

Draft speech of prosecutor-general Han Moraal, on the occasion of the 9th IAP European Regional Conference, International Association of Prosecutors, 12 March 2008, The Hague

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 150 different organisations in the field of international law and international law enforcement.

You all know the Permanent Court of Arbitration, the International Court of Justice, the International Criminal Court and the International Criminal Tribunal for the Former Yugoslavia. Furthermore, EU organisations like Eurojust and Europol can be found within the city borders.

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 creates 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 9th European Regional Conference of the International Association of Prosecutors. Therefore the Netherlands is pleased to have you all here.

[Following the money]

The subject of this conference is 'Following the money'. It refers to hitting criminals where it hurts most: by depriving them of the assets they acquired through crime. We all know that the majority of criminal activities have a financial motive. Therefore the confiscation of the proceeds of crime is one of the most effective means to tackle crime and should be one of the cornerstones of any anti-crime strategy.

It is interesting to note that you can follow a trail in two directions: towards its source or towards its destination. Upstream or downstream. This also goes for money. When Deep Throat told Bob Woodward of the Washington Post: 'Follow the money', he meant: find out who sponsored the men that broke into the Watergate Building, and you'll know who is behind this. In the end, Woodward and Bernstein succeeded in tracing back the money, all the way to the White House.

In our work, following the money most often means tracing and recovering illegal profits. Downstream. A crime is discovered, the criminal investigation department starts an inquiry and the financial detectives follow in its wake. But it is also possible to work upstream. In such a case the investigation does not start with a criminal act, but with criminal money. With assets that can not be legally accounted for.

In the Netherlands we have experience with following the money in both directions. I will give you some examples later. But also I would like to explain:

- why the Dutch consider confiscation and recovery of criminal proceeds an important issue
- how we have organised it and
- which results the Dutch approach has yielded so far.

[Social relevance]

The social relevance of seizing criminal profits is clear: crime should not pay. If done effectively, it will put criminals out of business, discourage new potential malefactors and satisfy the sense of justice of ordinary citizens.

It is alarming when in some neighbourhoods resorting to crime is considered as a good way to make money. When young men who are officially unemployed, drive the streets in BMW's, showing off their wealth, this naturally appeals to others who are also craving for status. Therefore we should strip these guys of their money.

This is the idea behind the so-called 'patseraanpak' in Amsterdam which loosely translates in: 'macho approach'. In this experimental method, asset recovery starts not with a criminal act, but with the suspicion of illegally acquired money. It is up to the suspect to explain his wealth or otherwise hand it over.

One should not conclude from this, that we mainly focus on the small fry. And that the big guys – behind the scenes – receive less judicial attention. Seizing illegal profits is important at all levels.

[How the Netherlands has organised asset tracing and recovery]

Most often the legal basis for the deprivation of illegally obtained profits lays in a law from 1993, called ‘Pluk ze’. In English: ‘Pluck them’. This law is part of the Dutch Code of Procedure and creates special powers and procedures to make asset seizure possible.

Nevertheless, there are also other ways of stripping criminals of their profits. For instance, by fining them, by making them liable for damages or simply by taxing them. The latter - of course - is not a matter for the public prosecution service but for the tax department, with which we co-operate closely in such matters.

The regional offices of the public prosecution service handle most of the smaller cases of asset tracing and recovery. But as this is specialised work, they can get help and advice from our national criminal assets deprivation bureau. The Dutch abbreviation for this bureau is BOOM [op zijn Engels uitspreken: BOEM]. This gives a whole new meaning to the English expression: ‘Boom and bust’ ;-), which is often heard in these times of credit crunch.

BOOM not only provides support to the regional offices, it also takes care of the more complicated asset recovery cases, especially the ones in which the criminal profits are more than a hundred thousand euro.

Ideally, the work of the financial detectives, the regional public prosecution offices and BOOM results in a judicial verdict that strips the criminal of all his illegal gains. But having a verdict is one thing, actually recovering the money quite another. Often – by the time the verdict is reached - the criminal profits have miraculously disappeared. To counter this, the Dutch public prosecution service can also resort to precautionary arrest. This means that assets are kept in custody from the early stages of the investigation, awaiting the final court ruling.

[Results of asset tracing and recovery in the Netherlands]

This is in very general terms how asset tracing and recovery is organised in the Netherlands. But what are the results since the introduction of the Pluck-them-law in 1993? At the time, expectations were very high.

I remember a claim from 1994 of 200 million euro against a drugs trader who had smuggled more than 200 tonnes of hashish into the country. This gave rise to much number juggling in court by the defence lawyer who tried to prove that the criminal gains of his client were much lower. The judge – tired of this - finally decided that the public prosecution had to prove that the man's two mansions and his yacht were bought with dirty money. This turned out to be very hard.

In other words, the high expectations were bound to lead to disappointment. Still, we have come a long way since 1993. In 2007 - for the first time - more than 20 million euro was recovered and confiscated by the Dutch state. Last year we collected 23 million euro. The figures show a steady growth over the years. Nevertheless, there remains a big gap of about 80 per cent between the judicial verdicts and the amount of money that is actually recovered. Not to mention the gap between the confiscated criminal assets and the size of the criminal economy.

[What causes the gap between verdicts and recovery]

What is causing this gap? First of all, the average police man and prosecutor is not well equipped to perform the highly specialised tasks, needed for the recovery of criminal assets. Then train them, you might say. Unfortunately, the average police man and prosecutor also have little interest in asset tracing and recovery. Police men often join the force – at least partly - because of the thrill. Accounting hardly fits the picture. And jurists are often more focussed on language than on figures.

This means that we have to recruit people from outside. People with a financial background. The Dutch government has set aside extra money to enrol such people in law enforcement. But it will take a while before they're active.

Secondly, the big guys with the big money know very well where to hide their profits. Abroad. Tracing and recovering these criminal assets requires close co-operation between countries. It means coping with different procedures, different laws, different cultures. Tough going.

The European Union tries to make the going a little bit easier. In 2006 it took a Framework Decision on the mutual recognition of confiscation verdicts. Followed in 2007 by a Council Decision concerning co-operation between asset recovery offices.

The latter also entails the establishment of national contact points in all Member States. For the Netherlands BOOM is the national contact point. Last November the Commission issued a Communication which again stressed the importance of the creation of contact points in all Member States. I can only agree.

Finally, there is the matter of lagging legislation. As I explained earlier, in the Netherlands the public prosecution has to prove that assets are illegally acquired, even when they can not be accounted for by legal means. The Macho Approach is an experimental exception. But this year a new law will be presented to Parliament that reverses the burden of proof.

When a criminal offence has been proven, the public prosecution may claim criminal assets acquired up to six years before the offence was committed. The rationale is that such an offence presupposes a criminal lifestyle. It will be up to the defendant to prove his assets were legally acquired. This new law is inspired on a British Act. Recently the European Court of Human Rights ruled that the British model does not contravene the fair trial principle.

[Conclusion]

Ladies and gentlemen,

This is in general terms how the Netherlands has organised the confiscation and recovery of criminal assets, which results this approach has yielded and what problems we encounter.

Later today my colleague Hessel Schuth from BOOM will give you a more in-depth presentation.

The point I would like to stress, is that - when taken seriously - 'following the money' will provide crime fighters with many leads to combat crime. Just in the way it provided Woodward and Bernstein with new angles to their story.

By the way, did you know that in 2005 Deep Throat revealed himself? It turned out to be William Mark Felt, Associate Director of the FBI. At the age of 92, he decided to follow the money himself. 'To write a book or something and get all the money I can', as he told reporters. Alas, he died in 2008 without publishing his book or cashing in.

Personally, I am not ready to publish my memoirs yet. And I hope the same applies to you. This conference is meant to enrich you with new ideas on how to crack down on those criminal credits. But the ultimate goal is of course putting those ideas to practice.

I wish you a very inspiring conference.