



**Co-operation Group to Combat Drug Abuse  
and illicit trafficking in Drugs**

Please quote                      RPG 403  
   JM/FMD

Strasbourg, 15 June 2015

Dear Robert,

**Subject: Submission in connection with the preparation of a study on the impact of drug policy on the enjoyment of human rights**

Thank you again for the opportunity to submit comments on behalf of the Pompidou Group that you may wish to consider in the drafting of the study on the impact of drug policy on the enjoyment of human rights.

The Pompidou Group is a 37-state strong cooperation platform to respond to substance use disorders and illicit trafficking in drugs. It was set up in 1971 at the initiative of the French President in response to the heroin trafficking phenomenon known as “the French Connection”. It was incorporated into the Council of Europe in 1980. Member states of the Council of Europe and also other countries can be members of the Pompidou Group.

In the first place, I would refer to the statement made by the Council of Europe’s Pompidou Group at the March 2015 CND meeting. It underlined the purpose of the UN legal framework on drugs, namely safeguarding the health and welfare of humankind, and to protect children. However, despite efforts, the world drug problem persists and poses serious threats to health and safety, and to the wellbeing of humanity in particular children and young persons, and also to national security and sovereignty.

Availability of drugs is high, and related social harm and deaths increase. Challenges are posed by new substances and ICT assisted distribution methods. These developments, coupled with the economic downturn and attitudes that stigmatise persons with substance use disorders, hamper harm reduction measures and treatment efforts. The death penalty continues to be widely applied for drug-related offences, contrary to the idea of treatment and rehabilitation, and to the spirit of human rights. Access to treatment for drug users sometimes remains problematic and controlled medicines are not always available when needed.

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The Pompidou Group therefore recalled the importance of treaty law on fundamental rights and freedoms, the right to life and human dignity, the right to protection of health, the prohibition of discrimination and the rights of children. All states are called upon to ensure that drug policies conform to human rights exigencies. The Pompidou Group also signalled the need for policy coherence and to pursue efforts on the supply reduction front, and the challenges posed by new psychoactive substances.

In 2009 the Pompidou Group produced a feasibility study on a possible European convention on promoting public health policy in the fight against drugs. It was strongly based on human rights considerations and also related to harm reduction, etc. The study was prepared following a recommendation made by the Parliamentary Assembly of the Council of Europe. The proposal involved a framework convention complementary to the existing UN Conventions focussing on principles and measures for effective public health policies in the response to drugs, underlining the need to respect human rights in line with existing international obligations.

The discussions on this proposal revealed a strong feeling that there is an absence of instruments dealing with public health issues in the fight against drugs and that the latest findings in neuroscience are not taken into account. The discussions also showed that the shift in emphasis from a supply reduction to a more balanced approach, with addiction at the centre, was not yet being properly reflected in the international drug policy legal framework. A human rights based instrument could also spell out the rights of persons with substance use disorders. However, given the reservations expressed (risk of weakening current approaches) the proposal was not taken up.

The Parliamentary Assembly of the Council of Europe addressed the drug problem on a number of occasions. For example, in 2013 it recommended alternatives to imprisonment for certain drug-related offences. In particular, under the heading “Drug detoxification and rehabilitation measures” a Parliamentary rapporteur stated that “The so-called war on drugs has filled prisons in many countries, the success in terms of reduction of drug crime being at best doubtful. It is therefore increasingly accepted that for drug offenders, who are themselves addicted, recidivism is best avoided by drug detoxification and rehabilitation measures.” And added: “In my view, imprisonment (together with the confiscation of any ill-gotten gains) is still an appropriate punishment for larger-scale dealers who make a fortune off the backs of addicts who jeopardise their health and often their lives. But the addicts themselves are more akin to victims – of the said dealers – than to perpetrators, and should be treated accordingly.”

In 2011, the Parliamentary Assembly saw the tabling of a motion on “Developing advanced drug policies: the example of drug-checking”. It has not yet led to results. The motion signed by a number of parliamentarians representing the spectrum of political sectors and regions in Europe, acknowledged the Global Commission on Drug Policy conclusion that “the global war on drugs has been a failure. With a view to effectively responding to this major public health threat, it calls upon governments to replace drug policies driven by ideology and political convenience with responsible strategies grounded on science, health, security and human rights, to offer treatment services to those in need and to end the criminalisation, marginalisation and stigmatisation of people who use drugs but who do no harm to others.”

I understand that, although the Parliamentary Assembly may not adopt a drug policy-related text in the coming months, interest among members persists and the Assembly’s Committee on Social Affairs, Health and Sustainable Development may issue a statement on the subject ahead of UNGASS 2016.

The Council of Europe has 47 member states and its objective is to promote and protect human rights, democracy and the rule of law. All Council of Europe member states are bound by the European Convention on Human Rights, and have submitted to the jurisdiction of the European Court of Human Rights. The Court oversees the application of the European Convention on Human Rights through its adjudications in individual or interstate complaints about human rights violations. In doing so and subject to the principle of subsidiarity, it falls to the Court to tease out the boundaries of human rights and the modalities for their protection. However, the Court has not had the opportunity to pronounce itself about drug-related cases to an extent that would allow drawing out principles to outline or inspire drug policy. The case law of the court can, and does evolve with time.

Nevertheless, I attach an as yet unpublished compendium of jurisprudence of the European Court of Human Rights in relation to drug issues prepared by our trainee Graham de Barra over the last few months. It points to some relevant case law of the Court. Pending cases may cast additional light on the impact of drug policy on the enjoyment of human rights.

I would be happy to discuss these matters further.

Best regards,

A handwritten signature in black ink, appearing to read "J. Malinowski". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Jan Malinowski  
Executive Secretary