

## National Laws

Legislation of Interpol member states on sexual offences against children

# Netherlands - Pays-Bas - Países Bajos\*

The Hague

The information on this page is up to date as of spring 2006

## I. Ages for legal purposes

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### Age of simple majority

The legal age of majority is eighteen (18) years.

### Age of consent for sexual activity

The legal age of consent for sexual activity has not been communicated.

### Age of consent for marriage

The legal age of consent for marriage is eighteen (18) years. When younger, the person needs a permission of the legal representative or the civil court.

## II. Rape

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### Article 242 of the Penal Code

'A person who by an act of violence or another act or by threat of violence or threat of another act compels a person to submit to acts comprising or including sexual penetration of the body is guilty of rape and liable to a term of imprisonment of not more than twelve years or a fine of the fifth category.'

## III. Other forms of child sex abuse

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### Article 244 of the Penal Code

'A person who, with a person who is under the age of twelve (12) performs acts comprising or including sexual penetration of the body is liable to a term of imprisonment of not more than twelve years or a fine of the fifth category.'

#### **Article 245 of the Penal Code**

'1. A person who, out of wedlock, with a person who has reached the age of twelve (12) but not yet sixteen (16), performs indecent acts comprising or including sexual penetration of the body is liable to a term of imprisonment of not more than eight years or a fine of the fifth category.'

#### **Article 246 of the Penal Code**

'A person who by an act of violence or another act or by threat of violence or threat of another act compels another person to perform or to submit to indecent acts is guilty of indecent assault and is liable to a term of imprisonment of not more than eight years or a fine of the fifth category.'

#### **Article 247 of the Penal Code**

'1. A person who, with a person whom he knows to be unconscious or physically unable to resist or to be suffering from such a degree of mental defect or mental disease that he is incapable or not sufficiently capable of exercising or expressing his will in the matter or of offering resistance, performs indecent acts, or who, with a person who has not yet reached the age of sixteen (16) years, out of wedlock, performs indecent acts, or by whom the latter is enticed into performing, or submitting to such acts, out of wedlock, with a third party, is liable to a term of imprisonment of not more than six years or a fine of the fourth category.'

#### **Article 248 of the Penal Code**

'1. Where serious bodily harm ensues as a result of any of the offences defined in articles 243 and 245-247, a term of imprisonment of not more than twelve years or a fine of the fifth category shall be imposed.'

2. Where death ensues as a result of any of the offences defined in articles 242-247, a term of imprisonment of not more than fifteen years or a fine of the fifth category shall be imposed.'

#### **Article 248ter of the Penal Code**

'1. A person by whom, by means of gifts or promises of money or goods, by abusing the authority arising from an existing relationship or by misrepresentation, a minor of good reputation, whom he knows or should reasonably suspect to be a minor, is intentionally induced to engage in indecent acts with him or to submit to his performing these is liable to a term of imprisonment of not more than four years or a fine of the fourth category.'

#### **Article 249 of the Penal Code**

'1. A person who commits indecencies with his minor child, stepchild or foster-child, his ward, or with a minor, a minor servant or subordinate entrusted to his care, instruction or supervision, is liable to a term of imprisonment of not more than six years or a fine of the fourth category.'

1. The punishment in section 1 is also applicable to:
2. a public servant who commits indecencies with a person submitted to his authority or entrusted or commended to his supervision;
3. a director, physician, teacher, public servant, supervisor or employee, in a prison, State workhouse, State institution for the care and protection of children, an orphanage, hospital, or a charitable institution, who commits indecencies with a person admitted to such institution;
4. a person employed in the health care or social care sector, who commits indecencies with a person who, as a patient of a client, has entrusted himself to his care or assistance.'

#### **Article 250 of the Penal Code**

'1. A person by whose agency the commission of indecencies with a third person by his minor child, stepchild or foster-child, his ward, or by a minor, minor servant or subordinate entrusted to his care, instruction or supervision is intentionally brought about or promoted is liable to a term of imprisonment of not more than four years or a fine of the fourth category;

2. Where the offender commits the serious offence by custom, the terms of imprisonment may be increased by one third.'

#### **Article 250bis of the Penal Code**

'A person who intentionally brings about or promotes, by profession or custom, the commission or indecencies by others with third parties is liable to a term of imprisonment of not more than one year or a fine of the third category.'

## **IV. Child prostitution**

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#### **Article 250ter of the Penal Code**

1. 'A person is guilty of traffic in persons and is liable to a term of imprisonment of six years or a fine of the fifth category where:
  - a. he, by an act of violence or another act or by threat of violence of another act or by abusing the authority arising from an existing relationship or by misrepresentation, causes a person to prostitute himself or herself or undertakes any activity under any of the above circumstances where he knows or should reasonably suspect that activity to cause a person to end in prostitution;

- b. he recruits, takes with him or kidnaps another person with the object of causing that person to become involved in prostitution in a foreign country;
  - c. he causes another person, where that person is a minor, to prostitute himself or herself or undertakes any activity with regard to that person where he knows or should reasonably suspect that activity to cause that person to end in prostitution;
2. A person is guilty of traffic in persons and is liable to a term of imprisonment of eight years or a fine of the fifth category:
  - a. where he commits the offence jointly with one or more persons;
  - b. with regard to a person who has not yet reached the age of sixteen (16);
  - c. where serious bodily harm ensues as a result of an act of violence or another act as specified in section 1.
3. Two or more persons who jointly commit the offence of traffic in persons under the circumstances specified in section 2(2) or (3) are liable to a term of imprisonment of ten years or a fine of the fifth category.'

## V. Child pornography

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### Article 240a of the Penal Code

*"Any person who delivers, distributes or shows to a minor, who is manifestly under age of sixteen, a pictorial representation or a data carrier containing a pictorial representation of an act which is seen to be damaging to persons under the age of sixteen, shall be liable to a term of imprisonment not exceeding one year or a fourth category of fine."*

### Article 240b of the Penal Code

1. *"Any person who distributes, publicly exhibits, manufactures, imports, conveys in transit, exports or possess a pictorial representation of a sexual act involving a person who is manifestly under the age of eighteen shall be liable to a term of imprisonment not exceeding four years or a fifth category of fine."*
2. *"Any person who makes a profession or habit of committing one of the criminal offences described in paragraph 1 shall be liable to a term of imprisonment not exceeding six years or a fifth category fine."*

### Article 240a of the Penal Code

1. *If one of the crimes as specified in Article 240b, 243, 245 to 247, 248a, 248b and 249 causes serious bodily harm or endangers a person's life, the offender*

*shall be sentenced to imprisonment for a maximum of 12 years or shall receive a fifth category fine.*

2. *"If one of the crimes as specified in Article 240b, 243, 245 to 247, 248a, 248b and 249 causes death, the offender shall be sentenced to imprisonment for a maximum of 15 years or shall receive a fifth category fine."*

#### **Article 253 of the Penal Code**

'A person by whom a child under the age of twelve over whom he exercises legal authority, knowing that it will be used in or for the purpose of begging, hazardous artistic performances or work that is hazardous or deleterious to health, is surrendered to or left in the control of another is liable to a term of imprisonment of not more than three years or a fine of the fourth category.'

**\* The information on this page has partly been taken from the Europol "Overview of the legislation on Child Pornography in the Member States" of the European Union (Europol public information, 2005)**