

Thank you for your invitation to be your speaker today for this international congress. I have been asked to talk to you about the role that an association of prosecutors and members of the judiciary can fulfil in the creation of a code of conduct. Before I begin I will need to give you some information about the situation in the Netherlands.

The Dutch Association for the Judiciary, of which I am honored to be deputy Chairman, is an association that comprises both prosecutors and judges. Because it is also the only association in the Netherlands we represent the entire judiciary. We have become used to it; both functions are equally paid and it is possible and also not unusual to switch from one to the other.

Representing both groups reinforces our position in dealing with the outside world and strengthens our hand when it comes to salary negotiations. But it also confronts us with different choices from those we would face if we were only an association of prosecutors. An example of such a choice concerns the code of conduct for prosecutors. Should we make one code combining both functions or should we do it separately?

As an association for the judiciary we believe it is of the utmost importance that a code of conduct should exist for judges and prosecutors. However in the Netherlands we have decided as the Dutch Association for the judiciary not to develop a separate code of conduct for prosecutors, but to work with core values for the judiciary. The most important reason lies in the fact that the Dutch Public Prosecution Service has already developed its own code of conduct which specifically applies to all employees of that organization. The existence of two codes alongside each other is not in the interests of prosecutors, so for our specific situation in the Netherlands we have chosen to formulate core values for the whole of the judiciary, which both prosecutors and judges belong to in the Netherlands. I will introduce these core values briefly in a minute.

But why should a code of conduct be necessary? And why do we regard it as so important that an association of prosecutors should also have a major role to play in it?

In my opinion there are a number of important aspects. I will begin with the last point, the role of the prosecutors' association:

A code comprises - in short - guiding principles for how people act, norms and values, and it says something about what good behavior is and what behavior is to be avoided. If a code is intended to be more than just a management tool, and is to enjoy extensive support and respect, then it is important that it should be created with the participation of the prosecutors themselves, young and old, from lowest ranking to highest ranking. Furthermore in order to prevent the prosecutors forming the view, rightly or wrongly, that the interests of the organization are all that count, an association of prosecutors makes the ideal initiator for this type of code.

In our opinion the value of a code of conduct can be summarized in four points:

1. **A code stimulates debate.** Drawing up a code is an excellent way for prosecutors to debate the norms and values that we work with. Much of what we do represents ingrained customs and habits that are passed on from generation to generation. Is everything still appropriate for the present day? Have we thought about matters differently? Why do we always do things that way? Just holding this debate, which is inherent to the creation of the code, is of great value. On the one hand to re-evaluate existing behavior and opinions, and on the other hand to increase awareness of what the code stands for among prosecutors.
2. **A code provides support / a frame of reference.** The law is not mathematics. And that is just as well, because most practitioners of the law are not good at maths. It means that as a prosecutor you can find yourself in situations where you are confronted with a dilemma. Although it is not possible to provide for everything in a code, a code of conduct can help to make a justifiable decision. As an individual prosecutor, but also in discussion with colleagues.
3. **A code offers protection.** The protection offered by a code is an automatic consequence of my last point. Acting in accordance with the code can make it harder to criticize a prosecutor, even when things ultimately go wrong. Working on the basis of a code means that in any case you can state that a

conscious decision was made using due diligence. A prosecutor is then less at risk of being personally criticised for a decision he or she has made.

4. **A code makes your actions transparent and predictable.** A code is also important from an external perspective. We work in a world of criminality where agreements depend on what is in it for the individual, where honesty is sometimes seen as a weakness, and where integrity is just a word in a game of Scrabble. As a prosecutor who takes the measure of other people you must be predictable and verifiable in your own actions. A code of conduct can provide society with the confidence that prosecutors will act in a conscientious, upright and verifiable manner.

As I have said, the Dutch Association for the Judiciary has chosen to work with core values. Five core values, to be precise.

The core values we have formulated are:

- Independence
- Autonomy
- Impartiality
- Integrity
- Professionalism

We expressly hope that the core values formulated by us will act as a guideline for prosecutors to enter into a discussion together about these core values, and will encourage critical self reflection. Because the core values are formulated in a somewhat abstract manner we also explain for each core value the way in which we give form to this core value.

It will come as no great surprise that there is a great deal of similarity with the code of conduct which the Public Prosecution Service has drawn up.

The core values formulated by the Public Prosecution Service itself are:

- Professionalism
- Environmental awareness
- Integrity
- Openness

- Due diligence

As I have already said, the Dutch Public Prosecution service has chosen to create a code of conduct for the whole of its organisation. So this involves both the prosecutors and the other employees of the organisation. There is a lot to be said for this, because people make decisions and deal with confidential information at many levels within our organisation. In addition in the Netherlands more and more people other than prosecutors are fulfilling important roles externally.

Just like the Netherlands Association for the Judiciary, the Public Prosecution Service has also stated the way in which its core values are to be interpreted.

In both cases the express decision was made not to opt for a set of legal regulations. That would not do justice to the complex and wide-ranging work performed by the Public Prosecution Service, and would be more likely to have a paralysing effect.

Both refer to the importance of creating a culture within which self reflection and talking about moral and professional dilemmas are second nature. The core values must be seen as a sort of moral compass for employees of the Public Prosecution Service.

At first sight the differences seem to lie in particular in the core values like **Independence, Autonomy** and **Impartiality** which have a more prominent place in the core values of the Dutch Association.

This can no doubt be explained on the one hand by the fact that the Association is both a professional association and a trade union, and on the other hand that we bring together both judges and prosecutors. However there is also a clear connection in terms of these points with the other core values chosen by the Public Prosecution Service.

I will look at each of them in turn and offer a short explanation.

Independence

This core value has been chosen by the Association principally because we believe it is important to emphasise the fact that the authority to prosecute rests with the individual prosecutor to whom the legislation has granted the exclusive right of prosecution. The core value of independence reflects the constitutional separation of powers between legislature, executive and judiciary, and in relation to other parts of the judicial organisation. The prosecutor acts with appropriate detachment with regard to both the administration, the judiciary, and politics. His actions must be guided by the law, legality and law enforcement, and not by purely political motives. The relevance of this is to be found in the fact that since the mid-1990's the Minister of Justice has had the authority to issue instructions in concrete matters. The prosecutor must implement instructions from the Minister of Justice, but this does not detract from the fact that the prosecutor formulates sentence requests independently, partly on the basis of the court hearing. Fortunately, I don't know of cases where the Minister made use of this capacity and this authority is also subject to strenuous Parliamentary control.

We prosecutors are answerable to the public for our performance before the judge on individual criminal cases. It is the duty of the prosecutor to ensure that the political debate has no influence on his or her performance. On the other hand it is also true that politicians are expected to be prudent in their dealings with the independent position of the prosecutor.

In the light of the specific task that our association has and the administrative connections between the Public Prosecution Service and the Minister it is hardly surprising that this core value has gained such a prominent place in our thinking.

Autonomy

The prosecutor forms part of a hierarchical organisation. But with this core value the Association wishes to emphasise that he has an independent position within that. On the one hand he is hierarchically subordinate and is bound by established policy. On the other hand he has the authority to make individual decisions, which means that he must be able to depart from guidelines or instructions originating from his organisation in specific, well substantiated cases. The prosecutor is bound to follow

instructions, but that does not detract from the fact, as previously referred to, that the prosecutor formulates his sentence request partly in the light of what happens during the hearing.

This is reflected in a different way in the explanation of the core value '**Professionalism**' within the Public Prosecution Service' code of conduct. There it is approached from a different perspective, by stating that the prosecutor is conscious of the fact that his decisions may have a major impact on society; an impact which goes beyond an individual criminal case. If you wish to be generous you might read into this that the underlying principle is one of Autonomy, but 'be aware that you are part of an organisation!'.

Impartiality

The core value of impartiality refers to the absence of any appearance of prejudice on the part of the individual prosecutor in investigating to find out the truth. Society must be able to be confident that the prosecutor makes an impartial judgement when deciding whether to prosecute. As an association we have also included this core value because the prosecutor also stands for the legitimacy of investigation and prosecution. The prosecutor is a party to the process in a case, but he is not partial. We also include exculpatory evidence in the criminal record; everything that argues for and against the suspect. The principle of equality of arms and the presumption of innocence represent practical expressions of this core value.

The prosecutor must also not allow media pressure to have any influence on his judgement.

These aspects, which we include under **Impartiality**, are partly to be found under the core value of **Integrity** as expressed by the Public Prosecution Service.

Professionalism. We both recognise this core value, which focuses in particular on professional competence. It means that knowledge and expertise must be in good order. That besides the organisation, which must facilitate the provision of courses, the primary responsibility lies with the employee, to ensure that his professional expertise is adequate. But as an association we add that monitoring the speed at which cases are handled is also part of professionalism.

Professionalism also means being open for the contributions and criticism of colleagues. I believe personally that a good example of this is to be found in the reflection chambers which are held during major criminal investigations. In major investigations there are always points in time where important choices have to be made. This may vary from tactical to strategic choices, or just the choice of which charges we ultimately wish to place before the judge.

A reflection chamber is organised regularly for these types of matters, to which a variety of colleagues are invited. This varies and may include the prosecutor charged with the quality portfolio, prosecutors with special expertise, e.g. forensics or cybercrime. The local chief-prosecutor and a Advocate General may also be invited. The prosecutor charged with the investigation explains his case and the choices that he is confronted with. The pros and cons of the various options are then discussed in a peer discussion. The final responsibility remains with the case prosecutor, but in practice these sessions provide a clear direction for the choices that are made. I have expressly used the word 'peer' here. By this I mean that discussion does not take place on the basis of hierarchy, but at the same level. In my case, for example, I am Advocate General and 'contact-AG' for a particular regional public prosecutor's office, where I am invited to attend these types of meetings. Although my function naturally affords me superiority I guard carefully against attaching any weight to this during the discussions, beyond offering my experience on the basis of my seniority. Naturally that is sometimes rather difficult because the seniority of an AG or the hierarchical position of the chief prosecutor naturally still exist during such a conversation. This imposes a great responsibility on us to guard against this carefully. This is also an aspect of the core value of '**professionalism**' within the code of conduct. Those who have been following this may well have noted that part of our association's core value '**autonomy**' is also reflected in this core value.

Another core value is 'environmentally aware'

In order to serve society you need to be well rooted in it, and to know what is going on. This means that it is necessary to be connected to all relevant parties in order to achieve a relevant and meaningful intervention.

As far as I am concerned this core value really reflects the times we are living in. For example it makes me think of the attention that is paid to the victim in criminal processes. The victim's right to speak personally during the process, but also for example the victim's right to speak with the responsible prosecutor in particular cases. This core value also tells me that you should also reassess your core values periodically. Criminal cases will increasingly be seen in their social context and as a prosecutor you will need to be connected to that environment. Part of this core value falls within the Association's core value of **Professionalism**.

One core value that we both recognise is integrity. In fact this is a precondition for being able to work for the Public Prosecution Service. If you are reproaching other people then you must be beyond reproach yourself.

But the very fact that integrity seems like something that can be taken for granted means that it is important to take the time to think about it and talk to each other about it. A Prosecutor that lacks integrity can jeopardise the credibility of the entire organisation.

It is important to note in the context of this term that it relates to our actions both during and outside work hours. And I'm not talking only of criminal behavior but also any behavior that may suggest a conflict of interests or impurity of actions.

But simply stating such a term is not enough. You have to keep it alive and maintain it. An important step is at the very start of a career with the Public Prosecution Service. An good example of this is the section on moral dilemmas within the course followed by those wishing to qualify as prosecutors.

I participate in this section in the training phase of new prosecutors, together with 3 colleagues. We hold discussions with the study group based on a number of case studies. We begin quite simply with something like the question of driving while under the influence of alcohol. But then it becomes more difficult when you are asked what you would do if your partner has had just a bit too much to drink and wishes to drive. And what do you do with friends who come and visit you, and have drunk a bit too much? We slowly build this up to situations that are less common but which are

difficult, in which maybe you come into contact with people who are the subject of an investigation via your partner's work.

We cannot always come up with the right answer but what is most important is seeking to adhere to the norm, talking together about the norms, and emphasizing to colleagues the importance of talking about dilemmas and not continuing to struggle with them on your own. That may be with us, the people presenting the course, but also both the Public Prosecution Service and the prosecutors association have **confidential counsellors** that you can talk to.

And besides this, though this goes beyond the scope of this presentation, members of the association also are entitled to legal support from a well-known firm of advocates that we have a contract with. Naturally this is only for extreme cases which result in an actual conflict, or threaten to do so.

In the context of integrity it is in any case important to refer to the BIOM (Prosecution Service Integrity Bureau). The BIOM is a national bureau of the Public Prosecution Service which fulfils the function on the one hand of an expertise centre and advisory body in the field of integrity, but also has qualified investigators who can be used to investigate possible integrity violations. These are not policemen or similar, but specially trained colleagues within the Public Prosecution Service. The big advantage is that if an integrity violation is suspected at a particular location, colleagues from other locations who are not involved, but who are qualified, can carry out the investigation. In addition, as I said, each location has a confidential counsellor dealing with integrity issues. This is someone that colleagues can turn to with their questions, or if they need advice.

A surprising core value that the Public Prosecution Service has chosen is **'openness'**.

Everything that is paid for by public funds must be accounted for. This applies all the more to us, as a prosecuting body. We have extensive powers and sometimes we intervene in ways that have a profound effect on the lives of citizens. Then it is important that we work transparently and openly. That we say what we are going to do upfront, and where our priorities lie, and that we say what we have done (or not done) after the event. Naturally you cannot always openly share everything with everyone in a criminal case, but it is surprising how much you can actually share.

A good example is the annual reporting of the number of integrity violations at the Public Prosecution Service itself. The Prosecution Service Integrity Bureau that I just mentioned reports annually on the number of violations that have occurred within the Public Prosecution Service itself. Then we might report, completely anonymous, for example, that an administrative employee had used his work email address for a private matter in order to apply additional pressure, and that he had received an official warning for this.

Initially I was dubious about this, as were many of my colleagues. That colleagues should be publicly named and shamed. In practice it hasn't had any negative consequences. In the media it is soon back to 'business as usual' whilst in the long term it has only served to improve confidence in the Public Prosecution Service, in my opinion.

As an association we have also not received any concerned reactions from our members.

A final core value that the Public Prosecution Service refers to in its code of behavior is '**due diligence**'

This due diligence naturally relates to the decisions we take, which often have a major impact on the lives of citizens, but in today's world an important aspect of this due diligence also relates to the data/information that we have access to. And to how we record our own information. That we also record what we do in order to make it possible to check our work. And that we are clear about the agreements we make.

This brings me finally to another role that I believe is fitting for a prosecutors association.

Entering into service as a prosecutor is very special. A function with a great deal of responsibility and social significance. For this reason we invite all new prosecutors and judges to an introductory meeting with our association in a special environment. Space is planned into the training program of both new prosecutors and judges for a visit to our association. We invite these potential new members to a special historic location.

In the case of the prosecutors that is mostly the House of Democracy, where we take them on a tour of the parliament building. We visit both the upper and lower houses and also the Ridderzaal, where every year on the third Thursday of September members of both Houses of Parliament come together to listen to the King presenting the 'Troonrede', setting out the government's plans for the year. In the case of the judges we use the Gevangendoor (Prison Gate), an old historical prison where important prisoners were held and punishments were carried out centuries ago. The aim of both meetings is to make the judges and prosecutors aware that by taking on the function they are joining centuries of tradition. That they will fulfil an office with an important social function, but that they will also form part of a legal system that has evolved over the centuries, and within which they will now write their own history. Alongside all the work-related courses that they are offered, we, as the Dutch Association for the Judiciary, also regard it as our express task to take the time to contemplate this very special circumstance with them.

Thank you all very much for your attention. Should you have any questions I will be pleased to answer them, either now or at any other time during the conference.

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