

**Fighting impunity of transnational
child sex offenders.**

**What is the impact of the Belgian
extraterritorial legislation?**



ECPAT BELGIUM

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Introduction

Twenty years ago, on 13 April 1995, Belgium passed a law which facilitated the prosecution of transnational child sex offenders. This legislation was intended to fight against the near total impunity that “child sex tourists” often enjoyed. Indeed, they were rarely prosecuted in the destination country, and even less on their return to their homeland.

Under this law, Belgium is given the competency to prosecute anyone suspected of sexual abuse against children, irrespective of the nationality of the victim and/or the offender. The scope of extraterritorial jurisdiction, therefore, becomes quasi universal: anyone, and not just national citizens alone, can be prosecuted for sexual abuse under Belgian law. There is, however, one limitation : the perpetrator must be found on Belgian soil when criminal proceedings are initiated.

This tool reflects Belgium’s willingness to take strong action in the protection of children from sexual exploitation in travel and tourism. Nonetheless, ECPAT Belgium is frequently asked about the effectiveness of this law. What is its real impact in the fight against impunity? The 20th anniversary of the text, and Belgium’s reaffirmation of its commitment to eradicate sexual exploitation of children by 2025, is a timely moment to reconsider this question¹.

The objective of this case study is to provide a better understanding of this law and question its impact. Should this tool be adapted in a world where the latest technologies give a new face to commercial sexual exploitation of children? Beyond its immediate impact on the prosecution of child sex offenders, ECPAT Belgium also seeks to broaden the discussion to (re) place children’s rights at the heart of this approach. How effective are the measures taken to prevent recidivism? In short, can we ignore “related” measures in this law, namely awareness and prevention?

This study is divided into three main parts: first, we will retrace the history of the legislation and outline its main characteristics with the aim of providing a better understanding of the scope and key issues of concern. The investigation will then focus on offenders, victims, procedure (collection of evidence, civil and criminal penalties, etc.) as well as international cooperation. Finally, awareness measures and prevention are essential components in order to assess the impact of the law as a whole.

To conclude, based on the successes and the challenges linked to the implementation of the law, recommendations will be made to decision makers.

¹ Belgium adopted on 25 September 2015 Sustainable Development Goals, namely 17 global objectives to end poverty, fight against inequality and injustice, and to address climate change by 2030. Objective 16.2. explicitly states: "end child abuse, exploitation and trafficking and all forms of violence against and torture of children" (<http://www.un.org/sustainabledevelopment/>).

Note on Terminology

Although the term "sexual abuse" involving children is broader than that of "sexual exploitation", both terms will be used interchangeably in this study.

These terms cover, among others, offences referred to in Chapter V of the Penal Code (on indecent assault and rape), Chapter VI (on debauchery and prostitution), Chapter VII (public indecency) as well as Chapter IIIter on trafficking in human beings.

Several terms need to be clarified, both regarding their definition and the usage preferred by ECPAT International².

Child: any person below the age of 18. Although the term "minor" is less precise, it will be used here as a synonym for "child".

Commercial sexual exploitation of children: using a child for sexual purposes in exchange for money, consumer goods, or any other type of favor given to a child and/or an intermediary who gains benefit from this practice. Contrary to popular belief, a child never consents to being sexually exploited, even when he reaches the age when he can have sexual intercourse (16 years old in Belgium) and when no threat or a constraint is placed on him.

Pedophilia: psychiatric disorder in which an older person experiences a primary or exclusive sexual attraction to prepubescent children. Since this term does not cover all the people that sexually exploit or abuse children, the term "child sex offender" will be used.

Child pornography : any representation, by whatever means, of a child engaging in sexually explicit conduct, real or not, or any representation showing a child's sexual organs for sexual purposes. In spite of being a legal term commonly used, many experts consider that this expression fails to encompass the seriousness of the exploitation from which the victim has suffered. Therefore, the term "child sexual abuse material" seems more appropriate.

Child prostitution: designates the use of children for sexual puposes in exchange for a remuneration or other form of consideration. This term could lead one to presume that the child is consenting to this situation. This is why we will refer to it as "exploitation of children in/through prostitution".

Sexual exploitation of children in travel and tourism: sexual exploitation of children for commercial purposes by people who travel from one place to another and when they have sexual intercourse with minors. The term "child sex tourism" is increasingly criticized since it implies that only tourists are guilty of such acts. This term also downplays the criminal nature of this exploitation, by making it appear as a "legitimate" form of tourism. As a result, the term "exploitation of children in travel and tourism" is more adequate. Likewise, the term "child sex tourist" has been disregarded where possible.

² ECPAT INTERNATIONAL, *Questions & Answers about the Commercial Sexual Exploitation of Children*, Bangkok, 2008; INTERAGENCY WORKING GROUP ON SEXUAL EXPLOITATION OF CHILDREN, *Terminology Guidelines for the protection of children from sexual exploitation and sexual abuse*, 2016.

Trafficking of children: recruitment, transportation, transfer, harbouring or receipt of a child by an adult with a view of exploiting him/her in different ways, such as prostitution, begging or child labour.

List of Abbreviations

CEOOR: Centre for Equal Opportunities and Opposition to Racism, became Federal Migration Center in 2014. In 2015, it was renamed Myria.

CR: Criminal record

ECPAT: End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes

ECRIS: European Criminal Records Information System

EUROPOL: European Police Office

FPS: Federal Public Service

INTERPOL: International Police

NGO: Non-Governmental Organisation

SIS II: Schengen Information System II

VOG: Verklaring Omtrent het Gedrag

Sources used

Statistics : a scarce commodity

Finding sources proved to be the main challenge for two reasons: the difficulties in listing the cases and the limited access to data. It can be observed, from the outset, that “there is not enough reliable data allowing us to draw an accurate image of the phenomenon [sexual exploitation of children in travel and tourism]”³. This lack of data can first be explained by the fact that a number of cases of child abuse committed abroad will never be known by the authorities. Cases of child abuse that are not officially recorded in the statistics (these are generally referred to as “the dark figure”) make it more difficult to precisely measure the extent of the phenomenon. In addition, Belgium’s extraterritorial jurisdiction to prosecute any of the offences listed in Article 10ter (henceforth Art. 10ter) of the Act of 17 April 1878 containing the Preliminary Title of the Code of Criminal Procedure is extremely wide: Art.10ter stipulates that the offender will be held liable as long as he is found on Belgian soil, irrespective of the place or the nationality of the offender and/or the victim. The wider the scope, the greater the risk of missing out on unreported crimes.

Regarding the statistics available, no database systematically tracking cases of child sexual exploitation committed abroad has been established so far. “Child sex tourism” is not explicitly referred to as one of the offences listed in the Penal Code. Allusions to it can only be found, indirectly, under indecent assault, the production of child sexual abuse material, exploitation of children in prostitution, etc. In the available databases, we looked in vain for a column entitled “child sex tourism”. And next to the already mentioned offences, there is no “committed abroad” box to tick.

Moreover, it would be more appropriate to talk about several databases, rather than just one : there are police databases keeping track of all the complaints filed - those of Justice in the event of legal proceedings being initiated – and those of Foreign Affairs which gather information on offences involving Belgian citizens abroad.

Going through police and judiciary databases turns out to be a fairly difficult task as each case must be carefully reviewed according to a number of factors : the type of offence and the location where it was committed but also the nationality of the victims and the abusers (as previously mentioned, prosecution can also be brought against non-Belgian citizens). The next step is then to analyse the case to see if it can be considered as “child sex tourism”. For instance, a French-born father who abused his Belgian son abroad and who was arrested afterwards in Belgium could be held liable under extraterritorial law but this does not fall into the definition mentioned above (see note on terminology).

Access to police and judicial statistics is therefore limited by the very nature of the database itself. Another possible solution had to be found. In connection with the works of the Bureau of the Interdepartmental Coordination Cell on Action against Trafficking in Human Beings, a questionnaire (see Annex 1) was sent to the College of Public Prosecutors by the Criminal Policy Service to see if it had

³ FALZONE, C. and RUTTEN, J., *Évaluation des lois de 1995 et 2000 en matière de mœurs ainsi que de quelques autres instruments connexes*, Brussels, 2008, p. 47.

any information regarding the use of Art. 10ter in court rulings. Among the fifteen cases received and anonymized by the Criminal Policy Service, only one case could be used in this study.

Sound quantitative data are also not available from Foreign Affairs due to privacy laws. The departement manages files in which Belgian citizens have committed sexual offences against children abroad and only has partial information on those cases. Given that some procedures are still ongoing, no information, even anonymized, can be disclosed.

Source used

Due to the difficulty of accessing data from public services, **a desk research** was undertaken, both in the existing literature and on the Internet to complete the cases already listed by ECPAT Belgium and detect new ones. Once the sample was collected, **several sources** could be used to back-up the case studies:

- Newspaper articles

Newspaper articles constitute the main source of information. ECPAT Belgium has kept records of newspaper cuttings pertaining to the first reported cases involving extraterritorial jurisdiction. Those recorded after 2000 received broad media coverage and are available in electronic format.

- Judgements

In seven cases, the decisions of courts and tribunals were consulted. The documents contain the convictions handed down against the accused/defendant as well as the motivations of the court. ECPAT Belgium was not allowed, under any circumstances, to have access to the investigation files. The data found in those judicial sources may be incomplete. However, they proved invaluable in completing or correcting information provided by the press.

- Correspondence

ECPAT Belgium has, in some cases, kept an exchange of correspondence with its counterparts in other countries as well as with victims' lawyers.

- Interview

The interview of a former Belgian Liaison Officer in South-East Asia provided on-the-ground experience to add to the data collected. It was conducted on 12 August 2015.

Methodology

The “quantitative data” of the cases to which access was made available were encoded in a common analytical grid (see Annex 2). The data focuses on several aspects, including the perpetrator, the victim, the abuse and the procedure. Based on this grid, it was possible to establish a narrative of events for each case in a separate document. A summary of each case can be found in Annex 3.

Thirteen cases were analysed, a few of which make explicit reference to the use of Art. 10ter. For the purpose of this study, all cases were retained since they fall within the scope of the law and are consistent with its original intent, that of prosecuting transnational child sex offenders in Belgium.

This study does not claim to offer a comprehensive and representative image of all the cases tried under extraterritorial law since 1995. Its limits lie in the sources. However, based on the data, this study sheds light on some important aspects of the law and its applicability. The approach is, therefore, more qualitative than quantitative.

Even though most offenders are known to the press, we decided not to disclose their names. No reference or form of identification, by names or initials has ever been made with regard to the victims.

There were many exchanges with the partners of the STOP Group throughout the collection of data and the writing process in order to have the most accurate information possible (Police, Service for Criminal Policy, FPS Foreign Affairs and Child Focus). Myria⁴(Federal Migration Center) was also contacted several times.

Legal technicalities related to the topic itself required the aid of law experts. The law firm DLA Piper offered its assistance in this matter on a voluntary basis.

Finally, several experts agreed to read all, or parts, of the study.

- Christel De Craim, Head of Unit, Service for Criminal Policy, FPS Justice
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- Jean-François Minet, Agent, Service for Criminal Policy, FPS Justice
- Florence Moreau, Agent, FPS Foreign Affairs
- Camille Seccaud, legal expert and former trainee at ECPAT Belgium
- Yasmin Van Damme, Sexual exploitation analyst, Child Focus

⁴ Myria (former Centre for Equal Opportunities and Opposition to Racism) combats human smuggling and trafficking in Belgium. It can also initiate legal proceedings in these domains.

Fighting Impunity : birth and characteristics of the law

In accordance with the Law of 13 April 1995, Belgian authorities have the power to prosecute any case of child sexual abuse committed abroad, irrespective of the nationality of the victim or the offender, provided that the latter is found on Belgian soil. This ambitious programme reflects Belgium's willingness to fight against impunity, which up until the passage of the law, "child sex tourists" had enjoyed almost completely.

A number of conditions had to be met so Belgium could exercise its extraterritorial jurisdiction, i.e. prosecute national citizens for crimes committed outside its national borders. By extending the principle of extraterritoriality to child sexual abuse, this law has facilitated the initiation of criminal proceedings when offenders are suspected of sexual offences against minors abroad.

The amendment of Art. 10ter, extending extraterritorial jurisdiction to sexual offences against children, is part of a more general law aimed to strengthen the fight against human trafficking and child pornography. Before looking at its main features, it is first important to fully understand the context that gave rise to this law.

Building (inter)national awareness

The International Convention on the Rights of the Child (CRC) was already in force for a little over three years when Belgium enacted its law on extraterritorial jurisdiction. This text of the CRC is the culmination of a long struggle at the international level to view children as holders of rights. By ratifying this treaty, Belgium committed itself to protecting children against all forms of violence, including sexual abuse.

Meanwhile, in the 1980's, child sexual abuse garnered more and more public attention. The extent of the psychological consequences endured in childhood were strongly denounced by feminist movements, among others, thereby revealing many cases considered to be taboo until then. As more investigations were being carried out, victims also started to come out and child sexual abuse was strongly condemned.

To avoid prosecution in Belgium, some offenders decided to move to countries where they could more easily come into contact with children. Others did not go with this in mind but were tempted by offers to have sex with children on the spot. The democratization of means of transport and the major development of the tourism industry in the so-called destination country had, of course, an important role to play. Moreover, the precarious situation of the local population, the gaps in child protection systems, corruption and the anonymity of far away destinations, are all factors contributing to the development of sexual exploitation of children in travel and tourism.

By the late 1980's, organisations strongly reacted to what was rapidly referred to as a plague. In 1990, the international campaign ECPAT (End Child Prostitution in Asian Tourism) was launched to denounce the extent of the phenomenon and to build support worldwide. Originally conducted in Sri Lanka, the

Philippines and Thailand, the campaign quickly spread to sending countries by calling for the implementation of extraterritorial legislation. This tool, which is crucial in the fight against impunity for the offender, was one of the first demands of the Belgian member of the ECPAT International network when it was established in 1993.

Naturally, ECPAT is not the only actor to denounce sexual exploitation of children in travel and tourism and to call for the implementation of extraterritorial laws in Belgium. In her book, "The Price of a Child: Four Years in the Hell of Child Prostitution in Bangkok" published in 1993, Marie-France Botte provides us with a forceful testimony of the conditions of Asian children in Thai brothels from which transnational child sex offenders were taking advantage without being prosecuted. In 1994, a deeply affected Claude Lelièvre, General Delegate for Children's Rights, launched a first awareness raising campaign aimed at travelers leaving from Zaventem airport who received leaflets with a shocking message : "the pleasure of certain adults is destroying the lives of children"⁵.

The Spartacus case

The national context therefore provided fertile ground for the adoption of a new law on which the legislature was working, when the Spartacus case arose. Spartacus was the name of a travel guide, edited by John Stamford, a British man who had been living in Turnhout since the early 1990's. Officially, Spartacus masqueraded as a holiday guide pointing out all the gay-friendly organisations and places to visit around the world. However, savvy readers would also find the addresses of places where they could get in touch with a "younger crowd" (meaning minors) and obtain pedophilic literature.

Stamford was also the founder of Club Spartacus, a very exclusive club named after the magazine. Its members had access to restricted publications such as Holidays Help Portfolios in which the issue on the Philippines (1991) devoted an entire chapter to pedophiles, with addresses visited by Stamford himself. The quotes could not be more explicit: "Between January and May 1978, I personally sampled many of the boys and sent some of them to Spartacus readers. Their boys were extremely well trained and gave a very good professional massage and sex, usually whichever way you like"⁶.

Since 1970, Mr. Stamford had been closely watched by Scotland Yard but, when arrested, was always released due to lack of strong evidence. Human rights organisations had been trying, since the early 1980's, to put an end to these Spartacus publications and convict the perpetrator, but without much success.

A raid by the police in a gay massage parlor that Stamford ran in Geel led to his arrest and prosecution in November 1994. Despite Stamford's concrete actions to organise prostitution of children abroad – which was denounced by civil parties – the Public Prosecutor's Office could only carry a maximum prison sentence of one year under Article 380quater which stipulates that whoever, by whatever means

⁵ GAVILAN MESAS, Y., *Le tourisme sexuel impliquant les enfants. Etude comparative des enjeux belges et canadiens entourant la répression pénale d'un problème devenu public*, Louvain-la-Neuve, 2015, p. 109.

⁶ FONDATION TERRE DES HOMMES, *Le procès d'un commerçant esclavagiste de mineurs au niveau international depuis 25 ans*, Lausanne, 1994, p. 4.

of advertising, shall incite sexual exploitation of children will be punished by a maximum prison term of one year.

Legislation at the time did not give the police the power to prosecute the procurement of minors. This would have led to much more serious charges since the acts were committed abroad. A law aimed at prosecuting cases of white slavery abroad, i.e. bringing victims to Belgium for purposes of sexual exploitation, had already been put in place at the beginning of the 20th century. However, in this situation, the opposite started to take place. An article in the *Vif l'Express* pointed out that “international pimps have adapted themselves: they no longer bring the children to pedophiles but facilitate the journey of the abuser to the kids in countries where the latter are less protected”⁷.

When draft legislation started to be developed for the Law of 1995, authorities were in fact seeking to send a “message to those involved in child pornography”⁸ and permit the prosecution of such people as John Stamford; that is, a foreign national carrying out sexual abuse on children abroad but who was arrested in Belgium.

According to the Belgian legislator, this infringement of the rule of territoriality (i.e. the State holds sovereign jurisdiction over crimes within its own national borders) can be justified by the need to combat impunity for both Belgian and foreign nationals who take advantage of the vulnerability of children, even when the destination country decides to “turn a blind eye” to the problem. As we will see further on, corruption among authorities still remains in 2015 one of the major obstacles to the implementation of the law.

If the principle of universal protection of children should be understood within a philosophical framework, it also collides with more diplomatic concerns and the need not to interfere with another state’s “affairs”. A few Members of Parliament have warned of the risk that such principle entails: setting Belgian Parliament up as a universal court. If no limits are set, Belgian authorities could very well demand the extradition of a foreign citizen who carried out sexual abuse on children in order to judge him in Belgium, even if his actions are not illegal in the country in which they took place. To prevent this absurd situation from happening, the implementation of extraterritorial jurisdiction by Belgian courts has been subject to the condition that the person be found on Belgian soil, before the commencement of the proceedings at the latest.

Until the amendment introduced by the Law of 2000, there were still some doubts regarding the double criminality requirement. The question was whether the perpetrator’s conduct would also constitute a criminal offence in the state where the acts were committed. Case law differs on this matter¹⁰, as do the cases under examination here. It would seem that double criminality was considered a prerequisite in the M.B. case due to the many letters that have been exchanged between ECPAT Belgium and its Thai counterpart to ensure that the offence charged was punishable in Thailand as well. In the D.C. case, however, the judge ruled that, contrary to what the accused claimed, the application

⁷ KLEIN, D., “Impressions de voyage”, *Le Vif l'Express*, 2 December 1994.

⁸ DOCUMENTS PARLEMENTAIRES, *Projet de loi contenant des dispositions en vue de la répression de la traite des êtres humains et de la pornographie enfantine*, Rapport fait au nom de la Commission de la Justice par Mmes CAHAY-ANDRE et VERHOEVEN, Sénat, session 1994-1995, 1142-3, p. 59.

⁹ *Ibid.*, p. 60.

¹⁰ GAVILAN MESAS, Y., *op. cit.*, p. 95.

of Art. 10ter did “not require the principle of double incrimination, even for any infringement committed between 5 August 1996 and 27 March 2001”¹¹.

Through the enactment of the 1995 law, Belgium set itself up as a leading example of those countries which have introduced the principle of extraterritoriality to fight against sexual exploitation of children in travel and tourism. However, as we have just seen, the law still contained some restrictions on which the legislator was busy working at the time Belgium was shaken by the Dutroux case.

After 1996

In August 1996, Marc Dutroux was arrested for the kidnapping, torture and sexual assault of six young girls, whom he kept enslaved in a concrete bunker. Only two survived. This gruesome discovery marked the beginning of the Dutroux case which resulted in an unprecedented popular mobilization against child sexual exploitation in Belgium.

Violation of physical and sexual integrity of children became an absolute evil and pedophiles started to be hunted down. The sharp increase of convictions for indecent assault and rape of minors committed between 1996 and 1997 was directly linked to this phenomenon¹².

The legislator therefore had to act. By making clear reference to the Dutroux case, the new draft law, introduced to the Chamber of Representatives in 1996, sought to reflect the “collective awareness of the necessity to rethink the values that our society wishes to defend”¹³, including the respect of children.

In addition to this national trauma, Belgium was also influenced by the European and international context. In August 1996, following the initiative of ECPAT and UNICEF, the First World Congress against Sexual Exploitation of Children took place. It gathered 122 countries, together with scholars, representatives of the tourism industry, NGO's, and children. Belgium thereby adopted the Agenda for Action which lists a series of priority actions to eradicate sexual exploitation of children in travel and tourism. The adoption of adequate extraterritorial laws figures high on the list¹⁴.

Moreover, extensive media coverage was given to the first cases involving extraterritorial jurisdiction tried in different European countries, including Belgium. The involvement of Belgians in potential cases of child trafficking sometimes made the headlines of foreign newspapers. For instance, in October 1996, the Colombo Times denounced, in "The Belgian Sex Connection"¹⁵, the Belgian ramifications of a pedophile ring operating in Sri Lanka. A Belgian was said to make use of its sponsorship association to “rent” children to tourists. When interrogated, the suspect - G.D. - strongly denied: “I’m not a Dutroux”¹⁶. He claimed that his job as a tour operator required him to visit Sri Lanka on a regular basis. Since he retired, he set up several orphanages in cooperation with the Lion’s Club and the Rotary Club.

¹¹ Corr. Brussels (54e ch.), 6 October 2009, FD.37.97.2/03, f. 12.

¹² FALZONE, C. and RUTTEN, J., *op. cit.*, p. 236.

¹³ DOCUMENTS PARLEMENTAIRES, *Projet de loi relatif à la protection pénale des mineurs*, Rapport fait au nom de la Commission de la Justice par M. LANDUYT, Chambre, session de 1998-1999, 1907/7-98-99, p. 3.

¹⁴ ECPAT INTERNATIONAL, *Stockholm Declaration and Agenda for Action*, 1996, p. 6.

¹⁵ PALDANO, J. and TISSAARATCHY, S., "The Belgian Sex Connection", *The Colombo Times*, s.d.

¹⁶ BOUWEN, K., "Ik ben geen Dutroux", *De Streekkrant Antwerpen*, 29 October 1996.

The case was never prosecuted in Belgium. In June 1997, however, the Commissioner for Probation and Child Care in Sri Lanka decided to close two of the three orphanages.

With the increasing exposure given to sexual exploitation of children in travel and tourism, the European Union decided to respond through a joint action which strongly encouraged Member States to abolish the requirement of double criminality : if a Member State maintained this requirement, it must enable the efficient prosecution of its national citizens, particularly in destination countries where they might face less serious charges¹⁷. This resolution was adopted in Belgian legislation since double criminality was no longer a formal requirement in the Law of 2000.

In addition to double criminality, the scope of the 1995 Law was also limited regarding the age of the victims. Even if offences of prostitution concerned all minors, only indecent assault and rape committed abroad against children under the age of 16 could be prosecuted. For example, charges of indecent assault on boys aged 16 against D.C. were dropped. Under the Law of 2000, the threshold was raised to 18 years old for all kinds of offences, including indecent assault and rape.

As in 1995, amendments to the principle of extraterritorial jurisdiction were part of a more general law on “criminal protection of minors”, dated 28 November 2000 and entered into force on 27 March 2001.

Characteristics

The entire text of the law is reproduced in Annex 4. Before we discuss its main features, we should bear in mind that Belgium only makes use of its extraterritorial jurisdiction as a last resort, when local authorities do not want to, or can not, take the law into their own hands. In any case, priority should be given to the prosecution of the abuser in the country where the acts were committed. First, because the evidence is to be collected there and second, to show that no country can condone child sexual abuse. In that sense, expectations regarding the impact of Art. 10ter should remain limited since this law does not constitute, in any way, a remedy but only a substitute.

Moreover, Art. 10ter is not the only way to prosecute someone who has committed a punishable offence abroad. Prosecution is also possible if it can be proven that one of the constituent elements of the offence has been committed in Belgium¹⁸. Let's take the example of an individual taking advantage of a mentoring system in Cambodia to abuse his/her godchild and then bring him/her back to Belgium to continue exploiting him/her. In that case, the Judge's territorial legislation can be extended to also allow the prosecution of the abuser in Belgium for acts committed in both countries.

Who ?

Art. 10ter of the Code of Criminal Procedure starts in the following manner : "anyone who has committed, outside the territory of the Kingdom, shall face prosecution" (list of offences following).

¹⁷ COUNCIL OF THE EUROPEAN UNION, *Framework decision on combating trafficking in human beings*, 19 July 2002, 2002/629/JAI, p. 3.

¹⁸ BEERNAERT, M.A., BOSLY, H.D. and VANDERMEERSCH, D., *Droit de la procédure pénale*, 2014, t. I, Brussels, 7e éd., p. 86.

Belgium does not limit its extraterritorial jurisdiction to its residents or citizens, unlike other European countries. Rather, it targets anyone and can therefore be applied to all citizens. As a result, Belgian courts have the right to exercise universal criminal jurisdiction in matters involving sexual offences committed against minors. Belgian authorities can now prosecute offenders such as John Stamford, i.e. a foreigner who has committed offences abroad against another foreigner... but who has been found in Belgium.

The presence of the suspect on Belgian soil at the time of the prosecution is a condition *sine qua non*¹⁹. Criminal proceedings are not admissible if these have been initiated prior to the arrival of the accused in Belgium. This is the argument put forth by C.D. to clear him of all charges which were brought against him in 1996, while he was still residing in Thailand. As a result, Belgium maintains a link between its territory and the sexual offence, even when none of the constituent elements of the offence have been committed in Belgium.

What kind of offences ?

The main offences listed in Art. 10ter pertaining to minors are the following: indecent assault with or without violence, rape, corruption of youth, exploitation of children in prostitution, procurement, child sexual abuse material and trafficking in human beings. In the cases identified, offenders often faced several charges. Indecent assault is linked to offences related to exploitation of children in prostitution and/or child sexual abuse material when the abuse has been remunerated and/or filmed.

Several cases have shed light on the difficulties in distinguishing “the client” from the pimp, that is to say the one directly abusing the child and the one taking advantage of this “business”. The Penal Code makes a distinction between the two but it may not always be that clear-cut.

In a case dating back to 1996, M.B. faced trial on the grounds that he paid a young 14 year-old Thai to provide masturbation services. Charges initially held against him included indecent assault without violence (Art. 372 of the Penal Code) and corruption of youth (Art. 379). The defence, however, succeeded in having the last charge dropped since it required committing the act to “satisfy the passions of another”. In order to be prosecuted, M.B. would have had to act as an intermediary towards another “client” or be masturbated by the child in the presence of a third party for whom such viewing might provide sexual pleasure.

Moreover, if the article of the Penal Code on indecent assault targets acts committed on or with the help of a minor, Art. 10ter only mentions if “the act was committed on a minor”. The term “with the help” has been removed. This is a subtle difference but full harmonization between the infractions in Art.10 and the Penal Code is strongly needed.

In the M.V. case, the offender was prosecuted for abusing children sexually in Brazil as well as for the filming and dissemination of material showing these abuses. One of the charges brought by the civil

¹⁹ Cass., 30 May 2007, *Rev. dr. pén.*, 2008. See conclusions of the Advocate General Damien Vandermeersch. « Il n'est pas requis que, présent sur le territoire du Royaume au moment de l'engagement des poursuites, le suspect y réside encore au moment du jugement. Il suffit, mais il faut, qu'après l'infraction dont il est soupçonné, l'agent soit venu en Belgique et y ait été rencontré ou trouvé, même s'il a quitté le territoire avant les premiers actes de procédure. Liée à la recevabilité de l'action publique, cette condition doit être remplie au moment où ladite action est mise en mouvement. La présence ultérieure du suspect sur le sol belge ne saurait avoir pour effet de rendre recevable une poursuite qui ne l'était pas lorsqu'elle fut engagée. »

party was trafficking in human beings for sexual purposes. M.V. is said to have been both the trafficker - who forced his victims into prostitution to make a profit - and the “client”, committing sexual abuse. Based on how the law was worded at the time²⁰, the judge rejected this interpretation of the concept of human trafficking in holding that the trafficker and the client could not be one and the same person. In this case, an intermediary – a trafficker who made a child available – would have been necessary, thus facilitating the production of child sexual abuse material by M.V.

A change in the definition of trafficking of human beings in April 2013 testified to the need to go beyond a simple distinction between “client” and pimp. Still, this was a little too late for the case mentioned above. The new legislation²¹ was indeed worded more simply to target, indisputably, the person committing the offence and not only the intermediary.

In 2014, Belgium amended the Penal Code by adopting a new act which aimed at protecting minors²² against online solicitation for sexual purposes, i.e. using new technologies to contact a minor and trick him/her into committing sexual offences. Under Art. 10ter, “grooming” now also constitutes a punishable offence, which is particularly important given that new technologies have become increasingly popular to facilitate child sexual exploitation abroad.

This is particularly the case with webcam child sex tourism²³ where the abuser no longer travels to a foreign country, but “orders” a sexual performance that will be imposed on a child and filmed live via webcam. If they are not recorded, these activities run the risk of going unnoticed. Going beyond Art. 10ter *stricto sensu*, the link between new technologies and commercial sexual exploitation of children should be studied in further detail given the many shortcomings remaining in the detection and prosecution of such abuse.

How ?

It is worth mentioning here a few additional principles in order to have a more comprehensive overview of extraterritorial legislation.

Optional complaint: the victim does not need to file a complaint in order to launch the procedure. This is an element of paramount importance since the victims are largely absent in these kinds of cases, either because they do not recognise themselves as such, or because they are unaware of the existence of their rights or they are unable to assert them (corruption, financial barriers, etc.). Moreover, for the victims residing abroad, it is not easy to involve them in the procedure, or gather enough information about them.

Non bis in idem: This concept, which literally means “not twice in the same thing”, states that no legal action can be instituted twice for the same cause of action. If a person has already been tried by a foreign court, s/he cannot be prosecuted in Belgium for the same offence. This was one of the elements invoked

²⁰ The law stipulated that human trafficking targeted anyone who was recruiting another person in order to allow certain offences to be committed against this same person (such as exploitation through prostitution and child sexual abuse material).

²¹ Law of 29 April 2013 amending article 433quinquies of the Penal Code to clarify and extend the definition of human trafficking, M.B., 23 July 2013, art. 2.

²² Law of 10 April 2015 on the protection of minors against solicitation with a view of committing sexual offences, M.B., 30 April 2014.

²³ ECPAT BELGIUM, *Child Sex Tourism Via Webcam: a Disturbing New Trend*, Brussels, 2014.

by the defence lawyers of M.B. who was arrested and taken into custody by the Thai authorities. After he was bailed out, M.B. was released and quickly headed back to Belgium. During the hearing, his lawyer invoked these three days in prison under the rule of *non bis in idem* to overturn the judgement in Belgium, but without success.

Non retroactivity : The first law containing Art. 10ter came into force on 5 May 1995. This means that the actions committed before this date can not be prosecuted even if they fall under the articles concerned. For instance, P.W. and E.U., who had been charged with the rape of Thai boys, were only condemned for actions committed after May 1995. Likewise, in the N.D. case, alleged offences dated back to 1991. Although he could not invoke Art. 10ter, the judge nevertheless succeeded in sentencing N.D. to five years' imprisonment, invoking Art. 7 of the Law of 1878 which stipulates that: "any Belgian citizen or person residing in the Kingdom, who, outside this territory, is guilty of acts qualified as a crime or an offence under Belgian law, can be prosecuted in Belgium if the act is punishable under the law of the country in which it was committed".

Prescription period: Since the Act of 30 November 2011 amending the legislation in view of stepping up the fight against sexual abuse within a relationship of authority²⁴, the victim or his/her representatives have 15 years after the victim has reached majority to bring legal proceedings against the alleged perpetrator of sexual offences. After this date, the acts are regarded as time-barred and it is not possible to prosecute, with some exceptions. This was the case for C.D. who fled Belgium in 1987 for Thailand. He was condemned in *absentia* to 10 years' imprisonment one year later. When he was expelled by Thai authorities and returned to Belgium in 2002, the claims were time-barred (based on the previous law in which the prescription period was shorter).

The extension of the Belgian extraterritorial jurisdiction is no doubt a valuable tool to prosecute transnational child sex offenders. Art. 10ter, introduced in 1995, should be regarded as a live text, in that it can be adapted according to the context, integrating, for example, offences committed using new technologies.

However, despite the inherent features of each law, (non retroactivity, prescription period and *non bis in idem*, etc.), the abusers also take advantage of the vagueness regarding the scope of application of some of the offences to escape prosecution. This is the case for indecent assault, whose scope needs further clarification and harmonization with the Penal Code.

²⁴ Law of 30 November 2011 amending the legislation on how to improve the approach to sexual abuse and acts related to child abuse in a relationship of authority, M.B., 20 January 2012.

Case studies

In this section, we look at different cases prosecuted in Belgium and consider how Art. 10ter has been implemented in practice. Emphasis will first be put on the abusers, the victims, detection of abuse and procedure, i.e. collection of evidence, the criminal and civil penalties, extra measures aimed at reducing the risk of recidivism and other partners involved in international cooperation.

Sample

The case study presented here draws on thirteen cases involving Belgian nationals or residents who faced prosecution in Belgium for child sexual abuse committed abroad. Ten of them were condemned in the first instance, six decided to appeal and two appealed in cassation. Three cases were dismissed. The cases analysed took place between 1996 and 2014 before the court.

Seven other cases have been analysed but have not been included in the sample: the Spartacus case, two Belgians respectively condemned in Cambodia and Romania, and four cases of extraterritoriality concerning other countries (Canada and Switzerland).

The abusers: defining a common profile ?

Despite our limited sample, we were able to pinpoint some of the major traits common to all abusers. Naturally, this profile does not apply to all people guilty of child sexual abuse committed abroad. However, some of these features are worthy of consideration when assessing the impact of Belgian extraterritorial legislation to fight impunity.

In all the reported cases, the abusers were **men**, aged between **40 and 50 years old** at the time when they first committed the abuse abroad. A word of caution is required here. These are approximate calculations given that the moment when the first abuse was committed is not always easy to determine. It also happens that these abuses have taken place over a period of ten years.

Seven persons **picked careers and/or voluntary positions that placed them in close proximity to children** in Belgium – teacher, priest, psychologist, psychiatrist nurse – or in the State where the abuse was committed. Among these, there are, for example, two medical staff members employed by humanitarian NGO's. Some individuals had a completely different job but took advantage of the voluntary work done in other countries to get into contact with children (founder of orphanage or sports coach).

The abusers subsequently put themselves in a **position of authority** over children. Whatever their occupation – teacher, medical staff member, sports coach or priest – the relationship that bound them to the child was not neutral.

The perpetrators could have been **travelling on a regular basis** to the destination country for some years. This was the case for L.C. and G.D. who travelled to Sri Lanka, M.B. and E.U. to Thailand, P.S. to Morocco and M.V. to Brazil. Some also decided to **settle** (5 cases) or work (3 cases) in the country. Due to this local presence, they were firmly established in the city or the community where they could get into contact with children either in the streets, at the beach, with the help of an accomplice on location or through the abovementioned structures (orphanages, sports club, NGO's, religious community).

One last element is worth mentioning. In nine cases, the perpetrators had already been **prosecuted for similar offences** in Belgium, e.g.. child sexual abuse material, indecent act on minors, child sexual abuse and, for some, these offences led to convictions.

The victims : vulnerable children

The victims are **largely absent** from the cases studied. The correspondence between ECPAT Belgium and its partners in Sri Lanka and Thailand revealed that it is extremely difficult to retrieve accurate information, even on the age or the sex of the victims. When child sexual abuse material is being produced, the pictures found at the place of the accused sometimes enable the identification of the victims. However, this is not always the case. In the E.U. case, for instance, identification of each and every victim, among the hundreds reported, was practically impossible.

Boys constitute the majority of the victims. Of the 13 cases reviewed, 11 referred to male victims. Several accused admitted to being only sexually attracted to boys and to seek their contact. The average age is **14 years** old, eight years old for the younger ones and 16 years old for the older ones.

It is not surprising to see that one of the major vulnerability factors is **poverty**. Almost all of the victims are trying to survive. These children are either living in the streets or in slums. M.V.'s victims, for instance, lived in dilapidated dwellings in Brazil, where the children were on their own. It was therefore easy for the perpetrator to be alone with the child and abuse him for 200 reals. During a rogatory commission, the school headmaster claimed that "for these children, winning this amount of money might feel like winning the jackpot"²⁵.

Other vulnerability factors, which can result from the victims' precarious situations, can also be taken into account: orphans, AIDS patients, children that can be easily influenced or those that have already been molested by other tourists.

The children came from the local community or the town where the defendant lived. The continents concerned by this are:

- Asia (8): Sri Lanka (2), Thailand (5), India (1)
- Africa (2): Senegal and Morocco

²⁵ Corr. Brussels (46e ch.), 28 June 2013, BR37.97.2347/2010, f. 19.

- Latin America (2): Brazil

- Europe (3): Portugal (2) and (1) Poland

Contrary to popular belief, **Europe** is also a destination for transnational child sex offenders. Apart from Portugal and Poland, a Belgian citizen was also prosecuted and tried in Romania in 2015 for acts committed on very young victims.

If the victims admitted, during the police investigation, to having been abused, they rarely filed a complaint. There are various reasons why they decided not to do so. Intimidation is one of them. According to the investigation conducted in Sri Lanka, L.C. reportedly blackmailed the two boys he had abused into withdrawing their complaint²⁶. Sometimes, blame is put on the victims themselves who are then regarded as the perpetrators of the sexual offence. For example, the two boys abused by L.C. in Sri Lanka were initially prosecuted for homosexuality, before the Penal Code of Sri Lanka was amended in order to fight child sexual abuse and the child sex trade.

What kind of abuse?

The **charges** brought in the different cases concerned sexual offences and trafficking in human beings. The articles mentioned below come from the Belgian Penal Code:

- Indecent assault without violence (art. 372)
- Indecent assault with violence (art. 373)
- Rape (art. 375)
- Corruption of youth/debauchery of minors (art. 379)
- Procurement of minors (art. 380)
- Advertising to incite prostitution of minors (art. 380ter)
- Dissemination of material contrary to morality (art. 383)
- Possession, production, dissemination and sale of child sexual abuse material (art. 383bis)
- Trafficking in human beings (art. 433quinquies)

The boundaries between indecent assault, with or without violence, are sometimes difficult for the judge to assess. The question that needs to be asked is the following: What constitutes a form of violence or a threat? In the M.B. case, Art. 373, originally used against the accused, was reclassified as Art. 372 because there was no proof that the perpetrator had forced the victim.

²⁶ SEABROOK, J. *No hiding place. Child sex tourism and the role of extraterritorial legislation*, New York, 2000, p. 71.

The same applied for C.D. According to the judge, the system of fines imposed by the abuser to his Thai go-go dancers, if they were not offering enough “extra services” (meaning to have sex with clients), could not be considered as proof of coercion of unwanted sex. “Even if the free will is reduced by the precarious situation of the victims, the fact remains that they are free to continue to offer services to their clients or to keep their jobs or not”²⁷.

This claim is open to debate. How can we say that a child freely consents to have sexual relations when he is forced to prostitute himself in order to survive and when he is threatened with fines if he refuses to do so? This is nothing but exploiting the child’s vulnerability to obtain sexual favors. If the concept of exploitation is left to be assessed by the judge, the definition of trafficking states that, whether there was consent or not on the part of the victim, such practice remains an offence. In addition, recent case law²⁸ stipulated that there is talk of recruitment for the purpose of exploitation even when the person has voluntarily asked to be hired, meaning that s/he actively sought to be recruited. An individual recruiting children prostituted on the streets in order to spend the night with them could therefore be regarded as a trafficker. As a result, judges should be made aware of this broader interpretation of the notion of recruitment.

In the N.D. case, the use of violence left no room for doubt: the abuser locked up his victim and threatened her with a gun. In the J.A. case, the situation is even more pernicious: the accused took advantage of his victims’ sleep to take pictures.

In four cases, the abuser also found himself behind the lens to shoot his own sexual activities with the victims. In E.U., as well as in the M.V. case, the abusers were compulsive collectors, who gathered an extremely large number of child sexual abuse material. Ten million of these pictures were recovered for M.V., who confessed: “I downloaded all I could find”²⁹. To enrich their collection, they were forced to produce their own images.

M.V. was also charged with the dissemination of written obscenities, of which he was the author. These writings depicted sexual abuse of children including extreme and sadistic practices, all accompanied by drawings.

Is sexual exploitation of children a commercial transaction?

In six cases, there was an explicit mention of compensation in cash. In another, the victim was promised a better life (marriage, papers, etc.). The financial aspect is of key importance when the victims are trying to survive and one can reasonably assume that this is so in most cases.

Abused children were not the only ones to be paid. The abusers themselves were also making use of the images for their own profit by selling them to international pedophile networks. This is what E.U. was doing. Investigators found evidence of financial transactions made to Finland, Morocco, Brazil, Spain, Germany and Mexico.

²⁷ Corr. Brussels (54e ch.), 6 October 2009, FD.37.97.2/03, f. 12.

²⁸ Cass., 8 October 2014 and CLESSE, Ch.-E., “Le recrutement : une action active ou passive ?”, *Rev. dr. pén. crim.*, 2015, p. 692 to 701.

²⁹ “Marc Vanden Bossche “fier d’avoir la plus grande collection de matériel pédopornographique jamais réunie”, *RTL*, 28 May 2013, <http://www.rtl.be/info/belgique/faits-divers/marc-vanden-bossche-fier-d-avoir-la-plus-grande-collection-de-materiel-pedopornographique-jamais-reunie--361248.aspx>, consulted on 2 November 2015

Where does abuse happen?

Little information exists about the location. Child abuse took place in hotels (three cases), buildings of the organisation (orphanage, sports club), in the street (one case), a club of go-go dancers or at the abuser's own house.

(Extra)ordinary cases?

According to ECPAT International, pedophiles account for a tiny minority of transnational child sex offenders. Most of them are situational offenders³⁰, i.e. opportunistic abusers who find themselves unable to "resist" temptation. The abuse is no less serious but the circumstances are different.

However, in the cases analysed, the majority of child sex abusers were individuals that were sexually attracted to young boys. They most likely picked their destination to have easier access to their victims and pursue activities that would be difficult to conceal in Belgium. This partly explains why the "pathological" profile is overrepresented. The abuses have been carried out repeatedly over a long period of time. Therefore, the perpetrators ran a greater risk of being arrested than situational offenders who were found guilty of a situation that got "out of control".

Nonetheless, in the P.W. trial, the defence lawyer tried to downplay the facts, arguing that the abuse was a "mistake". According to her, her client was certainly not a "child sex tourist" but someone who suddenly acted on certain impulses which he wished "to get rid of"³¹. However, the repetition of the abuse, its duration (two years) and the abuser's record (similar charges already held against him) seemed to prove that he consciously looked for contact with vulnerable children.

The same applies for P.S. who shifted the blame onto a young girl who, he said, claimed to be 18 years old and W. who was convinced that the age of sexual consent was 14 in Senegal. M.B.'s lawyer, on the other hand, claimed that pedophilia belonged to the values of the country (Thailand).

In the cases reviewed, Art. 10ter made it possible to prosecute the abusers who consciously looked for sexual contact with children abroad and who had extensive criminal records in Belgium. In that sense, it has reached its objectives which is to fight impunity for perpetrators who still managed to escape trial before the enforcement of the law. The different cases suggest that the accused fled the country in order to give into their "impulses" in countries in which they believed they were less likely to be denounced or punished.

Unfortunately, we deplore the fact that only a restricted number of cases have been prosecuted. Despite the difficulties in identifying sources, we ask ourselves how many cases still remain unreported? How many have not been prosecuted due to lack of evidence? It appears at this stage that, in order to maximize the impact of the extraterritorial tool, it is necessary to make it known to the public by raising people's awareness.

³⁰ ECPAT INTERNATIONAL, "CSEC Terminology. Paedophilia", http://resources.ecpat.net/EI/Csec_paedophilia.asp, consulted on 17 July 2015.

³¹ DE BRULLE, C., "La défense du médecin pédophile réclame son acquittement", *Le Soir*, 30 August 1997.

Launching the Procedure

The elements that allowed for the cases studied to reach the justice system are particularly important. If the factors that triggered the investigation remain unknown most of the time, the cases analysed here make it possible to identify various sources.

- **Anonymous complaint** : an anonymous complaint is what initiated legal proceedings in three cases. In one case, the complaint was sent to Claude Lelièvre, General Delegate for the Rights of the Child at the time, and who firmly committed to fighting sexual exploitation of children. Despite the anonymous nature of the complaint, the Delegate sought to bring the case to justice.

In the two other remaining cases, it was the Belgian Embassy in Thailand that received the anonymous complaint and forwarded it to the police. Embassies therefore play a key role as soon as the proceedings start. Consequently, their staff needs to be trained to address the problem and react in the appropriate manner.

- **Complaint of a (former) victim or his/her family** : while this may be rare, the victim may have lodged a complaint, as in the P.S. case where one of the Moroccan (adult) victims recognised herself on a CD containing pornographic material being sold in Agadir. In the M.V. case, it was the mother of one of the victims who, in June 2006, filed a complaint to the Brazilian authorities. In two other cases, complaints were received from Belgian victims having tracked down their abuser who was still active among Indian and Brazilian communities. It should be noted that one case is still ongoing.

- **"External" complaint** : J.A. was denounced by a bank employee who found child sexual abuse material in the deposit box of the accused while he was a sports coach in India. The employee immediately informed the police. In at least three other cases, including the case of a Belgian judged in Cambodia, reference was also made to active surveillance by local NGO's on the spot. It is not clear from the available information whether it was these NGO's who denounced the acts or not.

- **Related complaint investigation** : E.U. started to be chased by the police after child sexual abuse material was seized on a suspect upon his arrival in Frankfurt. The investigation conducted from Germany quickly showed links between the arrested man and E.U. Elements obtained on a suspect during an investigation at the Court of Justice in Nivelles were traced back to C.D.

- **Interpol** : Belgian authorities were informed by Interpol that M.V. was wanted by Brazilian authorities for extradition. This marked the start of the investigation in Belgium. In 2002, the arrest of M.R. in Thailand for procurement and debauchery of minors was immediately communicated to Belgium. This rapidly put investigators on the trail of M.R.'s accomplice, namely C.D., who had just returned to Belgium a few months earlier.

There were few victims behind the launch of public action, especially because of the geographical distance. The ability to prosecute the abusers without a complaint from the victim is therefore a crucial provision in the implementation of Art. 10ter.

Collection of Evidence : A Challenge for Law Enforcement Authorities

Collecting all the evidence for a lawsuit proved to be difficult in many cases of child sexual abuse in Belgium. How does one take down statements from children? How much weight should be given to them? What other elements does one have if it is not possible to take down the victim's testimony? This aspect is compounded in cases of extraterritoriality: with the events having taken place abroad, how does one provide strong evidence? In what follows, we will see that justice must get creative and that a range of elements, sometimes taken together, have lead to conviction.

- **Anonymous complaint** : even though the anonymous complaint to the General Delegate for Children's Rights was rejected as acceptable evidence in the Court of First Instance, it was found admissible on appeal.

- **Confessions** : in at least five cases, the accused admitted having sexual contacts with minors or having produced/owned/disseminated child sexual abuse material. If they recognised the nature of the offences, very few admitted the gravity. In addition, some retracted their statements, claiming they were forced to confess under pressure from the local police. It is important, therefore, for the judge to be able to supplement the record with testimonies or tangible physical evidence.

- **Criminal records** : the accused's records were not considered as direct evidence, but as aggravating factors influencing the prison sentence (three cases).

- **Child sexual abuse** : this is certainly the evidence most relied upon. Possession of child sexual abuse material was found in five cases and supports the idea that sexual exploitation of children abroad was, in many cases, filmed/recorded. Moreover, the existence of a private darkroom (two cases), which allowed suspects to develop their photos and movies away from prying eyes, was further evidence of their culpability.

- **E-Mails and letters of the accused** : Extracts from the correspondence of M.R., where clear reference was made of his accomplice, C.D., were seized. This allowed the latter to be arrested.

- **Suspicious financial transactions** : in the case of E.U., financial transactions with Finland, Morocco, Brazil, Spain, Germany and Mexico – where he sold “his” child sexual abuse material produced in Thailand - provided further evidence against him. Records of suspicious payments helped complete an already strong case.

- **Witnesses' testimonies** : in the L.C. case, the owner of the hotel where the accused was caught red-handed with two young boys, made an incriminating statement against him, resulting in him being brutally beaten by L.C. and his accomplice. This witness profile shows the importance of collaborating with the tourism sector which is sometimes more inclined to act as an accomplice in the crime (M.V. case), rather than a whistleblower. Nonetheless, tourism professionals remain among the primary sources in reporting child sexual abuse.

- **Statements of victims** : five cases mentioned the testimony of child victims describing sexual acts that were inflicted upon them by the suspect. In the sample analysed, victims' statements were still rare

because they often require the use of international rogatory commissions. In other words, the judge hearing the case in Belgium asks his counterparts in the country concerned to continue on his behalf the investigation stage in order to gather the necessary evidence. If there is no treaty on judicial cooperation between the two countries, the application may take more time.

Few mentions to **rogatory commissions** were made in the cases studied, except for Sri Lanka (L.C.), Thailand (M.B. and C.D.) and Brazil (J.V. and M.V.). The investigation in Brazil was particularly instructive, given that Belgian police officers went to the neighbourhood where the victims were living to question not only them but also other members from the community. Their report testified to the misery of these poor neighbourhoods where it is easy to abuse a child in exchange for a few reals. Police investigation allowed the judge to better assess the moral damage caused to the victims following these abuses (isolation, mockery, etc.) and the subsequent financial compensation.

The files in question gave us barely any information on the methods used during interrogations. Victims can experience their trauma all over again through recollection of their sexual abuse. As a result, all the precautionary measures must be taken to reduce, as much as possible, the negative effects that might arise while collecting the evidence. In two cases, clear reference was made to the audiovisual recordings of the victims' testimonies.

Jail Sentences: is Criminal Justice too Lenient?

One point must be made : except for N.D, only repeat offenders (E.U., J.A., C.D., M.R., M.V.) were given prison sentences in the Court of First Instance from 30 months to 10 years. M.R. was sentenced *in absentia*. For the others (M.B. and P.S.), the court decided on a conditional sentence for the full term, not exceeding 18 months. That means that the perpetrators did not serve prison sentences, unless they re-offended before the end of their suspended sentence. W. was released on parole and had to attend therapy.

The Court of Appeal is often more severe: the prison sentence of N.D., for instance, increased from five to eight years imprisonment. P.W. was acquitted in first instance and sentenced to five years in prison, half of which was suspended. M. V. on the other hand, benefited from a reduction of his prison term from seven to four years, but when placed at the disposal of the Sentence Enforcement Court (see *infra*), the period went from five to 10 years.

C.D., initially sentenced to six years' imprisonment, was acquitted on appeal on the grounds of procedural error. M.B.'s sentence, however, was upheld.

Overall, light sentences were imposed (an acquittal or suspended sentence) for "first time" offenders. By contrast, punishment is more severe for repeat offenders, though, on average, this does not exceed five years' imprisonment.

Compensation of Victims : The Poor Relation of the Procedure

In addition to the criminal sanctions imposed on the offender, obtaining compensation for the damage caused is part of the process of victim recognition. In cases of child sexual abuse committed abroad, victims are often poorly recognised or acknowledged. Thus, it is very rare for them to seek financial compensation through a lawyer. In the cases analysed, many organisations brought civil actions in order to obtain compensation on behalf of the victims for the damages they suffered.

- Center for Equal Opportunities and Opposition to Racism (CEOOR)

Following the request of ECPAT Belgium, CEOOR agreed to bring civil actions in the cases of L.C. and M.B. In 1996, ECPAT Belgium did not yet have the status of a non-profit organisation. This is the reason why it turned to CEOOR, whose mandate is, among others, to fight against human trafficking. Unfortunately, the representation of the victim encountered several obstacles and the approach by CEOOR failed to produce results. In the L.C. case, the file was blocked in Sri Lanka but was determined to continue over there, even if the abuser had fled. Belgium, as a result, never received official permission to continue. The information gathered on the victim by ECPAT Belgium and the NGO PEACE could not, therefore, be used.

In the M. B. case, the request of CEOOR was deemed inadmissible. Indeed, the mandate of the organisation only allowed it to act as a civil party if the legal action in question was the result of a crime regarded as human trafficking, such as the exploitation of prostitution (Art. 379). But the accused was acquitted of this charge. The only infringement retained, indecent assault (Art. 372), was not included in the law of human trafficking that allowed the CEOOR to initiate proceedings. The Court of First Instance in Bruges, therefore, declared itself incompetent to handle the case, a fact confirmed by the Court of Appeal. The letter from the victim's mother allowing the CEOOR to act on behalf of her son was not taken into account, especially as it came after the judgment of the Bruges Court.

In 2013, the CEOOR again decided to bring a civil action in the M. V. case, this time using the criminalisation of trafficking in human beings against the accused. This approach was also unsuccessful. According to the court, the incriminated act did not correspond to the definition of trafficking as M.V. had not exploited child prostitution for financial gain but to satisfy his own lusts. With changes made to the law a few months after (see *supra*, Law of 29 April 2013), it may now be possible for the criminalisation of the offence of trafficking to be retained in a case like this and Myria (formerly CEOOR) can act as a civil party before the courts.

- Child Focus

Child Focus, the Foundation for Missing and Sexually Exploited Children, also brings regular civil actions, especially in cases of child sexual abuse material, where the child is not always identified³². Given that sexual exploitation of children in travel and tourism is often linked to the production of child sexual abuse material, Child Focus intervened in two of the cases analysed.

In the E.U. case where hundreds of Thai children were abused and where child sexual abuse material from such abuse was produced, the victims still remained unknown. Child Focus stood for all the children during the trial in 2005 and was able to get compensation of 2000€ on behalf of the victims, an amount that had to be allocated to the fight against child sexual abuse material. This case set a precedent because, for the first time, Child Focus could represent anonymous victims³³.

The Brazilian victims of M.V. were identified and individually acted as civil parties. Child Focus sought to represent the anonymous victims. The request of the organisation was first dismissed in first instance. The court claimed that no Royal Decree allowed Child Focus to represent the public interest and that no link could be established between the offence and any physical damage to the organisation. On appeal, the request of Child Focus was deemed admissible. No recognition by the Royal Decree was necessary to bring civil actions in the scope of application of the Law of 1995. The organisation's mandate was sufficient enough in this case since the charges against M.V. (child sexual abuse material) corresponded to the mandate of Child Focus, i.e. the fight against child pornography and trafficking of children for sexual purposes.

- The Victims

In three cases the victims themselves acted as civil parties and received compensation. The amounts ranged from 2,500€ for the victims of N.D. and M.V. to 50,000€ (provisional sum) for the only juvenile victim of P.S.

Within the sample analysed, the 10 Portuguese victims of N.D. were the first to obtain compensation. The verdict came in 1999, eight years after the acts committed. Each victim was awarded 100,000 BEF (amounting to +/-2,500€ today). Some parents also filed civil actions and were awarded 25,000 BEF (amounting to +/- 625€ today) per person.

The best documented case concerns the victims of M.V. A total of nine victims were compensated: eight received 1,500€ and one received 2,500€. The rogatory commission gave rise to an investigation in the community where the victims resided and where they were abused. The moral damage established was based on several observations: pictures of abuse of the victims became public, after which the youngsters were isolated by their community and suffered ridicule from their peers. The feeling of shame caused by these pictures had a significant impact on their education (some dropped out of school) and on their employment opportunities, given their reputational damage.

³² CHILD FOCUS, *Annual Report 2014*, Brussels, s.d., p. 24.

³³ CHILD FOCUS, *Annual Report 2005*, Brussels, s.d., p. 27.

The moral damage was indisputable. As a result, the Court decided to grant financial compensation to the victims. The amount of money was still very low compared to the damages sustained and what the perpetrators were willing to pay to bribe the authorities (20,000 USD in the case of M.B.).

Despite these small victories, many obstacles still exist for obtaining compensation for civil parties. Apart from the distance there are, of course, for the victims the social, psychological and financial obstacles. Legal representation by organisations such as CEOOR and Child Focus exist in Belgium but under certain conditions.

These organisations also face resource difficulties. Moreover, their claims were not always deemed admissible because the offence did not correspond to the mandates of the litigating organisations. Following the amendments of the Law of 2013, Myria should be able to bring legal actions systematically in cases of trafficking pertaining to all forms of sexual exploitation. Child Focus/ECPAT Belgium should also be able to do so whether there is proof of sexual exploitation or not (indecent assault or rape).

Additional Penal Measures: Avoid Recidivism

Besides the prison sentence, further penalties were handed down by the court in order to prevent the abuser from committing more offences. This touches on a key aspect, namely preventing further offences since most perpetrators were repeat offenders. These are issues that go beyond the strict context of Art. 10ter but which are closely related: how to ensure that the prohibitions imposed will be respected and how can further abuse be prevented in the future?

- Sentence Enforcement Court

In three cases, in addition to the prison sentence, the accused was also put at the disposal of the Sentence Enforcement Court for a duration of 10 years. That means that when the person has served his/her sentence, s/he can be forced to remain in jail for a maximum of 10 years depending on whether s/he is still a danger to society. This was the case for J.A., E.U. and M.V. The judge's decision was justified by the high risk of recidivism (given the records of the accused) and the particularly serious nature of the crime. The Court was concerned, for example, by the anti-social and criminal nature of M.V., who was only thinking of satisfying his passions and considered his victims to be sexual objects.

- Therapeutic Treatment

Some abusers were forced to undergo therapeutic treatment following their application for parole (J.A., M.V.); the Sentence Enforcement Court allowed them to serve the remainder of their sentence outside prison, if they agreed to undergo psychological treatment. One of the objectives of this initiative was to make them aware of the seriousness of their actions and prevent them from reoffending. In another case, W. was released at the conclusion of his trial, under the same condition.

One question immediately arises: How effective is this therapeutic treatment on persistent re-offenders like those present in the cases studied? The goal here is not to get into a particularly sensitive debate but to note the persistent lack of guilt felt by the accused.

The abusers were convinced that the encounters were consensual (P.W., E.U.), that the young person liked it (M.V.) and was even the first to look for contact (M.B.). They said they were incapable of violence against children (P.W.), and considered their victims to be "close friends"³⁴(E.U.). They used distorted comparisons: "I love being with children the same way just as you love being with women"³⁵(J.A.). J.V. claimed he was a "pedophile in the Greek sense of the word, i.e. being friends with children and not a child sex offender"³⁶ while M.V. claimed he was an "hebophile"³⁷, that is "someone sexually attracted to young boys aged 12 years". As a result, some of them are convinced that it is society that needs to change and not themselves (M.V. and E.U.). P.S. was the only one to show remorse, claiming that "I am not quite well and have a visual related sexuality which is a form of perversion"³⁸.

In cases where therapy was pursued, the findings that emerged showed the importance of regularly reassessing this measure and combining it with other prevention initiatives, such as a ban on practicing a profession that gives a person access to children.

- Prohibited Occupations

Following their trial, at least four accused were prohibited from practicing a profession/activity that put them in regular contact with minors (Art. 382bis). This prohibition applies to both paid work (e.g. education), and volunteer work (youth group, sports club, etc.). M.B. and J. A. were sentenced to 10 years prohibition, M.V., 20 years and for W. the duration is unknown.

This preventive measure is important since nine of the 13 stakeholders were already convicted on similar charges in Belgium; the risk of reoffending is very real. However, the ban is only effective if regular checks are carried out to enforce the sentence imposed, not only in Belgium but also abroad. Indeed, in several cases analysed (J.A., D.C., J.V.), as in other notorious cases of Belgians tried in Cambodia and Canada, the abusers went abroad to escape justice in Belgium.

J.A. was also prohibited from practicing his profession, following his first conviction in Belgium and would never have been able to find himself a coaching position in a sports club in India if that provision had been correctly applied.

³⁴ "Boezemvrienden", see DE GRAAF, A., "De Belgische mijnheer keek niet op een verkracht Thais jongetje meer of minder", *De Morgen*, 22 October 2005, <http://www.demorgen.be/plus/de-belgische-mijnheer-keek-niet-op-een-verkracht-thais-jongetje-meer-of-minder-b-1412181469581/>, consulted on 21 September 2015.

³⁵ XUEREB, M., "Belgian paedophile is captured in Gozo", *Times of Malta*, 11 August 2012, <http://www.timesofmalta.com/articles/view/20120811/local/Belgian-paedophile-is-captured-in-Gozo.432333>, consulted on 12 August 2015.

³⁶ "Ik ben pedofiel in de Griekse betekenis", *De Standaard*, 11 February 2015, http://www.standaard.be/cnt/dmf20150211_01523157, consulted on 17 August 2015.

³⁷ Corr. Brussels (46e ch.), 28 June 2013, BR37.97.2347/2010, f. 12.

³⁸ PRAET, E., "Je suis un malade sexuel", *La DH*, 30 June 2005, <http://www.dhnet.be/actu/faits/je-suis-un-malade-sexuel-51b7c653e4b0de6db98d5bd2>, consulted on 20 September 2015.

In addition to ensuring the enforcement of sentences in Belgium and abroad, paid activities/volunteer work must be controlled. Given their much more informal nature, volunteer activities are also the poor relation of the prohibition. Many sports clubs or youth movements, in Belgium as well as abroad, have no formal procedure for selecting volunteers. As a result, the protection of children suffers. A look at the cases discussed above confirms this.

In the 1980s, J.A. was a sports coach and M.V. was a scoutmaster. Both were convicted of child sexual abuse. Both served their sentences and then reoffended. J.A. left for India. M.V. was asked to leave the Scout Unit but remained there as an assistant cook this was also the case for the priest J.V. who was simply "transferred" to another parish, before leaving for Brazil.

Therefore, during their stay abroad, the same problems arose again. They offered their services in a local community, where voluntary assistance was required, became influential actors and were rapidly regarded as benefactors, be it in an orphanage (G.D.), a sports club (J.A.) or as a priest (J.V.). In the wake of revelations concerning J.A., the Director of the football club concerned replied: "it is hard to believe (...) he has been associated with us for the last 5 years. We don't pay him any remuneration and he even spends from his pocket"³⁹. Later, J.A. would be asked to leave the club. And this case, like so many others, would be hushed up.

Many obstacles still hinder the implementation of the prohibited occupations: little exchange of information at the international level on convictions and little or no background checks by local organisations and individuals who continue to cross borders unmolested. However, besides the punishment of perpetrators, prevention of further abuse is also paramount. To forget this aspect is to miss an essential element regarding the possible impact of Art. 10ter and its mission to protect children.

The following two sections will focus on concrete measures to facilitate the implementation of Art. 382bis: official criminal records and child sex offender registers.

³⁹ "A paedophile as coach in Kerala", *Times of India*, 1st April 2008, <http://timesofindia.indiatimes.com/city/thiruvananthapuram/A-paedophile-as-coach-in-Kerala/articleshow/2915570.cms>, consulted on 12 August 2015.

Criminal Records

In Belgium, an employer normally requires a criminal record (CR) in order to perform any professional activity in the field of education, psycho-medical social working, local youth work, child protection, the arranging of activities or supervision of minors. It takes into account, not only possible previous convictions of the person concerned, but also resulting restrictions arising therefrom. In the case of sexual abuse of minors, prohibited occupations appear on the CR, until they are erased.

In theory, the system is satisfactory, but in practice, a CR is only very seldom asked for in the case of volunteer activities carried out in Belgium or abroad. The approach developed by our northern neighbors, the Netherlands, is quite instructive in this respect.

A certificate of good conduct (Verklaring Omtrent het Gedrag - VOG) can be issued free of charge for Dutch organisations employing at least 70% volunteers. This is an encouraging factor for youth movements, for example, to request the CR of potential candidates. In addition, the VOG was translated into English in order to promote its use among Dutch nationals wishing to volunteer abroad. An information leaflet on the VOG for host organisations in destination countries is also under preparation⁴⁰.

The VOG has the advantage of reaching a balance between privacy protection and protection of the child. Anyone wishing to get his VOG must submit a request to Justis, the Ministry of Security and Justice, which will decide whether the document can be issued. In the case of refusal, the reason for the negative decision will not be mentioned but the local NGO will be aware that the person cannot work with children.

Unlike other offences, convictions under Art. 372-377 of the Penal Code are not erased from the CR after a set time, unless a pardon has been requested and obtained by the applicant. In this case, the conviction and the prohibitions arising therefrom will be deleted from the CR. For rehabilitation, the defendant must, *inter alia*, have completed his sentence and fulfilled all obligations arising out of or connected with the judicial procedure (cost of the trial, compensation to victims, etc.) and not have reoffended during a trial period of three to 10 years⁴¹.

Even if the rehabilitation process is not an easy task, it is not impossible. M.V., for example, was sentenced to three years suspended sentence in 1988 for abusing young scouts in his unit. On appeal, he obtained a suspension of judgment (the facts are recognised, but the sentence is suspended for a specified period). At the end of the probationary period, he sought and obtained his rehabilitation. All traces of his conviction disappeared from his CR, which allowed him to recover (temporarily) a clean CR.

⁴⁰ MINISTERIE VAN VEILIGHEID EN JUSTITIE, *Voortgangsrapportage Kinderpornografie en Kindersekstoerisme*, 4 September 2014, 554114, p. 6.

⁴¹ FEDERAL PUBLIC SERVICE JUSTICE, *Effacement et réhabilitation*, http://justice.belgium.be/fr/themes_et_dossiers/jugement_penal_et_consequences/casier_judiciaire/effacement_et_rehabilitation, consulted on 12 November 2015.

Child Sex Offender Registers and Travel Bans

Some countries, such as France, Ireland, Malta and the UK have registers showing the persons convicted of sexual offences against minors on their territories. Not only is data concerning the sex offender registered at the national level, but restrictions can also be imposed on international travel. This is the case, for example, in the UK where sexual abusers on the register must notify the competent authorities of their intention to travel abroad. Based on the file, the court can decide to deny the person the right to travel abroad or within a particular country⁴².

The opportunity to implement such a system in Belgium is worth considering, even if some questions remain about its actual effectiveness. Indeed, according to recent figures from the British police, 400 people placed on the sex offenders register went missing, half of them already having abused children⁴³. So despite the obligation to report on a foreign trip, some perpetrators manage to get around the system and disappear.

As in the case of CRs, another issue arises: if a person abuses children abroad and/or was found guilty of abuse, that offence will not appear on his/her CR or in the national (child) sex offender register, unless there is a good exchange of information at the regional and international levels.

Since 2012, the ECRIS (European Criminal Records Information System⁴⁴) has facilitated the exchange of information on CRs of European citizens. Via ECRIS, Belgian authorities can deliver a CR, in a standardised electronic format, to an authority of another EU Member State that requests it. Although it is not a European central database, ECRIS nevertheless allows the exchange of information between Member States in order to avoid the risk of reoffending of their national citizens.

Beside the registers, other measures to restrict the freedom of movement of dangerous persons by removing their travel documents are also in use. The Belgian consular code makes it possible to refuse or remove somebody's passport if his freedom of movement has been limited to prevent further criminal offences⁴⁵. Concretely put, law enforcement authorities in Belgium should notify the Federal Public Service (FPS) Foreign Affairs of the suspect's name for this measure to be implemented. Despite its undeniable usefulness, this provision is not sufficiently applied, according to the former liaison officer and members of FPS Foreign Affairs interviewed during this research.

⁴² ECPAT UK, *Return to Sender, British child sex offenders abroad - why more must be done*, London, 2008, p. 17.

⁴³ TOPPING, A., "Hundreds of Convicted Sex Offenders are Missing, New Figures Show", *The Guardian*, 10 March 2015, <http://www.theguardian.com/society/2015/mar/10/hundreds-of-convicted-sex-offenders-are-missing-new-figures-show>, consulted on 9 November 2015.

⁴⁴ EUROPEAN COMMISSION, "ECRIS. European Criminal Records Information System", http://ec.europa.eu/justice/criminal/european-e-justice/ecris/index_en.htm, consulted on 9 November 2015.

⁴⁵ *Law of 21 December 2013 on the Consular Code*, M.B., 21 January 2014 (art. 62).

The Flight of the Accused

One of the major obstacles to the implementation of the law is the flight of the accused. L.C. and M.B. were indeed arrested by the local authorities after the sexual abuse of young boys. However, they managed to escape with false passports. L.C. flew to Amsterdam and returned to Belgium with his identity card. It was only several years later that he was arrested for possession of child sexual abuse material.

Although L.C. and M.B. fled from foreign justice and returned to Belgium, others fled Belgian justice and moved abroad. C.D., for example, convicted in Belgium for child sexual abuse, fled to Thailand during his preventive release. He remained there until the acts committed in Belgium were time-barred, giving him the opportunity to commit further crimes against Thai children.

J.A. was arrested at his home in July 2009 for offences committed in India. He took advantage of his preventive release to flee to Cyprus, spending a brief period in Belgium to sell his house and invest his money. He was convicted in first instance *in absentia* in 2010 and on appeal in 2012. It was only by monitoring telephone calls from relatives that he was located and arrested in Malta during an operation of the Fugitive Action Search Team (FAST).

During another case, a priest was moved to Canada by his religious order, allowing him to escape Belgian justice. He abused many children in the Inuit community while he officiated on the other side of the Atlantic. A naturalised Canadian when the case emerged, he returned to Belgium to escape Canadian investigators. It was only years later that he was found by the Belgian authorities, not because of his pedophile past but because he was living illegally in Belgium, since he was the holder of a Canadian passport.

Abusers can still enjoy the lack of systematic monitoring of their movements and manage to outsmart police checks. It is therefore essential to strengthen border control and issue warnings to indicate the movement of persons convicted or suspected of intending to commit child abuse during their trips. Existing measures will be developed under the section on international cooperation among police forces.

Extradition : Possible Procedure but Rarely Applied

If extraterritorial legislation requires the presence of the accused on Belgian soil when prosecution starts, it is also important that the person be present throughout the judicial proceedings. Under certain conditions, Belgium may therefore request extradition, so that the accused appears before the Belgian courts. This was precisely the case of J.A. who was discovered in Malta where he had fled after being investigated by the Belgian authorities for sexual abuse of Indian children. Belgium issued a warrant for his immediate arrest and extradition. In another case, they were able to turn over to the Canadian authorities one of their own nationals, a priest hiding out in an Oblate community in Blanden.

Extradition may also be used if a country is unable to pursue a Belgian citizen abroad. In one ongoing case, J.V., a priest suspected for years of sexual abuse of children in Brazil, will not be prosecuted locally because he is more than 70 years old. The only solution would be to seek extradition and have him tried in Belgium. However, providing proof is an obstacle: despite strong suspicions, no sufficient evidence has yet been collected to demand his immediate extradition.

By allowing Belgian courts to stand in for the justice system of another country, the purpose of extradition is to fight against impunity for crimes, including sexual abuse, committed against children abroad. An international obligation also endorses this rule “extradite or prosecute” (*aut dedere aut judicare*): either the “host” country prosecutes, or the accused is brought before the Belgian courts.

Belgium retains exclusive responsibility to judge its citizens in its own territory. As a result, it does not extradite its own citizens. If the country where the abuse was committed allows the suspect to escape, he can no longer be captured and tried thereafter. Thus, when a complaint was filed against M.V. in Brazil, he fled the country to return to Belgium. A few years later, Brazil requested his extradition so that he could be brought to trial. Belgium refused this request, preferring to open an investigation itself.

Extradition is often facilitated by the existence of bi- or multi- lateral agreements among the countries concerned. It is also possible that the country plagued by a sexual abuser decides to expel the offender and have him declared *persona non grata*. For example, C.D. was asked to leave Thailand after he had exploited under-age children. P.S. was treated in the same manner in Morocco. The case of a Belgian sentenced in Cambodia was also instructive: after being sentenced in 2006 to 18 years in prison, he was given early release in 2009, but was permanently expelled a few months later in response to the mobilisation of local NGO's.

International Cooperation : The Cornerstone of the Procedure

Given the transnational nature of the cases analysed, collaboration among countries and exchange of information at the international level are among the determining factors regarding the success or failure of an investigation.

Handling of the L.C. case, for example, suffered from a lack of cooperation with Sri Lanka. Despite a formal request, Belgium was never given permission to investigate and prosecute the suspect, even though he returned to Belgium. In other cases, Belgium was never notified that one of its nationals had been arrested abroad for sexual crimes against minors. This problem was mentioned in the P.S. case concerning Morocco and the M.V. case concerning Brazil and it is likely that these were not isolated cases.

However, the Belgian embassy in Thailand, the local police and the liaison officers were in contact regularly as soon as M.B. was arrested which facilitated the continuation of the procedure. Thanks to the cooperation among NGO's, it was possible to collect the victim's testimony translate the necessary documents, and get the permission of the victim's mother to bring a civil action. Moreover, ECPAT Belgium welcomed a working visit from the Thai Attorney General who wished to collaborate on the case.

This section seeks to pinpoint some actors whose roles were of key importance in international cooperation in the cases analysed.

- Liaison Officers

Liaison officers are Belgian police officers posted abroad in one or several countries to enable smooth cooperation between police and judicial forces. They directly work at the Belgian Embassy in the countries concerned and provide assistance in obtaining and exchanging information, including during the investigation procedure⁴⁶.

It is essential that they be familiar with extraterritorial legislation relating to child sexual abuse committed abroad to ensure that the relevant information is passed on rapidly in the event of an opening of proceedings in Belgium. Liaison officers offer precious help during the investigation by the local police since they make sure that all the evidence that links the perpetrator or that helps to identify the victims is gathered in the appropriate manner. For example, if DVDs containing sexual abuse of children are found at a suspect's house, the liaison officer may ask that the material be recorded by the local police so that it can then be used as evidence in Belgium.

By his/her presence on the ground, the liaison officer sets up a network of formal and informal contacts which can sometimes be very useful during the investigation. S/he is therefore able to assist with the

⁴⁶ FEDERAL PUBLIC SERVICE FOREIGN AFFAIRS, FOREIGN TRADE AND DEVELOPMENT COOPERATION, FEDERAL PUBLIC SERVICE INTERIOR AND FEDERAL PUBLIC SERVICE JUSTICE, *Circulaire ministérielle relative aux officiers de liaisons belges de la police intégrée à l'étranger*, M.B., 27 March 2014.

preparation of rogatory commissions to facilitate the work of the investigators working on the spot. For instance, during the rogatory commission conducted in 2004, a liaison officer posted in Thailand passed on information on the defendant C.D. as well as a list of victims to be interviewed.

Given that s/he does not carry out the investigation herself/himself, the liaison officer often depends on the cooperation with the local police. However, many factors such as the political situation, corruption, etc. can slow down or even hamper the investigation. For example, M.B. was quickly released on bail (20,000 USD) from his prison in Thailand and M.V. succeeded in bribing local authorities for 3,000€. A former liaison officer expressed his frustration regarding the difficulties of carrying out certain formalities during the investigation and the need to gather more support from Belgian authorities to facilitate his job on the ground. It might therefore be useful to redefine the scope of action of liaison officers and the legal framework in which these actions are carried out.

- Embassies

A circular dated 1995⁴⁷ gives clear instructions to embassies on how to proceed when a Belgian citizen is involved in child sexual abuse. Belgian embassies and consulates abroad must pass on information regarding the arrest of a national citizen in particular and the legal proceedings initiated locally. Should this happen, an official report should be requested from the local authorities and sent to FPS Foreign Affairs in Brussels. This information should then be given to the Federal Police to allow the Belgian judge to decide whether to prosecute, using Art. 10ter. The C.D. case, for example, started with an anonymous report sent to the Belgian Embassy in Thailand which, one may assume, was transferred to Belgium rapidly.

As is the case with law enforcement authorities, the lack of cooperation among embassies can particularly damage the procedure, as it can cause delays. However, child sexual abuse committed abroad calls for speedy action, not only for the collection of evidence but also for the protection of victims. In March 1998, W., a doctor working for a French NGO in Senegal, was caught red-handed by colleagues, sexually abusing young boys. The people in charge immediately filed a complaint to the French Embassy in Dakar but it never informed its Belgian counterpart. It was only in November 1998, following the insistence of humanitarian workers, that Belgium was informed and could take the necessary measures...nine months later.

In 2010, complaints by Belgian victims were filed against priest J.V. who had been looking after children living in the streets in Brazil since 1989. While suspected child sexual abuse was not yet confirmed, complaints against J.V. were recorded by the Brazilian helpline. Faced with the inaction of religious authorities - the Archbishop of Fortaleza claimed he had been informed in 2005 of the suspicions raised against J.V. and that he had ordered concrete actions to be taken – protest actions were held in front of the Brazilian Embassy by the Belgian branch of Survivors Network of those Abused by Priests (SNAP). With a letter to the Ambassador, the Network reminded the Brazilian authorities of the urgency to launch an investigation on the ground into the actions of J.V. and to put an end to the large degree of

⁴⁷ FEDERAL PUBLIC SERVICE FOREIGN AFFAIRS, FOREIGN TRADE AND DEVELOPMENT COOPERATION, *LC 183*, 15 December 1995 and *LC 141*, 22 November 1996.

impunity still enjoyed by priests⁴⁸. No action has been taken so far by the Brazilian authorities against J.V.

The embassies therefore play a key role in the passing on of information which can be crucial to setting up an investigation by Belgian judicial authorities. As a result, it is important to raise the awareness of their staff to implement the circular of 1995 in an efficient manner.

- NGO's

Local NGO's are major actors in detecting cases, gathering testimonies, ensuring the adequate treatment of victims and contributing to the exchange of information between the country of origin and Belgium. In the L.C. and M.B. cases, the local points of contact of ECPAT made it possible to have supporting documents translated for the file.

NGO networks, such as ECPAT, which includes members in over 80 countries, can be used to help monitor the implementation of extraterritorial legislation. They are an invaluable source of information and work on the ground to protect children from sexual exploitation. Their influence and power of action should not be underestimated. Although there was not enough evidence to prove that G.D. used his orphanages in Sri Lanka to abuse children, the vigilance of the government was increased thanks to the actions led by the NGO PEACE. It was decided to close these orphanages a few months after the case ended.

- (Inter)national police

As mentioned above, transnational child sex offenders sometimes managed to escape whereas they should have been stopped from leaving the country where the proceedings were initiated (Belgium or any other country). However, mechanisms are in place that can be used to facilitate cooperation among police forces.

In Europe, the Schengen Information System (SIS II⁴⁹) allows Member States of the Schengen area to issue an alert on a person wanted for arrest. The information is passed on to national police forces but also to customs officers, border guards and visa authorities. A European arrest warrant was issued against E.U., for example, when he fled, soon after the Belgian police searched his house. Realising that he could not hide for long, he finally decided to hand himself over to the Belgian authorities.

If the person is sought outside Europe, an alert can be issued through the international organisation Interpol which will pass on the information to all national police forces. In March 2010, it was Interpol Brazil that drew the attention of Belgian authorities to M.V. since he was actively pursued by Brazilian forces to be prosecuted there. The colour-code for each alert varies according to the type of action that

⁴⁸ SURVIVORS NETWORK OF THOSE ABUSED BY PRIESTS, "Clergy Sex Victims To Urge Brazilian Federal Authorities To Investigate Credibly Accused Belgian Priest And Help Save Brazilian Street Children", 26 October 2011, http://www.verschueren.at/Brazilian_Embassy_SNAPBelgium.html, consulted on 17 August 2015.

⁴⁹ COUNCIL OF THE EUROPEAN UNION, *Decision on the establishment, operation and use of the second generation Schengen Information System (SIS II)*, 12 June 2007, 2007/533/JAI.

is requested and the urgency. An international arrest warrant is marked red when the person must be arrested immediately. If the Interpol Belgium office had issued a warning when C.D. fled Brussels during his pre-trial detention, it is unlikely he would have managed to cross the Thai border.

In addition to calling for immediate arrest when the crime has already been committed, the Interpol notices can also be used to warn of possible threats. The Green Notice⁵⁰ is issued by a country when an individual has already been convicted of child sexual abuse and might be likely to reoffend. It is up to the country to decide which measures are to be taken if a person “notified with the green colour” tries to enter its territory. Green notices are an efficient way to prevent recidivism, but they are still too seldom used⁵¹. It is therefore important to raise the awareness of police forces on the local and national levels so that they make greater use of the system to check the records of those arrested in Belgium or to provide information on Belgian suspects to foreign police.

Using SIS II, it is also possible to request discreet or specific checks of a person regarded as a threat. Since transnational child sexual abuse is a serious criminal offence, Belgium could request a neighbouring country to closely watch an individual suspected of committing such acts, especially due to his past CR. Data will be kept for one year, with the possibility of extension.

⁵⁰ INTERPOL, “Sex offenders”, <http://www.interpol.int/es/Criminalidad/Delitos-contramenores/Sex-offenders>, consulted on 10 November 2015.

⁵¹ ECPAT INTERNATIONAL, *Offenders on the Move. Global Study on Sexual Exploitation of Children in Travel and Tourism*, p. 78, 2016.

Before : Prevention!

For every identified case, how many cases of transnational sexual abuse will still remain unknown? In order to be well-known and correctly applied, the extraterritorial law needs to go hand in hand with awareness-raising campaigns aimed at the general public but also those working in the sectors concerned (police, justice, Embassies, NGO's, tourist sector, etc.).

- Awareness-raising

Since 2004, ECPAT Belgium has been coordinating the campaign "I say STOP!"⁵² which aims at raising travelers' awareness of the existence of extraterritorial legislation. A survey led by the European Commission revealed that 81% of Belgian citizens tried to discourage someone they knew wishing to travel to give into "child sex tourism"⁵³.

This is the reason why the campaign seeks not only to inform the people but also to call for the vigilance and action of everyone. By filing a reporting form, people can report any suspected cases of transnational child sex abuse. The reports are analysed by ECPAT Belgium and then sent to the Federal Police. Each year, a dozen contain enough elements to launch an investigation.

Since 2014, the campaign "I say STOP!" has been linked to the International Platform "Don't Look Away!" which gathers different national reporting lines in Europe and in the United States.

This initiative is operating well thanks to the good will of each member of the STOP Group (see *infra*) and the voluntary commitment of ECPAT Belgium in the coordination of actions. It is important to ensure long-term institutional and financial support for the campaign which is often referred to as an example of good practice in the different ministries involved.

- Partnerships

It is clear that combatting commercial sexual exploitation of children can not be done alone. Not only does it require citizen involvement but also that of all the sectors concerned.

The **STOP Group** is made up of representatives of the public sector (Foreign Affairs, Police, Justice and Defence), the private sector (Federation of the Tourism Industry and Royal Federation of Belgian Carriers and Logistic Service Providers) and NGO's (ECPAT Belgium, Plan Belgium, Child Focus and Samilia Foundation).

Multidisciplinary collaboration and the active commitment of the different sectors is what makes this group successful. In addition to sharing information on the cases, this partnership allows a real dissemination of the campaign, both internally, within each structure, and externally to the partners' networks.

⁵² <http://www.isaystop.com>

⁵³ INRA, EUROPEAN COORDINATION OFFICE, *Europeans and their views on child sex tourism. Executive summary*, Brussels, 1998, p. 13.

In 2015, for example, the campaign "I Say STOP!" was launched, using lorries on the Brussels ring road. According to the indicators of "Touring Mobilis", 271,000 people have been reached by this campaign. Moreover, an agreement in principle was reached with Brussels Airport to distribute flyers for the campaign.

Based on the analysed cases, the **tourism sector** has an ambiguous relationship with commercial sexual exploitation of children. Sometimes, it takes advantage of it while, other times, it is opposed to it. On the one hand, the hotelier hosting M.V. in Brazil helped the defendant by finding a lawyer that would help him escape. He also helped in hiding child sexual abuse material. On the other hand, the owner of the hotel testified against L.C., thereby putting his own life at risk. We obtained no information on the taxi drivers, travel agencies and bus companies, etc. whose infrastructures are used both voluntarily and involuntarily by travelling child sex offenders.

For a few years now, ECPAT Belgium has been giving training sessions to future professionals of the tourism industry to help them better detect and handle possible cases of child sexual exploitation. It cooperates with tourism schools/universities and recognised companies such as ACCOR Belgium and TUI Belgium.

But all these partnerships are obviously not enough. Regarding the tourism sector, it is essential to have all the actors taking part, irrespective of their size or type: airline companies, tour operators, travel agencies, etc. Too few companies have, at the moment, set the fight against sexual exploitation of children in travel and tourism as their main priority within their societal commitments.

ECPAT Belgium can, only invite companies to sign the "**Code of Conduct** for the Protection of Children from Sexual Exploitation in Travel and Tourism"⁵⁴. Its signatories thereby commit to training their staff on this phenomenon in the countries of origin and countries of destination, and give information to their clients on children's rights. In Belgium, 12 companies (ANWB Reizen Beheer BV, Carlson, Sawadee, Travel counsellors, ACCOR Hotels Belgium, Astrea Test, Bayerisches Pilgerbüro e.V, Orbitz worldwide, Society for Incentive Travel Excellence, Studiosus Reisen München GmbH, Thomas Cook, Jetair) have signed the Code, but ACCOR Belgium and Jetair/TUI are the only ones in direct contact with ECPAT Belgium.

At the regional level, Art. 31 of the Decree on Flemish Travel Agencies mentioned, among other things, the need to react against illegal practices, such as exploitation of children in prostitution. Since January 2014, this Decree is no longer in use and was replaced by the "Global Code of Ethics on Tourism" signed by Minister Geert Bourgeois in 2008. It is therefore this Code that is being promoted in Flemish tourism business, including via Toerisme Vlaanderen⁵⁵.

In addition to raising awareness externally, it is important to establish internal procedures when reporting cases. To be complete, these procedures should be coupled with sanctions if the staff are themselves also responsible.

Besides the tourism industry, other key sectors, such as the financial sector, also have a role to play in the fight against the production/dissemination of child sexual abuse material. The links between the

⁵⁴ <http://www.thecode.org>

⁵⁵ Correspondence between ECPAT Belgium and Jozef Vercruysse, Departement Internationaal Vlaanderen, 26 November 2015. Correspondence between ECPAT Belgium and Griet Geudens, Toerisme Vlaanderen, 7 December 2015.

various forms of exploitation of children in prostitution, pornography, trafficking or travel and tourism no longer need to be proved. Private companies such as Microsoft, Paypal, Mastercard, Google, Visa, through the European Financial Coalition⁵⁶, aim at fighting the diversion of their services by users of child pornography by the training of their staff to address this problem.

⁵⁶ http://www.europeanfinancialcoalition.eu/working_group.php

Conclusion and Recommendations

One of the first challenges in studying the impact of extraterritorial legislation on combatting impunity for transnational child sex abusers is the lack of available sources. To date, there is no centralised system listing all the individuals prosecuted for sexual exploitation of children in travel and tourism. And with good reason: this offence is not part of the Penal Code. Consequently, gathering police and court statistics still remains laborious. Given this lack of information, ECPAT decided to focus on a limited number of cases, relying mainly on judgements and media sources.

The cases studied provided proof that extraterritorial legislation has a profound impact on the prosecution of perpetrators who might not have been found guilty, were it not for this law. For most of them, this was not their first attempt at exploiting children and many were relying on the laxity of local authorities to slip through the cracks. Even if there had been only one conviction under Art. 10ter, the outcome could still be regarded as a success.

However, there are still many obstacles hindering the fight against impunity for perpetrators. First, the number of perpetrators is underestimated. The law can only start to take hold if the abuses are properly identified. Yet, the annual number of reported cases is still extremely low. And even when offenders are arrested, some of them still manage to escape, for instance, by corrupting local authorities. This way, they circumvent accountability in justice. Finally, even if proceedings are initiated in Belgium, collecting evidence and victims' testimonies remain a costly and delicate task.

Moreover, prescription or non-retroactivity are sometimes favourable to the case of the abuser, just as are certain inaccuracies, notably concerning the scope of indecent assault.

If we only consider the sentences pronounced, the effectiveness of the Law remains relative. It is important, nevertheless, to take its symbolic impact into account⁵⁷. Since Belgian courts have universal extraterritorial jurisdiction in matters involving child sexual abuse, Belgium is sending a clear signal to potential perpetrators, that their actions are liable to prosecution in Belgium. In this sense, the Law has a dissuasive impact.

Assessing the impact of the Law also means considering its preventive arm. The cases analysed in this study are proof that many of the abuses could have been avoided: by awareness raising among all actors concerned, systematic control of one's criminal records, and respect for bans imposed. For ECPAT Belgium, prevention is an absolutely essential tool within the legislative policy. While the prosecution of perpetrators must remain a priority, the fight against child sexual exploitation means avoiding, at all costs, children becoming victims of abuse. ECPAT Belgium calls, therefore, for a global, multidisciplinary approach.

International cooperation between police forces, including liaison officers, courts, diplomatic posts and NGO's are thus essential components in the prevention but also in the efficient handling of cases. This will be achieved through, for instance, greater information-sharing between the different organisations on the ground, using existing mechanisms (Interpol Green Notices, ECRIS system, international certificate of good conduct, the reporting line "I say STOP!", bilateral treaties, etc.).

⁵⁷ FALZONE, C. and RUTTEN, J., *op. cit.*, p. 49.

To conclude, it would be unrealistic to place limitless expectations on this legislation. We must bear in mind that extraterritorial jurisdiction is only used as a last resort, when justice is not rendered, as it should be, in the country concerned. Therefore, it is always the immediate prosecution approach that should be favored because it sends a strong message to (potential) abusers of the commitment of the countries concerned to fight against impunity.

This does not mean, however, that Belgium's responsibilities under extraterritorial legislation should be overlooked. That is why we conclude this study with a series of recommendations which, hopefully, will improve the application of the Law and the protection afforded to children. These recommendations focus on the four P's: prevention, protection, prosecution and partnership.

Prevention

- improve the exchange of information on CRs in Belgium and abroad, by following the example from the Dutch system and its international dissemination; [Ministry of Justice]
- assess the opportunity to link this system to a register listing prohibitions resulting from past criminal convictions for child sexual abuse, per person, including prohibitions of professions; [Ministry of Justice]
- require, systematically, the prohibition of certain professions for a specific period (Art. 382bis) for convictions linked to child sexual abuse or, failing that, raise the awareness of Public Prosecutors and judges about the existence of this prohibition; [Ministry of Justice]
- encourage the systematic use of Interpol Green Notices at the different levels of Belgian police forces and the use of discreet or specific checks within SIS II; [Ministry of Interior]
- make more use of the application of the provisions of the Consular Code which can, following the request of law enforcement officials, refuse the issue, invalidate or retrieve the passport of someone who has committed child sexual abuse; [Ministry of Justice/Ministry of Foreign Affairs]
- increase people's awareness on this issue and enhance the visibility of the reporting line through the institutionalisation of the campaign 'I say STOP!'; [Ministry of Foreign Affairs/Ministry of Justice]
- reinforce awareness raising actions during special events (major sporting events, holiday seasons, etc.); [Ministry of Foreign Affairs/tourism sector]
- make awareness-raising systematic in the different sectors (public sector, private sector, NGO's, etc.) through training sessions on the existence of extraterritorial laws and reporting procedures;
- make sure that each of the structures of the aforementioned sectors have internal procedures (detection, handling, sanctions) to combat sexual exploitation of children in travel and tourism within their own sector.

Protection

- examine in more detail the Penal Code regarding sexual offences to see if children are protected from all kinds of abuse, including those committed through the use of new technologies; [Ministry of Justice]
- explicitly mention, in Art. 10ter, indecent assault with the help (and not only on) of a child to ensure consistency with Art. 372 of the Penal Code; [Ministry of Justice]
- raise judges' awareness about the larger scope of the offence of human trafficking for sexual purposes and the interpretation made by the Court of Cassation on the notion of recruitment in case of active behaviour by the victims; [Ministry of Justice]
- make sure that any organisation whose mandate is to fight against sexual abuse or exploitation of children abroad can bring civil actions to defend the victim's interest; [Ministry of Justice]
- assess the chance to add the fight against sexual exploitation of children in travel and tourism into the plans of action on children's rights at the regional level since there is still no plan of action at the federal level which could address this problem; [Ministry of Justice and Communities]
- carry out specific research on the links between new technologies and sexual exploitation of children in travel and tourism; [Ministry of Justice]
- set up a working group on "extraterritoriality" that would follow-up the implementation of the law. [Ministry of Justice/Ministry of Foreign Affairs]

Prosecution

- provide Public Prosecutors with the financial and human resources to prosecute offenders using Art. 10ter and create more rogatory commissions; [Ministry of Justice]
- raise liaison officer's awareness to the existence of Art. 10ter and the different means to ensure that the evidence is efficiently collected for possible proceedings in Belgium; [Ministry of Interior]
- analyse the obstacles hampering the work of liaison officers and redefine, if necessary, the legal framework and the scope of action in which they operate; [Ministry of Interior/Ministry of Foreign Affairs]
- refine the encoding methods of police data by adding the possibility of specifying a country rather than providing an address in Belgium, to distinguish which offence has been committed abroad; [Ministry of Interior]
- set up a centralised data system among the different Ministries, as recommended by the Council of Europe⁵⁸. [Ministry of Interior/Ministry of Justice/Ministry of Foreign Affairs]

⁵⁸ PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE, *Fighting Child Sex Tourism*, Resolution 1926 (2013).

Partnership

- formally establish the existing cooperation among the public sector, tourism sector and NGO's within the group STOP by means of a budget so that its coordination does not solely depend on good will; [Ministry of Foreign Affairs/Ministry of Justice]
- network with NGO's in Belgium but also in destination countries;
- set up new partnerships with the tourism sector and promote the “Code of Conduct for the protection of children from sexual exploitation in travel and tourism” (tour operators, travel agencies, travel guides, etc.);
- extend the partnership to online booking sites, discussion forums, etc.;
- develop a network of *pro bono* lawyers to help organisations to bring civil actions and represent the victims in court;
- work more closely with the ICT sector to detect cases in which Art. 10ter could be applied; [Ministry of Justice/law enforcement/NGO's]
- strengthen exchange of information and collaboration among law enforcement authorities at the international level (bi-multilateral agreements, resort to Europol/Interpol, border controls, etc.);
- establish a network for the exchange of good practices among the liaison officers of different countries but who are operating in the same area, so that they can help each other out in the way they conduct investigations;
- extend the “Decision on the common use of liaison officers abroad by the law and enforcement agencies of the Member States⁵⁹” to member states outside the European Union so that Belgium can appoint – when there is no liaison officer in the destination country - a liaison officer of a third country positioned there.

⁵⁹ COUNCIL OF THE EUROPEAN UNION, *Decision on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States*, 27 February 2003, 2003/170/JAI.

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Annex 1

Questionnaire to the attention of the judges on the application of the extraterritorial measure

The extraterritorial measure under Article 10ter 4 of the Preliminary Title of the Code of Criminal Procedure has been in force over 20 years. Under this article, “anyone who has committed outside the territory of the Kingdom can be prosecuted in Belgium”:

1° one of the offences referred to in Articles 379, 380, 381, 383bis, §§ 1er and 3, 433sexies, 433septies and 433octies of the Penal Code.

2° one of the offences referred to in Articles 372 à 377 , 377quater and 409 of the same Code if the act has been committed on a minor.

3° one of the offences referred to in Articles 77ter, 77quater and 77quinquies of the Law of 15 December 1980 on access to territory, stay, establishment and return of the foreigners and in Articles 10 to 13 of the Law of 9 March 1993 regulating and monitoring the activities of matrimony companies.

4° one of the offences under Article 137, 140 and 141 of the Penal Code committed on a national citizen or a Belgian institution, or against an institution of the European Union or of a body, set up pursuant to the Treaties establishing the European Community and the Treaty on European Union, which has its seat in the Kingdom”.

ECPAT wishes to conduct a survey to have a broader overview of the cases where this measure has been applied over the last 20 years. This survey is conducted with certain members of the Interdepartmental Coordination Unit on the fight against trafficking. In order to better assess the application of this Article, the Service for Criminal Policy invites you to answer this short questionnaire.

- 1) Have you already had to deal with cases for which the provision set out in Article 10ter of the Preliminary Title of the CCP could be applied?

Period	Number
1995-2005	
2005-2015	

Please, specify the kind of behaviour/offence.

- 2) Could you provide a scanned copy of the decisions at your disposal or, at least, the reference of the judgement?
- 3) Could you give us your opinion on the application of such measure? The difficulties or accomplishments that you had in these cases.

Your first name and family name :

Function :

Judicial district :

Thank you in advance for your cooperation.

Annex 2

Name of the case	
1. Offender	
	<ul style="list-style-type: none"> ➤ Date of birth ➤ Job ➤ Marital status ➤ Children ➤ Place of residence ➤ Past convictions ➤ Year of death ➤ Number of years spent in the country when abuse happened ➤ Accomplices ➤ Ways to have access to children
2. Victims	
	<ul style="list-style-type: none"> ➤ Number of victims ➤ Age ➤ Nationality ➤ Place of residence ➤ Sex ➤ Vulnerability factors
3. Abuse	
	<ul style="list-style-type: none"> ➤ Year of abuse ➤ Number of abuse ➤ Place of abuse (town, village, etc.) ➤ Location of abuse (bar, beach, hotel, etc.) ➤ Type of offence ➤ Circumstances of the abuse ➤ How the abuse was detected
4. Procedure	
	<ul style="list-style-type: none"> ➤ Length of custody ➤ Bail ➤ Starting date of the procedure ➤ Date of verdict ➤ Length of the procedure ➤ Place of trial ➤ Evidence used ➤ Sentence ➤ Civil party ➤ Compensation ➤ Extradition ➤ Still ongoing? ➤ International collaboration ➤ Actors involved in the procedure ➤ Personal comments

Annex 3

Name	J.A.	M.B.	L.C.	N.D.	G.D.
Job / voluntary work	Psychologist specialized in childhood / Sports coach	Teacher	Building scaffolds	Employee	Teacher+ Travel organizer/ Founder of an orphanage
Past convictions for sexual offences on minors	yes	?	yes	?	?
Age of the victims	?	14	12 and 13	11-15	?
Number of victims	3	1	2	10	?
Sex of the victims	M	M	M	9 M/ 1 F	?
Country	India	Thailand	Sri Lanka	Portugal	Sri Lanka
Offence	Sexual abuse – Possession of child sexual abuse material	Indecent assault	Rape of minors	Rape, assault with violence, indecent with child sexual material abuse	?
First instance	30 months	1 year - 6 months suspended sentence	Proceedings stopped in Sri Lanka	5 years	Dismissed
Appeal	30 months	1 year - 6 month suspended sentence	/	5 years	/
Cassation	/	1 year - 6 month suspended sentence	/	/	/
Compensation	/	/	/	/	/

Name	C.D.	M.R.	J.V.	P.S
Job / voluntary work	?	Business man	Priest	Journalist + civil servant
Past convictions for sexual offences on minors	yes	suspicious	yes	suspicious
Age of the victims	14-18	14-18	?	14
Number of victims	40ish	40ish	4?	1
Sex of the victims	M	M	M	F
Country	Thailand	Thailand	Brazil	Morocco
Offence	Rape on minors, exploitation of children in prostitution, Indecent assault with violence	Advertizing to facilitate prostitution of children	?	Indecent assault without violence
First instance	6 years	3 years (in absentia)	Ongoing case	18 months - 5 year suspended sentence
Appeal	5 years	/	/	/
Cassation	released	/	/	/
Compensation	/	/	/	50.000 euro

Name	E.U.	M.V.	P.W.	W.
Job / voluntary work	Sales engineer	Psychatrist nurse	Doctor	NGO staff
Past convictions for sexual offences on minors	yes	yes	yes	?
Age of the victims	12-13	8-16	?	<14
Number of victims	200	min 16	?	10
Sex of the victims	M	M	M	M
Country	Thailand	Brazil + Portugal and Poland	Thailand	Senegal
Offence	Indecent assault on children under 16 + production and dissemination of child sexual abuse material	Sexual abuse, production, possession, dissemination and selling of child sexual abuse material	Rape on minors + indecent assault	Indecent assault
First instance	10 years	7 years	acquitted	Parole
Appeal	/	4 years	5 years - 2,5 suspended sentence	/
Cassation	/	/	/	/
Compensation	2000 euro	2500 euro per victim	/	/

Annex 4

Article 10ter de la loi du 17 avril 1878 contenant le titre préliminaire du Code de procédure pénale

Pourra être poursuivie en Belgique toute personne qui aura commis hors du territoire du Royaume :

1° une des infractions prévues aux articles 379, 380, 381 [383bis, §§ 1er et 3, 433sexies, 433septies et 433octies du Code pénal]; <L 2005-08-10/61, art. 23, 020; En vigueur : 12-09-2005>

2° une des infractions prévues aux articles 372 à 377 [2 , 377quater]2 et 409, du même Code si le fait a été commis sur la personne d'un mineur;

3° une des infractions prévues [aux articles 77ter, 77quater et 77quinquies], de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et par les articles 10 à 13 de la loi du 9 mars 1993 tendant à réglementer et à contrôler les activités des entreprises de courtage matrimonial.

[4° une des infractions prévues aux articles 137, 140 et 141 du Code pénal commise contre un ressortissant ou une institution belge, ou contre une institution de l'Union européenne ou d'un organisme créé conformément au traité instituant la Communauté européenne ou au traité sur l'Union européenne et qui a son siège dans le Royaume.] <L 2003-12-19/34, art. 14, 017; En vigueur : 08-01-2004>

[1 Si l'inculpé n'est pas trouvé en Belgique, les poursuites, en ce compris l'instruction, ne peuvent être engagées, lorsque l'infraction a été commise par un étranger contre une personne qui, au moment des faits, est un ressortissant belge ou contre une institution visée à l'alinéa 1er, qu'à la requête du procureur fédéral ou du procureur du Roi, qui apprécie les plaintes éventuelles.

Saisi d'une plainte en application de l'alinéa précédent, le procureur fédéral ou le procureur du Roi requiert le juge d'instruction d'instruire cette plainte sauf si:

1° la plainte est manifestement non fondée; ou

2° les faits relevés dans la plainte ne correspondent pas à une qualification des infractions visées à l'article 137 du Code pénal; ou

3° une action publique recevable ne peut résulter de cette plainte; ou

4° des circonstances concrètes de l'affaire, il ressort que, dans l'intérêt d'une bonne administration de la justice et dans le respect des obligations internationales de la Belgique, cette affaire devrait être portée soit devant les juridictions internationales, soit devant la juridiction du lieu où les faits ont été commis, soit devant la juridiction de l'Etat dont l'auteur est ressortissant ou celle du lieu où il peut être trouvé, et pour autant que cette juridiction présente les qualités d'indépendance, d'impartialité et d'équité, tel que cela peut notamment ressortir des engagements internationaux relevant liant la Belgique et cet Etat.

S'il est d'avis qu'une ou plusieurs des conditions énoncées à l'alinéa 3, 1°, 2° et 3°, sont remplies, le procureur fédéral ou le procureur général prend devant la chambre des mises en accusation des réquisitions tendant à faire déclarer, selon les cas, qu'il n'y a pas lieu à poursuivre ou que l'action publique criminelle n'est pas recevable. Le procureur fédéral ou le procureur général est seul entendu.

Lorsque la chambre des mises en accusation constate qu'aucune des conditions énoncées à l'alinéa 3, 1°, 2° et 3°, n'est remplie, elle désigne le juge d'instruction territorialement compétent et indique les faits sur lesquels portera l'instruction. Si la requête visée à l'alinéa 4 émane du procureur fédéral, elle saisit le doyen des juges d'instruction visé à l'article 47 duodecies, § 3, du Code d'Instruction Criminelle.

Il est ensuite procédé conformément au droit commun.

Le procureur fédéral ou le procureur général a le droit de former un pourvoi en cassation contre les arrêts rendus en application des alinéas 4 et 5. Dans tous les cas, ce pourvoi sera formé dans les quinze jours à compter du prononcé de l'arrêt.

Dans le cas prévu à l'alinéa 3, 4°, le procureur fédéral ou le procureur du Roi classe l'affaire sans suite et notifie sa décision au ministre de la Justice. Cette décision de classement sans suite n'est susceptible d'aucun recours.]

Article 7 de la loi du 17 avril 1878 contenant le titre préliminaire du Code de procédure pénale

Tout Belge ou toute personne ayant sa résidence principale sur le territoire du Royaume] qui, hors du territoire du Royaume, se sera rendu coupable d'un fait qualifié crime ou délit par la loi belge pourra être poursuivi en Belgique si le fait est puni par la législation du pays où il a été commis .<L 2003-08-05/32, art. 15, 016; En vigueur : 07-08-2003>

§ 2. Si l'infraction a été commise contre un étranger, la poursuite ne pourra avoir lieu que sur réquisition, du ministère public et devra, en outre, être précédée d'une plainte de l'étranger offensé ou de sa famille ou d'un avis officiel donné à l'autorité belge par l'autorité du pays où l'infraction a été commise.

Dans le cas où l'infraction a été commise, en temps de guerre, contre un ressortissant d'un pays allié de la Belgique au sens du deuxième alinéa de l'article 117 du Code pénal, l'avis officiel peut également être donné par l'autorité du pays dont cet étranger est ou était ressortissant.

Article 12 du Code d’Instruction Criminelle

La poursuite des infractions dont il s'agit dans le présent chapitre n'aura lieu que si l'inculpé est trouvé en Belgique, sauf dans les cas visés par :

1° l'article 6, 1°, 1° bis et 2°, ainsi que l'article 6, 1° ter, en ce qui concerne les infractions

prévues par l'article 137 du Code pénal;

2° l'article 10, 1°, 1° bis et 2° ainsi que l'article 10, 5°, en ce qui concerne les infractions prévues par les articles 347bis, 393 à 397, et 475 du Code pénal;

3° l'article 10bis;

4° l'article 10ter, 4°, en ce qui concerne les infractions prévues par l'article 137 du Code pénal;

5° l'article 12bis.]

FIGHTING IMPUNITY OF
TRANSNATIONAL CHILD
SEX OFFENDERS.

WHAT IS THE IMPACT OF
THE BELGIAN
EXTRATERRITORIAL
LEGISLATION ?



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