National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children

Paying the price

The criminalisation of sex with 16- and 17-year-olds for payment

SUMMARY

Colophon

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1 The context

1.1 Article 248b DCC and the background to the report

Under Dutch law, children reach the age of consent at sixteen. Consequently, sex with children who have reached that age is, in principle, not a criminal offence. One of the first exceptions to that rule came with the insertion of Article 248b in the Dutch Criminal Code (DCC) in 2000, which criminalised payment for sex with a child aged sixteen or seventeen. Article 248b DCC created an offence against public morals, which is intended to protect children of those ages against commercial sex. The article reads:

> Any person who sexually abuses a person who makes himself available for the performance of sexual acts with a third party for remuneration and who has reached the age of 16 but is under the age of 18 years, shall be liable to a term of imprisonment not exceeding four years or a fine of the fourth category.

In the first fourteen years after the offence was created, scarcely any suspects were apprehended and prosecuted for paying for sex with a minor aged sixteen or seventeen. This changed at the end of 2014, when the police discovered a 16-year-old girl and her human trafficker in a hotel in Valkenburg in the province of Limburg. A wastepaper basket containing condoms used by various clients was found in the hotel room, as well as a list of telephone numbers of clients on the human trafficker's telephone. The Public Prosecution Service (PPS) brought charges against these clients and the case was widely reported in the media. In July 2015, the court of first instance convicted 24 clients.[1] The Valkenburg vice case marked a change in the approach to the crime under Article 248b DCC: suddenly the offence was receiving the full attention of the PPS, the courts, the media and the public. This prompted me to investigate how the criminal justice authorities have dealt with the crime since the article was introduced, and whether we are moving in the right direction.

This summary of the original report in Dutch first explains how Article 248b DCC relates to paid sex with minors under the age of sixteen, to prostitution and to human trafficking (§ 1.2-1.3). There is then a brief discussion of the nature of the offences that have come to trial as reflected in the case law. Who are the victims and the suspects, where did the sexual acts take place, and how did the investigations start (§ 2)?

1 Two clients were acquitted and appeals were filed in 25 of the cases. Furthermore, a number of clients still have to appear in court.

In §3, the focus is on the turnaround in the approach to the crime: what is the evidence of this change of approach and where should the PPS concentrate its efforts? Since it is not yet possible to speak of a similar transformation in the case law, §4 contains a review of the wide discrepancies in the types of sentences that are imposed and their severity, as well as a discussion of the importance of endeavouring to create transparency and uniformity in sentencing. Policies designed to combat sex with minors for payment are still evolving and are not yet evident to the same extent everywhere, but it is clear that efforts to tackle the crime have been greatly intensified (§5).

1.2 Criminalisation of clients of younger children

Article 248b DCC relates exclusively to payment for sex with children aged sixteen and seventeen. However, paid sex with minors is not confined to this age group. There are also victims among children below the age of sixteen.

In principle, sex with children younger than sixteen always constitutes sexual abuse and is therefore a criminal offence. In other words, *paid* sex with children in this age group is not a separate offence, since it is already a crime even where no payment is involved. Suspects who pay for sex with children under the age of sixteen are therefore prosecuted for offences against the 'regular' articles concerning offences against public morals. Because payment is not an element of the crime in the case of sexual abuse of children in this age group, it is impossible to ascertain precisely how many perpetrators fall into that category.

However, there have been scores of judgments in recent years in which suspects were convicted of indecent acts with a child under the age of sixteen where payment was involved. In those cases, the remuneration was not solely in the form of cash, but also in goods or in kind. Examples include payment in the form of telephone cards or credit for a telephone card, alcohol, drugs, a tongue piercing, a puppy, accommodation, designer clothing, food, a mobile telephone and cigarettes. The statistics further show in the period 2010-2014, 28% of the minors reported as having been exploited in the sex industry, and who had already worked and had therefore already had one or more clients, were younger than sixteen.[2]

1.3 Illegal prostitution, possible human trafficking

1.3.1 Prostitution?

In discussions of Article 248b DCC, terms such as 'prostitution', 'youth prostitution' and 'clients' are often used, not only in the media, but also in the Public Prosecution Service's guidelines on sentencing[3] and in the case law.[4] These are unfortunate terms to use when talking about minors, since they can divert attention from the true nature of the situation: a sex offence with a perpetrator and a victim who is

2 In the period 2010-2014, a total of 592 minors were reported as possible victims of exploitation in the sex industry, of whom 169 were younger than sixteen. For a breakdown by age, see table 1 in this summary.
3 Guidelines on sentencing under Article 248b DCC (2015R054) 1 June 2015, *Government Gazette*. 2015, 14043.
4 In the Valkenburg vice case, among others.

a minor. Buying sexual services from minors is without exception prohibited and punishable as an offence against public morals. The minor should therefore be referred to as a victim in the criminal proceedings. Buying sex from minors is always illegal and is entirely separate from the policy on legalised and regulated prostitution in the Netherlands, which relates to *voluntary* paid sex between *adults*: persons aged eighteen or older. Incorrectly referring to a minor as a prostitute is to ignore the fact that he or she is a victim and can cause additional suffering for the individual concerned.

Prostitution policy in the Netherlands
Prostitution is referred to in a number of places in Dutch legislation, not only in the context of the article on human trafficking, Article 273f DCC, but also in the Municipalities Act, which lays the basis for the regulation of voluntary prostitution by adults. References to 'the Dutch prostitution policy' generally refer to the policy that gives municipalities a certain level of discretion in terms of whether to regulate voluntary prostitution by *adults* and to formulate additional rules for the profession. *Regulation* means that prostitution in the licensed segment of the sector is legal, or has been legalised. At the moment, prostitution in the Netherlands is partially legal and licensed, partially legal and unlicensed, and partially illegal. The reason for this is that when the legislature abolished the general ban on brothels in 2000, it gave municipalities the power to lay down rules governing prostitution in their General Municipal By-laws, and to the extent that municipalities have done so, the rules have been adopted in different ways.

1.3.2 Relationship to human trafficking

When a person is involved in arranging sex with a minor, his or her actions can quickly constitute human trafficking within the meaning of Article 273f DCC. Coercion is not a requirement of that article. Essentially, human trafficking is ultimately a question of exploitation and – in relation to prostitution – of infringement of physical integrity, in addition to infringement of personal liberty. In contrast to Article 248b DCC, human trafficking is not an offence against public morals.

In the last five years, almost 600 minors who were possible victims of human trafficking have been registered in the Netherlands who, according to the reports, had already worked in prostitution and therefore had also had clients. This number highlights the importance of criminalising clients. The table below shows that most of the reported underage victims were aged fifteen, sixteen and seventeen. The youngest victim reported in the last few years was aged eleven.

Table 1 Figures for minors who were possible victims of human trafficking (m/f) who, according to the reports to CoMensha, had already worked in the sex industry and had therefore had one or more clients.

	Age of possible victim	Year 2010	2011	2012	2013	2014	Total 2010-2014
Overlap with other offences against public morals	**11**	1	0	0	1	0	**2**
	12	2	1	0	0	0	**3**
	13	2	4	0	2	5	**13**
	14	12	7	11	5	10	**45**
	15	22	20	21	12	31	**106**
Overlap with Article 248b DCC	**16**	37	37	37	39	39	**189**
	17	40	56	43	50	45	**234**
Total		**116**	**125**	**112**	**109**	**130**	**592**

Source: CoMensha records.

Prostitution involving minors is always illegal and *can* involve human trafficking. For human trafficking, there has to be a person who has induced a minor to make him- or herself available for prostitution, for example, and that is not always the case. There are also minors who, of their own volition and without the involvement of anyone else, perform sexual acts with a person for payment.[5] For the purposes of the 'client's' criminality, however, it is irrelevant whether the minor is a victim of human trafficking, or whether he or she 'offers' him- or herself entirely independently; in either case the client is committing an offence against public morals as soon as he pays the minor for sex. The criminal law approach to clients should therefore not be confined to clients of victims of human trafficking, but should be targeted at clients of every minor who is paid for sex.

Bill for the criminalisation of clients of victims of human trafficking

In the Ninth Report on Trafficking in Human Beings and during the consultations on the implementation of the EU Human Trafficking Directive (Directive 2011/36/EU), the National Rapporteur recommended the separate criminalisation of clients who use the services of prostitutes who are victims of human trafficking. What the National Rapporteur advocates is the criminalisation of the client when human trafficking is involved, not of a prostitute's client per se – as in the frequently mentioned 'Swedish prostitution model'. The grounds for the recommendation are that it should be an offence to make culpable use of services that another person has not freely chosen to provide. A draft private member's bill was adopted by the Lower House of Parliament and is currently pending in the Senate (EK. 34 091 A). The bill is in line with the National Rapporteur's recommendation and is intended to criminalise the abuse of prostitutes who are victims of human trafficking. It relates to both minors and adults who are victims.

5 In a recent case that was heard by Rotterdam District Court, for example, three clients were convicted for offences under Article 248b DCC. They had sex with a boy who offered himself for paid sex on a chat site. Rotterdam District Court 8 October 2015, 10/750012-15, 10/750072-13 and 10/750073-13.

2 Nature of the cases

Fifteen years after the introduction of Article 248b DCC, what is known about sex with minors for payment? The picture that emerges from the cases that have come before the courts is that the phenomenon is highly diverse. Both girls and boys are victims. All of the suspects who have appeared in court are men, most of them native Dutch. The ages of the 177 suspects registered by the PPS vary greatly, from minors to men in their late 60s. To the extent that it could be ascertained from the judgments, some were men in whom paedophilia, personality disorders, a very low mental capacity or alcohol-related problems were observed. On the other hand, there were men who were not found to have these problems and who were described in the court's judgment as married with children and having no criminal record.

One in ten of the suspects of offences against Article 248b DCC in the last fifteen years was also charged with human trafficking. In the majority of the cases that were studied, a link was found with human trafficking or the case started with an investigation into human trafficking. Nevertheless, suspects have also emerged in other ways, for example because a mother caught a man with her daughter or the police found a man and a victim together in the woods during a patrol. Internet and mobile messaging have played an increasingly important role in the establishment of contact between victim and suspect. The sexual acts took place in a variety of locations, from a hotel to a lock-up, and from a car to a park. Almost all of the cases occurred in the illegal and/or unlicensed prostitution circuit, in other words outside the window prostitution sector and clubs, where there was no regular control. These are locations where clients have the greatest chance of meeting a minor and thus committing a sex offence, and are therefore the sectors that investigative agencies should focus on in their efforts to apprehend the clients of minors. At the same time, several cases in which the paid sex with a minor took place in a licensed sex club illustrate that they must not close their eyes to the licensed prostitution sector. The fact that clients are visiting a licensed club does not discharge them from their duty to ascertain the age of the prostitute.

Approximately a quarter of all cases (N: 43; 24.3%) also involved one or more offences in addition to the offences against Article 248b DCC. They were usually other sex offences (hands-on or hands-off) or, as already mentioned, human trafficking.[6]

Prosecution under Article 248b DCC in combination with other sex offences
Approximately one in six suspects (15.8%) was suspected of other hands-on sex offences in addition to offences under Article 248b DCC. Some of the cases that were studied involved multiple victims. In these cases, charges were brought under Article 248b DCC in relation to victims aged sixteen and older, and under other legal provisions, such as Articles 245 and 247 DCC, with regard to victims below the age of sixteen. The fact is, however, that the charges all related to payment for sex with children.

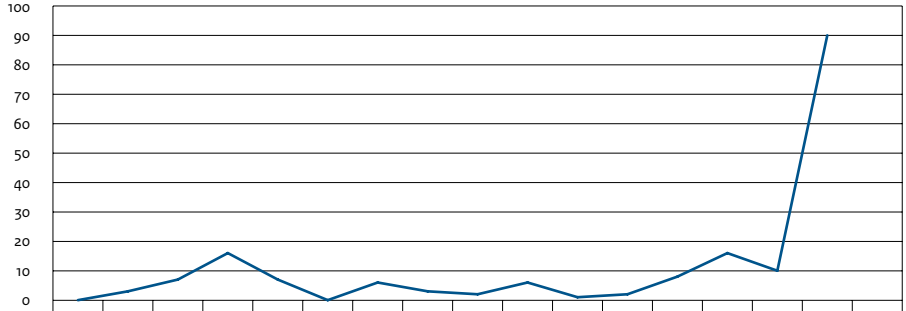
The figures show that 10.2% of the suspects of offences under Article 248b DCC were also suspected of a hands-off offence, such as child pornography (Article 240b DCC). In some of the cases that were studied, there was a connection between the charges for having paid sex with a sixteen- or seventeen-year-old and child pornography. For example, in one case in which the suspect was prosecuted under Article 248b DCC with respect to a victim, the PPS classified the posting of 'racy photos' of the victim on a website as distribution of child pornography.

6 In 28 cases (15.8%) there were one or more hands-on sex offences (Articles 242, 243, 245, 246, 247, 248ter(old), 248a, 249 DCC), in 18 cases (10.2%) hands-off offences (Articles 240b, 248c DCC), in 18 cases (10.2%) human trafficking offences (Articles 250a(old), 273f DCC), in 4 cases (2.3%) violent crimes (Articles 285, 287, 302 DCC) and in 10 cases (5.6%) 'other' offences (Articles 140 (participation in a criminal organisation), 189 (obstructing a police investigation), 197a (people smuggling), 266, 267 (insulting a person), 279 (removing a minor from the protection of the law), 350 (destruction of property), 416 (receipt of stolen property) and violations of the Opium Act, the Weapons and Ammunition Act and the Foreign Nationals Employment Act).

3 A turning point in the approach

Running as a red line through the report is the change in the approach to clients who pay for sex with a sixteen- or seventeen-year-old.

The figures support the impression that investigating and prosecuting clients of victims who were minors was not a priority for the police or the PPS in the first fourteen years after the introduction of Article 248b DCC; during that period, the number of suspects nationally each year could often be counted on the fingers of one hand. The turning point came in 2015: in the first half of that year, the PPS registered as many cases - 90 (50.8%) - as in the more than fourteen preceding years - 87 (49.2%). The PPS is therefore clearly intent on prosecuting men who pay minors for sex.



	2000 (3 mth)	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 (6 mth)	total
number	0	3	7	16	7	0	6	3	2	6	1	2	8	16	10	90	177

Figure 1 Number of cases under Article 248b DCC, by year of registration by the PPS (October 2000 to June 2015, N: 177)
Source: PPS data (reference date: 1 July 2015)

The PPS also charged the suspects who were registered in 2015 *exclusively* with paying for sex with a sixteen- or seventeen-year-old far more often than the suspects that were registered before 2015. Whereas in the first fourteen years almost half of all registered cases relating to Article 248b DCC also involved at least one other offence (possession of child pornography, for example), this figure was only 3.3% in 2015. This also seems to be a consequence of the PPS's new focus on 'the client', as well as a greater emphasis on also prosecuting cases in which no other offences are involved. Furthermore, the sentences demanded by the PPS have been harmonised since the Valkenburg vice case. At the beginning

of 2015, the Board of Procurators General issued new guidelines on the sentences to be demanded for offences under Article 248b DCC, with an unconditional prison sentence as the point of departure.

The transformation has not only been evident at the PPS. Public attitudes also seem to have changed. At the time of the introduction of the article, various political parties still openly questioned the usefulness of criminalising clients – with the argument that children from the age of sixteen should not be constrained too much in their sexual freedom. Today, such arguments are almost unthinkable. This is also reflected in the reactions to the Valkenburg sex case. Whereas there was initially support for the suspects in the case – the poor clients who had only visited a prostitute and were not aware of doing anything wrong – the tone of the public debate in the media steadily changed. The focus gradually shifted from the client to the victim, the sixteen-year-old girl who was repeatedly the victim of a serious sex offence.

But there is still some way to go. The impression created by the PPS's human trafficking figures is that there must still be many more clients of underage victims (see table 1 above). In roughly one in five human trafficking cases since 1995 there was a suspicion of a minor being forced into prostitution. In the Valkenburg and Schiedam vice cases, a single victim, who had been put to work for a few days, had dozens of clients. It is noteworthy that similarly large numbers of suspects of offences under Article 248b DCC are not to be found in other human trafficking cases in which minors were exploited, especially when they involved longer periods of forced prostitution by a minor.

There are also large regional differences in the number of clients who are registered as suspects. The absence of records in The Hague and Amsterdam regions is particularly remarkable, given the large number of human trafficking cases that are registered in those regions. It can be assumed that some of these cases involve minors. It is legitimate to ask why the clients of these minors are not to be found in the statistics. So the turnaround that might have been expected has not been made across the board and is not apparent in every district. *It is therefore recommended that in every investigation of sexual exploitation of minors, the PPS also investigate clients with a view to developing an effective and uniform national approach to dealing with this group of suspects.*

4 Sentences

Of the 93 summonses for offences under Article 248b DCC between October 2000 and July 2015, the courts of first instance have already rendered judgment in 74 cases. Of these, 34 (45.9%) were disposed of in 2015. On average, the courts convicted in 82.4% of all cases brought for sex with a sixteen- or seventeen-year-old for payment, whether or not in combination with other offences. In 14.9% of cases, the suspect was acquitted and in 2.7% the outcome was 'another method of disposition' (in one case the suspect was found guilty but no sanction or measure was imposed, and one case was declared inadmissible). In terms of disposition, the judgments in 2015 do not differ from those rendered before 2015.

It is not yet possible to speak of a turnaround in the case law. However, there are signs of change when one looks at two major cases that came before the courts in 2015: the previously mentioned Valkenburg vice case and the Schiedam vice case, which was heard two months later.[7] The Rotterdam District Court sentenced the suspects in the Schiedam case to significantly heavier sentences than those imposed by the Limburg District Court in the Valkenburg case. Also notable is the contrast between the Limburg District Court's reference to the victim in Valkenburg as 'the underage prostitute' and the terms 'the girl' and 'the complainant' used by the Rotterdam District Court in the Schiedam case.

What stands out from the judgments that were studied is that the types of sentences and the severity of the sentences still vary greatly, from a community service sentence to an unconditional prison sentence of several months. The impression that arises from the grounds of sentencing in the cases that were studied is that the factors considered by the courts are highly diverse and it is often unclear what weight was attached to a particular factor in sentencing. Different judges stress different factors. This would not be a problem in and of itself, were it not for the fact that the sentences and the grounds for them are so diverse that it is impossible to predict which factors the court will emphasise in a specific case and whether the outcome will be community service with a custodial sentence of one or two days or a longer unconditional prison sentence.

For example, a number of factors – which always constitute an element of the behaviour under Article 248b DCC – are applied inconsistently. In one judgment the judge referred in her grounds of sentencing to the penetration or otherwise of the victim's body, the consequences for the victim or the location where the sexual acts took place, while in other judgments those factors were not mentioned at all.

7 The Schiedam vice case concerned a sixteen-year-old victim who had sex for payment on a mattress in a lock-up. Four men were prosecuted for human trafficking and nine clients appeared in court.

Furthermore, when those factors were mentioned in the grounds of sentencing, it was also not always clear whether they had been regarded as aggravating or mitigating circumstances or what weight had been attached to them. Moreover, in some cases, a particular factor, such as whether or not there was penetration, was not mentioned at all in the grounds of sentencing, while it could be concluded from the differences in the sentences imposed in one case with multiple perpetrators that this factor had influenced the sentences that were imposed.

Furthermore, in some cases factors were taken into account in mitigation of the sentence, which the court should not have taken into account at all, such as 'not consciously looking for a minor' and 'the absence of coercion by the human trafficker'. Making the type of sentence and the severity of the sentence in general dependent on these factors undermines the ideal of Article 248b DCC, the key to which is the protection of minors, whether or not they are coerced and whether they appear to be sixteen or eighteen years of age.

Because the sentences vary so much in cases, it is important for the factors on which sentencing is based to be clearly stated, together with an explanation of how they influenced the severity of the sentence.

The differences can be partially explained by the present stage in the development of the approach to offences under Article 248b DCC: it is just started taking off, fifteen years after the introduction of the article, and there is still relatively little case law. Although the personal circumstances of each perpetrator may differ, the conduct that is criminalised by Article 248b DCC is quite strictly defined; it always involves payment for sex with a minor aged sixteen or seventeen. In light of that, it is highly remarkable that the types of sentences imposed, as well as the factors that influence the severity of the sentence, vary from case to case and from one court to another. ***It is therefore recommended that the judiciary endeavour to create more transparency in on the grounds of sentencing and greater uniformity in sentencing.***

5 Conclusion

This report provides a quantitative and qualitative survey of the information about the prosecution and trial of offences under Article 248b DCC over the last fifteen years. The approach is still evolving and is not yet equally apparent everywhere. What is already clear is that the statement by the minister of justice at the time of the introduction of Article 248b DCC in 2000, that the article would not lead to a great many cases, has been overtaken by reality. The public outrage at paid sex with sixteen- and seventeen-year-olds is now being reflected in the prosecution and trial of offenders. The client is increasingly paying the price. The PPS can be expected to continue focusing on clients and to do so uniformly in every district. Whereas the PPS has clearly documented this focus in sentencing guidelines, the judiciary is still feeling its way. This report provides some guidance on how the courts can achieve the desired uniformity.

The National Rapporteur reports on the nature and scale of human trafficking and sexual violence against children in the Netherlands.

What does the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children do?

The National Rapporteur reports on the nature and scale of human trafficking and sexual violence against children in the Netherlands. The Rapporteur monitors the effects of policy conducted in these domains, identifies bottlenecks and makes recommendations to improve the measures taken to address these themes. The National Rapporteur has no investigative authority and is not a complaints agency.

Who is the National Rapporteur?

The National Rapporteur is Corinne Dettmeijer-Vermeulen. She is supported by a team of researchers from various disciplines.

What activities does the National Rapporteur carry out?

The National Rapporteur collects quantitative and qualitative data by means of independent research, through intensive contact with other bodies, by organizing and participating at meetings and conferences and by participating in task forces and groups of experts. The Rapporteur publishes the results of her research and the ensuing recommendations in reports, which also contain descriptions of the phenomena of human trafficking and sexual violence against children, relevant legislation and the measures taken in the areas of prevention, investigation and prosecution of perpetrators and help for victims. The Rapporteur monitors the practical implementation of her recommendations. The Rapporteur is also active at international level.

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