

Facts and figures

Coffee-shops in the Netherlands

The Dutch Tolerance in Practice

In Europe, France and the Netherlands both stand for opposite models of drug policies as far as public opinion is concerned. The Dutch *coffee-shops*, in which any adult individual can obtain and use up to 5 grams of cannabis, symbolise such a dissimilarity. In France, for the same behaviour thousands of people are apprehended each year by the police. A closer look at laws relating to drugs in both countries shows nevertheless quite a significant similarity. Though not dealing with the use issue, Dutch law penalises anyone possessing narcotics, including cannabis by-products, as French law does. The discrepancy between Dutch and French policies as regards cannabis can then be basically explained throughout differences observed within the enforcement of drug policies. Cannabis free sale in *coffee-shops* proves indeed a kind of tolerance made official by the Prosecution circular letters yet not listed in official law.

How far does that “tolerance” for soft drugs go back in time? Why has such a situation been established? How is it presently made lawful? Eventually what are the last legal evolutions likely to apply to *coffee-shops*? We suggest to answer these questions via the results of a survey carried out in 1999 and pertaining to Dutch drug policies¹. That research chiefly covers the recent alterations concerning that policy. We shall take up the main developments insofar as cannabis retail sale is concerned.

Cannabis Sale and Use in the Netherlands: legal aspects

In the Netherlands, possessing hemp and its by-products has been listed in the law pertaining to opium and other narcotics (called “Opium Act”) since 1953. Yet the control of the “soft drugs” market, as it is known nowadays, dates back from 1976, when an legislative addition to the Opium Act broaches a demarcation between substances presenting a risk inappropriate for health and society (those commonly called “hard drugs”, such as opiates, coca by-products, cannabis essential oil, ecstasy, LSD, etc.), and the substances generating a lesser danger, to wit cannabis and its by-

¹ GOMART (E.), MARTINEAU (H.), *Politiques et expérimentations récentes sur les drogues aux Pays-Bas*, Paris, OFDT/CESDIP/CSI, nov. 1999 (manuscript).

products (other than essence). Offences connected with cannabis will then be less penalised than those regarding hard drugs.

Using cannabis is not criminalized in the Netherlands, yet according to the Dutch legislation, possessing some, even though for one's personal use, is liable to a penalty of two years in jail and/or a 25,000 Florins fine (one month in prison and/or 5,000 Florins for less than 30 grams)². These are the texts of law enforcement — indicators for prosecutors —, that will create a tolerance status in regard to those acts. From 1976 onwards those texts will make possible the sale and therefore the handling of cannabis (within the limit of 30 grams per purchase at that time) in *coffee-shops*. While accepting the opening of *coffee-shops*, the decision-makers' purpose was to isolate the soft drugs market from the hard drugs one, for the users of the first not to come into touch with the second.

How does that tolerance apply to drug policies without contradicting national legal texts and international treaties?

The Opium Act condemns all offences listed by the 1988 Convention on Illicit Drug Trafficking. Yet international agreements do not require any condition whatsoever from the signing countries as regards their legislation regular enforcement, out of consideration for national supremacy. Thus enforcing the law may be limited by principles pertaining to national sovereignty³.

For the Netherlands, one of these principles is the prosecution opportunity granting the prosecutor's office arbitrary powers. The main purpose involves avoiding pursuits which do not depend upon general interest. The guidelines imply for instance:

“The policy of condoning certain offences represents an attempt to balance conflicting interests in that the interest of law enforcement is subordinated to a higher, identifiable common good. In the context of drugs policy this higher good is defined as public health (separation of the markets) and public order. Hence it is a considered decision not to investigate and prosecute the offences in question, regardless of the resources available.

“The decisions to accord a low investigation priority to certain categories of crime is generally based on an assessment of the seriousness of a particular type of offence, often taking account of the resources available”⁴.

In order to accommodate the use of that arbitrary power between various magistrate's courts, the prosecutors college set up guidelines for them. Those directions have gradually been enlarged

² Possessing whatever drugs is punishable in the Netherlands yet having a little quantity of soft drugs for one's personal use is regarded as an infraction (when it comes to hard drugs, it is a misdemeanour).

³ SILVIS (J.) La mise en œuvre de la législation sur les stupéfiants aux Pays-Bas, in Césioni (M.-L.) (dir.), *Usage de stupéfiants : politiques européennes*, Genève, Georg Éditeur, 1996, pp. 181-204 (quotation p. 183).

⁴ Public Prosecution Service, *Guidelines on Policy on the Investigation and Prosecution of Offences under the Opium Act*, 1996 (quotation p. 5).

towards departments in charge of researches (particularly the police). Furthermore they fix the limits of matters of priority for investigating and bringing suit to transgressions, and that involves a somewhat leniency as regards the latter.

As far as drugs are concerned, possessing a little quantity of cannabis or hard drugs is imparted the lowest matter of priority, that is the usual quantity sold for one's personal reasonably instant use (estimated to amount to 5 grams for hemp by-products). Such a tolerance proves consistent with the whole Dutch policy: the logic of means used is respected because in order to act against narcotics trafficking and serious criminality — priority offences —, the research and pursuit strategy must focus upon those transgressions. Moreover that tolerance provide the means to match a legal logic, as the de facto decriminalisation about possessing drugs for one's personal use just comes next to (legal) decriminalisation of narcotics use.

Circular letters from the French Ministry of Justice sometimes advised a flexible approach towards small users. To what extent do the Dutch policies deviate?

Let us notice first that the French public prosecutor's office put the principle of pursuit opportunities into practice only when matters are decided to be brought to court or not for a transgression already detected by the police. The conception of priorities and the power of guidelines upon the police prove less systematic. Circular letters especially are then but guidelines for magistrate's courts, which remain free to accommodate their policy to their local context. Reversibly guidelines are lawful in the Netherlands⁵.

The last recommendations from the Dutch Prosecution date back from 1996. They confirm numerous aspects of the drug policy expounded the previous year in the *Continuity and Change*⁶ Government Report. As far as cannabis sale and use are concerned, what are the alterations inserted by that new policy?

Recent Evolutions of the Legal and Ruling Context

When it comes to transgressions connected with cannabis and within the realm of fight against drug tourism or against cross-border effects resulting from the Dutch policy, the 1996 recommendations circumscribe new goals, among which research and pursuit become top priority: *coffee-shops* selling soft drugs for export and foreign patrons buying big quantity and consequently suspected of trafficking.

⁵ JOUBERT (C.), HUISMAN (W.), La politique de tolérance en matière de drogue : un phénomène bien néerlandais ?, *Revue de droit pénal et de criminologie*, n° 11, 1997, pp. 963-987 (quotation p. 965).

⁶ Ministry of Foreign Affairs, Ministry of Health, Welfare, and Sports, Ministry of Justice, Ministry of the Interior, *Drug Policies in the Netherlands – Continuity and Change*, Rijswijk, Ministry of Health, Welfare, and Sports, 1995.

As in the Schengen agreement context Dutch authorities commit themselves to the utmost diminishing of that cannabis export issue, some people suggested to proscribe cannabis sale to foreigners. However the 1995 Government Report ascertains that Constitution prevents discriminating foreign clients from Dutch ones⁷. Anyway that proceeding would have been difficult to enforced and one can speculate the Dutch would have volunteered to act as go-between for purchase.

One of the solutions was to bring down the maximum quantity allowed to be sold in *coffee-shops* from 30 to 5 grams by purchase and individual, and that makes cannabis mass buying difficult. The quantity sold also demarcates the threshold officially limiting individual use from that of resale purposes.

Such alteration agrees with a general wish to sanitise *coffee-shops*. Numerous towns have indeed denounced the “wild development” of those venues throughout the nineties, and some managers’ equivocal practices to attract customers. So if the *coffee-shops* principle of existence is not questioned, decision-makers wish the latter to be better controlled when it comes to their number or their management. On one hand because local request is often judged lower than offer. On the other hand populations regarded as particularly exposed must be protected, such as the youth or psychiatric hospital patients.

The main measures approved will then concern regulating the number of *coffee-shops* and the sale conditions to individuals. A few ones will however support regulating *coffee-shops* supply⁸.

On those grounds remains the issue about the cannabis quantity allowed to be stocked. The debate about the “back door” (*achterdeur*; to wit that equivocal situation when a customer can freely buy cannabis, whereas the dealer coming to supply the *coffee-shop* is exposed to prosecution) has been partly set forth again by recommendations pointing out that stock could be limited to a locally determined quantity (500 grams usually).

Since this research has been conducted the issue about regulating *coffee-shops* supply has been raised by numerous mayors. In June 2000, the Chamber of Deputies adopted a not restricting motion aiming at decriminalising cannabis supply to *coffee-shops*. Three days later the Prime Minister, Wim Kok, declared he did not acknowledge that decriminalisation, which might jeopardise the balance eventually achieved by the Dutch policy towards foreign countries.

⁷ *id.*, p. 48

⁸ HILLENAAR (W.), BOGERS (G.), *Lokaal coffeeshopbeleid*, Den Haag, Steun-en informatiepunt drugs en veiligheid, 1997.

Such controversy extends to the *nederwiet* (Dutch grass) farming issue. The Netherlands are often blamed of mass producing that grass, commonly considered of excellent quality as it is strong with THC. In the 1995 *Continuity and Change* Memorandum and throughout the 1996 public prosecutor's directions, the Dutch authorities reassert their resolution to control the *nederwiet* farming.

Even so, they are facing a dilemma: on one hand, those crops mostly achieved by small home producers enable many *coffee-shops* to stock up, and therefore to avoid criminal process; on the other hand, developing these crops may attract more and more criminal circles, which are hoped to be strongly fought by the Dutch authorities.

Yet the greatest feature of the new *coffee-shops* policy is their very decentralised management, within the context of local three-party deliberations between the mayor, the prosecutor, and the head of the police.

Such a pattern symbolises the 1990's drug policy which focuses upon a new concern: once risks are reduced, fighting against "drug nuisances" becomes prominent. And the displeased citizens themselves demand their local councillors individually that this issue should be taken into account.

Within that context the mayors' power to order *coffee-shops* closing will increase in two steps.

Until 1999 only the public prosecutor's office qualifies for arbitrating as far as offences to the Opium Act are committed. If a mayor judges necessary to close a *coffee-shop*, he/she then must bring forth evidence of the commercial establishment disrespecting the measures formerly determined by the Prosecution and emphasised in 1996: the *AHOJ-G standards*⁹. Transgressing these tolerance thresholds is considered at once a breach of the law and an offence to the quality of life, only areas which the mayor is allowed to step in. The latter would then justify his deeds against *coffee-shops* by struggling against the nuisance they would cause.

In 1999 the law called "Damocles"¹⁰ allow the mayor to close a *coffee-shop* under such grounds as breaches of the Opium Act (e.g.: the cases of illicit substances transporting still pertains to the Prosecution). Yet his/her action remains administrative and not judicial (limited to a financial penalty or closing order).

⁹ Those criteria are established by the Prosecution directions and determine the conditions of tolerance towards coffee-shops: no advertising (*Affichering*), no hard drugs sale (*Harddrugs*), no nuisance (*Overlast*), no sale to minors (*Jeugdigen*), and no sale in big quantities (*Grote hoeveelheden*); the limit to "big quantities" was brought down from 30 to 5 grams by purchase.

¹⁰ The 13b section of the Opium Act dates back from April 21st, 1999. "The mayor is empowered to use constraint action towards public places [*coffee-shops* or others] where are sold, delivered, distributed, or simply present products classified in List I or II [hard or soft drugs]. That qualification does not apply to places with a medical purposes".

The “Damocles” Law is indeed too recent to be assessed. The way the national policies have been settled by municipalities may nevertheless be examined, especially before the act was passed.

Setting up the Dutch Policies regarding *Coffee-shops*: Local Policies and First Results

According to a survey carried out by the Intraval Centre, most of the Dutch municipalities have adopted a policy as regards coffee-shops, chiefly as an attempt to reduce their number¹¹. The recent decrease in the number of *coffee-shops* registered nationally is stressed upon by many: about 15% since 1995 according to a recent government report¹².

The Intraval Survey conducted among the whole Dutch municipalities acknowledges 846 *coffee-shops* by late 1999, whereas their number was estimated to surround 1,200 in 1997¹³. It must then be noticed that other cannabis points of sale add up to that amount: public establishments also selling alcohol (and not being *coffee-shops* in the exact meaning of the term), about 150 according to Intraval, and non public places (houses, streets, messengers, etc.) which are estimated around 1,500. The authors of that survey also observe a decrease in that kind of sales outlet. That decline is also judged satisfactory by authorities, with a view to better control the whole retail market.

The latter also wish a better geographic distribution of *coffee-shops*. It can presently be observed that they mainly localise in cities, and other sales outlet develop in places having no *coffee-shops*. Such factor must be taken into account for a better regulation of cannabis market.

If the total amount of *coffee-shops* may seem high, it must then be noticed that 80% of municipalities have none. The disparity between municipalities is due to the mayors’ independence in that matter. However even if the number of approved *coffee-shops* is determined locally, the administrative magistrate compels the mayors to justify their choices¹⁴.

A majority of municipalities, notably the small ones, have adopted the “no tolerance principle: no coffee-shop is allowed to settle in town. Practice showed that such decision must be taken in agreement with the surrounding towns, in order to avoid a massive transit of users to those.

In some uncommon cases the number of coffee-shops is limited; the town will then have to demonstrate before administrative court that exceeding that number stands as an offence to the quality of life.

¹¹ BIELEMAN (B.), GOEREE (P.), *Coffeeshops geteld. Aantallen verkooppunten van cannabis in Nederland*, Groningen, Stichting Intraval, 2000 (English summary: Number of points of sale of cannabis in the Netherlands).

¹² Ministry of Health, Welfare, and Sports. *Drug Policies in the Netherlands: Progress Report, September 1997 – September 1999*, Den Haag, Ministry of Health, Welfare, and Sports.

¹³ BIELEMAN (B.), BIESMA (S.), SMALLENBROEK (A.J.H.), *Cannabis in Nederland, inventarisatie van verkooppunten*, Groningen, Stichting Intraval/SGBO, 1997.

¹⁴ And that was analysed in detail by: HILLENAAR (W.), BOGERS (G.), *Lokaal coffeeshopbeleid, op. cit.*, p. 19 sq.

Towns having adopted one behaviour or the other had to settle an elimination policy in order to reduce the amount of *coffee-shops* to the number needed. The reasons called up for their closing vary.

According to the Prosecution directions, disrespecting the AHOJ-G criteria can justify the closing a coffee-shop. Before the “Damocles” law, the towns attempts essentially apply to those standards. The Intraval Survey observes therefore that the most frequent controls occurred in the wake of nuisance complaints or hard drugs selling. The disrespect of other AHOJ-G standards seems more tolerated¹⁵. Closing proceedings will be easier thanks to the “Damocles” law allowing to close *coffee-shops* with or without nuisance. Until now that legislative addition especially aims at municipalities wishing to restrict their number, and being unable to gather evidence of nuisance around some of those outlets (absence of solid pieces of evidence such as complaints).

The elimination wish often comes along with discouraging measures. For example, event if a *coffee-shop* is tolerated its owner is neither allowed to sell it nor to change its location. A new *coffee-shop* will not be authorised to settle as well.

For the maximum number of coffee-shops to be respected, the municipality can also establish a licence system. Tolerance standards are then settled by the three-party deliberation (to wit the mayor, the prosecutor, and the head of the police) and listed in a licence document. *Coffee-shops* who disregard the agreed conditions are then denied their licence and compelled to close. It must be observed that such permit do not explicitly refer to cannabis sale, that would legitimate soft drugs sale, yet it concerns for instance nuisance, the location of the outlet, its opening hours, etc.

Thus in Amsterdam, from January 1st 1998 onwards *coffee-shop* owners had to chose between becoming a café and selling alcohol, or keeping on as *coffee-shops* (among the 350 within the city, 100 would also sell alcohol). Carrying on both activities has then become a reason for closing, as well disrespecting the AHOJ-G standards. No new *coffee-shop* has been allowed and furthermore, the location of a coffee-shop closed for offences to public order, for example, cannot be used for that business¹⁶. In early 1999 the number of Amsterdam *coffee-shops* would amount to 211, to which some hash cafés would add, outlets that are supposed to disappear because of the sale of alcoholised drinks. If a decrease has indeed been recorded, it comes into view that the reasons for closing have essentially been hard drugs trade and nuisance, two standards from the AHOJ-G criteria.

¹⁵ BIELEMAN (B.), GOEREE (P.), *Coffeshops geteld. Aantallen verkooppunten van cannabis in Nederland, op. cit.* p. 19, sq.

¹⁶ VAN OOSTVEEN (N.), *The Amsterdam Drug Policy*, Amsterdam, City of Amsterdam / Communications Department, 1997.

An awkward effect must eventually be noticed: closing coffee-shops in some neighbourhoods has occasionally led to the development of a cannabis illegal — therefore uncontrollable — market¹⁷. Balance is difficult to reach, especially in a city including so many *coffee-shops* and noticeable for its long tolerance tradition.

Conclusion

The recent evolution of the Dutch policy as regards *coffee-shops* has been subjected to numerous comments abroad, and the strengthening of measures against these outlets has sometimes been interpreted as an admission of failure. A close study of the Dutch policy actually shows that the authorities wished to restrict and better control cannabis retail sale without questioning the mere principle of existence of the *coffee-shops*. Such changes result from international yet also national pressures. The latter were more particularly expressed through the protest movement against nuisance caused by *coffee-shops* users.

In conclusion the evolutions detected in the realm of coffee-shops match the image of the new Dutch drug policy settled in the 1990's. Without betraying the tolerance tradition that distinguishes the Dutch society, it has been influenced by the nuisance concern relating to drug use, and a determination to decentralise that policy through putting local three-party deliberations into widespread use and increasing the mayors' authority.

Hélène MARTINEAU et Émilie GOMART

¹⁷ BIELEMAN (B.), SNIPPE (J.), *Gedogen gewogen. Evaluatie van het Amsterdamse coffeeshopbeleid*, Groningen, Stichting Intraval, 1999 (English summary : *Evaluation of the Coffee-shop Policy in the City of Amsterdam*).

Some prevalence data about declared cannabis use in the Netherlands

	Prevalence during one's lifetime	Prevalence during the year	Prevalence during last month
National Survey			
Survey carried out face-to-face with a probability sample of 21,959 Dutch individuals (based upon population records) of 12 years-old and over ¹ .			
Cannabis	15.6%	4.5%	2.5%
Tobacco	67.9%	38.1%	34.3%
Ecstasy	1.9%	0.7%	0.3%
Cocaine	2.1%	0.6%	0.2%
"Difficult drugs" ²	24.1%	1.2%	0.5%
School Survey			
Survey carried out in 1996 by self-answered questionnaire among 6,952 pupils from regular secondary education, from 12 to 18 years-old ³			
Cannabis	20.0%	-	10.7%
Tobacco	56.0%	-	27.8%
Ecstasy	5.6%	-	2.2%
Cocaine	2.9%	-	1.1%

1. Source: ABRAHAM (M.D.), COHEN (P. D.A.), VAN TIL (R.-J.), DE WINTER (M.A.L.), *Licit and Illicit Drug Use in the Netherlands*, 1997, Amsterdam, Centrum Voor Drugsonderzoek (CEDRO), 1999.

2. The "Difficult drugs" category includes cocaine, amphetamines, ecstasy, hallucinants, and heroin, the whole being difficult to obtain in the Netherlands.

3. DE ZWART (V.M.), STAM (H.), KUIPERS (S.B.M.) Key Data, Smoking, Drinking, Drug Use & Gambling among Pupils Aged 10 Years and Older of the 4th Station Survey with High-risk Substances, Utrecht, Institut Trimbos, 1997.

• **For more information**

MARTINEAU (H.), GOMART (É.), *Recent Policies and Experimentations on Drugs in the Netherlands – English Summary*, Paris, OFDT/CESDIP/CSI, January 2001.

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