

Hate speech on the internet. Case study of Belgium and the Netherlands

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1. INTRODUCTION

The World Wide Web offers a wide pallet of possibilities for easy access to information. As such, it has become an important instrument to influence the public opinion. Although it is still far behind the traditional media, the impact of the internet as an information channel has increasingly expanded since the mid-1990s. The use of internet as an instrument for the dissemination of ideas and information is worldwide welcomed and recognised. On the other hand, we determine that the internet is also used for purposes contrary to respect for human values, non-discrimination, respect for others and tolerance, including the propagation of racial hatred, xenophobia, right-wing extremist ideas and related intolerance.

Research has shown that racist discourse is a widespread phenomenon on the internet. For example, **Surf Control**, a British-based web filtering company, reported that the hate and violence sites, which they monitor, increased with 300 percent from 2000 to April 2004 (www.surfcontrol.com). Further, the Hate Directory handbook, compiled by Raymond Franklin and published every six months (last update January 15 2007) by the University of Michigan, contains 149 pages of sites of individuals and groups that, *in the opinion of the author*, advocate violence against, separation from, defamation of, deception about, or hostility toward others based upon race, religion, ethnicity, gender or sexual orientation. In other words, the number of racist sites has grown exponentially over the years and is considered as a serious problem. It is striking that not only the number of racist sites increases; also the number of complaints concerning racism and discrimination on the internet is rising (CGKR, 2005, p.17-18).

In this paper we analyse the legal restrictions and the self-regulation initiatives against the misuse of the Internet in Belgium and in the Netherlands¹ and describe the jurisprudence

¹ This paper doesn't concentrate on the E-commerce Directive and the implementation of this Directive into Belgian and Dutch Law, nor does it deals with liability of ISP's. Also other European initiatives/treaties/texts/... of the Council of Europe, the European Convention on Human Rights, the European Commission against Racism and Intolerance, the Committee of Ministers, ... will not be treated in this paper. The author is of the

concerning racist expression and hate speech in these two countries. Finally, we present the results of a content analysis of racist or xenophobic websites, web logs, discussion groups, games, ...

2. BELGIUM

2.1. Legal restrictions

This paper deals with hate speech on the internet. Consequently we will only concentrate on the laws and the stipulations within concerning the communication media. As a result we are aiming on the chastisement of racist and discriminating expressions, which are done in public. Racism or discrimination on the shop floor or with the offering of services (e.g. the leasing out of houses, the entrance at dance halls or bars, etc.) will not be dealt with in this paper.

In Belgium the federal legislation with regard to racism and discrimination has recently been revised. The law of July 30 1981 conform the chastisement of certain deeds inspired by racism or xenophobia (*Anti-Racism Act*) and the law of February 25 2003 challenging discrimination (*Anti-Discrimination Act*) both have been adjusted.² Except these two general instruments the federal justice consists also of the law of March 23 1995 to punish the negation, minimization, justification or approbation of genocide committed by the national-socialist German regime during the Second World War (the Anti-Negationism Act). These three laws outline the juridical scope in which this paper will operate.

2.1.1. The Anti-Racism Act³

According to Anti-Racism Act there are four kinds of conduct considered as illegal in relation with expressions of racism. And only those are to be punished with a prison sentence from a month to a year and punishable by fine from 50 euros up to a 1.000 euros those who are:

- **inciting others in public to** discrimination, hatred or violence against a **person**, that is based on nationality, the so-called race, colour of skin, the origin or the national or ethnic extraction.
- **inciting others in public to** discrimination, segregation, hatred or violence against a **group**, a **community** or **its members**, that is based on nationality, the so-called race, colour of skin, the origin or the national or ethnic extraction.
- **spreading in public ideas** which are based on race superiority or race hatred.

opinion that other authors have already written interesting documents about these themes and the purpose of this paper is to focus on two countries and the bottlenecks of the fight against racism and intolerance on the internet. Due to lack of time and space the initial idea to discuss also France isn't executed.

² The text of the modified law was published in *Moniteur Belge* on May 30 2007.

³ De wet van 10 mei 2007 tot wijziging van de wet van 30 juli 1981 tot bestraffing van bepaalde door racisme of xenofobie ingegeven daden, *B.S.*, 30 mei 2007.

- **being a member of or co-operating with a group or society** which are announcing in public - unmistakably and repeatedly - discrimination or segregation that is based on nationality, the so-called race, colour of skin, origin or ethnic extraction.⁴

The conditions of the public nature are to be carried out as summed up in article 444 of the Penal code⁵, before the inciting to discrimination, segregation, hatred or violence can be prosecuted or before the spreading of ideas based on race superiority or race hatred can be sentenced. In other words the law only sentences opinions which are occur in **public**. *“To ventilate a racist discourse in a letter, even in a virulent way, as far as this letter is addressed to a person, is not covered by the Anti-Racism law. To incite to racism or discrimination via so-called news groups on the internet is to be considered as a public expression in application of article 444 of the Penal code.”*⁶

By **discrimination** we understand each form of:

- *intentional direct discrimination*: a direct distinction that is based on the preserved criteria (nationality, so-called race, colour of skin, origin or the national or ethnic extraction) which cannot be justified.
- *intentional indirect discrimination*: an indirect distinction that is based on the preserved criteria which cannot be justified.
- *order to discriminate*: each act that states to order a person, a group, a community or one of their members to discriminate based on the preserved criteria.
- *intimidation*: unwanted conduct that is connected to one of the preserved criteria, and that has as goal or consequence that the dignity of a person is violated and a threatening, hostile, insulting, humiliating or hurting environment is created.⁷

By **"inciting to"** we mean: *"communicative expressions, language expressions, gestures which spur on, urge on, egg up, encourage, stir on, evoke and provoke to certain facts or reactions"*. With the **"inciting to"** the perpetrator really must have the intention and the hope that those who he has turned to will in fact discriminate, hate or use violence against other

⁴ Article 20, 21 and 22 of the Anti-Racism Act.

⁵ The culprit is to be punished with a prison sentence from 8 days to a year and with a punishable by fine from 26 euros to 200 euros, when the charges befall: unless in public meetings or places; unless in the presence of several persons, in a non-public place, but which is accessible to a certain number of people who have the right to meet there or to visit it; unless anywhere, in presence of the insulted and in front of the witnesses; unless by writings, whether or not printed, by images or symbols which are affixed, spread or sold, offered or publicly showed; unless finally by writings, not made publicly, but sent or announced to several people.

⁶ VOORHOOF, D., *De wet bestrijding discriminatie als beperking op de expressievrijheid: ultieme realisatie van het gelijkheidsbeginsel of veelkoppig monster?* In: BREMS, E. en DE VOS, M., (eds), *Wet bestrijding discriminatie in de praktijk*, Antwerpen, Intersentia, 2004; p. 12.

⁷ Article 19 of the Anti-Racism Act and Articles 4, 7, 9, 10, 12 for the definition of "discrimination".

people or groups. The law therefore subscribes that the perpetrator has the **explicit** intention to drive others to the edge so that they will discriminate other people. One demands therefore that as well as a material element (the punishable fact) - as was described in the law - as a moral element (the intentional will) is to be proved. The intentional will to incite someone to a reaction has to be present. If the judge wants to declare a conviction based on the law of Anti -Racism, than he has to answer to different questions: is the expression really insulting, is the expression to be called racist and is there occurring a special intention? When one of these questions is left unanswered, then a punishable racist conduct is out of the question. It is not required that one has to take the matter of this appeal into court. It is sufficient that people are incited by expressions to a strong resent or to a general negative attitude. The merely expressing of certain opinions that show a racist character and that point out a contempt towards foreigners, is at itself not punishable. The arguing about the return of foreigners to their land of origin for example is as such not racist.⁸

With regard to the inclusion of the article that prohibits ***the spreading of ideas that are based on race superiority and race hatred***, there exists a hot topic discussion in Belgium. Not in the least because the occasion for the reformation of the Anti-Racism Act and the Anti-Discrimination Act was - among other things- an arrest of the Constitutional Court. On October 6 2004 the Constitutional Court destroyed several parts of the Anti-Discrimination Act. The Constitutional Court was particularly severe concerning the opinions which the law intended to restrain. As such the sentencing of the *"the publicly showing a consideration to discrimination, hatred, or violence"* was destroyed.

The court pones in its arrest that this prohibition *"smothers each debate because it prevents that the one who expresses this intention, can be opposed and could be brought of the idea to realise his intention."*⁹ Also more in general the Constitutional Court preserves strictly the guaranteeing of the freedom of speech and therefore goes further than the preservation that is offered in the justice of the European Court for Human Rights (ECHR).¹⁰

The Constitutional Court takes up a disapproving attitude towards the attempts to sentence the merely spreading of ideas - even if those ideas are insulting, shocking, discriminating or with respect to content irreconcilable with the human rights. With the new article in the law of Anti- Racism the merely spreading of ideas is regarded to be punishable, now that there are

⁸ VAN DE PUTTE, M., Wet Racisme en Xenofobie: 20 jaar rechtspraak. *TVR*, 2001, nr. 3, p. 192.; VOORHOOF, D., *Racismebestrijding en vrijheid van meningsuiting in België: wetgeving en jurisprudentie*. In: SCHUIJT, G.A.I. en VOORHOOF, D. (eds.), *Vrijheid van meningsuiting. Racisme en revisionisme*. Gent, Academia Press, 1995, p. 164-167; VAN NOOTEN, M. Niet elke racistische belediging valt onder racismewet. *De Juristenkrant*, 2002, jrg. 4, nr. 52, p. 13.

⁹ Arbitragehof nr. 157/2004, 6 oktober, B. 60.

¹⁰ See also: Sottiaux S. Het Arbitragehof herwaardeert de vrijheid van meningsuiting, *R.W.*, 2001-2002, p. 185-193; Velaers J., Het Arbitragehof en de antidiscriminatiewet, *T.B.P.*, 2004, nr.10, randnummer 29; Ang. F., De

no further requirements to be put to the intention of the perpetrator, the consequences for the society or for the victims after all.

The perpetrator no longer has to incite to hatred, he must not have the will to insult, he only just has to spread the ideas. The freedom of speech here is therefore very restricted. Vrielinck puts it as follows: “one who prohibits the merely spreading of ideas that are based on race superiority and race hatred states as punishable, goes remarkably further than one who his intention to hatred or discrimination announces sentences.”¹¹ By the way, the Constitutional Court destroyed this latter penalty clause (cfr. supra) and it looks as if this new statement in the law of Anti- Racism will not survive the touch of the Constitutional Court.

2.1.2 The Anti-Discrimination Act

As mentioned before in the previous chapter there was an appeal imposed to the destroying of the law of Anti-Discrimination. In the arrest of October 6 2004 a whole lot of statements in the law were destroyed and other statements merely escaped destruction on condition of an obligated interpretation which is constitutionally conform. Because of this the legibility and the practical handiness of the law weakened. There was consequently searched for an alternative and eventual on May 10 2007 the new law of Anti-Racism and the law of Anti-Discrimination were declared. The law of Anti-Discrimination puts discrimination illegal on the basis of **age, sexual inclination, political beliefs, language, civil state, birth, wealth, belief or life consideration, current or future medical condition, a handicap, a physical or genetic property or social origin**. Analogue to the statements in the law of Anti-Racism those are to be punished from a month to a year and with a punishable by fine from 50 euros to a 1000 euros or with one of these penalties are only those who:

- **incite in public to** discrimination, hatred or violence against a person that is based on the criteria summed up previously.
- **incite in public to** discrimination, segregation, hatred or violence against a group, a community or its members that is based on the criteria summed up previously.¹²

Concretely this means that all grounds concerning the discrimination of races are excluded of the working of this statement and that these grounds are to be regulated on the basis of analogue statements of the Anti-Racism law. The concept of discrimination that is used in the Anti-Discrimination Law knows now the same interpretation as in the Anti-Racism Law (cf. supra).¹³ What actually was added was also the refusing to the making of reasonable

(on)verenigbaarheid van de antidiscriminatiewet met de Grondwet, *TvMR*, 2004, nr. 4, p. 16.

¹¹ Vrielinck, J., *Strafbare ideeën: geen goed idee*. SAMPOL, 2007, vol. 14, nr. 3, p. 32-38.

¹² Article 22 of the Anti- Discrimination Act, *B.S.*, May 30 2007.

¹³ In the previous law a different definition was used.

adjustments for a person with a handicap, which has to be considered as discrimination in application of the Anti-Discrimination Law.¹⁴ Just as in the Anti-Racism Law a mere insult of a person because of the named grounds is not punishable. Discriminating insults are only punishable if they **incite** a third party **to** discrimination, hatred, or violence.

The insult has to occur in public, namely in the circumstances summed up in Article 444 of the Penal Code and it has to "*aim at least likewise to the public as to the victim. However, the law does not suggest hereby that that which is spurred on, necessarily should concern concrete, certain or uncertain deeds. It can be sufficient that others are inspired to a strong resent, or to an general negative attitude.*"¹⁵

2.1.3 The Anti-Negationism Act

The law curbs negationist opinions, expressed in the circumstances as provided in Article 444 of the Penal Code, who go against the historical reality or who has as goal to glorify racist ideas and therefore demolish the reminiscence of the victims of the Holocaust. Important is the fact that the law only talks about the genocide as it was conducted by the Germans in WW II and that other forms of genocides are not taken into consideration. It seems as if the Holocaust is the only genocide that by its denial should cause damage to victims or surviving relatives and the Belgian government esteems other genocides, like those by the Hutus on the Zulus, those by the Chinese on the Tibetans, etc. as lesser ones or even deny them. The restriction to the "**Nazi-genocide**" is either way no wrong or unreasonable judgement, but it is conscious specified by the legislator according to keep the affecting of the freedom of speech as minimal as possible by protecting only the prosecution of Jews during WW II.

Furthermore the legislator has pointed out that nothing prevents that the application area of the law should be expanded when the denying or approving of sort like facts would occur on the same systematically manner concerning another genocide but that this situation has not occurred for the time being.¹⁶

One uses the concepts "*the denying in public, the gross minimising, the attempt to justify or the approval*" of the genocide during WW II by the German nationalist-socialist regime. These concepts asks for further explanation. The publicly **denial** contains that one pones that the Holocaust never has existed and that this genocide is nonsense. **Approval**

¹⁴ Article 21 of the Anti- Discrimination Act, *B.S.*, May 30 2007.

¹⁵ VRIELINCK, J., De nieuwe Belgische Anti-Discriminatiewet, een kritische bespreking. In: Het recht in de samenleving. Vrijheid en gelijkheid. De horizontale werking van het gelijkheidsbeginsel en de nieuwe Anti-Discriminatiewet. Antwerpen, maklu, 2003, p.226

¹⁶ *Wet tot bestraffing van het ontkennen, minimaliseren, rechtvaardigen of goedkeuren van de genocide die tijdens de Tweede Wereldoorlog door het Duitse nationaal-socialistische regimes is gepleegd.* In: GORLE, F. (ed.), Strafrechtelijke kwalificaties met jurisprudentie, Brugge, die Keure, 2002, p. 1-2 (losbladig).

means that one justifies the Holocaust.¹⁷

The gross minimising is a result of the many critique that was uttered with relation to the expression "*to cast doubt on something*" which was admitted in the original bill. This means that the legislator points at - not the minimising as such - but indeed points at the minimising in a far-reaching and therefore extreme outrageous and insulting manner. However, the expression to minimise in a gross manner is not without critique as it is impossible to determine with scientific certainty whether how many casualties have fallen in battle in reality during the Nazi-genocide. The critique reads that scientist may counter problems when they should formulate a new death toll that does not fit into the general accepted scope.¹⁸

There were two appeals submitted for destruction with the Constitutional Court against the Anti -Negationism Act. Both cases eventually appeared before the Constitutional Court at July 12 1996. However, the arrest of the Constitutional Court is very clear and formulates as follows:

*"the scientific research in general and the objective and scientific well-considered historical research concerning especially the genocide committed by the German national-socialist regime during WW II are not under any circumstance to be put under jurisdiction of the law."*¹⁹

In other words there have to be made a distinction between the scientific findings of the righteous historian and the pseudo-declarations of the negationists which are unacceptable as well as from a humane as from a historical point of view.

The attempt to justify points at the rewriting of historical facts with the intention to reflect the Holocaust in an acceptable manner and to warrant the Nazi-ideology. With this expression the legislator wants to put an end at the pseudo-scientific research.

It is up to the judge to make a distinction between the scientific historical research and the pseudo-scientific negationism that only wants to announce a racist and political discourse.²⁰

2.2 Self regulation and co-operations

2.2.1 Acceptable Use Policy of the ISPs

Most ISPs have drawn up their own "**Acceptable Use Policy**". This code of conduct imposes to their clients an "*acceptable*" behaviour on the internet, e.g. a prohibition against racist and discriminating texts. When the user not tends to follows these conditions, the ISP is allowed

¹⁷ GEYS, F. en DE BATSLEER, B. *De antiracismewet. Herwerkte versie van Eddy Boutmans*. Gent, Liga voor Mensenrechten, 2002, p.62.

¹⁸ *Wet tot bestraffing van het ontkennen, minimaliseren, rechtvaardigen of goedkeuren van de genocide die tijdens de Tweede Wereldoorlog door het Duitse nationaal-socialistische regime is gepleegd*. op. cit., p.5.

¹⁹ Arbitragehof 12 juli 1996, *B.S.*, 27 juli 1996.

²⁰ GEYS, F. en DE BATSLEER, B. *op. cit.*, p.62-63.

to terminate the treaty unilaterally and to remove the disputed content.²¹ The ISPs use this code of conduct to secure themselves. Beside it, the ISPs have united themselves on May 30 1997 in the professional organisation ISPA (Internet Service provider Association). Their goal is to challenge illegal conducts on the internet. 95 percent of the ISPs have joined this organisation and they were all obligated to sign the **code of conduct**. This code of conduct was drawn up in 1998 when the legislation about internet was not yet developed. We can conclude that the ISPA 's code of conduct determines that the ISPs not supposed to actively track inappropriate material on the internet, because of the technicalities that make this task quite impossible.

On the other hand the ISPs prove via this code that they will not avoid their responsibility and that they too wish to challenge illegal contents on the internet. As soon as they discover illegal information or as soon as they will be informed by a third party, the ISPs will notify the proper authorities and they will with all means possible help these authorities in the battle against punishable contents. Next to it they will see to it that the juridical complaints department - also known as eCops - will be announced on their sites in order to give an opportunity to the users to report misconducts on the internet.²²

In other words the ISPs want to bring about the legal use of the internet and therefore will not flee from their responsibility.

An example of a Belgian Acceptable Use Policy is that of Skynet. In the third item what is considered as illegal content is:

"3. Racism, xenophobia and denial of the Nazi-genocide:

- *Public incentive to discrimination, hatred or violence against a person because of his race, colour of skin, origin or nationality.*
- *Advertisements made by a person in order to incite to such an attitude.*
- *Denial, gross minimising and justification of the Nazi-genocide, when this attitude shows a public character."*

2.2.2. ISPA- protocol

Next to the self regulation there exists also another specific form of collaboration. Between the ISPs, the vice- prime minister, the minister of telecommunication and the minister of justice there was entered into a **co-operation protocol** to challenge inappropriate conduct on the internet. This protocol dates from the period before the law of E-Commerce, but still

²¹ STROWEL, A., *Les activités liberticides et l'internet*. In: DUMONT, H., MONDEAUX, P., STROWEL, A. en TULKENS, F. (eds.), *Pas de liberté pour les ennemis de la liberté? Groupements liberticides et droit*. Bruylant, Brussel, 2000, p. 439-440.

²² RAMONT, G., *De strafrechtelijke aansprakelijkheid van de ISP's inzake ongeoorloofde inhoud op het Internet. De I.S.P.A.-gedragscode en het protocol van 28 mei 1999. Auteurs & Media*, 2001, nr.1, p.172-174. HENDRICKX, K., *Ruim 30.000 meldingen van cybercriminaliteit in 2006, De Morgen*, 24 januari 2007.

exists today. The protocol concretises the principles and the rules stipulated in the code of conduct of the ISPA and largely carries this out. We can conclude that the protocol stipulates a procedure concerning the co-operation between the ISPs and the juridical authorities. The ISP reports infringements to the proper authorities which they detected themselves or which were discovered by internet users. In case of an illegal content on a foreign server the ISP sends a message to the foreign ISP. Finally we can mention that the ISPs are committed to identify their clients. This to give the opportunity to the proper authorities to penal the real author of punishable publications. This protocol affirms again that it is not the task of the ISPs to control the content of the internet but that they only indulge to co-operate with the juridical authorities.²³ The co-operation protocol is currently revised.²⁴

2.2.3. The co-operation CYBERHATE

This co-operation unites different organisations and institutions with as main goal the more effectively challenging of cyber hate. On March 21 2006 the co-operation was presented. It consists of:

- The Federal Computer Crime Unit of the Federal Police (FCCU)
- The Internet Service Providers Association Belgium (ISPA)
- The General Board of Control and the Arbitration of the Federal Government
- Department of Economics
- The Board of Procurators- General
- Centre de Recherches Informatiques et Droit (CRID)
- The Federal Government for Societal Integration and Equal Opportunities
- The Centre for Equal opportunities and Fights against Racism (CGKR)

With an impulse of this co-operation there were created a number of instruments that could from now on come to use in the battle against cyber hate:

1. **DELETE CYBER HATE**: a guide for the internet user in which a certain number of key questions concerning cyber hate are being treated
2. www.cyberhate.be : a point of complaints that should make internet surfers able to report more easily hatred on the internet with the proper authorities. The ISPA members apply the button on their websites. The goal is to develop in the near future **one common integrated point of complaint** because at this moment there exist too many points of complaint.²⁵

²³ ISPA, *Samenwerkingsprotocol*. Internet, (7 juni 2007); RAMONT, G., op.cit., p.174-178 en STROWEL, A. op. cit., p. 436-438.

²⁴ SAFER INTERNET BELGIUM, *Jongeren op het internet: virtueel of reëel gevaar? Verslag van het colloquium van 31 mei 2006*, 2006, p.20-21.

²⁵ On the day of June 8 2007 there is still **no** common juridical point of complaint. When you surf to the ISP Skynet website you are able to track 4 points of complaint: Netaalert (for children pornography), Cyberhate (on hate speech), Spamsquad (for spam dispute) and eCops (to report general misconducts on the internet).

3. **CYBERHATE**: Training module of the Centre for Equal Opportunities and Fights against Racism.²⁶

2.3. Organisations

The offices of the public prosecutor and the victims have the right to incite justifiable against racism and discrimination. Beside this there are certain organisations which have disposal of a special requisitioning right. Public institutions and organisations which on the day of the facts have 3 years of corporate personality and are aiming with statute to defend the human rights or battling discrimination, have the right to incite to all juridical disputes in which the application of laws of Anti-Racism and Anti-Discrimination can give reason to, on condition that there has been damage to what they try to achieve by statute.²⁷

These organisations are e.g. "*The League for Human Rights*" and "*Le Mouvement contre le racisme, l'Anti-sémitisme et la Xénofobie*".

The same right is applied with relation to the **Centre for Equal Opportunities and Fights against Racism** that was founded in 1993 in order to extract the application of the law of Anti-Racism from the criminal judge. The day of today this organ is also responsible for disputes in which the application of the law of Anti-Discrimination can give cause to, with exception of the disputes concerning discrimination which are base on language.²⁸ There still has to be appointed an organ that has authority concerning discrimination that is based on language. If it concerns deeds of individual racism or discrimination and the victim of discrimination is an identified natural person or legal body, than the public institution or pressure group or just the CGKR can establish a claim, if they prove that they have received the permission of that natural person or legal body.²⁹

The **CGKR** receives frequently complaints of citizens about hate speech in forums, chats, mails, blogs and sites. Each time the CGKR tries to maintain contact with the author of the hate speech. If the contact data of the user are unavailable, than the CGKR will point at the trustee and in the last resort to the provider. The CGKR tries by means of deliberation and mediation to come to removal of the hate speech. In 85% of the cases the CGKR finds a solution by means of mediation with the website-author or the moderator of a forum.³⁰

If this approach fails or if it concerns serious crimes, there is to be chosen a different approach and the CGKR will file a complaint with the office of the public prosecutor or with

²⁶ SAFER INTERNET BELGIUM, op. cit., p.35-37;CGKR, *Delete cyberhate. Racisme en discriminatie internet. Handleiding voor de internetgebruiker*, 2006, p. 2-3.

²⁷ Article 32, 1° Anti-Racism Act and article 30, 1° Anti-Discrimination Act.

²⁸ Article 31 Anti-Racism Act and article 29, § 1 Anti-Discrimination Act.

²⁹ Article 33 Anti-Racism Act and article 31 Anti-Discrimination Act; VAN DE PUTTE, M., *Wet racisme en Xenofobie: 20 jaar rechtspraktijk. Tijdschrift voor vreemdelingenrecht*, 2001, nr.3, p. 201.

³⁰ CGRK, Jaarverslag 2006, *Internet*, juni 2007, p.49.

special cases the CGKR will position itself as civil party (cf. supra).³¹

Also the **ISPA** can establish a claim to cease against a certain determined punishable content if conciliation and deliberation have not gained anything with the chairman of the court of first appeal (cfr.supra).

2.4. Case Law

In this part of the paper we will deal with a few examples of lawsuits which are connected with the expansion of racism, discrimination and negationism via the internet.

The **first** example is taken from the issues concerning **discussion groups** on the internet: "**the Elbers case**". In this case the CGKR positioned oneself as civil party against W. Elbers. It concerns a policeman who spread racist texts via newsgroups on the internet. He was charged with violation on Article 1, 2° and Article 4 of the previous Anti- Racism law. The correctional court of Brussels judged oneself territorial authorised because "*the reception of the messages and the participation to newsgroups is possible at all places in Belgium and a fortiori in the judicial district of Brussels.*" Next to it the court stated that punishable texts in newsgroups on the internet can be considered as criminal felonies by press. According to the court one has to use a teleological or evolutionary approach of the concept felony by press by which this concept also can be applied to the new communication media. However Elbers denied the authorship of the e-mails and texts, the court considered it proved sufficiently that the texts were indeed originating from Elbers.

The court based its findings on e.g. the resemblance of the e-mails and the texts on the internet with printed sources of Elbers. The judge stated as a verdict that the require of public nature was fulfilled. He confirmed this with e.g. the following arguments: "*Attendu que les "Newsgroups" ou forums de discussion qui sont des lieux non publics mais ouverts à un certain nombre de personnes réunissent la condition de publicité requise par la loi*" and "*Attendu qu'il apparaît que les textes parus sous cette forme sur le réseau internet répondent aux conditions de publicité requises par la loi*". The magistrate judged that Elbers by means of racist e-mails in a newsgroup ("**soc.culture.belgium**") incited to hatred, discrimination, violence and segregation "*à l'égard de la communauté marocaine et Belgique ainsi qu'à l'égard de la communauté africaine*". Furthermore he felt strongly about the fact that it concerns in casu a police official, a person whom is expected to respect the law in stead of violate it. On December 22 1999 Elbers was sentenced with a suspended prison penal of six months and a punishable by fine of 2500 euros and furthermore he was obligated to pay a compensation of 2500 euros to the civil party, namely the CGKR. On June 27 2000 this

³¹ CGKR, *Delete cyberhate. Racisme en discriminatie internet. Handleiding voor de internetgebruiker*, 2006, p. 15-16.

conviction was largely affirmed by the Court of Appeal in Brussels. Elbers was convicted to a prison penal of six months (with suspension by three years) and sentenced by a punishable by fine of 2500 euros. However, the compensation to the CGKR was reduced to one (symbolical) Belgian frank.³²

In other words the conviction of racist texts on newsgroups on the internet is possible.

We have to mention though that the relevant e-mails a few days later were located already on an American website. The e-mails were indeed removed from the Belgian website, but could be consulted however for a long time on that American website. The Belgian judges have not the authority to forbid texts or e-mails on an American website.³³

A **second** example is "**the case Infonie-Benelux**" where we can determine as well a violation to the Anti-Racism law, as on the Anti-Negationism law. The accused Thiebault V.B. has spread racist and negationist texts via **discussion groups** on the internet between December 19 1998 and March 15 1999. After repeated warnings of his provider Infonie-Benelux, which maintained without result, the provider pressed charges with the position of civil party. The correctional court of Brussels judged the facts as being proved:

"Attendu que les faits sont graves et portent atteinte à des degrés divers tant à des individus qu'à des collectivités; Qu'il échet de prononcer une sanction de nature à faire prendre conscience au prévenu de la nécessité de changer radicalement de comportement". On January 15 2002 he was convicted by default of appearance to an effective prison penal of 1 year due to violations on the Anti-Racism law and the Anti-Negationism law. An order to immediate arrest was promulgated. Next to it he was convicted to pay a compensation of 12.394,67 euros to the internet provider Infonie-Benelux.³⁴

A **third** case is the "**VHO case**" in which as well the expansion of negationist ideas via the internet, as via pamphlets and books were restrained.

The Court of Appeal in Antwerp convicted on April 14 2005 Siegfried Verbeke and his brother, Herbert Verbeke on the basis of violations to the Anti-Negationism law and the Anti-Racism law. The criminal investigation showed that the first and the second accused printed and spread pamphlets by the VZW VHO (('Vrij Historisch Onderzoek' (or 'Free Historical Research'), later changed in 'Vogelvrij Historisch Onderzoek' or 'Outlawed Historical

³² CGKR, *Vechten voor rechten. Jaarverslag 2000 van het CGKR*. CGKR, Brussel, 2001, p. 32; VOORHOOF, D., Racisme op het internet: de correctionele rechtbank is voortaan bevoegd! Noot onder Corr. Brussel, 22 december 1999. *Auteurs & Media*, 2000, nr. 1-2, p. 137-138; Procureur du Roi en Centre pour l'Egalité des Chances et la Lutte contre le Racisme c. Elbers. *Auteurs & Media*, 2000, nr. 1-2, p. 134-137; Hof van Beroep Brussel 27 juni 2000, Noot D. Voorhoof. *Auteurs & Media*, 2001, nr. 1, p. 142; STROWEL, A., op. cit., p. 417-419.

³³ CGKR, *Vechten voor Rechten. Jaarverslag 2000 van het CGKR*. CGKR, Brussel, 2001, p.32.

³⁴ Corr. Brussel 15 januari 2002 in: CGKR. *Rechtspraak*. Internet, (5 juni 2007); Jurisprudence. Civ.Bruxelles,

Research') in which they pursued promotion for books of a negationist nature.

In this books important Belgian and foreign negationists denied the genocide that is committed by the German national-socialist regime during the Second World War. The brothers Verbeke offered this books for sale also via the internet, on the negationist website of the VHO (<http://www.vho.org>). Besides, there were offered stickers of the VHO with the internet addresses and also works of Siegfried Verbeke himself for sale on the website. In spite of this Siegfried Verbeke emphasized in the criminal investigation that he only questioned the existence of the gas chambers and in that manner he wished not to deny, minimize or justify the genocide. Contradictory enough it showed out of different utterances in the works of the accused that were offered for sale that he gave the fact that there were no gas chambers according to him as reason for the genocide that never had taken place according to him. (genocide: the whole or partial exterminating of a national, ethnic, religious or race group). The Court determines that *"the way of conduct of the defendant contains an outrageous disdain towards the inexpressible suffering that the Holocaust has caused and that he is definitely one of those who tries to deny this crime or tries to minimize in a gross manner in a pseudo-scientific way in order to make the Nazi-regime acceptable in this way."* Siegfried Verbeke is sentenced after the investigation of the Court of Appeal in Antwerp to a prison penal of one year effectively and a punishable by fine of 2.500 euros. He was also deprived of his civil rights for a period of ten years. The CGKR and the Auschwitz foundation which were positioned as civil party, are to be given one (symbolical) euro as compensation.

He was convicted before on September 9 2003 by the correctional court of Antwerp fo the same facts.³⁵

A **fourth** case is the expansion of the *Makakkendans*, a racist version of the popular *Kabouter Plop -dance* (or *Gnome Plop-dance*: the hero of a television series for children, to be watched on the Belgian channel VTM and Club RTL - the programme is also broadcast in the Netherlands) spread via the internet. On December 16 2005 the correctional court of Antwerp convicted three persons due to the expansion of this song. The first person was sentenced because he had widely expanded the text version of this song via e-mail. The second person was convicted because he had song the sound version of the *Makakkendans* and the third person has made this sound version available via Napster (a programme that can be use to exchange sound files for free via the internet) together with speeches of Adolf Hitler. They were convicted due to violations to the Anti-Racism law and they all had to pay a

15 janvier 2002. In: *Révue Ubiquité - Droits des technologies de l'information*, 2002, nr. 13, p. 73-75.

³⁵ CGKR, Rechtspraak, *internet*, (5 juni 2007). See also a similar conviction in the Netherlands (November 25 1997).

punishable by fine. The judge refused to grant the request of the defendants who asked for a suspension of their punishment because their deeds increased the intolerance and the racism between the different communities. The Centre received since 2000 more than 100 complaints in connection with the racist *Plop*-parody. Today the song still circulates on the internet.

A **fifth** case deals with **the website Centre islamique**. On June 21 2006 for the first time there was an in Belgium stationed internet site convicted by the correctional court of Brussels because of violations on the Anti- Negationism law and Anti- racism law. On the website www.assabyle.com there was spread a video titled "*Nazisme et Sionisme ne font qu'un*" in which the Israeli government and their deeds were compared with the actions that the Nazi-regime has practised during WW II. Furthermore there was also expanded a text entitled "*La fin du peuple d' Israël*" in which the Jews were qualified as corrupt, hostile, cowardly, etc. There was also made a comparison with apes and pigs and they were marked as reincarnations of the antichrist. The judge judged that the many insulting utterances incited to hatred and violence against the Jews. This judgement is according to the Centre "*a clear signal in the current context of expansion of hate speech on the internet by which a climate is created that incites certain people to translates them into deeds*" (CGKR, 2006, internet).

A **last** example is that of **the case Blood & Honour**. It concerns not a judicial judgement, but this is an interesting example of a fast co-operation between and internet provider and the criminal court. At the end of November 2003 the intercultural platform Kif Kif started a petition against Telenet. In this platform there was demanded that Telenet would shut down the extreme neo-nazism website of the Flemish department of *Blood & Honour*, which was spread from her servers. The juridical authorities hadn't noticed the website in this case. It is only due to an appeal of Kif Kif that one has discovered the website. Due to this appeal Telenet handed over the file to the Federal Crime Computer Unit (FCCU) of the federal police and to the office of the public prosecutor in Mechelen. Telenet notified that she couldn't take any measures as long as the investigation was going on.³⁶ On December 4 2003 the entrance to the website was made impossible safe a top100 reference to other neo-nazism and negationist websites.³⁷ Short afterwards the relevant web page even was removed entirely from the internet.

In other words eventually there was a kind of swift reaction by the judicial authorities. However, in the future it is the task of the criminal court to punish and to comply with such websites more thoroughly via a certain determined system. However, nowadays it is still possible to surf directly to this nazism organisation via the typing of the words "*Blood and*

³⁶ G.F.R. Petitie tegen nazistische website. De Standaard, 2 december 2003.

³⁷ De website van Blood & Honour bevond zich op: <http://users.pandora.be/bhvlaanderen>

Honour" in the viewfinder Google. Just the Flemish version has disappeared.³⁸

There are still no cases judged about the expansion of discrimination that is based on age, sex, sexual inclination, etc. The reason for this is that the Anti- Discrimination law was only promulgated in 2003 - a number of executive decisions were not performed so there were discussions about this law from the beginning onwards. The destruction of a whole lot of statements by the Constitutional Court in October 2004 kept this law in an impasse. The new Anti- Discrimination law of May 10 2007 has to find a better way of applying though.

3. THE NETHERLANDS

3.1. *Legal restrictions*

In this part of the paper we will treat only the most important provisions of the Dutch legislation which are specifically aiming to fight discrimination. In the Netherlands there is in the civil-judicial area only one law, namely the Algemene Wet Gelijke Behandeling (AWGB) (or the General Law Equal Treatment). Next to it the Dutch Constitution esteems the principle of equality and the discrimination prohibition highly, as they shape the first article of the Constitution. Finally the Dutch Penal Code consists of many determinations for the challenging of racism and discrimination.

3.1.1 The Dutch Constitution

*Article 1. All those who are located in the Netherlands, are to be treated in all cases equally. Discrimination due to religion, life consideration, political beliefs, race, sex or which is based **on whatever grounds**, is not allowed.*

The first part of this basic principle stipulates that equal cases should be treated equally. The second part formulates the actually discrimination prohibition. It mentions clearly the most convenient grounds (e.g. race, sex) but it isn't an absolute summing up like the notion "*on whatever grounds*" makes clear. In that perspective there can occur other forms of discrimination (e.g. discrimination that is based on grounds of nationality) which can regard as punishable even if those are not absolutely put in the article. The social reality, changing in time and space, shows what these other grounds are.

Although the constitutional articles in principle have a vertical function (government- citizen), it turns out from the praxis that these stipulations are applied more and more to regulate the relations between citizens mutually and therefore they function also on a horizontal level.

It is even so that Article 1 of the Constitution can be evoked not only against the government

³⁸ Blood & Honour op <http://www.skrewdriver.net>

but it can also be used as an argument to support discrimination between two citizens.³⁹

However, it is advised to appeal as a citizen to the more specific legislation, like for example articles of the Penal Code or e.g. the Algemene Wet Gelijke Behandeling (AWGB) (or the General Law Equal Treatment), before one evokes this basic article of the Constitution.

3.1.2. Algemene Wet Gelijke Behandeling (AWGB) (General Law Equal Treatment)

One of those other juridical means concerning discrimination is the Algemene Wet Gelijke Behandeling (General Law Equal Treatment). This law is decisive to the previous mentioned Article 1 of the Constitution.⁴⁰ It elaborates as well the horizontal as the vertical function of the non-discrimination principle as the principle of equality. The basic principle of the law is as follows:

“Equal treatment of persons regardless of their religion, life consideration, political beliefs, race, sex, nationality, hetero- or homosexual inclination or civil state”

Even the AWGB functions in the non-discrimination area and even it is a legal source that can be evoked, though there has to be pointed to the fact that it concerns mostly irrelevant areas for this paper : subjects like work, provision of services, etc. Though this AWGB is special and worth mentioning enough to notify as being an important law concerning the fight against discrimination. The AWGB law has also drawn up the Commission for Equal Opportunities (*cf. infra*).

The law itself forbids the making of a **direct** and **indirect distinction**⁴¹ that is based on e.g. race, nationality, religion and life consideration. In this way the refusing of a migrant to become a journalist with a paper, because of his nationality, is a punishable fact of this law.

Direct distinction is the unequal treatment due to one of the principles of the legislation concerning equal treatment.

Direct distinction is always forbidden. With **indirect distinction** it concerns regulations or conducts which are on itself neutral but nonetheless cause a discriminating effect. Indirect

³⁹ ECRI, *Tweede rapport over Nederland*, goedgekeurd op 15/12/2000, internet, 13 november 2001.

⁴⁰ BELLEKOM, TH. L., *Racismebestrijding en vrijheid van meningsuiting in Nederland: wetgeving en jurisprudentie*. In: Schuijt, G.A.I. en Voorhoof, D. (eds.). *Vrijheid van meningsuiting, racisme en revisionisme*. Gent, Academia Press, 1995, p.9

⁴¹ Notice that the Netherlands are deviating with this terminology from the language use in foreign countries where mostly discussions about discrimination are taking place. In the report of the ‘‘CGB, *Het verschil gemaakt. Evaluatie AWGB en werkzaamheden CGB 1999-2004*’’ this is justified as follows: ‘‘In the Dutch language the term ‘discrimination’ has such a negative connotation that it is not desirable for the bearing surface of the legislation concerning equal treatment to replace the term ‘distinction’ with ‘discrimination’, which is the case in the European legal regulation. This also not necessary because there can be guaranteed in a different way that the Dutch legislation offers the preservation which the European regulations have in mind.’’ See: CGB, *Het verschil gemaakt. Evaluatie AWGB en werkzaamheden CGB 1999- 2004*, internet, (8 juni 2007), p. 32- 33.

distinction is not forbidden when there exists an objective justification for it.

This exists if the goal that is pursued with the regulation or conduct is legitimate, suitable and necessary in order to achieve that goal and if there is therefore no alternative available that is less discriminating or not discriminating at all.

In this way, there indeed may be demanded of a news anchor that he is able to speak impeccable Dutch, whereas a blue collar doesn't have to fit to this condition.⁴² The Algemene Wet Gelijke Behandeling (AWGB or General Law Equal Treatment) is to be evaluated every 5 years. The first time this occurred in 1999. The second period of 5 years was enclosed at the end of 2004.⁴³

3.1.3. Stipulations of the Dutch Penal Code

Safe Article 1 of the Constitution and the Algemene Wet Gelijke Behandeling (AWGB or General Law Equal Treatment) there are different articles about criminal law in the Dutch justice system which can be appealed with regard to the fight against discrimination.

Due to these stipulations one can press charges with the police and then again the police can bring in the Public Prosecutor that can prepare the case before court. In the first place one has to refer to Article **90quater** which states a general **definition of discrimination**:

"By discrimination or to discriminate is understood each form of distinction, each exclusion, restriction or preference that has a goal or has as a consequence that the recognition, joy or application that is based on the principles of equality and the human rights and the fundamental liberties in political, economical, social or cultural areas or in other areas of the societal life are being violated or destructed."

The Dutch Penal Code states as punishable:

- a deliberate insult that has occurred in public, orally, by means of press or in an image with the intention to discriminate due to race, religion, life consideration, hetero- or homosexual inclination, physical, psychological or mental handicap (**Article 137c**). This insult can occur as well as *orally*, *by press*, as *by image*. In other words a gesture is excluded from the range of this article. The gesture of the Hitler salute for example, without further comments, is excluded from this punishable prohibition.⁴⁴ It is

⁴² CGB, Het verschil gemaakt. Evaluatie AWGB en werkzaamheden CGB 1999- 2004, *internet*, (8 juni 2007), p. 13-14.

⁴³ See: CGB, Het verschil gemaakt. Evaluatie AWGB en werkzaamheden CGB 1999- 2004, *internet*, (8 juni 2007) en ZOONTJES, P. en HERTOOGH, M., *Gelijke behandeling: principes en praktijken. Evaluatieonderzoek Algemene Wet Gelijke Behandeling*, Wolf Legal Publishers, 2007.

⁴⁴ RODRIGUES, P.R., Vrijheid van meningsuiting versus discriminatieverbod in Nederland: enige casuïstiek. In: Schuijt, G.A.I. en Voorhoof, D. (eds.). *Vrijheid van meningsuiting, racisme en revisionisme*. Gent, Academia Press, 1995, p. 142; JANSSENS, A.L.J. en NIEUWENHUIS, A.J., *Uitingsdelicten*, Deventer, Kluwer, 2005, p.

mainly *the deliberate insulting* character that is decisive with the whether or not attaching a penalty to an insulting utterance. In other words the moral integrity of the (members of the) group is violated. The perpetrator had to understand without reason of a doubt that the used phrases were insulting. This can be the case then when the perpetrator with his comment had a different intention than to insult. The context of the comment is of a great importance. We notice that not each utterance that is hurtful is to be considered as insulting. "*In public*" doesn't mean that the agitating words are uttered in a public place but that they are uttered under certain circumstances and in a such a way that can be heard by an audience. A different interpretation concerning to this subject is possible. The context in which the insult is uttered is always to be taken into consideration. In that way noisy and loud conversations in the front yard can be considered as conversations in public. Furthermore the modern communication techniques are making it possible that one can address from one's own house a large and indefinite number of people.⁴⁵

- In public, orally or by writing or by image inciting to hatred, discrimination and violence that is based on race, sex, religion or life consideration, hetero- or homosexual inclination, physical, psychological or mental handicap (**Article 137d**). Just like in the Belgian legislation it doesn't have to concern inciting to concrete deeds. This doesn't influence the seriousness of the violation.⁴⁶
- Publication or expansion different from the needed professional coverage:
 - o Punishable is to make an utterance public of which the "perpetrator" knows or reasonably have to suspect that this utterance is insulting for a group of people due to their race, their religion or life consideration, their hetero- or homosexual inclination or their physical, psychological or mental handicap or is inciting to hatred against or discrimination of people or enact violently against persons due to their race, their sex, their hetero- or homosexual inclination or due to their physical, psychological or mental handicap; (**Article 137e, 1st part**). The spreading doesn't have to occur in an offensive way neither a discriminating motive has to be present with the expander. It is understood that the expander reasonably knows what it is that he

133.

⁴⁵ RODRIGUES, P.R., *op. cit.*, p. 141- 142; JANSSENS, A.L.J. en NIEUWENHUIS, A.J., *op. cit.*, p. 133- 135.

⁴⁶ JANSSENS, A.L.J. en NIEUWENHUIS, A.J., *op. cit.*, p. 136-137 en 175-177.

spreads.

- **The second part of Article 137e** states "*the otherwise than requested arriving of objects in which such an utterance is signed up*" as being punishable. Objects like newspapers, magazines, pamphlets, television programmes, CDs, DVDs, etc. are referred to.⁴⁷

The first and second part of this article both demand that the perpetrator enacts differently than to the benefit of the professional coverage. This phrase was drawn up in order to not restrict the liberty of education and scientific research unnecessarily. Concretely it is allowed that a museum exhibits nazism propaganda material or it is allowed that in a college about criminal law in university a pamphlet is spread entitled: "*demolish the houses of Jews and club the children*", but the expansion of such pamphlets at markets is indeed to be considered as punishable. Once again the context is of a great importance.⁴⁸

- Participation or financial or other material support to activities with as goal discrimination of people due to their race, religion, life consideration, sex, hetero- or homosexual inclination or physical, psychological or mental handicap (**Article 137f**). By this the legislator points at acts that are part of a collective acting (organisation) and are consciously and really meant for discrimination.
- The last article of this series concerning discrimination, namely **Article 137g** considers race discrimination punishable with the exertion of a public office, profession or company. This is not a part of our exploring scope to the Dutch legislation about racism and discrimination. The same remark counts also for **Article 429quater** that deals with discrimination against race in de exertion of an office, profession or company.

We can conclude that the stipulations of the Penal Code covered in this paper are reaching to a large extent by which the public and deliberate character are the basic conditions to lead to a conviction. Nonetheless the covered criminal justice will prove that also many other sources are used with the conviction of condescending and discriminating comments.

Nowadays⁴⁹ there doesn't exist an article in the Dutch Penal Code that considers

⁴⁷ Ibidem, p. 138

⁴⁸ Ibidem, p. 138- 139:RODRIGUES, P.R., *op. cit.*, p. 150- 151.

⁴⁹ Even though in the Netherlands there is a discussion about the importation of a Negotiaonism law. In 2006 there was presented a proposition to a Negationism law in the Lower Chamber. See: *Part. St.*, Tweede Kamer, 8 juni 2006, stuknr. 30579, <http://parlando.sdu.nl> - On April 24 2007 the Christian Union declares that she will continue her proposition to initiative to make punishable the denying of the genocide, in spite of the critique of

negationism as punishable, though we determine that already a few judgements of negationism were pronounced. In that way the Supreme Court has already judged in 1987 that the denial of the Holocaust is covered by the discrimination prohibition.⁵⁰ On the basis of the anti-discrimination stipulations of the Penal Code is the denial of the Holocaust therefore also punishable in the Netherlands. The prototypical example in the Netherlands of this fact is the arrest Verbeke of 1997 by which the Belgian Siegfried Verbeke is convicted by a Dutch judge for the expansion of material in which the Holocaust was denied. Verbeke had sent such material without request to schools, libraries and particulars with a Jewish sounding last name. The LBR, the Anne Frank Foundation, the CIDI and the Consultative Body Christians and Jews have decided to undertake steps against this. In Belgium there didn't exist any legislation that made it possible to react against this sort of conduct. In this way there was started in the Netherlands a juridical procedure against Verbeke. In summary proceedings the judge was requested to forbid the expansion and carrying out of the denial of the Holocaust by means of pamphlets.⁵¹ The judge agreed to the request and prohibited further expansion. In 1995 Verbeke was sentenced also by the Dutch criminal judge due to insulting based on the **Article 137c** of the Penal Code and due to the spreading of discriminating base on the **Article 127e** of the Penal Code.⁵² The case came eventually before the Supreme Court.

This latter organ affirmed the judgement that the denial of the Holocaust is in defiance of the discrimination prohibits.⁵³

Another example by which the denial of the Holocaust in the Netherlands was convicted is the case of the book '**Sechs Millionen ?**'. The salesman of a couple of a few copies of the book had to reasonable suspect that the denial of the Holocaust is insulting for the Jewish community. The Court judged that the book didn't consist of any scientific meant pleas and didn't debate in an appropriate way with historical scientific sources. Nothing prevented then a conviction based on Article 137^e Sr.⁵⁴

Even though the fact that there were already convictions which were based on the existing legislation, a new proposition to an amendment of the Penal code was submitted by the Minister of Justice Donner on July 12 2005 concerning the attaching a penalty to the glorification, glossing, trivialisation and denial of very serious criminal offences and depriving of the exertion of certain professions. The announced measure has to protect the society

the Council of State (<http://www.nos.nl>).

⁵⁰ HR 27 oktober 1988, NJ 1988, 538.

⁵¹ Rb Den Haag 4 november 1992, KG 1992/399.

⁵² Rb. Den Haag 16 maart 1995, Hof Den Haag 2 mei 1996.

⁵³ Supreme Court November 1997, NJ 1998/261; DE F(R)EY, C., Conviction for the denial of the Holocaust, internet, May 4 2005 <http://www.lbr.nl/?node=3374>

⁵⁴ HR 27-41-1985, NJ 1988, 538; NIEUWENHUIS, A.J., *Over de grens van de uitingvrijheid: een rechtvergelijkende analyse van de regelgeving ten aanzien van pornografie en racistische uitlatingen.*

better against comments that cross the borders of the permissible by far. According to Donner the criminal legislation is necessary as a last link in the approach of people who take advantage of their constitutional liberties at expense of others. This legislation has to remain contemporary. The presented measure is an appendix to criminal offences as agitation, discrimination and the incitation to hatred or violence. Furthermore the possibilities are expanded in order to deprive persons of their office as an extra punishment when they take advantage of this by inciting or creating hatred. This punishment can from now on also be applied with the recruiting for the benefit of the Jihad and with the glorification, trivialisation, glossing or denial of very serious criminal offences.⁵⁵ The Dutch Association for Criminal Justice however, is not a supporter of the proposition.⁵⁶

3.2. Self regulation and co-operations

3.2.1. Acceptable Use Policies of the ISPs

Just like in Belgium self regulation occupies an important position in the Netherlands with the challenging of discrimination and racism on the internet. Already from the beginning onwards of the electronic networks we can notice that network users participate in self regulation in order to avoid interference from outside. In this way there has been tried from the beginning onwards to restrict the non-requested sending of pornographic material. On the internet there are to find many examples of 'Acceptable Use Policies' for acceptable use of cyberspace.

In this manner some of the internet providers let sign their members an agreement by which the provider has the authority to apply a censure on the content that is spread by the members via the internet. This is for example the case with the internet provider NCF.⁵⁷

Dutch Internet providers have united their forces in the Vereniging van Nederlandse Internet Providers (**NLIP**, *cf. ISPA in Belgium*) (or: Association of Dutch Internet Providers). Since April 2005 the NLIP is shut down and the ISPO was founded.

The members of the ISPO represent together roughly 70 percent of the internet supply to particulars in the Netherlands. ISPO doesn't profess to carry out a point of view in the name of all ISPs of the Netherlands. The activities of the ISPO are carried by a group ISPs of constant changing compilation. The members have in common that they worry about (government) plans that strike the internet and as such their internet providers and their clients. One of the most important points of attention for the providers is the removing of illegal information (this is information that is illegal according to the Dutch legislation).

Nijmegen, *Ars aequi libri*, 1997, p. 294.

⁵⁵ Donner wil het publieke debat binnen aanvaardbare grenzen houden, *Juridisch Dagblad*, 28 juli 2005.

⁵⁶ Zie: Nederlandse Vereniging voor Rechtspraak (2005, 14 oktober). Strafbaarstelling verheerlijking van zeer ernstige misdrijven. *Internet*, 14 oktober 2005. (<http://www.nvvr.org>)

⁵⁷ Hamelink, 1999, p. 42-43.

Discriminating utterances are also to be regarded within this range of scope.

3.2.2. Meldpunt Discriminatie Internet

The Meldpunt Discriminatie Internet (MDI) (Dutch Complaints Bureau for Discrimination on the Internet) has the task to challenge the discriminating utterances on the "**Dutch part**" of the internet. The Centre of complaints defines this as follows: "*the Dutch part of the internet and inclusively the parts of the internet that are physically located in foreign countries but are written in the Dutch language and/or are taken care of in the Netherlands and/or are clearly point at the Netherlands.*" Reports about utterances made on parts of the internet that not are located in the Netherlands are therefore not dealt with.

With her foundation the MDI was supported by the NLIP (*cf. supra*), the National Association of Anti-Discriminating Bureaus and Meldpunten (centres of complaints) (is now fused in Article 1, *cf. infra*). The MDI receives subsidies for her activities by the Ministry of Justice. The management of the MDI is in control of the foundation Magenta (which occupies in the first place with the fight against racism, fascism and other forms of discrimination). The MDI is a member and a co-founder of the INACH, the International Network Against Cyberhate.

The MDI is a centre of complaints that is exclusively occupied with the treating of cases that are presented by a third party. When there occurs a report with the MDI, then the centre of complaints checks if this is made by the Dutch part of the internet. With this judgement the MDI makes use of the Anti-discrimination stipulations of the Penal Code (especially the articles 137c, 137d and 137e). When it concerns punishable facts, the MDI sends a request to removal to the one who has placed or has spread the message. In 70 percent of the cases this functions successfully. In the case of no reaction or with refusal the MDI sometimes reports a complaint with the police. This depends on the seriousness of the comments. Finally the MDI also has a task concerning the prevention and they also organise workshops about discrimination and racism on the internet.⁵⁸

Out of the year rapport of 2004 it turns out that the number of reports increase year after year - from rather more than 1200 in 2003 to rather more than 1800 in 2004. This is as well due to the increasing of the number of discriminating comments on the internet as with the increased reputation of the Meldpunt (*centre of complaints*).

It is remarkable that a large number of the reports that they receive are not concerning the clearly extreme racist websites but are concerning the "normal" weblogs or discussion forums. Especially the free sites that allow their users to create a website in only a few steps, turn out to be used often for such goals.⁵⁹

⁵⁸ MDI, Jaarverslag 2004, *internet*, (9 juni 2007); MDI, Jaarverslag 2005, *internet*, (9 juni 2007).

⁵⁹ MDI, Jaarverslag 2004, *internet*, (9 juni 2007).

On the other hand it turns out of the year rapport of 2005 that the number of reports is decreased up to 1289. The MDI notices though that the year 2004 was probably a peak year with the aftermath of the murder on the film maker Theo Van Gogh.

The MDI also points out that there is a new registration advice in use since 2005 by which "unique" utterances are registered. This means that the frequency of occurring of the comment is registered on a specific location on the internet and not the fact how many times an utterance is reported with the MDI. This has as a consequence that the number of reports has decreased.

The MDI determines a certain number of positive evolutions:

- *"It seems that the ones who are initially responsible for keeping the internet free from discrimination are going to fulfil this role more actively and substantially. In this way a few web forums is moderating better now, whether or not as a result of contacts with the MDI. The number of utterances that was already removed by the forum trustees before the MDI could indeed affirm the comment or before the MDI could take steps, is increased.*
- *Also a number of providers have taken up a more active role. Where previously the MDI had to send frequently a request to remove an account to for example MSN because of the fact that there was a discriminating content in a MSN group, it happened in 2005 several times that MSN had shut down a group before the MDI could verify the content.*
- *In relation with this the internet users become more "emancipated". Before they report to the MDI, they will first notify the trustee of a website or the provider of the by them signalised discriminating comments."*

It will turn out in the future if this form of self regulation will increase. It is a fact that the internet nowadays is full of racism and discrimination and that the employees of MDI still have their hands full. Their work is very useful because in 97 percent of the requests to removal there is effectively answered to the moderator or provider to actually remove the content.⁶⁰

3.2.3. Meldpunt Cybercrime

At first it was the intention that there would be founded a Nationaal Meldpunt Cybercriminaliteit (or National Centre of Complaints Cyber Criminality) on January 1 2006. In the beginning it would be occupied with the reports concerning terrorism and spreading hatred etc. and later on it would develop towards a kind of *"front-office"*- function in which the

⁶⁰ MDI, Jaarverslag 2005, internet, (9 juni 2007).

reports (that are not concerning terrorism) were passed through to other centres of complaints. In that sense the Nationaal Meldpunt Cybercriminaliteit (or: National Centre of Complaint Cyber Criminality) would have fulfilled a coordinating function and the centre of complaints regarding Discrimination (and Children pornography) would still exist. However, the foundation was suspended and there was founded a temporary site in March 2006 and eventually the Meldpunt (centre of complaint) Cybercrime is only just operational from March 14 2007 onwards. The new site is controlled by the Korps Landelijke Politiediensten (KLPD) that with this is responsible for the sending of the reports to the right places.

Whoever reports a case with the MCC can do this anonymously. On the basis of a report the police, or the judiciary or the criminal investigation department can undertake further action. The goal of the website is that people can warn the police more swiftly and easily. The website www.meldpuncybercrime.nl focuses on reports of child porn and the sexual approaching of children on and via the internet, like for example this occurs frequently in chat boxes or on forums. Even radical, extremist and terrorist utterances can be reported.

3.3 Organisations

Also in the Netherlands the lobbies have a collective right to act in order to come forward as a legal body on behalf of the victims of discriminating behaviour.⁶¹ There are different organisations - we will deal with the most relevant of them in this paper.

3.3.1 Commissie Gelijke Behandeling (CGB) (or: Commission for Equal Treatment)

Together with the Algemene Wet Gelijke Behandeling (General Law Equal Treatment) there was also founded the Commissie Gelijke Behandeling (Commission Equal Treatment) in late 1994. This is a national, independent board that has an expertise concerning the legislation about equal treatment. The CGB has different tasks. This organ is responsible for the supervision of the compliance with the different anti- discrimination laws and has to make an effort to the maintenance of it. The CGB treats on a yearly basis dozens of complaints concerning discrimination and therefore pronounces a lot of judgements. The judgements of the Commission are not binding. The judgements function as a kind of advice so people are not obligated to follow them up. On the contrary one has to obey the judgements of a regular judge. Important to know is that one considers the judgements of the Commission very valuable. The regular judge, or even higher authorities, can involve the judgement of the Commission in their own sentence. Also mediation becomes of a greater importance. With this the opportunity is offered to the different parties to solve the conflict via mediation and in this case there is not a "judgement" to be pronounced. The success percentage of the mediation turns out to be high and the result causes a great contentment with the parties.

Next to it the CGB can pursue at its own initiative an investigation on the basis of signals out of the society to discriminating conducts. Furthermore the CGB advises the government and the proper authorities about the regulation that is of great importance for the fight against discrimination. Finally it is important to emphasize that the CGB plays a big part in the training and education about the legislation of anti- discrimination. The CGB has to create an awareness of the legislation of equal treatment with the general public.⁶²

3.3.2. Art. 1

Art. 1 is the national association against discrimination and is operational since January 1 2007. On April 23 2007 this association made known its name, namely Art. 1. This name refers to Article 1 of the Dutch Constitution (*cf. supra*). Within this association the regional anti-discriminating bureaus (ADB's) and the former Landelijk Bureau ter bestrijding van Rassendiscriminatie (LBR) (or: the National Bureau for the challenging of Race discrimination) have united their forces and expertise in order to support and reinforce each other concerning the challenge against discrimination. The tasks of Art. 1 are described on their website as follows:

- *"registration and monitoring of discrimination in the Netherlands;*
- *to influence the policy and regulation of the authorities and other relevant parties;*
- *to promote the resistance and social cohesion;*
- *to stimulate and to maintain a national covering network in order to fight discrimination;*
- *promotion of expertise of and transfer of knowledge to the ADB's.*"⁶³

3.4. Case Law

In this part we give a few examples of cases that are concerning the expansion of racism, discrimination and negationism via the internet. Striking is that, just like in Belgium, there aren't many websites that were legally prosecuted and therefore the number of examples is rather restricted.

On November 16 2006 the court in Amsterdam has convicted a man in higher appeal to a week of suspended prison penal and a punishable by fine of 500 euros due to discrimination on the internet. It concerns a website "Het Periodiek Internetsysteem" of a fictional Christian internet community in which were announcements about Jews and

⁶¹ BELLEKOM, T.H., *op. cit.*, p. 126

⁶² CGB, Jaarverslag 2006, internet, (10 juni 2007), p. 6-9; CGB, Het verschil gemaakt. Evaluatie AWGB en werkzaamheden CGB 1999- 2004, internet, (8 juni 2007), p. 69- 70. *For an evaluation of the CGB, see also this report, chapter 6 and 7.*

⁶³ Art. 1, Algemene informatie over Art. 1, internet, (10 juni 2007).

homosexuals with references to the Christian faith. The magistrate judged that the borders of what is general acceptable were crossed and that the comments were unnecessary insulting. An excerpt of the judgement stated as follows: *"The context in which these utterances occurred was as follows: the column dates from February 25 2004 and is entitled: "The Passion of the Christ", referring to the film of the same name of Mel Gibson that premiered around the same time. About this film there was a lot of discussion, especially from a religious point of view. One of the discussion issues was that the film maker had removed a certain scene that was considered offensive by a number of prominent Jewish people after a request was made by them. Then the suspect quoted a scriptural passages of the Bible (Ezechiël 8:9-13) and said the following: **"Another bunch of lawless Jews that are afraid from the light, I often consider"**. Within this context this can be considered as a contribution to the societal debate according to the judgement of the magistrate, by which the insulting character of the comment is gone. This comment is furthermore not unnecessary hurtful. This latter is not the case in the second passage which is with charges: **"Yes, even today Jews are still behaving like animals, my friends"**. This comparison, even if it occurs in the broader context of the already mentioned societal debate, crosses the borders of what is general acceptable and therefore is to be considered as a punishable insult. The magistrate points out that the suspect is charged with the deliberate insulting of a group of people, namely the Jewish community, due to their race and not due to their religion."*

Even though the author of the texts said that it concerned a satirical website, the judge stated that satire may not be an excuse for the making of discriminating comments.⁶⁴

On June 1 2006 the person after the different "ERTAN"- websites was convicted by the court of Amsterdam to a penalty of 100 hours of community service (of which 50 hours were suspended). In the texts on his website the blogger "Ertan" for instance that *"as soon as there is an Islamic law becomes valid in the Netherlands, he will be the first one that will push each protesting homosexual - head down - of the Westertoren."* Besides this he writes for example also in an item named 'Amsterdam Pride or Hell?', referring to the Canal Pride (city parade for homosexuals) in Amsterdam 2005: *'let's make it an explosive party'*. With this he quotes a terror threat that occurred around that time, in which a terrorist movement has threat to commit attacks in the European capitals. The magistrate judged that the texts published by Ertan incited to black-white reasoning and that this brings about the increasing tension in the society. Besides, the texts may have the consequence that people use violence in order to realise what the texts are inciting to.

The man is therefore convicted because of the inciting to hatred, discrimination and violence

⁶⁴ MDI, Persberichten, *internet*, (9 juni 2007).

against homosexuals.⁶⁵

On May 23 2006 the court of Rotterdam has convicted by judgement the author of the clip "Housewitz" to a penalty of community service of 40 hours. In the summer of 2005 a 23-year-old student made a video clip available on the internet. It concerned a video that announced a so-called techno party "**Housewitz, tanzen macht frei**" on the terrain of the former concentration camp Auschwitz, adorned with historical footage of Nazi's, prisoners, staples of corpses, Jews on transport, etc. The judge considered the clip insulting and offensive to the survivors and relatives of the victims of the Holocaust - the author also trivialises the Holocaust. He convicted the author due to Article 137e of the Penal Code. Even though the author regretted his deeds afterwards and even though he removed the clip from his site, his defence that he couldn't help it that the clip got such an unintended wide expansion, failed. The magistrate judged that one who puts information on the internet, has to be conscious that he can loose control over that information. Also other distributors, for instance the weblog "GeenStijl.nl" will be prosecuted in the future due to the same crime of expansion.⁶⁶

A fourth example concerns the website www.dutchpal.com. On this website a number of texts were placed that, whether or not by clicking a so-called "link", could be read by internet users. One of those texts was entitled "Holocaust" or "*the Holocaust that never took place*". This texts stated as follows: "*The Holocaust that has never happened. We can in case of the Holocaust clearly detect the effects of the media in the creating of events that never took place, and in the switching of good into evil and vice versa. The "Holocaust" can be called perfectly the lie of the century. In the whole history of men there was never such nonsense spread, as that of the Holocaust. In this part we will discuss the facts on order to prove that all the stories about the Holocaust were made up in the benefit of the own advantage of the Zionist Jews.*" The website is full of this kind of texts and links to texts in which the Holocaust is denied. The court of 's-Hertogenbosch judged on December 21 2004 that the suspect has created a website that is freely available to all internet users, on which he clearly questions the genocide of WW II. As a result he was sentenced on the basis of Article 137c of the Penal Code due to the deliberate insulting by means of press about a group of people (Jews) because of their race and/or religion.

A fifth and last example concerns a judgement of the Court of Dordrecht on June 11 2002. The convicted is the chairman of the Nieuwe Nationale Partij (New National Party) and it turns out from his declaration that he regards himself responsible for the placement of the

⁶⁵ Ibidem

⁶⁶ S.n., Rechts-extremisme en internet (Housewitz), *Computerrecht*, 2006, p. 237-238.

relevant texts on the internet. It concerns texts with discriminating comments towards Moroccans that were to read on the site of the NNP, like for instance this one: *"The third generation can be very dangerous. The third generation is raised by parents who didn't enjoy an upbringing themselves. Parents who are mostly raised in prisons, by the parole offices or social offices. Parents who never participated the production process. Parents who are occupied with drugs dealing, weapon trade, trade of women, fraud, burglary, murder, robbery, rape and other crimes"*. The court regards that with these texts certain people are harmed completely unnecessary and are mistreated due to their origin. Besides, in a suggestive way there is created a wrong and tendentious image of people from a Moroccan origin in the Netherlands. They are considered responsible for the cause of problems concerning criminality and the distribution of community subsidies within the Dutch society. With this the intolerance and hatred against other people is promoted and people are incited to discrimination of their fellow people. This is intolerable out of a humane and societal point of view and is therefore a violation to Article 137d of the Penal Code.

The punishment seemed to be rather mild because the judge took the age (77 years old) of the convicted and his bad health condition into consideration. Eventually he was sentenced to a punishable by fine of 660 euros.⁶⁷

4. RESEARCH

The report centre Cyberhate was inaugurated on March 21 2006. In a period of three months the CGKR has received 700 reports about racism on the internet.⁶⁸ Also other numbers point out that racism on the internet is widely spread.⁶⁹ In the year 2006 the CGKR received 28 complaints/month about extremist content on the internet, in emails, There is an increase of complaints about the spreading of racist or discriminating ideas by means of the internet. This doesn't necessary means that there are more extremist sites than before, but there is more attention about it (see also the start of Cyberhate on March 21 2006).⁷⁰

In the Netherlands, where we dispose of a better overview about the number of complaints, there is also an increase year after year - from 1008 in 2002 to rather more than 1800 complaints in 2004. This is as well due to the increasing of the number of discriminating comments on the internet as with the increased reputation of the Meldpunt.⁷¹

In our research, *executed in the period April – May 2006 with the assistance of 17*

⁶⁷ Rechtbank Dordrecht 11 juni 2002, *LJN-nummer*. AE3932.

⁶⁸ COCHEZ, T., 700 klachten over internetracisme, *De Morgen*, 12 juli 2006; VANMUYSEN, C., 700 klachten over internetracisme, *Het Laatste Nieuws*, 13 juli 2006.

⁶⁹ HENDRICKX, K., Ruim 30.000 meldingen van cybercriminaliteit in 2006, *De Morgen*, 24 januari 2007.

⁷⁰ CGKR, Jaarverslag 2006, *Internet*, juni 2007, p.49-50.

⁷¹ MDI, Jaarverslag 2005, *Internet*, (10 juni 2007), p.4-5.

students of the third year Communication Sciences at Ghent University, we haven't found a lot of websites, fora, ... with racist, xenophobic or discriminating content. There a number of reasons why we haven't found a lot sites (*cfr. infra "Bottlenecks"*). One reason may be that we used a very strict definition of Dutch or Belgian sites: *the Dutch or Belgian part of the internet and inclusively the parts of the internet that are physically located in foreign countries but are written in the Dutch or French language and/or are taken care of in the Netherlands/Belgium and/or are clearly point at the Netherlands/Belgium.*⁷²

BELGIUM:

Content	Websites	Discussion Fora/Newsgroups	Weblogs
Racist	13	12	3
Xenophobic	4	5	/
Discriminating	5	4	/

In total we have found only **46** sites, discussion fora, .. with, according to us, a racist, xenophobic or discriminating content.

THE NETHERLANDS:

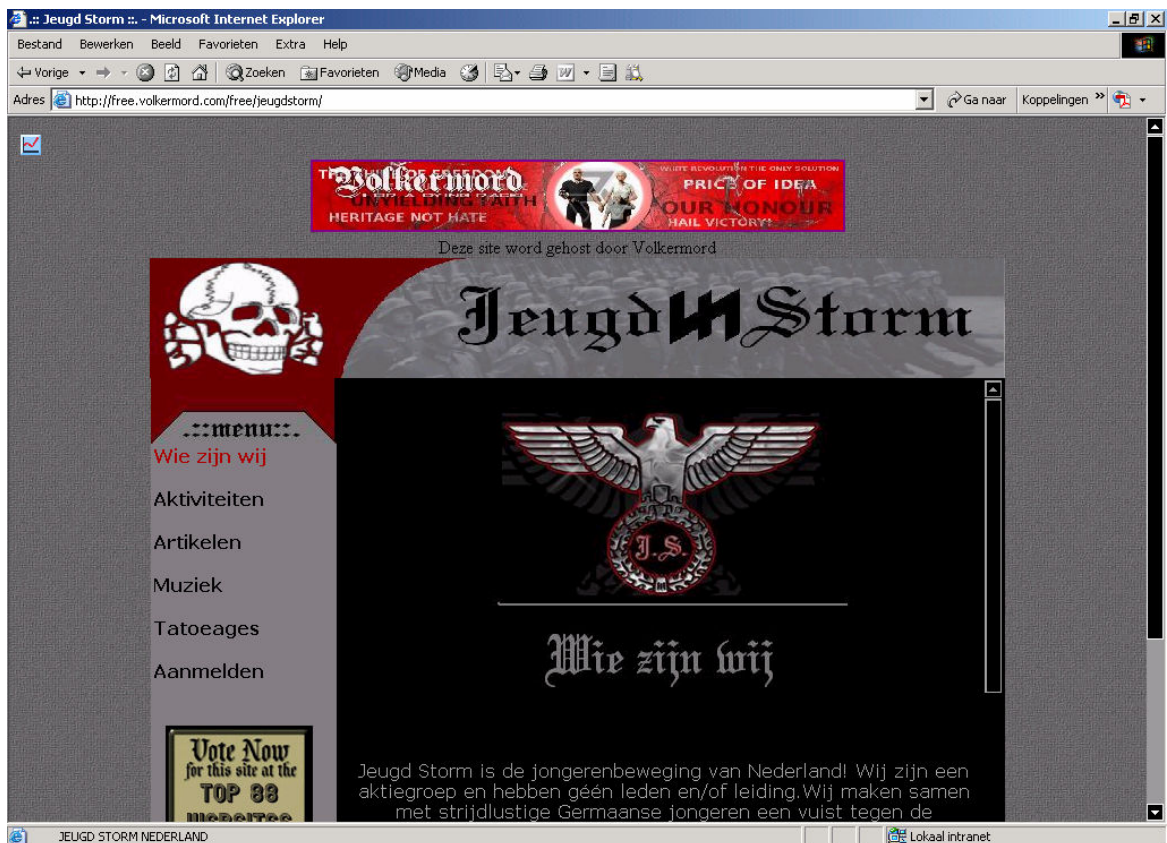
Content	Websites	Discussion Fora/Newsgroups	Weblogs
Racist	23	20	10
Xenophobic	5	4	/
Discriminating	6	2	/

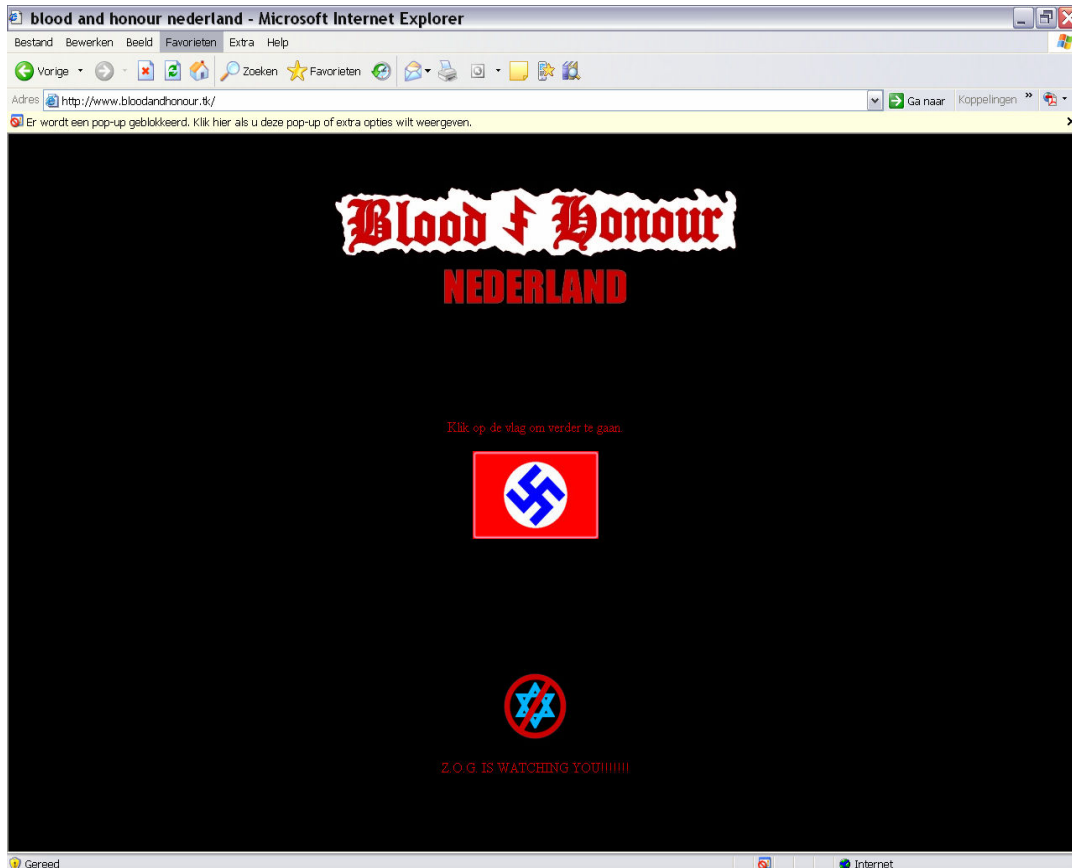
In total we have found only **70** sites, discussion fora, .. with, according to us, a racist, xenophobic or discriminating content.

⇒ As well for Belgium, as for the Netherlands it is remarkable that a lot of internet sites are in itself not racist or discriminating of set-up, but that frequently, by placing a certain article or topic on the site, the forum is overwhelmed with discriminating contents. For example the newspaper "*De Telegraaf*" writes an article about the murder of a white young man by 2 other underaged immigrants and a few minutes later a discussion in the forum starts about the problems in the multicultural society.

Some examples:

⁷² Notice that **email** wasn't analyzed in our study, although a lot of complaints handle about email.





Beste ontvanger van meel,

*Beste ontvanger, jij net gekregen
Marrokaansje computer virus.*

*Maar wij in Marokko nog niet sjo goed zijn met compoeters, dus
dit isj handmattig virusj. jij doen volgende dingen;*

*Jj eerst moeten alle data weggooien zelluf van harde disk van
jou compjoeter. Daarna jij pakke ghamer en sjaan heel hard op
kastje waarin sjitten die harde disk.*

*Maar eerst jij stoeren dit meel naar al jouw vrienden. Werkjt
echt hoor. Gaat goed.*

Dank joe wel voor mooie sjamenwerking.

Groeten Achmed-Ali



5. BOTTLENECKS

First of all we can detect that a whole lot of websites, *which violate the Anti-Racism law, the Anti-Discrimination law and/or the Anti-Negationism law*, are from a foreign origin. Sites like Stormfront, Blood & Honour, Combat 18, Ku Klux Klan, etc. are widely spread on the internet and give the impression that *"everything is allowed"* on the world wide web. The trans-national character of the internet causes therefore a problem. Many sites are not from a Belgian or Dutch origin, but some of them can be consulted in Belgium/The Netherlands. Criminality on the internet doesn't stop at the country borders. The criminal law has only a territorial authority and jurisdiction. The question is whether which country has authority. Next to this it is striking that the national laws often differ. What is punishable in one country isn't necessarily punishable in another country. There are often used different values and norms in the judging of a punishable content of a publication. An image of a swastika is for example punishable in Germany, but then again not in Belgium and the Netherlands.⁷³ Often one is confronted with sites of American origin by which a whole lot of complaints are classified unattended. In the US the *"First Amendment"* legitimates every opinion so also a racist,

⁷³ VALCKE, P., *Democratie en diversiteit op de informatiesnelweg: beschouwingen over de vrijheid van meningsuiting op het internet*. In: ICM, *De rechten van de mens op het internet*, Maklu, Antwerpen, 2000, p. 110-111.

discriminating or negationist opinion can be freely expressed.⁷⁴

Another problem that ties together with the trans-national character of the internet is the fact that the Belgian or Dutch legislator has sometimes the authority but because of the fact that the expansion happens abroad a **tracing and prosecution** by the Belgian/Dutch court often is made difficult. *"if one wants to avoid the violation of the sovereignty of a country, one has to wait until the foreign perpetrator sets foot on Belgian/Dutch soil in order to be able to catch him."*⁷⁵

Next to it we can determine that the Belgian/Dutch versions of sites like Blood & Honour often consist of less extreme opinions than the original versions. A latent racist or negationist plea is indeed present but the punishable character of it is difficult to prove. Furthermore one has to have the disposal of an access code in order to enter the forums of these sites.

Fourthly the border between contents which are merely insulting on the one hand and contents which violate the Anti-Racism law, the Anti-Negationism law and the Anti-Discrimination law on the other hand is difficult to determine.

Concerning the Anti-Negationism law we have to mention that (in Belgium) only the *'denying, gross minimising, the attempt to justify or approve of the genocide that was committed during WW II by the German nationalist-socialist regime'*, is punishable. There are enough skinheads, chums and supporters with extreme right-wing ideas who are caught using insulting language as: **"dirty Jew"**, **"Hail Hitler"**, **"cancer Jews"**, etc. websites in which these slanging-matches occur are widely spread on the internet. However, it is impossible to call this being negationist; these insults don't consist of a denial, neither a justification, neither a gross minimising and neither an approval of the genocide. Their content is one of a racist and insulting nature against the Jews as a community. As a consequence such expressions are to be prosecuted on basis of the anti-Racism law (and therefore they have to be considered as insults that incite to hatred, discrimination or violence, *cf. supra*). Although *'to cast doubt'* about the genocide was punishable in the bill of 1992, eventually this was not drawn up in the final statutory provision and one has opted for the expression *'to minimise in a gross manner'*. Here lies the problem.

With many Belgian websites this casting of doubt occurs often: *'were there in fact 6 million Jews taken to the gas chambers? could it be that there were only 5,4 million? does there exist evidence that the genocide was planned? were the gas chambers used like they are represented? etc.'* Is this a matter of gross minimising or not? This expression offers no solution in the discussion. On the internet the latter grant debates, pseudo-scientific articles, columns, etc. which balance on a thin line between negationism and revisionism are

⁷⁴ CGKR, *Gelijkwaardigheid en verscheidenheid. Jaarverslag 2001*. CGKR, Brussel, 2002, p. 29.

⁷⁵ VALCKE, P., *op. cit.*, p. 111.

occurring very often. It is rather seldom that this expels into a manifest punishable expression but it is the accumulation of the different posts on discussion forums that exposes the real character of the forum that lies underneath, namely the denying, the justifying, the gross minimising of the approval of the genocide that is committed during WW II by the German nationalist-socialist regime. This sidling discourse that is used on many forums and the lacking of an objective criterion that prescribes unambiguous where a text crosses the lines of the revisionism and therefore is a case of negationism is therefore still absent in the law. This hiatus borders, restrains and slows down the search to negationism on the internet extremely.

A fifth point that has to be taken into consideration is that our research was also confronted with the internet being fleeting. Very often we could determine a punishable content but the site was jiggled after a couple of days with another provider and therefore no longer traceable. Authors of such clearly punishable sites use handily this way of working and know to escape prosecution.

Sixthly we can determine that many authors of punishable contents are anonymous or are using a pseudonym. Therefore it isn't easy to indeed prosecute the authors. This withholds an effective prosecution policy.

We have **also** noticed that a website can be forbidden by the legal system and even can be blocked in for example Belgium. This means that the Belgian surfer is unable to reach the website. The blocking system isn't watertight because there exist websites that can lead you through the blocked sites.⁷⁶ Next to this many filters are failing. An educative site for example about the concentration camps can be blocked by a filter while a site that questions the existence of those camps can slip through these filters.⁷⁷

Eighthly the internet is distinguished by a complicated technical system by which the juridical and police services have to dispose of the necessary expertise and means to track criminal offences.

The internet specialists of punishable websites are often one step ahead of the technicians of the judicial authorities so that many criminal offences can occur.⁷⁸

Another important bottleneck is the large amount of information that can be detected on the internet. In discussion forums for example you can find full-paged articles together with almost endless reactions. It is impossible to completely screen them for suspected punishable contents. In short, it is human and material quasi impossible to control the internet proactively and systematically.

⁷⁶ DE WIT, J. Centrum-Leman pakt ook website negationisten aan. *Gazet van Antwerpen*, 6 juni 2003.

⁷⁷ CGKR, *Delete cyberhate. Racisme en discriminatie internet. Handleiding voor de internetgebruiker*, 2006, p. 20.

⁷⁸ de VILLENFAGNE, F. en DUSOLLIER, S., La Belgique sort enfin des ames contre la cybercriminalité: à propos de la loi du 28 novembre 2000 sur la criminalité informatique. *Auteurs et Media*, 2001, nr. 1, p. 72-73.

Finally we can notice that there is a lot of work done against punishable, discriminating, racist or negationist sites, discussion forums, etc. on the “*Belgian*” internet (*cf. supra*). Very often a certain site or discussion forum was “discovered” by a student, but this site was already removed from the internet a few days later by the provider or trustee, whether or not after a complaint of the CGKR or a reporting of the internet users. Many providers or trustees of discussion forums are conscious that certain contents are suspected to be punishable and have to be removed. We are cheering on this approach but it is obvious that it isn’t easy to find in this way “many” research material.