
Session 2005-2006

29 754

Counterterrorism

No. 30

**LETTER FROM THE MINISTER OF INTERNAL AFFAIRS &
KINGDOM RELATIONS AND THE MINISTER OF JUSTICE**

To the President of the House of Representatives of the States General

The Hague, 29 September 2005

In accordance with the promise made in the memorandum “Radicalism and radicalisation”, we now submit a more detailed explanation of the local and judicial approach to radicalism and radicalisation. The purpose of this memorandum is to clarify the manner in which radicalism and radicalisation can be identified and countered at an early stage, using an exchange of information and the local approach, and also how judicial mechanisms can be applied as a support and as a final measure for this approach.

The Minister of Internal of Affairs and Kingdom Relations,
J. W. Remkes

The Minister of Justice,
J. P. H. Donner

Addressing radicalism and radicalisation at local and judicial levels

Introduction

The memorandum "*Radicalisme en Radicalisering*" [Radicalism and Radicalisation] recently submit to your House, intimated that the Ministers of Justice and of Internal Affairs & Kingdom Relations would jointly prepare a scenario explaining the facilities and limits of criminal law and the use of civil law by judicial authorities, as well as the role of the local authorities and police forces in highlighting and countering radicalism and radicalisation.

The memoranda mentioned above offer a basis for a broad approach to these phenomena on the part of government, and thus also for an elaboration of policy for a range of government agencies. One of these detailed policy elaborations has already been prepared by the Minister of Immigration and Integration in the memorandum "*Weerbaarheid en Integratie*" [Resistance and Integration], submitted to your House at the same time as the memorandum "Radicalism and Radicalisation".

As explained in the memorandum "Radicalism and Radicalisation", there are currently three distinguishable forms of radicalism within society: islamist radicalism, right-wing radicalism and animal rights activism. The memorandum describes the importance of a broad-based approach to radicalism and radicalisation, as well as the circumstances in which judicial intervention by the government against radicalism is required. This would be the case if radicalism were to result in violence or other criminal activities, or if a form of radicalism that rejects the democratic legal system were to attract substantial support. The approach would then consist of an energetic application of the mechanisms available under the law. It might, for example, include the application of the criminal law, or other legal facilities such as the dissolution of a legal entity, or administrative measures such as the withdrawal of subsidies.

However, action under the law on its own, without wider (social) measures, will not have the desired effect of permanently addressing the problems faced by society with regard to radicalism and radicalisation. On the other hand, a broadly-based policy aimed at increasing resistance to these types of influence on the part of society, local authorities and individuals will be doomed to failure if the government does not, where necessary or desirable, come down hard against words and deeds that overstep the mark. Taking action under the law is therefore a necessary complement to and support for a broadly-based approach to radicalism and radicalisation. For these to be addressed effectively, it is, therefore, of great importance that (social) organisations, local authorities and individual citizens should continue to strive for the preservation of an open, public and tolerant society where people are dealt with respectfully - a society that is resilient enough to resist the growth of violent radicalism.

Viewed in this light, we have to emphasise the importance of early recognition of (individual) radicalisation processes that might develop into criminal activity or actions that undermine the legal system, as well as the containment of these types of processes. It is therefore necessary to continue with efforts to recognise phenomena

in society that point towards radicalisation and recruitment for the violent Jihad. Input and information from the police services and the national and regional intelligence services are indispensable for this purpose. The same applies in relation to the role of local government, because local government networks are more suited to recognising the existence of radicalisation hotbeds and processes at both local and regional levels, and for taking adequate measures in relation to these, supported by central government.

In the following synopsis, we therefore explore first of all the issues of investigating, identifying and countering radicalism and radicalisation. We go on to discuss an expansion of the local approach to these phenomena and finally look at the application of judicial measures as support for and completing phase of the approach.

1 Investigating and identifying radicalism and radicalisation as preconditions of an adequate response

1.1 Introduction

A precondition for dealing effectively with radicalism and radicalisation is the early recognition of manifestations or hotspots of radicalism, detection of developments within population groups with this in mind, effectively combining and analysing available information, and ensuring that the findings are able to be translated promptly into policy and actions. This requires the organisation of information channels, receptivity towards signals of radicalism and the ability to deploy an adequate response on the basis of the analysis.

Activities involving investigating and identifying signs of radicalisation in society have long been the domain of the intelligence and security services. For the manifestations we are discussing here, however, it would also be useful to employ and develop additional channels of information and communication. This is certainly the case as regards the police force, but it also applies to a large number of other government services and private organisations. It is at the stage where radicalisation has not yet led to criminal activity that we need to keep an eye on developments.

1.2 Intelligence and security services

One element of the measures announced by the Cabinet and adopted in the context of the battle against terrorism is an expansion and strengthening of the intelligence and security services. In addition to the collection, exchange and analysis of information concerning plans for terrorist attacks, a large part of the work and the collated information also relates to radicalism, radicalisation and recruitment. The expansion of the intelligence and security services as regards counterterrorism is therefore also an expansion for the benefit of the investigation of different forms of radicalism and recruitment. It is important here not just to look at those forms of radicalism that are regarded as a threat at any particular point, but also at those forms that might end up posing a threat in the future. The ongoing investigation in connection with right-wing extremists is currently being charted in connection with the

letter relating to the AIVD memorandum "Lonsdale youths in the Netherlands" (House of Representatives, 2004/2005, 29 284, number 12). This is to see whether there are any areas not yet being covered. Your House will receive further information on this in the autumn.

1.3 Police forces

The police forces are also of major importance for investigating and identifying radicalism, radicalisation and recruitment. With its neighbourhood outreach - the role of the local policeman as an information source must not be ignored – the police force has an indispensable network of contacts. We shall explore this further in chapter 2. There are also various divisions of the National Police Agency [KLPD] that play an important part in Internet surveillance and in the assembling and channelling of information originating from other government departments and information sources.

1.4 Other channels of information

Other government organisations also have an important part to play when it comes to investigation and identification, in much the same way as private individuals and private organisations. Local administrators, social security agencies, educational institutions, social and community workers all have the ability to notice that groups or individuals may be on the path towards radicalisation. What we are discussing here is not confined to inflammatory sermons and discriminatory statements in mosques, on videotapes, audiocassettes or on the Internet, but also about what is happening in clubs and community centres, entertainment facilities and sports complexes. It is crucial for everyone that the relevant partners, services and organisations succeed in recognising the signals, and that they know what they can do about them.

In this context, special attention must be paid to locations where groups of people congregate over a relatively lengthy period, with no significant contact with the outside world and under a certain degree of compulsion. The most familiar example, which has frequently been mentioned in this context, is the prison. Based on the experience we have gained to date, there is currently a high degree of vigilance for radicalisation, both via outside influences and 'self-starters', as well as recruitment, within the prison environment (and in young offenders' institutions). Contacts with investigation and security services are intensive, as a result of which any signs of radicalisation are passed on and warnings are received in relation to individuals at risk.

As with the battle against crime, it is important to enhance the public's willingness to make reports. A distinction must be drawn here between individuals and organisations in a general sense, and individuals and organisations who are part of the immediate circle of those with radical ideas (the sympathisers and the vulnerable). As regards the general category, we might expect that their readiness to report unusual manifestations or developments would mainly be influenced by clarifying what information is important to report, where they can do so and what will be done with information. We shall be looking into whether a facility along the lines of "crime-stoppers anonymous" might also be possible for radicalism.

For those who find themselves closer to the inner circle of those with radical ideas, and in particular the sympathisers, the position is that it would probably be much harder to motivate them into providing information, although they would potentially be an important source. Experience in other countries, particularly in the United Kingdom, tell us however that it is not impossible to convince them of the importance of collaborating with the government, certainly when it involves the provision of information concerning violent trends. Building on experiences gained in combating terrorism in Northern Ireland, individuals with radical ideologies, but who reject violence, are regarded both by the police and the Home Office as valuable discussion and collaboration partners. We are looking into the extent to which the British example might offer usable principles to apply to the Dutch situation.

1.5 *Support in recognising radicalism*

It is not, of course, our intention that the alarm should immediately be sounded whenever an individual or institution notices something odd, just on the possibility that there might be some suggestion of radicalism. Nor would it be desirable to ignore any warning signs. To be able to identify radicalism or a process of radicalisation in concrete cases with any reliability, the observer needs to have something to go on: what counts as an indication, and when does it make sense to ring the alarm bell?

This is not the appropriate place for exploring these matters. Instead, we will merely state that a number of institutions and municipalities are working on strengthening the facilities for exchanging and testing information concerning possible radicalisation. The role of State government, with the supervisory responsibility of the National Counter-terrorism Coordinator (NCTb), is to stimulate and support this process. It is also in a position to offer expertise.

Individual citizens can also play their part when it comes to drawing attention to questionable situations. This might, for example, involve indications within their own familiar environment of immediate and wider family, friends and religious congregations, because it is easy in these circles to recognise what amounts to genuinely unusual behaviour, which is therefore a cause for alarm.

1.6 *Effective ability to respond*

Experience teaches us that the organisation of systems for identifying questionable situations – in other words, setting up channels of information - can make a crucial contribution to effective policy. Proper organisation of information processing is also essential for this. Any warnings must not only reach the allocated contact point, but must be recognised and analysed correctly. A choice must then be made as to which measures should be taken, and we have to ensure that any such deployment is also carried out effectively.

At a local level, this process can be enabled through strengthening the exchange of information between local authority services, administrative bodies, police and the judicial system. For example, the campaign “*Meedoen of Achterblijven*” [Take part or stay behind], currently under way in Rotterdam, involves structuring, reinforcing and converting the existing *Contactgroep Maatschappelijke Verhoudingen* [Social

Relationships Contact Group] into an information hub embedded in the existing local security structure. At a national level it is the NCTb and the KLPD that are specifically charged with undertaking this task.

These services bring together many different sources of information, which is analysed in greater detail. The response options are considered on the basis of that analysis, if there seem to be appropriate reasons for doing so, and central government services and local authorities are informed and prompted into action. These services also ensure that the responses are fine-tuned and coordinated, and that the impact is evaluated.

2 Expansion of the local approach to radicalism and radicalisation

2.1 Introduction

What we have discussed in the preceding sections is the major importance of the part played by local government, municipal authorities and police forces in identifying, containing and combating radicalism and radicalisation. The following sections will specifically explore an expansion of the local approach, contemplating - in particular - the support that can be given to municipal authorities in bringing these undesirable phenomena to light and addressing them. A number of municipal authorities have acted decisively in recent times in relation to identifying and countering radicalism. Amsterdam and Rotterdam are prime examples here, but the same thing is also increasingly happening in other provinces and municipal areas.

The steps we mention below in relation to the local approach to the issue have come to fruition in consultation with the VNG (*Vereniging Nederlandse Gemeenten*, or Association of Netherlands Municipalities), and are intended to prompt local partners to accept their responsibilities in this area, promoting a healthy collaboration, so that the range of efforts enhance each other and become imbedded in a wider local framework under the control of the local authorities.

2.2. The central role for local government

The AIVD report "*Van dawa tot jihad*" [From dawa to jihad] and the memorandum "*Radicalisme en Radicalisering*" [Radicalism and Radicalisation] both indicated a need to adopt a general policy aimed against radicalisation at all administrative levels. This general policy is aimed not only at dealing with individuals who are suspected of terrorism or planning terrorism, but also at preventing and identifying radicalisation among youngsters in particular. Local government has a central part to play here, as it is in the best position to generate an accurate picture following discussions with the local (ethnic minority) community and also on the basis of information from, for example, the police, social services, schools, community centres and clubs. This gives rise to the facility of being able to make a timely analysis of the underlying causes of any concrete incident, and take appropriate measures.

A significant number of municipal authorities are actively involved in this initiative.

The administrative approach to radicalisation need not, in fact, be confined to preventive measures but may also include repressive measures, including those set out in the letter to your House dated 24 January last (House of Representatives Papers 2004-2005, 29 754, no. 5). Local government is in a position to ensure that this policy coincides properly with municipal duties relating to countering terrorism, arising from its responsibility for public order and safety.

There is no standard formula that can be set out for the policy against radicalism. Ostensibly well-integrated youngsters appear to be just as susceptible to radicalism as disadvantaged youngsters. In addition to young men, there also seems recently to have been a greater incidence of young girls and women becoming involved in radicalism. The most important challenge from Dutch cities is formed by the improvement in relationships with communities of Muslims and non-Muslims, allowing them jointly to identify any obvious or more subtle changes. What we are talking about here are changes in relation to the norm in a particular city, neighbourhood or mosque. In other words, particular types of conduct within one municipal area might justify taking action, whereas it might not be necessary in a different municipal area.

Fortunately, not all municipalities have shown evidence of the need to adopt an active policy against radicalism. This report marks the start of an approach under which those municipalities where there is a demonstrable need will receive support in preparing and implementing their policies.

2.3. The role of police forces and regional information structures

Police activities aimed at countering radicalisation have intensified since the murder of Theo van Gogh. The process of National Information Coordination (*Landelijke Informatie Coördinatie*) has been started and the collection and processing of information by the (regional and national) information centres has since increased substantially. To gain access to the "grass roots" of society, the police have been building up contacts with residents, school employees, mosques and youth workers in neighbourhoods. This allows the earliest possible recognition, at a local level, of tendencies towards radicalisation, radical cells and possible terrorist activities (including support network activities), deploying the "eyes and ears" function of the police.

The increased terrorist threat demands extra efforts on the part of the police. The focus on gathering information by means of briefing and debriefing (Information-directed Policing) as well as maintaining contacts with, for example, the Muslim communities and right-wing youths, have resulted in a reinforcement of the effort towards identifying and investigating signs of terrorism and radicalisation. With this in mind, the regional intelligence services and information centres have also been recently expanded, as was announced in the letter to your House dated 24 January last (HR Papers 2004-2005, 29 754, no. 5).

The aim behind the structure of the *Landelijke Informatie Coördinatie* (LIC) [National Information Coordination], with a single National Information Centre (NIK) at the *dienst Nationale Recherche Informatie* (dNRI) [National Criminal Intelligence Service] of the KLPD and 25 regional information centres (RIKs) at the regional police forces, is to ensure the permanent coordination of information within the

police force at national and regional levels. For this purpose, the dNRI has prepared an information strategy and a collection/gathering plan. After being analysed by the NIK (where possible), information is stored in registers and/or passed on to detection services and agencies who can then take administrative measures (such as the NCC and NCTb). The arrangements for readiness guarantee that the structure of coordination of information can be active throughout the whole country within one hour if necessary, irrespective of the nature of the subject. This allows for a speedy and flexible approach to all sorts of developments. One of the underlying principles of the coordination effort is the use of homogenous processes and uniform products. The coordination of information is positioned at the cutting edge of the detection process, basic police duties, conflict and crisis management and surveillance and security. This allows for integrated agreement on the information across the sectors.

Regional intelligence services are also being reinforced (HR Papers 2004-2005, 29 754, no. 5). The regional intelligence services (in their role as outposts of the AIVD) are charged with the targeted hunt for information and trends from the "grass roots" of society that might indicate any potential disruption of the democratic system. The special collaborative ventures between the AIVD and the police force include the AIVD "counterterrorism" lectures for police forces in the Netherlands. These lectures are primarily intended to improve understanding among neighbourhood police officers, neighbourhood police teams and also the immigration police, so as to allow them to improve the part they play in collecting information. More than 2000 police officers have attended these lectures, which have now been concluded.

2.4. The role and effort on the part of municipal authorities

As previously stated, local government has an important part to play as regards policy in relation to radicalisation, precisely because local authorities possess the networks required to coordinate this policy. The memorandum "*Weerbaarheid en integratiebeleid*" [Resistance and integration policy] stated, in relation to the local approach to radicalisation, that caution should be exercised against too hasty a categorisation of incidents as "ethnic" or "radical". It is always important to interpret the situation carefully, in order to allow for development of a considered and broad approach to the underlying causes of the conflicts. Incidents must be looked at within a wide context. An unbalanced focus of the approach to a single incident or specific group arouses resistance and may even aggravate tensions.

What is required is a subtle but wide-ranging approach, combining measures adopted by the police and the judicial system with an integral sociological approach. This underscores the role of local government, which is ideally placed to forge these links. What this requires from local authority leaders is a form of "cohesive leadership", in order to be able to take preventive measures in the event of conflicts, to deal properly with any alerts, to act tactfully, to communicate simply, to take the time for a thorough analysis of the situation and to provide the requisite aftercare in the event of any serious incidents.

In dealing with radicalisation, structural contacts and good relationships between local authority leaders and social institutions on the one hand, and ethnic and religious organisations on the other hand, are indispensable. The latter can provide

information on positive and negative developments within the communities and can make a valuable contribution to the solutions. Continuous dialogue, which must be open, honest and direct, will result in the local communities having a basis for confidence. This in turn will result in a scenario where joint action towards countering radicalism becomes possible.

It is also of vital importance here to bear in mind who the discussion partners actually are. The AIVD indicates, in "Van dawa tot jihad" (see above), that attention needs to be paid to the representativeness, loyalty and integrity of the discussion partners. In conjunction with the dialogue and the sociological integration policy, it is also extremely important to address racism and interethnic incidents decisively.

2.4.1. Countering radicalisation by means of an exchange of information at the local level

One of the crucial elements of the local approach is ensuring an improvement of information exchange. Relevant information can be collected both within the municipal authority and also in conjunction with its local partners, so that an up-to-date picture is available within the municipal authority of the situation as regards integration and radicalisation. Indications of any threat that young men or others (girls or women) might be likely to turn against society or towards radicalism might first be noted by employees of the local authority, or by Muslim communities, the police, schools, social services/CWI, housing corporations or community centres and clubs. Indications of this kind can be used to depict the dynamics within a community. As previously indicated, there is no "formula" that we can prescribe for combating radicalism. Setting up a central "alert list" has certain limitations: reality is more complex. Information exchange is a process that gradually, from the bottom up, takes form through joint consultation, based on impressions gathered from a neighbourhood or community. This is precisely why it is important not to draw a discreet veil over any potential indications, nor to fail to report them out of fear. In some sectors, this will require a reappraisal of ways of thinking.

It would also be advisable, in this context, to devote specific attention to the parents of youngsters who might potentially be subject to radicalisation, via the schools, neighbourhood centres and local communities. How can parents keep an eye open for warning signs from their children, and at what point are they expected to report a course of conduct to the headteachers or imams? There is an impression that parents are sometimes uncertain and prefer to leave their children "well alone". Examples of this include what the children are doing on the Internet and provocative behaviour. These parents need to be offered backing as to how they should deal with their children. This might take the form, at a local level, of organising evening information sessions via the schools.

2.4.2. Measures in response to identification

It is important to take a good look at the types of actions or measures that can be taken in reaction to reports of possible questionable activities. The lines of action are clear if criminal activities are suspected. They are less clear, however, for the phases preceding criminal activity, or for forms of radicalisation that are not actually criminal but that still have a negative impact (in the sense of polarisation, inter-ethnic tensions

and so forth). But it is precisely in the interest of preventing criminal activities that it is important for the government to use all available means to defend itself against radicalism. The primary channel for this is collaboration with the relevant (Muslim) communities. Members of the community must try, by means of persuasion, to convince potential radicals of the fact that they are on the wrong track. This will involve a debate with radical persons, with a view to making them appreciate the undesirability or unacceptability of their activities. This in itself can have an adequate deterrent effect by putting a stop to further radicalisation. Other mechanisms are also available, including measures in the area of subsidies (awards or refusals) and other "obstructive" powers available to the government. Deploying these types of measures requires careful but vigorous action.

2.5. *Stimulating and supporting local authorities in these (new) tasks*

The State is keen to support local authorities in these tasks of addressing radicalism and radicalisation. The *Centrum voor Criminaliteitspreventie en Veiligheid* (CCV) [Centre for Crime Prevention and Security] will be accepting responsibility for a number of campaigns to this end. A number of campaigns aimed at local authorities and announced in the memorandum "Resistance and Integration Policy" will also be undertaken.

The following support campaigns will be undertaken:

1. Regional information meetings will be organised, where the Minister of Internal Affairs and Kingdom Relations will offer the local authorities information on terrorism and the battle against it, in conjunction with the AIVD and NCTb. At these information meetings, there will also be an emphasis on the fact that collaboration between the State and local government and among the local government agencies themselves is of crucial importance in the area of counterterrorism. The first of these meetings took place on 30 May last in Maastricht. There will be four further meetings in the period between September and November 2005.
2. A network will be set up for municipal authority staff involved in countering radicalism, which could provide for periodic meetings and a supportive website. For this network, the primary focus of attention will be on how the various local authorities are working, in concrete terms, on exchanging information.
3. A number of those involved will be working on the preparation of a radicalisation reference point/helpdesk for local authorities and other local organisations.
4. The NCTb is developing a guide for local authorities covering the role of local government in relation to counterterrorism and radicalisation. This will be produced towards the end of 2005.
5. If asked to do so, the AIVD and NCTb can contribute towards the development of the local approach to radicalisation to be implemented by local government, by providing them with focused information and knowledge regarding the phenomenon of radicalisation at a national level.
6. The NCTb also categorises international case studies in relation to counterterrorism; the best practices developed from these will be shared with local government.
7. As an extension to these activities, there is also a need to address pronouncements made by right-wing radicals. Your House already been provided with separate information on this in the said letter of 5 July last (HR

Papers 2004-2005, 29 284, no. 12).

3 The application of judicial measures as support and as final measure

3.1. Introduction

Society's concerns about radicalisation processes and recruitment for the violent jihad was apparent from the public debate, and has also been discussed several times with your House. One recurring point was the question as to whether there were adequate judicial mechanisms in place to counter radicalism and radicalisation and, if so, whether they were being applied effectively.

The memorandum "*Radicalisme en Radicalisering*" [Radicalism and Radicalisation] indicated that a number of areas required active intervention on the part of the government with both of these phenomena. From the judicial perspective, therefore, this particularly involves deterrence of radicals and those who knowingly and willingly support them, as well as the disruption, obstruction or frustration of their activities and the safeguarding and protection of their targets.

3.2. Comments on judicial intervention

The democratic system provides those who are part of this system with the freedom, in principle, to express their ideas and to act in accordance with them. This freedom also implies that the government may only act to hinder citizens - or call them to account - in specifically described circumstances, but also that citizens must feel protected against those who attack the democratic legal system, or realistically threaten to do so. Radicalism accordingly involves a clear balancing of standards as far as society is concerned: if it actually puts the democratic legal system, and consequently the freedom of others, under threat, then it must be countered and if necessary, combated with the full force of the law. If - or for as long as - there is no such actual threat, then the expression of these types of personal ideas and notions must in principle be permitted and even protected. The essential issue here is: at what point is there such a level of threat that judicial intervention is required? The memorandum "*Grondrechten in een pluriforme samenleving*" [Basic civil rights in a pluralist society] (HR Papers 2003-2004, 29 614, no. 1) offers some points of departure for answering this question, which we will now refine further in relation to the problems being dealt with in this paper.

3.2.1. To intervene or not?

The framework for measures that can be taken by the government against radicalism and radicalisation threatening the democratic constitutional state is formed by that democratic constitutional state itself, and particularly by basic rights such as those established in the Constitution and treaties. These are the minimum requirements for the constitutional state. Any self-respecting constitutional state will generally offer its citizens greater protection than that which is specified in the Constitution and treaties; these are only the extreme limits for government action. The contrary applies in relation to dealing with forces threatening the democratic constitutional

state. In these circumstances, the need to protect the rights and lives of its citizens and democracy itself means that such scope as is available will be used to the maximum.

The question of whether any restrictions are acceptable, and if so which ones, must be answered in the light of the appropriate requirements under the Constitution and international treaties, such as the European Convention on Human Rights (ECHR). Restrictions must be set out by law, and must also be necessary to a democratic society.

Proportionality and subsidiarity are important factors in assessing these restrictions. Restrictive measures must also serve a legitimate purpose. States have a certain amount of scope available to them for addressing these issues when adopting restrictive measures. The European Court of Human Rights speaks in this context of a "margin of appreciation" and of the Convention as a "living instrument". This may result in judgments such as that in relation to the prohibition against the Turkish (Islamic) Reformation Party. It is also implicit in such decisions, however, that a similar prohibition might well be regarded as being in conflict with fundamental rights elsewhere and in different circumstances. Whether action can and must be taken against alarming phenomena will then primarily depend on the objective criterion of whether the democratic constitutional system might be under an actual threat, as well as the relative criterion of whether the circumstances in which those phenomena manifest themselves incorporate a clear and current threat.

When radicalism actually expresses itself in violence or other criminal conduct, there is no doubt about the option to intervene. The same applies to any associated immediate threat. The social impact of radical violence (or the threat of such violence) is of such dimension as to justify a tough and potentially special response under the criminal law.

The indirect threat emanating from the presence of radical factions in society is, however, more difficult to deal with, even though its social impact is significant. The anticipation that these factions might resort to violence can influence the public conduct of individuals and thus limit freedom of opinion. This in turn can result in disruptions to political decision-making and consequently to the development of society. The systematic threat of radical violence also undermines mutual confidence among citizens and between population groups, thus impacting on the basic principles of the social order.

What is even more difficult is combating ideas and notions which, if put into practice, would hamper the freedom of others - particularly in the Dutch context if this occurs "within the private circle of influence" - or which might signify the end of the democratic constitutional state if such ideas were to attain a democratic (political) majority. Radicalism as such is not in conflict with the democratic constitutional system and, as long as it is expressed in a manner that is not intrinsically punishable, battling against it could come very close to interfering with democracy and perhaps even the constitutional state itself, depending on the circumstances. The purpose of the democratic constitutional state is precisely to offer people the scope to be able to think and act according to their own convictions. It is even part of the definition of democracy to provide scope for expression of radical ideologies, so as to prevent

supporters of these ideologies from finding any justification for resorting to violence. This is partly the background for the protection, found in the Constitution and in international treaties, of the freedom to express ideas by word and letter and to be able to live according to one's own beliefs.

We should also bear in mind that viewing something as a potential interference with the democratic constitutional system is a relative assessment. Every faction focusing on social change can easily be viewed as radical by the established powers, or viewed as being focused on radical reformation, whether the ideology is focused on a single policy aim or on broader political changes.

3.2.2. The limits of intervention

Generally speaking, there are two paths available to a government if it wishes to counteract certain types of conduct: the limitation of opportunities for displaying that conduct, and the encouragement of voluntary restraint. The first involves a limitation of personal freedom and is accordingly always subject to strict conditions and procedures. The main way of achieving the second method is by offering alternatives. This option offers greater scope and is to be preferred for that reason. Or, to put it another way, limiting freedom almost always requires a judicial test; increasing freedom requires a political test.

In the Dutch context, what this means is that, even when protecting the democratic constitutional system, the government is more likely to encounter limits under criminal, civil or administrative law if it wishes to issue prohibitions, punishments or bans than it will if it chooses to promote alternatives or counter-strategies. As long as ideologies remain personal, not matter how reprehensible they may be, it is impossible to take legal action against them, leaving aside the issue of whether this would be effective or not. Even when ideologies are expressed in behaviour, the response will have to vary according to the nature, the situation and the more or less public character of the conduct. Thus it is possible for people to express more personal prejudices in private than could be uttered or acted out in public life. The reverse is also true: ideas and political aims implying fundamental changes to the constitutional system can be argued in the democratic context, provided they are not put into practice before the constitutional system is adapted to them by legal means. The government can, however, counter or curb the development of ideologies that are in conflict with the democratic constitutional system by means of the educational system, offering socio-cultural facilities or encouraging the expression of opposing ideologies.

The essence of the constitutional system is not that rights, powers and rules should be immutable and unchanging, but that the rules should be the same for everyone and should offer everyone equal protection against unfairness. Fear of an indefinable threat and an insatiable need for protection will, on the other hand, quickly start to dominate policy, alienate people from society and merely fortify radicalism.

3.3. Criminal law powers and facilities for intervention

The most pernicious expressions of radicalism are already covered by the criminal

law. The criminal conduct of relevance in this context, against which action can be taken, whether perpetrated by individuals or organisations, includes the commission of violence, threatening with violence, incitement to violence, dissemination of hatred, and a number of other activities designed to foster unrest.

In certain circumstances, the government can also act under the criminal law even before an offence has been committed. The criminal law can also be used to protect individuals who are under the threat of becoming targets of radical activity, perhaps because they have stood up against radicalisation or have fought against radical ideology in some legitimate manner. Finally, the criminal law can be used to protect individuals in specific groups or with specific characteristics against any disadvantage to their interests (for example discrimination) or personal integrity (for example insulting behaviour). This can make them less susceptible to radicalisation, because it wipes out the arguments of those encouraging them into radicalisation.

The criminal law not only regulates the offences that can be prosecuted but also the manner in which they can be investigated and prosecuted. As regards the mandated powers for carrying out investigations, at the present time certain extensions of scope are, in the context of the terrorism legislation, now being prepared, which will allow for intervention at an earlier stage. Given the inter-relationship with terrorism, these measures may, in certain situations, also help in combating violent radicalism.

Taking action under the criminal law is primarily aimed at achieving a legal result: establishing the truth and, if appropriate, proceeding to conviction and punishment on the basis thereof. But it is also possible for the contemplated effect to be wider and to include the obstruction of a contemplated offence.

When an individual is convicted, he may be subjected to ancillary punishments that will restrict his ability to undertake new radicalist activities even after he has served out his punishment. We already have the facility to impose a range of restrictions along with a criminal conviction, including the denial of active and passive voting rights. A legislative proposal is also being prepared to allow for the removal of convicted persons from their positions or functions in certain professions, under a broader scope, if the profession is being exercised for the purpose of steering youngsters towards radicalisation.

The existence of a grey area between what amounts to a criminal offence according to current case law and what is regarded as acceptable or unacceptable conduct in society is of significance to the efficacy of applying the criminal law against radicalism. In its report entitled "*Waarden, normen en de last van het gedrag*" [Values, standards and the burden of conduct], the *Wetenschappelijke Raad voor het Regeringsbeleid* [Scientific Council for Government Policy] had some thought-provoking words to say on this issue. It is of primary importance that this grey area should not be 'set in stone' forever. Both of the boundaries - those of social acceptance and of the interpretation of criminal law - can move, and this is also happening constantly. Sometimes it requires an adjustment to the law and sometimes it occurs as a result of the process of formation of the law through judicial pronouncements.

There appear to be prospects for further action to counter radicalism in the formulation of new case law. A number of the provisions from the Dutch Penal Code - including articles that have been there for many years - have never been used as a basis for charges, at least so far as we are aware, while others have not been used for a long time. It is therefore possible that the descriptions of the offences might be (re-)interpreted. But the formulation of more detailed case law is also possible in relation to provisions that have been applied in recent times. This happens in any event when the Court - on the basis of arguments proposed by the Public Prosecution Service (OM) or otherwise - reaches the conclusion that an earlier interpretation of the penal legislation is no longer correct in present circumstances, or is not the only possible interpretation. The Cabinet's view is that there is adequate scope in relation to radicalism at this stage. Articles 137c et seq of the Dutch Penal Code, which classify certain inflammatory statements as criminal offenses, have until now been interpreted very strictly, giving rise to very few prosecutions. The reason for this is partly to do with freedom of expression, but also in view of an era in which few people took notice of the subversive use of language. There was no actual threat involved at the time. The position is somewhat different nowadays. However, it appears that nowadays too many people draw inspiration from what others say, or are provoked into the use of violence that has an impact on the constitutional system.

It is important - partly because of the risk we have already mentioned of the counterproductive operation of any refinement of criminal law prohibitions, without a clear distinction being drawn between pernicious expressions of radicalism and ideas that ought to be protected by the fundamental freedoms - that, where there appears to be any such scope, the primary effort of an active prosecution policy on the part of the Public Prosecution Service should be concentrated on stretching the limits through a more detailed formulation of the case law. This does, however, involve exploring the limits of the existing law, involving a risk that the Courts might not agree with the Public Prosecution Service.

If we want to realise a more detailed formulation of case law in a responsible manner, then we have to be on guard, when dealing with incidents which are widely regarded as undesirable or unacceptable, against the reflex of taking action under the criminal law, or looking for a refinement of the criminal law or criminal procedures, only because of that reason. The decision of whether or not to prosecute incidents should also rest on the prospects these prosecutions would offer in relation to the formulation of case law.

The process of formulating new case law takes time. A number of individual cases will involve travelling the whole road, at least to the stage of a pronouncement by the Dutch Supreme Court but preferably also including a pronouncement by the European Court of Human Rights. The legislative process, which involves subsequently travelling down the same road in order to check whether the legislation is compatible with the fundamental requirements it must meet, takes at least as much time.

3.4. *Other mechanisms*

Combating (the threat of) radicalism and radicalisation is not the exclusive domain of the criminal law. There are also facilities available under civil law and administrative

law. This is the case, for example, if legal entities, institutions or other facilities of the social infrastructure are used to assist in the activities or the disseminating of ideas from radical groups. It is particularly the case if parties or groups happen to become openly involved in the public debate or the democratic process on the basis of programmes containing an intrinsic threat for individuals or groups.

The primary area of significance under the civil law is article 2:20 of the Dutch Civil Code, which affords the Public Prosecution Service the opportunity of applying to the Courts for dissolution of legal entities (associations, institutions) on the basis of a breach of public order. This mechanism can be deployed against organisations promulgating radicalism unlawfully, or trying to prompt others in the direction of radicalisation. When using the facilities under article 2:20, Dutch Civil Code, the following question needs to be answered: how far can and should the basic principles of freedom of association and congregation and freedom to express ideas be limited in the interests of the preservation of a democratic society? Against the background of the general considerations at play here - and those just mentioned - we have to investigate whether the infringement of those freedoms is proportionate and also whether it is effective. The larger and more concrete the radical threat, the sooner will there be a justification for an infringement of the freedom to express ideas and the freedom of association and congregation. Experience tells us that the Courts set high demands on the use of article 2:20 of the Dutch Civil Code, precisely for that reason.

Any prohibitory declaration must always be checked to see whether it is effective. If, for example, it involves a legal entity, then it has to be borne in mind that a prohibitory declaration combined with dissolution of that legal entity will easily be circumvented by establishing a second legal entity to continue the work. Puppet figureheads and stooges can also be used in these cases to carry out the legal transactions.

Administrative law is of primary importance from the perspective of enforcement. Valuable experience has been gained through collaboration between different services with diverse powers in connection with combating illegal employment, drug smuggling and trading and environmental offences. This appears to be effective not only in foiling undesirable transactions but also in keeping an eye on the comings and goings of those involved (through obligatory reporting). Combined campaigns by services and the targeted application of resources require coordination and clear direction. The Public Prosecution Office and the NCTb deal with this under their respective responsibilities.

3.5. Focusing the available mechanisms

During the debate which took place in November 2004 in relation to the murder of Mr Van Gogh, the Cabinet was asked to look into whether the existing prohibitions and powers were sufficient to allow society to protect the principles of the social system against attack - in word or deed - by radical or extremist groups within our society. In this context, we now explore in particular the currently ongoing projects designed to refine or extend the criminal law.

According to current views on these matters, the physical threat and impact on the

democratic legal order is adequately covered by existing provisions, albeit that, for a number of them, the above-mentioned facility of development of new case law might be appropriate at this juncture in time.

A different aspect relates to the possibility of imposing specific obligations or prohibitions against individuals who are known to be involved in radical factions but against whom there is insufficient manifest evidence that they are committing or planning a criminal offence. The responses to the proposals along these lines for counterterrorism have indicated that these would have no deterrent or restrictive effect. We should bear in mind, however, that they would at least be disruptive and would also offer a point of departure for proceeding with harsher measures in the event of failure to comply or further infringement.

As regards verbal or symbolic threats, we can at this stage indicate one point where the criminal law does require refinement, namely the facility for acting in response to pronouncements made in the public debate. A legislative Bill has already been announced in this context to the effect that apologia, the defence or glorification of serious offences, will be rendered a criminal offence. This Bill also proposes to extend the facilities to professional dismissal for offences involving incitement to hatred or violence against individuals. This ancillary penalty can be imposed for some offences against public order, but only in the case of repeat offenders. The Cabinet considers that there are reasons for allowing the Courts to impose such a penalty on a first offence in cases where a profession is used for subversive activities, perhaps including professions within the education system and also, for example, spiritual leaders. There is also some reason for including in the facility a provision for dismissal from the profession or a prohibition against carrying out professional activities for similar punishable offences - these might include articles 131, 133, 137c and 137d of the Dutch Penal Code, but also recruitment for the jihad, which is criminalised in article 205 of the DPC.

We might also point out in this context that the Public Prosecution Office has structurally expanded the formation of the *Landelijk Expertise Centrum Discriminatie* [National Discrimination Expertise Centre] in connection with an improvement of criminal enforcement and an active prosecution policy in relation to discrimination and racism. The police function of the *Landelijk Bureau Discriminatiezaken* [National Discrimination Cases Bureau] has been subsumed for two years (2005-2006) within the *Landelijk Expertise Centrum Diversiteit* [National Diversity Expertise Centre].

The Ministry of Justice is subsidising the Internet Discrimination Reporting Centre in order to prevent, counter and combat discrimination as expressed on the Internet. A start has been made on an improved alignment and information exchange between the Public Prosecution Office, the police and the Internet Discrimination Reporting Centre. The Minister of Justice is also subsidising the *Landelijk Bureau ter Bestrijding van Rassendiscriminatie* (LBR) [National Racial Discrimination Bureau]. The activities of the LBR include those designed to strengthen the link between vulnerable foreign heritage groups and Dutch society.

In order to support the important responsibility of decentralised government to maintain an overview of the local situation, a nationally operating network of

professional anti-discrimination bureaus is indispensable. These anti-discrimination bureaus will operate as an easily accessible facility where citizens can go with any complaints they have about pronouncements made in public. You will shortly receive from the Minister of Justice the policy note entitled "*Discriminatiebestrijding en rechtshandhaving*" [Countering discrimination and enforcing the law], which will elaborate on the measures mentioned above. The Memorandum entitled "*Roze in alle kleuren, homo-emancipatiebeleid 2005-2007*" [All shades of pink, homo-emancipation policy 2005-2007] describes the activities throughout the Cabinet for improving the relationship between ethnic minorities and homosexuals of native Dutch origin and foreign heritage origins.

4 Conclusions

The concrete application of judicial mechanisms will always be a matter for discussion. Some people will no doubt consider that this application is too conservative - certainly in relation to concrete cases. Others will warn against expansion of powers and the impact on fundamental rights. It is of the utmost importance to hold this discussion, and it is a duty of the judicial system to ensure that this discussion can be undertaken freely. At the same time, the government can also be expected to use adequate resources to act unrelentingly against those forms of radicalism and radicalisation that pose a threat.

We can confirm that the judicial mechanisms for combating radicalism and recruitment are largely in good shape - certainly following those measures that have been recently introduced - and that in any event we should not be too hasty in deciding to expand these mechanisms either in terms of quantity or quality. The decisiveness and effectiveness of judicial intervention might rather be expanded by a creative and targeted use of existing mechanisms, including the current legislative proposals for further measures.

Extension of the existing measures is, however, being considered in a range of areas. A number of amendments to the Dutch Penal Code are designed to provide improved options for acting against incitement to hatred or violence, as well as against recruitment by radical groups. There are also plans to extend capacity in relation to the system of investigation and identification.

It should be clear that dealing with radicalism requires the involvement of many partners. At a local level, in particular, the range of efforts made by local authorities, the police, local communities, the education and health sectors and others need to be drawn together. From the State's perspective, this presumes that sufficient opportunities will have to be created to facilitate the collaboration and the exchange of information. As we are aware, various Ministries are involved in addressing radicalism. In consultation with the stakeholders, the aim is to achieve an adequate and speedy resolution of any bottlenecks occurring in the area of local collaboration and exchange of information.

