

**Speech of Procurator-General Han Moraal, on the occasion of the 8th European Regional Conference, International Association of Prosecutors, 13 March 2008**

Ladies and gentlemen,

On behalf of the Dutch public prosecution service I would like to bid you all a very warm welcome in The Hague. Not only is The Hague the seat of the Dutch government, the city also likes to sport itself as the legal capital of the world. And with some right, I might say. The Hague harbours more than a 150 different organisations in the field of international law and international law enforcement.

The Peace Palace, almost a hundred years old, houses the Permanent Court of Arbitration and the International Court of Justice, the principal judicial organ of the United Nations. Other important organisations, established in The Hague, include the International Criminal Court and the International Criminal Tribunal for the Former Yugoslavia. Furthermore, EU agencies like Eurojust and Europol can be found within the city borders. As I understand, a visit to Eurojust is part of today's program.

The fact that The Hague became the legal capital of the world, is not entirely a coincidence. Article 90 of the Dutch constitution states: 'The government stimulates the development of the international legal order.' Such a statement of course holds a special responsibility when it comes to supporting the international rule of law, both in the legal and practical sense. One way of doing this, is hosting this 8th European Regional Conference of the International Association of Prosecutors. Therefore the Netherlands is pleased to have you all here.

[Hate crime; a difficult concept]

The subject of this conference is 'hate crime'. Of course it is clear that in many violent offences, hate is a factor. But this is not what the term refers to.

Americans – who originally coined the phrase – use it for very serious offences in which hate against a group of people motivates the perpetrator to commit a crime. The victim is selected by the offender, because he or she belongs to this grouping. This aspect makes ‘hate crime’ very hard to prove in court because the prosecutor must show that the offender was ideologically motivated.

I don’t know about other European countries, but the Dutch legal system has no equivalent for ‘hate crime’. And for three reasons we would like to keep it that way:

- 1st) As I said the concept of ‘hate crime’ is hard to put to judicial practice;
- 2nd) ‘Hate crime’ might distract the attention of police and public prosecution from the much larger number of common crimes in which discrimination plays a part;
- 3rd) Common crimes with discriminatory aspects could be relabelled as ‘hate crimes’. But in doing this, we might risk to include all kinds of crimes that were not committed by an ideologically motivated offender. For instance, we all know that in a conflict situation people easily resort to insults. And whether you have red hair, a coloured skin or just one leg, you can be sure that such outward appearances will be the focus of these insults. Of course, this is a form of discrimination. But the starting point in such a case is a conflict situation, not ideology.

In the Netherlands we like to keep our judicial definitions as clear and narrow as possible. Nevertheless, I do not want to spoil this party right at the start. So I will elaborate on two Dutch crime categories that might fall under what is internationally referred to as ‘hate crime’.

- 1st) We know in the Netherlands so-called ‘pure crimes of discrimination’. These include inciting to hatred, exclusion on discriminatory grounds and insults;  
and,
- 2nd) As mentioned - we know common crimes with discriminatory aspects. This can refer to all kinds of crimes. For instance abuse, breaking and entering or arson. Of the latter crime, more specifically arson in mosques, we’ve had several cases after the Dutch filmmaker Theo van Gogh was murdered by an Islamist in 2004. Later today, prosecutor Frits van Straelen will tell you more about that.

Although I prefer the Dutch categories to the rather vague concept of 'hate crime', this does not mean these categories are easily put to practice in the court room. Discrimination cases and cases with discriminatory aspects always remain difficult.

To present you with one of our recent dilemmas: where does the freedom of expression ends and starts discrimination? In 2007 the Dutch politician Geert Wilders published an newspaper article in which he called the Islam 'a fascist religion'. The police took down forty notifications of people who wanted the public prosecution service to press charges against Mr Wilders.

The dilemma here is of course that for a democratically elected politician as Mr Wilders - and for democracy in general - the freedom of speech is very important. On the other hand, also politicians have to obey the law. We still have to decide if we are going to prosecute Mr Wilders. It will take another 2 months. In the mean time we will have to deal with his latest provocation, the making of a film about the Koran. It will be published later this month.

[Discrimination in the Netherlands; the figures]

What do the figures tell us about discrimination in the Netherlands? Unfortunately only pure crimes of discrimination were registered in the past. This year we will start registering discriminatory aspects in other crimes.

The most recent figures on pure crimes of discrimination apply to 2006. In that particular year 446 suspects were arrested on charges of discrimination. On a population of 17 million people this number does not seem surprising.

Most cases concerned discrimination on racial basis (55 per cent), followed by anti-Semitism (33 per cent). Then comes discrimination on religious basis (6 per cent) and discrimination of homosexuals (2 per cent).

In a recent report, the Council of Europe stated that discrimination and islamophobia in the Netherlands is growing. The Council sees this as the aftermath of 9/11, the rise of the populist politician Pim Fortuyn and the murder on Theo van Gogh.

When we look at the pure crimes of discrimination, we indeed see that the number of arrests rose with 56 per cent from 2000 to 2007. At the same time, it is important to put things in perspective. Undoubtedly the events mentioned by the Council of Europe have led to a general vulgarisation of manners and language. This nasty habit turns up in the numbers, referring to pure crimes of discrimination.

But what about the more serious offences in which discrimination plays a part? Potentially, these offences fall in the category 'crimes with discriminatory aspects'. As I said, we will start registering this aspect in common crimes only this year. However, preliminary research for the period 2000-2005 shows that only 7 per cent of the cases in this category involve serious violence. And the vast majority (72 per cent) of the cases start with a conflict situation. In fact we know of only one case in which the offender was ideologically motivated.

[Discrimination in the Netherlands; what we do about it?]

These are the figures on discrimination. But of course you will also want to know what we do about it. Well, more and more, I can tell you. To prove this, I will mention – in chronological order - a few of the steps we have taken to combat discrimination.

To start with, in 1998 the public prosecution service established its own national expertise centre on discrimination. Discrimination cases often call for highly specialised knowledge. One can not expect every public prosecutor's office to have this kind of knowledge. Therefore the expertise centre was set up as a general helpdesk for all discrimination cases nationwide.

Furthermore, in 2006 the public prosecution service made the fight against discrimination a priority in its long-range plan that runs until 2010. The long-range plan also includes the intention to have a specialised discrimination prosecutor in the larger, regional public prosecution offices. Last year this intention was put into practice. We now have eleven specialised discrimination prosecutors, spread across the country.

Also in 2007 we introduced new guidelines on how to prosecute in discrimination cases. These guidelines include a list of common crimes in which discrimination can play a part. If so, then the public prosecutor will raise his demand for punishment with an additional 25 per cent. At the moment, we are looking into the possibility to raise the demand for this kind of crimes even further. So it might be that in the future prosecution officers will increase their demands with 50 per cent for common crimes with discriminatory aspects.

[Conclusion]

Ladies and gentlemen,

The Netherlands has a long and lasting tradition for being a peaceful and tolerant nation. Over the past centuries many foreigners, who were prosecuted for their thoughts, found a safe haven here. Flemish protestants, French Huguenots, Jews from Portugal and Spain; all were allowed to celebrate their faith in liberty. Many a philosopher like Spinoza and Descartes took refuge here.

I started my speech with a quote from the Dutch constitution. I will finish with article 1: 'Everyone in the Netherlands will be treated equally in equal cases. Discrimination on the ground of religion, life principles, political persuasion, races, sex or whatever other ground, is not permitted.'

This indicates that the Netherlands will continue to give the struggle against discrimination all the attention it rightly deserves. Therefore I hope our country will provide a stimulating surroundings for this conference and that you will feel a little bit at home in The Hague. After all, as prosecutors you are also citizens of the legal capital of the world. I wish you a very inspiring conference.