“environmental crime prosecution” - the Netherlands -

by

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THE NETHERLANDS
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Environmental crime; what is it?

- unlawful (local) dumping of, e.g.:
  - chemicals (incl. asbestos)
  - agricultural toxins (e.g. nitrates)
  - plastics and household waste
  - radioactive material
  - biological waste (biocides)
  - and also: poaching (animals, fish)

- organized crime, e.g.:
  - “e-waste” from Europe to 3rd world (e.g. Africa)
Container $^{-1}$: what you see in first instance...
Container $^{-2}$: hidden behind first layer...
Container $^{-3}$: toxic waste...
Recent investigations:

- February 2009: almost 1,000,000 tons of British electronic waste transported from Belgian harbours, to Ghana and Nigeria.
- March 2009: The Netherlands’ authorities (FPPO) arrested 8 people (5 Ghanaians, 3 Turkish) for illegally transporting toxic waste to Ghana (violation of EU Waste Electrical and Electronic Equipment Directive).
- August 2006: “Probo Koala” dumped toxic waste. It gave off many poisonous chemicals, including hydrogen sulphide, killing 17 people in Ivory Coast...
Hundreds of tons of highly toxic waste...

... and the consequences:
- 17 dead
- 26,000 injured
- huge damage to environment
“Probo Koala”

- Judicial consequences, 2 years later:
  - Ivorian CEO: 20 years of imprisonment
  - Ivorian advisor: 5 years of imprisonment
  - Dutch transporters: 152,000,000 dollar fine

- And why did the offenders do it?
  - high profits: unlawful dumping of toxic waste saves a lot of money
- Waste dump with computers, TV's in Ghana
  (no processing costs; price paid by Ghanaians)
WHAT?  
burning of e-waste

=> emission of dioxin's

=> cause of cancer

WHY?

$ 3,- for 15 kilogram of metal
Judicial organization

- 1 Supreme Court (cassation)
- 5 courts of appeal
- 19 district courts
- 1 Board of Procurators-General
- 5 solicitor-generals’ offices (appeal)
- 21 prosecutors’ offices (1st instance)
  - incl. National Public Prosecution Office
  - incl. Functional Public Prosecution Office
## Facts and figures (2007)

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>1</td>
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<tr>
<td>Courts of Appeals</td>
<td>5</td>
</tr>
<tr>
<td>District Courts</td>
<td>19</td>
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<tr>
<td>Judges</td>
<td>2345</td>
</tr>
<tr>
<td>(31% in criminal court)</td>
<td></td>
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<tr>
<td>Public prosecutors</td>
<td>720</td>
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<tr>
<td>Private lawyers</td>
<td>14,882</td>
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<tr>
<td>Offences</td>
<td>271,784</td>
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<td>Dismissals</td>
<td>27,300</td>
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<td>Transactions</td>
<td>73,800</td>
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<td>To court</td>
<td>138,700</td>
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<td>Environment</td>
<td>16,000</td>
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<td>Infractions</td>
<td>263,992</td>
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<td>Dismissals</td>
<td>36,700</td>
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<tr>
<td>Transactions</td>
<td>53,000</td>
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<tr>
<td>To court</td>
<td>157,000</td>
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Beirut, UNDP-POGAR
March 17-18, 2009
Position of the prosecutor in The Netherlands

- Judiciary, appointed by Queen, not for life
- Master of the trial (‘dominus litis’)
- Gatekeeper to court, absolute monopoly
- Highest investigator, ultimately responsible for criminal investigations:
  - ‘minor’ cases: afterwards instructions to police
  - ‘major’ cases: pro-active consultations and instructions to law enforcement
- ‘Obliged to objectivity’
FPPO (2003):
- Fraud
- Economic crime
- Environmental crime

National level

FPPO: responsible for the investigation and prosecution of criminal cases which are being investigated by ‘special investigation departments’ (SID’s)
Why a specialized FPPO?

- Government expects efficient protection of the environment against crime
- Local prosecutors were neglecting environmental crime
- Environmental crime increasingly complex
  - complex laws, including international regulations
  - complex technical cases (mostly chemical)
- Law enforcement is specializing in SID’s
- Defense lawyers are specializing as well (environmental crime is well paid...)
Added value of the FPPO

- Specialists;
- Concentration of quality and energy,
- Making it an effective enforcement partner for the ministries concerned,
- Giving great authority towards SID’s,
- Able to make environmental crime policies
- Defining priorities for investigation
FPPO = chief investigator in environmental crime

- investigation capacity is scarce
- in case of environmental crime:
  - small and simple offenses: (local) police
  - complex environmental crime: specialized law enforcement agency “VROM-IOD” (Intelligence and Investigation Service of the Ministry for the Environment)
- priorities by the FPPO, in close cooperation with the Ministry for the Environment
Differentiation in environmental crime

- Police: investigating in matters of quality of life ('minor' cases)
  - garbage on the streets, in the park
  - small poaching (illegal fishing or hunting)
  - dumping of small amounts of household waste
  - car wrecks
  - etc.
Differentiation in environmental crime

- Special Investigation Department:
  - death or injuries
  - irreversible serious damage to environment or public health
  - environmental crime by an organization or company
  - very profitable environmental crime
  - high publicity
Investigation problems

- Environmental crime = difficult because of complex regulations
- Evidence is also difficult:
  - what traces are relevant?
  - how to secure them?
  - how to determine them?
- Netherlands’ Forensic Institute (NFI):
  - assisting prosecutor and SID
NFI: forensic investigation in laboratory and on crime scene
Example: incident at chemical industry
Leading to a cloud of dangerous hydrochloric acid
NFI: calculation of health risks

Health risks, 20 minutes after the incident
Investigation problems

- Question: accident or intentionally?
  - Difficult to answer; interpretation of circumstances

- Assistance by NFI:
  - Forensic analysis of traces
  - Forensic advice
  - Risk assessment
  - Education (training and courses)
Conclusions

- Environmental crime:
  - difficult to investigate and to prosecute
  - important to investigate and to prosecute

- Necessary:
  - specialists
  - education
  - clear regulations
Thank you for your attention!

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