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Medical Cannabis in Switzerland

A Paradigm Shift in Swiss Regulations

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Abstract: The decision of the Swiss Parliament to declare cannabis containing THC as a marketable substance with regard to the medical use represents a turning point in Swiss cannabis regulation. Before, cannabis narcotics have been subject to a traffic ban. The liberalisation aims in particular to facilitate the research and development of medicinal products based on cannabis. Core of the new regulation is a two-stage licensing procedure for the cultivation of cannabis plants. The revised law assigns the responsibility to decide on an adequate therapy with cannabis medicinal products to the treating physician.

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I. Introduction

The Swiss Parliament decided to declare cannabis containing tetrahydrocannabinol (THC) as a marketable substance with regard to the medical use.[1] In order to make it easier to use cannabis medicinal products, the ban on the circulation of cannabis for medicinal purposes set out in the Federal Act on Narcotics and Psychotropic Substances of 3 October 1951 (NA) will be lifted. This allows the narcotics of the effect type cannabis used for medical purposes to be reclassified from the prohibited to the controlled narcotics with restricted circulation. Cannabis used for non-medical purposes, on the other hand, remains prohibited without change. The obligations under international law will thus continue to be complied with.

This decision represents a turning point and a paradigm shift in Switzerland. Cannabis has been classified as a prohibited narcotic since the revision of the Narcotics Act of 1 August 1975. Since then, narcotics of the cannabis effect type have been subject to a comprehensive traffic ban.[2] In contrast to controlled narcotics such as cocaine, fentanyl, methadone or morphine, which have a restricted marketability for medical and scientific purposes within the framework of the narcotics law control system, prohibited narcotics such as cannabis were in principle considered to have no medical or scientific use.[3] It was not until a revision of the law, which came into force in 2011, that the medical usability of cannabis was recognised.[4]

Due to the circulation ban, an exceptional permit from the Federal Office of Public Health (FOPH) was required for the use of cannabis with a THC content of over 1%.[5] Subject to restrictive conditions, the FOPH was also able to grant treating physicians a corresponding exceptional permit for medical use. However, according to the practice of the FOPH, this required that the patient was suffering from an incurable disease and that existing treatment options had already been exhausted.[6]

According to the current Narcotics Act (NA), narcotics of the cannabis effect type may neither be cultivated, imported, manufactured nor placed on the market.[7] The medical use of cannabis within the framework of the regular narcotics control system is excluded. However, the FOPH may, on the basis of Art. 8 para. 5 NA, authorise the marketing of prohibited narcotics for the purposes of scientific research, medicinal product development or restricted medical use, provided that no international agreement is in

1 Dispatch of 24 June 2020 on the amendment of the Narcotics Act (Cannabis medicinal products), BBl 2020 6069, p. 6070.

2 Dispatch on the amendment of the Narcotics Act (fn. 1), sect. 1.1.1.

3 Dispatch on the amendment of the Narcotics Act (fn. 1), sect. 1.1.1.

4 Dispatch on the amendment of the Narcotics Act (fn. 1), sect. 1.1.1.

5 In this respect, a distinction is made between industrial hemp and narcotic cannabis. According to list d of the NDO only the cannabis plant or its parts that have an average total THC content of at least 1%, as well as all objects and products that have a total THC content of at least 1% or which are produced from hemp with a total THC content of at least 1% are subject to said prohibition (Fingerhuth/Schlegel/Jucker, OFK-BetmG, Art. 8 N 24).

6 Dispatch on the amendment of the Narcotics Act (fn. 1), sect. 1.1.2.

7 Art. 8 of the Federal Act on Narcotics and Psychotropic Substances of 3 October 1951 (NA).

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