of the opium law 1978, tolerates, indeed, discreet sale of cannabis by "domestic suppliers"³³⁴. Domestic provider means a person who sells cannabis or its derivatives in a reception center for young people, with the approval of the center's leadership, and who is allowed to supply only ordinary customers. As long as this supplier does neither show any open sale and nor instigate it, he is tolerated by the police and the justice, even if he commits reprehensible acts.

An important step was made by recognizing the "cafés". Their number should be around 1200-1500. These commercial institutions operate as bars but they also sell cannabis. By tolerating them, the authorities aim to prevent young people from discovering stronger drugs, thereby artificially separating the market of mild drugs. By offering the opportunity to sell light drugs without a care, providing that certain rules imposed in the interests of society are complied with, the situations in which the consumer is in direct contact with more harmful drugs are avoided.

The opening of such a "coffee shop" is submitted to the agreement of a tripartite committee composed of representatives of the prosecutor, police and the municipality concerned. In reality, the role of the prosecutor is decisive because his decision not to begin prosecutions in some cases, allows traders to obtain profit. However, for the future, the mayor will have administrative powers to close the premises, which also enables him to oppose the opening³³⁵. In order to function this "cafe", can not hold a stock of more than 500 grams and must meet several criteria: no advertising, no strong drugs, no public order disturbance, no access or sale to minors aged 18 years, no selling in large quantities (five grams per transaction). But these rules are often avoided. The commercial activities of these places favor the development of competition which makes their number grow³³⁶ and increase consumption. There are special offers for house customers, debt sale is developed, new services are offered such as "blow home". This service, which has been operating for several years in Rotterdam, is inspired from pizza home delivery and involves the same process: a simple phone call to receive a dose of cannabis³³⁷. Since 1995, authorities began to react to stop these abuses.

6. Critical rating of the Dutch law

The main criticism that can be brought to Dutch policy is that it has not reduced drug use, whether strong or mild. The number of consumers of heroin is estimated at 25,000 reported to a population of 15 million inhabitants³³⁸.

³³⁴ About this evolving legislative see MANSCHOT. Some comments on legislation and judicial policy in terms of drugs, in the Netherlands, Drug Colloquium documentation: social and political stakes, Milt - Unesco, 26-28 Feb. 1986, p. 8.

³³⁵ The project is known by the name of "law Damocles".

³³⁶ In 1980 there was only 20 such "coffee" and in 1988 have multiplied to 300.

³³⁷ A.C.M. Jansen, Cannabis in Amsterdam - Geography of hashish and marijuana, Lezard Publishing House, Paris 1994, p. 43.

³³⁸ PLANIJE, SPRUIT, MENSINK, Fact Sheet 10 hard drugs policy, Netherlands Alcohol and Drugs Reports, cited paperwork.

Consumption of cannabis, after having dropped during the period 1973-1983, has increased from 1983³³⁹ only to culminate in 1992.

Dutch policy has also failed to reduce any risks related to drug abuse. It is estimated that between 2 and 5% of cannabis consumers require psychological treatment. 5% of placements in the hospitals are related to drug addiction³⁴⁰. Halting the dangers associated to abusive consumption of drugs, particularly hard drugs, has not been succeeded.

But we must also acknowledge and have faith in the Dutch policy, because *if it has failed to improve things in the fight against drug use, it hasn't aggravated them either compared to other prohibitive countries*. Drug consumption is at an average level among European countries. The percentage of heroin consumers reported to the population is lower than in France³⁴¹. And, at the same time, the Netherlands were able to establish a genuine medical and health care: between 70 and 80% of dependents are registered in the socio-medical system. This policy is translated into a lower percentage of infestation with the AIDS virus and the improvement of the general health of addicted consumers³⁴². Remarkable is the fact that the Netherlands have reached these results without the need to multiply by the absurd, like the U.S., the criminal penalties applied to consumers. This argument should attract adhesion among the democracies concerned by freedom.

Yet the international criticisms on Dutch politics are very harsh. The international community reproaches it with the violation of the Single Convention by organizing or tolerating some illegal circuits of distribution of narcotic drugs without having any medical purpose. The international authority of control over narcotic drugs has not stopped, over time, to present the policy of the Netherlands as being devilish and refuses to recognize the benefic effects. Other European countries favoring prohibition of drug use, such as Sweden and France, exercise pressure on the Netherlands, because its tolerance makes this country an ideal transit place of transit for trafficking dedicated to the whole Europe.

7. Money laundering and confiscation of product infringement

The Netherlands have introduced or amended laws in order to comply with EU directives regarding money laundering, making it more difficult to preserve assets from illegal activities carried on by criminal organizations. The legislation allowing confiscation of assets or amounts derived from illicit transactions entered into force in 1993. However, the result of 5 years (1993-1998) of implementation of measures for confiscation has not met original expectations. Treasury was

³³⁹ SYLGBING and PERSON, consumption of cannabis by young people in the Netherlands, BS Publishing House, 1985, Vol. XXXVII, No 4, p. 51.

³⁴⁰ Ibid, PLANIJIE, SPRUIT, MENSINK, Fact Sheet 10 Hard drugs police.

³⁴¹ This proportion is 162 to 200 consumers in 100,000 people in the Netherlands and of 208 consumers in 100,000 people in France. Instead, the prevalence of occasional cannabis is higher in the Netherlands than in France (European Observatory of Drugs and drug abuse, Annual Report, 1996, on the drug problem in the European Union).

³⁴² In 1988, the rate of contamination of heroin addicts was 30% in the Netherlands and 55% in France, Le Monde, November 3rd, 1988, p. 16.

counting on 112 million Dutch guilders (50 million Euros) but only a fifth of this amount was insured. Prosecutors had difficulties in proving that criminals have gained profits from illegal activities. The courts procedures are long and especially actions against important offenders are difficult to prove.

It can be noted that the Dutch model in the field incriminating illicit drug use is a very indulgent one which does not always respond to the needs of protecting social values. But it is difficult to tabulate as appropriate a model or another, in matters of incriminating trafficking and consumption of illicit drugs. We have presented this model of legislation in order to have a picture about a different treatment that can be applied to the phenomenon brought forward compared with Romanian legislation in the field, which leaves out of incrimination only the consumption, the rest of the operations being sanctioned only if they are carried out without right.