

# DRUG-RELATED NUISANCES : HOW THE DUTCH HANDLE THE PROBLEM

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*In the present paper, the authors summarize a research project conducted in 1999 (a joint CESDIP - CSI study for the Observatoire Français des Drogues et des Toxicomanies (OFDT) (the French Monitoring Centre for Drugs and Drug Addictions).*

The Dutch policy on drugs is famous for its tolerance of the retail sale of cannabis and for its experiments in treating hard drug users. Rather than concentrating on the already familiar Dutch principles of separating the hard and soft drug markets and reducing risks, the present study deals with a less known aspect of this policy : the combat against drug-related nuisances.

Various government notes issued from 1993<sup>1</sup> on testify to the priority given to nuisance control. It was in 1995 that its place within Dutch drug-related policy was officialized, in an interministerial report entitled *Continuity and change*, which outlined the administration's goals and projects for the coming four years. Last, the new instructions issued by the public prosecutor in 1996<sup>2</sup> adopted most of the guidelines and measures announced in *Continuity and change*, and made them priorities for investigation and prosecution.

The idea of combating drug-related nuisances forced people working on drug control to revise their approach, and above all it obliged them to coordinate the two main components of the earlier policy (separation between the markets and risk-reduction) with this new principle, more concerned with having public order and security respected.

Rather than describing the projects initiated in this context, we prefer to discuss the philosophy behind this new drug policy, and the problems encountered by the actors in charge of implementing it. First, let us take a closer look at the notion of "drug-related nuisances", and the reality behind it.

## Drug-related nuisances : a difficult concept to define

At the outset, the label "drug-related nuisances" was confined to petty offenses committed by drug users. Subsequently, the term was extended to designate behavior of users that non-users perceive as disturbing the

peace, and that instill feelings of insecurity. It therefore refers to a broad range of deviant behavior connected either with codified norms, such as those mentioned in the criminal code, or with more or less explicit social standards.

During the parliamentary debates that led to the officialization of the nuisance control policy, the definition of those nuisances was modeled after the salient points evidenced in citizens' complaints about groups of users (violent or highly visible users, etc.), or about a particular place (coffee shops, buildings used for dealing, etc.). The 1993 note on nuisances, for instance, lists a very wide range of behavior, including violent behavior, petty offending, aggressiveness, intimidation, noise, gatherings in public places, discarding syringes, the simple, "irritating" presence of users, etc.

The definition was not refined any further, subsequently, nor was it explicitly referred to. A fact becomes a nuisance when a citizen complains about it. As will be seen, the nuisance-related policy was an attempt to respond to popular expectations, since the population has recently begun to show signs of exasperation with some individuals and places where drugs are in circulation.

What is the actual extent of these drug-related nuisances ? Unfortunately, any attempt at quantification comes up against the lack of a precise definition. Nonetheless, in order to justify the legitimacy of the governmental measures,<sup>3</sup> the authors of *Continuity and change* had to provide some proof of their necessity. The figures they advanced in support of their arguments were actually confined to drug-linked offending. Their line of reasoning was similar to what is heard in France : it is only a small group of users who are really offenders, but their repeated acts cause considerably disturbance : "The crime and nuisance problem caused by a few thousand addicts engaging in extremely anti-social behaviour on a persistent basis has now become so excessive that one way or another it must be tackled more effectively"<sup>3</sup>.

Quantification of nuisances in the less restrictive sense of the term is even more delicate. A task force attempted to use the information gathered by complaint-recording centers to define and measure such nuisances. But it found it impossible to exploit that source, owing to the fact that changes in the number and nature of complaints may depend on the nuisances themselves, but also on the sensitivity of the individuals who come

<sup>3</sup> Staatssecretaris van Welzijn, Volksgezondheid en Cultuur, 1993-1994.

<sup>1</sup> We are alluding to two government notes : the first refers to drug and nuisance-related policy (Staatssecretaris van Welzijn, Volksgezondheid en Cultuur *Verklaringproblematiek ; Nota overlast*, Rijswijk, Tweede Kamer der Staten-Generaal, 1993-1994, and the second to policy regarding security (Staatssecretaris van Binnenlandse Zaken, *Veiligheidsbeleid 1995-1998*, Rijswijk, Tweede Kamer der Staten-Generaal, 1995).

<sup>2</sup> Ministry of Foreign Affairs, Ministry of Health, Welfare and Sport, Ministry of Justice, Ministry of the Interior, *Drugs policy in the Netherlands : Continuity and change*, Rijswijk, Ministry of Health, Welfare and Sport, 1995.

<sup>3</sup> Openbaar Ministerie, *Richtlijnen voor het opsporings - en strafvorderingsbeleid inzake strafbare feiten van de Opiumwet*, 1996 (Guidelines on policy on the investigation and prosecution of offences under the Opium Act).

to these centers and the way in which their complaints were considered.

Thus, the range of behavior to be included in the nuisance category can not be quantified, or even itemized. Moreover, the various attempts to define nuisances have all turned out to be unsatisfactory. But this is apparently not an obstacle to defining a nuisance control policy. In fact, nuisances are not so much defined by their contents as by the means (complaints) and the people (essentially citizens who are not users) whose participation in the development of a definition is deemed legitimate. It is our opinion, however, that this absence of a definition raises at least one question, which will remain unanswered until the projects have been evaluated; that is, what proof can be obtained of the efficiency of the new policy, in terms of nuisance reduction?

### The nuisance control policy : origins and objectives

At the turn of the nineties, nuisances became a source of conflict between non-drug-using citizens and the local authorities (the police, city governments). On occasions, the former expressed militant opposition to the presence of users, *runners*, drug tourists, etc. They ended up persuading - sometimes through violence - their parliament that the "nuisances" of which they complained should be taken seriously. The 1995 government note on security even mentions a "crisis in democracy". This note also proclaims the competency of citizens in defining nuisances, as pointed out above.

As early as 1993, a parliamentary debate had focused on the efficacy of the action taken by the treatment system. Since the actors involved had been unable to provide satisfactory proof of this efficacy, especially in terms of public order and security, the treatment budget was cut back by 10%. This reduction is also consonant with the administration's determination to decentralize the funding of the health care system. The same week, parliament set up a budget line for nuisance control. Many actors viewed this as an opportunity to maintain their work, but they then had to convince the agency in charge of fund distribution that their projects were effective tools for nuisance reduction.

The official goal of the 1995 project was to reduce the nuisances caused by some hard drug users. Although it turned out that there were very few of the latter, they endangered the earlier principles of the Dutch policy, since the population no longer tolerated them. Furthermore, these users "overloaded" the criminal justice system, and at the same time no noteworthy change in their behavior could be evidenced. This constitutes one limit of treatment provision. These users required specific help that was not available at the time within the medical and/or social system, with its focus on "ordinary" hard drug users. The care system was therefore obliged to make some adjustments and to integrate the goal of nuisance reduction for these new users. To do so, it had to collaborate with the judicial system, which was generally already in contact with these users. New bridges between the two systems had therefore to be created for that purpose.

The nuisances control policy was not confined to hard drug users, however. Criticism addressed to the earlier policy was of a more general nature.

Other countries had been criticizing the Dutch system, for example, and such criticism was crescendoing in the early nineties. It focused mostly on the effects of the Dutch policy on neighboring countries, with young people being attracted to the coffee shops on the other side of the border, transit of small quantities of soft or hard drugs, etc. This criticism from outside finally obliged the Dutch administration to prove the efficacy of the policy it was defending, and to introduce some adjustments as evidence of its responsiveness to these concerns. Residents of border towns were faced with the same problem, since foreign drug users were a new, growing source of irritation for them as well. At one level, then, the attempt to fight drug tourism intersected with nuisance control.

Concretely, how and in what fields was nuisance control implemented within the new Dutch drug control policy?

### Main therapeutic and judicial changes prompted by this new policy

First of all, it should be recalled that the police truly does tolerate users' as long as they are not a nuisance and do not commit any offense. Health coverage and easy access to treatment justify this principle: drug consumption is no longer an excuse for "property offences, act aggressively or engage in behaviour which causes a nuisance".

Next, a large part of Dutch legislation and policy is devoted to fighting the drug traffic, as in other European countries. Traditionally, repression was mostly aimed at large-scale trafficking. Now, the problem of nuisances and the discontent expressed by the population have extended the targets to nuisance-creating people (users or dealers) and places. To implement this new priority, administrative measures - reinforcing the existing penal arsenal - were projected, so as to combat nuisances indirectly (that is, without reference to the Opium Act). This was done through by-laws, already used to control gatherings on the public highway, and now covered trafficking and use of drugs on the public highway, if they are a nuisance. Moreover, mayors now have the power to close apartments occupied by dealers (the 1997 law on municipalities) and to close coffee shops (the 1999 "Damocles" Act). Because nuisances affect the public order and are therefore within the mayors' dominion, the latter are led to participate increasingly in the fight against local drug trafficking.

The example of the coffee shops is quite remarkable in this respect. In 1995, the authorities, while refraining from contesting their existence (the separateness of the markets was judged sufficient), expressed concern at their increasing numbers, and at the nuisances caused by them. Here again, the population had expressed discontent, especially in border towns. The new policy therefore called for the regulation of coffee shops, through the adjustment of their number to local demand, for instance. But initially, mayors were not allowed to close a selling place unless they could show proof to the administrative court that drug dealing was a source of nuisances, and it was up to them to

· GARRETSEN (H.), BLANKEN (P.), Van MASTRIGT (H.), Van OERS (J.), A research perspective on drug-related nuisance. Dutch experiences, *Medicine and Law*, 15, 1996, pp. 705-714.

<sup>7</sup> Use of drugs is not an offense in the Opium Act, and according to the instructions of the public prosecutor, people possessing small amounts of drug for their personal consumption should not be a police target.

<sup>8</sup> Ministry of Foreign Affairs *et al.*, 1995, p. 64.

produce such proof (in the form of complaints, police reports, etc.). In 1997 the procedure was simplified, since the courts indicated that a mayor had simply to prove that an offense violated the AHOJ-G criteria<sup>9</sup> for it to be defined a nuisance (infringement of these criteria was automatically viewed as a breach of the public order and as damaging the quality of life). In some towns, however, mayors still come up against uncooperative administrative court judges. What they needed, then, was a tool they could use directly. The "Damocles" Act, voted in 1999, gives mayors the power to act in the framework of some offenses defined in the Opium Act, to close the establishment incriminated. Until then, the public prosecutor had a monopoly on that power, and some concern at the extension of this prerogative to mayors was voiced. The parliament, however, deemed that the "Damocles" Act simply formalized an existing practice.

Even more radical transformations took place in the field of treatment of drug abusers. To be eligible for funds budgeted for nuisance control, and to correspond to the policy's new requirements, future projects could take one of two approaches: they could facilitate the transfer of users coming under the province of the criminal justice system to the treatment system; or, in a more social approach, they could reduce the visibility of some users (by opening centers for them, for instance).

The first series of projects, which we will call "treatment under judicial compulsion", attempt to create a bridge between the judicial system and the health and welfare system. The liberalization of requisites for obtaining treatment, characteristic of "low threshold" projects within the risk-reduction approach, did not suffice to reach those users who were nuisances. The idea behind the new projects is therefore to force the user to effectively undergo treatment, but the latter's consent is still compulsory. One such project is the "Early Care Intervention System", in which health workers, present in police stations, are in contact with users immediately when they are taken in, and offer a treatment protocol thanks to which prosecution may be avoided in some cases. Nuisance-causing users then make the choice between prosecution and treatment under constraint.

Other projects offer treatment, always conditional, to imprisoned users. The SOV program<sup>10</sup> is certainly the most emblematic of these "compulsion and dissuasion" projects. It offers long-term care (up to 2 years) for individuals who risk a prison sentence not exceeding nine months. The duration of this measure was designed to enable the user to modify his behavior at last. The advocates of this project felt that previous attempts to treat sentenced users and petty offenders had failed because their sentences were too short to enable them to

"take advantage" of the opportunity to change their behavior. These users finally return to the streets very rapidly, where they become nuisances once again. With the SOV, the treatment and follow-up received by users is sufficiently long as to increase the efficacy of the care (for instance, their rehabilitation upon release is guaranteed). This experimental program rests on the user's consent. It is allegedly a prelude to a legislative bill regulating such treatment. But the proposed bill would authorize the imposition of treatment on users without requiring their consent at any point in the admission or treatment procedure.

The treatment provision scheme developed during the debate over "nuisances" is therefore characterized by cooperation between therapeutic and judicial agencies, on the one hand, and by use of "pressure" to bring users to accept treatment, on the other hand.

As mentioned above, another series of projects received funding from the nuisance control budget as well. Whereas the services offered by these are similar, in the last analysis, to those of some traditional "low threshold" projects, the issue of nuisances was not simply a ploy to obtain funding, but was really crucial to their development. In most instances, residents oppose the establishment of a space for users, a night or day shelter, or other facility in their neighborhood. Yet these projects were aimed at reducing the nuisances caused by users, who generally hang around on the streets. Following some often tense bargaining, agreements were reached between the police, town hall, doctors, users and residents as to the mutual guarantees required to protect the interests of the different parties. These negotiation processes involving a wide circle of actors seem to be a very specific element of the nuisance control policy. The exchange of guarantees is clearly the most effective way of achieving the coexistence, within a same neighborhood, of people with presumably irreconcilable interests.

## Conclusion

The new Dutch drug-related policy focusing on nuisance control, announced by the government in 1995, offers a contrasted image of the Dutch position. The legal arrangements developed to implement nuisance control may seem exorbitant. The projected link between punishment and treatment for petty offender/users considers the possibility of making treatment compulsory for the latter; mayors now dispose of legal instruments enabling them to close places be they public or private – in which some drug-related offenses are committed.

Another specific feature of this policy, since 1993, resides in the subordination of funding for treatment programs to the objective of nuisance reduction. In the last analysis, it is the residents of the neighborhoods for which these projects are designed who determine the contours of the local drug policy.

Lastly, we are witnessing the arrival of new actors on the scene, or the reintroduction of actors who seem to have been relegated to the background by earlier policies. Mayors now have more power, actors in the judicial system participate in treatment by designating

<sup>9</sup> These criteria are defined by instructions from the public prosecutor's office, and indicate under what conditions coffee shops are to be tolerated: no advertising (*Affichering*), no hard drugs sales (*Harddrugs*), no causing a nuisance (*Overlast*), no sale to minors (*Jeugdigen*) and no sale of large amounts (*Grote hoeveelheden*) – the definition of "large amounts" has been lowered from 30 to 5 g. per transaction.

<sup>10</sup> *Strafrechtelijke Opvang Verslaafden* – penal care facility for addicts sector.

those groups that may be constrained to benefit from the new therapeutic measures, care-givers and police officers act jointly, non-users are heard and obtain guarantees, etc. The difficulty in achieving cohabitation between these actors is not denied, but the authorities consider these partnerships indispensable to the efficacy of the nuisance control policy. At the same time, they point out that the development of this new arsenal of judiciary measures does not imply that their approach is purely coercive. Actors, and towns and cities in particular, should design what is known as an "integrated" policy : each and all are encouraged to develop multiple

tools and partners, to achieve an integrated control of the problems caused by drug use.

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For further information, the reader is referred to :  
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