

The SNEEP case

LJN: BD6972, Almelo District Court, 08/963001-07 Print judgement

Date of judgement: 11 July 2008

Date of publication: 11 July 2008

Section: Criminal

Kind of proceedings: First instance - three-judge section

Indication of content: Sneep case, six defendants. All guilty of trafficking in women with respect to one or more women. Partial acquittal on this point partly as a result of the formulation of the indictments. Five defendants in addition guilty of participation in and/or leading a criminal organisation. 'A characteristic feature of the organisation was its ruthless and violent conduct. (') The case file is bursting with violence and intimidations.' The five defendants have 'no respect at all(') for the physical and mental integrity and right of self-determination of these women'. Convictions also for assault of individual women, among other things. In determining the punishment to be imposed, the court sought attunement with convictions by other courts of justice in the country. The court has deemed rape and coercion into breast enlargement or abortion as aggravating circumstances. Sentences varying from eight months to seven years and six months. Partial awarding of compensation of victims' claims for damages. Advance payments of up to EUR 50,000.

Judgement

UTRECHT DISTRICT COURT
ALMELO, SUBSIDIARY PLACE OF SESSION

Public prosecutor's office no.: 08/963001-07

CRIMINAL JUDGEMENT

Judgement: 11 July 2008

The District Court of Utrecht, in session in Almelo, three-judge section for criminal cases, delivering judgement in the case of the Public Prosecutor of the National Office of the Dutch Prosecution Service, against:

[Defendant 5],
born in [place of birth] in [1974],
residing at [address],

on trial - after amendment of the indictment during the court hearing - for:

1A.

in or around the period of 10 April 2002 up to and including 31 December 2004 in Utrecht and/or in Amsterdam and/or in The Hague and/or in Alkmaar and/or in Haarlem and/or elsewhere in the Netherlands and/or Germany, together and in association with one or other person(s), at any rate alone, he

- forced [Woman 22], (in each case) by violence and/or other act(s) and/or by threat of violence and/or threat of other act(s), and/or induced by misuse of authority arising from the actual state of affairs and/or misrepresentation to make herself available for sexual acts with (or for) a third person for payment and/or under aforesaid circumstance(s) performed some acts concerning which the Defendant and/or his Co-accused(s) knew, at any rate must have reasonably suspected, that this [Woman 22] made herself available through this for the performance of those sexual acts;

and/or

- (in each case) profited with intent from the sexual acts of another, named [Woman 22], with (or for) a third person for payment, while the Defendant and/or his Co-accused(s) knew, at any rate must have reasonably suspected, that this [Woman 22] was forced by violence and/or other act(s) and/or by threat of violence and/or threat of other act(s) and/or misuse of authority arising from the actual state of affairs and/or misrepresentation to make herself available to perform these acts;

and/or

forced [Woman 22], (in each case) by violence and/or other act(s) and/or threat of violence and/or other act(s), or induced by misuse of authority arising from the actual state of affairs or misrepresentation to provide a third person, Defendant and/or his Co-accused(s) with benefits from the proceeds of the sexual acts of this [Woman 22] with (or for) a third party;

while this/those act(s) resulted in serious bodily harm;

since the Defendant and/or his Co-accused(s) has/have

(with respect to this [Woman 22]) (in aforesaid period)

- entered into a love affair with this [Woman 22] and/or won over this [Woman 22] and/or made [her] dependent (emotionally) on him, the Defendant, and/or his Co-accused(s) by or through giving a great deal of attention and/or giving presents and/or paying everything for her and/or

- had this [Woman 22] work as a prostitute and/or

- arranged or had arranged a room or rooms for this [Woman 22] where she could work as a prostitute and/or

- brought / collected this [Woman 22] to / from her place of work and/or had her brought and/or collected and/or

- forced, at any rate induced, this [Woman 22] to work as a prostitute for long hours at a stretch and/or during her menstruation and/or when ill and/or

- kept an eye on this [Woman 22] during the performance of her work as a prostitute or had an eye kept on her and/or

- forced, at any rate induced, this [Woman 22] to hand over and/or pay (a (large) part of) her earnings from prostitution to him, the Defendant, and/or his Co-accused(s), and/or
- had this [Woman 22] pay the rent of the (joint) living accommodation and/or
- forced, at any rate induced, this [Woman 22] to undergo a breast-enlargement operation (so that this [Woman 22] would earn more money as a prostitute), while the Defendant and/or his Co-accused(s) determined how large this breast enlargement would be and/or
- monitored this [Woman 22] (continually);

1B.

in or around the period of 01 January 2005 up to and including 03 April 2007 in Utrecht and/or in Amsterdam and/or in The Hague and/or in Alkmaar and/or Haarlem and/or elsewhere in the Netherlands and/or Germany, together and in association with one or other person(s), at any rate alone, he

- recruited and/or transported and/or transferred and/or housed and/or received [Woman 22] and/or [Woman 23], (each time) by coercion and/or violence and/or other act and/or by threat of violence and/or other act and/or by extortion and/or fraud and/or misrepresentation and/or by misuse of authority arising from the actual state of affairs and/or abuse of a vulnerable position and/or by giving or receiving payments and/or benefits to obtain the agreement of a person who has power over this [Woman 22] and/or [Woman 23], with the purpose of exploiting this [Woman 22] and/or [Woman 23];

and/or

- forced and/or induced [Woman 22] and/or [Woman 23], (in each case) by coercion and/or violence and/or other act(s) and/or threat of violence and/or other act and/or by extortion and/or fraud and/or misrepresentation and/or misuse of authority arising from the actual state of affairs and/or abuse of a vulnerable position and/or by giving and/or receiving payments and/or benefits in order to obtain the agreement of a person who has power over this [Woman 22] and/or [Woman 23], to make herself or themselves available for the performance of labour and/or services or, by above means, performed some act, of which he, the Defendant, and/or his Co-accused(s) knew and/or must have reasonably suspected that this [Woman 22] and/or [Woman 23] would make herself or themselves available for the performance of labour and/or services;

and/or

- (in each case) profited with intent from the exploitation of [Woman 22] and/or [Woman 23];

and/or

- forced, or induced this [Woman 22] and/or [Woman 23], (in each case) by coercion and/or violence and/or other act(s) and/or threat of violence and/or other act and/or by extortion and/or fraud and/or misrepresentation and/or misuse of authority arising from the actual state of affairs and/or abuse of a vulnerable position and/or by giving and/or receiving payments and/or benefits in order to obtain the agreement of a person who has power over this [Woman 22] and/or [Woman 23], to provide benefit to him, the Defendant, and/or his Co-accused(s), from the proceeds of the sexual act(s) of this [Woman 22] and/or [Woman 23] with or for a third party;

while that/those act(s) resulted in serious bodily harm;

since he, the Defendant, and/or his Co-accused(s) has/have

(with respect to this [Woman 22]) (in aforesaid period)

- entered into a love affair with this [Woman 22] and/or won over this [Woman 22] and/or made (her) dependent (emotionally) on him, the Defendant, and/or his Co-accused(s) by or through giving a great deal of attention and/or giving presents and/or paying everything for her and/or
- allowed this [Woman 22] to work as a prostitute and/or
- arranged or had arranged a room(s) for this [Woman 22] where she could work as a prostitute and/or
- brought / collected this [Woman 22] to / from her place of work and/or had her brought and/or collected and/or
- forced, at any rate induced, this [Woman 22] to work as a prostitute for long hours at a stretch and/or during her menstruation and/or when ill and/or
- kept an eye on this [Woman 22] during the performance of her work as a prostitute or had an eye kept on her and/or
- forced, at any rate induced, this [Woman 22] to hand over and/or pay (a (large) part of) her earnings from prostitution to him, the Defendant, and/or his Co-accused(s) and/or
- had this [Woman 22] pay the rent of the (joint) living accommodation and/or
- forced, at any rate induced, this [Woman 22] to have an abortion (in order to work (or continue to work) as a prostitute) and/or
- forced, at any rate induced, this [Woman 22] to undergo a breast-enlargement operation (so that this [Woman 22] would earn more money as a prostitute), while the Defendant and/or his Co-accused(s) determined how large this breast enlargement would be and/or
- monitored this [Woman 22] (continually);

(with respect to this [Woman 23]) (in aforesaid period)

- entered into a love affair with this [Woman 23] and/or won over this [Woman 23] and/or made (her) dependent (emotionally) on him, the Defendant, and/or his Co-accused(s) by or through giving a great deal of attention and/or giving presents and/or paying everything for her and/or
- had this [Woman 23] work as a prostitute and/or
- arranged or had arranged a room or rooms for this [Woman 23] where she could work as a prostitute and/or
- brought / collected this [Woman 23] to / from her place of work and/or had her brought and/or collected and/or
- forced, at any rate induced, this [Woman 23] to work as a prostitute for long hours at a stretch and/or during her menstruation and/or when ill and/or
- kept an eye on this [Woman 23] during the performance of her work as a prostitute or had an eye kept on her and/or
- forced, at any rate induced, this [Woman 23] to hand over and/or pay (a (large) part of) her earnings from prostitution to him, the Defendant, and/or his Co-accused and/or
- had this [Woman 23] pay (part of) the rent of the living accommodation and/or
- threatened to smash the face in of this [Woman 23] and/or
- threatened to hit this [Woman 23] and/or
- threatened this [Woman 23] and/or
- threatened this [Woman 23] with a weapon or firearm and/or a (stabbing) weapon and/or
- assaulted this [Woman 23] and/or

- forced, at any rate induced, this [Woman 23] to have an abortion (in order to work (or continue to work) as a prostitute) and/or
- held / had held this [Woman 23] in a dwelling (until the day of the abortion) and/or
- monitored this [Woman 23] (continually).

2.

that he, together and in association with one or other persons, at any rate alone, in or around the period of 1 January 2005 up to and including 7 April 2007 in Utrecht and/or Amsterdam and/or Haarlem and/or elsewhere in the Netherlands, inflicted (in each case) with intent and premeditation serious bodily harm on [Woman 22] and/or [Woman 23] by - intentionally and after calm and careful consideration -

- forcing this [Woman 22] and/or [Woman 23] to have an abortion as a result of which this [Woman 22] and/or this [Woman 23] suffered serious bodily harm, namely the abortion and/or the death of the foetus of this [Woman 22] and/or the foetus of this [Woman 23];

case file A 26 and A08 viewed together and in conjunction with the other case files

3.

he, in or around the period of January 2002 up to and including 7 April 2007 in the municipality of Utrecht and/or Amsterdam and/or Alkmaar and/or (elsewhere) in the Netherlands and/or Germany and/or Belgium, took part in an organisation that comprised, among others, the Defendant and/or one or more of the following persons [Defendant 1] and/or [Defendant 2] and/or [Defendant A] and/or [Defendant 3] and/or [Defendant B] and/or [Defendant C] and/or [Defendant D] and/or [Defendant 6] and/or [Defendant D] and/or Defendant 4] and/or [Defendant F] and/or one or more other persons,

- which organisation had the commission of serious offences as its object, namely (in each case) committing trafficking in human beings, as referred to in Article 250a of the Dutch Criminal Code (old) and/or Article 273a of the Dutch Criminal Code (old) and/or Article 273f of the Dutch Criminal Code, in which trafficking in human beings comprises, among other things, the sexual exploitation of women (prostitutes);
- (aggravated) assault, as referred to in Article 300 and/or 302 of the Dutch Criminal Code, whereby this aggravated assault comprised, among other things, hitting and/or punching and/or kicking of (several) persons (prostitutes and/or clients of prostitutes and/or pimps) and/of having breast expansions carried out and/or having tattoos set;
- acting in contravention of Article 26(1) of the Weapons and Ammunition Act, made punishable under Article 55(1) of the Weapons and Ammunition Act (including possessing firearms and stabbing weapons);
- threatening against the life/threatening with aggravated assault as referred to in Article 285 of the Criminal Code (including threatening prostitutes and/or clients of prostitutes);
- extortion as referred to in Article 317 of the Criminal Code (including cheating prostitutes out of their money).

In the light of the documents;

Given the examination in court;

Having heard the demand of the public prosecutor;

Given the defence submitted by and on behalf of the Defendant;

The Court has corrected the apparent writing errors in the indictment in the judicial finding

of facts.

The Defendant will not be prejudiced in his defence by this.

1. Preliminary question: competence of the district court

The Court considers the following with regard to its relative competence.

The current case has been brought before the Utrecht District Court in session in Almelo by the issuing of a summons. The indictment states as place where the offence was committed, among others: 'Utrecht'.

On the basis of Article 2(1) of the Code of Criminal Procedure, the Court in Utrecht is competent as 'that within whose territorial jurisdiction the offence was committed'.

The Court can disregard the question whether telephone interception authorisations were granted in the past by the examining magistrate of the Rotterdam District Court or the examining magistrate of the Groningen District Court in the Sneep investigation or possibly linked investigations. Even if this were the case and if the granting of these authorisations would have to be regarded as a deed initiating prosecution, this would not represent a denial of the competence of the Utrecht District Court. In that case, the court placed first in the hierarchy of paragraph 1, that is of the place where the offence was committed, has exclusive competence on the basis of paragraph 2 of the Article referred to above. It has not been shown that the competence of the courts in Rotterdam and Groningen has been deduced in the past from the place where the offence was committed, so that there are no courts that occupy the same position in the hierarchy and there is no need to address the question of in which court prosecution was initiated.

2. Considerations regarding the evidence in general

2.1 Documents added during the investigation during the court hearing

During the proceedings, the Public Prosecution Service regularly added new documents to the case file and introduced amendments to the indictment in this case. Even after the Public Prosecutor had made her closing speech demanding sentence, the Public Prosecution Service added two new files and a CD-rom with text files. It is indeed true that these were transcripts of intercepted telephone calls, the audio recordings and summaries of which had already been included in the case file, but the transcripts were new and the principle of allowing both parties to be heard implies that the defence must also be able to give its opinion on new items.

Counsel for the Defence in all the present pending cases complained about this matter and, with the exception of Counsel for [Defendant 2], requested that the Court disregard these documents.

In the case of [Defendant 6], his Counsel requested the court to attach the consequence to this that they be excluded as evidence, or that the sentence is mitigated.

The reason given by the Public Prosecutor was that the investigation had been very extensive, that it had been folded up too quickly, and this had made it difficult for the Prosecution Service to prepare the case file on time.

The Court ascertains that most of the defendants have been in pre-trial detention since February 2007. The final case file was presented in September 2007. In February 2008, the

Public Prosecutor requested the Court to set a date for the trial of the substance of the case as quickly as possible since the Prosecution Service found prompt treatment very important. On 3 March 2008, the Court then set June 2008 as the date on which the planned dealing of the substance of the case would take place. The Court finds that it cannot be said that the Prosecution Service was taken by surprise by the expeditious dealing of the case on its substance. In addition to this, the Public Prosecutor had the almost continual assistance of two other public prosecutors, a number of secretaries from the public prosecutor's office and a couple of police officers during the sessions of the court hearing so that the Court concludes that the Prosecutor had the support of a team.

The Court has been hindered - with the Defence - by this course of affairs, which was a serious impediment to the planning of the substance of the case, and regards the reasons presented by the Public Prosecutor as invalid. This has resulted in the Court and the Defence being pressed for time, since the Court has had to grant a week's delay for the pleadings so that the Defence had the opportunity to examine the new files and discuss them with their clients. The Court is, however, of the opinion that this way of proceeding, albeit undesirable, does not imply that items need be excluded from the evidence. This is also because the items can be relevant in the context of the process of establishing the truth.

The Court also finds that a reduction in sentence does not necessarily ensue as a result. The Defence managed in the end - 'sometimes after having to pull some rabbits out of the hat' - to be given the opportunity to give its opinion on the new items.

2.2 Use of intercepted telephone calls as evidence

A large number of intercepted telephone calls have been added to the case file – some 85,000 according to the Public Prosecutor. Their written and/or audio reproduction comprises more than 80 DVDs/CD-roms. Not all intercepted calls have been included on these. The calls in the Caravan investigation, in particular, are missing. Some of the calls have been transcribed verbatim, others only as a summary on paper. Furthermore, some summaries or transcribed calls have been listened to once again in the course of the (criminal) investigation and as a full and written version added to the case file (files 59 and 60, submitted after the Public Prosecutor's speech demanding sentence).

During the court hearing, there were discussions in various cases concerning the fact that the summaries of these intercepted telephone calls do not always cover the entire conversations because the context of the conversation in question is missing as well as the preceding and following calls. Intercepted telephone calls were played during the court hearing in this respect. The Court has also listened to calls in camera.

An intercepted telephone call can only be accepted as evidence when it is included in the case file as an official report, or as the own perception of the court if listened to during the court hearing. The Court has pointed out and explained on several occasions during the court hearing that the intercepted telephone calls can only be used as evidence when they have been included in the case file in fully transcribed and written versions or when the case file contains summaries of calls in Dutch, German and English that the Court has been able to listen to in camera. Calls for which no audio material is available (all calls in the Caravan investigation) and calls conducted in a foreign language that are only available in summary form are therefore discarded as evidence. In an incidental case, special considerations have induced the Court to deviate from this principle.

2.3 Defence concerning exclusion of intercepted telephone calls from evidence

Counsel for the Defence has submitted that all the intercepted calls need to be translated again if the Court wishes to use them as evidence. He adds the following explanation:

- the (court) interpreter for the Turkish language has listened to an intercepted telephone call during the court hearing and has said that this call has not been translated correctly. Since this conversation has not been translated correctly, it follows that the other calls have not been translated correctly;
- the Defendant argues that a dialect is spoken in the region where he comes from. The interpreters who were interviewed by the examining magistrate in this respect have said that they did not know of this. Counsel for the Defence argues that an interpreter who does not know this cannot do his work properly.

The Court considers as follows.

During the court hearing, the (court) interpreter stated that the conversation referred to that has been translated and summarised in the case file as 'I'll rearrange your face' literally means 'fuck your mouth, fuck your nose'. The (court) interpreter said that she would translate this 'I've had more than enough, I'm fed up to the back teeth of you'. Or the expression 'fuck it'. The incidental circumstance that the (court) interpreter would use a different expression in Dutch for the fragment 'fuck your mouth, fuck your nose' is no reason to assume that all the intercepted calls have been incorrectly translated. In addition, the Court remarks that this refers to a summary and the Court has just stated that summaries will not be used in evidence, for the very reason of avoiding any expressions or fragments being taken out of context in an extract.

Nor does the Court infer from the circumstance that the interpreters who were examined before the examining magistrate said that they knew nothing about a dialect in the town of Emirdag in the Afyon region that they are not capable. From a letter from interpreter [Name 16] submitted by Defence Counsel, it is shown that it is not so much a dialect but more that people from this area tend to speak coarsely. If the interpreters say that they are not aware of a dialect, then this statement is not necessarily contrary to the Defendant's proposition. Moreover, the interpreters have said that they had not heard any dialect, that the words they had translated were in standard Turkish and that they would not have translated such a conversation if they had not been able to understand a conversation because it was in dialect.

The Court rejects this request.

2.4 The Court's being bound by the facts of the indictment

The case file presents an image of defendants who were involved in trafficking in human beings in an organised context. There have been surveillance operations, transactions, and intercepted telephone calls during which working hours, sums of money and transport to and from the Wallen [red-light district of Amsterdam] and Zandpad [red-light district of Utrecht municipality] were discussed, and there are also witness statements that speak of a violent and intimidating group of men there who have had women working for them in the prostitution. Only a very limited number of these women have made an official report to the police concerning a specific suspect.

In her speech demanding sentence, the Public Prosecutor has asked the Court to set a legal

precedent in this case by deeming that, even though the women have themselves indicated that they had worked voluntarily in the prostitution and had voluntarily handed their money to the defendants, coercion is proven nevertheless and to return a conviction for trafficking in human beings.

The Court is, however, dependent for a judicial finding of fact on the way in which the Public Prosecution Service has formulated the charges on the indictment. In cases where the coercion cannot be deduced from violence but from other acts, misrepresentation or the authority arising from the actual state of affairs, the facts and circumstances that imply coercion must be included in the indictment. The Court is essentially bound by the facts of the indictment.

In this case, those facts and circumstances from which the Court could deduce means of coercion have not always been included in the indictment, while the facts and circumstances that have been included are not always provable, or regarded in conjunction are not sufficient to prove the existence of a means of coercion, so that the Court comes to acquittals in a number of cases for that reason.

The Public Prosecution Service has opted to include more or less the same series of charges in the indictment with regard to the various women and has not tailored the charges on the indictment to the individual victim in each case.

It appears, for instance, from a number of cases in the case file that the defendants misled the victim by telling her that she would have a nice life and that they would save her money for her or that the defendants had authority over the victim because she had no papers or house, or she was fleeing from a violent pimp or had huge debts, but these circumstances have not been included in the indictment. In a number of cases, the documents show that violence was used against the women but, although the Public Prosecutor has mentioned this in her summary of the evidence, the violence has not been included on the indictment.

As already indicated, the Court is bound by the indictment as presented in first instance. The Court also makes a further remark that it is surprising that the Prosecution Service has not taken greater care with the indictment, partly in view of the fact that this case has been publicised as the largest case concerning trafficking in human beings ever in the Netherlands.

3. Considerations of the evidence 250a/273f of the Criminal Code

3.1 General

In the cases of all the defendants against whom a ruling will be given today: [Defendant 2] and [Defendant 1], [Defendant 4], [Defendant 6], [Defendant 3] and [Defendant 5] the Defence has argued in favour of acquittal with respect to the trafficking in human beings on the indictment. It was generally argued, in summary, that:

- the women involved were already working as prostitutes when they came into contact with the Defendant;
- they had always worked as a prostitute of their own free will;
- insofar as the women shared their earnings with the Defendant or made payments to him, this was because they had an emotional relationship with him, or they paid him for (bodyguard) services or because they were repaying money they had borrowed from him.

In response to these defence arguments, the Court takes the scope of Article 250a (old) of the Criminal Code into consideration (in the cases of [Defendant 1], [Defendant 2], [Defendant 6] and [Defendant 5]) and 273f of the Criminal Code (all cases).

The indictment focuses specifically on Article 250a(1) (old) of the Criminal Code and/or Article 273f(1) of the Criminal Code. These provisions refer to acts of unlawful conduct. In Article 250a (old) these are coercing into prostitution (by violence or other act or by threat of violence or other act), or inducing into prostitution (by misuse of authority arising from the actual state of affairs or misrepresentation). The means of coercion listed in Article 273f of the Criminal Code include: coercion, violence or other act, the threat of violence or other act, misrepresentation and misuse of authority arising from the actual state of affairs or abuse of a vulnerable position.

In the parliamentary documentation of the present and previous article(s) on trafficking in human beings and derived case law, the component misuse of authority arising from the actual state of affairs/circumstances is objectified as follows: such misuse can generally be assumed: 'if the prostitute is in a situation or ends up in a situation that is not the equivalent to the situation in which an articulate prostitute tends to find him- or herself in the Netherlands', and this can be regarded as an exploitative situation. The legislator had the circumstances in mind here in which another person is brought into a dependent situation whereby this person's freedom of choice would be restricted. As accompanying important factors, the legislator envisaged the following, among other things: not having access to one's own financial means, not having access to a passport, not having a valid visa and debts involving such a repayment obligation that the person in question is forced to continue to work as a prostitute.

Possible consent on the part of the victim to his or her exploitation is not determinative. Moreover, there can be no question of voluntariness if the prostitute has no, or only a reduced, possibility of making a conscious choice with regard to the continuation or discontinuation of his or her relationship with the exploiter. The fact that the relationship was initially entered into on a voluntary basis and/or that the prostitute had previously been involved in prostitution is itself no indication of voluntariness.

3.2 Periods before and after legislative amendment

The indictment under 1A is tailored to Article 250a (old) of the Criminal Code and under 1B to Article 273f (273a (old)) of the Criminal Code but refers to a contiguous period. This artificial division is the consequence of the legislative amendment in which Article 273a of the Criminal Code was introduced; it was later renumbered as Article 273f of the Criminal Code without alteration of its content. Insofar as the Court has been able to deduce from the evidence in which period certain acts took place, these have been declared proven in the period in question. If it can only be determined that an act has taken place in the entire continuous period while no indication of the exact point in time can be given, the Court has declared that act proven in both separate periods, but essentially in the entire period of Article 250a up to and including Article 273f of the Criminal Code.

3.3 Considerations regarding acquittal [Woman 22]

The Public Prosecutor has demanded an acquittal for the charge under count 1A of the indictment for the period up to and including 11 May 2004. The Court follows the Public Prosecutor in this so that it must still deliver judgement on the question whether the Defendant was guilty of trafficking in human beings in the period from 12 May 2004 up to

and including 3 April 2007 with regard to [Woman 22].

The Public Prosecutor holds the view that the content of the following items of evidence can serve as proof of the charges in the indictment:

- an official report of findings of the interviews of [Woman 22] in April and May 2002;
- the interview of [Woman 22] by the police on 3 April and 9 July 2007;
- the interview of [Woman 22] by the examining magistrate on 17 August 2007;
- various intercepted telephone calls and text messages;
- one undated letter from [Woman 22] addressed to the reporting officers;
- four letters dated in the period from 9 December 2004 to 18 June 2005 and written to the Defendant by [Woman 22].

The Court considers as follows.

The Defendant has been previously prosecuted and convicted for trafficking in human beings. In the ruling of 3 February 2004 of the Amsterdam Court of Appeal, he was acquitted of trafficking in human beings committed with regard to [Woman 22] in the period of 1 October 2000 up to and including 9 April 2002. The official report of findings of 2002 referred to above is apparently from the criminal investigation in that case. In the opinion of the Court, it is not necessary to explain why statements made in 2002 cannot provide evidence for acts said to have taken place from mid-2004 onwards. The same applies to the content of the undated letter that, according to its content, relates to the period for which the Defendant was being prosecuted and of which he was acquitted with respect to [Woman 22].

From the statements given by [Woman 22] and the Defendant, the Court deduces that they had entered into a love affair in 2000, long before the period on the indictment, and this relationship still existed in any case on the day of the examination of [Woman 22] in court. [Woman 22] was already working in the prostitution when she met the Defendant and continued to do so, and this included the period when the Defendant was being detained because of a conviction for trafficking in human beings and after this, while she is now working for homecare. During the court hearing, she stated that she was not forced to do anything, she need not hand over anything and that she was not checked. In her view, the intercepted telephone calls and text messages must be regarded as normal contacts between partners during working hours, but also as requests for help when having problems with customers. Before the examining magistrate, she stated that she travelled to and from her work independently and arranged where she worked herself. It has not been shown that there was any coercion to work during illness or menstruation nor of a forced abortion or breast enlargement. [Woman 22] did state that she shared her earnings with the Defendant and paid the rent of their joint accommodation but she sets this in the context of their relationship and living together. With respect to the letters, [Woman 22] stated that she wrote these at times when she was angry and blamed [Defendant 5] for everything, and in the period when she had decided to have an abortion and she blamed him for this, while she herself wanted the abortion because she could not combine her work with a pregnancy.

These matters do not seem implausible to the Court. The conclusion must therefore be that the means of coercion of which the Defendant is accused are not substantiated by provable actual acts, committed with the object of exploitation, so that the Defendant will be acquitted of the charges under count 1A and 1B insofar as they were committed with respect to [Woman 22]

3.4 Considerations regarding the evidence [Woman 23]

According to the statements given by [Woman 23], [Woman 23] worked in the prostitution, the Defendant entered into a love affair with her and she moved in with him. She admitted that she sometimes told the Defendant on the telephone how much she had earned so far and that [Woman 23] brought home the money she earned and that the Defendant also used this money.

[Woman 23] always denied being under pressure from the Defendant when questioned by the examining magistrate and during the court hearing. When asked whether the Defendant ever hit her, she said that he had slapped her the odd time.

The Court attaches little value to the statement of [Woman 23] - although given under oath - where she says that she was not put under pressure to hand over her earnings to the Defendant. The Court cannot avoid the impression that she is afraid to state this because she is scared of the Defendant. The following is causative.

The witness [Witness 10, aunt of Woman 23] stated on oath before the examining magistrate that [Woman 23] revealed the situation of coercion in which she found herself in conversations between [Woman 23] and herself and her former husband. [Witness 10, aunt of Woman 23] stated that [Woman 23] said that the money she earned had to be handed over to the Defendant and was kept in a safe in Haarlem at the Defendant's and she had no access to it. [Woman 23] has also stated that the Defendant made her earn a certain sum each day and sometimes she had to continue to work right through the night while she was tired. [Woman 23] also stated that the Defendant had a hand-gun in the safe and once pointed a revolver at her.

This statement by [Witness 10, aunt of Woman 23] substantially corroborates the statements of [Witness 11, uncle of Woman 23], the uncle of [Woman 23], who also stated to the police that [Woman 23] had said that the Defendant possessed a firearm, which was kept in a safe, where the money that [Woman 23] had to hand over was also kept. [Witness 11, uncle of Woman 23] stated on oath before the examining magistrate that [Woman 23] had said on several occasions in conversations he and his former wife had with [Woman 23] that she had to hand over the money she earned to the Defendant. [Witness 11, uncle of Woman 23] stated that he could well remember that [Woman 23] spoke of hitting, having to work and having to hand over money during the conversations. The Court does not regard as plausible the fact that [Witness 11, uncle of Woman 23] can be mistaken on this point, where he explicitly mentioned the Defendant, and not another person, during the second interview. In addition, [Witness 11, uncle of Woman 23] stated that he could remember that [Woman 23] received telephone calls from the Defendant when she was visiting him, saying that she must leave because she had to start work. The statement given by [Woman 23]'s mother to the examining magistrate confirmed the fact that [Woman 23] received so-called coercive telephone calls from the Defendant, in which statement she indicated that she knew that [Woman 23] had had enough of the coercive telephone calls from the Defendant and that the Defendant was interfering with her private life to a considerable extent.

The Court is of the opinion that, under the above circumstances, it has been proven lawfully and beyond a reasonable doubt that there was a situation in which the Defendant, with the purpose of exploitation, housed [Woman 23], induced her to work as a prostitute, profited from the proceeds and benefited from this by means of coercion as referred to in Article 273f of the Criminal Code.

3.5 Considerations regarding acquittal (abortion) 273f Criminal Code [Woman 22] and 302 Criminal Code [Woman 22] and [Woman 23]

The Defendant is accused under counts 1B and 2 that he forced or induced [Woman 23] to undergo an abortion and under count 2 that he also forced [Woman 22] to do this.

With respect to [Woman 23], the Court considers that there are indications that she wanted to keep the child when she became pregnant. It has been established that she discussed this with people outside the sphere of influence of the Defendant, such as her uncle, her aunt, an obstetrician and an assistant at a women's refuge. Her aunt, [Witness 10, aunt of Woman 23], stated before the examining magistrate that the starting point during the appointment with the obstetrician was that it would be better if an abortion took place. Her uncle, [Witness 11, uncle of Woman 23], stated before the examining magistrate that he had discussed with [Woman 23] that the (prostitution) environment in which she found herself was not a suitable one for raising a child. It has been established that [Woman 23] actually underwent an abortion. It is not possible, however, to establish who or what finally induced [Woman 23] to have an abortion and the extent to which the Defendant played a relevant part in this under criminal law. The Defendant will therefore be acquitted for the charges against him in count 1B and count 2 of the indictment.

The Court also acquits the Defendant on count 2 of the indictment with regard to [Woman 22] and refers for its motivation to the considerations regarding acquittal of the abortion in count 1A.

4. Considerations of the evidence re Article 140 of the Criminal Code

4.1 Size of the organisation

The Court has been presented with a sizable case file in which four binders relate specifically to membership of a criminal organisation. This part of the case file contains a hypothesis regarding the existence of two organisations, each with its own structure, helping each other, where necessary, and taking over jobs for each other. One organisation was headed by [Defendant A], the other by [Defendant 2] and [Defendant 1]. In addition, there were independent pimps who would assist this organisation or these organisations in various ways. It was said that the two organisations became estranged in April 2006.

The Public Prosecutor has described an organisation on the indictment with regard to Article 140 of the Criminal Code in which six other, named persons and 'one or more other persons' are said to have participated, and not only the defendants that are now on trial. In that sense, the point of view of the Prosecutor seems to be that there was just the one organisation. The Public Prosecutor has also demanded a judicial finding of fact in which no distinction is made between the two organisations described in the case file. A conviction is therefore being demanded regarding participation in just one organisation of which all the defendants listed in the file were said to be members. The Prosecutor's demand for sentence names a total number of members of 50, and the list of those involved adds up to 34 persons and the summary of evidence submitted by the Prosecutor mentions at least 30 members. The Public Prosecutor has not expressed in concrete terms what the membership of the six *other* defendants consisted of and how this can be established. The other names consistently emerge in relation to the accusations made against the defendants who are now on trial.

There is a discrepancy between the speech demanding sentence (one organisation) and the hypothesis in the case file (two organisations). Insofar as the Public Prosecutor takes two organisations as her premise, it is moreover unclear which persons named in the indictment belong to which organisation or organisations.

In discussing the acts during the court hearing, attention has been paid almost exclusively to the defendants now on trial. The role of the other members named on the indictment has only been discussed incidentally. The Court comes to the conclusion that the case file contains indications of participation in the organisation by more than the six defendants, but it is not immediately obvious in which organisation they participated and during which period. The Court has therefore given further consideration to the question as to whether the investigation has made the size and composition of one or more of the organisations and the role played by the other participants sufficiently clear, and came to the conclusion that this was not the case. The Court sees no necessity for reopening the investigation, however. In the six cases that will be ruled on today, judgement must be delivered on whether the 'present' six defendants can be accused of participation in a criminal organisation, leaving aside the question of the identity of the other members who comprised the organisation. The Court takes into consideration that the term 'organisation' has a factual meaning according to established case law and needs no further definition (see Supreme Court of the Netherlands 31 May 1004, DD 94.375 and NLR note 1 to Article 140 of the Criminal Code). Taken in this light, it is not particularly necessary to name the other participants in the organisation in the judicial finding of fact.

It cannot be determined without some obvious misgiving whether there was one organisation or two organisations which cooperated on an incidental basis. The Court finds however that it has been established that the six Defendants now on trial were members of the same organisation, with the exception of [Defendant 4]. It cannot be established from the content of the evidence whether [Defendant 4] took part in any criminal organisation at all. [Defendant 4] is therefore acquitted of this count.

Since, as already stated, the Court will leave to one side who else were members of the criminal organisation to which [Defendant 1] and [Defendant 2], [Defendant 6], [Defendant 3] and [Defendant 5] belonged, it will not include the other six persons named on the indictment in its judicial finding of fact, without giving its opinion as to whether those other six were involved in any kind of criminal organisation or not.

4.2 Organisation and participation

The Court takes the following into consideration with regard to the judicial finding of fact of participation in a criminal organisation.

It has been shown in the case file that the defendants on trial here had frequent contact with each other and with others on the telephone. Many of these conversations related to prostitution, in the light of the context and the subject of discussion. In this way, instructions to bodyguards are given, an eye is kept on prostitutes and arrangements are made for the transport of the prostitutes and rooms. This all took place in an organised context, during which the bodyguards offered protection to the women and kept an eye on the women belonging to the group, money for the bodyguards was collected, joint transport for the prostitutes arranged and care was taken that the rented rooms were in continuous use by the prostitutes in the group. The statement of [Woman 1] indicates that a group existed for, when she was shown names and photos, she said on her own initiative: 'that person belongs to our group' and 'that person is not one of our group'. In addition, there is a discussion in an intercepted telephone call between [Defendant 1] and [Defendant 3] concerning a 'community' that cannot be easily joined by another person (a certain [Name 09.2]), who wants to come to the Netherlands with girls. There are also conversations between [Defendant 3] and bodyguard [Name 12] and [Defendant 1] respectively in which mention is made of part of the costs that 'we as company' must bear in a discussion of the purchase of

bullet-proof vests.

This group can be linked to many violent incidents during which violence and intimidation were inflicted on prostitutes, customers and rival pimps.

There is the assault on the prostitute [Woman 09], among other things, during which she was hit by [Defendant 1] and [Defendant 3] to make it clear to her boyfriend/pimp that she had been taken off him, and the subsequent intercepted telephone calls which indicate that she had been allocated to someone else as a 'present'.

In addition, there was the assault on the prostitute [Woman 17] by [Defendant 3], during which the violence was linked to the fact that [Defendant 3] wanted [Woman 17] to find a 'second girl' for him, according to the interrelated content of the various intercepted telephone calls.

An intercepted telephone call shows that [Defendant 3] instructed the bodyguard [Name 12] to hit 'his girl'.

Illustrative of the group's practices is the assault of prostitute [Woman 18]. [Woman 18] stated when reporting to the police that she had had many problems with young Turkish men in recent months and that she had been hit - after being threatened several times because these Turkish men did not want German girls to be working in the Wallen - in the face by someone pretending to be a customer. From the intercepted telephone calls that can be related to this on the basis of context and the times of the conversations, it appeared that [Defendant 3] asked [Defendant 5] to arrange someone who could carry out this assault in return for payment, that this assault was carried out and the perpetrator arrested by the police, that various matters were communicated to [Defendant 1], and that [Defendant 5] was subsequently approached to arrange a lawyer for the perpetrator, which was followed by the release of the perpetrator.

These practices involving the conscious infliction of violence for the sake of market protection were illustrated in the report made by [Woman 33] in which she reported an assault on the brother of her boyfriend and on herself by a group of Turkish pimps, including [Defendant 1], because she was working independently as a prostitute and the group wanted to prevent her from doing her work or wanted to make her work for them. This last fact is also an indication that the group violence had the object of trafficking in human beings. Furthermore, from the statement of [Woman 05] an incident appears in which a shot was fired from a firearm or firearms when [Defendant 1] and [Defendant 3] took a firearm against men wishing to sell condoms and drugs to prostitutes.

She also stated that before this shooting incident she had sometimes seen the group with weapons that were hidden by [Defendant 1], [Defendant 3] or [Defendant 2] in the room at Zandpad.

The statement made by [Woman 03], and related statements made by her relations and the statement of [Witness 03], indicate that the family of this prostitute was threatened with, among other things, a bomb attack even in Poland, because it was required that [Woman 03] withdraw her report to the police with regard to trafficking in human beings.

[Witness 02]'s statement indicates that he was beaten by [Name 12] and was threatened by [Defendant 3] because he pretended to take a photo of a prostitute. He was asked to withdraw his reporting to the police and to come and work for the group. He received a telephone call from [Defendant 1] if a prostitute was having problems with a customer. Then he had to go there and beat up the customer. In addition, [Witness 02] stated in no uncertain terms: 'The group messes around with everyone and everything here. Threatening everyone and wrecking everything, scaring people. That happened to me too.'

The fact that the Defendant can be regarded as a member of this group follows, among other things, from the above in that in the mistreatment of [Woman 18] the Defendant not only

played a pro-active part in arranging the later services of a lawyer, but also played a reprehensible role in the hiring of the person who had to hit the prostitute in return for payment.

It also follows from the statement by [Woman 34] and the intercepted telephone calls that the Defendant must be classed as a member.

[Woman 34] stated that the Defendant was a member of [Defendant 1]'s criminal group and that he arranged everything for her and the other prostitutes when the other suspects were arrested.

In an intercepted telephone conversation between [Defendant 3] and an unknown man (19 November 2006 p. 36878), [Defendant 3] says that they always had to help Defendant's girls, if there were any problems: '[Defendant 5] fulfils a different role in our group'.

It also appears from several telephone conversations that the Defendant is more often called on to arrange lawyers and to pass on information if the police have arrested someone of importance to the group.

5. Conclusion

The Court is of the opinion that the charges under count 1A and count 2 of the indictment have not been proven lawfully and beyond a reasonable doubt, so that the Defendant should be acquitted on these counts.

The Court has come to the conclusion on the content of the legal evidence which forms the basis of the ruling set out hereinafter - which will be included in an Annex appended to this ruling in those cases where the law requires supplementation of evidence in this (abridged) ruling - and is of the opinion that the charges under count 1B and count 3 of the indictment have been proven lawfully and beyond a reasonable doubt, on the proviso that:

1B.

in the period from 1 May 2005 up to and including 3 April 2007 in the Netherlands, he

- housed this [Woman 23] by coercion and violence and an other act and by threat of violence and by misuse of authority arising from the actual state of affairs, with the purpose of exploiting this [Woman 23];

and

- induced [Woman 23] to make herself available for performing labour and/or services by coercion and violence and other acts and by threat of violence and by misuse of authority arising from the actual state of affairs

and

- profited with intent from the exploitation of [Woman 23];

and

- induced this [Woman 23] to provide benefits to him, the Defendant, by coercion and violence and other acts and by threat of violence and by misuse of authority arising from the actual state of affairs, from the proceeds of the sexual acts of said [Woman 23] with a third

person;

since he, the Defendant, has

- entered into a love affair with said [Woman 23] and/or
- allowed said [Woman 23] to work as a prostitute and/or
- induced said [Woman 23] to work in the prostitution for long hours at a stretch and/or
- kept an eye on said [Woman 23] during the performance of her work as a prostitute or has an eye kept on her and/or
- induced said [Woman 23] to hand over and/or pay (a large part of) her earnings from prostitution to him, the Defendant, and/or
- threatened said [Woman 23] with a weapon or firearm and/or
- mistreated said [Woman 23] and/or
- monitored said [Woman 23] (continually).

3.

in the period of January 2002 up to and including 7 April 2007 in the Netherlands, he took part in an organisation that comprised Defendant and, among others, one or more of the following persons [Defendant 1] and [Defendant 2] and [Defendant 3] and [Defendant 6] and/or one or more other persons,

- which organisation had the commission of serious offences as its object, namely (in each case) committing trafficking in human beings, as referred to in Article 250a of the Criminal Code (old) and/or Article 273a of the Criminal Code (old) and/or Article 273f of the Criminal Code, which trafficking in human beings comprised, among other things, the sexual exploitation of women (prostitutes);
- (aggravated) assault, as referred to in Article 300 and/or 302 of the Criminal Code, whereby this aggravated assault comprised, among other things, hitting and/or punching and/or kicking of (several) persons
- acting in contravention of Article 26(1) of the Weapons and Ammunition Act, made punishable under Article 55(1) of the Weapons and Ammunition Act (including possessing firearms and/or stabbing weapons);
- threatening against the life/threatening with aggravated assault as referred to in Article 285 of the Criminal Code (including threatening prostitutes and/or clients of prostitutes);
- extortion as referred to in Article 317 of the Criminal Code (including tricking prostitutes out of their money).

The facts and circumstances listed in this evidence provide the reasons for this ruling, whereby the content of that evidence has only be used as evidence for the charge on the indictment to which this content refers in particular.

The Court is of the opinion that the charges under count 1B and count 3 of the indictment that are additional or different have not been proven lawfully and beyond a reasonable doubt, so that the Defendant should be acquitted of these.

The proven facts constitute:

re count 1B the offence in each case:

'Trafficking in human beings',
made punishable in each case under Article 273a (old) and Article 273f of the Criminal Code;

and re count 3 the offence:

'Membership of an organisation with the commission of criminal offences as object';
made punishable under Article 140 of the Criminal Code;

The Defendant is punishable, since no circumstance has been shown that would exclude punishability.

The Public Prosecutor has demanded that the Defendant be sentenced to a custodial sentence for a term of five years for the offences under counts 1A, 1B, 2 and 3 of the indictment, with deduction of the time spent in pre-trial detention.

The Court considers with respect to the punishment that, guided by the nature of the offences, the circumstances in which they were committed and the personality of the Defendant, as evidenced by various matters during the examination in court, it would be appropriate to impose a punishment on the Defendant, as will be determined hereinafter, by which the following was taken into consideration.

The Defendant was a member of a criminal organisation during a number of years, which organisation had as its object, among others, the exploitation of women in the context of prostitution. The organisation was characterised by its ruthless and violent practices.

Through the use of serious and crude violence or the threat of this, the Defendant and his co-perpetrators forced the women to work for them in the prostitution and to continue working for them subsequently.

In a number of cases, the women were made dependent on the Defendant or his co-perpetrators so that there was no other alternative open to them than to work as a prostitute. The Defendant and the co-perpetrators have crudely abused the vulnerable, isolated and dependent position in which these women found themselves.

This was one of the reasons why the women as prostitutes were not able to freely choose and decide independently as articulate prostitutes in the Netherlands are well able to do.

The Defendant and his co-perpetrators called the shots.

They provided the women with accommodation, determined where, when and for how long they had to work, they partly took care of the rooms, the transport of the women to and from the workplaces and they took care that the women were monitored when working. The money that the women earned from their work in the prostitution had to be handed over almost entirely to the Defendant and his co-perpetrators.

The case file is bursting with violence and intimidations.

Work was made almost impossible for other prostitutes who worked independently or who worked for another pimp, or they had to pay considerable sums every week to the Defendant and/or the perpetrators, after which they were tolerated by the group of the Defendant and/or

his co-perpetrators in the area where they laid down the law.

A number dared to report matters to the police at the beginning, others only after it had been made known that the members of the group had been arrested. Later, various reports to the police were withdrawn. Witnesses have also stated before the examining magistrate that their earlier statements were not entirely in line with the truth.

If one also considers that there was no hesitation on the part of the defendants to utter threats - not only the threat to blow up the dwelling of the family of the woman reporting [Woman 03] with explosives but also threatening to murder this same woman if she were not to withdraw her reporting to the police - then this presents a striking picture of the practices of the group of which the Defendant was a member.

For a long time, the Defendant and his co-perpetrators have been laying down the law in a violent manner in the world of prostitution and in the Wallen red-light district in Amsterdam. The Court is aware of the fact that different rules and standards possibly apply in this world from outside it. The way in which the Defendant and his co-perpetrators have laid down, maintained and imposed their rules and standards on others is unacceptable and objectionable.

Keeping women in prostitution against their will and exploiting these women financially is not only very serious, it also shows that the Defendant has no ounce of respect for the physical and mental integrity and right of self-determination of these women. The women have been reduced by the Defendant and co-perpetrators to individuals with no will of their own, who could be used to earn large sums of money.

The Defendant had [Woman 23] work for him as a prostitute and obtained financial benefit from this, while this [Woman 23] had previously been a victim of trafficking in human beings.

The Defendant, who has himself been previously sentenced to a considerable prison sentence for trafficking in human beings has not been deterred by this from committing such acts once more.

With respect the punishment to be imposed, the Court has in general considered the following.

It may be regarded as self-evident that only a non-suspended custodial sentence can be considered for dealing with acts of this nature. The Court has examined rulings by other courts of justice in this country, and has sought attunement with facts and circumstances similar to these in this case file.

After considering all these matters, the Court has taken a non-suspended prison sentence of eight to ten months for each victim as its starting point in this case, which minimum punishment will be increased by the Court if there has been serious violence with regard to that victim.

In addition, the Court has taken into account the duration of the period in which the acts took place as a circumstance that would work in aggravation or mitigation of the punishment. The Court has also considered whether there was a question of rape, forced breast enlargement or abortion as factors aggravating the sentence, the role of Defendant in the whole and possible reoffending.

In addition, the Court took a custodial sentence of 12 months as its point of departure for membership of the criminal organisation, and for those who occupied a leading position a custodial sentence of 24 months.

In concrete terms, this means for the Defendant that there is a judicial finding of facts with respect to one woman only, but over a longer period of time, and accompanied by threatening with a firearm.

Furthermore, it is to the detriment of the Defendant that there is also recidivism with regard to trafficking in human beings.

All these considerations have induced the Court to impose the punishment set out hereinafter.

The Court is aware that this punishment implies that the Defendant will be deprived of his liberty a second time, but no facts or circumstances are known to the Court which would make this particularly problematic for the Defendant.

The punishment set out hereinafter is based on Articles 10, 27 and 57 of the Criminal Code, apart from the articles already referred to above.

GIVING JUDGEMENT:

Declares unproven the counts 1A and 2 of the indictment against the Defendant and acquits the Defendant of these.

Declares proven that the Defendant committed the counts 1B and 3 of the indictment as described above.

Understands that the facts declared proven constitute the criminal offences as set out above.

Declares the Defendant punishable.

Sentences the Defendant in this matter to a custodial sentence for the term of two years and two months.

Orders that the time that the Accused has spent on remand and in pre-trial detention before the execution of this ruling be deducted in full from the execution of the imposed custodial sentence.

Declares that the charges under counts 1B and 3 of the indictment that are additional or different to those accepted as proven heretofore to be not proven and acquits the Defendant of these.

Lifts the - suspended - order for pre-trial detention.