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Ladies and gentlemen, good morning.

Today, I would like to tell you the tale of a thirteen year old girl.

A thirteen year old girl from India who thought of making a new future for herself in the Netherlands.

A thirteen year old girl who dreamed of a new country, new opportunities, with a sound education and perhaps, at some point, a good job. But it was not be. The story I'm going to tell you today is about how she actually lived, here in the Netherlands. A life of years of exploitation and, after that, prison. The story is about S..

I'm not telling you any old story. First of all, I feel very strongly about it. But I've also got a very good reason for telling you the story *right here* during a conference on the interaction between legal systems. Because, entirely unintentional though it may be, the life story of S. illustrates that the interaction between legal systems is a real issue; that its importance cannot just be understood from a theoretical and academic angle because it can have a direct impact on people's lives.

I notice that the interaction between legal systems is often studied from an empirical angle: where can similarities be identified between different legal domains? How do the different areas influence each other, for example through the concepts they use? The story of S. demonstrates that interaction is not just a matter for empirical study but that in itself interaction is a goal worth achieving.
That interaction is sometimes necessary to be able to take just decisions, however high flown that may perhaps sound.

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I will tell the tale chronologically, touching on several legal domains: international and European law, and three national legal jurisdictions to which S. in various capacities was subject.
First, criminal law in which S. featured as witness-informant, victim and suspect.
Then immigration law from the perspective of which, during a period lasting almost a decade, several decisions were taken regarding S. as an alien. And finally, labour law, where S. had the role of plaintiff.

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But let me begin at the beginning. That is 1999, when the father of S. in India reached agreement with a well-to-do Indian family in The Hague that his daughter would come to live with them. The deal was that S. would earn 2000 rupees for regular work in the house of the two expats, preparing meals and taking the children to school.

The two expats also engaged two more housekeepers, also from India, who, together with their five month old baby Mehak, came to live in the house on Copernicusstraat in The Hague.

But her tasks were not confined to regular work. S. was expected to work every day, not during normal hours but often at five in the morning, when breakfast had to be prepared, until ten at night. In the court case brought against the expats the final verdict of the Appeal Court of The Hague was that S. had been forced to work excessively long days during which she was expected to be available at any given moment. Altogether S. was forced to live in these conditions for more than six years. No

wonder that the Appeal Court reached a conviction. Both expats were sentenced to 6 to 8 years in prison, but managed to escape, probably to India, when their pre-trail detention was waived. The Court found that the charges of 'servitude' had been proven, a category of (domestic) bondage that only distinguishes itself from the classic form of slavery through the absence of a formal 'certificate of ownership'.

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But there is yet another component to the story of S.. The component that links this tale to the theme of today's conference. One of the expats happened to think that the baby of the other housekeepers was bewitched because her mother had allegedly killed a snake in India. One of the expats was convinced that drastic measures were required to cast out the baby's evil spirits. She instructed the baby's parents and S. on several occasions to maltreat the baby. In her brief life the baby was repeatedly beaten. Things went badly wrong at a certain point when the expat again forced S. and Mehak's mother to hit Mehak. Mehak died as a result of the ill treatment.

S. was prosecuted for her part in the maltreatment of baby Mehak. In the end she was sentenced by the Appeal Court to five years for manslaughter, the maltreatment prior to the day of death and perjury because initially, under pressure from the expats, she failed to tell the truth.

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We are dealing here with a complex situation, that much is clear. There is S. the victim, who as domestic slave was abused for years, and for which her exploiters were convicted. And there is the conviction of S. herself for maltreating baby Mehak. Two criminal facts which have had an immense impact on the decisions taken about S. at a later stage in different legal domains.

Before I go on to talk about these it is a good idea to look briefly at the international and European legal context within which policy in the Netherlands regarding victims is required to take shape. The positive obligations of the government of the Netherlands with respect to the victims of human trafficking are after all determined to a large extent by this supranational framework.

- The framework stipulates in the first instance that the victims of human trafficking are entitled to legal residence and protection, such as help and shelter if they cooperate with the criminal investigation into their human traffickers. This applies in the Netherlands even if the human trafficking victim has a conviction. The conviction in other words does not detract from the fact that the person in question is a victim.

- What is also relevant here is the principle of non-prosecution and non-punishment as contained in the Council of Europe Convention on Action against Trafficking in Human Beings and in the EU Directive on trafficking in human beings. The principles prescribe that states must have the opportunity to refrain from prosecuting or punishing victims of human trafficking if the victims were forced to commit criminal acts.
  We are talking here of 'causation'. To what extent were the offences related to the exploitation and human trafficking? And if they were, should we then prosecute victims? International and European law tend to say no. The dogma is that the non-punishment principle constitutes the corner stone of the protection of victims.

So it is interesting to see whether S. in the proceedings that followed her conviction was properly and sufficiently protected bearing in mind this framework. The decisions taken about her in various legal domains interacted in different ways. I'll pause to consider how this interaction took place for each decision. What's more, I'll look to see to what extent that interaction made a positive contribution to the protection of S..

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First of all, let's take the notion in international and European law of non-prosecution and non-punishment. As we already established the question is one of causation: were the criminal offences sufficiently related to the human trafficking?

The Appeal Court interpreted the principle in such a way that there had to be a connection between the *work* that S. performed and the maltreatment inflicted upon Mehak. Since that connection proved insufficient resort to the principle of non-punishment was rejected.

The wrong interpretation had a great drawback: by requiring there to be a connection with the work no attention was paid to the context of subjugation or domestic bondage that prevailed in the Copernicusstraat, or to the utterly dependent situation in which S. found herself vis à vis her exploiters. While, in fact, it is precisely this underlying context that can, for the most part, provide an explanation for the crime.

The conviction of S. had major repercussions because, as the first domino to fall, it proved to have an immense impact on the outcome of other proceedings in other legal domains. Thus the conviction was the immediate grounds for S. being declared an undesirable alien. Given the conviction, it was argued that she posed a threat to public order and was therefore summonsed to leave the country immediately after having served her sentence. The conviction served to ensure that S. was not granted the protection due to victims of human trafficking by virtue of immigration legislation which, as we saw, all human trafficking victims are entitled to. She had thus no right to temporary residence and protection.

We see here how much influence a decision taken in one legal domain has on the substance of a decision in another legal domain. Criminal law immediately affected the underlying arguments and the decisions that were taken in immigration law. Strictly speaking, one would say there is interaction here. In terms of the dictionary definition though, which emphasises the reciprocal nature of the process, the mutual influence of the one on the other, interaction was totally lacking in this case. The very fact that there was no reciprocal interaction led to a decision being taken that took no account of the lamentable circumstances that S. found herself in as a victim of human trafficking.

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Something else unusual also occurs in immigration law in the Netherlands which we could perhaps call 'internal interaction', an interaction between proceedings that take place within a single legal domain. In this case though we are talking about a lack of internal interaction.

Even within a *single* legal area, and the modalities which are part of that, it sometimes proves difficult to offer victims the protection they need. The reason for this is that proceedings are based on different objectives and points of departure.

We can see that in the case of S. her being declared an undesirable alien directly affects her request for asylum which is rejected. Moreover the arguments for the rejection also stated that no credence could be given to the danger S. would be in if she returned to India. S. had asserted that she would be at risk because she was afraid that once in India she would again fall into the hands of the escaped expats. Here we now see that something strange happens. Let me explain

We had established that S. was entitled to residence by law during the investigation of her exploiters, but that it was never granted. This special human trafficking procedure has another option which is 'continued residence', that provides for a long-term or permanent legal residence in the Netherlands if the human traffickers have been convicted and the victim has cooperated in their conviction. This was the case with S.. The statements she ultimately made proved crucial to a conviction. The reasoning behind this procedure is that victims should be protected against the risk they run of falling into the hands of the traffickers once they return to their country of origin. This fact has been accepted as given and does not need to be proved by the victim: the law takes the view that the danger unquestionably exists.

However, now that S. was not subject to the regime of human trafficking procedures, the regular immigration rules applied. That entailed that it had to be established separately whether there was a real chance of her being at risk on returning to India. The onus of proof rested with the alien. The state failed to be convinced by the arguments S. put forward. Worse still, the Immigration and Naturalisation Service, (IND) lent 'no credence whatsoever' to the fear of reprisals. Her statements were dismissed as minimal and unclear.

Here we have a strange discrepancy between the points of departure in two different proceedings within a single legal domain. The danger of returning is considered present by definition in the one proceedings while in the other the alien herself has to prove that that is the case. We see now how important it is for the authorities to be properly aware of each other's decisions. How crucial it is for information to be shared so that the context of the person about whom the decision is being taken clearly emerges, and balanced decisions can be taken. In a nutshell: interaction is not only required *between* legal domains it is also necessary *within* legal domains.

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That brings me to the next interaction. Here, too, it would be better to speak of lack of interaction. S. becomes the plaintiff in a civil law action brought for the back pay that she never received.
If work has an international component there is always the question of which jurisdiction applies. European law stipulates that in principle the law that applies is that of the country where the work is normally performed, unless it becomes apparent from the overall circumstances that the contract of employment is more closely tied to another country (the exception clause). The intention is to protect workers and ensure that the level-playing-field principle applies: conditions of employment should not vary too much in one and the same territory.

De sub-district court in first instance set this aside. S. was almost never out of the house during the more than six years that she worked in the Netherlands. Her contact with the world at large was kept to a minimum through the control her exploiters had over her.

The work she performed in the house on Copernicusstraat was carried out in an entirely Indian environment or put another way; the house in The Hague could just as well have been in New Delhi. The court found that S. must be compensated. On the basis of the agreed 50 euro per month and assuming an 80-hour working week she was entitled, according to the court, to 2020 euro for a period of two years.

Again something interesting happens here. Criminal law proceeds from an entirely different premise. Of course, the decision as to whether exploitation had occurred, and therefore under what conditions criminal liability could be assumed, is a totally different matter to the liability to pay wages. And yet it is strange that in criminal law no value whatsoever is attached to the Indian, Chinese, Bulgarian etcetera... context in which work is performed. Going even further, the Supreme Court found on several occasions that in assessing exploitation solely Dutch standards should apply.

Earlier we saw that the criminal conviction of S. had a major impact on the decisions based on immigration legislation. Now we see how the premises of labour law differ from those of criminal law. In other words how autonomously labour law functions. Here, too, there is a need for a more reciprocal influence, for a link or interaction between these ostensibly so separate legal domains so that a certain coherence can be achieved to exclude any strange discrepancies between the various decisions. I take the view that in this case the exception clause should not have been applied and a good argument for this could have been derived for one thing from the criminal law approach I referred to earlier.

At appeal, by the way, things went well with the wages because the court considered that the exception clause was not applicable and that compensation had to be paid in accordance with Dutch

standards. But that exception nevertheless continues to exist and conflicts with the premises of criminal law in cases that arise.

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Let me close by recapitulating. I've explained how many decisions had been taken regarding S. in several legal domains. I also demonstrated how those decisions affected one another and were sometimes backed by arguments from different points of view.

1. First of all there was the power of criminal law: the conviction that resulted in her being declared an undesirable alien and her application for asylum being automatically rejected. We concluded that this was for the victim an unpleasant one-sided interaction. A more **autonomous deliberation** under the terms of immigration law, separate from criminal law, would have been desirable here and would have done greater justice to the human trafficking context in which S. had spent more than six years.
2. At the same time in the interaction between criminal law and labour law we see a greater need for **coherence**, in which, because of the notion of protection, criminal law ought to take precedence. In that case no significance is attached to the Indian setting in which the work was carried out and the equality principle prevails: equal pay for equal work in the same territory. Here labour law can learn something from criminal law.
3. Third, we have also seen that in the tale of S. there were different proceedings within a single legal domain that were based on contradictory premises. It would appear that sometimes there is a lack of interaction between legal domains as well as a lack of interaction within legal domains. The key word here is information: decision-makers in the one proceedings must be aware of the background to a case. Balanced decisions can only be taken once this interaction has been achieved.

The main thing to emerge here is that the protection of victims of human trafficking is a major challenge that is jeopardised by the subdivision into legal domains that we ourselves have created. No one denies the importance of those legal domains, or of the distinctions that lawyers over the years have created. They make for clarity in theory and practice and facilitate understanding of the workings of the legal system as a whole.

But these human constructs should never stand in the way of the effective protection of victims. In other words products conceived by man may not result in inhumane products. We have seen that if we are to achieve this we must continually seek the right balance. And a recurring issue is the need for the legal domains to be linked. But besides this link there must also be genuine interaction, by which I mean, real mutual influence on a recurring basis. We have an obligation to do this in the interests of victims. The story of S. should continually serve as a challenge to us.

Thank you.