

3. Case concerning mentally handicapped person in Zeist
First instance

LJN: BD7426, Utrecht District Court, 16/600243-08 Print judgement

Date of judgement: 17 June 2008

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Section: Criminal

Kind of proceedings: First instance - three-judge section

Indication of content: Trafficking in human beings - performing labour and services
Explanation of concept of 'exploitation'. Ex officio imposition of a
compensation measure.

Ruling

UTRECHT DISTRICT COURT
Criminal section

Public prosecutor's office no.: 16/600243-08

Date of ruling: 17 June 2008

Judgment of the three-judge section for criminal cases in the defended action in the case
against:

[Defendant],
born on [date of birth] 1974 in [place of birth] ,
residing at [address], [town].
Counsel: N. van Schaik, LL.M.

This judgement was given as a result of the hearing in court on 3 June 2008.

The indictment

The Defendant, after two amendments to the indictment, is accused of

Principal charge

having, (on one or more occasions) in or around the period from 1 January 2006 up to and
including 25 February 2008 in Zeist, in any event in the court district of Utrecht, recruited,
and/or transported and/or received another person, called [Person Reporting 1] by force and/or
violence and/or one or more other act or acts and/or threat of violence and/or of one or more
other act or acts, or by the misuse of authority arising from the actual state of affairs and/or
abuse of the vulnerable position of this person [Person Reporting 1], (in each case) with the
purpose of exploiting this [Person Reporting 1],

and/or forced this [Person Reporting 1] or induced him to make himself available for

performing labour or services, by force and/or violence and/or one or more other act or acts and/or threat of violence and/or of one or more other act or acts, or by the misuse of authority arising from the actual state of affairs and/or abuse of the vulnerable position of this [Person Reporting 1].

this force and/or violence and/or one or more other act or acts and/or threat of violence and/or one or more other act or acts, or that misuse (and/or abuse) (in each case) consisting of the Defendant:

- the Defendant knowing that this [Person Reporting 1] (is a young man who) finds it difficult to say 'no' (to him, the Defendant) and/or knowing that he, the Defendant, could get this [the Person Reporting 1] to do things for him and/or
- knowing that this [Person Reporting 1] worked in sheltered employment at Sociale Werkvoorziening Zeist and/or he, the Defendant, presuming that this [Person Reporting 1] was not quite 100% and/or
- this [Person Reporting 1] had a developmental delay and/or a (slight) handicap/intellectual disability and/or had the mental capacity of a ten-year-old and /or
- having said the following words to this [Person Reporting 1], repeatedly, in any event once, possibly in a threatening manner: 'if you don't do it right this time, I'll beat you black and blue' and/or (by text message) 'you think you've got rid of me now you're making it worse now, hey'
- and/or 'give you the chance to be done with it but you must come [Person Reporting 1] or otherwise I'll have to take steps'
- and/or
- 'even if I have to kick open your door tonight, nutter'
- and/or 'see you later and I'm not a nice person, nutcase, you'll find out when you get out of work';
- and/or 'mind, if you don't come I could earn some money and if don't come I'll have nothing and then I'll really kill you it'll be own fault';
- and/or '[Person Reporting 1] I'll see you at 16.45 if not you'll be in right trouble with me it's up to you'
- and/or 'there'll be hell to pay when I get hold of you I'll smash your teeth in and you'll pay on the spot you'll pay me in any case'
- and/or 'if you come to the scramble tomorrow I'd forgive you I'll get you if you don't come 10 hr you are here now'
- and/or 'if you don't come, I'll be waiting for you'
- and/or (written on a letter/envelop) 'pay soon between 23/25 hey and my lock back otherwise I'll take steps make sure JK'; in any event (in each case) uttered words of a similar nature and/or meaning, and/or
- having hit/punched this [Person Reporting 1] (in each case) forcefully, on several occasions, in any event on one occasion, on the leg, in any event on the body, and/or
- having hit/punched this [Person Reporting 1] forcefully in the face, and/or
- having pressed/held a burning cigarette against the hand, in any event against the body of this [Person Reporting] on several occasions, in any event on one occasion, and/or
- having said to this [Person Reporting 1] that he must finish a joint, inhaling fully and/or that this [Person Reporting 1] must otherwise go and buy some fresh grass for him, and/or
- going to the workplace of this [Person Reporting 1] on several occasions, in any event on one occasion, to see whether this [Person Reporting 1] was there, and/or
- on several occasions, in any event on one occasion, having made this [Person Reporting 1]

make breakfast and/or made him make coffee and/or (in each case) said at the same time that if this [Person Reporting 1] did not do it properly he must pay money, and/or having broke into the shed of this [Person Reporting 1] (and/or as a result of which:)

- this [Person Reporting 1] buttered bread for him, the Defendant, on several occasions, in any event on one occasion and/or
- this [Person Reporting 1] made coffee for him, the Defendant, on several occasions, in any event on one occasion and/or
- this [Person Reporting 1] made breakfast for him, the Defendant, on several occasions, in any event on one occasion and/or
- this [Person Reporting 1] did general and domestic chores for him, the Defendant, on several occasions, in any event on one occasion (such as (among others) cleaning and/or vacuuming and/or washing and/or cleaning the windows of his, the Defendant's flat) and/or
- this [Person Reporting 1] paid money to him, the Defendant, on several occasions, in any event on one occasion, if said work was not carried out properly in the opinion of the Defendant and/or
- this [Person Reporting 1], on several occasions, in any event on one occasion, ran errands for him, the Defendant, and/or brought goods (without the Defendant paying this [Person Reporting 1] for them or repaying him) and/or
- this [Person Reporting 1] bought/fetched grass for him, the Defendant, on several occasions, in any event on one occasion (as punishment for 25/15 Euros) (and [Person Reporting 1] paid for this grass himself) and/or
- this Person Reporting 1] helped him, the Defendant, (during a period of about a month and a half) at his, the Defendant's, work at the parcel service at [?] on several occasions, in any event on one occasion, and/or delivered parcels for him, the Defendant,

Alternative charge

having, on one or more occasions in or around the period from 1 January 2006 up to and including 25 February 2008 in Zeist, in any event in the court district of Utrecht, or in any event (elsewhere) in the Netherlands, threatened the life of [Person Reporting 1], at any rate with aggravated assault, since the Defendant directed (threatening) words at this [Person Reporting 1] on several occasions, in any event on one occasion: 'if you don't do it right now I'll beat you black and blue' and/or (as text message) 'see you later and I'm not a nice person nutcase, you'll find out after work' and/or 'if you don't come I'll wait for you' and/or (written on a letter / envelope) 'pay soon between 23/25 hey and my lock back otherwise I'll take steps make sure JK', at any rate (in each case) uttered words of a similar nature and/or meaning;

and/or

having, on one or more occasions in or around the period from 1 January 2006 up to and including 25 February 2008 in Zeist, in any event in the court district of Utrecht, in any event (elsewhere) in the Netherlands, (several times) punched/hit a person, namely [Person Reporting 1], in the face and/or on the leg, in any event on the body as part of a deliberate assault, and pressed/held a burning cigarette against the hand of this person [Person Reporting 1] on several occasions, in any event on one occasion so that this [Person Reporting 1] was injured and/or experienced pain;

Judicial finding of fact

The determined facts and circumstances

As a result of the reporting of the matter to the police, the Defendant eventually admitted, during questioning by the police, that he had gone far too far with the Person Reporting. He knew that the Person Reporting could not refuse and he misused this personality trait. The Defendant admitted that he was guilty of threatening and mistreatment of the Person Reporting.

During the court hearing, the Defendant retracted parts of this statement. The Defendant denied hitting and threatening the Person Reporting more than once, apart from in the text messages that the Defendant sent to the Person Reporting at the end of November and the beginning of December. The police had recorded his statement incorrectly. The Court does not share the view of the Defendant in this. The minutes of his appearance before the examining magistrate indicate that the Defendant largely confirmed his last statement to the police in the presence of the examining magistrate. That these minutes are not a correct reflection of his statement has not been put forward by the Defendant and is also not probable. In its determination of the facts and circumstances of importance in the judgement of this case, the Court therefore takes the last statement by the Defendant to the police as its point of departure, which statement substantiates numerous sections of the report made to the police. On the basis of the report made to the police and this statement by the Defendant, the Court has determined the following facts and circumstances which are important in the judgement of this case.

The Person Reporting and the Defendant had known each other for about two years when the report was made to the police.

They both had their own flat in the same apartment block in [place].

The Person Reporting has a limited mental capacity and the mental age of a ten-year-old, according to a witness [Witness 1]. During the day, he worked in sheltered employment at the Sociale Werkvoorziening Zeist in Zeist. Initially, the Defendant and the Person Reporting used to watch an occasional film or DVD together. The Person Reporting also went to the motor scrambles with the Defendant during the weekends and helped him with his bike. According to the Defendant, they were like friends together.

As time went by, their meetings became more frequent; in the past year they saw each other every day. The Person Reporting ate at the home of the Defendant every day and the Defendant always cooked the meal.

The Person Reporting also spent the evening at the home of the Defendant, doing the washing up and various other domestic chores like vacuuming, at the request of the Defendant. The Person Reporting worked at the Sociale Werkvoorziening Zeist workplace during the day but had to do some shopping after work before going to the home of the Defendant. The Person Reporting usually paid for this shopping himself. The Defendant threatened him on several occasions that he would hit him if he did not do these chores properly.

The Defendant started work at [?] in September 2007 as courier. He found the work very hard, and the Person Reporting started to help him after work, at the request of the Defendant. This made things easier for the Defendant. The Person Reporting helped the Defendant for about six weeks and the Defendant gave him one payment of €50 for this. For part of this period, the Person Reporting had reported sick at his work so that he could help all day. During this work, the Defendant yelled orders at the Person Reporting and started to curse and swear if the Person Reporting was doing things wrongly. The Defendant also hit the Person Reporting in the face in this connection, and this was witnessed and reported to the police by a witness (an off-duty policeman).

From the time that the Defendant started working for [?], the Person Reporting also had to go to the home of the Defendant early in the morning before he went to his own work and make a

packed lunch and coffee for him. It also occurred that the Person Reporting had to pay the Defendant €50 if he had made the wrong coffee. If the Person Reporting did something wrong in the eyes of the Defendant, he had to go and fetch €15's worth of grass for the Defendant, as punishment. He had to pay for this from his own pocket. This happened about fifteen times. In addition, the Defendant regularly punched the Person Reporting's arm and leg if he did something the wrong way or if he was dozing on the sofa. The Defendant's demands exhausted the Person Reporting and he often fell asleep in the chair in the evening. The Defendant did not tolerate this and he twice held a cigarette against the hand of the Person Reporting to wake him up.

In the last two months (October and November 2007) the Person Reporting had to pay the Defendant €150 for food and he actually paid this one time.

The Defendant stated that he could sometimes see when the Person Reporting did not like something from the look on his face. Usually he said nothing. According to the Defendant, the problems started because the Person Reporting did not say what he was thinking or feeling. The Person Reporting was not able to refuse requests. He did everything the Defendant asked him to do. The Defendant has stated that he took advantage of this because it made life easier for him if the Person Reporting did jobs for him. If the Person Reporting refused to do something the first time, the Defendant asked him again but then said that he had to do it.

Discussion of Defence

Counsel for the Defence had presented in defence - put succinctly – that the Defendant should be acquitted on the principal charge because a rational interpretation of the law implies that the complex of facts in the present case cannot be defined as criminal exploitation. In addition, Counsel holds that acquittal must be inevitable because of the absence of the required purpose of exploitation.

Is there a question of exploitation?

The Court considers the following with regard to the first part of the defence.

In deciding on the question whether the facts and circumstances as determined above can be defined as human trafficking, the Court must first determine whether exploitation has taken place as referred to in Article 273f of the Dutch Criminal Code (*Wetboek van Strafrecht*).

Unlike most cases where the indictment states human trafficking, a situation of sexual exploitation is not a factor in the present case. The indictment refers to performing labour and services.

Paragraph 2 of Article 273f of the Criminal Code describes the concept of exploitation, in so far as of relevance, in the following terms: exploitation comprises at least 'forced or compulsory labour or services'. The definition of the concept of exploitation in criminal law in Article 273f of the Criminal Code is narrower than that of the concept in common parlance. The answer to the question of the point where objectionable working conditions turn into exploitation that can be classified under Article 273f of the Criminal Code has been left by the legislator to the courts to some extent.

In terms of legislative history, it is apparent that interpretation of Article 273f of the Criminal Code is linked to the protection of human rights. Counsel pointed out, in his plea, the connection between - specifically – the definition of exploitation given in paragraph 2 and in Article 4 of the ECHR, which obliges the treaty states to provide effective protection from slavery, servitude and forced or compulsory labour.

The Court agrees with Counsel in his conclusion that it is only a question of exploitation in the sense of human trafficking if this is accompanied by infringement of fundamental rights of human dignity, physical integrity and personal freedom.

In order to determine whether there has been a situation of criminal exploitation in this case, the Court will address the following points in question successively:

1. were labour or services involved;
2. was there a possible situation of exploitation;
3. was the exploitation such that human rights were violated.

Re 1.

In the view of the above facts and circumstances determined by the Court, the Court deems that it has been proven that the Person Reporting performed labour or services for the Defendant, namely - put succinctly - domestic chores, buying grass and delivering parcels, without a reasonable payment in return.

Re 2.

In her fifth report, the Dutch National Rapporteur on Trafficking in Human Beings established that, in addition to the constant factor of lack of freedom, a criterion for exploitation must also include at least one or more of the indicators of forced or compulsory labour or services, as set out in the report. In this connection the coercion indicator is important, which includes physical violence or threat of it, misuse of authority arising from the actual state of affairs or abuse of a vulnerable position. The Court adopts the criterion of the Dutch National Rapporteur to distinguish whether there has been exploitation in the present case.

The Court postulates that the Person Reporting was in a vulnerable position in relation to the Defendant because of his limited mental capacity. According to one witness [Witness 1], the Person Reporting has the mental age of a ten-year-old. Although he was living by himself, he was still receiving support from Stichting Abrona. His social worker at Stichting Abrona, witness [Witness 2] stated that the Person Reporting is a very vulnerable person: he is unsure and very easily influenced.

According to the statements of the Defendant, he was aware of the Person Reporting's limited mental capacity. He knew that the Person Reporting worked in sheltered employment and, after some time, he discovered he could get him to do anything he wanted: the Person Reporting never said 'No'.

The actual state of affairs of the Person Reporting being of limited mental capacity and being easily influenced put him not only in a vulnerable position but also put the Defendant in a position of authority over him.

The Defendant has misused this authority and abused the vulnerable position of the Person Reporting, described above, by having him work for him, without giving him reasonable payment in return.

Furthermore, the Defendant threatened him on several occasions with hitting him if he did not do certain jobs properly. The Person Reporting has said in his statements that these threats made him very frightened and caused him to lose his self-confidence. That the threats were to be taken seriously by the Person Reporting is shown by the fact that the Defendant actually mistreated him while delivering the parcel post.

The Person Reporting, in view of his limitations, could not reasonably avoid the influence of the Defendant and therefore withdraw from the situation. He was therefore in an unfree situation and was forced to do the work the Defendant required of him.

In view of the above, the Court comes to the final conclusion that – now that the criterion of exploitation has been fulfilled – a situation of exploitation has been established.

Re 3.

It can be concluded that the Person Reporting had to stay in Defendant's house both before and after his work. In fact, he only went to his own home to sleep and had no time for his own housekeeping. He felt – as he said in his statement – as if his life was entirely in the hands of the Defendant and he had lost his own sense of self-worth completely. From this, it can be deduced that the exploitation of the Person Reporting was serious to such an extent that it can be considered a matter of violation of fundamental human rights such as human dignity and personal freedom.

In the light of the excessive situation now established, the Court concludes that the facts and circumstances as determined in this case can be defined as exploitation in the sense of human trafficking.

This argument of the defence is therefore rejected.

Was there the purpose of exploitation?

A second argument put forward by Counsel as defence is that the Defendant had no purpose of exploitation.

This defence is only important in assessing the first part of the principal charge, namely that the Defendant recruited, transported and/or received the Person Reporting for the purpose of exploitation.

The Court is of the opinion that the facts and circumstances it has determined justify the conclusion that the Defendant received the young person into his home in order to have him work for him. It is true that the Person Reporting still slept at his own home but he had to spend the rest of his free time with the Defendant. The Defendant also transported the Person Reporting with the aim of having him work for him in the sense that he had to deliver parcels for the Defendant. All these matters imply that the Defendant acted with a purpose and therefore the Court deems that the purpose of exploitation has been proven.

This defence is also rejected for this reason.

The Court deems that it has been proven lawfully and beyond a reasonable doubt that the Defendant has committed the offence in the principal charge in such a manner that

Principal charge

In the period of 1 January 2007 up to and including 25 February 2008 in the court district of Utrecht, he transported and received another person, called [the Person Reporting 1] by misuse of authority arising from the actual state of affairs and/or by abuse of a vulnerable position of this [Person Reporting 1], (in each case) with the purpose of exploitation of this [the Person Reporting 1].

and forced this [Person Reporting 1] or induced him to make himself available for performing labour or services, by violence or threat of violence or by the misuse of authority arising from the actual state of affairs and/or the vulnerable position of this [Person Reporting 1], which violence or which threat of violence or the misuse (in each case) consisted of him, the Defendant,

- knowing that this [Person Reporting 1] (is a young man who) finds it difficult to say 'no' (to him, the Defendant) and knowing that he, the Defendant, could get this [Person Reporting 1] to do things for him and

- knowing that this [the Person Reporting 1] works or worked for Sociale Werkvoorziening Zeist knowing, therefore, that this [Person Reporting 1] has a (slight) handicap/mental

incapacity

- having said the following words to this [Person Reporting 1], in a threatening manner: 'if you don't do it right this time, I'll beat you black and blue' and
 - having on several occasions hit/punched this [Person Reporting 1] forcefully on the leg or the body, and
 - having hit/punched this [Person Reporting 1] forcefully in the face, and
 - having on several occasions held/pressed a burning cigarette to the hand of this [Person Reporting 1],
- as a result of which:
- this [Person Reporting 1] buttered bread for him, the Defendant, on several occasions and
 - this [Person Reporting 1] made coffee for him, the Defendant on several occasions and
 - this [Person Reporting 1] performed general and domestic tasks for him, the Defendant, on several occasions, at any rate on one occasion (such as, among others, cleaning and/or vacuuming and/or washing and/or cleaning the windows of his, (the Defendant's,) flat) and
 - this [Person Reporting 1] ran errands or brought goods for him, the Defendant, on several occasions and
 - this [Person Reporting 1] bought /fetched grass for him, the Defendant, on several occasions, (as punishment for 25/15 Euros) and
 - this [Person Reporting 1] helped him, the Defendant, at his work at the parcel service at [?] on several occasions and delivered parcels for him, the Defendant.

Any language or writing errors in that part of the indictment that has now been declared proven have been corrected in this judicial finding of fact. This has not been prejudicial to Defendant's defence.

Other or further parts of the principal charge have not been proven. The Defendant should be acquitted on these charges, which means that the Defendant is acquitted on, among others, the following, put in succinct terms: threatening the Person Reporting by text message and letter, forcing the Person Reporting to smoke a joint, keeping watch at the workplace of the Person Reporting and breaking into the shed of the Person Reporting.

Although the Defendant has largely admitted that he performed the above acts, these acts cannot lead to - stated succinctly - a judicial finding of fact on the transport and receipt with the purpose of exploitation and the forced performance of labour and services in the indictment. According to the documentation, the threats by text message and letter, the keeping watch at the workplace and breaking into the shed did in fact take place after the Person Reporting had reported the matter to the police and had gone into hiding and therefore did not contribute to the performance of labour and services for the Defendant by the Person Reporting. Neither has being forced to smoke a joint led to the Person Reporting being forced to perform labour.

Furthermore, the Court acquits the Defendant on having the Person Reporting pay him money and not paying this back to the Person Reporting, because these facts do not pertain to the exploitation in the indictment and in the proven facts but rather to wilfully profiting from the exploitation of another person (a criminal offence under Article 273f(1)(vi) of the Criminal Code). Profiting as such is not a part of the indictment.

The Court bases its conviction that the Defendant has committed the acts declared proven on the facts and circumstances as contained in the evidence.

The punishability of the offence

No circumstance has proved plausible that would exclude punishability for the proven facts under the principal charge, so that this is punishable.

The proven facts in the principal charge constitute the following criminal offence.

human trafficking, committed on several occasions

The punishability of the Defendant

No circumstance has proved plausible that would exclude the punishability of the Defendant. The Defendant is therefore liable to punishment.

Motivation for the sanctions to be imposed

The Court has taken into account the seriousness of the offence, the circumstances in which it was committed and the personality of the Defendant in its determination of the sentences to be imposed.

The Court has taken the following into particular consideration with regard to the seriousness of the offence and the circumstances in which it was committed.

The Defendant had the Person Reporting perform acts for a period of more than a year by the use or threat of violence, while he knew that the Person Reporting had a mental incapacity so that he was not able to offer resistance to him, the Defendant. The conduct of the Defendant can be qualified as human trafficking. Human trafficking is a very serious offence, for which a nonsuspended custodial sentence of two to four years can be imposed. In many cases, lover boys are usually involved, who also exploit their victims sexually. In the present case, there is no question of sexual exploitation, and the physical integrity of the Person Reporting has been violated to a much smaller extent. The Defendant has, however, seriously impinged on the feeling of fundamental security of the Person Reporting. The Person Reporting has declared that he is afraid to go out onto the street and to go to work by himself. He no longer dared to go to his own home and has since moved house. The Person Reporting has lost all sense of his own self-worth and was completely dominated by the Defendant. The Court attributes a great deal of blame to the Defendant for this, the more so because the victim has a mental incapacity and the Defendant knew that it was difficult for the Person Reporting to refuse things and that he worked in sheltered employment. When the Defendant was experiencing financial problems and was having difficulty carrying out his own work at the parcel service at [?], he misused the friendship that had developed between the Person Reporting and himself to have the Person Reporting carry out work for him, the Defendant. The Defendant did not shy away from the use of threats and violence.

With regard to the personality of the Defendant, the Court took particular consideration of:

- the contents extract from a judicial record dated 27 February 2008 concerning the Defendant, which show that the Defendant has previous convictions, but the most recent one dates back to 2001 and was, moreover, imposed for a different kind of offence;
- a social inquiry report on the Defendant by the Dutch Probation Service from 2 June 2008, drawn up by J.M.W. Liebrand, probation officer;
- a psychological report concerning the Defendant dated 15 May 2008 by Dr M.F. Raven,

including – stated succinctly – that the Defendant has a pathological mental disorder in the sense of a cannabis dependency. There is also an inadequate development of his mental capacity in the sense of an anti-social personality disorder and mental retardation. The Defendant must be regarded as being capable of appreciating the unlawfulness of the offences charged in the indictment, despite his own mental incapacity, but he is less capable than an average normal person of exercising his will freely, in accordance with such an appreciation. It is recommended that the Defendant be regarded as less than fully accountable for the charges in the indictment, if declared proven. The limitations arising from his antisocial personality disorder, especially the impaired functioning of conscience, impulsiveness and the inability to plan ahead, in combination with the low intelligence, but also with the presence of emotional insensitivity under the influence of cannabis, increase the chance of offences being committed. An aggression regulation treatment is indicated, which can take place in a group treatment programme for persons of limited mental capacity at the De Waag forensic outpatient clinic in Utrecht. It is advised that the Defendant is given a partly suspended sentence whereby compulsory contact with the Probation Service is imposed with an additional special condition that the Defendant undergoes treatment at De Waag and is registered with the Jellinek Clinic for cannabis dependency. The Court adopts the conclusion of this expert with regard to accountability and accepts it as its own.

During the hearing, the Public Prosecutor petitioned that the Defendant be convicted, for the principal charge in the indictment, to, put succinctly:

- a nonsuspended custodial sentence for the period already spent in pre-trial detention at the time of pronouncement of the judgement as well as a suspended prison sentence of six months, with an operational period of two years and with the following special conditions:
 - supervision by the Probation Service, also if this includes treatment at De Waag or Jellinek Clinic
 - payment of the amount of €1500 to the [Person Reporting 1] as an advance for the harm incurred by him;
- community service of 200 hours.

The Court deems, all things considered, a partly suspended custodial sentence, the duration of which to be stated hereinafter, and community service, to be defined hereinafter, to be appropriate and fitting.

This means that a punishment will be imposed that is lower than that demanded by the Public Prosecutor, since the Court has taken slightly more account of the personal circumstances of the Defendant.

Moreover, the Court does not deem it appropriate that the Defendant be ordered to pay damages as a special condition.

Restitution of seized articles:

With regard to a seized article, namely a white mobile telephone, Sony Ericsson, type W300I, the Court orders this to be returned to the Defendant, from whom it was seized.

Imposition of order to pay damages

The Person Reporting has not joined the criminal proceedings as injured party with a claim for compensation. The Court deems that there are ex officio grounds for imposing an order to

pay damages, as an advance on the immaterial injury incurred by the Person Reporting [Person Reporting 1], since the Person Reporting has stated to the police that the Defendant's threats have made him very frightened and he has lost his last shred of self-confidence. He has lost all sense of his own self-esteem and his life was completely dominated by the Defendant. The Person Reporting has said that he was put under so much psychological pressure and his life was so greatly influenced by the Defendant that he wanted to end his own life. One witness [Witness 2] has indicated that the Person Reporting is a very vulnerable person whose fundamental sense of security has been greatly damaged by the Defendant's conduct. It has become certain that the Person Reporting has incurred injury directly through the proven facts in the principal charge. Moreover, the Defendant is liable under civil law for the injury incurred in the criminal offence. The immaterial injury has been set equitably at €500.

Applicable sections of law

The sentences and order have been based on Articles 9, 14a, 14b, 14c, 14d, 22c, 22d, 36f, 57 and 273f of the Dutch Criminal Code.

RULING

The Court delivers the following judgement:

Declares proven that the Defendant has committed the offence in the principal charge of the indictment, as stated heretofore.

Declares not proven that Defendant has committed further or other charges in the principal charge in the indictment than those accepted as proven heretofore and acquits the Defendant on these charges.

Declares that the proven facts are punishable and constitute the criminal offence set out above.

Declares that the Defendant is punishable for this.

Sentences the Defendant to a CUSTODIAL SENTENCE for the period of seven months.

Determines that part of this custodial sentence, four months in duration, will not be imposed unless this imposition is ordered at a later date.

Sets an operational period of two years for this part.

States that execution of this sentence can be ordered if:

- the Defendant is guilty of a criminal offence before the end of the operational period;
- the Defendant does not comply with one or more of the special conditions set out below:
 - that the Defendant follows the instructions from or on behalf of the Dutch Probation Service during the operational period of the suspended sentence for as long as the Probation Service regard this as necessary, which above organisation is instructed to help and support the Defendant in his complying with the conditions, also if this includes treatment at De Waag or registering with the Jellinek Clinic.
 - that the Defendant on no account seeks contact with [Person Reporting 1] on his own initiative.

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

In addition, imposes COMMUNITY SERVICE on the Defendant, this service to consist of: unpaid work for the term of 120 hours, to be replaced by detention for a term of 60 days if the Defendant fails to carry out this punishment properly.

Orders the return of a white mobile telephone, Sony Ericsson, type W300I, to the Defendant.

Imposes the obligation to pay €500 (in words: FIVE HUNDRED EUROS) to the State for the benefit of [Person Reporting 1] on the Defendant; should payment in full and full recovery not take place this is to be replaced by detention for a term of 10 days, on the understanding that the application of alternative detention does not waive the obligation imposed above.

If and to the extent that the Defendant has paid this sum to the State for the benefit of [Person Reporting 1], then the obligation for the Defendant to pay the above sum to [Person Reporting 1] lapses. Conversely, if and to the extent that the Defendant has paid this sum to the [Person Reporting 1], then the obligation to pay the above sum to the State lapses.