

**Negative consequences of control in the enforcement of current Norwegian law
regarding cannabis. A literature review and human rights complaint.**

Karl Nafstad

Normal Norge

November 2018

Introduction

The nonprofit drug-policy organization Normal Norge (Norwegian Organization for Reform of Marihuana Legislation) has received funding from the Norwegian Directorate of Health to produce a human rights complaint to the United Nations Office of the High Commissioner for Human Rights on the basis of the negative consequences of control from the enforcement of the Norwegian ban on cannabis. This report provides the basis for that complaint.

For the sake of thoroughness and to glean and provide a better overview of the situation, the present paper is constructed as a systematic literature review of all relevant academic material on the cannabis-related consequences of control in Norway, and follows the suggestions laid out by Urinbojev, Wickenberg and Leo (2016) and Hart (1998) in producing a search term protocol to capture all articles relevant to the topic. Searches were done in both English and Norwegian. Non-relevant material was discarded, and secondary searches performed based on the findings. A critical human rights analysis and perspective is employed throughout. Finally, a complaint is issued based on the findings from the literature and an outline of recommendations is provided.

Problems and limitations

There is little systematic research on the consequences of enforcement of legislation relating to cannabis in Norway (Ervik 2014; Fjær 2010; Larsson 2015; Rossow 2013). The extant literature is marked by certain shortcomings and difficulties, making a comprehensive overview of the actual situation in the field suffer. Some of these are explicitly acknowledged in the literature as features of the state of knowledge in Norway, whereas others are intrinsic to the field itself. There is, nevertheless, salient information implicating the necessity and viability of a human rights perspective that can be gleaned from the studies that do exist, although a fair amount of conjecture and reliance on inferences from international sources are

involved (see, e.g., Bretteville-Jensen 2013; Goldberg 2011; Larsen 2015). Some of the main problems arising from the literature are evaluated here, along with certain implications for human rights questions relating to the enforcement of cannabis legislation in Norway.

That Norway is a small country and only relatively recently has started paying attention to issues relating to the regulation of cannabis (Haug 2012; Pedersen 2010) can only account for a portion of the dearth of research here. Much scholarly attention has been given the harder drugs such as heroin, and the situation for heroin users (e.g. Helse- og omsorgsdepartementet 2010; Nafstad 2011; Snertingdal 2010), yet academic research on cannabis from social scientific and legal perspectives remains scant (Ervik 2014; Fjær 2010; Larsson 2015; Rossow 2013). One consequence of this is that much of the research that does exist is forced to rely on international experience and studies (e.g. Bretteville-Jensen 2013; Larsson 2015). Although an international perspective is typically a strength in academic research, as elsewhere, without comparable national studies we simply cannot know whether such knowledge is applicable domestically. This is particularly true for a field marked by as much national variation as is the enforcement of drug legislation.

Another main issue is that there is no cannabis legislation as such in Norway. Although instructions specifically concerning the prosecution of cannabis are occasionally provided by the judicial and legislative branches (e.g. Kallerud 2010; Myhrer 2001), cannabis is regulated along with the other illegal drugs according to two main legal provisions: *legemiddelloven* [Act relating to medicines etc.] § 24 and *straffeloven* [The penal code] § 231 (see, e.g., Hauge 2013; Marthinussen 2018). Following from this, there is no official disaggregated data on prosecutions and convictions by drug type, nor is there a direct way to ascertain whether enforcement follows the instructions from other branches of government. Available cannabis statistics are thus largely based on assumptions gleaned from other sources (Hauge 2013).

This uncertainty due to lack of disaggregated data is endemic to the field of human rights (e.g. Landman 2006), although more prevalent in societies with less developed bureaucracies and poorer human rights records, and means that there is much that we simply do not know for certain about the field. To the extent that the ramifications of cannabis control is indeed a human rights issue, Norway is failing to live up to its obligations to provide these basic necessities of knowledge. Along with this is the uncertainty arising regarding cooperation between branches of government. At the very least, Norway is a long way from making readily available the standards for research in this field as presented by Bretteville-Jensen and her colleagues (2017). Furthermore, this failure to separate the illegal drugs in the penal code may also run up against legal principles, such as proportionality, although this will be explored in more detail later.

This failure to separate types of drugs in the legislation has the predictable effect of failing to separate types of drugs in the applicable literature (Berg and Audestad 2006; Larsson 2014; Shammass, Sandberg and Pedersen 2014). Although this is a truth with some modifications (see, e.g., Bukten and Lobmaier 2013; Fekjær 2016; Fjær 2010), even relevant research specifically on cannabis is hampered by this lack of data where official data must necessarily be supplemented by conjecture and outside sources (Bretteville-Jensen 2013; Hauge 2013). Much research on drug policy, legislation and enforcement, although often implicitly slanted toward the heavier drugs, does not explicitly consider types of drugs separately, although there is reason to believe that official responses and enforcement may vary considerably depending on type of drug (Hauge 2013; Nafstad 2011; Pedersen, Viland and Sandberg 2007). Open drug scenes centered around heroin may, for instance, differ significantly from the so-called “cannabis culture” of private markets (Sandberg and Pedersen 2010). Thus, we should expect its repression to similarly vary. Nevertheless, one earlier study (Hauge and Nordlie 1989) estimated that as much as 3/4 of drug-related prosecutions

and sanctions involved cannabis exclusively. Even though this proportion may have been reduced in more recent times (Hauge 2013), where non-specific statistics are employed below we know they disproportionately concern and affect cannabis-related legal infractions.¹

To illustrate: one meta-study exemplifies these twin issues well, in this case suggesting that intensified enforcement of drug laws increases the risk of drug-related violence (ICS DP 2010). These findings are, however, largely US-based, and do not differentiate by type of drug involved, making the applicability for the present focus tenuous; how similar are these countries' drug trade and law enforcement traditions really, and is not the market for cannabis marked by significantly lower levels of violence and conflict (Pedersen, Viland and Sandberg. 2007; Sandberg and Pedersen 2010)? The mechanisms behind these effects may nevertheless be transferable to a Norwegian context, and the cannabis market, with some exceptions, is unlikely to be wholly isolated from the broader drug cartels. Another example involves claims that enforcement of cannabis laws may be ethnically biased based exclusively on the American or British experience (e.g. Goldberg 2011; Larsson 2014), where these countries' historical race relations are marked by idiosyncrasies not easily transferable to other historically determined national contexts. This does not mean that Norwegian enforcement is not ethnically biased, but, as with the former example, it does illustrate the need for caution when applying international sources or non-specific drug data.

Typical measures of validity and reliability are also necessarily easily compromised by the nature of the field, where randomized experiments are largely unfeasible by ethical or legal considerations (Neumann and Snertingdal 2010; Rossow 2013). This obviously does not mean that valid and reliable replicable research is rendered impossible in this field, but it does mean that empirical studies are vastly outnumbered by strictly normative ones (e.g.

¹ Current police statistics set cannabis seizures at about half of all drug seizures (Kripos 2017). See also Stene (2018) on the difficulty in producing accurate and detailed drug statistics.

Almvik, Sagsveen, Olsø, Westerlund and Norvoll 2011; Berg and Audestad 2006; Ervik 2014; Fjær 2010; Hauge 2012; Kuvoame 2015a; Larsson 2015; Neumann and Snertingdal 2010; Pedersen 2010). Although the latter can well raise important theoretical considerations, their applicability is nevertheless limited for present purposes.

A related but distinct problem is the disconnect between what the research tells us and what policies are enacted, where the chasm has traditionally been wide, although this is a field in transformation (Fjær 2010; Pedersen 2010). This, however, is considered more a consequence of policy, legislation and enforcement, rather than a problem of the literature itself. As such, it will be treated more in-depth later.

Consequences of Control

Discrimination: ethnic, class, gender

A common thread running throughout many of the studies, is one of discrimination. Although most often implicit, direct and indirect discrimination in the enforcement of drug laws and its consequences is also occasionally treated explicitly (Berg and Audestad 2006; Kuvoame 2004; Sandberg and Pedersen 2011; Shammas, Sandberg and Pedersen 2014). Race, class and gender – as well as their interaction (e.g. Larsson 2014) – are here, as is often the case, the main categories, although sometimes in somewhat unexpected and surprising ways. A fourth category of national origin does also seem integral to disparate police enforcement, although this is, as we shall see, deeply enmeshed with the broader theme of ethnicity.

The principle of non-discrimination is a cornerstone of human rights (Carey, Gibney and Poe 2010; Donnelly 2003; Steiner, Alston and Goodman 2007). Beyond its intrinsic worth in protecting people from discrimination on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

(UDHR, Art. 2), this principle is integral to the very idea of universal human rights; if rights are systematically applied (or violated) in a discriminatory manner, they cease to be both universal and rights that belong to a person for simply being human. As such, it becomes imperative for present purposes to look at whether legislation relating to cannabis in Norway is implemented and enforced in a non-discriminatory manner.

In the present context, ethnic minorities primarily refer to first- or second-generation immigrants or asylum seekers from Africa and Asia (e.g. Berg and Audestad 2006; Kuvoame 2004, 2015a; Nafstad 2011; Sandberg and Pedersen 2011). To put it bluntly; black and brown individuals, the ones you may readily visually identify as ethnic minorities in Norway. As it turns out, these are also most often young and male (e.g. Larsson 2014). Sandberg and Pedersen's (2011) sociological survey of ethnic minority cannabis dealers in an open drug market in Oslo is, along with Kuvoame's (2015b) related, though somewhat more tangential, study, perhaps the most thorough ethnographic account and introduction to the topic in this country. Theirs is a story of marginalization and alienation, and, although the racism experienced by their interviewees is self-reported, this nevertheless contributes to the creation and adoption of a self-defined gangster image which, in turn, may lead to further criminalization (see also Pedersen 2010). Kuvoame's (2004) earlier study of a similar environment confirms these experiences, noting the added attention afforded young ethnic minority males for cannabis dealing (see also Kuvoame 2015b). Police frequently target these over ethnic majorities. These stories and structures also closely comport with Nafstad's (2011) description of police targeting of obviously 'foreign' drug dealers in the so-called open drug scenes, while white Norwegians in the same situation may be more readily passed by. In fact, this study suggests that as many as 2/3 of those arrested for selling drugs were undocumented or asylum seekers, with a majority of these being North or West Africans

(*ibid.*). This leaves the number of ethnic minority Norwegians arrested an open question, with a strong suggestion of overrepresentation.

As fluctuations in criminal statistics concerning drug-related infractions are largely independent of actual variations in the underlying trends, these statistics almost exclusively reflect police priorities in this area (e.g. Larsson 2015). This is strengthened by the fact of the targeted operation aimed at foreigners in the drug scene, a collaborative effort between the police and immigration authorities (Nafstad 2011). As such, these high proportions of arrests and sanctions of ethnic minority males are willed and intentional. Even if the intention is targeting based on national origin – a so-called “crimmigration” attempt at removing unwanted foreign nationals through an overlap of criminal and immigration law – one may not readily tell citizenship status simply by looking at a black or brown individual (nor necessarily their potential involvement in cannabis sales). The result is stigmatization and criminalization of whole groups of minorities.

The ethnically based discrimination continues from policing into the judicial system, where accused drug dealers of ethnic Norwegian heritage are more likely to be seen as needing treatment whereas minorities are seen as belonging to organized crime (Nafstad 2011; Snertingdal 2010). Berg and Audestad (2006) further suggest that ethnic minorities are less likely to enter and receive care and rehabilitation systems, and this is at least partly due to a distrust in the system. Kuvoame (2004, 2015a) confirms this distrust, basing it partly on stereotyping by, and negative experiences, with social services and others. Although this distrust obviously may stem from many sources, experienced and observed discrimination by police and other authorities certainly does little to alleviate this distrust (Kuvoame 2015b). As such, the ramifications reverberate down to other areas, and here compromise the right to care and rehabilitation. Minority women are even further marginalized, being almost completely absent from these services (Berg and Audestad 2006).

Based on interviews with 60 incarcerated drug dealers, Shammas, Sandberg and Pedersen (2014) find that marginalization processes are key to understanding their criminal careers. These individuals typically exhibited poverty, low educational attainment and poor attachment to the job market, thus supporting Neumann and Snertingdal's (2010) assertion, taking into account the link between cannabis usage and distribution, that problematic cannabis usage more frequently occurs among young men in poor areas with little education and job market participation. The vast majority of sanctions for cannabis use and possession in Norway involves a fine. For the large segment of those sanctioned who belong to lower socio-demographic strata, a monetary fine is experienced much more severely than for the minority of affluent cannabis users who are caught (Haug 2012). Add to this that drug users in prison face higher risk of both morbidity and future incarceration upon release (Bukten and Lobmaier 2013), we can infer a chain of negative consequences disproportionately impacting young black and brown males. In his prison study, Ødegård (2008) finds cannabis to be the most frequently consumed illicit substance in a six-month period prior to incarceration, with 51% of inmates reporting such usage. The majority of users, as well as high-frequency users, are young males under the age of 30. These also account for the population with the highest number of sentences received and the longest time served in prison (*ibid.*).

Concomitant usage and sale occurs much more frequently with cannabis than with the other illegal drugs, i.e. cannabis users are often involved in sales and distribution, and the lines separating these are much more fluid (Pedersen, Viland and Sandberg 2007; Sandberg and Pedersen 2010). Cannabis is also the most widely used illegal drug in Norway, reaching most layers of society (European Monitoring Centre for Drugs and Drug Addiction 2018; Haug 2012). When enforcement against sellers of cannabis is as heavily skewed toward certain demographic groups as suggested here, the result is a justice system which systematically leaves large groups of users unpunished while other, more marginalized groups

bear the brunt of control measures. Basic concepts of fairness and justice are thus challenged. This picture of discrimination based on race, class and gender – and their intersections – does indeed seem to lend strong support to Ervik’s (2014) suspicion that marginalization, exclusion and poverty experienced by users might be related to the consequences of control. To put it even more bluntly, we are “punishing poverty and deprivation” (Giertsen 2010, p. 281)².

Stigmatization, marginalization, criminalization

Although Sandberg and Pedersen (2010; see also Pedersen 2013, 2015) emphasize the unique self-selected culture surrounding cannabis and its use, another related trend we can read out of the literature, is that the Norwegian enforcement leads to stigmatization, marginalization and further criminalization – often of already marginalized populations. Drug crimes comprise the largest category in the justice system (Pedersen 2010; Sandberg and Pedersen 2010).

Bukten and Lobmaier (2013) find that 60% of inmates in their study used illegal drugs prior to incarceration, cannabis (along with amphetamines) being most common, and that the risk of reincarceration is higher for users.

In a longitudinal study of more than 1000 teens and young adults, Pedersen and Skardhamar (2009) find that early cannabis use is indeed specifically associated with later criminal charges. These charges are, however, almost exclusively drug-related. This means that the prohibition on cannabis, and its enforcement, is directly related to the criminalization—and recriminalization—of relatively large groups of people, including the implications and problems that arise from having a criminal record and the threat of further reincarceration. These problems include both professional and social consequences, personal costs and even certain higher education and vocational choices becoming precluded (Bretteville-Jensen 2013).

² Author’s translation.

Pedersen and Skardhamar (*ibid.*) succinctly state that “the fact that a considerable proportion of adolescents and young adults in Norway may come into contact with the penal system because of their involvement with cannabis must...give rise to concern. There is much to indicate that such penal reactions do not prevent young people continuing with cannabis use; on the contrary, such reactions may have a real, detrimental impact on their lives” (p. 116). This should be read in light of Art. 33 of the Convention on the Rights of the Child³, particularly as concerns the prevention of the use of children in drug trafficking, as this contributes to a further process of marginalization and alienation which, in turn, may lead minors to become deeper entrenched and involved in illegal drug markets and, in turn, gang-related activities as mainstream opportunities increasingly become precluded.

Analyzing the public debate on cannabis, Haug (2012) also finds stigmatization, criminalization and social exclusion to be the greatest harms associated with prohibition. She also points out the problem of this out-group becoming too amorphous as the number of Norwegian cannabis users is increasing, something also touched upon by Pedersen (2010). Any presumed deterrent effect is diminished in inverse proportion to the growth of the group, while the public’s general sense of justice may be challenged by the criminalization of large groups of people. Trust in the justice system suffers as a consequence. Although individuals developing a problematic usage of cannabis typically already exhibit characteristics of social marginalization and exclusion, the marginalization of cannabis users largely relies on involvement in, and complications arising from, the illegal economy associated with cannabis (Sandberg and Pedersen 2010), often resulting in further stigmatization. Even among incarcerated higher-level dealers and traffickers, there is a great proportion of individuals more readily characterized as suffering from heavy social marginalization rather than being

³ The full text of which reads: “States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”

professionals in organized crime (Shammas, Sandberg and Pedersen 2014). The heavier sentences received by these individuals will presumably do little to alleviate their marginalization.

New Psychoactive Substances

Issues associated with so-called new psychoactive substances (NPS) are also of concern here, not only as the majority of these substances belong to the category of synthetic cannabinoids (Bilgrei 2012; Bretteville-Jensen and Bilgrei 2015; Fekjær 2016) as well as the association arising from a full 100% of users in one study having previously tried cannabis (Bretteville-Jensen and Bilgrei 2015), but because the motivation and rationale for their use and growth may be related to coercive control and enforcement of the ban on cannabis. The explosive growth in NPS is tied both to low price, easy availability via the internet and, being known as ‘legal highs’, the somewhat legal grey-area they belong to (Bilgrei 2012; Fekjær 2016). New varieties are continually developed and discovered (EMCDDA 2018), and their contents are often uncertain and potentially dangerous (Bilgrei 2012).

Although the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) cannot say whether there is a relation between the prevalence of NPS in their member countries and those countries’ other drug policies (Larsen 2015), it does seem that the motivation for their use can be, at least in part, tied to those policies and their enforcement. Although the price and availability mentioned above increasing the attractiveness of NPS in comparison to cannabis may arguable be a function of the ban on cannabis, the low legal risks and difficulty of detection associated with these substances are emphasized as a rationale among users, particularly amongst the youngest and least experienced users (Bretteville-Jensen and Bilgrei 2015). Young boys between 16 and 30 are indeed the most prevalent users in Norway (Fekjær 2016). The difficulty of detecting these substances in drug tests may draw

young people on so-called drug contracts for cannabis use toward these synthetic alternatives. That the NPS may be far more volatile, uncertain and dangerous than the counterparts they are replacing is, of course, a cruel irony.

The Right to Drive

A potentially important issue only briefly touched upon in the literature concerns the right to drive. Skudal and Druckrey-Fiskaaen (2015) focus on how the right to drive is handled with regard to patients referred to Specialist health services, but many of their points are instructive for the larger debate. The right to drive can be revoked administratively, without sentencing but subject to legal appeal, on the basis of consideration of the general sobriety of the person involved, although Lysne (2017) questions whether there is an actual penal element in the practice based in preventive drug policy. The latter would lie outside the scope of the law (*ibid.*)

Having actually operated a motor vehicle while intoxicated is not a requirement for revocation. Doctors, including psychologists and opticians, have a duty to report suspicion of a general lack of sobriety to the authorities, and this duty, Skudal and Druckrey-Fiskaaen (2015) point out, trumps the principle of confidentiality, although many are not fully aware of this duty. In their study, cannabis users, among users of other illegal drugs, were far more likely to have lost their right to drive than those in treatment for alcohol problems. This may be attributed to the lessened social stigma of alcohol abuse in comparison to abuse of illegal drugs. 40% of those who had lost their right to drive in this study, had done so on account of their health care provider having reported their case to *Fylkesmannen* (*ibid.*). It appears that cannabis users relatively frequently have their right to drive revoked outside of a suspicion of having driven while intoxicated, although national statistics are again lacking, and that police operate with a standard of the person involved having admitted to using cannabis on occasion

over the last year as the test of sobriety (Lysne 2017). The seemingly standard one-year probation for regaining the right to drive has, however, been criticized by the courts as not appropriately taking actual circumstances and individual variation into account (*ibid.*).

Skudal and Druckrey-Fiskaaen (2015) only briefly problematize the topic in reference to the issue of trust between health care provider and patient, but a whole host of other troublesome consequences are implicated. Not only is the principle of confidentiality an important principle strongly tied in with both the right to health and the right to privacy, but this also leaves cannabis users who may want to discuss their use with their doctor with a fairly prohibitive cost of losing their right to drive. In a scarcely populated country with long distances between population centers, this cost may also disproportionately affect rural users with heavier consequences. Being able to drive may, for instance, be crucial to maintaining both employment and social and community engagement, and families may also face higher costs from losing the right to drive (Lysne 2017). The inequitable distribution of revoking the right to drive depending on the type of intoxicant involved is also highly troublesome, as it runs directly counter to notions of fairness and the right to equality before the law. The extrajudicial nature of the procedure of revoking the right to drive, also leaves the whole process vulnerable to great regional variation and, thus, arbitrariness (*ibid.*).

Disproportionality and nontraditional policing methods

Paul Larsson (2014; 2015) problematizes the use of so-called nontraditional policing methods. These include undercover activities, the use of informants, surveillance of telephones and electronic communications, provocation and the like (Larsson 2015). Such methods are tightly regulated, but their regulation is also in large part secret—making knowledge about the extent of their use difficult to glean (*ibid.*). What we do know is that the field of illegal drugs is one of the few allowing the use of these methods, the rationale being that this field

potentially carries the harshest available legal penalties in Norway, but that they primarily end up being applied against low-level users and sellers (*ibid.*). From the above, we may assume that this disproportionately affects those involved with cannabis. The police methods being used in anti-terrorism investigations and those involving national security, then, are the same ones potentially being used against low-level cannabis consumers. Such methods may, among other things, be quite invasive in terms of the rights to personal integrity and privacy, and this raises questions about proportionality between the severity of the crime and its control.

The use of nontraditional policing methods in the drug field is also accompanied by the normalization of these methods. They become an accepted part of the police repertoire, despite their invasive and problematic nature and their propensity to be applied against already marginalized populations (Larsson, 2014). The effects of these methods, along with their more traditional companions, remain undocumented (Larsson, 2015). They thus become difficult to defend, beyond the normative conviction apparent among police of the great threat posed by the illegal drugs that should be faced by almost any available means (*ibid.*).

Other Issues

From the news media and Norwegian public discourse, as well as a recent study by Normal Norge (2018), we know that the issues identified above merely scratch the surface. As has been noted in the literature (e.g. Ervik 2014; Fjær 2010; Larsson 2015; Rossow 2013), the field is overripe for further research to help fill the many glaring holes in our knowledge. The issue of medical cannabis, for instance, has received scant attention in Norway (Pedersen and Sandberg 2010). An analysis and review of news media reports over the last several years is clearly outside the scope of this study, but it may nevertheless be instructive to provide certain

illustrative examples and references to recent public debates as they have appeared in printed news media—not the least in order to stake out the course for further research.

Revocation of the right to drive on the basis of cannabis usage has recently garnered a fair amount of attention and scrutiny in the press, as compared to the scant scholarly literature on the subject. One of the leading daily populist newspapers issued an editorial decrying the police practice of preventively revoking the right to drive on the basis of cannabis usage irrespective of whether intoxicated driving has already taken place (Dagbladet 30.07.2017). The editorial points out that the Parliamentary Ombudsman has called the practice contrary to existing legislation, as has the lower and appeals courts. The editorial appeals to the Minister of Justice to take corrective action unless police change what the newspaper deems an illegal practice.

More than a year later, a commentary in the same newspaper indicates that little has changed (Rydje, 2018). Reiterating the previous arguments, adding details that the revocation may be indefinite yet no statistics are being kept on the practice, the commentary also points out that the Police Directorate insists on continuing the practice until a Supreme Court decision on the subject is reached. The police have, however, declined to appeal their losses in such cases to said court, leaving such a decision indefinitely out of reach. Relatively broad public agreement on this issue is indicated by a commentary in conservative digital paper *Minerva* largely echoing and furthering similar arguments against the practice (Marthinussen, 2018).

An issue which somewhat surprisingly seems to have been left untouched by scholarly attention concerns so-called drug contracts.⁴ These may be issued as an alternative to punishment for young people, where they commit to regular drug screenings and other follow-up in exchange for dropped charges and a clean criminal record. These contracts are

⁴ Although experiences with these contracts in Oslo and Follo have been evaluated by the public health competence center KoRus (Lien and Larsen, 2015).

typically offered underage cannabis users. Regardless of its intention, a whole host of problematic human rights issues arise from this practice. The basic voluntariness of the agreements has been called into question by the threat of punishment on which it is based. Failure to abide by the terms of the agreements may lead to the criminal charges being pursued. The logistics of control often seem to compromise the personal integrity and right to privacy of young people who are forced to urinate in front of control personnel who may often be of the opposite sex (Dahl, 19.01.2016; Spinnangr and Paust, 2018). As indicated in the section on new psychoactive substances above, these tests may drive young cannabis users to experiment with far more uncertain and dangerous substances which may not turn up on urine tests, compromising the right to health (*ibid.*). This latter problem is exacerbated by the frequent practice of offering only control without the intended counseling and follow-up to address potentially underlying issues related to the substance use. Some do experience these drug contracts as positive (NRK, 28.05.2015), although their usage seems to depend on local county priorities which, in turn, results in inconsistent and arbitrary practices (Romerikes Blad, 25.07.2013). In other words, whether you are punished or offered help may depend on your geographic residence. Finally, the effects of these contracts remain unknown all the while they have not been studied or scrutinized (NRK, 28.05.2015; Spinnangr and Paust, 2018).

As it also concerns young people, this relates to a recent novel debate concerning whether realization of the principles enshrined in the Convention on the Rights of the Child is helped or harmed by the ban on cannabis. The argument that current policy and control practices drives young, typically marginalized, people into the drug trade and illegal economy through cannabis sales (Paust, 2018a) was quickly countered by arguing that the Convention's aim to limit children's exposure to illegal drugs, as well as Norway's obligations through international drug treaties, would not be better served by alternatives to

current practices (Fludal, 2018). The latter is illustrated by reference to Colorado's experience with cannabis legalization (*ibid.*), which interpretation in turn was called into question (Paust, 2018b). This debate brings interesting perspectives, but needs necessarily be resolved politically. Such decision should nevertheless be informed by the best available empirical evidence. Foremost amongst these is their relation to the realization of Art. 33 of the Convention, and whether this is an immediate obligation or rather one of progressive realization. This will affect the consideration of whether current practices are best suited to serve the intentions of this article. This direct connection to the consequences of enforcement in Norway may be worthy of a closer look.

Finally, there appears to be a meta-debate about the public discourse on cannabis regulation as such, where certain police representatives claim that cannabis reform discussions should be avoided as they themselves cause and incentivize usage (NRK, 28.01.2015). This could be linked to debates on the role and actions of Norsk Narkotikapolitiforening, a private interest organization for drug enforcement officers which has been accused of blurring the lines between professional and private roles (Standal, 2016).

Summary and conclusions

First and foremost, it is clear that more independent research is needed in order to fill the knowledge gaps evident throughout this field. Central to this is the need for collecting, producing and publicizing relevant disaggregated statistics on the full spectrum of criminal justice reactions and civil sanctions. Although international studies provide a good deal more general knowledge, the extant literature on the consequences of marijuana control in Norway appears to barely scratch the surface of the experienced situation. What is revealed by this precursory look, however, is disquieting in terms of its human rights implications. The present literature review reveals an apparent systematic pattern of both deliberate and

unintended failure to heed and observe international human rights obligations along many aspects of the enforcement of the ban on cannabis in Norway, and that these are seemingly interrelated to a large degree and reverberate throughout the chain of relevant rights.

Current Norwegian law and policy is being enforced in a way that leads to those in need of help not receiving any, whereas those who do not need help are controlled, sanctioned and punished. This punishment is unevenly distributed along the fault lines of ethnicity, class and gender, with an overrepresentation of poor black and brown males, contributing to a further cycle of marginalization and alienation not only for those directly affected but for whole groups of people that fit the profile of those targeted. Women and minorities are underrepresented in institutions of care, and minority women are practically non-existent there. The principle of nondiscrimination is seriously abridged by the above, so is that of equality before the law.

Children are afforded additional levels of protection from involvement in the drug trade, yet current practices may seem to exacerbate rather than ameliorate the situation for minors already having become exposed to the illegal drug market through the use of cannabis. This is done both through the process of further criminalization and marginalization, and also, perversely, through the practice of drug contracts seemingly working effectively as sanctions rather than assistance. The exact degree to which NPS are used as a substitute for cannabis remains uncertain, but the use of so-called drug contracts for young cannabis offenders enhances their attractiveness for their quality of evading detection in urine controls. The right to optimal levels of health is compromised by unneeded exposure to potentially volatile and far more dangerous drugs. This same right to health is particularly challenged by health professionals' duty to report trumping the principle of confidentiality. Those in actual need of help may be dissuaded from seeking it for fear of negative ramifications from risking being reported to the police. This risk also includes being extrajudicially denied the right to drive,

irrespective of actual intoxicated driving. This particular consequence has disproportionately large ramifications for those in rural areas where public transportation is scarce.

That all these policies are subject to much regional variation in practice and availability further compromises the principles of equality and nondiscrimination. Add to this the use of nontraditional policing methods of a disproportionate character, and there are strong indications that the negative consequences of control in the enforcement of current Norwegian law regarding cannabis puts Norway at odds with its international human rights obligations.

Recommendations

Based on the above survey, Norway needs to take immediate corrective action as well as develop sound long-term policies in order to meet its international human rights obligations in this field. These include, but are not limited to, the following recommendations:

Develop and publish appropriate disaggregated statistical indicators. These should be disaggregated by type and amount of drug involved, and follow the entire course of the justice system process from arrest, type of punishment, length of incarceration etc. These should also include administrative decisions such as revocation of the right to drive, the use of drug contracts and so on. This is a crucial first step to getting an accurate handle on the extent of the problem and whether officially promulgated policy on enforcement is indeed followed.

End the practice of police profiling based on ethnicity, class and gender. This must include appropriate training for law enforcement personnel, as well as logging relevant indicators in arrest records and reviewing current enforcement policies as they differ across social strata.

Review current criminalization of cannabis users. To the extent that current practices leads to further recriminalization and stigmatization, and in light of the fact that the relatively large number of cannabis users challenges traditional notions of justice, current policies, along with their aims and success rates, must be reviewed.

Streamline administrative and extrajudicial responses. The large regional and individual variations in the availability, content and use of drug contracts, the duty to report and the revocation of the right to drive must be minimized through national guidelines and follow-up.

Review and revise the content, aims and success-rates of administrative and extrajudicial responses. To the extent that these responses are employed more as additional punishment rather than assistance for those in need, these must be revised in line with clearly stated aims. Whether such aims are actually met, must be evaluated independently in accordance with clear indicators and, in turn, feed back into the review.

End the duty to report for health professionals. This duty severely compromises the principle of confidentiality and, along with it, the right to obtain optimal health standards. Such duties to report should only be employed when clearly necessary to protect the safety and health of others, and should otherwise be handled in the patient-doctor relationship.

End the current practice of the revocation of the right to drive. Such revocation must be clearly tailored to meet actual needs of traffic safety, content and conditions must adapt to individual circumstances and cannot be added as a by-product of other and unrelated contact with law enforcement. It must, in other words, be actually related to the topic which it is meant to regulate and not be effectively used as an additional and extrajudicial penalty.

Bibliography

- Almvik, Arve, Sagsveen, Espen, Olsø, Turid Møller, Westerlund, Heidi and Reidun Norvoll. 2011. "Å lage farger på livet til folk': God hjelp til personer med rusproblemer og psykiske lidelser i ambulante team." *Tidsskrift for psykisk helsearbeid* 02(8), 154-162.
- Berg, Elin and Ragnhild Audestad. 2006. *Rusmiddelbehandling og skam. En undersøkelse om rusmiddelbrukere med etnisk minoritetsbakgrunn og deres møte med behandlingssystemet*. Oslo: Rusmiddeletatens kompetansesenter.
- Bilgrei, Ola Røed. 2012. "Syntetiske cannabinoider." *Rus & Samfunn* 01(6), 13-15.
- Bretteville-Jensen, Anne Line (ed.). 2013. *Hva vet vi om cannabis?* Oslo: Universitetsforlaget.
- Bretteville-Jensen, Anne Line and Ola R. Bilgrei (eds.). 2015. *Nye Psykoaktive Stoffer. En rusmiddelrevolusjon?* Oslo: Universitetsforlaget.
- Bretteville-Jensen, Anne Line, Mikulic, Sania, Bem, Pavel, Papamalis, Fivos, Harel-Fisch, Yossi, Sieroslowski, Janusz, Trigueiros, Fatima, Piscociu, Laura, Tsarev, Sergey, Altan, Peyman and Claudia Costa Storti. 2017. *Costs and Unintended Consequences of Drug Control Policies*. Pompidou Group, Council of Europe. Available at: http://fileserv.idpc.net/library/2017_PPG_Costs_and_unintended_consequences_of_drug_control_policies.pdf.pdf
- Bukten, Anne and Philipp Lobmaier. 2013. "Soning: Unik mulighet til motivasjonsarbeid?" *Rus & Samfunn* 06(7), 26-28.
- Carey, Sabine C., Gibney, Mark and Steven C. Poe. 2010. *The Politics of Human Rights. The Quest for Dignity*. Cambridge: Cambridge University Press.
- Donnelly, Jack. 2003. *Universal Human Rights in Theory & Practice*, 2nd ed. Ithaca: Cornell University Press.
- Ervik, Randi. 2014. "13 og en halv dolcontin." *Rus & Samfunn* 01(4), 38-39.

- European Monitoring Centre for Drugs and Drug Addiction. 2018. "Norway, Country Drug Report 2018." Available at: <http://www.emcdda.europa.eu/publications/country-drug-reports/2018/norway>
- Fekjær, Hans Olav. 2016. *Rus*, 4. reviderte utgave. Oslo: Gyldendal Akademisk.
- Fjær, Svanaug. 2010. "Sosiologien som forsvant." *Nytt Norsk Tidsskrift* 1-2, 153-162.
- Giertsen, Hedda. 2010. "Stoltenberg-utvalget og dagens narkotikapolitikk – endringer eller fortsettelse?" *Kritisk juss* 04(36), 273-284.
- Goldberg, Ted. 2011. *Legalisera narkotika? Ett diskussionsunderlag*. Solna: Academic Publishing of Sweden.
- Hart, Chris. 1998. *Doing a Literature Review: Releasing the Social Science Research Imagination*. London: Sage.
- Haug, Anja. 2012. *Den norske cannabisdebatten. Dagens skadeforståelser – morgendagens Skadereduksjon*. Master thesis, Department of Criminology and Sociology of Law. Oslo: University of Oslo.
- Hauge, Ragnar. 2012. "Medisinsk cannabis – et juridisk dilemma." *Rus & Samfunn* 05(6), 12-16.
- Hauge, Ragnar. 2013.
- Hauge og Nordlie 1989.
- Helse- og omsorgsdepartementet [Ministry of Health and Care Services]. 2010. *Rapport om Narkotika. Stoltenbergutvalget*. Oslo: Helse- og Omsorgsdepartementet.
- Kallerud, Knut H. 2010. "Fra riksadvokaten." *Tidsskrift for strafferett* 03(10), 296-302.
- Kripos. 2017. *Narkotika- og dopingstatistikk 2017*. Available at: <https://www.politiet.no/globalassets/04-aktuelt-tall-og-fakta/narkotika/narkotika-og-dopingstatistikk-kripos-2017.pdf>
- Kuvoame, Moses B. B. 2004. "Eikaguttene." *Marginalisert etnisk minoritetsungdom i et*

- marginalt miljø i Oslo*. Oslo: Rusmiddeletatens kompetansesenter.
- Kuvoame, Moses Deyegbe. 2015a. "Uteseksjonens oppsøkende arbeid i Oslo sentrum." *Rus & Samfunn* 06(8), 15-18.
- Kuvoame, Moses Deyegbe. 2015b. *In Search of Care: How marginalised street-involved Black and minority ethnic youths tackle the psychoaffective injuries of multiple and prolonged marginality in a White workfare state*. Ph.D. dissertation, Faculty of Law. Oslo: University of Oslo.
- Landman, Todd. 2006. *Studying Human Rights*. Abingdon: Routledge.
- Larsen, Ole Martin. 2015. "Et felt i stadig endring." *Rus & Samfunn* 04(8), 4-6.
- Larsson, Paul. 2014. "Å Danse med djevelen: Utradisjonelle politimetoder innen narkotikafeltet." In: Storgaard, Anette (Ed.) *Nsfks 56. forskerseminar: Skarrildhus, Danmark 2014*, 195-211. Aarhus: Nordisk samarbeidsråd for kriminologi.
- Larsson, Paul. 2015. "Politistategier mot narkotika." *Drugs: what is the problem and how do we perceive it? Policies on Drugs in the Nordic countries*, 78-89.
- Lien, Marianne Inez and Yvonne Larsen. 2015. *Flinkiser og "dropouts." Erfaringer med ungdom på frivillig ruskontrakt*. KoRus report. Available at: https://www.korusoslo.no/wp-content/uploads/Web_Korus_Frivillig-ruskontrakt-1.pdf
- Lysne, Karl Edvin. 2017. *Vedtakspraksis på sviktende juridisk grunnlag? En legalitetsprøving av politiets vedtakspraksis av vilkåret «edruelig» ved tilbakekall av førerretten etter vegtrafikkloven § 34 femte ledd – med særlig fokus på cannabis bruk*. Master thesis, Faculty of Law. Bergen: University of Bergen.
- Marthinussen, Hans Fredrik. 2018. "Decriminalisation of Drug Use – The Outlook for Reform in Norway." *Bergen Journal of Criminal Law and Criminal Justice* 6(1), 53-67.
- Myhrer, Tor-Geir. 2001. "Fra riksadvokaten." *Tidsskrift for strafferett* 02(1), 102-136.

- Nafstad, Ida. 2011. "Changing control of the open drug scenes in Oslo—Crime, welfare, immigration control, or a combination?" *Journal of Scandinavian Studies in Criminology and Crime Prevention* 12(2), 128-152.
- Neumann, Cecilie E. B. and Mette Snertingdal. 2010. "Overfladisk narkotisk vareopptelling." *Rus & Samfunn* 04(4), 48-50.
- Normal Norge. 2018. "Kartlegging av prevalens og bruksmønster hos norske cannabisbrukere. En dybdeanalyse." Available at: <https://normalnorge.no/wp-content/uploads/2018/09/Cannabis-bruk-i-Norge-en-dybdeanalyse.pdf>
- Pedersen, Willy. 2010. "Krigen mot narkotika går mot slutten." *Nytt Norsk Tidsskrift* 01-02(27), 142-153.
- Pedersen, Willy and Sveinung Sandberg. 2013. "The medicalisation of revolt: A sociological analysis of medical cannabis users." *Sociology of Health and Illness* 1(35), 17-32.
- Pedersen, Willy and Torbjørn Skardhamar. 2010. "Cannabis and crime: Findings from a longitudinal study." *Addiction* 1(105), 109-118.
- Pedersen, Willy, Viland, Christine and Sveinung Sandberg. 2007. "'Joint, joine, dele, være sammen'. Hasjmarketets konsekvenser for bruk, risiko og avhengighet." *Sosiologisk tidsskrift* 04(15), 317-336.
- Skudal, Eva and Karl Trygve Druckrey-Fiskaaen. 2015. "Håndtering av førerrett i TSB." *Rus & Samfunn* 06(8), 24-26.
- Sandberg, Sveinung and Willy Pedersen. 2010. *Cannabiskultur*. Oslo: Universitetsforlaget.
- Sandberg, Sveinung and Willy Pedersen. 2011. *Street Capital. Black cannabis dealers in a white welfare state*. Bristol: The Policy Press.
- Shammas, Victor L., Sandberg, Sveinung and Willy Pedersen. 2014. "Trajectories to Mid- and Higher-level Drug Crimes: Penal Misrepresentations of Drug Dealers in Norway." *The British Journal of Criminology* 4(54), 592-612.

- Snertingdal, Mette Irmgard. 2010. *The co-constitution of heroin crime. Narratives of smugglers and dealers meet the judicial practices*. Ph.D. dissertation, Department of Sociology and Human Geography. Oslo: University of Oslo.
- Steiner, Henry J., Alston, Philip and Ryan Goodman. 2007. *International Human Rights in Context. Law Politics, Morals*, 3rd ed. Oxford: Oxford University Press.
- Stene, Reid Jone. 2008. "Narkotikasiktedes lovbrudd preger rettssystemet." Statistics Norway: *Samfunnsspeilet* 2008/1. Available at: <https://www.ssb.no/sosiale-forhold-og-kriminalitet/artikler-og-publikasjoner/narkotikasiktedes-lovbrudd-preger-rettssystemet>
- Urinbojev, Rustamjon, Wickenberg, Per and Ulf Leo. 2016. "Child Rights, Classroom and School Management: A Systematic Literature Review." *International journal of children's rights* 24, 522-547.
- Ødegård, Einar. 2008. "Narkotika- og alkoholproblemer blant innsatte i norske fengsler." *Nordisk Alkohol- & Narkotikatidsskrift* 25(3), 169-185.

Newspaper articles

- Dagbladet 30.07.2017
- Dahl, 19.01.2016
- Fludal, 2018
- Marthinussen, 2018
- NRK, 28.01.2015
- NRK, 28.05.2015
- Paust, 2018a
- Paust, 2018b
- Romerikes Blad, 25.07.2013
- Rydje, 2018
- Spinnangr and Paust, 2018
- Standal, 2016