

# THE DUTCH COFFEE SHOP SYSTEM, TENSIONS AND BENEFITS

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*The central notion of the Dutch drug policy has always been that the drug problem is primarily a public health issue. The policy never aimed at a total ban of drug use from society because this was considered a nonrealistic objective. Instead of eradication of drugs and drug use, it tries to prevent and limit the risks of the use of drugs users, their direct environment and society. This aim can be classified as harm reduction. At the same time, it controls drug-related nuisance and crime. For a long time, the tolerant policy towards drug users was controversial and deviated from other policies worldwide. The eye catcher of the drug policy is the phenomenon of the ‘coffee shop,’ café-like commercial public enterprises where the sale of cannabis to adult consumers is tolerated by police and prosecutor. Coffee shops have existed for more than 40 years and a regulatory system with an increasing number of rules developed in the course of time. The legal basis for the policy of tolerance lies in the discretionary power of the Public Prosecutor, the ‘expediency principle.’ The coffee shop system is a typical example of the drug policy’s focus on health and welfare of users and its core concept of risk reduction. But it is only a halfway-regulated system. In this article, I will discuss the paradoxes and tensions that are inherent to the coffee shop system. I will also sketch the adverse developments that occurred in relation to the system. The system is a wicked problem for Dutch policy makers, who seek for a balance between the health principles of the policy and the need to enforce the Opium Act.*

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## INTRODUCTION<sup>2</sup>

Coffee shops are a typical Dutch phenomenon. They are commercial enterprises where the sale of small amounts of cannabis to adult users is tolerated, which means that the police and the Public Prosecutor won't arrest or prosecute the coffee shop owner for selling cannabis, although this is a criminal act according to the Dutch Opium Act.<sup>3</sup> The user won't be arrested for buying and possessing cannabis either.<sup>4</sup> The first coffee shop started in 1968 in the city of Utrecht.<sup>5</sup> There was no official tolerance policy back then, that's why the coffee shops' door was closed and customers had to knock on the door in order to enter the shop.<sup>6</sup> A 'house dealer' sold the cannabis and you could consume a coffee or a tea.<sup>7</sup> The sale of cannabis by house dealers was not new; house dealers of cannabis were active at entertainment venues and music events and the police more and more applied an informal practice of tolerance.<sup>8</sup> In the

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2. Thank you to Karen Nelson from Michigan State University College of Law for her assistance with translations.

3. Wet van 12 mei 1928, Stb. 1928, art. 3 (Neth.).

4. *Id.*

5. DERRICK BERGMAN, *DE EERSTE COFFEESHOP VAN NEDERLAND*, ROLLING STONED (Dec. 10, 2014), <http://www.rollingstoned.nl/de-eerste-coffeeshop-van-nederland/>.

6. *Id.*

7. *Id.*

8. A.C.M. Jansen, *Hasj-coffeeshops als experiment*, 19 JUSTITIËLE VERKENNINGEN 96 (1993); see generally DIRK J. KORF, *DUTCH TREAT: FORMAL CONTROL AND ILLICIT DRUG USE IN THE NETHERLANDS* 69-70 (1995); MARCEL DE KORT, *TUSSEN PATIËNT EN DELINQUENT, GESCHIEDENIS VAN HET NEDERLANDSE DRUGSBELEID* [BETWEEN

1970s coffee shops in Amsterdam started their business: Mellow Yellow in 1972, the Bulldog in 1975.<sup>9</sup> After a change in the Opium Act in 1976, coffee shops developed into open enterprises<sup>10</sup> and they even got a formal function in the drug policy.<sup>11</sup> They became one of the most salient features of the Dutch drug policy. Their number grew explosively in the 1980s and 1990s.<sup>12</sup> Since then, the policy towards them became more restrictive<sup>13</sup> and the number slowly and gradually decreased to 582 in March 2015.<sup>14</sup> All the policies and rules that were woven around the coffee shops in all these years really speak about the Dutch coffee shop *system*. The coffee shops of 2016 look like normal cafés where adults can walk in and buy and use cannabis.

## I. WHY DOES THE NETHERLANDS HAVE COFFEE SHOPS?

If we want to understand the reason for the existence of coffee shops, we have to go back in history and look at the attitude towards drugs and drug use in the Netherlands back in the 1970s and 1980s. An important year for the Dutch drug policy was 1976. The Opium Act was revised then after a period of reflections by several commissions<sup>15</sup> and

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PATIENT AND DELINQUENT, THE HISTORY OF DRUG POLICY IN THE NETHERLANDS] 246-248 (1995) (with a report summary in English)

9. BERGMAN, *supra* note 5.

10. KORF, *supra* note 8, at 69–70.

11. LOWER HOUSE OF THE PARLIAMENT 1994-1995, File No 24077 3, DRUGBELEID, NOTA 'HET NEDERLANDSE DRUGBELEID: CONTINUÏTEIT EN VERANDERING' [DRUG POLICY IN THE NETHERLANDS, CONTINUITY AND CHANGE] 39 (Sept. 25, 1995); Margriet van Laar et al., *Scheiding der markten en beleid ten aanzien van coffeeshops [Separation of Markets and Policy with Regard to Coffee Shops]*, in EVALUATIE VAN HET NEDERLANDSE DRUGSBELEID [EVALUATION OF THE DUTCH DRUG POLICY] 109, 112 (Margriet van Laar & Marianne van Ooyen-Houben eds., 2009) (with a report summary in English).

12. Jansen, *supra* note 8, at 101.

13. van Laar et al., *supra* note 11, at 120; Marianne van Ooyen-Houben & Edward Kleemans, *Drug Policy: The "Dutch Model"*, 44 CRIME & JUST. 165, 196–202 (2015).

14. BERT BIELEMAN ET AL., COFFEESHOPS IN NEDERLAND 2014 (COFFEE SHOPS IN THE NETHERLANDS 2014) 9 (2015) (with a report summary in English).

15. DE KORT, *supra* note 8, at 186–201; Ed Leuw, *Drugs and Drug Policy in the Netherlands*, 14 CRIME & JUST. 229, 240, 243–47; Jaap van der Stel et al., *Ontwikkeling van het Nederlandse drugsbeleid (The Development of the Dutch Drug Policy)*, in EVALUATIE VAN HET NEDERLANDSE DRUGSBELEID EVALUATION OF THE DUTCH DRUG

discussions in Parliament<sup>16</sup> the use of drugs was no longer a criminal act. Possession of cannabis for personal use was reduced from a crime to a minor infraction of the law.<sup>17</sup> But the most important change was that a distinction was made between two types of drugs: drugs with an unacceptable risk for the health ('hard drugs' like heroin, LSD, amphetamine or cocaine) and, on the other hand, drugs with less risks ('soft drugs,' cannabis being the most important one).<sup>18</sup> By making a distinction between cannabis and other, more harmful drugs, a differentiated judicial reaction could be given to crimes with regard to hard drugs or cannabis. Offenses were punished more severely when hard drugs were involved.<sup>19</sup>

The change was considered necessary because of radical changes in the drug situation in the Netherlands in the 1960s. The use of drugs, which was a criminal act then, and especially the use of cannabis, LSD and amphetamine, increased substantially.<sup>20</sup> In the 1970s, the use of heroin (and the international organized trafficking of heroin) started demanding a lot of attention because of the severe problems with addiction and crime related to it.<sup>21</sup> The initial reaction to all this new drug use was repression,<sup>22</sup> but a big difference was noticed between the cannabis users on the one hand, who were well-integrated members of society and functioned in a socially normal way, and heroin users on the other hand, who were often addicted and marginalized (the 'junkies').<sup>23</sup> This soon led to an informal tolerance policy towards cannabis users: they were left as they were by police and Public Prosecutor.<sup>24</sup> During the

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POLICY] 45, 49–50 (Margriet van Laar & Marianne van Ooyen-Houben eds., 2009) (with report summary in English).

16. DE KORT, *supra* note 8, at 243–46; Leuw, *supra* note 15, at 248.

17. van der Stel et al., *supra* note 15, at 50; KORF, *supra* note 8, at 43.

18. Leuw, *supra* note 15, at 231; van der Stel et al., *supra* note 15, at 50.

19. Karin Monshouwer et al., *Buying Cannabis in 'Coffee Shops,'* 30 DRUG & ALCOHOL REV. 148, 149 (2011); KORF, *supra* note 8, at 43.

20. DE KORT, *supra* note 8, at 162–75; van der Stel et al., *supra* note 15, at 47.

21. DE KORT, *supra* note 8, at 228–30, 234–35; KORF, *supra* note 8, at 45.

22. See KORF, *supra* note 8, at 61; van der Stel et al., *supra* note 15, at 47; DE KORT, *supra* note 8, at 178–79.

23. KORF, *supra* note 8, at 61–63.

24. van der Stel et al., *supra* note 15, at 45, 48; DE KORT, *supra* note 8, at 179–83, 228.

1970s, the Public Prosecutor was dropping the majority of cannabis charges.<sup>25</sup>

This differentiated, more lenient attitude towards cannabis and cannabis users was consolidated in the Opium Act of 1976.<sup>26</sup> The aim of the policy with regard to cannabis users since then has been to prevent them from becoming marginalized, stigmatized, and criminalized and to reduce the risk that they start using more harmful ‘hard drugs’ like heroin or amphetamine.<sup>27</sup>

This opened the way for a tolerant attitude of police and Public Prosecutor towards house dealers of cannabis at music events and in public premises, and later in coffee shops.<sup>28</sup> By tolerating sales outlets where cannabis users can buy their cannabis quietly and safely, users will be kept away from the hands of criminal street drug dealers who also sell hard drugs.<sup>29</sup>

This is the key function of coffee shops in the Dutch cannabis policy: contributing to a separation of the hard drugs consumer market in the streets and the cannabis consumer market. Coffee shops are, thus, a consequence of the Dutch cannabis policy, which aims at normalization of users, is primarily focused on the health of users, and which wants to keep cannabis users away from hard drugs. This is embedded in a health-oriented drug policy<sup>30</sup> in which the ministry of Health, Welfare and Sports plays the coordinating role.<sup>31</sup> Whereas the reason to tolerate coffee shops sounds as a rational argument, there were also ideological motives that played a role in the background. In the 1960s and 1970s it was quite ‘bourgeois’ and old fashioned to condemn cannabis use – those were the days of self-determination and freedom in which the state should play a

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25. KORF, *supra* note 8, at 54.

26. DE KORT, *supra* note 8, at 246.

27. *Id.* at 247; van Laar et al., *supra* note 11, at 110.

28. DE KORT, *supra* note 8, at 247–48.

29. *Id.* at 247–48; van Laar et al., *supra* note 11, at 111, 117; LOWER HOUSE OF THE PARLIAMENT 1994–1995, *supra* note 11, at 6, 37.

30. See TIM BOEKHOUT VAN SOLINGE, DEALING WITH DRUGS IN EUROPE, AN INVESTIGATION OF EUROPEAN DRUG CONTROL EXPERIENCES: FRANCE, THE NETHERLANDS AND SWEDEN 24 (2004).

31. van der Stel et al., *supra* note 15, at 50; KORF, *supra* note 8, at 50.

modest role, especially in the case of cannabis, which was seen as a relatively harmless drug.<sup>32</sup>

The settlement of coffee shops was a bottom-up development.<sup>33</sup> Individuals took the initiative to start a commercial cannabis outlet. The official policy followed and shaped the conditions. The phenomenon of the coffee shop started in the bigger cities.<sup>34</sup> The development was facilitated by the change of law in 1976, which followed a growing practice of tolerance with regard to cannabis use in the years before.<sup>35</sup> In the 1980s and 1990s coffee shops were initiated all over the country.<sup>36</sup> In 1995, the number of coffee shops was estimated at 1100-1200.<sup>37</sup> They prospered especially in municipalities near the German and Belgian border.<sup>38</sup>

## II. THE LEGAL BASIS OF THE POLICY TO TOLERATE COFFEE SHOPS

We have to make a distinction between the national and the local level. On the national level, the policy with regards to enforcement is that coffee shops are ‘tolerated.’<sup>39</sup> This means that there is no enforcement of the law, despite the fact that this is legally and practically possible.<sup>40</sup> Strictly speaking, coffee shops commit a crime against the Opium Act when they sell cannabis, because the sale of cannabis as well as the

32. Henk G. van de Bunt, *Hoe stevig zijn de fundamenteën van het cannabisbeleid?* [How Strong Are the Fundamentals of Dutch Cannabis Policy], 32 JUSTITIËLE VERKENNINGEN 10, 11–14 (2006).

33. DE KORT, *supra* note 8, at 254; Jansen, *supra* note 8, at 97–98, 102.

34. Jansen, *supra* note 8, at 98.

35. van der Stel et al., *supra* note 15, at 48; KORF, *supra* note 8, at 61; DE KORT, *supra* note 8, at 254.

36. Jansen, *supra* note 8, at 100–01.

37. LOWER HOUSE OF THE PARLIAMENT 1994-1995, *supra* note 11, at 37.

38. See M. van Ooyen-Houben & M. van der Giessen, *Eerdere interventies in het coffeeshopaanbod* [Earlier Interventions in the Supply by Coffee Shops], in COFFEESHOPS, EN LOKALE MARKT, EVALUATIE VAN HET BESLOTEN CLUB- EN HET INGEZETENENCRIERIUM VOOR COFFEESHOPS [COFFEE SHOPS, TOURISTS AND LOCAL MARKETS, EVALUATION OF THE PRIVATE CLUB AND THE RESIDENCE CRITERION] 34–35 (M. van Ooyen-Houben et al. eds., 2014) (with report summary in English).

39. Aanwijzing Opiumwet (Designation Opium Act) 1 Mar. 2015, § 2.2 (2015).

40. See LOWER HOUSE OF THE PARLIAMENT 2004-2005, File No 30050 1-2, HANDHAVEN EN GEDOGEN, RAPPORT [ENFORCEMENT AND TOLERANCE, REPORT] 11 (Mar. 18, 2005).

possession of (large amounts of) cannabis is forbidden.<sup>41</sup> But this criminal act is not investigated by the police, nor prosecuted by the Public Prosecutor.<sup>42</sup> Coffee shops can do their business without being arrested. Not that the police turns a blind eye to the coffee shops, no, it is the formal and explicit policy.

The judicial basis for the tolerance is the principle of discretionary powers of the Public Prosecutor, the “expediency principle.” This principle, laid down in the Code of Criminal Procedure, gives the Public Prosecutor the power to refrain from prosecution of offences if this serves a general public interest.<sup>43</sup> This principle is systematically applied in the Dutch coffee shop policy. In the case of coffee shops, the general public interest is found in preserving public health (by a separation of markets) and public order (regulated sale instead of criminal drug markets).<sup>44</sup> For this higher public interest, coffee shops are left un-arrested and un-prosecuted.

This is explicitly stated in the Directive for Opium Act crimes for the Public Prosecutor:

The basis for the policy of tolerance lies in the balancing of interests which the importance of enforcement must give way to a more identifiable public interest. In the context of the drug policy is this higher interest found in public health (separation of markets) and the public order. It is therefore not to detect a positive decision and to continue regardless of available capacity.<sup>45</sup>

The tolerance is, however, bound to strict rules. In the course of time, when more and more coffee shops opened their doors, rules for tolerance developed in practice, initially in the city of Amsterdam.<sup>46</sup> In 1991, the National Office of the Public Prosecutor decided that these rules would be applicable to coffee shops nationwide.<sup>47</sup> Coffee shops would only be tolerated when they do not advertise (apart from a minor reference on the shop); when they have no hard drugs in the shop and do not sell hard

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41. Art. 3 Wet RO (Neth.).

42. Aanwijzing Opiumwet (Designation Opium Act) 1 Mar. 2015, § 2.2 (2015).

43. Art. 167, lid 2, Sv. (Neth.); Art. 242, lid 2 Sv. (Neth.).

44. Aanwijzing Opiumwet (Designation Opium Act) 1 Mar. 2015, § 2.2 (2015).

45. *Id.*

46. Jansen, *supra* note 8, at 98–99.

47. van der Stel et al., *supra* note 15, at 50.

drugs; when they do not cause public nuisance in their direct vicinity; when they do not sell to or give access to youngsters; and when they do not sell large quantities of cannabis to a customer per transaction, which means quantities larger than suitable for personal use.<sup>48</sup> Later it was also specified that coffee shops are not allowed to have more than 500 grams of cannabis in stock and that they may not serve alcohol.<sup>49</sup> In addition, since 2013, coffee shops are not allowed to give access to non-residents of the Netherlands.<sup>50</sup> With regard to youngsters, the criterion was specified in 1994: no customers under age 18 are allowed in coffee shops.<sup>51</sup> With regard to the quantities that can be sold per transaction: this was 30 grams, but it was reduced to 5 grams in 1994.<sup>52</sup> The national rules, or “criteria for tolerance” are described explicitly in the Directive Opium Act for the Public Prosecutor.<sup>53</sup>

The coffee shop policy, however, is implemented and gets its concrete shape on the local level.<sup>54</sup> Local authorities take some basic decisions about coffee shops and they play, in fact, a key role. First of all, the mayor, together with the Public Prosecutor and the Chief of the police in the city, decide whether they will allow the establishment of (one or more) coffee shops in their municipality.<sup>55</sup> Every coffee shop needs a license from the mayor.<sup>56</sup> If the local authorities decide not to allow coffee shops, no licenses will be given out and no coffee shop will be

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48. Aanwijzing Opiumwet (Designation Opium Act) 1 Mar. 2015, § 3.4 (2015).

49. *Id.* § 1.

50. *Id.*

51. *Id.*; LOWER HOUSE OF THE PARLIAMENT 1994-1995, *supra* note 11, at 37.

52. Aanwijzing Opiumwet (Designation Opium Act) 1 Mar. 2015, § 3.4 (2015); LOWER HOUSE OF THE PARLIAMENT 1994-1995, *supra* note 11, at 37.

53. Aanwijzing Opiumwet (Directive Opium Act) 3 Jan. 2015, § 3.4 (2015).

54. MIRJAM VAN HET LOO ET AL., CANNABIS POLICY, IMPLEMENTATION AND OUTCOMES 20-21 (2003); M. van Ooyen-Houben & A. Mein, *Wie heeft hier de regie? Coffeeshops tussen lokaal, nationaal en internationaal beleid [Who is in Charge Here, Coffee Shops Between Local, National and International Drug Policies]*, 41(2) JUSTITIËLE VERKENNINGEN 55-79 (2015); M.M.J. van Ooyen-Houben, *Coffeeshops: ontstaan en beleid [Coffee Shops: Origin and Policy]*, in HET BESLOTEN CLUB- EN HET INGEZETENENCRIERIUM VOOR COFFEESHOPS THE PRIVATE CLUB AND THE RESIDENCE CRITERION FOR COFFEE SHOPS] 34-35 (M.M.J. van Ooyen-Houben et al. eds., 2012) (with report summary in English).

55. Aanwijzing Opiumwet (Directive Opium Act) 3 Jan. 2015, § 2.3 (2015).

56. *Id.*



tolerated in the municipality.<sup>57</sup> The majority of municipalities in the Netherlands, especially the smaller ones, have such a local “zero policy” of *not* allowing any coffee shop within their municipality, 69,7% in 2014.<sup>58</sup> The others do allow coffee shops and give out licenses for a certain number of them.<sup>59</sup> The local authorities also decide how many coffee shops they will allow.<sup>60</sup> Most municipalities limit the number of coffee shops to a certain maximum.<sup>61</sup> No more licenses will be given out by the mayor when this maximum is reached.<sup>62</sup>

Sometimes a municipality changes its local coffee shop policy from a “zero policy” to a policy of allowing coffee shops. This was for instance the case in the medium-sized city of Lelystad in 2011 when local authorities decided to give room for one coffee shop after a long period of forbidding coffee shops.<sup>63</sup> The other way round is also possible. When Bergen op Zoom-Roosendaal, a medium-sized city near the Belgian border, decided to leave its policy of tolerating coffee shops and introduced a “zero policy” in 2008, all eight coffee shops had to close their doors.<sup>64</sup> The mayor has to render account for the local coffee shop policy to the city council.<sup>65</sup>

When the local authorities decide to allow coffee shops, the mayor can apply additional local rules for the coffee shops.<sup>66</sup> A wide spread local rule is that no coffee shop is allowed within a certain distance (mostly 250 meters) from a secondary school.<sup>67</sup> The cities of Amsterdam and Rotterdam, for instance, apply such a “distance criterion.” Rotterdam introduced this criterion in 2009, and, as a consequence, 16 coffee shops

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57. *Id.*

58. BIELEMAN ET AL., *supra* note 14, at 13.

59. *Id.* at 13-14.

60. Aanwijzing Opiumwet (Directive Opium Act) 3 Jan. 2015, § 2.3 (2015).

61. BIELEMAN ET AL., *supra* note 14, at 14.

62. *Id.*

63. D. J. KORF ET AL., COFFEESHOP, OVERLAST EN ILLEGALE MARKT: DE GEVOLGEN VAN DE KOMST VAN EEN COFFEESHOP IN LELYSTAD [COFFEE SHOPS, PUBLIC NUISANCE AND ILLEGAL MARKET, THE CONSEQUENCES OF THE ESTABLISHMENT OF A COFFEE SHOP IN THE CITY OF LELYSTAD] 11 (2013).

64. van Ooyen-Houben & van der Giessen, *supra* note 38, at 39.

65. van Ooyen-Houben, *supra* note 54, at 34.

66. *Id.* at 35.

67. BIELEMAN ET AL., *supra* note 58, at IV.

had to close.<sup>68</sup> Amsterdam has applied such a criterion since 2014 and coffee shops there have to close their doors.<sup>69</sup> Another local rule that some municipalities apply is that a coffee shop is not allowed to serve customers on a terrace, or that it is only allowed to be open at certain hours.<sup>70</sup>

Local authorities also decide how they will enforce the criteria in daily practice, and they have to agree on sanctions.<sup>71</sup> The mayor plays an important role in enforcement. He can apply administrative sanctions, like a temporary or definitive closure of a coffee shop when it does not comply with the rules.<sup>72</sup> This authority of the mayor is laid down in the Opium Act.<sup>73</sup> Additionally, the Public Prosecutor can prosecute a coffee shop when it does not comply with the rules, but administrative sanctions have priority (in principle).<sup>74</sup> Police and municipal authorities in co-operation mostly carry out controls of compliance in the coffee shops.<sup>75</sup> They take place unannounced periodically, or in reaction to complaints or speculations about noncompliance.<sup>76</sup> The frequency of controls is determined on the local level.<sup>77</sup>

The criteria and the sanctions must be described in a local ‘enforcement plan’ so that everybody is informed about the local policy and knows what to expect. This is important with regard to the necessary transparency and predictability of authorities; coffee shops must know how to behave and they must be able to trust the authorities. The judge will weigh this when a case of noncompliance comes to court.<sup>78</sup>

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68. van Ooyen-Houben & van der Giessen, *supra* note 38, at 41.

69. M. W. VAN LAAR & M.M.J. VAN OOYEN-HOUBEN, NATIONALE DRUG MONITOR, JAARBERICHT 2016 [NATIONAL DRUG MONITOR, ANNUAL REPORT 2016] 59 (2016) (with report summary in English).

70. BIELEMAN ET AL., *supra* note 14, at 25.

71. *Id.* at 26.

72. Wet van 12 mei 1928, Stb. 1928, art. 13b (Neth.).

73. *Id.*

74. van Ooyen-Houben, *supra* note 54, at 159.

75. BIELEMAN ET AL., *supra* note 14, at 26.

76. *Id.* at 27.

77. *Id.*

78. ARNT MEIN & MARIANNE VAN OOYEN-HOUBEN, BESTUURLIJKE RAPPORTAGE COFFEESHOP CHECKPOINT [ADMINISTRATIVE REPORT COFFEE SHOP CHECKPOINT] 10 (2011).

The pivotal role of local authorities in the coffee shop policy causes local variation in the availability of cannabis through coffee shops. Research has shown that both the local demand for cannabis and the political composition of the local council influence the decision to allow coffee shops.<sup>79</sup> Only coffee shops that fit in the local policy and that adhere to the national and local criteria will be tolerated by the police, Public Prosecutor, and mayor. The tolerance, thus, is bound to strict conditions. This is an active and systematic way of tolerance: authorities and Public Prosecutor decide officially and explicitly to *not* enforce the law under certain conditions.<sup>80</sup> MacCoun classifies the regime as “quasi-legalization”<sup>81</sup> and Boekhout van Solinge concluded in 2004 that “[t]his type of regulatory prohibition . . . represents the farthest any country has been able to go within the current structures of global drug prohibition.”<sup>82</sup>

### III. TENSIONS INHERENT TO THE CURRENT SYSTEM

Ever since its existence, the coffee shop system has been struggling with tensions and frictions on national and international level. These tensions seem inherent to the system and could not be solved, although the system is about 40 years old now.<sup>83</sup> The Dutch cannabis policy—and thus the coffee shop system—has to fit in international treaties. The national policy, in its turn, functions as a framework for the local policy. Within this national framework, there is a lot of room for local authorities to tailor the national policy to their specific local situation. Fijnaut and De Ruyver define the discussion about cannabis policy as a “glocal” discussion, because the policy is shaped on international,

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79. Marije Wouters et al., *Local Politics and Retail Cannabis Markets: The Case of the Dutch Coffee Shops*, 21 INT’L J. DRUG POL’Y 315, 318 (2010).

80. LOWER HOUSE OF THE PARLIAMENT 2004-2005, *supra* note 40, at 14; BOEKHOUT VAN SOLINGE, *supra* note 30, at 131; Boekhout van Solinge, *Het Nederlands drugsbeleid en de wet van de remmende voorsprong [The Dutch Drug Policy and the Law of the Inhibiting Lead]*, 40 NEDERLANDS JURISTENBLAD 2580, 2582 (2010).

81. Robert J. MacCoun, *What Can We Learn from the Dutch Cannabis Coffeeshop System?*, 106 ADDICTION 1899, 1909 (2011).

82. BOEKHOUT VAN SOLINGE, *supra* note 30, at 23.

83. Jansen, *supra* note 8, at 98; KORF, *supra* note 8, at 70; MARCO MEESTERS, HET FAILLIET VAN HET GEDOGEN: OP WEG NAAR DE CANNABISWET [BANKRUPTCY OF THE DECEASED: ON THE WAY TO THE CANNABIS LAW] 7 (2015).

national, and local level.<sup>84</sup> I will illustrate the tensions on the different levels.

- First, there are frictions between the international UN treaties, which aim at banning cannabis except for medical or scientific purposes. Is the coffee shop system permissible under international drug treaties?

- Second, the system only regulates the sale of cannabis to consumers, not the cultivation for this sale. This halfway regulation is a paradox in the system, which causes continuous debate between parties on the national level and tensions between municipalities and the national policy makers. These tensions plod along heavily. How do the Netherlands cope with their half-way regulated system?

- Third, the mayor, the local prosecutor and the chief of the police can shape the national policy to their local practice, which means that they have to agree on the local coffee shop policy. The city council has to agree. The prosecutor has to follow the national instructions and the national enforcement policy, whereas the mayor is mainly concerned about local public order. How do local authorities handle tensions caused by these different interests?

#### A. Is the coffee shop system permissible under international drug treaties?

In the view of the International Narcotics Control Board, the committee that is responsible for the control and supervision of the implementation of the UN Narcotic Drugs Conventions—especially the UN 1961 Single Convention on Narcotic Drugs as amended by the 1972 Protocol,<sup>85</sup> and also the UN 1988 Illicit Traffic Convention<sup>86</sup>—the Dutch policy of tolerance with regard to coffee shops contravenes the Conventions.<sup>87</sup> The Conventions decidedly aim at limiting the use of

84. CYRILLE FIJNAUT & BRICE DE RUYVER, *DE DERDE WEG, EEN PLEIDOOI VOOR EEN EVENWICHTIG CANNABISBELEID* [THE THIRD WAY, A PLEA FOR A BALANCED CANNABIS POLICY] 1 (2014).

85. Single Convention on Narcotic Drugs, 1961 art. 18, Mar. 25, 1961, 976 U.N.T.S. 105, *amended by* 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, Mar. 24, 1972.

86. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, res. 3, Dec. 20, 1988, 1582 U.N.T.S. 95.

87. DE KORT, *supra* note 8, at 257; *see also infra* notes 91, 93–94.

narcotics such as cannabis to purely medical and scientific purposes, “[t]he Parties shall take such legislative and administrative measures as may be necessary . . . (c) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.”<sup>88</sup> From the Preamble of the Convention, the body of text, the system, and the history of deliberations of the UN Drugs Conventions, it is clear that “eradicating cannabis for recreational use is the object and purpose of these Conventions.”<sup>89</sup>

According to the Board, the coffee shop system does not fit in this target and also stimulates social acceptance of cannabis abuse and demotivates other states in their combat against cannabis.<sup>90</sup> The Board is clear in its conclusions and reiterated them in subsequent annual reports, for instance,

[S]ome States parties have “permitted the use of ‘safer crack kits,’ the existence of so-called ‘coffee shops’ and the establishment and operation of so-called ‘drug injection rooms.’ The Board has warned that such policies promote social and legal tolerance of drug abuse and drug trafficking and therefore contravene the international drug control treaties.”<sup>91</sup>

While the Board has taken note of this development,<sup>92</sup> “its position continues to be that such ‘coffee shops’ are in violation of the provisions

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88. Single Convention on Narcotic Drugs, 1961, *supra* note 85, at art. 4.

89. P.H.P.H.M.C. VAN KEMPEN & M.I. FEDOROVA, INTERNATIONAAL RECHT EN CANNABIS: EEN BEOORDELING OP BASIS VAN VN-DRUGSVERDRAGEN EN EU-DRUGSREGELGEVING VAN GEMEENTELIJKE EN BUITENLANDSE OPVATTINGEN PRO REGULERING VAN CANNABISTEELT VOOR RECREATIEF GEBRUIK [INTERNATIONAL LAW AND CANNABIS: AN ASSESSMENT OF MUNICIPAL AND FOREIGN VIEWS IN FAVOUR OF REGULATING CANNABIS CULTIVATION FOR RECREATIONAL USE BASED ON UN NARCOTIC DRUGS CONVENTIONS AND THE EU LEGAL INSTRUMENTS IN ANTI-DRUGS POLICY] 240 (2014).

90. Rep. of the Int’l Narcotics Control Board for 2011, U.N. Doc. E/INCB/2011/1, ¶ 283 (2012). Note that the Netherlands also have a policy of tolerance with regard to drug injection rooms. These reflect, like the coffee shops, the national health oriented and risk-reducing drug policy. *Id.* at 38.

91. *Id.* ¶ 283.

92. *Id.* ¶ 718. The Board refers here to the amendments in 2012 in the Dutch coffee shop policy as contained in the Opium Act Directive for the Public Prosecutor: the

of the international drug control conventions.”<sup>93</sup> “The Board notes the measures<sup>94</sup> taken by the Government of the Netherlands to implement stricter policies towards ‘coffee shops’ and calls upon the Government to step up its efforts to ensure the full compliance of the Netherlands with the provisions of the international drug control treaties.”<sup>95</sup>

In order to achieve the stated eradication target, the UN Drugs Conventions provide for a prohibitive and repressive enforcement system, which imposes a wide spectrum of diverse criminal, administrative and other obligations on the parties to the Convention. Judicial research in the Netherlands concludes that this includes “a total ban on the possession of cannabis intended for personal recreational use [and] obligations to also seize cannabis intended for recreational use.”<sup>96</sup> Implementation of all these obligations should result in a zero circulation of narcotics—including cannabis—for recreational use.<sup>97</sup>

Relevant in this respect is that the Netherlands made an official ‘Reservation’ to article 3, paragraphs 6, 7 and 8, of the UN 1988 Illicit Traffic Convention stating, “[t]he Government of the Kingdom of the Netherlands accepts the provisions of article 3, paragraphs 6, 7, and 8, only in so far as the obligations under these provisions are in accordance with Dutch criminal legislation and Dutch policy on criminal matters.”<sup>98</sup> By doing so, it aimed at preserving the fundamental role of the national

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Private club and the Residence criterion for coffee shops were added to the national criteria for tolerance of coffee shops. Access to coffee shops was restricted to residents of the Netherlands aged 18 years or older who are members of the coffee shop. These were radical entry restrictions. The aim was reducing the size of coffee shops, facilitating control and combating drug tourism. Rep. of the Int’l Narcotics Control Board for 2012, U.N. Doc. E/INCB/2012/1, ¶ 757 (2013).

93. U.N. Report of the International Narcotics Control Board for 2012, *supra* note 80, ¶ 756.

94. Rep. of the Int’l Narcotics Control Board for 2013, U.N. Doc. E/INCB/2013/1, ¶ 54 (2014). ‘Measures’: meant is the introduction of the Private club and the Residence criterion for coffee shops in 2012. *Id.* ¶ 56.

95. *Id.*

96. VAN KEMPEN & FEDOROVA, *supra* note 89, at 240.

97. *Id.* The obligations pertaining to European law (“the so-called EU Schengenacquis, the EU 1996 Joint Action Illegal Drug Trafficking and the EU 2004 Framework Decision Illicit Drug Trafficking”) are in line with this. *Id.* at 239; see De Kort, *supra* note 15.

98. VAN KEMPEN & FEDOROVA, *supra* note 89, at 71.

expediency principle, especially in its drug policy,<sup>99</sup> and, as can be reasoned, specifically with regard to tolerance of criminal acts related to personal use. This reservation preserved the existing policy of tolerance with regard to coffee shops in the Netherlands.<sup>100</sup>

The Netherlands did get a lot of critics on their drug policy—and especially on their coffee shop policy—from other states with more restrictive policies, like Sweden and France.<sup>101</sup> Yet, the Netherlands has always persisted in this policy and are unwilling to abandon it,<sup>102</sup> although there were substantial adaptations in the direction of a more restrictive and less lenient policy in the course of the years.<sup>103</sup>

#### B. How does the Netherlands cope with their halfway-regulated system?

The coffee shop system can be defined as a “regulatory system for adults.”<sup>104</sup> The system, however, regulates only the sale of cannabis to consumers.<sup>105</sup> The authorities never regulated the supply of cannabis to the coffee shops.<sup>106</sup> This leads to a central paradox in the coffee shop system: coffee shops can sell cannabis at their “front door,” but they are not allowed to buy cannabis at their “back door.”<sup>107</sup> Although policy makers in the 1970s preferred a legalization of cannabis, they realized

99. *Id.* at 71–72.

100. *Id.* at 71–73.

101. BOEKHOUT VAN SOLINGE, *supra* note 30, at 200, 202–08. According to Tim Boekhout van Solinge, the attitude in Europe became more favorable for the Netherlands. Boekhout van Solinge, *supra* note 80, at 2580, 2587. Sweden also has a specific attitude toward the Netherlands with respect to Dutch drug laws. *See generally* Ted Goldberg, *Will Swedish and Dutch Drug Policy Converge? The Role of Theory*, 14 INT’L J. SOC. WELFARE 44 (2005).

102. *See, e.g.*, BOEKHOUT VAN SOLINGE, *supra* note 30, at 200; *see, e.g.*, van Laar et al., *supra* note 11, at 109, 147; *see also, e.g.* Ooyen-Houben & Kleemans, *supra* note 13, at 165, 213 (explaining the driving forces behind the Dutch drug policy).

103. van Laar et al., *supra* note 11, at 109, 147; van Ooyen-Houben & Kleemans, *supra* note 13, at 213.

104. *See* Robert MacCoun et al., *Assessing Alternative Drug Control Regimes*, 15 J. OF POL’Y ANALYSIS AND MGMT. 330, 333 (1996).

105. Aanwijzing Opiumwet (Designation Opium Act) 1 Mar. 2015, Pre-opsparing § 1 (2015).

106. *Id.*

107. van Ooyen-Houben & Kleemans, *supra* note 13, at 181.

that this was not feasible within the United Nations Treaties, especially the Single Convention.<sup>108</sup> They expected that the international treaties would be adapted on the mid-range term in order to give national states the freedom to follow their own regimes with regard to cannabis and cannabis cultivation.<sup>109</sup> However, this never happened.

It was also assumed that the Netherlands was too small and thus not interesting enough for the international drug trade.<sup>110</sup> The conviction was that nobody could get rich from trafficking of cannabis in the Netherlands.<sup>111</sup> Until the 1990s, the cannabis in the Netherlands came from abroad, mainly from Morocco.<sup>112</sup> Policy makers did not anticipate the development and explosive growth of domestic cannabis cultivation and underestimated the lucrativeness of the commercial sale of cannabis to consumers that developed since the 1980s.<sup>113</sup>

The halfway regulation caused numerous political debates in the Netherlands, a debate which has continued over the years.<sup>114</sup> While some parties in the Parliament want to include cannabis cultivation in the coffee shop system in order to be able to control the cannabis and to exclude criminals and criminal networks from the coffee shop cannabis chain, other parties are vigorously opposed.<sup>115</sup> There is also a dividing line between a majority of municipalities and the national authorities, represented by the minister of Security and Justice.<sup>116</sup>

In 2005, the mayor of Maastricht, a municipality in the South of the Netherlands, very close to the Belgian border, called for a regulation of the cannabis cultivation.<sup>117</sup> In his view, the ban on cultivation for

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108. DE KORT, *supra* note 8, at 253.

109. *Id.*

110. Leuw, *supra* note 15, at 251.

111. *Id.*; van de Bunt, *supra* note 32, at 15.

112. See Kenza Afsahi, *Are Moroccan Cannabis Growers Able to Adapt to Recent European Market Trend?* 26 INT'L J. DRUG POLICY 327, 327–28 (2015).

113. van de Bunt, *supra* note 32, at 16; Mark van der Giessen et al., *Estimating the Production, Consumption and Export of Cannabis, the Dutch Case*, 31 INT'L J. DRUG POL'Y 104 (2016); BOEKHOUT VAN SOLINGE, *supra* note 30, at 138; DE KORT, *supra* note 8, at 255–56.

114. See, e.g., VAN HET LOO ET AL., *supra* note 54, at 20; see, e.g., BOEKHOUT VAN SOLINGE, *supra* note 30, at 138; see, e.g., DE KORT, *supra* note 8, at 257.

115. See, e.g., FIJNAUT & DE RUYVER, *supra* note 84, at 112, 116.

116. See, e.g., VAN HET LOO ET AL., *supra* note 54, at 20.

117. LOWER HOUSE OF THE PARLIAMENT, Kamervragen (Aanhangsel) 2004-2005, File No 1290, VRAGEN VAN HET LID VAN DER HAM (D66) AAN DE MINISTER VAN JUSTITIE



recreational use is enhancing crime and the many illegal cultivation sites cause nuisance and danger for neighbors.<sup>118</sup> He argued that regulation—in combination with other measures—would solve these problems and warned that the Netherlands should not take this step alone: other European countries should also adhere to such a policy.<sup>119</sup> The minister of Security and Justice reacted aversely, stating “as far as the initiative of the mayor of Maastricht aims at regulation or legalization of the cultivation of cannabis, this is against the Dutch law.”<sup>120</sup> In addition, the minister points out that regulation or legalization will not solve the problems around the existing illegal cultivation, that it would require supervision of the tolerated cultivation and that the proposals do not fit in the international treaties and thus “there is no reason to review the policy.”<sup>121</sup>

The mayor of Maastricht was not the only one who pleaded for a regulation or legalization.<sup>122</sup> And the minister of Security and Justice in 2005 was not the only one who rejected it.<sup>123</sup> There were already intense debates on the issue in the beginning of the 1990s.<sup>124</sup> The problem of illegal cultivation sites was extensively addressed in a policy document in 2000 (in the document titled “The road to the back door”)<sup>125</sup> and again

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EN DE STAATSSECRETARIS VAN VOLKSGEZONDHEID, WELZIJN EN SPORT OVER DE UITSPRAKEN VAN DE BURGEMEESTER VAN MAASTRICHT OVER SOFTDRUGS IN DE REGIO MAASTRICHT [QUESTIONS OF THE MEMBER VAN DER HAM (D66) TO THE MINISTER OF JUSTICE AND THE SECRETARY OF STATE OF HEALTH, WELFARE AND SPORTS ABOUT PRONUNCIATIONS OF THE MAYOR OF MAASTRICHT ABOUT SOFT DRUGS IN THE REGION OF MAASTRICHT], 2735–36 (April 6, 2005).

118. *Id.*

119. *Id.*

120. *Id.* at 134, 2735.

121. LOWER HOUSE OF THE PARLIAMENT 2004-2005 File No 24077 156, DRUGBELEID, BRIEF MINISTER MET TOEGEZEGDE REACTIE OP RECENTE UITLATINGEN BURGEMEESTER LEERS VAN MAASTRICHT IN TOESPRAAK EUROPEES PARLEMENT VAN 21 APRIL 2005 OVER DRUGSPROBLEMATIEK IN DE GRENSSTREEK [DRUG POLICY, LETTER OF MINISTER WITH PROMISED REACTION ON RECENT PRONUNCIATIONS OF MAYOR LEERS OF MAASTRICHT IN SPEECH TO THE EUROPEAN PARLIAMENT OF APRIL 21 2005 ABOUT DRUG PROBLEMS IN THE BORDER REGION], 3 (April 26, 2005).

122. van Ooyen-Houben & Kleemans, *supra* note 13, at 181; *see generally* MEESTERS, *supra* note 83.

123. van Ooyen-Houben & Kleemans, *supra* note 13, at 181.

124. FIJNAUT & DE RUYVER, *supra* note 84, at 109–18.

125. LOWER HOUSE OF THE PARLIAMENT 1999-2000, File No 24077 75, DRUGBELEID, BRIEF MINISTER BIJ DE NOTITIE ‘HET PAD NAAR DE ACHTERDEUR’ OVER DE

in 2004 (in the “Cannabis Letter”).<sup>126</sup> Time and again the cabinet and the minister of Security and Justice state that international obligations forbade any kind of regulation of cannabis cultivation and that they will not take any step in the direction of regulation or legalization.<sup>127</sup>

Municipalities did not give up, though. The mayor of Maastricht got company from several other mayors, who wanted to experiment with regulation in order to contain the “back door” problem and combat the danger and the nuisance of the many illegal cannabis cultivation sites in their municipalities.<sup>128</sup> The mayors prefer a clear system, which makes a distinction between illegal cultivation—that has to be combatted—and cultivation as part of the tolerance system—which can be tolerated.

Three judicial studies were conducted in order to get clarity about the question whether authorities are permitted under international law to regulate the cultivation and the trade in cannabis for recreational use. In

AANVOER VAN SOFTDRUGS NAAR DE COFFEESHOPS [DRUG POLICY, LETTER OF THE MINISTER ACCOMPANYING THE NOTE ‘THE PATH TO THE BACK DOOR’ ABOUT THE SUPPLY OF SOFT DRUGS TO THE COFFEE SHOPS] (April 7, 2000); MEESTERS, *supra* note 83, at 5.

126. LOWER HOUSE OF THE PARLIAMENT 2003-2004, File No 24077 125, DRUGSBELEID, BRIEF MINISTERS OVER HET CANNABISBELEID [DRUG POLICY, LETTER OF THE MINISTERS ABOUT THE CANNABIS POLICY], 5–8 (April 23, 2004).

127. LOWER HOUSE OF THE PARLIAMENT 2008-2009, File No 24077 232, DRUGSBELEID, BRIEF MINISTERS OVER EEN AANTAL AAN DE DRUGSPROBLEMATIEK IN DE GRENSTREEK GERELATEERDE ZAKEN [DRUG POLICY, LETTER OF MINISTERS ABOUT A NUMBER ITEMS RELATED TO THE DRUG PROBLEM IN THE BORDER REGION], 2–3 (May 12, 2009); LOWER HOUSE OF THE PARLIAMENT 2013-2014, File No 24077 314, DRUGBELEID, BRIEF REGERING, TOEZEGGINGEN COFFEESHOPBELEID [DRUG POLICY, LETTER OF THE GOVERNMENT, PROMISES WITH REGARD TO COFFEE SHOP POLICY], 3–9 (Dec.18 2013); LOWER HOUSE OF THE PARLIAMENT 2013-2014, File No 24077 316, DRUGBELEID, TOEZEGGINGEN ALGEMEEN OVERLEG COFFEESHOPBELEID EN AANBIEDING RAPPORT ‘INTERNATIONAAL RECHT EN CANNABIS’ [DRUG POLICY, PROMISES GENERAL DELIBERATIONS ABOUT THE COFFEE SHOP POLICY AND PRESENTATION OF THE REPORT ‘INTERNATIONAL LAW AND CANNABIS’], 4–5 (March 21, 2014); LOWER HOUSE OF THE PARLIAMENT 2015-2016, File No 24077 346, DRUGBELEID, BRIEF REGERING, UITVOERING VAN DE MOTIE VAN HET LID OSKAM OVER GEREGULEERDE WIETTEELT [DRUG POLICY, LETTER OF THE GOVERNMENT, IMPLEMENTATION OF THE MOTION OF THE MEMBER OSKAM ABOUT REGULATED CANNABIS CULTIVATION] 1 (May 27, 2015).

128. LIMBURGIAN MUNICIPALITIES, LIMBURG TREKT ZIJN GRENS, EEN PROVINCIEBREED INITIATIEF VOOR HET HUIDIGE SOFTDRUGSBELEID (LIMBURG DRAWS ITS LINES, A PROVINCE-WIDE ALTERNATIVE FOR THE PRESENT SOFT DRUGS POLICY (2009); *see also* MAYORS OF HEERLEN, UTRECHT AND EINDHOVEN, MANIFEST JOINT REGULATION (2014). In 2015, this Manifesto was signed by a majority – 59 of 103 – of municipalities with coffee shops.

2005, a study commissioned by the minister of Security and Justice concluded that there are no judicial options for legalization or regulation of cannabis cultivation under the international drug treaties.<sup>129</sup> A replication study carried out in 2014 by the Radboud University Nijmegen supported this conclusion.<sup>130</sup> A third judicial study, commissioned by the municipalities of Utrecht, Heerlen and Eindhoven, looked at the question from a different perspective, not only from the internal perspective of the drug treaties, but this time from the external perspective of international human rights conventions.<sup>131</sup> From this external perspective there is a possibility to regulate, even by legalization, the cultivation of and trade in cannabis for the recreational user market.<sup>132</sup> The possibility only exists if at least the following conditions are met:

- The regulation should protect interests that are relevant from the perspective of positive human rights obligations.
- The claim of a more effective human rights protection must be substantiated.
- There has to be national democratic support and decision-making.
- Other states should not be confronted with negative consequences; therefore, the state should create a closed national system.

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129. T.C.M. ASSER INSTITUTE, EXPERIMENTEREN MET HET GEDOGEN VAN DE TEELT VAN CANNABIS TEN BEHOEVE VAN DE BEVOORRADING VAN COFFEESHOPS, INTERNATIONAAL RECHTELIJKE EN EUROPEES RECHTELIJKE ASPECTEN [EXPERIMENTS WITH THE TOLERANCE OF THE CULTIVATION OF CANNABIS ON BEHALF OF THE SUPPLY OF COFFEE SHOPS, ASPECTS OF INTERNATIONAL AND EUROPEAN LAW] 25 (2005).

130. VAN KEMPEN & FEDOROVA, *supra* note 89, at 260.

131. *See generally* P.H.P.H.M.C. VAN KEMPEN & M.I. FEDOROVA, INTERNATIONAAL RECHT EN CANNABIS: REGULERING VAN CANNABISTEELT EN – HANDEL VOOR RECREATIEF GEBRUIK: POSITIEVE MENSENRECHTVERPLICHTINGEN VERSUS VN-DRUGSVERDRAGEN [INTERNATIONAL LAW AND CANNABIS: REGULATION OF CANNABIS CULTIVATION AND TRADE FOR RECREATIONAL USE: POSITIVE HUMAN RIGHTS OBLIGATIONS VERSUS UN DRUG TREATIES] (2016).

132. *Id.* at 335, 341.

-The state should create an adequate policy to ensure discouragement, limitation and increased public awareness of the risks associated with recreational use of cannabis.<sup>133</sup>

The minister of Security and Justice concluded that is it insecure whether or not these conditions are met in the Netherlands and that no change in the policy is indicated.<sup>134</sup>

The paradox of the half-regulated coffee shop system still exists in 2017. The differences between municipalities who want regulation and the national policy makers still continue and sometimes it seems as if the debate will never end.<sup>135</sup>

### C. How do local authorities handle tensions caused by different interests?

The mayor, the Chief of the police and the local Prosecutor have to agree on a local policy and the mayor has to render account to the city council.<sup>136</sup> The mayor's first worry is the public order and controlling the public nuisance, whereas the Public Prosecutor wants to fight crime and drive back the supply of drugs.<sup>137</sup> That can result in tensions, as illustrated by the case of coffee shop 'Checkpoint,' one of the biggest coffee shops of the Netherlands, in a small city near the Belgian border, Terneuzen:

Terneuzen decided to introduce a policy of tolerance in the 1990s. Two coffee shops were established: 'Miami' and 'Checkpoint.' The policy was fruitful in the sense that illegal drug trade and drug-related nuisance were reduced substantially. With the passage of time,

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133. *Id.* at 332-34, 338-41.

134. LOWER HOUSE OF THE PARLIAMENT, KAMERVragen (AANHANGSEL) 2015-2016 File No 2838, ANTWOORD OP DE Vragen VAN DE LEDEN KOOIMAN EN BERGKAMP OVER LEGALE WIEtTEELT ALS POSITIEVE MENSENRECHTENVERPLICHTING [ANSWER TO THE QUESTIONS OF THE MEMBERS KOOIMAN AND BERGKAMP ABOUT LEGAL CANNABIS CULTIVATION AS A POSITIVE HUMAN RIGHTS OBLIGATION] 2, 4 (June 15, 2016).

135. MEESTERS, *supra* note 83, at 5.

136. van Ooyen-Houben, *supra* note 54, at 34.

137. VAN HET LOO ET AL., *supra* note 54, at 78-79; Arnt Mein & Marianne van Ooyen-Houben, *The Rise and Fall of Coffee Shop Checkpoint in Terneuzen*, 1 CIROC (CENTRE FOR INFORMATION AND RESEARCH ON ORGANIZED CRIME) NEWSLETTER 4, 4-5 (2013).

however, the situation around Checkpoint became more and more difficult, especially when the municipality relocated it to a prominent and easily accessible new location that proved to be good for a robust further growth. The shop developed into a large and successful professional enterprise. It attracted thousands of visitors daily, of whom the majority came from Belgium and France. The municipality saw Checkpoint as a 'model coffee shop' and the mayor showed it regularly to his visitors from abroad. The stream of visitors, however, resulted in serious nuisances for the local population. The municipality tried different ways to contain the problem. It installed road signs to the coffee shop, created parking facilities and set up additional supervision. Finally, it felt forced to relocate the coffee shop outside the municipality, in borderland. While the mayor wanted to push back the nuisance, the local Prosecutor regarded the coffee shop as a criminal organization and insisted on pushing back the supply. The prosecutor opposed the relocation outside the municipality. The local authorities did not come to an agreement on the collective approach to deal with the coffee shop<sup>138</sup>

The end of the story was that the police and the prosecutor raided the coffee shop in June 2007; 96 kilos of cannabis were confiscated.<sup>139</sup> During a later search in May 2008, the police confiscated another batch of more than 130 kilos.<sup>140</sup> The violations of the conditions for tolerance gave cause to the mayor of Terneuzen to close the coffee shop and withdraw the license; at the same time, the coffee shop owner and his staff were prosecuted for breaching the Opium Act and taking part in a criminal organization.<sup>141</sup> This last charge was based on the fact that the coffee shop owner used different secret stashes outside the coffee shop, e.g. at his employees' homes, and he employed home-workers who prepared joints for his customers.<sup>142</sup>

The regional court of first instance came to a conviction, but the sentence was moderated because of the close involvement of local

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138. Mein & van Ooyen-Houben, *supra* note 137, at 64–65.

139. MEIN & Ooyen-Houben, *supra* note 78, at 7, 53–55.

140. *Id.*

141. *Id.* at 53–54.

142. *Id.* at 34–35.

authorities in the growth of the coffee shop.<sup>143</sup> In appeal, the court of appeal declared the prosecutor inadmissible, in view of the role of the local authorities, who never gave any sign that the coffee shop was violating rules.<sup>144</sup> The Supreme Court annihilated this judgment and sent the case back to an adjacent court of appeal,<sup>145</sup> which declared the inadmissibility of the prosecutor in the prosecution because of selling cannabis and because of membership of a criminal organization, and judged the coffee shop owner and staff as guilty in the case of possessing large amounts of cannabis and handling cannabis, but did not impose a sentence.<sup>146</sup> The case went back to the Supreme Court and in April 2016, the case was sent back again to an adjacent court of appeal.<sup>147</sup>

This case illustrates the local controversy that can arise around a coffee shop.<sup>148</sup> The mayor, in his efforts to reduce public nuisance, adhered to the local coffee shop policy and wanted to maintain the coffee shop, while the prosecutor, in his efforts to reduce crime and export of cannabis, wanted to close the coffee shop.<sup>149</sup>

Another example of problems plodding along for a long time could be observed in the city of Venlo, which is situated near the German border.<sup>150</sup> Venlo is a draw for German visitors and in the wake of the shopping crowds came, since the early 1990s, a lot of ‘drug tourists’ –

143. *See generally* Rb. Middelburg 25 maart 2010, rechtspraak.nl 2010, ECLI:NL:RBMID:2010:BL8815 m.nt. (State of the Netherlands, Public Prosecutor Rammeloo/owner of coffee shop Checkpoint, Willemsen) (Neth.).

144. *See generally* Hof's-Gravenhage 02 februari 2012, rechtspraak.nl 2012, ECLI:NL:GHSGR:2012:BV2572 m.nt. (State of the Netherlands, Public Prosecutor/owner of coffee shop Checkpoint Willemsen) (Neth.).

145. *See generally* HR 2 juli 2013, rechtspraak.nl 2013, ECLI:NL:HR:2013:7 m.nt. (Solicitor-general in appeal in cassation against judgment of Hof's-Gravenhage) (Neth.).

146. *See generally* Hof's-Amsterdam 16 juli 2014, rechtspraak.nl, 2014 ECLI:NL:GHAMS:2014:2840 m.nt. (State of the Netherlands, public prosecutor/owner of coffee shop Checkpoint, Willemsen) (Neth.).

147. *See generally* HR 26 april 2016, rechtspraak.nl 2016, ECLI:NL:HR:2016:742 m.nt. (Solicitor-general in appeal in cassation against judgement of Hof Amsterdam) (Neth.).

148. MEIN & MARIANNE VAN OUYEN-HOUBEN, *supra* note 78, at 62.

149. *Id.* at 50.

150. *See generally* J. SNIPPE ET AL., HEKTOR 2010 EN 2011: EVALUATIE AANPAK DRUGSOVERLAST IN VENLO [DRUG NUISANCE IN VENLO] (2012); J. SNIPPE ET AL., HEKTOR EN 2005: EVALUATIE AANPAK DRUGSOVERLAST IN VENLO [DRUG NUISANCE IN VENLO] 9 (2006).

people from Germany who came to buy soft drugs in Venlo.<sup>151</sup> In 1991, Venlo counted 39 coffee shops.<sup>152</sup> This number was reduced by the local authorities to five in 1996.<sup>153</sup> By the end of the 1990s, Venlo had severe problems with nuisance from hard drug premises, street dealers, drugs runners and a considerable stream of coffee shop customers.<sup>154</sup> The nuisance concentrated in the city center.<sup>155</sup> In 2001, the local authorities started a project, “Hektor,” which contained plans to enforce rules and public order, close drug premises, gentrification of the city center, and a coffee shop policy which aimed at the opening of two additional coffee shops in a location outside the city, in the direction of the border.<sup>156</sup> This coffee shop policy was not implemented, but instead two existing coffee shops were relocated to the location near the German border in 2004.<sup>157</sup> This took a long political debate in Venlo.<sup>158</sup> About half of the stream of foreign visitors to coffee shops went to the new location in 2005.<sup>159</sup> The city center improved, nuisance was reduced, and safety was increased.<sup>160</sup> The nuisance increased in the neighborhood of the new location, but the police enforced the nuisance laws and the coffee shops themselves took action against nuisance, so it stayed manageable.<sup>161</sup> There was some displacement of street dealing and drugs running, but this was limited.<sup>162</sup> In general, this policy turned out in a positive way.<sup>163</sup>

A third example of local (regional) controversies is Maastricht, also located near the Belgian border. Here, also, there was a problem of drug

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151. *Id.* at 1.

152. B. BIELEMAN ET AL., COFFEESHOPS NAAR DE PERIFERIE: EVALUATIE VERPLAATSING TWEE COFFEESHOPS IN VENLO [COFFEESHOPS TO THE PERIPHERY: EVALUATION MOVE TWO COFFEESHOPS IN VENLO] 1 (2006).

153. SNIPPE ET AL. (2012), *supra* note 150, at 1.

154. *Id.*

155. *Id.*

156. SNIPPE ET AL. (2012), *supra* note 150, at 53.

157. SNIPPE ET AL. (2006), *supra* note 150, at 21–22; BIELEMAN ET AL., *supra* note 152, at 2.

158. See BIELEMAN ET AL., *supra* note 152, at 2.

159. SNIPPE ET AL. (2012), *supra* note 150, at 38.

160. *Id.* at 53.

161. See BIELEMAN ET AL., *supra* note 152, at 8–9.

162. *Id.* at 9.

163. SNIPPE ET AL. (2012), *supra* note 150, at 53.

tourism causing public nuisance, dealing, and drug running.<sup>164</sup> Maastricht tried to cope with the problem by introducing—first by way of a pilot (because the municipality wanted to evoke a judicial procedure)—a residence criterion in its General Local Decree in 2005: non-residents of the Netherlands were no longer allowed to enter a coffee shop or buy cannabis there.<sup>165</sup> A coffee shop owner whose shop was closed by the mayor after a violation of the criterion contested this. He was successful because the Unit of administrative law of the Council of State concluded that the criterion was in line with European law and with the Constitution, given that there are objective justifications, but *not* with the Opium Act.<sup>166</sup> The Cabinet decided, in a reaction, to add a residence criterion in the already existing tolerance criteria in the Directive Opium Act for the Prosecutor.<sup>167</sup> Plans of the city of Maastricht to relocate coffee shops to the periphery of the city, concentrating them in a ‘coffee corner,’ were contested by neighboring villages who were afraid of nuisance.<sup>168</sup> Although the Council of State supported the relocation plans of Maastricht, they were never effectuated because they were overruled by the introduction of new national criteria.<sup>169</sup>

The frictions and tensions inherent to the coffee shop system are undeniable.<sup>170</sup> But what about the benefits of the system? Does it reach its goals? Why has the system survived (until now)?

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164. R. NIJKAMP ET AL., NULMETING OVERLAST EN BEZOEK COFFEESHOPS MAASTRICHT [BASELINE ASSESSMENT OF NUISANCE AND COFFEE SHOP VISITS IN MAASTRICHT] 1 (2008).

165. M.M.J. van Ooyen-Houben, *Inleiding [Introduction]*, in HET BESLOTEN CLUB- EN HET INGEZETENENCRIERIUM VOOR COFFEESHOPS [THE PRIVATE CLUB AND THE RESIDENCE CRITERION FOR COFFEE SHOPS] 16–17 (M.M.J. van Ooyen-Houben et al. eds., 2013) (with a report summary in English).

166. *See generally id.*

167. van Ooyen-Houben, *supra* note 165, at 15–17.

168. ABRvS 14 augustus 2013, rechtspraak.nl 2013, ECLI:NL:RVS:2013:696 m.nt (Exploitiemaatschappij Pegasus B.B., local authorities of Blegny Belgium, Bruto Real Estate B.V., ACI Supplies, Foundation Gruelles, local authorities of Eijsden-Margraten, Fun Valley, Banketbakkerij Nora and others/city council of Maastricht) (Neth.) [hereinafter *Operating Company/City Council of Maastricht*]; van Ooyen-Houben & van der Giessen, *supra* note 38, at 38.

169. *Operating Company/City Council of Maastricht.*

170. *See, e.g.,* van Ooyen-Houben & Mein, *supra* note 54, at 55, 63–80.



## IV. THE BENEFITS OF THE SYSTEM

If the idea behind the coffee shop system is right, then the coffee shop system should contribute to a separation of the cannabis retail market and the hard drug retail markets in the Netherlands. We should also observe that cannabis users in the Netherlands move less often to hard drugs use than in a system without coffee shops. A third hypothesis is that cannabis users in the Netherlands are well integrated in society and do not get in contact with the criminal justice system.

These hypotheses are supported by evidence.<sup>171</sup> Coffee shops are not only the most important retail channel for cannabis in the Netherlands, but also contribute to a separation of markets: they keep cannabis users for al large part away from illegal dealers and thus reduce the risk that they get in contact with hard drugs. Cannabis users are, in general, well integrated in society. In this respect, the system was good for the consumers.

Some facts and figures:

- In April 2015, there were 582 coffee shops, spread all over the country.<sup>172</sup> At the same time, there existed an illegal cannabis retail market.<sup>173</sup> Van der Giessen, Moolenaar and Van Ooyen estimate that 55-70% of the adult cannabis users in the Netherlands buys its cannabis in a coffee shop.<sup>174</sup> Other estimates resulted in percentages of 56-67% market

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171. van Ooyen-Houben & Kleemans, *supra* note 13, at 187–95.

172. BIELEMAN ET AL., *supra* note 14, at 9.

173. DIRK J. KORF ET AL., CANNABIS ZONDER COFFEESHOP, NIET-GEDOOGDE VERKOOP VAN CANNABIS IN TIEN NEDERLANDSE GEMEENTEN [CANNABIS WITHOUT COFFEE SHOPS, NOT-TOLERATED SALE OF CANNABIS IN TEN DUTCH MUNICIPALITIES] 139 (2005) [hereinafter CANNABIS WITHOUT COFFEE SHOPS] (with a report summary in English); see generally D.J. Korf et al., *De illegale gebruikersmarkt [The Illegal Retail Market]*, in COFFEESHOPS, TOERISTEN EN LOKALE MARKT, EVALUATIE VAN HET BESLOTEN CLUB- EN HET INGEZETENENCRIETERIUM VOOR COFFEESHOPS [COFFEE SHOPS, TOURISTS AND LOCAL MARKETS, EVALUATION OF THE PRIVATE CLUB AND THE RESIDENCE CRITERION] 133-186 (M. van Ooyen-Houben, et al. eds., 2014) [hereinafter *Illegal Retail Market*] (with a report summary in English); R. MENNES ET AL., MONITOR ONTWIKKELINGEN COFFEESHOPBELEID, METING 2015 [MONITOR OF DEVELOPMENTS IN THE COFFEE SHOP POLICY, ASSESSMENT 2015] 47–58 (2016) (with a report summary in English).

174. M. VAN DER GIESSEN ET AL., DE EXPORT VAN IN NEDERLAND GETEELDE CANNABIS [THE EXPORT OF CANNABIS CULTIVATED IN THE NETHERLANDS] 118–19 (2014) (with a report summary in English).

share of coffee shops among adult cannabis users.<sup>175</sup> In municipalities with coffee shops, the market share is even higher: 87-90% of adult actual users in a street survey bought their cannabis in a coffee shop in 2013.<sup>176</sup> 17-25% also bought it outside the coffee shop in 2013,<sup>177</sup> like with a mobile phone dealer or a home dealer, and 8-13% cultivated their own cannabis.<sup>178</sup>

- The dealers outside the coffee shop more often offer also hard drugs to their customers: home dealers or mobile phone dealers for instance also sell hard drugs in 33%-51% of the cases; this percentage is even higher among street dealers: 67%.<sup>179</sup> Coffee shop owners and operators, on the other hand, are keen of keeping hard drugs out of their business,<sup>180</sup> because they think that this is the core reason for their existence and because of the severe sanctions that apply on infractions.<sup>181</sup> Controls of coffee shops focus on the presence of hard drugs (and youngsters). When hard drugs are detected the mayor will, as a rule in most places, directly close the coffee shop.<sup>182</sup>

- There is also evidence that coffee shops prevent users from going to the illegal market. Research shows that the higher the coffee shop density is in a municipality, the lower the local market share of illegal dealers.<sup>183</sup> Other evidence comes from a study into the consequences of entry restrictions for coffee shops in three provinces of the Netherlands in 2012. A substantial part of the customers of the coffee shops decided to turn to the illegal market then.<sup>184</sup> The number of visits to coffee shops

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175. van Laar et al., *supra* note 11, at 120–21.

176. *Illegal Retail Market*, *supra* note 173, at 148.

177. *Id.* at 141.

178. *Id.* at 138.

179. CANNABIS WITHOUT COFFEE SHOPS, *supra* note 173, at 80–81.

180. BIELEMAN ET AL., *supra* note 14, at 39.

181. See D. DE BRUIN ET AL., COFFEESHOPS IN NEDERLAND 2007: NALEVING EN HANDHAVING VAN COFFEESHOPREGELS [COFFEE SHOPS IN THE NETHERLANDS 2007: COMPLIANCE AND ENFORCEMENT OF COFFEE SHOP REGULATIONS] 51-55 (2008) (with a report summary in English).

182. BIELEMAN ET AL., *supra* note 14, at 30.

183. CANNABIS WITHOUT COFFEE SHOPS, *supra* note 173, at 89, 93.

184. Marianne M.J. van Ooyen-Houben et al., *Tightening the Dutch Coffee Shop Policy: Evaluation of the Private Club and the Residence Criterion*, 31 INT'L J. DRUG POL'Y 113, 117 (2016).

decreased by 76%.<sup>185</sup> When the restrictions were loosened again in 2013, there was a movement back towards the coffee shops, indicating that coffee shops took over part of the illegal retail market again, a market that included mobile phone dealers, street dealers, and home dealers.<sup>186</sup>

International comparisons support the evidence that coffee shops indeed contribute to the separation of cannabis- and hard drug consumer markets. The retail markets of cannabis and those of hard drugs like heroin, crack, cocaine or amphetamine are more separated in the Netherlands than in other European countries or the US.<sup>187</sup> The correlation between the use of cannabis and the use of cocaine and amphetamines is weaker in the Netherlands and the step from cannabis use towards use of hard drugs is less probable here.<sup>188</sup> Cannabis users in the Netherlands use relatively few hard drugs like cocaine, amphetamine, heroin, and crack, and there are few hard drug addicts among the cannabis users compared to other countries.<sup>189</sup> The use of ecstasy, though, is higher and cannabis users with a regular or frequent pattern of use have more experience with hard drugs than in the general population.<sup>190</sup> The use of hard drugs is relatively low in the Netherlands, with ecstasy as an exception.<sup>191</sup>

Finally, the evidence shows that the majority of the customers of coffee shops are students or people who have a job.<sup>192</sup> A recent thesis

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185. *Id.* at 116.

186. *Id.* at 117; MARIANNE VAN OOYEN-HOUBEN ET AL., COFFEESHOPS, TOERISTEN EN LOKALE MARKT, EVALUATIE VAN HET BESLOTEN CLUB- EN HET INGEZETENENCRIERIUM VOOR COFFEESHOPS [COFFEE SHOPS, TOURISTS AND LOCAL MARKETS, EVALUATION OF THE PRIVATE CLUB AND THE RESIDENCE CRITERION] 13 (M. van Ooyen-Houben, et al. eds., 2014).

187. MacCoun, *supra* note 81, at 1902; *see also* van Laar et al., *supra* note 11, at 128–34, 148.

188. MacCoun, *supra* note 81, at 1902.

189. van Laar et al., *supra* note 11, at 129–131

190. *Id.*

191. *Id.* at 128–34.

192. BRICE DE RUYVER & TIM SURMONT, GRENSOVERSCHRIJDEND DRUGSTOERISME, NIEUWE UITDAGINGEN VOOR DE EUREGIO'S [CROSS-BORDER DRUG TOURISM, NEW CHALLENGES FOR THE EUREGIONS] 70 (2007); PEGGY M. VAN DER POL, THE DYNAMICS OF CANNABIS USE AND DEPENDENCE 32 (2014); B. BIELEMAN & H. NAAVER, ONDERZOEK COFFEESHOPS TERNEUZEN [A STUDY OF THE COFFEE SHOPS IN TERNEUZEN] 11 (2007); GEMEENTE NIJMEGEN [MUNICIPALITY OF NIJMEGEN], HET COFFEESHOPBEZOEK IN NIJMEGEN: EEN INVENTARISEREND ONDERZOEK NAAR DE OMVANG EN KENMERKEN VAN HET

shows that young adult frequent cannabis users are generally rather “normal” people, generally living a conventional life, including social and romantic activities, jobs, education, sports, and incidental minor delinquency (not related to cannabis).<sup>193</sup> Cannabis users in the Netherlands are (in principle) not prosecuted for possession of cannabis for personal use (no more than five grams), which is what they can buy in a coffee shop.<sup>194</sup> They will not be sentenced or imprisoned or end up with a criminal record, like in other countries.<sup>195</sup> The fact that the majority of the coffee shop customers in the Netherlands are students or employed could be interpreted as an indication that they are not marginalized and, in general, function normally in society.<sup>196</sup>

The coffee shop system thus contributes to a separation of markets and counteracts the stepping-stone idea that cannabis use will lead to hard drug use. Cannabis users and coffee shop customers are, usually, not marginalized. There are, however, some relevant notes to make. Firstly, the separation of markets is not 100%, which means that there exists an illegal market outside the coffee shops.<sup>197</sup> This market is not unattractive, because cannabis dealers on the illegal market offer cannabis of good quality for a good price (at least in Maastricht).<sup>198</sup> Secondly, practical and scientific evidence of many years has shown that

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BEZOEK AAN DE NIJMEEGSE COFFEESHOPS [THE COFFEESHOP VISIT IN NIJMEGEN: AN INVENTORY OF THE MAGNITUDE AND CHARACTERISTICS OF THE VISIT TO THE NIJMEEG COFFEESHOPS] 20 (2008).

193. NIENKE LIEBREGTS, CANNABIS CHANGES: UNDERSTANDING DYNAMICS OF USE AND DEPENDENCE 37, 58–61, 83, 110, 114, 117–18 (2015).

194. Aanwijzing Opiumwet (Directive Opium Act) 3 Jan. 2015, § 3.4 (2015).

195. ROBIN ROOM ET AL., THE BECKLEY FOUNDATION’S GLOBAL CANNABIS COMMISSION REPORT 12–14 (2009).

196. DE RUYVER & SURMONT, *supra* note 192, at 70; VAN DER POL, *supra* note 192, at 32; BIELEMAN & NAAYER *supra* note 192, at 11; GEMEENTE NIJMEGEN, *supra* note 192, at 20.

197. VAN DER GIESSEN ET AL., *supra* note 174, at 118–19; van Ooyen-Houben & Kleemans, *supra* note 13, at 187.

198. E.J. VAN DER TORRE ET AL., SOFTDRUGSBELEID IN MAASTRICHT: DE TWEDE TUSSENBALANS [SOFT DRUGS POLICY IN MAASTRICHT: THE SECOND MIDWAY ASSESSMENT OF RESULTS] 9 (2015), <http://www.yumpu.com/en/document/view/54486452/softdrugsbeleid-in-maastricht-de-tweede-tussenbalans/1>.

cannabis is not as harmless as was thought for a long time.<sup>199</sup> Although it is less harmful (for users and for others) than alcohol, heroin, crack, cocaine or tobacco,<sup>200</sup> we know now that cannabis use can end up in an addiction<sup>201</sup> and in adverse physical and mental health effects.<sup>202</sup> Especially early onset and long-term (almost) daily use, which occurs among 28.8% of the current users in the Netherlands,<sup>203</sup> is a predictor for addiction and other negative effects.<sup>204</sup> Van der Pol, for instance, observed first symptoms of cannabis dependence among 37% of a group of frequent users among the coffee shop customers within a period of three years.<sup>205</sup> There are, however, also other factors that contribute to the development of a cannabis addiction.<sup>206</sup> Figures from addiction care services show that the number of clients with a primary cannabis problem was almost twice as large in 2011 as in 2006 (and stable since then).<sup>207</sup> Cannabis addiction often correlates with psychological problems<sup>208</sup> and regular cannabis users seem to have higher risks of psychotic symptoms and disorders, or physical and psychosocial adverse effects.<sup>209</sup>

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199. W. van den Brink, *Hoe schadelijk zijn softdrugs? [How Dangerous are Soft Drugs]*, 32 JUSTITIËLE VERKENNINGEN 72, 74–75 (2006); VAN DER POL, *supra* note 192, at 11; *see generally* Wayne Hall & Louisa Degenhardt, *The Adverse Health Effects of Chronic Cannabis Use*, 6 DRUG TEST. ANALYSIS (2013); VAN LAAR & VAN OUYEN-HOUBEN, *supra* note 69, at 104–06; Michael A.P. Bloomfield et al., *The Effects of  $\Delta^9$ -Tetrahydrocannabinol on the Dopamine System*, 539 NATURE 396 (2016).

200. Jan van Amsterdam et al., *European Rating of Drug Harms*, 29 J. PSYCHOPHARMACOLOGY 655, 658–59 (2015).

201. van den Brink, *supra* note 199, at 74–75; VAN DER POL, *supra* note 192, at 11, 67, 72; *see generally* Hall & Degenhardt, *supra* note 199; VAN LAAR & VAN OUYEN-HOUBEN, *supra* note 69, at 104–06.

202. van den Brink, *supra* note 199, at 75–84; *see* Hall & Degenhardt, *supra* note 199, at 39–43; Bloomfield et al., *supra* note 199, at 396.

203. VAN LAAR & VAN OUYEN-HOUBEN, *supra* note 69, at 93–94.

204. *See* Bloomfield et al., *supra* note 199, at 372–73; van den Brink, *supra* note 199, at 83–84; *see* Hall & Degenhardt, *supra* note 199, at 39–43.

<sup>205</sup> VAN DER POL, *supra* note 192, at 72–77.

<sup>206</sup> *Id.*; LIEBREGTS, *supra* note 193, at 199–206.

<sup>207</sup> MARGRIET VAN LAAR ET AL., NATIONALE DRUG MONITOR: JAARBERICHT 2016, 111–12 (2016) (with a report summary in English).

<sup>208</sup> VAN DER POL, *supra* note 192, at 51–59.

<sup>209</sup> Hall & Degenhardt, *supra* note 199, at 41–43; van den Brink, *supra* note 199, at 75–77, 83–85.

These notes lead us to questions about adverse developments correlated to the coffee shops. Did the coffee shops contribute to an increase in use or addiction? Were there other adverse effects? The evidence teaches us that the potential dangers of the system with regard to cannabis use are reasonably limited.<sup>210</sup>

- Coffee shops do not necessarily lead to ‘uncontrolled,’ rampant use and they do not appear to encourage escalation into heavier use or lengthier use careers.<sup>211</sup> In fact, the prevalence of use among youngsters of 12-16 years in regular secondary schools has been decreasing since 2003.<sup>212</sup>

- There is only a modest correlation between the number of coffee shops and the prevalence of use.<sup>213</sup> If there are no coffee shops, users will find a way to cannabis via other channels. That’s why prevalence of cannabis use is even higher in France, Spain or the US than in the Netherlands, although the other countries have no coffee shops.<sup>214</sup> Other factors than the presence of coffee shops are more important for the prevalence of use in a country, like perceived harmfulness, availability and price, severity of sanctions, or characteristics of the youth culture.<sup>215</sup>

On the other hand, the prevalence of cannabis use among adolescents in regular secondary schools and among the general population aged 15-64 is high compared to other countries.<sup>216</sup> Use is also high among vulnerable groups of youngsters—youngsters who have problems or who stay in residential youth facilities.<sup>217</sup> According to the European School Survey Project On Alcohol and Other Drugs (ESPAD), 42% of the 15-16 year old students in regular schools in the Netherlands perceive cannabis as fairly easy or very easy to obtain, which is a relatively high percentage in comparison with 15-16 year olds in other EU-countries.<sup>218</sup> A relatively high percentage (50%) started using cannabis at the age of 13 or

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<sup>210</sup> van Ooyen-Houben & Kleemans, *supra* note 13, at 189–92.

<sup>211</sup> MacCoun, *supra* note 81, at 1901–02.

<sup>212</sup> VAN LAAR & VAN Ooyen-Houben, *supra* note 69, at 75.

<sup>213</sup> MacCoun, *supra* note 81, at 1899, 1900–04; VAN HET LOO ET AL., *supra* note 54, at 35, 38, 40, 47–48.

<sup>214</sup> VAN LAAR & VAN Ooyen-Houben, *supra* note 69, at 108.

<sup>215</sup> van Ooyen-Houben & Kleemans, *supra* note 13, at 191.

<sup>216</sup> VAN LAAR & VAN Ooyen-Houben, *supra* note 69, at 26.

<sup>217</sup> *Id.* at 101–02.

<sup>218</sup> THE ESPAD GROUP, ESPAD REPORT 2015: RESULTS FROM THE EUROPEAN SCHOOL SURVEY PROJECT ON ALCOHOL AND OTHER DRUGS 31 (2016).

younger.<sup>219</sup> Palali and Van Ours suggest that the vicinity of a coffee shop (within 20 kilometers) is correlated to a younger age of onset of cannabis use.<sup>220</sup>

From the evidence described above it can be concluded that the coffee shop system functions well for the mainstream cannabis users. They benefit from the non-marginalization and non-criminalization without getting into trouble with their use. Youngsters and vulnerable groups, however, use cannabis a lot and this is a risk. The exact causal relation between the “coffee shop” factor and the prevalence of use is difficult to determine. The relations seem complicated.<sup>221</sup>

## V. ADVERSE DEVELOPMENTS IN NUISANCE AND CRIME

### A. Public nuisance

Already long ago, in the 1990s, there were complaints about public nuisance around coffee shops. In the first comprehensive drug policy document in 1995 read “Inhabitants in the vicinity of the coffee shops in some municipalities complain about the nuisance in relation to a.o. loitering customers, pollution and traffic.”<sup>222</sup>

The coffee shops in the border regions attracted a lot of customers from abroad causing excessive nuisance for neighbors. The nuisance consisted of traffic and parking problems, noise and loitering, destruction of gardens and cars, bothering people, urinating and vomiting in gardens and porches of houses in the neighborhood.<sup>223</sup> There were at times thousands of customers per day, of which a majority came from abroad. For instance:

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<sup>219</sup> *Id.* at 35.

<sup>220</sup> ALI PALALI & JAN C. VAN OURS, DISTANCE TO CANNABIS-SHOPS AND AGE OF ONSET OF CANNABIS USE 3 (2013).

<sup>221</sup> See van Ooyen-Houben & Kleemans, *supra* note 13, at 191.

<sup>222</sup> LOWER HOUSE OF THE PARLIAMENT 1994-1995, File No. 24077 3, DRUGBELEID, NOTA ‘HET NEDERLANDSE DRUGBELEID: CONTINUÏTEIT EN VERANDERING’ [DRUG POLICY, NOTE ‘THE DUTCH DRUG POLICY: CONTINUITY AND CHANGE’] 37 (1995) [hereinafter DUTCH DRUG POLICY].

<sup>223</sup> Marianne van Ooyen-Houben et al., *Drugsgereleerde overlast [Drug Related Public Nuisance]*, in EVALUATIE VAN HET NEDERLANDSE DRUGSBELEID [EVALUATION OF THE DUTCH DRUG POLICY] 305–06 (Margriet van Laar & Marianne van Ooyen-Houben eds., 2009) (with a report summary in English).

- About 90% of the 2,300-2,900 customers of the two coffee shops per day in the city of Terneuzen came from Belgium or France in 2007;<sup>224</sup>

- in Venlo 75% of the more than eight thousand visitors of the five coffee shops per day came from Germany in 2006; in 2009, 64% of the 4,500-5,000 visitors came from Germany;<sup>225</sup>

- in Maastricht about 69% of the coffee shop visitors (14 coffee shops, 2.1 million visitors per year) came from abroad in 2008;<sup>226</sup>

- in Breda about half of the visitors of the eight coffee shops came from Belgium or France in 2011;<sup>227</sup>

- in Bergen op Zoom-Roosendaal came thousands of drug tourists from Belgium or France to visit the (four) coffee shops in 2008.<sup>228</sup>

These cities all took measures against the drug tourism and nuisance. We described the cases of Venlo (project “Hektor”), Terneuzen (closure of the biggest coffee shop “Checkpoint”) and Maastricht (local efforts to relocate and to ban nonresidents failed, finally it implemented the national residence criterion) already. Bergen op Zoom-Roosendaal decided in 2009 to close all eight coffee shops.<sup>229</sup> These interventions—closures and relocations—worked out generally well, also because they were embedded in a broader project with enforcement and communication towards foreign visitors.<sup>230</sup> Displacement occurred, but stayed limited.<sup>231</sup>

Measures against drug tourism and nuisance were also taken on the national level. To prevent drug tourists to buy bigger amounts of cannabis, the tolerated amount of sale per transaction in coffee shops was

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<sup>224</sup> BIELEMAN & NAAYER, *supra* note 192, at 24; van Ooyen-Houben & van der Giessen, *supra* note 38, at 34.

<sup>225</sup> SNIPPE ET AL. (2012), *supra* note 150, at 38.

<sup>226</sup> NIJKAMP ET AL., *supra* note 164, at 16.

<sup>227</sup> GEMEENTE BREDA, MONITOR OMVORMING COFFEESHOPS TOT BESLOTEN CLUBS IN BREDA, RESULTATEN METINGEN JUNI 2012 [MUNICIPALITY OF BREDA, MONITOR OF THE TRANSFERENCE OF COFFEE SHOPS INTO PRIVATE CLUBS, RESULTS OF ASSESSMENTS JUNE 2012] 14 (2012).

<sup>228</sup> E.J. VAN DER TORRE ET AL., DRUGSTOERISTEN IN ROOSENDAAL EN BERGEN OP ZOOM: TELLINGEN [DRUG TOURISTS IN ROOSENDAAL AND BERGEN OP ZOOM: COUNTINGS] 18, 24 (2008).

<sup>229</sup> van Ooyen-Houben & van der Giessen, *supra* note 38, at 39.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*



reduced from 30 grams to 5 grams, the maximum stash in a coffee shop was determined at 500 grams, coffee shops were not allowed to sell alcohol any more, youngsters under 18 were not allowed to enter a coffee shop, and coffee shops became restricted in their commercial activities.<sup>232</sup> The mayor got more judicial authorizations to act against violations of the tolerance criteria by coffee shops.<sup>233</sup> In 2012 the residence criterion was added to the tolerance criteria, which gives municipalities the option to ban nonresidents from the coffee shops<sup>234</sup> and thus reduce public nuisance.<sup>235</sup> Coffee shops themselves also intervened in the nuisance: they kept an eye on what happened in their direct vicinity or appointed staff to prevent nuisance outside their shop.<sup>236</sup>

As a result, the nuisance is better under control and, overall, stable.<sup>237</sup> Most municipalities do not have any nuisance from their coffee shops.<sup>238</sup>

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<sup>232</sup> DUTCH DRUG POLICY, 37–39.

<sup>233</sup> Art 13b Wet RO (Neth.).

<sup>234</sup> Aanwijzing Opiumwet 3 Jan. 2015, § 3.4 (2015).

<sup>235</sup> M. van der Giessen & M. van Ooyen-Houben, *Het Besloten club- en het Ingezetenen criterium uiteengegafeld: de interventielogica achter de criteria* [*The Private Club and the Residence Criterion Analyzed: the Intervention Logic Behind the Criteria*], in HET BESLOTEN CLUB- EN HET INGEZETENENCRIERIUM VOOR COFFEESHOPS [THE PRIVATE CLUB AND THE RESIDENCE CRITERION FOR COFFEE SHOPS] 50 (M.M.J. van Ooyen-Houben et al. eds., 2013) (with a report summary in English).

<sup>236</sup> van Ooyen-Houben, *supra* note 54, at 37; M. van Ooyen-Houben & M. van der Giessen, *De problematiek volgens de betrokken actoren* [*The Problems According to Stakeholders*], in HET BESLOTEN CLUB- EN HET INGEZETENENCRIERIUM VOOR COFFEESHOPS [THE PRIVATE CLUB AND THE RESIDENCE CRITERION FOR COFFEE SHOPS] 73–74 (M. van Ooyen-Houben et al. eds., 2013) (with a report summary in English); M. van Ooyen-Houben & M. van der Giessen, *De implementatie van de B- en I-criteria volgens de betrokken actoren: resultaten van de procesevaluatie* [*The Implementation of the Private Club and the Residence Criteria*], in HET BESLOTEN CLUB- EN HET INGEZETENENCRIERIUM VOOR COFFEESHOPS [THE PRIVATE CLUB AND THE RESIDENCE CRITERION FOR COFFEE SHOPS] 103 (M. van Ooyen-Houben et al. eds., 2013) (with a report summary in English); Thaddeus Müller et al., *Het verplaatsen van coffeeshops vanuit een criminologisch perspectief* [*Moving Coffee Shops from a Criminological Perspective*], in VERKENNING VERPLAATSMOGELIJKHEDEN COFFEESHOPS IN DE GEMEENTE ROTTERDAM [EXPLORATION POSSIBILITIES COFFEE SHOPS IN THE MUNICIPALITY OF ROTTERDAM] 54–55 (2012).

<sup>237</sup> ANNEMIEKE BENSCHOP ET AL., COFFEESHOPS, TOERISME, OVERLAST EN ILLEGALE VERKOOP VAN SOFTDRUGS, 2014 [COFFEE SHOPS, TOURISM, NUISANCE AND ILLEGAL SALE OF SOFT DRUGS, 2014] 37 (2015); MENNES ET AL., *supra* note 173, at I, II, 44; RALPH MENNES ET AL., LOKAAL GEZIEN, VERDIEPINGSSTUDIE MONITOR ONTWIKKELINGEN COFFEESHOPBELEID 2015/16 [LOCAL VIEW, IN-DEPTH STUDY OF THE MONITOR OF

In an evaluation study of measures against coffee shop related nuisance in ten municipalities in 2012, there was even not enough public nuisance in most municipalities to assess changes and effectiveness of the measures in a statistically reliable way.<sup>239</sup> The lack of nuisance as a problem explains why most municipalities did not feel any need for the private club and the residence criterion in 2012<sup>240</sup> or do not implement it in practice.<sup>241</sup> There are, though, differences between municipalities; most nuisances are still reported in the south of the country.<sup>242</sup> Recently, one municipality there decided to start implementing the residence criterion because of increasing drug tourism and nuisance.<sup>243</sup> In places where nuisance occurs, this consists mainly of traffic and parking nuisances, or the presence of dealers and drug runners in the vicinity of the coffee shops.<sup>244</sup>

## B. Crime

Coffee shops are regarded as a business branch with risks of involvement of crime. The most vulnerable spot, the Achilles heel, is the

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DEVELOPMENTS IN COFFEE SHOP POLICY 2015/16) 80–81, 87 (2016) (with a report summary in English).

<sup>238</sup> DENNIS DE HOOG ET AL., OVERLASTBEPERKENDE MAATREGELEN RONDOM COFFEESHOPS: LESSEN VOOR LOKALE PARTNERS [MEASURES TO REDUCE NUISANCE AROUND COFFEE SHOPS: LESSONS FOR LOCAL PARTNERS] 1 (2012); van Ooyen-Houben & van der Giessen, *supra* note 236, at 73–74; MENNES ET AL., *supra* note 173, at 41.

<sup>239</sup> DE HOOG ET AL., *supra* note 238, at 1.

<sup>240</sup> van Ooyen-Houben & van der Giessen, *supra* note 236, at 75, 88.

<sup>241</sup> M. van Ooyen-Houben & M. van der Giessen, *De implementatie van het Ingezetenen criterium volgens de betrokken actoren* [The Implementation of the Residence Criterion According to Stakeholders], in COFFEESHOPS, TOERISTEN EN LOKALE MARKT, EVALUATIE VAN HET BESLOTEN CLUB- EN HET INGEZETENENCRIERIUM VOOR COFFEESHOPS [COFFEE SHOPS, TOURISTS AND LOCAL MARKETS, EVALUATION OF THE PRIVATE CLUB AND THE RESIDENCE CRITERION] 53–54 (M. van Ooyen-Houben et al. eds., 2014) (with a report summary in English); BENSCHOP ET AL., *supra* note 237, at 25, 34; MENNES ET AL., *supra* note 173, at 28–29, 41–42.

<sup>242</sup> MENNES ET AL., *supra* note 173, at 17–20.

<sup>243</sup> R. MENNES, HET INGEZETENENCRIERIUM VOOR COFFEESHOPS IN SITTARD-GELEEN [THE RESIDENCE CRITERION FOR COFFEE SHOPS IN SITTARD-GELEEN] 1 (2017).

<sup>244</sup> BENSCHOP ET AL., *supra* note 237, at 37; MENNES ET AL., *supra* note 241, at 42.

purchase of cannabis.<sup>245</sup> The regulation of the sale of cannabis does not cover the so-called “back door” of the coffee shops, where the supply of cannabis takes place. We know little about what happens there. The police turn a blind eye to the “back door,” as long as the supply is low profile and not too visible.<sup>246</sup> Whereas a coffee shop is not allowed to have more than 500 grams in stock at any given moment, this small-scale supply takes place discretely several times a day when more is needed.<sup>247</sup> A coffee shop does not pay value added tax (VAT) over its cannabis sales because these activities are illegal and no VAT can be applied on such activities.<sup>248</sup> A coffee shop does pay income tax and has to keep an administration about sourcing and sales, but whereas the ‘back door’ is a ‘black box’ nobody can check what was bought and what prices were paid for the cannabis.<sup>249</sup> This means that the suppliers at the “back door” are uncontrollable for authorities or taxes and that the insight in benefits is only fragmentary, even for the tax authorities.<sup>250</sup> In cases of cannabis

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<sup>245</sup> See, e.g., ANTONIUS JOHANNES GERHARDUS TIJHUIS, *TRANSNATIONAL CRIME AND THE INTERFACE BETWEEN LEGAL AND ILLEGAL ACTORS* 67, 74 (2006); see, e.g., BOEKHOUT VAN SOLINGE, *supra* note 30, at 138.

<sup>246</sup> MEIN & VAN OUYEN-HOUBEN, *supra* note 78, at 29. Investigation and prosecution of organized crime in relation to cannabis cultivation and of professional cannabis cultivation is, however, a priority area for police and Public Prosecutor, as is the dismantlement of individual cannabis cultivation sites. See, e.g. See, e.g. I.W. Opstelten, Brief Regering, *Nationaal Dreigingsbeeld Georganiseerde Criminaliteit 2012 en Vierde rapportage op basis van de Monitor georganiseerde criminaliteit*, in *BESTRIJDING GEORGANISEERDE criminaliteit* [Letter of the Government, *National Threat Assessment Organized Crime and Fourth Report Based on the Monitor Organized Crime*, in *THE COMBAT OF ORGANIZED CRIME*], Lower House of Parliament File No 29911 79 (2013); I.W. Opstelten, Brief Regering, *Intensivering aanpak ondermijnende en georganiseerde criminaliteit Zuid-Nederland*, in *BESTRIJDING GEORGANISEERDE CRIMINALITEIT* [Letter of the Government, *Intensification of enforcement of undermining and organized crime in the South of the Netherlands*, in *THE COMBAT OF ORGANIZED CRIME*], Lower House of the Parliament File No 29911 93 (2014); I.W. Opstelten, Brief Regering, *Toezeggingen ter zake het Algemeen Overleg Coffeeshopbeleid over de aanpak van de hennepcultuur*, in *DRUGBELEID* [Letter of the Government, *Promises with Regard to the General Deliberations Coffee Shop Policy About the Combat of Cannabis Cultivation*, in *DRUG POLICY*], Lower House of the Parliament. File No 24077 321 (2014).

<sup>247</sup> MEIN & VAN OUYEN-HOUBEN, *supra* note 78, at 34–35.

<sup>248</sup> PROJECTGROEP EMERGO, *EMERGO: DE GEZAMENLIJKE AANPAK VAN DE ZWARE (GEORGANISEERDE) MISDAAD IN HET HART VAN AMSTERDAM* [EMERGO: THE JOINT COMBAT OF THE SERIOUS (ORGANIZED) CRIME IN THE HEART OF AMSTERDAM] 25, 191–92 (2011).

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

cultivation or violation of the stock-rule by coffee shops, the police do not do any deep investigation into the interweaving.<sup>251</sup> This makes our insight gritty.

This supply is a criminal act, which implies that coffee shops have to deal with criminals for their supply. How far coffee shop owners or their personnel are involved in supply or in (organized) criminal networks that cultivate cannabis is not clear. Research into (31 of the 74) coffee shops in the center of Amsterdam indicated that some of them were indeed involved, but others were not.<sup>252</sup> Some authors argue that the lenient policy toward coffee shops fostered the growth of widespread cannabis cultivation in the Netherlands.<sup>253</sup>

Despite the lack of exact figures about the profits of coffee shops, it is clear that a lot of money is involved in cannabis cultivation, as well as in the retail sale of cannabis.<sup>254</sup> The turnover of coffee shops was estimated (in 2006) at a total of 211 to 283 million euros.<sup>255</sup> In 2013, the total turnover over of the then 606 coffee shops was estimated to be between €

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<sup>251</sup> *Id.* at 193.

<sup>252</sup> *Id.* at 195–97.

<sup>253</sup> JANSEN, *supra* note 8, at 106; FIJNAUT & DE RUYVER, *supra* note 84, at 125; E.R. KLEEMANS ET AL., GEORGANISEERDE CRIMINALITEIT IN NEDERLAND: TWEDE RAPPORTAGE OP BASIS VAN DE WODC-MONITOR [ORGANIZED CRIME IN THE NETHERLANDS: SECOND REPORT BASED ON THE WODC-MONITOR], 71 (2002) (with a report summary in English); BOEKHOUT VAN SOLINGE, *supra* note 30, at 134–35.

<sup>254</sup> *See generally* B. Bieleman & J. Snippe, *Coffeeshops en criminaliteit [Coffeeshops and Criminality]*, 32 JUSTITIËLE VERKENNINGEN 46 (2006); Marten van de Wier, *Nederlandse coffeeshops zetten één miljard euro om [Dutch Coffeeshops have a Turnover of One Billion Euros]*, TROUW (Jan. 2, 2016 7:00 AM); PROJECTGROEP EMERGO, *supra* note 248, at 192; van der Giessen et al., *supra* note 113, at 104, 107; A.W.M. VAN DER HEIDEN, DE CANNABISMARKT IN NEDERLAND: RAMING VAN AANVOER, PRODUCTIE, CONSUMPTIE EN UITVOER [THE CANNABIS MARKET IN THE NETHERLANDS: ESTIMATE OF SUPPLY, PRODUCTION, CONSUMPTION AND EXPORT] 26, 32, 50, 53 (2006); FLOOR JANSEN, GEORGANISEERDE CRIMINALITEIT: CRIMINALITEITSBEELDANALYSE 2012 [ORGANIZED CRIME: CRIME ANALYSIS 2012] 59–60, 63–64 (2012); N. MAALSTÉ & T. BLOK, BINNENLANDSE CANNABISMARKT: ONDERZOEK NAAR DE HOEVEELHEID CANNABIS DIE IN 2013 VIA COFFEESHOPS OP DE NEDERLANDSE MARKT KWAM [DOMESTIC CANNABIS MARKET: STUDY INTO THE AMOUNT OF CANNABIS THAT CAME ON THE MARKET IN THE NETHERLANDS VIA COFFEE SHOPS IN 2013] 9, 11 (2014); A.C.M. SPAPENS ET AL., DE WERELD ACHTER DE WIETTEELT [THE WORLD BEHIND THE CANNABIS CULTIVATION] 61 (2007).

<sup>255</sup> *See generally* Bieleman & Snippe, *supra* note 254.

875 million and € 1.25 billion (with a 95% confidence interval).<sup>256</sup> The turnover of 52 coffee shops in the center of Amsterdam in 2007 was an average of about € 515,150.40 per coffee shop (according to the tax authorities, but the tax returns are not always trustworthy).<sup>257</sup> Van der Giessen et al. estimate the total annual consumption of domestic cannabis ('nederweed') at 51 to 78 tons (after Monte Carlo simulation, the consumption by non-residents included, 95% confidence interval), and the domestic production of cannabis at 271 to 613 tons (after Monte Carlo simulation, 95% confidence interval).<sup>258</sup> They estimate that 78 to 91% is exported (after Monte Carlo simulation, the consumption by non-residents included, 95% confidence interval).<sup>259</sup> Van der Heijden estimated the prevalence of annual cannabis consumption in the Netherlands at 57-76 tons and of nederweed 37-54 tons (most probable range) and production at 323 to 766 tons; 88-93% is exported.<sup>260</sup> Jansen estimated consumption in 2011 at around 65 tons and production at 448 tons.<sup>261</sup> Maalsté and Blok estimate that the coffee shops in the Netherlands sold in total about 139 tons of nederweed and about 26 tons of hashish in 2013 per year.<sup>262</sup> They observe big differences in distribution between coffee shops, due to the fact that some are small and others are very big.<sup>263</sup>

Despite the differences in amounts estimated, it is clear that a reasonable amount of money must be involved in the supply of cannabis at the "back door" of the coffee shops. At the same time, the cannabis cultivation in the Netherlands became professionalized and criminal networks became involved, which implies that coffee shops (to an unknown extent) have to deal with those networks.<sup>264</sup> Because investment via banks is difficult for coffee shops, there is a risk that they

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<sup>256</sup> van de Wier, *supra* note 254.

<sup>257</sup> PROJECTGROEP EMERGO, *supra* note 248, at 192.

<sup>258</sup> van der Giessen et al., *supra* note 113, at 104, 107.

<sup>259</sup> *Id.*

<sup>260</sup> VAN DER HEIJDEN, *supra* note 254, at 26–27, 50, 53.

<sup>261</sup> JANSEN, *supra* note 254, at 59–60, 63–64.

<sup>262</sup> MAALSTÉ & BLOK, *supra* note 254, at 9, 11.

<sup>263</sup> *Id.*

<sup>264</sup> FIJNAUT & DE RUYVER, *supra* note 84, at 115–16, 120; SPAPENS ET AL., *supra* note 254, at 61–80; JANSEN, *supra* note 254, at 49; J. SNIPPE ET AL., PREVENTIEVE DOORLICHTING CANNABIS-SECTOR C.A. [PREVENTIVE INVESTIGATION INTO THE CANNABIS-BRANCH CUM ANNEXIS] 120 (2004).

become involved in money laundering or get dependent from criminal investments.<sup>265</sup> The municipalities therefore use a license system for coffee shops, for which they can screen, on the basis of a law, the potential criminal engagement of coffee shop entrepreneurs before a license is given.<sup>266</sup> It can be assumed that, by implementing this law on screening on criminal involvement, investments in coffee shops becomes less attractive for criminal networks.

Another question is whether people working in the coffee shop business have a criminal history. Of the 560 persons who worked in a coffee shop in the city center of Amsterdam in 2010, 243 (43%) had no criminal record; 172 do have a criminal record, but only for minor things and 145 (26%) have a relevant criminal record.<sup>267</sup> Twenty-one percent of their crimes is drug related, 17% concerns traffic crimes and 10% violent crimes.<sup>268</sup> In total it concerns 1,036 crimes, which is considerable.<sup>269</sup> Some entrepreneurs and owners were linked to criminal networks, but the extent in which this occurs and the exact nature of the links remains unclear.<sup>270</sup> Another exploration was carried out in 2004 and indicated that relatively many cannabis entrepreneurs (60% of the coffee shops in Venlo and 79% of the coffee shops in Amsterdam) have a criminal record, mainly with regard to cannabis (like having more than 500 grams of cannabis in stock) but also hard drug crimes acquisitive crimes, violent crimes and crimes with weapons and munitions.<sup>271</sup> No definitive conclusions can be drawn about direct links with organized crime.

## VI. SUMMARY AND CONCLUSION: A WICKED PROBLEM

The tolerant policy with regard to coffee shops is embedded in a health oriented drug policy that wants to keep the risks of drug use as low as possible. Coffee shops are assumed to contribute to a separation

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<sup>265</sup> Bieleman & Snippe, *supra* note 255, at 54–55.

<sup>266</sup> *See generally* Wet bevordering integriteitsbeoordelingen door het Openbaar Bestuur [Act to Stimulate Integrity Screenings by Authorities] 20 juni 2002, Stb. 2002, p. 1 (Neth.).

<sup>267</sup> PROJECTGROEP EMERGO, *supra* note 248, at 194.

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.* at 195–97, 202.

<sup>271</sup> SNIPPE ET AL., *supra* note 264, at 78–79, 81, 83, 98, 100.

of the cannabis retail market and the retail market of more dangerous drugs, by offering cannabis users a safe place to buy their cannabis. As customers of a coffee shop, users will not be marginalized, criminalized or exposed to ‘hard drugs.’ Coffee shops fulfill this role. Adverse effects on an increase of cannabis use are modest, which can be explained by the fact that the prevalence of cannabis use is determined by many other factors outside the presence or absence of coffee shops. The first conclusion is that, in this respect, the cost-benefit analysis turns out as favorable for the coffee shop system. The cannabis user profits from the coffee shop system.

Youngsters, and especially vulnerable youngsters, show a relatively high prevalence of use, though. Youngsters also think that cannabis is easily available and that the risk of use is low. A direct link to the coffee shop system is not observed, but it might play a role in a complex interplay of other factors. A second conclusion is that it is important to enforce the rules for coffee shops, in order to keep them small-scale and modest, in combination with effective prevention programs in schools.

The Dutch coffee shops system stops at the borders of the Netherlands. In neighboring countries, cannabis can only be obtained on illegal markets. As a consequence, many foreign users found their way to the Dutch coffee shops. They appreciate the existence of coffee shops and the geographic accessibility and praise the good quality of the cannabis and the broad assortment of cannabis varieties they can buy there.<sup>272</sup> This ‘drug tourism’ caused public nuisance around coffee shops in border regions. Several measures were taken, and the third conclusion is that municipalities managed to control the problem. Yet, the experiences show that it is not such a good idea to introduce a deviant drug policy in an individual country that is so close to neighboring countries with more restrictive policies. My fourth conclusion is, consequently, that drug policies should be coordinated in an international framework.

The license system with a limited number of licenses per municipality in combination with the continuing demand for cannabis make the coffee shop business, on the whole, a lucrative one, especially in places with a lot of drug tourists. An enormous commercialization occurred. The

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<sup>272</sup> DE RUYVER & SURMONT, *supra* note 192, at 74.



license system creates opportunities to control the coffee shops, but on the other hand (I conclude) appears to carry the risk of excesses.

Finally, little is known about the coffee shop's involvement in organized crime and cannabis cultivation. Involvement is observed, but our knowledge is incomplete. Whether the system fostered domestic cannabis cultivation is not clear either. All we know is that the domestic production is wide-spread and, for a large part, meant for export.

The most curious feature of the system is, in my view (and in the view of many others), the halfway regulation. The Netherland's coffee shop policy somehow stuck in the middle of a regulated system. The retail sale is regulated with an increasing number of rules on national and local level, but the supply stayed completely illegal. A coffee shop has to operate between a 'white' front door and a 'black' back door. The coffee shop system as it is encountered a lot of criticism from abroad. It can be imagined that policy makers on the national level do not want to stretch it even further, even if it would be permissible under international treaties. However, it is not a quiet situation. The debate has been going on for years.

The coffee shop system has characteristics of a "wicked problem": it poses a problem that is difficult to solve because of incomplete and contradictory information. Every statement has a "but." Coffee shops have their benefits for users, *but* their exact role with regard to cannabis use is difficult to determine. Cannabis can be a harmful drug, more harmful than was thought in the 1970s, *but* less harmful than most other drugs. Cannabis cultivation and trafficking became wide-spread, *but* we can only hypothesize about the role of the coffee shops in this development. A number of coffee shop entrepreneurs are involved in crime and criminal networks, *but* we do not know to what extent this occurs. These "buts" leave room for conflicting viewpoints and ideological debates in the Netherlands. Some political parties in the Netherlands argue that the system goes too far and that the Netherlands should ban coffee shops;<sup>273</sup> others (like liberal and left-wing parties in the

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<sup>273</sup> FIJNAUT & DE RUYVER, *supra* note 84, at 165; CHRISTEN DEMOCRATISCH APPEL (CDA) [CHRISTIAN DEMOCRATIC APPEAL], KEUZES VOOR EEN BETER NEDERLAND, VERKIEZINGSPROGRAMMA 2017-2021 [CHOICES FOR BETTER NETHERLANDS: POLITICAL PROGRAM 2017-2021] 29 (2017); CHRISTENUNIE [CHRISTIAN UNION], HOOPVOL REALISTISCH, VOORSTELLEN VOOR EEN SAMENLEVING MET TOEKOMST,



Netherlands and the majority of municipalities with coffee shops) argue that it does not go far enough and that the regulation (or even legalization) should include the supply of the shops.<sup>274</sup> A bill from the liberal party Democrats 66 to regulate the supply to the coffee shops by a system in which not only coffee shops, but also the cultivation and the sales for the coffee shops are tolerated was accepted in the Lower House of the Dutch parliament in February 2017.<sup>275</sup> The bill is now on the agenda of the Senate.<sup>276</sup>

It is difficult to say which direction the system will take in the future. Shall the coffee shop system survive? How will the Senate vote about the bill to regulate the supply of cannabis to coffee shops? The ideology of the ruling parties after the elections in the Netherlands of 2017, in combination with international developments (in Uruguay, the US, Spain, harmonization on European level), might facilitate a change in one direction or the other. Change in the case of coffee shops and their supply seems to depend not so much on scientific evidence, but rather on the political will of national policy makers.

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VERKIEZINGSPROGRAMMA 2017-2021 [HOPEFUL REALISTIC, PROPOSALS FOR A SOCIETY WITH A FUTURE: POLITICAL PROGRAM 2017-2021] 24 (2017).

<sup>274</sup> FIJNAUT & DE RUYVER, *supra* note 84, at 165–66; *see generally* TWEDE KAMER DER STATEN-GENERAAL [LOWER HOUSE OF THE PARLIAMENT], WET GESLOTEN COFFEESHOPKETEN [BILL FOR A CLOSED COFFEE SHOP CIRCUIT] TK 52-40 (2017); *see generally* TWEDE KAMER DER STATEN-GENERAAL [LOWER HOUSE OF THE PARLIAMENT], 34165, NR. 7, VOORSTEL VAN WET VAN HET LID BERGKAMP TOT WIJZIGING VAN DE OPIUMWET TENEINDE DE TEELT EN VERKOOP VAN HENNEP EN HASJIESJ VIA EEN GESLOTEN COFFEESHOPKETEN TE GEDOGEN (WET GESLOTEN COFFEESHOPKETEN) [BILL OF THE MEMBER BERGKAMP TO TOLERATE THE CULTIVATION AND SALES OF HEMP AND HASHISH VIA A CLOSED COFFEE SHOP CIRCUIT (LAW CLOSED COFFEE SHOP CIRCUIT)] 2017; *see* GROENLINKS, TIJD VOOR VERANDERING, VERKIEZINGSPROGRAMMA 2017-2021 [TIME FOR CHANGE: POLITICAL PROGRAM 2017-2021] 65 (2017); MEESTERS, *supra* note 83, at 7.

<sup>275</sup> TWEDE KAMER DER STATEN-GENERAAL [LOWER HOUSE OF THE PARLIAMENT], STEMMINGEN WET GESLOTEN COFFEESHOPKETEN [VOTINGS ABOUT THE BILL FOR A CLOSED COFFEE SHOP CIRCUIT] TK 55-14 (2017); *SEE GENERALLY* EERSTE KAMER DER STATEN-GENERAAL [THE SENATE], 34165, A, VOORSTEL VAN WET VAN HET LID BERGKAMP TOT WIJZIGING VAN DE OPIUMWET TENEINDE DE TEELT EN VERKOOP VAN HENNEP EN HASJIESJ VIA EEN GESLOTEN COFFEESHOPKETEN TE GEDOGEN (WET GESLOTEN COFFEESHOPKETEN) [BILL OF THE MEMBER BERGKAMP TO TOLERATE THE CULTIVATION AND SALES OF HEMP AND HASHISH VIA A CLOSED COFFEE SHOP CIRCUIT (LAW CLOSED COFFEE SHOP CIRCUIT)] 2017 [hereinafter Senate Bergkamp Bill].

<sup>276</sup> *See generally* Senate Bergkamp Bill.

