

Public Hearing on drug reform and cannabis regulation, a way out of the crisis?

European Parliament, Brussels, December 8th, 2010

Presentation by Martin Barriuso, president of the National Confederation of Cannabis Organisations (FAC), Spain.

Introduction:

“Now we'll invite to the floor Martin Barriuso from Spain. Martin is one of the front people of the Spanish cannabis movement, president of the Cannabis Consumers Club Canna in Bilbao, that is working in a closed circuit between consumers and producers of cannabis since april 2004, with the consent of local political and legislative authorities. Barriuso is also president of the National Federation of Cannabis Associations in Spain, FAC.”

Martin Barriuso:

“Thank you very much, especially to the Greens group and the European Union for this opportunity to explain what we are doing in Spain. The title of my presentation is 'Cannabis Social Clubs: a normalization experience at work'. We are in this moment in our federation with 21 organisations, from different regions in Spain, but in this moment there are hundreds of Cannabis Social Clubs being founded in Spain. So it's a boom, it's a great social phenomenon. We are the first experiences, that started some years ago.

So I tell a little historical background to understand the Spanish legal situation, which is specific but not very different from other European countries. Spain signed up the United Nations Single Convention on Drugs in 1966 and next year the parliament, it was during Franco's dicature, they approved a new drugs law that states that possession is always illicit, except with authorisation from health authorities. Only medical and scientific use are authorised, but almost never have been really applied after that date and simple possession isn't punished. The only punition was seizure.

In 1973 the penal code changed to include drug trafficking as a crime, drug trafficking is punished by prison in Spain. In the case of cannabis it's one to three years of prison for a small amount and three to nine years for a big amount or for being part of a great trafficking organisation et cetera. But in 1974 the Supreme Court decided that consumption is not a crime in Spain. So simple possession and use, personal use never were a crime in Spain. So it was easier to develop some kind of model based on personal consumption. After that a subsequent a judicial of crime unanimous about this, there is no doubt in Spain that consumption of any kind of illegal drug is not a crime.

Between 1975 en 1992 the decriminalisation concept is defined but not completely: a donation is considered not a crime. For example a mother takes some heroin to prison to give to her son, who is there with abstinence syndrom for example, that's a compassionate donation, it's not a crime. Sharing among peers is not a crime. And buying and distributing inside a peergroup, for example a group of addicts who put their money together to buy cheaper together, is not a crime. But cannabis possession and cultivation were never regulated. So we don't know what's the legal amount for personal possession and we don't know the legal amount of plants you can cultivate for yourself. So it depends on the region, on the judge, et cetera. You could have problems or not with the same amount of plants of marihuana. So it's a great lack of security, legal security.

In 1992 the organic law on public security of was approved and there the possession and consumption in public spaces is fined with fines and seizure, even for personal consumption. But it's only an administrative fine, it's not a crime. Next year it was created the first Cannabis Association in Spain, Ramón Santos Association for the Study of Cannabis (ARSEC) in Barcelona and the first thing they did was ask the question to the public prosecutor. And the question is: if

consumption is not a crime, is it illegal to grow for self consumption? And the prosecutor said: I think it's not a crime, but I need concrete fact. And they decided to give him some concrete fact and they did a first collective plantation in 1994, which was publicly notified to the special anti-drugs prosecutor and they planted 200 plants for 100 people.

It was the beginning of an associative movement for self cultivation and we created the basis of the new model. In 1996 we founded the National Coordination for Cannabis Normalisation with first eight associations and we started a campaign called 'Against Prohibition of a Plant'. As a result of this campaign Kalamudia, a Basque organisation we founded in 1999, with three public cultivations to try to clarify it, if our activities this were really. In the first one, we were 200 people, including some members of the Basque and Navarra Parliament, some artists, members of trade unions et cetera. It had big attention in the media and sociale debate and finally we harvested. It was the first time that a great amount of marihuana was legally harvested in Spain.

In 2000, that's an important event, it's a legal report by Juan Muñoz and Susana Soto for the Andalucian government, about the conditions for legal distribution of cannabis in Spain. And they did a revision, a report on the Supreme Court sentences and they decided that it is possible inside Spanish law, but with these conditions. The first one is that it has to be a completely adult group, it has to be a closed circuit, they must have previously been users and the consumption has to be in a private place, so the club has to be a private place or a closed circuit of adult previous users. And it has to be non-profit, because the main legal problem in Spain is trying to become rich selling, not only producing for the group if you are not earning more.

The club model we decided at his moment had a strong legal basis and in 2001 we founded the first Cannabis Club with that name, the Cannabis Tasters' Club in Barcelona. And after that, in the Basque conuntry we started with the first club that really distributed marihuana, with distributioon activities. In 2005 in the Association where I work, Pannagh, we had a police operation. It was a police mistake; they were looking for some dealers but they found out us and they arrested four of us. And 150 kilos of fresh marihuana was seized and 17 kilos of dried marihuana was seized. They say marihuana, but it was a lot of shit. Sorry, but it was almost rotten, it was a lot of leafs and even roots. We don't believe that it was really marihuana, but they were saying 17 kilos of dried marihuana.

During the process a parliamentary question was asked to the Commission by mister Giusto Catani and he was answered by Justice Commisioner mister Frattini in march 2006. And the answer was that regulation of personal drug use is a competence of member states and there is no international law that binds them to pursue. So member states of the European Union have the freedom to decide if they want to criminalise or not drug use and they can regulate their personal consumption the way they want. That is the European law. The file was closed the same month of March of 2006 and we received, we took back the plants. It was the first time in legal Spanish history that a big amount of marihuana was recovered.

And after that there was another interesting legal report, the Basque Government legal report on Green Farm cannabis social club. It especially mentions that one of the goals of the group is producing cannabis for members and that the question to the legal services of Basque government, I can't do anything about that, you know, with the law, we have a problem. So after the sentences on some other clubs, the Basque government did this official legal report. In this report, the legal services of Basque police say that these kinds of activities are completely legal, both from a penal point of view and from an administrative point of view. So it's not a crime but also not an administrative infraction.

That is the situation in this moment. There are a lot of Cannabis Clubs working, I'm explaining

more or less what the normal way of work is, for a normal Cannabis Social Club in Spain. The first step is the legal registration of association. In every region there is an association record book and the first step is to inscribe, to register there the association. The second step is a collective cultivation agreement: members decide to cultivate and sign up an agreement to cultivate collectively. The next step is to rent buildings or land for cultivation and that cultivation is calculated from the consumption forecast of the members. For example: we need 30 kilos for all the year for all the members, so we are cultivating to produce 30 kilos. More or less, it's not mathematics, but we try to have that kind of prevision.

The care of plants is provided by volunteers, by association staff or professional farmers that work for the association. The distribution is done in the club in quantities for immediate consumption. We produce also resin, alcohol for external use -for massage for example-, tinctures for oral use, creams, oils, sweets et cetera. We have a private space for members consumption, they don't have to go out on the street to use, they have the right to use the association as a consumption place. They pay proportional consumption fees to cover production and management, so we calculate how much money we have spent to produce that, including salaries, transport, fertilizers, bud cleaning machines or every kind of things we need to do that, including management expenses. And the fees are proportional to the consumption of each one.

A member's invitation is necessary to enter the club, or if not, you need a medical letter saying that your doctor thinks that marihuana is helping you or cannabis use is helping you. The administrative and fiscal situation is almost normal in this moment, we have legally contracted staff and we pay Social Security fees, Rent Tax, Corporate Income Tax and in some cases we also pay the VAT, 18 % in the Basque Country. Yes, we are actually paying, it's absolutely crazy, because if the police discover that marihuana in your pocket on the street, they can take it and put a fine. But before that seizure, you pay for the VAT. It's not very coherent, but it's happening in this moment. And we have some other social activities like courses, legal and medical advice, cannabis cups, research, cultural activities, demonstrations, et cetera. We are not only a distribution point, we are also a social activities point.

We have proposed a mechanism for control of Cannabis Social Clubs. Because in that legal report from Basque government that I mentioned, they say that our activities are legal but it's necessary to control the concrete activities to overview that we are not trespassing the red line and that we are not doing crime under the umbrella of a club. So we have proposed in Basque Parliament last November some mechanism for control. And in this moment about half of parliament is in favour of our proposal, we are dealing with all the parties but exactly half of the parliament members are in favour and the other half are thinking about it. No one has said that they are against clearly, but they are thinking.

The proposal is to create a separate Association Book of Records for groups that will cultivate cannabis, or other psychoactive plants because this model is able to be applied for other psychoactive plants. And the annual presentation of club accounts, in order to overview that it is really a non-profit organisation. And we have in this moment a consumption record book of members consumption, we know how much does each member use during the year, we know if somebody is using more than last year. So members have the opportunity to know really how many grams are they using, because most of them didn't know really how many grams they smoke and they can control the evolution of their consumption.

And we asked the development a protocol for the control of crops and transport, with a census of growing sites, with inspections from the police after planting and during harvest time and with an authorisation to transport from growing site to the club. We are trying to be overview during the whole process in order to prove that we are really inside the legal field. This is an alternative to

illicit markets. Cannabis Social Clubs have taken cannabis users and also cannabis out from the illicit market just from now. In this moment we are thousands of users in Spain that are not spending money on the black market. We prevent access by minors, minors are forbidden in the clubs, it's only for adults. So for example my club is on the fourth floor of a commercial building, you have to ring downstairs, you have to ring upstairs. And there is no way to know that we are there, so even if we were in front of a school, the children never will know that we are there.

So called 'psychoactive tourism' is limited: you can't arrive to a club and in the next minute buy some marihuana. You have to know some member, you have to be invited and you have to do your consumption provision. But if you go to live in another place, if you move to Bilbao for example, you can become a member. Not just for a short visit, but just if you are arriving there. We have in this moment one authorised medical user from Canada and another one from California, that came to Bilbao for work and they took their medical papers from Canada and California and they were accepted in our club, and they are members in his moment. So our idea is to have a network of private clubs and if you move from your town to another town you have the right, with your club's identity card to go to another club. We think this is a good system to stop the social harm sometimes about psychoactive tourism.

It's not necessary to denounce international treaties, because personal consumption is a national competence. A non profit circuit appears, and I think it's very interesting, because no one is interested in increasing consumption. Because users themselves manage the association and they have no interest in increasing their own consumption. So it's a big difference with a commercial profit circuit. And that's a choice to do, because in this moment in Spain there are two circuits working together. One with maffia, lots of black money, huge repression expenses, illegal dealers, unknown quality, easy access for minors and reduced liberties. And another one with a non profit democratic organisations, legal workers, tax collection, controlled quality, limits to minors access and assumed rights.

I will shortly explain a little bit, some figures about the fiscal impact of Cannabis Social Clubs. I take the figures from Pannagh association from last year, a 2009 exercise. We had 200 members, we had 1,5 direct workers, employees and six indirect employees, between farmers. We paid €17.000 social security fees for association's workers and the farmers paid another €14.000. We paid €7.700 rent tax and the farmers paid another €3.000. We paid more than €11.000 of society tax. We didn't pay the VAT tax last year in our province, but if we would pay it, it would be another €14.000. And we paid another €6.000 in indirect VAT.

So in a scenario with one million members in clubs in Spain, it's sixty percent of daily users and thirty percent of frequent users, so it's not very utopic, it should be 7.500 direct employees and 30.000 indirect employees. With social security fees, rent tax, society tax and VAT, the total direct income for institutions should be 367 million euros in Spain for one million member in clubs. And for the whole European Union, with 23 million users, it should be 8.400 million euros in direct revenue for institutions, not including the economic movement that the clubs provoke with transportation, buying materials, telephone et cetera. It's only direct tax revenue for institutions with a club like ours. It's a complete, real and working example and those are real figures in our case.

So we are thinking about, we have a strong discussion about if this should be a transitional model or a final model. We are discussing about this, we think that this model has many advantages against full legalization of trade: no need to change UN Conventions, democratic management by the users themselves, there is the non profit nature that I mentioned and direct contact between producers and users, no middleman that can adulterate or make the product more expensive, with direct quality control by the users themselves. They decide what to plant and how to plant.

We don't like the idea of tobacco or alcohol production and distribution model applied to cannabis, with promotion campaigns, profit based companies, lack of information about tobacco addictives, we don't really know what we are smoking when we are smoking tobacco. And we don't like that kind of model so we prefer our private club model. We think that Cannabis Social Clubs are an opportunity for Europe to lead a change in current drug policies and to experiment with new approaches. The club model can be developed on a national level, with some European common criteria and it means that we have no need to wait for the necessary change, we can start with the change today. That's all, I end with this cartoon from Roto in *El Pais*, he is a very famous cartoonist in Spain and I think it's a nice conclusion for this speech. Thank you very much.”

Transcript: Derrick Bergman / GONZO Media 2011