

**8<sup>th</sup> IAP European Regional Conference**  
**Hate Crime**  
**The Hague, 12 – 14 March 2008**

**The ‘Van Gogh – case’**

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November 2nd 2004: during the morning rush hour, the well-known Dutch film-maker Theo van Gogh is murdered by Mohammed Bouyeri. An offense that was committed out of hatred. Mohammed Bouyeri hated Dutch society, the legal system and democracy. He hated Theo van Gogh for what he was saying, what he stood for, and because of the film *Submission* that Theo van Gogh had made together with Ayaan Hirsi Ali. At least.....that's what we think. But is this indeed the case?

Ladies and gentlemen, based on the case study of the van Gogh murder and its negative effects on Dutch society, I would like to make some remarks on Hate Crimes in relation to relevant Dutch legislation. Or maybe I should say, the lack thereof.

As Mr. Moraal said in his welcoming address, here in the Netherlands we have not included any real Hate Crimes in our legislation.

What are the consequences of this? Are we able to get by in the Netherlands without having any specific Hate-Crime regulations? At the end of my speech, I will try to juxtapose this with what might be in store for us in the coming month: an announced film by member of parliament Wilders about Islam and the Koran. Of course, this can only be in terms of probabilities. After all, we do not know what the contents of the film will be. Furthermore – considering the delicate subject-matter – I will have to be somewhat cautious.

Let me First introduce to you the three main protagonists:

Theo van Gogh.  
Just turned 47.

Great-grandson of the brother of the famous painter Vincent van Gogh.

During his lifetime, he was a columnist, television presenter and film-maker.

An incorrigible hatchet man, who made the insult into an art form.

He would call this “functional insulting”.

One part of his message: warning about a Fifth Column of “goat-fuckers” who are trying to tamper with the free way of life in the Netherlands.

And freedom of speech.

As a columnist, he was constantly seeking the limits of what was acceptable.

He agitated against hypocrisy in any form.

He often expressed himself in a rude and offensive manner.

He was charged three times for statements that were seen as anti-semitic, or insulting to Christians and Muslims.

He was never convicted.

Theo van Gogh promoted freedom of expression in the most absolute sense.

But also for everybody.

A born provocateur.

Theo van Gogh was also a film director who had won four Dutch film awards.

Together with Ayaan Hirsi Ali, he made the provocative film *Submission*.

Ayaan Hirsi Ali.

Former member of parliament in the Netherlands.

Born in Somalia to a Muslim family.

She was circumcised at a young age.

In 1992, at age 23, she was forced into marriage with a distant relative in Canada.

She was travelling to Canada via Germany, but decided to escape to the Netherlands by train.

She renounced Islam and became an atheist.

Her female circumcision has often been cited by her critics as the reason for her being so vehemently opposed to Islam.

In the Netherlands, she learned Dutch. She speaks that language fluently and almost without an accent.

Later, she studied political sciences.

In 2002, she made it into the news by sharply criticizing Islamic culture, and by leaving the Socialist Party PvdA for the conservative/liberal VVD.

She became a member of parliament for the VVD.

From that moment on, Hirsi Ali received death threats.

She was put under permanent police protection and was living at a secret address.

In an interview, she said about the prophet Mohammed: "Considered by our Western standards, a perverted man. A tyrant."

She was hereby specifically referring to the fact that in his later years, Mohammed had sexual intercourse with a nine-year-old girl.

She has consistently expressed sharp criticism of the position of women in Islam.

2006 marked the beginning of a turbulent period. Hirsi Ali revealed that she had given incorrect information to the Aliens Police while applying for Dutch citizenship. The minister of Integration threatened to take away her Dutch nationality. That did not happen in the end, but Hirsi Ali left Dutch politics, and the Netherlands. She began working for a conservative American think-tank.

Submission

In 2004, together with Theo van Gogh, she made the short low-budget film *Submission*. The film is about the position of women within Islam.

This 10-minute pamphlet shows, among other things, anti-female texts from the Koran, written onto the body of a scantily-dressed, veiled woman. Following the film, van Gogh also received death-threats from militant Muslims, and was killed on November 2<sup>nd</sup> 2004.

Van Gogh's murderer left a letter on his body, addressed to Hirsi Ali and threatening her again.

Mohammed Bouyeri

Age 27.

Born in Amsterdam from Moroccan parents.

Went to high school, and 1 year of higher education.

Above-average intelligence.

Until 2001, he led a normal Western life.

He smoked, drank, occasionally used cannabis and had girlfriends.

Was remarkably social towards youngsters in trouble.

In 2001, he radicalized into an extremist Muslim, following the pure teachings of the prophet.

Murdered Theo van Gogh on November 2<sup>nd</sup> 2004.

The question whether or not the murder of Theo van Gogh was motivated by hate, is not easy to answer. Let's take a look at the way in which the murder was perpetrated, and at what we know about Bouyeri as a person.

How did Mohammed Bouyeri carry out the murder of Theo van Gogh?

in broad daylight, during rush-hour at a very busy location in the city,

in a focused and calm manner,

the victim was a prominent and much-discussed Dutch citizen

first, Bouyeri shot four times at van Gogh, who was riding his bicycle to work

van Gogh was hit, and tried to escape Bouyeri by running across the street

Bouyeri follows him calmly, and fires a few more shots at van Gogh

On the other side of the street, van Gogh falls to the pavement

Bouyeri shoots another nine rounds at van Gogh, who is on the ground

then, in four sawing motions, he cuts van Gogh's throat with a large scimitar

he then sticks the scimitar into van Gogh's body.

finally, he uses a kitchen knife to pin a letter to Hirsi Ali to van Gogh's body

He does not make any effort to escape after this, but starts walking away slowly, while filling the clip of his gun with another 16 rounds.

In the meantime, he calmly talks to some bystanders, telling them that they also know what awaits them.

then, still perfectly calm, he starts shooting at the police who have arrived. His goal is to be shot dead as well.

Bouyeri left a letter on van Gogh's body. A letter addressed to the member of parliament Hirsi Ali. In flowery language, he predicts the downfall and death of Hirsi Ali and all infidel fundamentalists. He writes:

*"Islam shall triumph through the blood of the martyrs.....*

*The conflict that has ensued is different than all conflicts before.*

*The infidel fundamentalists have started it, and Insh'Allah the true believers will end it.*

*There will be no mercy for the wrongdoers, only the sword will be raised against them."*

From 1997 up to and until September 2004, the suspect had dealings with the police five times.

One noticeable common trait of these police contacts is his resistance to the representatives of the Dutch authorities.

Three times, he offered serious resistance to police officers, insulting, kicking and hitting them.

In 2001, he started stabbing one policeman, and when he was ordered to drop the knife, he threw it at that policeman.

In 2004, he had problems with a member of security at the Social Service in Amsterdam.

He shouted at him: "I'll kill you", and: "I'll tear your heart out."

Later in 2004, during a questioning, he refused to shake hands with the police

He stared at the ground, and when asked why he didn't want to shake hands, he only answered: "I hate you, I hate you."

Bouyeri will only follow his own vision of Islam.

In a tapped telephone conversation, Bouyeri tells a story to his brother.

Moses and the prophet come to a beach, where they see a little boy playing.

The prophet picks up a stone and throws it at the boy.

Then, he bites the boy to death.

Moses gets angry at the prophet.

According to the prophet, killing the child is justified, because by doing this, the prophet is sparing the boys' parents from a possibly infidel son, says Bouyeri.

Even though killing a child is not acceptable, it is justified because it's an order from Allah.

Bouyeri appears to have radicalized within four years.

He has written many articles about his faith and his political convictions

Bouyeri developed in four steps:

In February 2003, he rejects Western values and norms

In October 2003, the Western democratic order and legal system

In March 2004, he issues a global call for armed Jihad against democracy

In the final period before November 2004, he calls for violence against persons who have insulted Islam or the prophet Mohammed.

An expert has made a study of the 57 texts that Bouyeri had either written himself or translated.

In 2003, he begins writing the first text containing a rejection of the Western form of government.

According to him, the democratic system is based on the subordination of mankind by small groups of people.

In a political system based on Shariah, however, people are not subordinate to each other, but only to God.

Democracy is in conflict with Islam.

It is synonymous with the recognition of other gods than the One God: polytheism or idol worship.

He strongly rejects this.

A book entitled *The True Muslim*, February 2004, by Al-Qudsi, was also translated by Bouyeri.

In this book, rejection of Western democracy and legal system goes one step further.

Not only should Moslems avoid infidels, but avoiding means, I quote:

*“to hate them, to show them hostility, to despise them, to have an aversion towards them, and to combat them”.*

Even Muslims who would behave as good Muslims in every way, but who do not feel any hatred towards the enemies of Islam, are considered infidels,

*“Even if he has loved only one of them, and that person is a relative of his”.*

You will see a lot come back in his last word at the trial....

In March 2004, Bouyeri completes his article *To Catch a Wolf*.

It is a piece written in great anger.

It contains a clear call for armed Jihad.

In somewhat abstract terms and without any kind of strategy.

The circumstances that justify this call are described in almost apocalyptic terms.

According to Bouyeri, democracy is doomed to fall.

The title of the piece refers to an Eskimo technique for catching wolves.

It consists of placing a razor-sharp knife covered in frozen blood in the snow.

The wolves smell the blood, start licking the knife, cut their tongue open, but keep licking the blood without realizing that it's their own blood they are drinking.

Eventually, they lose too much blood and die.

Bouyeri claims that there are a number of “trick lollies” of democracy (such as coffee-shops, bars, discos, gambling halls).

They make people addicted to their own wishes.

He implicitly compares them to the fatal bloody knife of the Eskimo hunter.

Bouyeri also wrote an open letter to the Dutch people.

In this letter, he predicts terrorist attacks against the population.

*“The dark clouds of death are gathering over your country.*

*So prepare yourselves for what you can never be prepared for.*

*You shall have to pay for the death and torture of our brothers and sisters with your own blood.*

*You have become a target everywhere: in the tram, the bus, the train, the shopping centre, etc.  
It will only take a fraction of a second, and you will be surrounded by death.  
The unbearable stench of death will make your stomach turn.  
You will find yourself among the intestines and pieces of flesh.  
You will taste the pain of loss and the pain of mutilation.  
Should death give you relief, then time will stop for you and you will relive the event again and again.  
Life for you will become a hell, and you will only find peace when our brothers and sisters have done so too.”*

From all this, you would have to conclude that Bouyeri committed the murder of Theo van Gogh out of hatred. What does Bouyeri himself say about that?

In his speech at the end of the trial he said – among other things – the following:

*“ I take full responsibility. I acted not because I should hate your son (to the mother of Theo van Gogh who was present). I didn’t. Not because he’s a Dutchman or he insulted me as a Moroccan or called me “goatefucker”. I never felt insulted.*

*I acted purely on my conviction, my faith in Allah. Would it have been my father or my little brother, I would have acted likewise. May I ever be released I wouldn’t hesitate to act in the same way. The same law, that orders me to chop of the head of every person who abuses Allah or his prophet, obliges me not to settle in this country, where there is freedom of speech. Reproaching me would be just, if only there is a country where people like me can take refuge.”*

Considering all of this makes it particularly difficult to determine the motive for Bouyeri's actions. He was also examined psychologically and psychiatrically. Bouyeri, however, did not wish to cooperate, and for six weeks did not say one word to the examining physicians.

My conclusion is that we cannot determine with what motive Bouyeri murdered van Gogh. Must his deed be characterized as an act of discrimination, carried out because he hated everything that van Gogh represented to him? Or is it in fact a reaction to discriminating behaviour from van Gogh, who - even though he was never convicted of this - was constantly making patronizing and possibly insulting comments about Muslims and the Muslim faith?

It is precisely when we consider violent extremism based on religious convictions, that we are entering a dangerous terrain. You can risk acting out of feelings of superiority of one philosophy of life towards the other.

Protagonists of legislation of hate crime state that these kind of crimes cause more individual harm and definitely more societal harm. They threaten the safety and welfare of all citizens and therefore a harsher penalty is justified. They provoke community unrest and retaliation. The riots in Los Angeles, California, that followed the beating of Rodney King, are often cited as support for this argument. Crimes motivated by invidious hatred toward particular groups not only harm individual victims but send a powerful message of intolerance and discrimination to all members of the group to which the victim belongs.

On the other hand arguments against hate crime legislation could be:

- Perpetrators of the same criminal act should not be treated differently because they hold different beliefs or motives.
- Over time, these provisions might be disregarded and hate crime laws could evolve to the point where speaking out strongly against a particular group or its actions could be construed as a hate crime, violating rights to freedom of expression, thought, religion (among others).
- Religious practices will become subject to government regulation, violating the separation of church and state.

- If it is true that all violent crimes are the result of the perpetrator's contempt for the victim, then all crimes are hate crimes. Thus if there is no alternate rationale for prosecuting some people more harshly for the same crime based on who the victim is, then different defendants treated unequally under the law.
- Penalties that do not include hate-crimes enhancement are already sufficient.

And the legal system – at least in the Netherlands – is able to cope without. Bouyeri was given a lifelong prison sentence without the court having to ask itself whether he had acted out of hatred, or out of an in itself respectable political-religious conviction. The court did, however, conclude that Bouyeri had committed the murder with terrorist intentions. But that is something else than hatred.

In the aftermath of the van Gogh murder, fires were set at mosques and Islamic schools in various places. In the 10 days following the murder, more than 20 incidents were reported, most of which were acts of arson at Islamic institutions. The fires were clearly reactions to the murder of Theo van Gogh. The anger of the perpetrators was aimed at the Muslim community in the Netherlands, regardless of whether it was fundamentalist, or liberal and Western-influenced. The acts of arson shocked the country. They were expressions of an intolerance we were not yet used to in the Netherlands. There also seemed to be a rift developing between Muslims and non-Muslims. Plenty of reasons for concern, in other words.

In the evaluation of these cases, the judge did not miss the concept of Hate Crimes either. In all cases where the perpetrators were caught, the judge took into account the character of the arson in determining the penalty.

In one case the judge in Leeuwarden considered:

*The suspect made himself guilty of attempted arson and of embezzlement. The attempt to set fire to the mosques in Heerenveen took place a few days after Theo van Gogh had been violently put to death. The suspect's decision to set a mosque on fire appeared to be inspired by the events at the time, as well as the suspect's right-wing opinions. The court blames the suspect seriously for this. After all, it was exactly these circumstances that caused Muslim communities in particular great emotional damage, even though the material damage was very limited.*

The court in Den Bosch considered the following: *on November 6<sup>th</sup> 2004, the suspect assisted an attempt to set fire to a mosque, and also made himself guilty of arson at an Islamic elementary school just three days later. Both offences took place just a few days after Theo van Gogh had been violently put to death. During this period, prior to the offences committed by the suspect, several attempts at arson had taken place at Islamic prayer-houses and institutions. Also for this reason, overall feelings of unrest and unsafety had been developing in Dutch society. In the opinion of the court, there can be no doubt whatsoever that because of the suspect's actions, these feelings not only remained, but also increased, certainly among the Muslim population in the Netherlands, and even more so because in the second incident, the suspect chose to set fire to an elementary school, a particularly vulnerable object.*

I realize that the freedom given to a Dutch judge to impose sanctions according to his own judgement plays an important role in all this. The Netherlands only have a general minimum sanction of one day in prison or a three-euro fine, for all offences. However, for every particular offence, there is a specific maximum sanction. In determining that sanction, the judge will consider not only the seriousness of the offence, but also the circumstances under which it took place. He will also take into account the personality of the suspect. There are virtually no limitations for the public prosecutor in bringing forward anything he considers important for the judge's ruling during the hearing. In that sense, we do not have anything like a disclosure procedure.

This removes the necessity for legally aggravating circumstances, such as the perpetrator's motive. The judge will be taking that into account anyway.

This brings me to a brief look into the near future. This month, we are expecting the film by MP Wilders, in which he will give his point of view on the Koran. In the past, he has already said that the Koran should be banned because of its calls for violence and intolerance. You can imagine that we are concerned about the film and its repercussions, domestically and internationally. I presume that the next speaker will be able to demonstrate this to you even better

The Public Prosecutor's office in Amsterdam houses the National Expertise Center for Discrimination. To be better prepared for Wilders' film, the Center will give the public Prosecution Service an assessment of the possibly indictable nature of this film. The assessment will focus particularly on the section of the law that makes discrimination punishable. Mr. Moraal already mentioned that this is the only section in the Penal Code that refers to the hate motive, albeit in a very pure form. Not as an aggravating circumstance, but as an element by which behaviour becomes punishable. Therefore, statements become punishable because they are insulting to a group of people for reasons of race, religion etc.

This assessment by the National Center for Discrimination is no easy job. For example, while MP Wilders has said several times that his complaints are not about the Muslims, but about Islam, and discrimination is only punishable if the statements are insulting about Muslims as a group rather than the religion itself, an assessment of the film's indictability will still raise plenty of discussions. And suppose that we do come to the conclusion that Wilders' film is insulting to the group of Muslims, there is still a fair chance that it is not indictable, since it is a statement reasonably made within a social political debate.

And then the consequences. Suppose that there will be a violent reaction from the direction of the Muslims. Is such violence inspired by hatred towards the political thoughts of Wilders, or are they simply generated by anger at Wilders' film? What's the difference? It's an identical situation as with the murder of Theo van Gogh.

How then can the concept of Hate Crime help us further in combatting this violent behaviour?

With this rhetorical question, I would like to thank you for your attention, and wish you a pleasant continuation of this interesting meeting.....