

## 9 Investigation and prosecution in 2007

*Marija Davidović and Peter R. Rodrigues*

Combating discrimination through the criminal courts has received a great deal of attention lately. The police and the Public Prosecution Service (Openbaar Ministerie; OM) have given explicit priority to grappling with this form of criminality. At the same time, voices in both the public and the political debate have been increasingly insistent that protection against discrimination should not result in an excessive curtailment of the freedom of expression. This chapter looks at the various instruments that are offered by criminal law to fight racial discrimination and at how these instruments are acquired. The preceding paragraph pays attention to the freedom of expression.

In analysing the investigation and prosecution of discriminatory acts punishable by law, use was made of data provided by the National Police Services Agency (Korps Landelijke Politiediensten; KLPD), Statistics Netherlands (Centraal Bureau voor de Statistiek; CBS) and the National Expertise Centre for Discrimination (Landelijk Expertise Centrum Discriminatie; LECD) for the Public Prosecution Service (OM). However, the data that have been provided are limited to discriminatory acts punishable by law, which means that data on criminal offences aggravated by discriminatory behaviour are not included.

### 9.1 Freedom of expression

According to an old English expression, "sticks and stones may break my bones, but words can never hurt me." This same idea explains the importance that the United States attaches to the right to free expression as laid down in the First Amendment to the Constitution of the United States of America. Yet in democratic societies countless exceptions are made to this basic right. In the context of the European measures against terrorism, for example, posting instructions on the internet on how to make explosives is a punishable offence.<sup>1</sup> Then there are the almost classical restrictions on freedom of expression, such as punishment for incitement, defamation, libel and insult.

In the Netherlands, discriminatory defamation has been punishable since 1934 (art. 137c of the Criminal Code).<sup>2</sup> Later this became an almost worldwide practice when the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) came into effect. This UN convention allows countries that follow different traditions with respect to the expression of opinion to insert an exclusion clause with regard to discriminatory defamation (art. 4 paragraph a ICERD).

In the Netherlands, the stipulations laid down in the ICERD were applied in full in 1971, and the Dutch criminal statutes were modified accordingly. This is not to say that free speech was thereby cast aside. On the contrary, the ICERD is a human rights convention and is geared to the other human rights conventions, such as the *European Convention of Human Rights* (ECHR). The right to free expression contained in art. 10 ECHR stipulates that this right can be subjected to certain formalities, conditions,

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<sup>1</sup> *Kamerstukken II* (Official Reports of the House of Representatives of the States General) 2007/08, 28684, no. 133.

<sup>2</sup> Act of 19 July 1934, *Staatsblad* (Bulletin of Acts and Decrees) 1934, 405.

restrictions or sanctions that are provided for by law. The prohibition on discriminatory defamation is an exception,<sup>3</sup> but by no means does it deal a death blow to freedom of expression. The same is true of inciting discrimination, hatred or violence (art. 137d of the Criminal Code). This hate-mongering is much less controversial than discriminatory defamation (art. 137c), as jurisprudence suggests in the objections to art. 137c raised by Rosier in 1997.<sup>4</sup>

Resistance against this penal provision has undergone a strong revival in political circles, especially by Pim Fortuyn in 2001. In the famous interview in *de Volkskrant* he proposed that art. 1 of the Constitution be eliminated because it supposedly prohibits discriminatory statements.<sup>5</sup> In fact he proposed the elimination of art. 137c. His explicit views also led to a social debate on the relationship between freedom of expression and crimes of expression. That debate is still going on, and the question of whether Wilders is guilty of discrimination because of his statements and whether he should be prosecuted is discussed elsewhere in this Monitor.<sup>6</sup>

A public discussion of the legitimacy of certain legislation is always important. Law is not static, after all; it evolves according to time, place and changing circumstances. When a clash occurs between two basic rights, it is impossible to know ahead of time which right is going to come out the winner. The same is true of a clash between the right to free expression and the prohibition on discrimination. The European Court of Human Rights (ECtHR) has had to weigh these rights against each other in countless judgements. In doing so it applies a universally accepted principle of law: abuse of rights. This means that a person who is guilty of violating the ECHR can no longer rely on protection under the Convention.<sup>7</sup> Nor does a particular social status give a person licence to say whatever he or she likes.<sup>8</sup> Thus artistic expressions are sometimes prohibited by the ECtHR if they are in violation of the discrimination prohibition.<sup>9</sup> Politicians may not shirk their social responsibility, either. They, too, are bound to keep their public statements within certain limits.<sup>10</sup>

In the Netherlands, the balance between the freedom of expression and crimes of expression is in a state of flux. Interestingly, when it comes to fighting terrorism, limitations to the freedom of expression are perceived as much less problematic. A counter movement is also taking place. Relatively new international legislative measures

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<sup>3</sup> ECtHR 23 September 1994, E.R. van Eck et al. (eds.), *Rechtspraak Rassendiscriminatie 1995-2000*. Rotterdam: Landelijk Bureau ter bestrijding van Rassendiscriminatie 2001, 355, esp. Dommering and esp. Knigge (Jersild).

<sup>4</sup> Theo Rosier, *Vrijheid van meningsuiting en discriminatie in Nederland en Amerika* (Freedom of expression and discrimination in the Netherlands and America) (diss. Amsterdam VU). Ars Aequi Libri: Nijmegen 1997.

<sup>5</sup> See *de Volkskrant* 9 February 2002.

<sup>6</sup> On this topic see chapter 8, The extreme right and the discriminatory content of the PVV.

<sup>7</sup> ECtHR 23 September 1998, A.C. Possel (ed.), *Rechtspraak rassendiscriminatie 1995* (Case law on racial discrimination). Utrecht: Landelijk Bureau Racismebestrijding [etc.] 1995, 490 (Lehideux).

<sup>8</sup> C.M. Strengers, "Het EHRM en zijn angstvallige houding ten aanzien van de artistieke expressie" (The ECtHR and its scrupulous attitude towards artistic expression), *Nederlands Juristenblad* (NJB) 2008, pp. 878-882.

<sup>9</sup> ECtHR 20 September 1994, *Nederlandse Jurisprudentie* (NJ) 1995, 366 (Das Liebeskonzil).

<sup>10</sup> ECtHR 6 July 2006, *European Human Rights Cases* (ECHR) 2006/110 (Erbakan).

have been taken so that racist remarks can be dealt with more effectively. This legislation will be discussed in the next section.

## 9.2 Legislation

In 2007 a European-wide legal basis was created for criminal prohibitions on racism.<sup>11</sup> After six years of negotiation, the ministers of justice of the European Union reached an agreement on the wording of a *Framework decision on combating racism and xenophobia*.<sup>12</sup> This decision stipulates that inciting hatred or violence out of racist or xenophobic motives is punishable in all EU countries, along with the public whitewashing of genocide, crimes against humanity and war crimes.<sup>13</sup> When it comes to "ordinary" crimes, racist or xenophobic motives should be regarded as aggravating circumstances in determining the penalty.

In 2008 the European Parliament delivered a positive opinion on the *Framework decision*. The next step will be to submit this opinion to the Council of Ministers for a decision. In preparation, the Minister of Justice has asked the Senate of the Dutch Parliament for their endorsement of the *Framework decision*.<sup>14</sup> The provisions contained in the *Framework decision* will not have direct effect in the national legal system of the Netherlands. Member states whose national law does not penalise the behaviour in question have two years to do so after the proclamation of the decision.

An older decision, but likewise a decision that has yet to become operative in the Netherlands, is the first *Additional Protocol to the Convention on Cybercrime*. In this *Protocol*, distributing racist statements and making them available is made punishable.<sup>15</sup> The *Additional Protocol* was signed by the Netherlands on 28 January 2003 and ought to be followed by a bill to approve the *Protocol*.<sup>16</sup> As of the completion of this chapter, however, no such bill was forthcoming.

A few adjustments in existing legislation that are relevant to combating racial discrimination have been proposed recently in the Netherlands. On 15 September 2007 a revised *Police Act* went into effect.<sup>17</sup> By using the new system, this act enables police ministers (the Minister of Justice and the Minister of the Interior and Kingdom Relations) to set long-term priorities for the police at the national level.<sup>18</sup> We have already noted<sup>19</sup> that the subject of discrimination is missing for the period 2008-2011.<sup>20</sup> In her response to questions on this matter from MP Dibi, the Minister of the Interior and Kingdom Relations indicated in her letter of 17 December 2007 that the government attaches

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<sup>11</sup> Press release, Council of Ministers of the European Union, 19 April 2007.

<sup>12</sup> Official Journal of the European Union 2002, C 75 E/269.

<sup>13</sup> For a brief explanation and provisional text, see *NJCM-Bulletin* 2007, 916-925.

<sup>14</sup> *Kamerstukken II* 2007/08, 23 490, DC.

<sup>15</sup> *Tractatenblad* (Treaty Series) 2003, 60; for the Dutch text see *Tractatenblad* 2005, 46.

<sup>16</sup> *Kamerstukken II* 2004/05, 30 036 (R 1784), no. 3, p. 6.

<sup>17</sup> For the act itself see *Staatsblad* 2007, 180; for the implementation decree see *Staatsblad* 2007, 326.

<sup>18</sup> *Kamerstukken II* 2006/07, 29 628, no. 50.

<sup>19</sup> M. Davidović & P.R. Rodrigues, *Monitor Racisme & Extremisme. Opsporing en vervolging in 2006* (Racism & Extremism Monitor. Investigation and prosecution in 2006). Amsterdam: Anne Frank House / Leiden University 2007.

<sup>20</sup> *Kamerstukken II* 2007/08, 29 628 and 28 824, no. 50.

great importance to combating discrimination.<sup>21</sup> According to the Minister, combating discrimination is a priority for the cabinet, now and for the years to come. It was not deemed necessary to mention discrimination as a national priority for the police because the Coalition Agreement states that official reports of discrimination will always be followed up on. Otherwise, tackling discrimination remains high on the police agenda, according to the minister.

On 12 March 2008 the government proposed an amendment to the Criminal Code which, among other things, would make it possible to disqualify a person from his or her profession as an additional penalty for discrimination.<sup>22</sup> If a perpetrator is found guilty of a discriminatory offence (art. 137c-g of the Criminal Code) and this offence was committed in the exercise of his or her profession, then he or she can be prevented from exercising that profession.

In the spring of 2008, the government submitted a proposal to modify the Media Act for the purpose of preventing extremists from sowing hatred in the media.<sup>23</sup> According to article 22 *bis* of the European television guidelines, member states must ensure that any trace of incitement to hatred on the basis of race, gender, religion or nationality be absent from television broadcasts. According to the government, this provision was implemented in the Netherlands by means of art. 137d of the Criminal Code.<sup>24</sup> The modifications in the Media Act ensure that in the event of violation, the possible responses include fines or temporary revocation of the broadcasting licence.

On 25 April 2008 a bill concerning the Municipal Anti-Discrimination Relief Act was submitted to the House of Representatives.<sup>25</sup> The government's aim with this bill was to make sure that citizens have full recourse to assistance in their immediate surroundings if they feel discriminated against. For this reason the bill requires that the municipal executive of every municipality grant their residents access to anti-discrimination relief (antidiscriminatievoorziening; ADV).<sup>26</sup> Anti-discrimination relief is a collective term that is used to denote the organisations charged with at least these two tasks: assistance and registration. This bill guarantees each citizen access to anti-discrimination relief, thereby creating a comprehensive chain of national and local facilities involved in combating discrimination.

The following criminal discrimination prohibitions were in force in 2008:

- article 90quater of the Criminal Code defines discrimination as pertaining to criminal law;
- article 137c of the Criminal Code prohibits discriminatory defamation;
- article 137d of the Criminal Code makes inciting hatred, discrimination or violence a punishable offence;
- article 137e of the Criminal Code prohibits the dissemination of discriminatory statements and displays;

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<sup>21</sup> *Kamerstukken II 2007/08, 2007-2008, 29 628, no. 66.*

<sup>22</sup> *Kamerstukken II 2007/08, 31 386, nos. 1-3.*

<sup>23</sup> *Kamerstukken II 2007/08, 31 356, nos. 1-3.*

<sup>24</sup> Explanatory memorandum, p. 17.

<sup>25</sup> *Kamerstukken II 2007/08, 31 439, nos. 1-3.*

<sup>26</sup> This is the official new terminology for the Anti-Discrimination Agency (Anti-Discriminatie Bureau; ADB).

- article 137f of the Criminal Code prohibits providing support to discriminatory activities;
- article 137g of the Criminal Code prohibits discrimination on the ground of race in exercising an office, practising a profession or running a business;
- article 429quater of the Criminal Code prohibits the same offence as 137g of the Criminal Code, but without the requirement of intentionality and on more grounds than race. This is the so-called misdemeanour variant.

In 2004 the sentence for offences 137c, 137d, 137e and 137g of the Criminal Code were doubled if the crime is committed by two or more persons or by someone who makes the crime his profession or who commits it habitually. The complete text of the prohibitory provisions is included in the overview of criminal discrimination prohibitions (Appendix).

The application of criminal law is not the only instrument used to combat discrimination. Prevention and close cooperation between chain partners, including municipalities and anti-discrimination agencies, is just as important. To this end, the Minister of the Interior and Kingdom Relations and the Minister of Justice organised the Joint Approach to Discrimination conference on 7 June 2007.<sup>27</sup> The decision to work together more intensively in the area of discrimination will be further developed in the Joint Approach to Discrimination workgroup, which was launched in the summer of 2007. The members of government are planning on organising an annual meeting with chain partners to take stock of the current situation, coordinate policy and intensify efforts, if necessary.

### 9.3 Official instructions

Since the 1980s, the Board of Procurators General has issued instructions in order to guarantee the quality of investigation and prosecution in cases of discrimination. The most recent of these are the *Discrimination Instructions* of 30 November 2007.<sup>28</sup> They contain instructions and regulations for the police, and in principle they cannot be deviated from: they are mandatory, normative policy rules.<sup>29</sup>

According to the *Instructions*, learning more about the nature and scope of the discrimination problem at the level of political regions is very important. An essential aspect of this is the registration of all discriminatory incidents by way of tips, reports and official signed police reports. All reports concerning discrimination must be recorded. The registration requirement applies to discrimination prohibitions and offences under general criminal law with a discriminatory dimension, such as use of force in a public place, theft and vandalism. The police are required to draw up a list periodically for the OM (Public Prosecution Service) based on this registration. In each police corps there is an officer at the strategic level who is charged with these duties and who holds the portfolio, and at the operational level there is a contact official for discrimination.

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<sup>27</sup> For the results see <[www.justitie.nl/discriminatie](http://www.justitie.nl/discriminatie)> (10 July 2008).

<sup>28</sup> *Staatscourant* (Government Gazette) 2007, 233.

<sup>29</sup> B.E.P. Meyer, "Gedragscode OM: frisse wind bij open deuren" (Code of conduct of the Public Prosecution Service: open doors let in fresh air), *Trema* 2001, pp. 245-252.

As far as the public prosecutor is concerned, all discriminatory offences, including offences under general law with a discriminatory dimension, must be registered in a separate data processing system. The main rule is that any violation of a statutory provision must always be followed by a criminal response, if the case is demonstrable and the suspect is liable to punishment. This is important not only because of the negative effect of inadequate enforcement but also because criminal prosecution serves as an example to others.

As for opportuneness the guiding principle that the OM follows when foregoing prosecution), the *Instructions* assume that it is inherent in cases of discrimination.<sup>30</sup> According to the *Instructions*, the decision to award a discretionary dismissal should be made "with great restraint."<sup>31</sup> This is underscored by the directive that if there is evidence of a discriminatory offence, a summons should always be issued as a matter of principle. Only in minor cases can an on-the-spot fine be offered first. The instruction that public prosecutors are obliged to increase the penalty by 25% in cases of offences under general criminal law with a discriminatory dimension still applies in full. If there are no criminal proceedings (dismissal), the parties who made the report and any injured parties will be notified of the decision.

To facilitate the development of a uniform and effective policy among the police and the OM, and to settle these cases successfully, good mutual coordination is required. To this end, public prosecutors for cases of discrimination have been appointed in each of the eleven regional public prosecutors' offices. These prosecutors take on the actual settlement of cases of discrimination due to the specialist nature of the material. At the five public prosecutor's offices at the court of appeals, this is done by an Advocate General for cases of discrimination. On the Board of Procurators General, one Procurator General is charged with the discrimination portfolio.

#### **9.4 National Expertise Centre for Diversity**

Since 2005, the discrimination portfolio has had a permanent place in the National Expertise Centre for Diversity (Landelijk Expertise Centrum Diversiteit; LECDiv) of the Police Academy. The function of the LECDiv is to inspire and to advise, and it supports the various corps in their approach to discrimination. According to the LECDiv there is a clear-cut relationship between this approach to discrimination and the diversity policy of the police,<sup>32</sup> while also co-determining the legitimacy of the police. For these reasons, the theme within the LECDiv is an integral part of the diversity policy.

The National Dutch Police Structural Plan for 2007 contains process agreements on discrimination.<sup>33</sup> The corps are required to inform the Public Prosecution Service, the local government and any relevant partners of the current situation with regard to discrimination and criminality. The corps are also required to implement the nine preconditions on combating discrimination as set down by the Board of Chief

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<sup>30</sup> Other than on the grounds of technical legal considerations.

<sup>31</sup> For an explanation of the term "discretionary dismissal" see section 9.6.2.1.

<sup>32</sup> Landelijk Expertise Centrum Diversiteit, *Het jaar van het Multiculturele Vakmanschap, Jaarverslag 2007* (The year of multi-cultural craftsmanship, 2007 annual report), p. 30.

<sup>33</sup> See the 2007 Annual Report of the Dutch police, pp. 22-23, and the presentation letter *Kamerstukken II 2007/08, 29 628 and 28 824*, no. 90.

Commissioners on 14 January 2004. These preconditions have now been incorporated in the *Discrimination Instructions* of 2007.

During the intake process at the police station, it is essential that the staff person be able to recognise discrimination as a motive when a crime is reported. A professional attitude during the intake process ultimately increases the willingness of victims to report these crimes. So in January 2007 the Dutch Board of Chief Commissioners decided that structural attention should be paid to discrimination as an aspect of police training. The Police Academy has implemented this decision within the core assignment known as "Service & Intake" in initial and post-initial training.

For tackling a violent offence under general criminal law in which discrimination plays a role, the processing system used by the police needs to provide data by which the nature and scope of these crimes can be evaluated. To this end, in 2009 all regional police corps will be given the same data processing system. The system will include a code for "discrimination" so that offences under general criminal law with a discriminatory dimension can be registered. In January 2007 the Board of Chief Commissioners also ordered the LECDiv to develop a uniform format for the analysis of regional criminality (criminaliteitsbeeldanalyse; CBA) having to do with discrimination. To carry out this assignment, the LECDiv has begun using a uniform case review. The plan is that every police region will begin using the same case review in 2008. On the basis of the picture of regional criminality thus obtained, the police will produce a first national criminality survey on discrimination.<sup>34</sup>

In 2008 the LECDiv and the regional police corps of Amsterdam and Gelderland-Zuid started the hate crimes project.<sup>35</sup> Hate crimes are felonies and misdemeanours that have a discriminatory basis. The willingness to report such incidents is also limited.<sup>36</sup> The essence of the project is to raise awareness within the police corps, to produce recognisable information folders and booklets that are specifically designed for a particular target group and to launch a website.<sup>37</sup> By these means, victims can call in tips or make reports anonymously if they choose to do so. The project was inspired by experiences in Britain and will be introduced nationally in 2011.<sup>38</sup>

## 9.5 Police statistics

Since 2005 the National Police Services Agency has been compiling national figures on people suspected of committing criminal discriminatory offences, art. 137c-g of the Criminal Code. Statistics Netherlands also produces annual figures on how the charge of criminal discriminatory offences has been used and applied by the police. In this section we will examine this data, first from the KLPD and then from the CBS.

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<sup>34</sup> See the Minister's response to parliamentary questions: *Aanhangsel Handelingen II*, 2007/08, 2490.

<sup>35</sup> See <[www.lecd.nl](http://www.lecd.nl)> (10 July 2008).

<sup>36</sup> On the willingness to report, also see *Aanhangsel Handelingen II* (Appendix to the Official Acts of the House of Representatives of the States General) 2007/08, 2487.

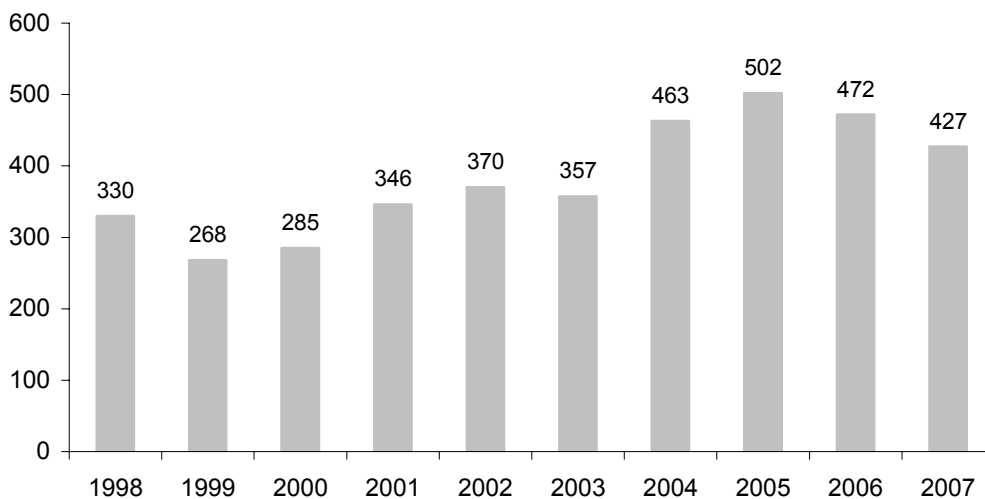
<sup>37</sup> See <[www.hatecrimes.nl](http://www.hatecrimes.nl)> (10 July 2008).

<sup>38</sup> *Kamerstukken II* 2007/08, 2007-2008, 29 628, no. 66.

### 9.5.1 National Police Services Agency (KLPD)

The KLPD uses a Recognition Service System (Herkenningdienst Systeem; HKS) for collecting data. In the period 2003-2007, this person-specific investigation system was used to search for arrested persons who had been suspected of violating at least one of the criminal prohibitions on discrimination. The HKS is concerned with felonies alone, so it provides no insight into people suspected of violating art. 429quater of the Criminal Code: discrimination without intentionality in the exercising of an office, practising of a profession or running of a business.

**Figure 9.1 Number of arrested suspects of criminal prohibitions on discrimination per year**



Source: KLPD

As far as the results for 2007 are concerned, there is one change that should be taken into account. The annual figures as first input into the system are provisional. After this the data is processed a second time to make up for backlogs among the regional corps. The 2007 figures have not yet been subjected to this second round of processing. For this reason the total for that year will probably end up being higher. As a result of this correction, the numbers from 2006 have been adjusted and definitely adopted.

If someone is suspected of several discriminatory felonies, each of these felonies is counted separately. This is why the table with suspects according to article of the law deviates from the overview of suspects per year.

**Table 9.1 Number of arrested suspects of criminal prohibitions on discrimination per article of the law**

	2003	2004	2005	2006	2007
<b>Article of the law</b>					
137c	213	254	274	224	165
137d	87	147	205	131	143
137e	36	54	91	68	47
137f	46	6	38	16	15
137g	25	73	75	110	98

Source: KLPD

Discriminatory defamation (art. 137c of the Criminal Code) and inciting hatred (art. 137d of the Criminal Code) are closer than ever in terms of numbers, with art. 137c showing a dip and 137d an increase. One explanation for this might be that the police are less quick to register an incident as discriminatory defamation and are more likely to regard the incident as inciting hatred, discrimination or violence.

The number of registrations of incidents concerning the prohibition on distribution (art. 137e of the Criminal Code) also decreased in 2007. Those concerned with providing support (art. 137f of the Criminal Code) remained at almost the same level as the previous reporting year, but that level is still relatively high in view of the fact that almost no legal proceedings involving this article were brought.<sup>39</sup> The number of registrations of incidents concerned with discrimination in exercising an office, practising a profession or running a business (art. 137g of the Criminal Code) is still quite high, despite a slight drop.

#### 9.5.2 *Statistics Netherlands (Centraal Bureau voor de Statistiek; CBS)*

CBS publishes the police statistics that are part of the *Crime and law enforcement* longitudinal study.<sup>40</sup> These are data from the data processing systems of the regional police corps. Incidents that are registered as discriminatory felonies – art. 137c-g of the Criminal Code – are filtered out of these systems. As in the HKS, the misdemeanour version of art. 429quater of the Criminal Code is not included.

**Table 9.2 Discriminatory felonies in which an official report was made**

	CBS	HKS
2003	396	357
2004	507	463
2005	535	502
2006	525	472
2007	520	427

Source: CBS and KLPD

<sup>39</sup> See section 9.6.1.

<sup>40</sup> See <<http://statline.cbs.nl/>> (5 August 2008).

The CBS figures refer to the number of discriminatory offences for which official reports were made, while the HKS data from the KLPD are based on "suspected" persons. Because not all persons who are suspected of felonies are arrested, the number of official reports of discriminatory felonies is higher than the number of arrested suspects. The police statistics from the CBS also help clarify whether incidents of discrimination are registered as unofficial reports or as official signed reports in the various police regions.

**Table 9.3 Registered unofficial reports and official signed reports in the 26 regional corps**

	2006	2007
Registered unofficial reports	1009	897
Registered official signed reports	525	520

Source: CBS

In 2007 the proportion of unofficial reports to official signed reports improved slightly over 2006. Even so, it still seems that too many cases are registered as unofficial reports without official signed reports being made. These are probably cases in which persons report an incident that has no chance of conviction. If the police decide not to pursue the case any further, that decision must be communicated in writing to the person making the report and must be adequately substantiated, and the person making the report has a right to lodge a complaint on account of failure to prosecute.<sup>41</sup>

CBS also provides data on the clearing up of discriminatory felonies.

**Table 9.4 Cleared up discriminatory felonies**

	2003	2004	2005	2006	2007
Registered criminality	396	507	535	525	520
Cleared up felonies	169 (43%)	225 (44%)	225 (42%)	210 (40%)	225 (43%)

Source: CBS

The clear-up rate for discrimination is relatively high and amounts to approximately twice the average of all criminal offences. That average was 22.7% in 2007 and in recent years around 22%.<sup>42</sup>

<sup>41</sup> Art. 12 Code of Criminal Procedure.

<sup>42</sup> See <<http://statline.cbs.nl/StatWeb/publication/?dm=sInl&pa=37932&D1=2-3-&D2=0,2-4&D3=0&D4=a&VW=T>> (5 August 2007).

## 9.6 National Expertise Centre for Discrimination

The National Expertise Centre for Diversity of the police, as discussed above, serves as the counterpart to the National Expertise Centre for Discrimination of the Public Prosecution Service (OM). These two knowledge centres are responsible for providing analyses of criminality in terms of figures on discrimination, for which the KLPD is responsible.

The OM's LECD is part of the Amsterdam District Public Prosecutor's Office, and its task is to promote effective criminal enforcement in cases of discrimination. Its activities include maintaining the central registry of discrimination cases as well as providing advice to the eleven regional public prosecutors' offices, each of which has its own discrimination officer.<sup>43</sup> Since cases of discrimination are relatively rare and are therefore vulnerable to knowledge loss, the LECD also sometimes coordinates current criminal investigations.

The working procedure of the LECD is largely determined by the registration method used by the public prosecutors' offices. They register data by means of COMPAS,<sup>44</sup> the OM's judicial data processing system that contains information on inflow and settlement. These data, however, are only accessible per region. So the discriminatory offences are filtered out of all the COMPAS data by way of the ICT department by searching for prohibitions on discrimination (art. 137c-g and 429quater of the Criminal Code). Discrimination enters criminal law in two forms, however. One is violation of the discrimination articles that have already been mentioned. Then there are criminal offences aggravated by discriminatory behaviour: violation of other articles of the Criminal Code in which discrimination is present as an underlying aspect. In spite of this, such offences are not included in the Public Prosecution Service figures on discrimination. If arson is committed to protest an asylum seeker centre, or if someone is assaulted because of his origins, these crimes are often only registered as offences under general criminal law: arson (art. 157 of the Criminal Code) or assault (art. 300 of the Criminal Code) respectively.<sup>45</sup> The *Discrimination Instructions* do require the registration of the discriminatory aspect. Failing to do so cannot be justified by appealing to the limitations of COMPAS, as shown in a successful experiment to register criminal offences aggravated by discriminatory behaviour in the Amsterdam public prosecutor's office in 2004.<sup>46</sup>

Nationally, the Public Prosecution Service has developed a new registration system (GPS)<sup>47</sup> that is supposed to compensate for this omission, but turning it operational is a

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<sup>43</sup> Previously the 19 district public prosecutors' offices, Public Prosecution Service, *Perspectief op 2010* (2010 in perspective). The Hague: Openbaar Ministerie 2006, p. 21.

<sup>44</sup> COMPAS stands for Communicatiesysteem Openbaar Ministerie – Parket Administratie Systeem (Communication System of the Public Prosecution Service – Administration System of the Public Prosecutors' Offices).

<sup>45</sup> Cf. C. Brants, R. Kool & A. Ringnalda, *Strafbare discriminatie*. Den Haag: Boom Juridische Uitgevers 2007 p. 22, <<http://www.wodc.nl/onderzoeksdatabase/strafmaat-discriminatiezaken.aspx>> (18 August 2008).

<sup>46</sup> P.R. Rodrigues, "Opsporing en vervolging" (Investigation and prosecution), in: J. van Donselaar & P. R. Rodrigues, *Monitor racisme & extreem-rechts, zesde rapportage* (Monitoring racism & the extreme right, sixth report). Amsterdam: Anne Frank House / Leiden University 2004, p. 188.

<sup>47</sup> GPS stands for Geïntegreerd Processysteem Strafrecht (Integrated Criminal Law Processing System).

slow process.<sup>48</sup> If the system becomes operational for discrimination throughout the country in 2009, no annual figures will be available until 2010.

In conclusion, one comment should be made about the method used by the LECD. It differs from the police method described in section 9.5.1, the Recognition Services System (HKS), which registers individual persons. The LECD method processes the figures by counting discriminatory *offences*. This is important since one case can consist of several offences, all of which are registered separately. In addition, only cases in the first instance are reviewed, which means that the courts of appeals and the Supreme Court fall outside the scope of this registration.

### 9.6.1 Inflow

There were 216 discriminatory offences in the year 2007, a drop of 12% with respect to 2006. One explanation for this is the slightly reduced (4%) number of suspects of discrimination supplied by the police, from 446 in 2006 to 427 in 2007.<sup>49</sup> None of the other criminal cases in the first instance show a similar decrease. They involve an increase of 3.2% in persons arrested by the police and of 1.7% in the cases flowing into the Public Prosecution Service.<sup>50</sup> Why cases of discrimination run counter to this trend is difficult to explain. The same phenomenon can be seen in offences under general criminal law with a discriminatory aspect. The percentage of all violent crimes rose by 7.5%,<sup>51</sup> while the figures for racist and extreme right-wing violence dropped.<sup>52</sup>

The underlying principle is that the police are obliged to pass on the official signed reports having anything to do with discrimination to the Public Prosecution Service. What is striking is the difference – in 2007 as well – with the number of persons registered by the police in HKS (427). One obvious reason why the police sometimes departed from this principle and decided not to pass on the report was because there was no known perpetrator. There are two other possible explanations as well.

First, because of context but also because of differences in insight, offences that are originally reported as discriminatory offences are regarded by the Public Prosecution Service as general criminal offences and therefore are not included in the count. In addition, some discriminatory offences are actually dealt with as dismissals by the police but are not treated as such: thus cases are set aside because there is no chance of a conviction. These are known as "plankzaken" – cases that are put on the shelf.<sup>53</sup>

Despite these explanations, we have not been able to acquire enough information to explain the considerable difference between the figures provided by the police and those from the Public Prosecution Service.

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<sup>48</sup> *Jaarbericht 2007. Openbaar Ministerie in Cijfers* (2007 Annual Report: Public Prosecution Service in Figures), p. 1, <<http://www.om.nl/publish/pages/93904/Jaarbericht%2007%20Cijfers.pdf>> (26 August 2008).

<sup>49</sup> See section 9.5.1, figure 9.1.

<sup>50</sup> *Jaarbericht 2007. Openbaar Ministerie in Cijfers*, p. 3.

<sup>51</sup> In 2007 this concerned 58,600 offences, an increase of 7.5%, *Jaarbericht 2007. Openbaar Ministerie in Cijfers*, p. 5.

<sup>52</sup> See chapter 2, "Racial and extreme right-wing violence in 2007."

<sup>53</sup> Also see section. 9.6.2.1.

Besides the general decline with respect to the previous year that is shown in table 9.5, there are several other striking matters concerning the inflow in 2007 for each article of the law. Art. 137c of the Criminal Code, discriminatory defamation, is still the clear front runner by three quarters and deviates from the new trend seen in the police figures. There art. 137d of the Criminal Code is on the rise.

**Table 9.5 Inflow of discriminatory offences into the Public Prosecution Service per article of the law, 2003-2007**

	2003	2004	2005	2006	2007
<b>Article of the law</b>					
137c	154	165	166	187	166
137d	18	29	46	18	27
137e	13	15	10	25	7
137f	1	0	2	1	0
137g	17	5	9	10	16
429quater	1	0	8	5	0
Total	204	214	241	246	216

Source: LECD

Article 137e of the Criminal Code, a prohibition on distributing discriminatory statements, accounted for an unusually large proportion of the offences: 10%. In 2007 it dropped to 7, the other extreme. There is no conclusive explanation for this, although possible explanations include changing interpretations of the various offences in attributing the discrimination articles, or a reduced inflow of this type of offence.

Art. 137g of the Criminal Code, intentional discrimination in exercising an office, practising a profession or running a business, measures up to the number for 2003 with more than 7% of the offences in 2007. The 16 crimes of exclusion contrast sharply with reports of discriminatory door policies at certain hotels, restaurants and cafés<sup>54</sup> and distinctions made in recruitment and selection by employers.<sup>55</sup>

### 9.6.2 Settlements

After the police have tracked down the suspect, the official signed report is sent to the office of the public prosecutor, who can respond in three possible ways (settlements). A dismissal may be awarded, conditional or unconditional, which means the public prosecutor decides not to prosecute. Or the Public Prosecution Service might impose a financial penalty on the suspect in order to avoid prosecution (the settlement penalties from art. 74 of the Criminal Code). Finally, a summons can be served (judicial settlement). The *Discrimination Instructions* provide instructions for choosing one of

<sup>54</sup> I. Boog & M. Coenders. *Kerncijfers 2007. Jaaroverzicht discriminatieklachten bij antidiscriminatiebureaus en meldpunten* (Key figures for 2007. Annual survey of complaints of discrimination made to anti-discrimination agencies and reporting centres). Rotterdam: Landelijk Bureau Art.1 2008.

<sup>55</sup> *Discriminatie-monitor niet-westers allochtonen op de arbeidsmarkt 2007* (Discrimination monitor for non-Western ethnic minorities in the labour market). The Hague: SCP/Art.1 2007.

these three settlements. The basic assumption is the summons (expediency of prosecution). Only in less severe cases can a settlement penalty be offered first. This same expediency holds that dismissals must be made with great restraint. After all, the Board of Procurators General has already decided whether such cases should be prosecuted or not.

**Table 9.6<sup>56</sup> Types of settlement of discriminatory offences by the Public Prosecution Service, 2003-2007**

	2003	2004	2005	2006	2007
Summons	135	145	152	198	140
Settlement penalty	56	38	35	62	29
Conditional dismissal	9	4	4	4	4
Dismissal	35	36	49	38	28
Total	235	223	240	302	201

Source: LECD

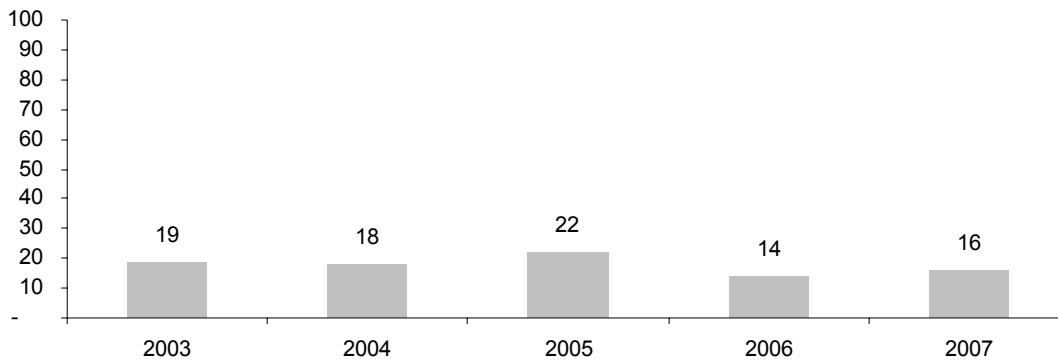
In 2006 there was a record number of 302 settlements. This picture changed drastically in 2007. There was a 33% decrease, in which 201 discriminatory offences were settled by the Public Prosecution Service, a difference of 101 offences over the previous year. Only in 2005 were there fewer settlements than inflow. Then the difference was 0.4%, whereas in 2007 the difference was 7%. On the plus side, the rising line in the proportion of summonses also continued into 2007, from 66% in 2006 to 70%.

#### 9.6.2.1 *Dismissals*

There are two kinds of dismissals in criminal law. A technical dismissal is used if a case has technical defects and prosecution is pointless. Then there is the discretionary dismissal, which is linked to the expediency principle. The Public Prosecution Service can grant a discretionary dismissal if measures have been taken other than those pertaining to criminal law, if the interest of the nation is at stake or if the age or health of the suspect requires it. A discretionary dismissal can also be applied in three other situations: if the act is a petty offence, if the act is not deserving of punishment or if the suspect's participation in the act is slight. In the case of dismissals, the importance of restraint applies in particular to "petty offence" or "minimal punishability." In cases of discrimination, however, there is practically no room for the public prosecutor to make his own policy considerations. Finally, it should be mentioned that if an offence is old but not yet statute-barred, a dismissal can be granted on that ground.

<sup>56</sup> The figures in this table differ from those in table 9.5 (Inflow of discriminatory offences into the Public Prosecution Service per article of the law, 2003-2007) because transferred offences were not included.

**Figure 9.2 Percentage of dismissals and conditional dismissals, 2003-2007**



Source: LECD

In 2007 there was a drop in the number of dismissals from 42 to 32, but that number was also a somewhat larger proportion of the total (16%). Compared with the dismissal percentage for all offences in 2007 (13%),<sup>57</sup> this is not an aberrant picture. With new instructions from the *Discrimination Instructions* of 2007, the Public Prosecution Service was given a bit more elbow room to proceed to a dismissal. The fact that the dismissal option was seldom used in 2007 seems to accord with the results of the dismissal study of 2005.<sup>58</sup> The most important findings show that by and large the correct criteria are being applied and the dismissals are being granted with care. The recommendations of the study that the Board of Procurators General brought to the attention of the public prosecutors at the time are still just as important today. The Public Prosecution Service is performing good work by maintaining a proper and critical application of the Instructions for Grounds for Dismissal, but according to the recommendations it needs to be more watchful of the internal disposal time in cases of discrimination.

Dismissals are not registered if they are carried out by the so-called "Hopper," a combination of assistant prosecutor and public prosecutor's clerk at a police station. This functionary is part of the Public Prosecution Service, but his dismissals are not recorded in COMPAS. If they were – which would be conducive to transparency – it would result in a sharp rise in the number of dismissals.

#### 9.6.2.2 *Settlement penalties*

Back to table 9.6. The trend of a declining number of settlement penalties that began in 2003 appears to have turned in 2006 (21%) but was restored in 2007 (14%). The percentage of settlement penalties in case of discrimination – 14% – is considerably lower than the average of 27% for settlement penalties imposed in all the offences in 2007.<sup>59</sup> This means the Public Prosecution Service is staying well within the framework

<sup>57</sup> *Jaarbericht 2007. Openbaar Ministerie in cijfers*, p. 18.

<sup>58</sup> This study was carried out in response to a motion of the House of Representatives in 2001 on technical and discretionary dismissals in cases of discrimination and racism. *Kamerstukken II 27 400 VI*, no. 92, *Kamerstukken II 2001/02*, 28 000 VI, no. 39.

<sup>59</sup> *Jaarbericht 2007. Openbaar Ministerie in Cijfers*, p. 18.

of the *Discrimination Instructions* by imposing settlement penalties only on rare occasions.

### 9.6.2.3 Summonses

In 2007 the percentage of *offences* for which summonses were issued was 70% (table 9.6), a proportion of the settlements never before reached. This 70% consists of 140 offences for which a summons was issued. As table 9.7 shows, the number of cases that went to court in 2007 is quite a bit lower: 107.

The reason for this difference has to do on the one hand with the method of registration. Unlike the previous tables, the terminology used in the courts is *cases* of discrimination (rather than *offences*). On the other hand, cases that the Public Prosecution Service brought before the court in 2007 were not settled by the court during in the same year. In 2007, however, the difference between the number of offences for which summonses were issued and the number of cases that were settled by the courts is 33, as opposed to an average of 12 for the previous years. The Public Prosecution Service attributes the drop in the number of cases brought before the courts to problems of coordination with the courts and to court-related capacity problems.<sup>60</sup> In addition, the courts settled fewer cases than expected, as the national figures for the settlement of all cases also show.<sup>61</sup>

**Table 9.7 Cases settled by the courts, 2003-2007**

	2003	2004	2005	2006	2007
Conviction	110	111	131	153	89
Acquittal	12	8	10	17	13
Summons invalidated	0	0	0	3	1
Prosecution barred	1	0	0	0	0
Discharge from further prosecution	0	0	0	0	0
Conviction without the imposition of penalty	1	1	1	4	1
Unknown	4	5	6	9	2
Total	128	125	148	186	107

Source: LECD

### 9.6.3 Background information on discriminatory offences

Besides the information on discrimination discussed so far that the LECD has collected from COMPAS, the expertise centre also received information by way of the Discrimination Registration Code (Discriminatie Registratie Code; DRC). This is a uniform list of question about who is discriminating (the suspect), who is being discriminated against (the victims) and where these incidents are taking place (location of the incident).

<sup>60</sup> Ibid., p. 11.

<sup>61</sup> *Jaarverslag van de Raad voor de Rechtspraak* (Annual Report of the Council for the Judiciary), <[http://www.rechtspraak.nl/nr/rdonlyres/3F8F7719-8D39-4777-8AE3-A70CA383BB9F/0/RvRJaarverslag\\_2007\\_net.pdf](http://www.rechtspraak.nl/nr/rdonlyres/3F8F7719-8D39-4777-8AE3-A70CA383BB9F/0/RvRJaarverslag_2007_net.pdf)> (1 August 2008).

### 9.6.3.1 Suspects

Information about who is discriminating can be of help in tackling the problem. More cases were categorised under "other" and "unknown" in 2006 because no data were available or could no longer be retrieved, but this phenomenon was practically eliminated in 2007. The split between private individual and investigating official as suspects, contributes to transparency and self-reflection among the government agencies involved. This positively contributes to the public's perception of the government's approach to discrimination.<sup>62</sup>

**Table 9.8 Suspects of discriminatory incidents, 2003-2007**

	2003	2004	2005	2006	2007
Extreme right	23	19	30	51	26
Religion/personal beliefs	0	0	0	0	1
Political convictions	2	3	2	2	1
By investigating official	0	0	4	2	3
Private, Surinamese/Antillean	1	1	2	1	2
Private, Turkish/Moroccan	12	15	3	5	14
Other, non-white, private	4	3	2	7	2
White, private	110	149	185	144	152
Private (ethnic background unknown)	24	14	8	17	14
Other	9	6	3	8	1
Unknown	19	4	2	9	0
Total	204	214	241	246	216

Source: LECD

The "spillover" from "extreme right" to "white, private" is most striking in 2007. In 2006 the opposite was the case, and it is rather difficult to point to the reasons for this.<sup>63</sup> Furthermore, the drop in the proportion of extreme right-wing suspects does not coincide with the observation made in the study of racial and extreme right-wing violence.<sup>64</sup> This underscores the problem of underregistration of discriminatory offences, particularly in the "extreme right" category, because criminal offences aggravated by discriminatory behaviour are not included in the registry. The groups "white, private" and "extreme right" together are responsible for the vast majority of discriminatory offences (82% in 2007 as opposed to 80% in 2006).

Nine more suspects of discrimination were of Moroccan or Turkish origin than in 2006. One interesting question is how an unambiguous distinction is made between, say, the

<sup>62</sup> Cf. B.A.M. van Stokkom, H.J.B. Sackers & J.-P. Wils, *Godslastering, discriminerende uitingen wegens godsdienst en haatuitingen* (Blasphemy, discriminatory remarks against religion and expressions of hatred). WODC, Meppel: Boom Juridische Uitgevers 2007, p. 138  
<[http://www.justitie.nl/images/wodc%20onderzoek%20godslastering.doc\\_tcm34-30812.pdf](http://www.justitie.nl/images/wodc%20onderzoek%20godslastering.doc_tcm34-30812.pdf)> (18 August 2008).

<sup>63</sup> Also see the explanation in C. Brants, R. Kool & A. Ringnalda, *Strafbare discriminatie* (Illegal discrimination). p. 110.

<sup>64</sup> See chapter 3, "Right-wing extremist groups."

group "private Turkish/Moroccan" and discrimination committed on the basis of religion (the group "religion/personal beliefs." The relevance of these difficulties is illustrated by the wave of attention for discrimination (and violence) against homosexuals that occurred in 2007 in particular. Figures from the Amsterdam police suggest that most violence against homosexuals is perpetrated by young Moroccans,<sup>65</sup> but this is not confirmed by figures from the Public Prosecution Service.

#### 9.6.3.2 *Victims*

The grounds contained in the criminal discrimination prohibitions are exhaustive. Besides the six grounds mentioned in the Criminal Code – race, religion or personal beliefs, hetero- or homosexual orientation, disability and gender – the LECD also uses the categories "anti-Semitism" and "other grounds."<sup>66</sup> In recent years there have been changes in both the legislation and in registration by the LECD. It is not clear to what extent the differences between the years of change and the previous years were caused by the new methodology, but an overview of the changes does provide something of a reference point for studying the figures.

In 2005 the LECD did away with the category "multiple grounds." Since then discrimination has been registered per ground, even if in actual practice something like a torrent of abuse would concerns several grounds. Then in 2006 the ground "disability" was added because of the expansion of the legislation. Finally, the most recent change took place in 2007, and the grounds in the table were adjusted to keep them more in line with international reports. Before casting a glance at all the grounds and the relative proportion of each ground to all the discriminatory offences contained in table 9.10 (Grounds for discrimination per incident, 2003-2007), a detailed look is taken at the ground of race.

In 67% of the cases involving discrimination in 2007, the offence occurred on the ground of race. With respect to the previous year that is again an increase: after 9% in 2006, an increase of 12% in 2007. This consolidated the place held by the ground 'race' as the most common form of discrimination. A look at table 9.9 gives us a more detailed picture of registered racial discrimination.

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<sup>65</sup> Gemeente Amsterdam, *Plan van aanpak discriminatie Amsterdam: problemen benoemen en grenzen stellen* (Amsterdam discrimination action plan: naming problems and drawing borders) (recommendation of April 2008), oov - pas - dmo, Unit Diversiteit & Integratie 2008  
<<http://amsterdam.nl/aspx/download.aspx?file=/contents/pages/110785/20080509planvanaanpakdiscriminatiedubbelzijdigdef2.pdf>>; "Politie overweegt 'lokhomo's' in te zetten" (Police consider deploying "gay decoys"), *Nu.nl* 15 August 2007, <[http://www.nu.nl/news/1195840/14/rss/Politie\\_overweegt\\_%27lokhomo%27s%27\\_in\\_te\\_zetten.html](http://www.nu.nl/news/1195840/14/rss/Politie_overweegt_%27lokhomo%27s%27_in_te_zetten.html)> (26 August 2008).

<sup>66</sup> The category "other grounds" is used when, on closer examination, it is decided that an offence registered as discrimination belongs not to race, for example, but to nationality. This is not a ground from the discrimination bans and the Public Prosecution Service registers it separately.

**Table 9.9 Race as grounds for discrimination, 2003-2007**

	2003	2004	2005	2006	2007
<b>Skin colour</b>	<b>15%</b>	<b>21%</b>	<b>29%</b>	<b>27%</b>	<b>21%</b>
- Negroid	15%	21%	29%	17%	14%
- Coloured (not negroid)				9%	6%
- White				2%	0%
<b>National or ethnic origins</b>	<b>31%</b>	<b>22%</b>	<b>17%</b>	<b>28%</b>	<b>47%</b>
- Surinamese/Antillians	10%	2%	3%	3%	5%
- Turks/Moroccans	21%	20%	15%	11%	20%
- Roma/Sinti				0%	0%
- Ethnic minorities/ foreigners				9%	15%
- Other national or ethnic origins				6%	6%
Total	47%	43%	46%	55%	67%

Source: LECD<sup>67</sup>

National or ethnic origins, which rose sharply, accounted for half of all the cases of racial discrimination in 2007. Besides this there are two other increases worth mentioning. The first has to do with the group "Turks/Moroccans" (9%). The second has to do with a rise of 6% for the generic group "Ethnic minorities/foreigners," while under discrimination on the grounds of skin colour no discrimination of whites was registered.

The objection that has been raised to the terminology used in the table so far by the LECD, such as "blacks or coloureds"<sup>68</sup> and "negroids," which does seem rather awkward, is also deserving of attention this year. Perhaps inspiration for a solution can be gained from the Americans, who use more neutral terms such as "African-American" For an effective approach to discrimination, knowledge of the various manifestations and victims is naturally of great importance. So it should also be recommended that national or ethnic origins be provided per group. In addition to the pragmatic reasons – to gain better insight into the problem – it is incorrect to identify Surinamese and Antilleans or Turks and Moroccans as one single group. There are indications that Moroccans, for example, are considerably more discriminated against than Turks.<sup>69</sup>

Besides racial discrimination there are other grounds for discrimination, and table 9.10 provides a picture of the relative amounts of the various grounds.

<sup>67</sup> This is a sub-table that only goes up to 67%, the percentage of all the discriminatory incidents accounted for by the ground of race.

<sup>68</sup> P. R. Rodrigues, "Opsporing en vervolging in 2005" (Investigation and prosecution in 2005), in: J. van Donselaar & P. R. Rodrigues (eds.), *Monitor Racisme & Extremisme, zevende rapportage* (Racism & Extremism Monitor, seventh report). Amsterdam: Anne Frank House / Leiden University 2006, p. 200.

<sup>69</sup> I. Boog & M. Coenders, *Kerncijfers 2007*.

**Table 9.10 Grounds for discrimination per incident, 2003-2007**

	2003	2004	2005	2006	2007
Race	47%	43%	46%	55%	67%
Antisemitism	25%	27%	23%	33%	19%
Religion/personal beliefs	4%	4%	6%	6%	7%
Homosexual orientation	1%	2%	3%	2%	4%
Gender	0%	0%	0%	0%	0%
Disability				0%	0%
Multiple grounds	12%	16%			
Other grounds	2%	5%	21%	0%	0%
Unknown	9%	2%	1%	3%	1%
Total	100%	100%	100%	100%	100%

Source: LECD

Cases of anti-Semitism have dropped sharply in line with the drop in extreme right-wing suspects (see table 9.8: Suspects of discriminatory incidents, 2003-2007). The tie between these groups of suspects-victims is difficult to determine, however, without a specific dossier study. Hatred of Muslims or anti-Islamism also qualifies for separate registration, as anti-Semitism already does, since discrimination may occur on the basis of religion as well as on the basis of ethnic origins (race).<sup>70</sup> In 2007, Islam also accounted for the entire 7% discrimination on the grounds of "religion/personal beliefs." This percentage for religion is comparable to the figures from the anti-discrimination agencies for 2006 and 2007, in which it is obvious that those who feel discriminated against on such grounds are mainly ethnic minorities, although their specific religion is not known.<sup>71</sup>

### 9.6.3.3 *Location of the incident*

In discussing the location of the crime, it should be noted that an investigating official can just as easily be a victim of discrimination. In a table dealing with locations, however, 'against investigating official' is still the odd man out. Investigating officials can be discriminated against on the basis of different grounds as well (think of female investigators, ethnic minorities, religious or homosexual investigators), as a result of which table 9.10 (Grounds for discrimination per incident, 2003-2007) may seem the more appropriate table for this category. In any case, table 9.11 shows a rising line for these incidents since 2005. The increase is 2% a year and seems indicative of the intention by the police to take stronger action when the rights of an investigating official are at issue.<sup>72</sup>

<sup>70</sup> B.A.M. van Stokkom, H.J.B. Sackers & J.-P. Wils, *Godslastering, discriminerende uitingen wegens godsdienst en haatuitingen*, pp. 36-37 and 163; P.R. Rodrigues, "De meervoudigheid van moslimdiscriminatie" (The multiplicity of Muslim discrimination), in: Anita Böcker et al. (eds.), *Migratierecht en rechtssociologie. Liber Amicorum Kees Groenendijk*. (Migration law and sociology of law. Liber Amicorum Kees Groenendijk). Nijmegen: Radboud University 2008, p. 486.

<sup>71</sup> I. Boog & M. Coenders, *Kerncijfers 2007*.

<sup>72</sup> A. Vermaat, "Sluit café bij geweld tegen politie" (Close café in the event of violence against police), *Trouw* 11 July 2008,

**Table 9.11 Location of the incident, 2003-2007**

	2003	2004	2005	2006	2007
Against investigation official	14	11	9	14	18
Work	16	1	12	6	11
School/educational institution		9	7	7	6
Sports	18	21	5	10	3
Nightlife – admission refused		4	7	14	10
Nightlife – general	21	6	17	8	5
Living environment	17	30	32	47	32
Street/public facility	85	110	139	109	94
Internet	4	13	8	13	22
Press (media)	1	0	2	1	1
Other	9	3	1	7	12
Unknown	19	6	2	10	2
Total	204	214	241	246	216

Source: LECD

The two places where discrimination most frequently occurs have been stable for a couple of years now. The first ("street/public facility") and the second ("living environment") together account for 59%; in 2006 that was still 63%. On the basis of the figures from previous years, "internet" occupies a startling third place with 10% of the registered discriminatory offences. The number of these offences has almost doubled, but that should not be surprising considering the amount of discrimination on the internet.<sup>73</sup> Of the 22 internet offences, five alone are from the same case. Six offences were introduced by the Dutch Complaints Bureau for Discrimination on the Internet (Meldpunt Discriminatie Internet; MDI). Seven of the complaints bureau's reports were dismissed (some of them had been running for quite some time), and none of its cases was brought before court in 2007.<sup>74</sup>

To begin a discussion of discrimination in the nightlife industry on a positive note, it seems that in 2007 no cases from this industry were registered as crimes of expression, but only as crimes of exclusion (in this case 10 of the 16 offences registered under art. 137g of the Criminal Code from table 9.5). In the figures from the Public Prosecution Service, exclusion at the door and general discrimination in nightlife establishments both dropped by 1%. While offences in this industry numbered 22 in 2006, that has now dropped to only 15. This is strange not only in the light of general practice in this scene,

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<[http://www.trouw.nl/hetnieuws/nederland/article1035214.ece/Sluit\\_cafe\\_bij\\_geweld\\_tegen\\_politie](http://www.trouw.nl/hetnieuws/nederland/article1035214.ece/Sluit_cafe_bij_geweld_tegen_politie)> (26 August 2008).

<sup>73</sup> *Jaarverslag 2007* (2007 Annual report), Meldpunt Discriminatie Internet, <[http://www.meldpunt.nl/uploads/upload\\_documents/Jaarverslag%20MDI%202007.pdf](http://www.meldpunt.nl/uploads/upload_documents/Jaarverslag%20MDI%202007.pdf)> (26 August 2008).

<sup>74</sup> *Jaarverslag 2007*, Meldpunt Discriminatie Internet, p. 15.

where discrimination is frequent,<sup>75</sup> but also in the light of increased local efforts to induce young people to report such incidents.<sup>76</sup>

## 9.7 Conclusion

One important comment is that many of the problem areas identified so far repeat themselves year after year, despite the fact that several solutions have been offered in the *Discrimination Instructions* for at least that long. The greatest challenge, it seems, is the proper and complete registration of violations of the discriminatory prohibitions, particularly criminal offences aggravated by discriminatory behaviour, which are now completely absent from the Public Prosecution Service registration. Almost inevitably the flow of figures has been less transparent and verifiable, as we see in the substantial difference between the figures from the police and those from the Public Prosecution Service. An integrated data file for cases of discrimination is therefore essential.<sup>77</sup>

One difficulty in dealing with dismissals that came to light had to do with the disposal time of cases of discrimination. When a case is kept on hold for a long time, it can be disposed of by means of a discretionary dismissal for "old offences." This is not in line with the *Discrimination Instructions*. For this reason, it might be wise to consider setting deadlines before which a decision to institute proceedings and to serve a summons would have to be taken. The Public Prosecution Service might search for a link with deadlines that already exist in administrative law, which would benefit uniformity and recognisability for the public. Naturally the complexity of cases should be taken into account, with fixed deadlines adjusted accordingly.

Another striking point is that although there has been a steady inflow of suspects of discriminatory offences to the police, settlement by the Public Prosecution Service has dropped significantly. The decline in settlements by the courts is striking as well. At the same time, there is no clear reason for the stagnation of cases earlier in the police-to-judiciary chain, which is troubling in view of the fact that public trust is necessary for adequate investigation and prosecution. The idea behind the creation of the eleven new public prosecutors' offices was to make expertise on discrimination easier to organise and more available, but according to the decline in figures for 2007 this has not been a total success.

It is of crucial importance for the Public Prosecution Service as well as for the police that grounds for discrimination be dealt with in an efficient manner. This will require recognition of the fact that the ground of race, for example, is becoming more prevalent and should therefore be allotted more resources. At the same time, caution should be taken against excessive attention for a single ground by means of campaigns and media

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<sup>75</sup> *Aanhangsel Handelingen II* 2006/07, no. 2635.

<sup>76</sup> City of Amsterdam, *Plan van aanpak discriminatie Amsterdam*; Roeland Franck, "Nog volop apartheid in Utrechtse horeca" (Still total apartheid in Utrecht's hospitality industry), Study by ROOD, the Socialist Party youth organisation, in: *Algemeen Dagblad* 16 March 2008 <[http://www.ad.nl/utrecht/stad/2140570/rsquoNog\\_volop\\_apartheid\\_in\\_Utrechtse\\_horeca'squo\\_Onderzoek\\_SPjongeren\\_rood.html](http://www.ad.nl/utrecht/stad/2140570/rsquoNog_volop_apartheid_in_Utrechtse_horeca'squo_Onderzoek_SPjongeren_rood.html)> (26 August 2008).

<sup>77</sup> Also see C. Brants, R. Kool & A. Ringnalda, *Strafbare discriminatie* (Illegal discrimination), p. 176.

policy. In discrimination against homosexuals, an undesired side effect of all the attention was that "gay bashing" had become a status-raising activity, according to discrimination reporting centres. In this regard, a balanced media policy by police and the judiciary, in addition to the satisfactory settlement of cases of discrimination commensurate with their manifestation in society, is indispensable. It would constitute a positive contribution to a self-sustaining effect: public perception would be improved, which in turn would benefit the flow of information to the policy and the judiciary.