



The Prosecutor General of the Netherlands



A warm welcome to the Philippine delegation,

- Mr. Adolfo Azcuna, Supreme Court
- Mr. Ruben Reyes, presiding justice of the Court of Appeals.
- Mr. Mariano Del Castillo, Court of Appeals
- Mr. Godofredo Legaspi, Chairperson Third Division
- Mr. Alejandro Bijasa, Judge special Drugs Court
- Mr. Edilberto Sandoval, Associate Justice Sandiganbayan
- Mrs. Mercedes Lacap, Judge regional Trial Court
- Mr. Edwin Sorongon,, Regional Trial Court
- Mr. Joselito Vibandor,, Regional Trial Court
- Mr. Oscar Herrera, Supreme Court of the Philippines
- Mr. Oscar Barrientos, Regional Trial Court
- Mr. Fortunato, De Gracia, Regional Trial Court
- Mr. Peter Eisma, Regional Trial Court
- Mrs. Carmelita Davin, Regional Trial Court
- Mr. Reynaldo Ros, Regional Trial Court
- Mr. Carlos Medina Jr. Executive Director Law School
- Mr. Rodolfo Palattao, Vice Chair PHILJA
- Mr. J. Eduardo Malaya, Foreign Affairs

You are hosted by

Prof. Dr. Gerard Strijards LL.M.
Senior legal advisor International Affairs

Mr. Floris Bouma
Retired Chief of Police

MINISTERIE

- Applying extra-territorial legislation for the prosecution of a Dutch sex tourist
- who committed sexual crimes in the Philippines.

Rosario Case (facts)

- Rosario was a Philippine girl of twelve years.
- She was a prostitute in a brothel in Manila.
- An Austrian pedophile, a physician of forty, paid a visit to her;
- During the sexual intercourse he brought into her vagina a big vibrator. The instrument broke into two parts. A part stuck into the vagina.
- The Austrian left her as she was.
- During five months Rosario suffered from heavy pain, due to several inflammations in utero.
- At last, she was brought to the hospital, where she died.
- The Austrian could be tracked by the national authorities.
- He was brought to trial.
- But he got an overall acquittal due to probative deficiencies.
- The case was the main theme of the World Congress against commercial sexual exploitation in Stockholm of 1987.
- Rosario's name will live forever, but for what a cause!

Rosario Case (technicalities)

Technically: the problems in such a case

- Does Austria have jurisdiction over such a crime abroad?
- Does the Philippines have jurisdiction?
- If the latter has the prevailance, is Austria under the obligation to cooperatie, f.e. by extraditing own nationals?
- If Austria as custodial state has the priority (given the principle of non extradition of own nationals), how to overcome probative hurdels especially with a view to the mens rea-principle?
- Does the victim or its next of kin have any ius standi in iudicio?
- Does international law provide for uniform answers in this respect?
- Is the treaty-position of Austria in the bilateral relation to the territorial state relevant of is “ius cogens” decisive?



Article 2

- *The criminal law of the Netherlands is applicable to any person who commits a criminal offense within the Netherlands.*

Extraterritorial jurisdiction

has to be considered as an intrusion on this principle



- The Netherlands seldom claims extraterritorial jurisdiction.
- The same jurisdictional system goes for almost all the Member States of the European Union.
- Of course, there are some dissimilarities: countries like
 - Germany,
 - Italy and
 - Franceare far less reluctant to claim criminal jurisdiction outside of their geographical boundaries



Cases of misuse of minors

Country	Victims	2000-2007	Outcome
Domenican Republic	1		Overall acquittal
Egypt	?	Lack of evidence	Inadmissible
Gambia	1		imprisonment
India	?	Lack of evidence	inadmissible
Cabo Verde	1		Overall acquittal
Malaysia	?		imprisonment
Romania	?	Indictment	pending
Tunesia	1		Overall acquittal

Conclusion:

The Netherlands claims extraterritorial jurisdiction over this kind of sexual crimes.
For the majority of cases the prosecution was ineffective, due to 'technicalities'

Technicalities 1

- “Sex tourism” organised by “touroperators” having a seat in the Netherlands.
- If the Dutch prosecutorial acts are directed against those operators, mostly they will be successful.
- In the Netherlands *legal persons* are held criminally responsible.

Technicalities 2

- The physical sexual abuse committed abroad by Dutchmen falls within the jurisdictional scope of the Netherlands;

The pivot article to justify this jurisdictional claim is article 5 of the Dutch Penal Code. It runs as follows:

- *“---1. The criminal law of the Netherlands is applicable to any Netherlands citizen who commits any of the following criminal offenses outside of the Netherlands:*
 - *any of the serious offenses defined in Title I and Title II of Book II (of the Penal Code), and in articles ...(of this code);*
 - *an offense that is considered a serious offense under the criminal law of the Netherlands and is considered a criminal offense under the laws of the country where the crime was committed.*
- *---2. Prosecution may also take place in cases in which the accused only acquires Netherlands nationality subsequent to committing the offense.”*
- If the prosecutorial acts are directed against those persons upon arrival back into the Netherlands they will turn out ineffective due to probative difficulties.

Dutchman successfully prosecuted

- Some tour operators, seating in this country, are suspected organising “sex tours” to the Philippines.
 - Dutchmen do subscribe to tours to abuse the so called “pam pams” and “pom poms” of Manila.
 - It has been reported by the NGO ECPAT (End Child Prostitution in Asian Tourism) in an official report as of May 1996.
 - “Pam pams” are female child prostitutes, “pom poms” are the male version thereof.
- The loci delicti are Metro, Manila, Boracay and Angeles.
- In 1996 a Dutchman has been sentenced by the The Hague District Court to imprisonment for abusing “pam pams”. Yet, this has turned out to be an incident in the criminal records: in a majority of cases in which the suspicion seems to be justified, Dutch judicial authorities seem to be mesmerised to use their penal enforcement power successfully against their own nationals upon their arrival after their sex tour.

EU policy

- The same applies to our EU-partners.
The main organisers of Philippine bound sex tourism according to UNICEF are located in:
 - the United States of North America;
 - Japan;
 - Australia;
 - Germany.
- What is our problem?

What is our problem?

The problem is not a jurisdictional one.

- Of course, sexual abuse of minors is punishable in the Philippines.
- the crime has been recognised by the Netherlands and
- the territorial state more or less on the same footing: the precondition of dual criminality as required by article 5 of the Dutch Penal Code has been fully met.
- There is no hurdle, technically speaking, to use the Dutch extraterritorial jurisdictional claim to the detriment of the Dutch sex tourist.
- In 1996 this claim has been exercised in a case before the The Hague District Court.
- Conviction followed. But this is rather rare.
- The problem is mainly a probative one.

Probative problems.

- Non governmental organisations assert in official United Nations Reports that the Philippine authorities seem to foster a leniency policy with regard to the abuse of pom poms and pam pams.
- A kind of a superficial impression ? in which those NGO's could be erroneous.
- Victims are unwilling to cooperate with the judicial authorities.
- Criminal transbordering organisations are shielding this kind of activities in a very effective way.
- The judicial authorities have no remedies to counter their organisational expertise.

The 1996 case

- The Dutch criminal authorities started their actions with a search of the premises of the tour operator in the Hague.
- Evidence against the operator and his Dutch client, at the moment passing his “holidays” in the Philippines.
- He was arrested upon arrival.
- We sought cooperation from the Philippine authorities.
- The division “Child Abuse, Discrimination and Exploitation” of the Philippine National Bureau of Investigation was not capable of rendering us an helping hand in this case.
- They were willing, but helpless due to circumstances beyond their will, as was stated in their official replies to our requests.

Why unsuccessful?

- The victims themselves will not cooperate with a view to the gathering of evidence.
- Prostituting themselves is a way of living.
- The tourist is a consumer, spending a lot of money to the benefit of minors who are condemned to an existence tottering on the edge of total destitution.
- In the case, four girls were interrogated by the local police.
- They kept on maintaining that they got the age of 21. The contrary could not be ascertained.



To sentence a person for child abuse

The following probative hurdles have to be taken:

- the culprit must have known that the victim was underaged;
- he must have known that the sexual intercourse took place under undue influence at the side of the minor;
- or he must have known that the victim was not really compos mentis.

HOW TO PROVE THIS,

- if the victim is unwilling to cooperate with the local judicial authorities?
- In their view, prostituting your body is acceptable as a way of making a living.

IT IS NOT A QUESTION OF LAW NOR OF TREATIES.

- It has nothing to do with the fact that the crimes as mentioned are not extraditable or no legal ground for cooperation and assistance.
- If the Dutch authorities can manage to overcome those probative hurdles, certainly, they will use their penal enforcement powers against the operators and the tourists.
- **The Dutch principle of expediency will never ever apply in this respect.**
- **We will therefore prosecute if we could present a “Reasonable Case”**

Pursuing the touroperator.

THAT is: ERADICATING THE CRIME AT THE BOTTOM.

- The legal person, the company, can be declared to be “a criminal organisation”.
 - The Prosecutor can dissolve the company and seize its profits.
- Prosecutor has to prove
 - that the companies aim was: the abetting of crimes of Dutchmen abroad.
 - Again, it has to be proven that the organisation knew that its clients were apt to commit sexual abuse to the detriment of minors.
 - And that implies that the client had reasons to believe that the victim was a minor and so on.
- As long as the mens rea-principle keeps to be a precondition for criminal accountability, this probative hurdle keeps on to be unsurmountable for the custodial state.

ICC ?

ICC is only established crimes of concern for the legal community of mankind.

- a widespread pattern
- crossbordering wrongfulness.
- Secondly, ICC jurisdiction only
 - if no national jurisdiction is available,
 - willing or
 - effective.
- The RULE OF COMPLEMENTARITY would certainly be the binding reason to declare such case inadmissible for ICC.





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Thank you for your attention.

- Of course,
now I would like to engage into a
exchange of thoughts.

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Senior legal advisor International Affairs

Mr. Floris Bouma
Retired Chief of Police

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The [crin website](#) contains a huge database on child rights documents

Non-governmental Organisations and Networks

[BICE](#)

[Child Abuse and Neglect in Eastern Europe](#)

[Child Center for Children at Risk in the Baltic Sea Region](#)

[Child Focus](#)

[Childtrafficking.com](#) – Digital Library

[Christian Childrens Fund](#)

[CRIPCAS](#) – Centre de recherche interdisciplinaire sur les problèmes conjugaux et les agressions sexuelles

[Defence for Children International](#)

[Ecpat International](#)

[European Network of Ombudsmen for Children \(ENOC\)](#)

[Human Rights Internet](#)

[Human Rights Watch](#)

[International Bureau for Childrens Rights](#)

[Innocence en Danger](#)

[International Federation of Social Workers \(IFSW\)](#)

[International Federation terre des hommes](#)

[ISPCAN](#) – International Society for Child Abuse and Neglect

[Juvenile Information Network](#)

[Parole d'Enfants](#)

[Red Barnet](#) – Save the Children Denmark

[Save the Children](#)

[Save the Children Alliance](#) – exploitation and abuse

[SEECRAN](#) – South East European Child Rights Action Network

[South Asia Partnership International](#)

[Swiss Foundation Terre des Hommes](#) – Child Trafficking

[Working Group on the Girl Child](#)

[Women's World Summit Foundation](#) – World Day for Prevention of Child Abuse – 19 November ©

[World Vision](#) – child rights

Regional Intergovernmental Organisations and Bodies

[African charter](#)

[ASEAN](#) (Association of Southeast Asian Nations)– youth

[Council of Europe](#)– protecting children against sexual exploitation

[Council of Europe](#)– fight against the sexual exploitation of children

[ECHO](#) (European Community Humanitarian Office)– youth

[Inter-American Childrens Institute](#)– Organization of American States

[OAS](#) (Organization of American States)– anti-trafficking in persons unit

[OSCE](#) (Organization for Security and Co-operation in Europe)– anti-trafficking

[SAARC](#) (South Asian Association for Regional Cooperation)– children and youth

International Intergovernmental Organisations and Bodies

[ICC International Criminal Court](#)

[ILO/IPEC](#) – Child Labour International Labour Organisation [INTERPOL](#) – child trafficking

[IOM](#) – child trafficking

[UN High Commissioner for Human Rights](#) – General Activities: Human Rights and Children Rights

[UNAIDS](#) – Children and HIV/AIDS

[UNHCR](#) – United Nations High Commissioner for Refugees

[UNICEF](#) – Child Protection

[Voices of Youth](#)

[World Health Organization](#) – sexual violence

[World Tourism Organization](#) – Child Prostitution in Tourism Watch

Others

[King Baudouin Foundation](#)

[OAK foundation](#)

[Sida](#)– Swedish International Development Cooperation Agency

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