

29 June 2011

Mayor's closure of Maastricht coffee shop ruled unlawful

The mayor of Maastricht should not have closed the Easy Going coffee shop for a three-month period in September 2006, according to a judgment given today by the Administrative Jurisdiction Division of the Council of State. The mayor closed the coffee shop, owned by Marc Josemans, temporarily in 2006 after it admitted foreign tourists in contravention of a Maastricht general municipal byelaw.

In today's judgment, the Administrative Jurisdiction Division of the Council of State held that Maastricht's byelaw contravenes the Opium Act, but not the Dutch Constitution or European law.

In the Netherlands the sale of soft drugs is prohibited by the Opium Act. The Council of State ruled that given the Act's absolute ban on the sale of soft drugs, the municipality may not regulate the sale of soft drugs by means of a municipal byelaw and decisions based on it without reference to the Opium Act. To combat drug tourism, Maastricht included a 'residence criterion' in its byelaw and authorised the mayor to designate the establishments to which it would apply. The criterion prohibited the admission of foreign nationals not resident in the Netherlands to certain types of catering establishments in the municipality. The mayor designated coffee shops as one such type. The mayor said the criterion was a 'suitable and appropriate method' to end the nuisance caused by the large numbers of foreign tourists who visit Maastricht's coffee shops. The byelaw provided that the mayor could close such establishments for a certain period if they did not respect the ban on tourists. The mayor decided to close the Easy Going coffee shop temporarily in 2006 after he observed the admission of non-residents on two occasions.

European law does not stand in the way of municipalities' using the residence criterion in their general byelaws when it comes to admission to coffee shops and the sale of products other than soft drugs. The criterion does however infringe European law on the freedom to provide services, but according to a judgment by the European Court of Justice on 16 December 2010, this infringement is permissible in the interests of combating drug tourism and the nuisance associated with it. In the judgment, the Court responded to the Council of State's request for its interpretation of provisions in the EC Treaty concerning the free movement of goods and services.

The residence criterion is also compatible with the Dutch Constitution's ban on discrimination. According to the Council of State, it applies 'indirect discrimination based on nationality, but in this case there are objective and reasonable grounds' for doing so. The mayor had demonstrated that public order in the city was being disrupted by the rising influx of drug tourists and that the residence criterion could offer a solution to this problem.

The judgment does not mean the mayor has no further statutory scope for taking measures against coffee shops that he believes cause nuisance problems. Under the Opium Act itself, the mayor may impose an enforcement order against coffee shops selling narcotics.

No appeal is possible against the Council of State's judgment.