

18 June 2014

### **Maastricht mayor entitled to close coffee shop temporarily in May 2012**

The Administrative Jurisdiction Division of the Council of State ruled today (18 June 2014) that the mayor of Maastricht's decision to close the Easy Going coffee shop for a month in May 2012 was lawful. He ordered the temporary closure for failure to comply with the residence criterion. On two occasions, the proprietor of Easy Going had allowed non-residents of the Netherlands to enter the coffee shop. The proprietor is of the opinion that the residence criterion is a violation of treaty law and fundamental rights because it makes an unjustified distinction on the basis of nationality. (In the Netherlands, a coffee shop is an establishment where cannabis may be sold subject to certain strict criteria.)

### **Public policy and health**

In its decision, the Administrative Jurisdiction Division considered that the mayor has the authority to close coffee shops under the Opium Act, which is national legislation intended to serve the interests of public policy and health. In the Administrative Jurisdiction Division's opinion, a mayor may take these interests into account along with interests that fall under 'municipal management'.

### **Legitimate objective**

Because the residence criterion entails indirect discrimination on the basis of nationality, it is necessary to determine whether there is an 'objective and reasonable justification' for making the distinction concerned. The standard is that a distinction must serve a legitimate objective, must be proportionate to the objective and must be a suitable means to achieve it. The residence criterion enables the mayor to prevent drugs tourism in accordance with anti-drugs policy, and ensure that coffee shops resume their role as a local service. As such, they are less likely to come under the influence of organised crime. In the view of the Administrative Jurisdiction Division, the mayor's enforcement of the residence criterion thus served a legitimate objective.

### **Suitable means**

The highest general administrative court also considers the residence criterion prohibiting non-residents from entering coffee shops a suitable means of achieving the objective of preventing drugs tourism. According to the Administrative Jurisdiction Division, 'The residence criterion is a proportionate measure for combating drugs tourism and this legitimate objective cannot be achieved by other, less radical means.'

No appeal can be brought against judgments delivered by the Administrative Jurisdiction Division.

**Advisory opinion of the State Councillor Advocate General**

Earlier in the proceedings, the Administrative Jurisdiction Division had asked State Councillor Advocate General Leen Keus to issue an advisory opinion on various district court judgments concerning the residence criterion. He was asked to examine whether the criterion is contrary to the Constitution, international law or European law. Mr Keus came to the conclusion that it is not.