

# VOCIARE

# THE NETHERLANDS

## NATIONAL REPORT



## Victims of Crime Implementation Analysis of Rights in Europe



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Victims of Crime  
Implementation Analysis  
of Rights in Europe

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## DISCLAIMER

All views expressed in the present report are those of the authors and not of the European Commission.

Most findings of the report are based on the research conducted by national researchers, between June 2018 and March 2019, and any inaccuracies in the interpretation of national results lays with the authors of the present report only. Additional support research, in particular regarding international experiences, was conducted by the authors of the present report.

The findings compiled in the present report represent, to the best of authors' abilities, the current situation of the practical implementation of the EU Victims' Rights Directive. Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date. However, it was still important to offer the first overall picture, even if incomplete, of the practical implementation of the Directive, to inform future work of Victim Support Europe, its members and the policy initiatives at the EU and national level. Future efforts will be plan to improve the findings and provide a more detailed analysis of key rights defined in the Directive.

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## EXECUTIVE SUMMARY

Directive 2012/29/EU, commonly known as the Victims' Directive, establishes minimum rights to all victims of crimes and constitutes the core of the European Union's legislative package aiming to guarantee that all victims of crimes have access to information, support and protection.

Member States were required to transpose the Directive into national legislation but need to guarantee its correct implementation in practice as well. This implementation has proved to be complex and challenging. Hence, the present national report aims to assess the practical implementation of the Victims' Directive in the Netherlands.

After thorough assessment, it was possible to detect gaps and challenges in the practical implementation of the Directive. Among the most important ones are the following.

**Masked vulnerabilities:** implementation of the individual assessment has only just begun, so little can be said about its efficacy. Nevertheless, there is some concern regarding the access of certain victim populations to the criminal justice system and victims' rights. Many individuals with *LVB* (mild intellectual disability) and/or (functional) illiteracy mask their vulnerability to avoid negative labelling. As a consequence they are easy overlooked by the system, more so because they often lack in assertiveness and awareness to know when and where to ask for help. Although *LVB* victims and, to a lesser degree, people with literacy problems, are being prioritized by authorities and service providers, practical yet non-stigmatizing remedies are yet to be developed.

**Cross-border victims tend to get lost in translation:** Becoming a victim outside ones country of residence severely impairs access to victims' rights and provisions. Consulates and medical centres will seldom refer these victims to local victim support organisations. The same goes for emergency call centres operated by travel insurance companies. Accurate registration and transfer of information between different jurisdictions remains an important bottleneck. It is also difficult for victim support organisations to keep track of victims after repatriation and continue the provision of information and assistance. We would welcome a dedicated liaison officer in every victim support organisation in Europe, making part of an international operational network.

**Cybercrime and hate crimes underreported:** the proportion of victims of online crime, varying from hacking, identity theft and extortion to dating scams, is on the rise. Although these crimes can have a serious impact on victims, the police usually stand empty-handed for perpetrators are either untraceable or out of reach. Victims have reported to feel discouraged by the police to file a complaint, or refrain from doing so for reasons of self-blame and shame. Hate crime is another category showing high levels of underreporting due to feelings of shame and fear for

stigmatization. This is especially true for the HLBTQI population. Victims need to feel safe to report and to receive a respectful and non-judgemental treatment to build trust. Shame and (self-)blame is also what prevents victims of sexual offenses, abuse and human trafficking to step forward.

**Dark number and access to rights and support:** most victims' rights are linked to the criminal justice system. If victims do not connect with the system, there is a more than considerable risk that they remain out of sight of other institutions as well, in particular Victim Support NL and the Violent Offenses Compensation Fund. In the introduction we presented some statistics on victimisation in the Netherlands. What stands out is the large difference between victimisation as reported in victim surveys and crimes reported to the police. The conclusion is that many crimes go unreported and many victims remain outside the scope of the criminal justice system.

**Procedural Participant vs. procedural party:** being a mere participant in the Dutch criminal justice system, the victim is not equipped with similar legal remedies as the defendant. Neglecting the rights of a victim bears no real sanction for the police or the Public Prosecution. The victim can lodge a complaint or turn to the media, and may get an apology, or, in some cases a substitute compensation, but not a retrial. Thus the position of the victim is intrinsically weak(er), more so since 'efficient production' is undeniably an important priority in the (overburdened) criminal justice system. To give but one example: when the date for a court session is set, it is a rare exception that a victim would be consulted regarding his/her availability for that date. Quite regularly victims turn up in vain in court because they received no or late notification of adjournment or rescheduling of sessions. Sometimes court clerks and judges aren't even aware that victims are present. We would recommend to rethink seemingly insignificant practical procedures, such as setting a court date, from a victim's perspective and to devise more 'inclusive' practices as a token of recognition.

Furthermore we would like to draw attention to good practices we have identified.

**Simple language and supporting communication tools:** the Dutch government has adopted the B1-language level (understandable for 80% of the population) as standard for all communications with citizens. As written documents constitute the lion's share of (formal) communication in the Criminal Justice System, this is an important step forwards to give effect to the victim's right to understand and be understood. The use of supporting communication tools (educational videos, infographics, testimonials and FAQ's) is encouraged, as is face to face communication between police officers/Public Prosecutors and victims to explain procedural decisions.

**Outreaching approach:** actively reaching out to victims has been a basic principle from the outset of victim support in the early 80's. Over the years, Victim Support NL and the police have developed an automated system for consent and referral, which enables Victim Support NL to approach

close to 200.000 victims annually. The Prosecution Office manifests itself more and more as an active referrer, thus opening an additional 'entrance' for victims. Victim Support NL has expanded her outreaching approach online by opening anonymous communication channels, and starting social media campaigns and online communities.

**A-to-Z approach:** key objective of Dutch victim policy is to provide victims with information and support before, during and after the trial, especially in cases of high impact crime. In recent years attention has shifted to the execution phase, inter alia by efforts to improve the existing victim notification scheme with regard to the detention, forensic psychiatric treatment and release of convicted offenders. In collaboration with the Prison Service, Probation Services and forensic psychiatric treatment centres restorative practices are promoted. Furthermore, the victim's needs for protection are made part of the risk assessment in preparation of leave and (conditional) release. The pending development of an online Victim Portal will elevate the A-Z approach to a next level by offering personalized, 24/7 available, up-to-date information.

**Securing compensation for victims:** the combination of an easy accessible claim procedure, including an online claim form, free of charge assistance (either by Victim Support NL or a victim lawyer), the application of the compensation measure and the State Deposit Fund that grants victims a (partial) advancement pay, guarantees that in the vast majority of cases prosecuted, the damages the victim suffered as consequence of the crime, are – at least partially – compensated with a minimal amount of effort on the victim's part. In addition, the Violent Offenses Compensation Fund offers redress for victims independent of the criminal proceedings, inviting victims to submit a request and offering guidance in the application process.

**Participation and voice:** in the Netherlands we witness a genuine, joint effort of the criminal justice actors to include and facilitate victims to exercise their rights to the fullest possible. The government is prepared to respond – to the extent due process allows – to the issues raised by victims and their advocates. This is illustrated by the implementation of the Victim Statement of Opinion in 2012, a very broad interpretation of the right to be heard.

**Chain approach:** The multilateral collaboration and exchange of information between the different actors in and around the criminal justice system is key ingredient for the success of the effectuation of victim rights. Victim Support NL is acknowledged as full partner of the criminal justice institutions. On the administrative and official level, consultation bodies have been established, providing for managerial and operational coordination. This enables the parties involved to align different workflow processes. This multilateral collaboration is the foundation under the online Victim Portal as well.

We conclude by stating that the Netherlands have developed a well-organized, well-funded and well-functioning system of rights, provisions and support for victims, but... the devil is in the details. The core business of the criminal justice system will be to investigate and prosecute offenders. There is an undeniable tension between the procedural rights and interests of the victim and those of the offender. The mere fact that the rights and provisions of the offender have a much firmer legal basis, will tend to tip the scale to the latter in situations of pressure. Last but not least; from day to day the 'victim-friendliness' of the criminal justice procedure depends less on what is written in the law than on the attentiveness, adequate knowledge, available time and attitude of the individual professionals in the criminal justice system. Without disregarding the expertise, continuous efforts and dedication of many of these professionals; there will always be room for improvement.

## INTRODUCTION

The present national report aims at assessing the practical implementation of the Victims' Directive in the Netherlands in the context of project VOCIARE - Victims of Crime Implementation Analysis of Rights in Europe.

### Victimisation and victims' rights

To get an accurate grasp of the performance of the criminal justice system vis-à-vis victims, a brief overview of the core statistics is helpful. We use the year 2016 as reference year. According to the Safety Monitor approximately 2.5 million Dutch citizens of 15 years and older became victim of one or more crimes in that year<sup>1</sup>. About 930.000 crimes were reported to the police, who managed to solve 26%. About 190.000 cases were referred to the Public Prosecution Service. About 45% of these cases are dealt with through out-of-court procedures by the prosecutor and the remaining 55% was brought before court<sup>2</sup>. Bearing in mind that since the mid-90's crime rates are steadily decreasing, as does the number of victims, we can nevertheless conclude that there is a considerable 'dark number' of victims who will not report to the police. This dark number may for an important part comprise of petty crime that is often perceived as a mere nuisance not worth reporting, but at the same time it is a well-known fact that there is high underreporting of severe violent and sexual offenses, including domestic violence, child abuse and human trafficking, and hate crime. Be it that the general crime rates are dropping, the proportion of victims of cybercrime, varying from hacking, identity theft and extortion to dating scams, is on the rise. The impact of cybercrimes should not be underestimated, as was observed in different studies<sup>3</sup>.

Concerning the establishment of victims' rights in the Netherlands one should not be misled by the fact that the deadline for transposition of the 2012 Directive to Dutch law was exceeded by more than two years. Transposition was completed with the passing of the Law of 8 March 2017, Establishing the Implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing council framework decision 2001/220/JHA<sup>4</sup>. However, the legislation of victims' rights started many years earlier with the strengthening of the victims' position as injured party in the criminal proceedings (the Terwee Act of 1 April 1995), the introduction of the Victim Impact Statement (by Law of 21 July 2004) and the Law of 12 December 2009 concerning the strengthening the victim's position in Criminal Justice that took effect on 1 January 2011. From that date, the Criminal Law in the Netherlands was

<sup>1</sup> The Safety Monitor is an annual survey about crime and victimisation among a representative sample of the Dutch population.  
<sup>2</sup> Jaarcijfers 2016 Openbaar Ministerie; Criminaliteit en Rechtshandhaving 2016.  
<sup>3</sup> Jansen & Leukfeldt (2018)  
<sup>4</sup> Stb.-2017, 90.

*materially* compliant with most standards set in the forthcoming Directive, with the exception of the individual assessment (Article 22) and, to a lesser extent, the provision of general and case specific information (Article 4 and 6). Through the implementation act of 27 March 2017, the wording of the victims' rights title in the CCP was aligned with that of the Directive, and the more detailed elaboration of the different provisions – mostly by taking over translated sections of the Directive – delegated to Decrees and Regulations. Thus many practices already in existence were codified. A transposition table is provided in the Annexes (Annex III).

To support the work presented in this report, three research tools were employed to obtain the desired information: desk research, an online survey and semi-structured interviews.

The desk research was carried out in two stages, from March to May 2018 and from August to October 2018. Beside legislative documents such as the Criminal Code (CC), the Criminal Code of Procedure (CCP) and other hard and soft law instruments, we have been able to draw on a considerable body of academic and evaluative studies with respect to victims' needs, rights and the implementation of provisions. We focused on studies between 2011 and 2016.

The online survey<sup>5</sup> was disseminated using the mailing list of the Victim Support NL newsletter<sup>6</sup>. An invitation to complete the survey was sent out in April 2018, a total 49 individuals completed the survey between 4 and 28 May 2018. The aggregated results of the survey are annexed to the report (Annex I). When relevant, reference in the text is made to the information as provided by the respondents.

Additionally, interviews served as an addition to desk research. Any questions to which desk research could not respond, or where findings were inconclusive, the researchers identified a stakeholder/key informant with whom to discuss such specific questions, in addition to the list of questions which were provided via the research tools. The interviews were carried out with four representatives of the key actors when it comes to informing and facilitating victims in the course of the criminal proceedings; the police<sup>7</sup>, Public Prosecution Office<sup>8</sup>, judiciary<sup>9</sup> and Victim Support NL<sup>10</sup>. The interviews took place by telephone in the months April and May 2018. They lasted between 90 and 120 minutes and were recorded in writing. An overview of the interviewees is presented in Annex II.

Regarding its structure, this report first provides a basic overview of the legal framework in the

<sup>5</sup> Developed by the VOCIARE research team, an English version was translated into Dutch by the national research team, making some small adaptations to conform to the Dutch lingual, cultural and legal context.

<sup>6</sup> On this list 1360 email addresses of, amongst others, staff members of the Police, the Prosecution Service, the judiciary, the legal profession, victim advocate groups and self-organisations, Restorative Justice organisations, the Probation Services, the National Prison Service, (mental) health care professionals, academic researchers and paid staff and volunteers of Victim Support NL.

<sup>7</sup> Interviewee 1.

<sup>8</sup> Interviewee 2.

<sup>9</sup> Interviewee 3.

<sup>10</sup> Interviewee 4.

Netherlands. Then, following the structure of the Directive, each article will be described and explained, as well as its transposition and practical implementation. Next comes a chapter on good practices, followed by a chapter identifying gaps, challenges and recommendations. The report ends with a conclusion.

# BASIC OVERVIEW OF THE LEGAL FRAMEWORK

The Victims' Directive was adopted on 25 October 2012 by the European Parliament and the Council, and Member States were required to transpose it into national law until 16 November 2015<sup>11</sup>. In the Netherlands the transposition was concluded with the passing of the Law of 8 March 2017, Establishing the Implementation of Directive 2012/29/EU [...] establishing minimum standards on the rights, support and protection of victims of crime [...]<sup>12</sup>.

## The criminal justice system in the Netherlands

The criminal justice system in the Netherlands is characterized as inquisitory. During the investigative and prosecution (pre-trial) phase evidence is compiled in the criminal file, which is reviewed by the judge(s) during the court session (trial phase). Although the judge(s), the defense lawyer and the Public Prosecutor can summon (expert-)witnesses (including the victim) to give testimony during the hearings and be cross-examined, the Dutch criminal trial is often a 'paper trial' i.e. on the basis of the content of the criminal dossier. Defendant and Public Prosecutor can lodge an appeal with the Court of Appeal and subsequently with the Supreme Court (appeal phase).

The judiciary comprises 11 district courts, 4 courts of appeal, 2 administrative courts and a Supreme Court. Although Dutch criminal law distinguishes between public, semi-public and private crimes, however, this has little practical relevance for victims' rights. More relevant is the distinction between serious and minor crimes, since, to name but one example, the right to speak is dependent upon the severity of the crime<sup>13</sup>. Minor crimes are reviewed by a so-called 'single chamber' (unex judex, also known as *Politierechter*, Police Judge)<sup>14</sup>, all other cases come before a 'plural chamber' of three judges. Defendant and Public Prosecutor can lodge an appeal with the Court of Appeal and subsequently with the Supreme Court.

The Public Prosecution Service wields a monopoly on prosecution (principle of opportunity or discretionary principle); private prosecution or assistance prosecution is unknown in the Dutch criminal law. Furthermore, the Public Prosecution Service has competence to impose penalties for a number of common criminal offences. These include fines, community service and payment of compensation to the victim, but not a custodial sentence.

11 All Member States, with the exception of Denmark, opted into the Directive system.

12 Stb. 2017, 90.

13 I.e. crimes that carry a maximum custodial sentence of 8 years or more and some specifically mentioned offenses such as the production and dissemination of child-pornographic material.

14 Minor offenses include simple theft, verbal and physical threat, fraud, purse-snatching. The Police Judge can impose fines, custodial sentences up to 1 year and alternative sanctions.

In the context of victims' rights we must mention the ZSM-procedure (*Zorgvuldig Snel Maatwerk*, translating as diligent, speedy, tailored). In the Netherlands a relatively large number of cases, currently 57% of the Public Prosecution Office's caseload<sup>15</sup>, are channeled through this out-of-court procedure. ZSM embodies a 'swift and meaningful response' from the criminal justice system to minor crime<sup>16</sup>. Quick and customized sanctions serve a safe and just society, victims view a rapid official response to the violation of their rights, while their needs and interests are taken into account; and offenders get a clear but proportionate message that certain behaviour is not tolerated.

In ZSM the police, the Public Prosecution Office, the Probation Services, the Youth Care and Protection Board and Victim Support NL work closely together, collecting relevant information and advice on the facts, the person and circumstances of the offender, and the needs and wishes of the victim. The Public Prosecutor will make a decision; either to impose a penalty or an alternative intervention, such as mediation, or to refer the case to court<sup>17</sup>.

In the Netherlands, the legal framework concerning the rights of victims in criminal proceedings, consists of both hard law and soft law. The base of the Dutch legal framework is the Dutch Code of Criminal Procedure (hereafter: CCP; *Wetboek van Strafvordering*). In line with the Directive's predecessor, the 2001 Framework Decision, the Dutch introduced a full legal directory of victims' rights in 2011. Since then, the victim is legally acknowledged as a formal participant (*procesdeelnemer*). This role encompasses the right to join the criminal proceedings as an injured party and the right to speak. As a result, the national law already lived up to the majority of the standards of the Directive, be it that some additional legal change and regulation was needed. Here, the Dutch government points specifically at the implementation of article 22 Directive: the individual assessment of victim's needs and the extension of the right to information to comply with articles 4 and 6 Directive. A transposition table is annexed to the report (Annex III).

Next to the major change introduced in 2011, changes were introduced related to the victim's legal position. E.g. article 1 (5) Criminal Cases Fees Act (*Wet tarieven in strafzaken*) was extended, indicating that the fees for the use of an interpreter and/or translator are at the expense of the State's treasury.

15 Jaarbericht 2017 Openbaar Ministerie.

16 <https://www.om.nl/onderwerpen/werkwijze-van-het-om/>

17 Roshangar (2015). Although one might wonder if diligence, speed and tailoring are not intrinsically conflictive objectives, it cannot be denied that the introduction of ZSM did benefit victims for several reasons. Before, many petty crime cases were either dismissed or 'shelved' to an extent that a meaningful settlement was no longer possible. Today, minor crime victims are quickly and pro-actively made part of the procedure and their needs are explicitly taken into account when reaching a decision. Through ZSM Victim Support NL is able to reach out to a far greater number of victims and offer practical, legal and psychosocial support. Furthermore, the presence (physical) presence of Victim Support in ZSM promotes that the Public Prosecution Service and the police stay focused on victim rights.

Besides hard law, the legislator opted for soft law regulations to complete the Directive's implementation. First, the Decree on Victims of Criminal Offences (*'Besluit slachtoffers van strafbare feiten'*). This Decree complements the Code of Criminal Procedure by providing additional legal rules on the protection and rights of victims before, during and after the criminal proceedings. The Decree is mostly directed at the police and the Public Prosecution Service, providing instructions how to apply the victim's rights in legal practice.

Secondly, with regard to the legal practice, the policy Guidelines (*'Aanwijzingen'*) of the Dutch Public Prosecution Service are of importance. With regard to victims' rights the following Prosecutorial Guidelines are of interest: (i) the Prosecutorial Guideline on Victim Rights (*'Aanwijzing slachtofferrechten'*), (ii) the Prosecutorial Guideline on Sex Offences (*'Aanwijzing zeden'*), and (iii) the Prosecutorial Guideline on Domestic Violence and Child Abuse (*'Aanwijzing huiselijk geweld en kindermishandeling'*). The aim of these Guidelines is to give substance to the role and competences of the public prosecutor in relation to the victims of each of these criminal offences. In addition, the legal practice – in particular the right to receive information – is further elaborated in separate Acts, some specifically directed to the police and/or the public prosecutor, Ministerial Regulations (*'Algemene Maatregel van Bestuur'*) and decrees.

## EVALUATION OF PRACTICAL IMPLEMENTATION

### ARTICLE 2 - DEFINITIONS

*For the purposes of the Directive a 'victim' is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence or a family members (the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim) of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.*

The Dutch criminal legal framework provides the following definition of "victim":

- *the person who, as a direct result of a criminal offence, has suffered financial damage or other disadvantage. The victim is equated with the legal person who, as a direct result of a criminal offence, has suffered financial damage or other disadvantage.*
- *survivors: family members of a person whose death was directly caused by a criminal offence" (Article 51a (1a) CCP).*

This includes victims of crimes when the perpetrator was not identified, apprehended, prosecuted or convicted. No distinction is made on grounds of nationality or residence permit.

Children who witness violence are not covered by this definition, but they are entitled to victim support (so are all other witnesses of a crime).



Regarding the definition of "family members", the legal framework provides with the following definition: *the spouse, the registered partner or another life partner of the victim, the relatives in direct line, the relatives in the side lines up to and including the fourth degree and the persons who are dependent on the victim. (Article 51a (1b) CCP).*

This definition includes non-married partners and partners of same sex.

The CCP provides for a broader range of definitions than stated in Article 2 of the Directive. Besides 'victim' and 'family members' it defines 'minor victim' (Article 51a (1c) CCP) and 'restorative justice system' (Article 51a (1d) CCP).

Article 10 of the Decree on victims of criminal offenses gives some further interpretation as to whom is considered vulnerable, referring to criteria in the Directive, i.e. child victims and their family, victims who suffer considerable (im)material loss due to the severity of the crime, victims of discrimination and prejudice (hate crimes) and victim who are in a relation of dependency with the offender<sup>18</sup>.

<sup>18</sup> Stb. 2017, 90.

## ARTICLE 3 - RIGHT TO UNDERSTAND AND BE UNDERSTOOD

*Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings. Communications with victims should be provided in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including (but not limited to) any disability. Victims should, in principle, be allowed to be accompanied by a person of their choice in the first contact.*

*'The public prosecutor shall ensure the correct treatment of the victim'* (Article 51aa (1) CCP). This provision marks the base for the victim to understand and to be understood.

In order for the victim to understand the investigation and the criminal proceedings, the victim will receive information. This right to receive information will be elaborated in the following Articles 4 and 6 of the Directive. However, it is useful to mention some general principles.

General information on criminal justice procedure and the Declaration on Victims' rights is provided in writing, mostly by the police, the Prosecution Service, the judiciary and Victim Support NL and is also available on their websites<sup>19</sup>. Information should be written in so-called B1 level, which is understood by 80% of the people<sup>20</sup>. Increasingly educational videos and infographics are used as supporting communication tools<sup>21</sup>. The Declaration of Victims' Rights is available in Dutch, German, English or French<sup>22</sup>. If the victim does not understand either of these languages, linguistic assistance is provided, often through the use of the Interpreter Phone<sup>23</sup>. This assistance is offered free of charge.

<sup>19</sup> Website police: [www.politie.nl/themas/slachtofferzorg.html](http://www.politie.nl/themas/slachtofferzorg.html) ; website Prosecution Service: [www.om.nl/onderwerpen/slachtofers/](http://www.om.nl/onderwerpen/slachtofers/) website judiciary: [www.rechtspraak.nl/Uw-Situatie/Naar-de-rechter/Betrokken-bij-een-rechtszaak/Slachtoffer](http://www.rechtspraak.nl/Uw-Situatie/Naar-de-rechter/Betrokken-bij-een-rechtszaak/Slachtoffer); website Victim Support NL: [www.slachtofferhulp.nl](http://www.slachtofferhulp.nl)

<sup>20</sup> <https://www.communicatierijk.nl/vakkennis/r/rijkswebsites/aanbevolen-richtlijnen/taalniveau-b1>

<sup>21</sup> Interviewees 1, 2 and 4.

<sup>22</sup> <https://www.rijksoverheid.nl/documenten/brochures/2017/04/03/verklaring-van-rechten-voor-slachtoffers-van-straftbare-feiten>

<sup>23</sup> Provides translation in 190 languages.

For other factors that limit the ability to understand and to be understood, such as intellectual development or mental or physical disability, the victim may rely upon a victim support officer or someone from the victim's formal/informal support network, such as a (specialized) supervisor or care giver to assist him/her or act as an intermediary. Not having this formal or informal assistance present might seriously interfere with mutual understanding between the victim and the authorities, since especially victims with mental disabilities are often not inclined to disclose this vulnerability e.g. out of fear for stigmatization. A prior problem is that persons with mental disability are more at risk to become a victim, but less able or confident to report to the police. Thus they remain out of sight of the criminal justice system all together<sup>24</sup>.

Further rules with regard to the assistance provided by an interpreter, as well as with regard to supporting the victim in understanding and being understood in the communication with the competent authorities, are laid down by ministerial regulation.

According to the majority of the survey respondents sufficient measures are in place to recognize individual communication needs. However, there is no systematic check that victims actually do understand the information they have received or that they feel understood (Table 3.1-2). About half of the survey respondents agree that the entire communication and language used by the authorities is made easy to understand, and about half disagree (Table 3.6a-e). Both survey respondents and interviewees agree that special attention and additional measures are wanted for victims with mental disabilities and literacy problems, as these problems are not always easy to identify and are often not disclosed by victims. A combined working group with members from the prosecution service, police, victim support and other criminal justice agencies is currently developing special information tools<sup>25</sup>.

Article 51c (2) CCP is broadly defined and permits the victim to receive representation by a person of his/her choice. Representation can be given by a companion, a Victim Support NL employee<sup>26</sup> or by an assigned counsel/lawyer. Representation by an interpreter is also possible and this may include a sign language interpreter for victims with a speech- and/or hearing disability.

About half of the survey respondents notice that victims are frequently accompanied by a person of their choice (Table 3.4). If this is refused by the authorities it is more often by reason of interference with the proceedings than by reason of a potential conflict with the interests of the victim (Table 3.5a-e).

<sup>24</sup> Spaan & Kaal (2015).

<sup>25</sup> Adapted language, pictograms and audio recordings of written information. Interviewee 4.

<sup>26</sup> Employee refers to both volunteers and paid staff of Victim Support NL.

## ARTICLE 4 - RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH THE COMPETENT AUTHORITY

*Member States shall ensure that victims are offered, without unnecessary delay, from their first contact with a competent authority, information about the type of support the victims can obtain and from whom; the procedures for making a formal complaint; how and under what conditions they can obtain protection, access legal advice and legal aid; access to compensation; entitlement to interpretation and translation; special measures if they are resident in another Member State; contact details for communications about their case; available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.*

Article 4 of the Victims' Directive was transposed into the CPP as follows: *"The officer of the police, the public prosecutor or the other investigating officer shall ensure that the victim is immediately provided with information on his first contact with the investigating officer concerned in order to enable him to gain access to the rights that are due to him"* (Article 51ab (1) CCP).

The several elements pointed out in Article 4 of the Directive are each further elaborated in article 5 of the Decree on Victims of Criminal Offences, that quite literally translates the text of Article 4 (1) a-k Directive, referring to information about support, complaint procedures, protection, legal assistance, compensation, translation et cetera. The investigating authority (usually: the police) and the Public Prosecution Service have to ensure that the victim is properly informed from the first contact with a competent authority.

Compliant with these regulations, victims receive an information brochure ('Declaration of Victim Rights') when reporting to the police. This brochure is available in Dutch, English, German and French, both hard copy and online<sup>27</sup>. When a complaint is filed via the online reporting system, information will be provided through email or other electronic means of communication<sup>28</sup>.

<sup>27</sup> <https://www.rijksoverheid.nl/documenten/brochures/2017/04/03/verklaring-van-rechten-voor-slachtoffers-van-straftbare-feiten>

<sup>28</sup> <https://www.politie.nl/aangifte-of-melding-doen>. Using the online report system is possible in cases of vandalism, property theft and online fraud.

When making record of the victim's declaration, (s)he should be duly informed about the possible consequences of including personal data in the declaration and other documents that are added to the criminal file, and that personal data can be (partly) omitted (see under Article 21).

With regard to the question how victims perceive the information given by the authorities, we should note that victims previously tended to have a critical view of the Dutch practice. However, periodical surveys have shown improvement. In September 2017 the Research and Documentation Centre of the Ministry of Justice and Security (WODC) presented the second report of the 'Victim Monitor'. Approximately 60% of the respondents were (very) positive about the information provided by the police on the developments in their case. Even a greater percentage were equally positive with regard to the information provided by the Public Prosecution Office. The judiciary received a slightly less positive evaluation, 51% of the respondents were (very) positive<sup>29</sup>. Even though these percentages showed an increase compared to the first Victim Monitor of 2012<sup>30</sup>, the accuracy, timeliness and comprehensibility remain a point of concern is the shared observation of the interviewees<sup>31</sup>. About half of the survey respondents agree that victims receive all or most information as required by the Directive, but according to 40% victims receive only partial or little information (Table 4.1). Since a major part of the communication from the police, Public Prosecution Office and judiciary is in writing (letters), interviewees 1-4 express concern that people with low education level, literacy problems and mental disabilities have trouble accessing and understanding the information<sup>32</sup>.

<sup>29</sup> Andringa et al (2017).

<sup>30</sup> Timmermans et al (2013).

<sup>31</sup> Interviewee 4.

<sup>32</sup> Interviewee 4.

## ARTICLE 5 - RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

*Member States shall ensure that victims receive written acknowledgement of their formal complaint. Where they do not understand or speak the language of the competent authority, they should be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance. The acknowledgement should be translated free of charge where the victim doesn't speak the language.*

The general rules on making a complaint are applicable for all types of complainants. The legislative provision can be found in Article 163 CCP. There it is stated that verbal complaints should be recorded and co-signed by the complainant and the police officer who receives the complaint. If the complainant is not proficient in Dutch, the declaration may be taken in another language or language assistance is provided. The complainant receives a full copy or a confirmation of the written complaint.

In the Dutch jurisdiction anyone is entitled to make a complaint at the police office. Only when the complainant is a minor of 12 years or younger, the police will contact the parents. If a minor is not able to make a complaint by him/herself, the parents (or legal representative) do so on his/her behalf.

Complaints of certain minor offenses<sup>33</sup> can also be made by using the online reporting system. To use this system one has to log on using his/her personal Citizen Service Number, which excludes non-residents from using this system.

When the victim concurs with the record of his/her complaint as written by the police officer, both the victim and the police officer sign the document which then becomes final (*proces-verbaal*). This final document cannot be adjusted, additional information has to be recorded and signed as separate declarations. The victim is not obliged to sign the written report if he/she does not agree with (part of) the content.

<sup>33</sup> Vandalism, property theft and online fraud.

Note, in cases of sexual violence the complaint is to be preceded by an *informatief gesprek* or 'informative talk'. The objective of this interview is to inform the victim of the (legal) consequences of filing a complaint. This also includes a warning that making false accusations is punishable by law. The victim is allowed up to 14 days respite to decide whether or not to make a formal complaint. However, this 'reflection period' is not compulsory. Sometimes, e.g. in case of a report of sexual violence against a minor, the informative talk will be skipped. An explorative study under a small sample of victims of sexual crimes revealed that some feel discouraged to pursue the report after the informative talk, because they had the impression the police officers did not believe them. Others find the conversation helpful to weigh the pros and cons of undergoing a criminal procedure<sup>34</sup>.

For the sake of privacy, the victim can file a report 'under number'<sup>35</sup>. The victim's personal data are then known to the judicial authorities, but are not disclosed to the suspect/offender. It is also possible to substitute the victim's address details for those of a police station or Victim Support office ('domicile of choice'). Arriving mail will then be forwarded to the victim. Between October 2012 and 31 December 2013 0,01% of all reports were filed as a report under number. A minority of these cases were prosecuted and tried, however, the anonymity of the declarant was upheld during the criminal proceedings.<sup>36</sup>

In line with the right to understand, to be understood and to be informed in a language mastered by the victim, the victim is entitled to language assistance. The same right applies to those who file a complaint on behalf of the victim. (Foreign) language assistance is often provided by the *Tolkentelefoon* (interpretation by telephone, offering 190 languages). The *Wet beëdigde tolken en vertalers* ('Certified interpreters and translators law')<sup>37</sup> dictates that in criminal cases and immigration law cases only interpreters who are certified/sworn-in by the Legal Aid Board can be employed. In 2016, 6459 certified interpreters were registered with the Board. Registered interpreters have to comply with the quality standards of the Legal Aid Board.

The vast majority of both the interview and survey respondents agree linguistic assistance services work well and are relatively easy accessible by making use of the '*Tolkentelefoon*' (interpreter phone) (Table 5.2-3).

<sup>34</sup> Timmermans (2017).

<sup>35</sup> Aanwijzing slachtofferrechten (2018A005) Article 3.2-3.4.

<sup>36</sup> Bruinsma et al (2015).

<sup>37</sup> BWBR0024896, Stb. 2007, 375.

## ARTICLE 6 - RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE

*Member States shall ensure that victims are notified without unnecessary delay of their right to receive information related to criminal proceedings: any decision not to proceed with or to end an investigation or not to prosecute the offender; the time and place of the trial, and the nature of the charges against the offender; of any final judgement in a trial and of information about the state of the criminal proceedings, in accordance with their role in the criminal justice system; about the reason which led to the above mentioned decisions; notification in case the person remanded in custody, prosecuted or sentenced concerning the victim is released from or has escaped detention.*

The starting point of the legislative framework concerning this obligation is Article 51ac CCP, elaborated upon in the Regulation on Providing Case Information to Victims, Articles 2 - 4. Article 5 states that information is always provided free of charge.

When reporting to the police, the victim may indicate that (s)he wishes to be kept informed about his/her case (opt-in system). This will be logged in the registration system. The police is then obliged to notify (pro-actively) victims of the progress of the case, e.g. the decision to discontinue the case or to transfer it to the Prosecution Office, and in the event that a suspect is released or has escaped protective custody. Apart from this procedure the victim may inquire at any moment of his own accord after the status of the procedure at the district's Victim Information Desk<sup>38</sup>.

<sup>38</sup> Stcrt. 2017, 18999.

When a case file is transferred from the police to the Public Prosecution Office, a letter will be sent to the victim containing 3 forms:

1. A so-called 'wish-form' (bullet-list)<sup>39</sup> on which the victim is expected to indicate whether he/she
  - Wishes to be kept informed about the proceedings
  - Wishes to claim for compensation in the criminal procedure
  - Wishes to make a victim impact statement, either orally or in writing, or if (a)he wishes someone to speak on his/her behalf
  - Does object to the Public Prosecution Office passing on his/her contact details to Victim Support the Netherlands, so he/she will be offered assistance
  - Wishes to have meeting with the Public Prosecutor that deals with his/her case.
2. A form to provide personal data. This form will not be included in the criminal file for privacy reasons. This form must be completed when the victim ticks one of the above options.
3. The compensation form. If one has indicated to wish to file a claim for compensation, this form has to be completed and signed.

The forms have to be completed, signed and returned to the Public Prosecution Office within a fortnight. If not, the assumption is that the victim does not wish to make use of these rights and provisions.

In case the victim has indicated to be kept informed about the proceedings, the Public Prosecution office will notify him/her (in writing):

1. When the police concludes the investigation and send the criminal file to the Public Prosecution Office;
2. When the Public Prosecution Office decides that further investigation is indicated in view of the decision (not) to prosecute;
3. When the Public Prosecution Office has decided that the suspect shall appear in court;
4. Of the date of the criminal proceedings at court;
5. Of the decision of the judge.

Furthermore, a public database of (anonymized) verdicts can be consulted at any time, accessible via the website of the Council of the Judiciary<sup>40</sup>.

<sup>39</sup> <https://www.slachtofferhulp.nl/strafproces/aangifte-tot-straf/de-officier-van-justitie-behandelt-de-zaak/wensenformulier/>

<sup>40</sup> <https://uitspraken.rechtspraak.nl/>

After passing sentence, the victim can request the Public Prosecution Service to be further informed with regard to the execution phase (Article 4 of the Regulation on Providing Case Information to Victims. The Information Point Detention Leave (*Informatiepunt Detentieverlof*; *IDV*) is the operator of the victim notification scheme in the post-trial phase and informs the victim (in writing, in urgent cases incidentally by phone) of the start of the detention, the granting of furlough and of the date of (conditional) release<sup>41</sup>.

In this context we should mention that the moment of receiving information depends on the type of sentence. In cases of imprisonment the information is provided when the convict (i) is granted his first general leave, (ii) is released (for the first time), (iii) has 'evaded detention' (has escaped before getting his first general leave), and (iv) when he dies during his imprisonment. If the convict is a minor, sentenced to treatment in detention, the victim also receives information when the treatment in juvenile prison commences.

In cases where a hospital order is in place (meaning treatment in a forensic psychiatric treatment facility of ambulatory treatment), the victim receives similar information. Next, the victim is notified when the convicted offender is granted conditional leave and when the convicted offender will live outside (but under supervision of) the forensic psychiatric treatment facility as part of the rehabilitation program<sup>42</sup>. Note that the application form for (supervised) furlough contains a so-called 'victim's box' to record which protection measures (like a prohibition order) should be taken on behalf of the victim(s)<sup>43</sup>.

If a victim wishes to receive information on the release or the escape of the suspect, from preventive custody or imprisonment, he/she must be informed without further delay. If protective measures (such as prohibition orders and electronic monitoring/ankle strap), are implemented compliant with the verdict, or in case of escape or release, the victim must be informed within 7 days from the date of the verdict or from the moment it becomes known that the suspect or the convict will be released. Moreover, the victim must be immediately informed in case of non-return from general leave. Interviewees<sup>44</sup> identified timeliness of the notification and incorrect registration of victim contact details as problematic aspects. In situations of acute risk for the victim, the police will seek immediate and personal contact with the victim(s). 40% of survey respondents express that victims are sometimes informed of their right to be informed of the escape or release of the offender, and according to 29% this happens rarely or never. When a victim has indicated his/her wish to be informed, about half of the respondents estimates that they are indeed informed often/always and 37% thinks sometimes (Table 6.5-6).

The rights mentioned in Article 51ac CCP are applicable to all victims. However, in case there

<sup>41</sup> <https://www.slachtofferwijzer.nl/organisatie/informatiepunt-detentieverloof/>

<sup>42</sup> <https://www.tbsnederland.nl/behandeling/informatieverstrekking-aan-slachtoffers/>

<sup>43</sup> <https://www.tbsnederland.nl/media/1066/geen-verlof-zonder-voorafgaand-slachtofferonderzoek.pdf>

<sup>44</sup> Interviewees 1, 3 and 4.

is a clear risk that the information given to the victim might harm the suspect or the convicted offender, the Prosecutor may decide to withhold this information from him/her. The victim may appeal this decision before the examining magistrate<sup>45</sup>.

Lastly, in case the police decide to discontinue the case, the victim must be informed within 14 days. The same rule applies for the Public Prosecutor in case of a dismissal. In cases of sexual crimes this must be done in person. As for the content of the information, this needs to be detailed enough to enable the victim to decide whether he/she will seek to have the decision not to prosecute reviewed by the Court of Appeal (Article 12 CCP).

Only 20% of the survey respondents agree that decisions to dismiss the case are sufficiently substantiated. The majority is of the opinion that this happens sometimes (44%) or rarely/never (36%, Table 6.4).

Interviewees concur that the system and regulations in place to ensure the provision of relevant information to victims is generally adequate but note that currently there are only two 'opt-in' opportunities (when reporting to the police and responding in time to the letter (bullet-list) of the Prosecution Office). If, for any reason, the victim does not opt in at these occasions, he/she will not automatically receive the necessary information to take part in the criminal proceedings. Furthermore, accurate registration and exchange of information between different authorities still needs improvement. If a victim is not known in the system and/or his/her contact details registered correctly, his/her possibilities to exercise certain rights are severely impeded.

<sup>45</sup> Candido et al. (2017).

## ARTICLE 7 - RIGHT TO INTERPRETATION AND TRANSLATION

*Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings are provided, upon request, with interpretation at least during any interviews or questioning and with translation of information essential to the exercise of their rights in criminal proceedings in accordance with their role. Victims may challenge a decision not to provide interpretation or translation.*

*"If the victim does not or not sufficiently master the Dutch language, he can be assisted by an interpreter"*  
(Article 51c (5) CCP).

The CCP contains a brief provision in article 51c (5) CCP. The right to receive linguistic assistance applies to the victim who wants to file a report, joins the criminal proceedings as injured party, wants to present a victim statement or wants to attend the hearing as an observer. In this case the Public Prosecutor must ensure that an interpreter is summoned<sup>46</sup>.

Although before 2011 linguistic assistance for victims in the pre-trial investigation was not anchored in legislation or in delegated regulations, in practice this was made available if required. The *'Wet versterking van de positie van het slachtoffer in het strafproces* ('Strengthening of the victim's position in the criminal procedure law')<sup>47</sup> codified this practice. If the victim is summoned as a witness, the provisions concerning the appointment of an interpreter for witnesses apply (Article 191 (1) and Article 260 (1) CCP). In addition to the Regulation concerning the investigation at the hearing, today article 51c (1) CCP states that the right to assistance, which includes interpretation, applies both during the pre-trial investigation and at the hearing. In practice, an interpreter or the use of the interpreter phone was already provided when necessary.

In case the victim requires support and is not able to speak Dutch or English, Victim Support NL will arrange for **interpretation**.

<sup>46</sup> Aanwijzing slachtofferrechten (2018A005) Artikel 10.4.

<sup>47</sup> Stb. 2010, 1.

With regard to the translation of written information for the benefit of the victim, no regulations were available in the Netherlands until 2011. To this end article 51ca CCP on written translation has been inserted<sup>48</sup>. A victim who does not or insufficiently understand the Dutch language may request that written information to which (s)he is entitled be translated into a language which (s)he understands, if and insofar this information is necessary in order to exercise his/her rights in the criminal proceedings. This request shall be made in writing, as clearly as possible, describing and motivating for which information or documents translation is needed. The request is addressed to the Public Prosecutor. If the Public Prosecutor rejects the request for translation he shall inform the victim of this in writing. The victim can file a notice of objection with the examining magistrate. Before deciding, the examining magistrate hears the victim and the Public Prosecutor. An oral translation or summary of the requested information/documents can be provided by way of exception.

With regard to the question whether and to what extent victims are denied the right to linguistic assistance no reliable information can be provided. Given the presence of a list of registered interpreters and the fundamental importance of linguistic assistance for truth-finding and reliable decision-making, the assumption is that this rarely happens. Over half of the survey respondents (60%) agree that free of charge interpretation and translation are available during the entire procedure (Table 7.2-7). About a quarter indicate that there is no or insufficient interpretation available. Most frequently mentioned reasons are 'lack of interpreters', 'interpretation in another language than that native tongue of the victim' and 'the wish to avoid delays in the proceedings' (Table 7.3). With regard to translation 'false assumption that victims understand the language of the proceedings well enough', 'information not being deemed essential for translation' and 'lack of availability of translator' are most frequently mentioned as reasons to refuse translation (Table 7.9). Interviewees confirm that the Prosecution Service will take the relevance of documents into consideration when providing for translation.

<sup>48</sup> Under the aforementioned Strengthening of the victim's position in the criminal procedure law.

## ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES

*Member States shall ensure that victims have access to confidential victim support services, free of charge, before, during and for an appropriate time after criminal proceedings. Member States shall facilitate the referral of victims, by the competent authority that received the complaint to victim support services. Member States shall take measures to establish specialist support services in addition to, or as an integrated part of, general victim support services. Member States shall ensure that access to any victim support service is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.*

Article 51aa CCP provides for a right to access victim support. The latter is to be read in conjunction with the overall incentive to treat victims with due respect, prescribed in article 51aa (1) CCP (Public Prosecutor) and article 288a CCP (judiciary).

Next to article 51aa (3) CCP the fore-mentioned Decree is of importance, elaborating on conditions of support (finances, organisation), the introduction of the individual assessment and potential protective measures. According to Article 51aa (3) CCP victims and their family members are entitled to victim support, and have to be informed about this.

In order to facilitate knowledge about the accessible services, the police officer, Public Prosecutor or another investigating officer, must inform the victim about existing victim support services and point out where to find information, advice or support (Article 51aa (2) CCP). These rights are repeated in Article 5 (a-k) Decree Victims of Criminal Offences and further elaborated in this Decree. Note that in the Dutch scheme, the police and the Public Prosecution Service are not appointed to deliver extended victim support. These organisations, especially the police, facilitate support by referring victims to victim support organisations. In cases of minor crimes<sup>49</sup>, this is a passive referral (by providing the Victim Support Service Number and the website address). In cases of more severe crimes an active referral is preferred, passing on the contact details of the victim (after consent) to Victim Support NL, who will then seek contact with the victim within 2

<sup>49</sup> E.g. bicycle theft, attempted theft, vandalism.

working days. In cases of severe violent and sexual crimes, including homicide, Victim Support will be informed immediately by the family liaison officer<sup>50</sup>.

The main organisation to provide for general and specialised victim support services is Victim Support NL. Victim Support NL offers psychosocial, practical and legal support to victims (including family members and witnesses) of crime, traffic accidents, terrorism, disaster and calamities<sup>51</sup>. The main structure of this service is non-governmental, but it relies strongly on State (Ministry of Justice and Safety) and municipal funding. Besides that, Victim Support NL receives some financial support from Victim Support Fund and other private funding. Victim Support NL is a publicly well-known organisation.

The services offered by Victim Support NL are free of charge and accessible before, during and after the criminal proceedings. The Decree Victims of Criminal Offences also secures these rights by mentioning that the victim may receive support before, during and *an appropriate period after* the criminal proceedings, free of charge.

The police refers victims to Victim Support NL when they make a complaint. If a victim does not object, his/her personal details are sent via the *Elektronische Doorgifte Politie* (electronic referral system or EDP) to Victim Support NL. After checking incoming referrals (completeness and correctness of contact details, duplications), the victim is contacted by phone within two working days after being referred (outreaching approach). Victims are referred by other parties as well (e.g. by the Prosecution Service and professionals in (mental) health care). Obviously, victims are welcome to contact Victim Support NL on their own initiative but to date only a minority does so. In 2017 Victim Support NL received 225,000 referrals, in 190,000 cases contact could be established. In 115,000 cases it proved sufficient to provide information and/or to refer victims to other (specialized) services. In 70,000 cases follow-up support was provided by Victim Support NL<sup>52</sup>.

When a case is taken up to the Prosecution Office and a victim has indicated (on the wish-form) that he/she wants to file a claim for compensation in the criminal procedure (adhesion procedure) and/or make a Victim Impact Statement, the Prosecution Office refers him/her to Victim Support NL for assistance. The victim can also contact the Victims' Information Desk at the District Public Prosecution Offices<sup>53</sup>.

To create easy access, Victim Support has set up a website ([www.slachtofferhulp.nl](http://www.slachtofferhulp.nl)). The website offers information, self-help tools (psycho-education, fora), phone, chat and email facilities,

50 Lünemann, Mein, Drost & Verwijs (2014).

51 [www.slachtofferhulp.nl](http://www.slachtofferhulp.nl)

52 Victim Support NL Annual Report 2017.

53 Candido et al (2017).

testimonials, social maps, electronic forms and information videos. Victim Support-NL also operates a Facebook page and Twitter-account and applies webcare<sup>54</sup>. Victims can contact the 0900 0101 phone number from 8 AM to 8 PM on weekdays and from 9 AM to 5 PM on Saturdays. The website is temporary only available in Dutch due to the introduction of completely revised website/portal. However, an English website is under construction. Besides, the Victim Support Fund hosts a website that (via Google translate) provides information in English, German, Arabic and Spanish and the websites of the Police provides information in English and other languages<sup>55</sup>, including a referral to the site of Victim Support. Both interviewees and survey respondents (95%) indicate the competent authorities often or always refer victims to victim support (Table 8.1).

In 2016, the online Victim Portal was piloted: a joint effort of the police, the Public Prosecution Service, Victim Support NL, the Violent Crimes Compensation Fund and the Central Fine Collection Agency (responsible amongst other things for the execution of compensation measures). The objective of the Victim Portal is to provide victims with an up-to-date overview of their case, general information on services and rights, interactive communication facilities with the different authorities and organisations involved, and the possibility to compile a personal dossier by uploading relevant documents. A Proof of Concept was conducted and a basic version of the portal was received well by a test panel of victims<sup>56</sup>. In the coming years the Victim Portal will be developed further and other organisations invited to join in.

Victim Support NL offers a broad spectrum of easy accessible victim support services, however, services for specific types of victims are also available, e.g. in the field of domestic and sexual violence, hate crime and (internet-)fraud. The police is obliged to point out such services to the victim. Via the worldwide web and leaflets available at distinct public places (police station, medical centres, Victim Support offices, libraries etc.) victims can easily acquire an overview of the general and special support services. Moreover, in the Netherlands, being but a relatively small and densely populated country, the access to victim support is adequate, albeit there are some differences due to geographical contrasts (rural/non-rural areas). In practice, Victim Support NL, being the main provider of victim support, finds smart solutions (e.g. house-visits, online support services) to ensure support services are provided equally throughout the territory. About 75% of survey respondents agrees that Victim Support NL is often/always adequate in meeting the needs of victims (Table 8.2).

There is, however, some concern with regard to so-called '*LVB*'-victims (victims with mild mental disabilities). The *LVB* population has a significantly higher risk for victimisation and are less likely to reach out for help or to report a crime. Since *LVB*-victims are not always easy to identify as

54 Victim Support Employees actively monitor Facebook, Twitter and Instagram pages for messages about victimisation and will reply by giving acknowledgment and information about support services.

55 <https://www.politie.nl/themas/are-you-the-victim-of-a-crime.html>, [www.slachtofferwijzer.nl](http://www.slachtofferwijzer.nl)

56 Jonk, Gijzel & Hengst (2017), Leferink et al. (2016).



they tend to mask their mental disabilities for fear of stigmatization, criminal authorities often do not recognize their greater vulnerability and specific (communication) needs<sup>57</sup>. Whether this is the case for victim support has not been assessed yet, but the *LVB* category provides for some general concern amongst the authorities involved; there is no victim support service specifically tailored to victims with disabilities<sup>58</sup>. That being said, recently a '*LVB*-guideline' has been developed and partly implemented by the Police. Special communication materials are developed as well<sup>59</sup>.

Given the fact that the Ministry of Justice and Safety provides the majority of the funds for victim support, the government has the means to supervise victim support organisations on an annual basis (via annual reports and account of expenditures and performance, funds can be adapted according to the results). As for Victim Support NL, this NGO closely works together with the Ministry of Justice & Safety and is frequently invited for consultation both by the legislature and the policy department<sup>60</sup>.

<sup>57</sup> Concerning the *LVB* victim population, research identified several problems 1) inability of *LVB* victims to understand the procedures and 2) problems to comply with the expectations and requirements of the system, 3) (negative) stereotypes concerning *LVB*, 4) failure to recognize *LVB*, 5) insufficient knowledge of and understanding for the (consequences of) *LVB*, 6) difficult access to and acceptance of support and 7) communication is not sufficiently tuned to the needs and capacities of the victim (Spaan & Kaal, 2015).

<sup>58</sup> Kaal et al (2017).

<sup>59</sup> See comment under Article 3.

<sup>60</sup> Interviewee 4.

## ARTICLE 9 - SUPPORT FROM VICTIM SUPPORT SERVICES

*Victim support services shall, as a minimum, provide: a) information, advice and support relevant to the rights of victims; b) information about or direct referral to any relevant specialist support services in place; c) emotional and psychological support; d) advice relating to financial and practical issues arising from the crimes; e) advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation. Specialist support services shall develop and provide: a) shelters or any other appropriate interim accommodation for victims; b) targeted and integrated support for victims with specific needs such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships.*

All the elements on the victim support services, mentioned in Article 9 of the Directive (under a-e), can be found (in the same order) in Article 3 (1a-1e) of the Decree Victims of Criminal Offenses, which on its turn relates to Article 51aa (3) CCP.

Victim Support NL provides most services as required Article 9 under a) to e). Information is provided by telephone, face-to-face, online and in brochures and covers a broad range of subjects: practical issues, victims' rights, the criminal procedure, but also relevant civil law issues (inheritance law, custody), legal assistance, compensation, restorative justice practices, psycho-education and explanation and contact details of specialist service providers. Emotional support is often provided face to face (either during house visits or appointments at local offices) and increasingly via phone, social media or chat, as especially the younger generations seem to prefer these communication channels. If counselling or therapy is indicated, Victim Support NL will refer victims to their GP who is authorised to diagnose and refer victims to mental health services or independent mental health practitioners. Victim Support NL will help victims to deal with practical and financial issues, such as insurances, house safety, and can refer victims to a financial coach.

Providing 'tailored' support, addressing the individual needs and circumstances of victims has been a long standing principle of Victim Support NL. Emotional and practical assistance is mainly provided by volunteers, legal support predominantly by paid staff (Interviewee 4)<sup>61</sup>. In case of severe violent and sexual crimes, a casemanager is assigned to the victim or relatives. Casemanagers are paid staff and provide a more intensive and long term assistance. The Victim Support NL casemanagers work closely together with their counterparts at the Police (family liaison officers) and the Prosecution Office (case coordinators) conform the *Maatwerkprotocol* (Customized Service Protocol)<sup>62</sup>. The participation of Victim Support NL in the so-called '*ZSM-werkwijze*' (ASAP-protocol, the previously explained out-of-court procedure aiming at an efficient and swift settling of petty crime cases by the Public Prosecution Service) deserves special mention. The Public Prosecutor handling the case requests information from all organisations involved, including Victim Support NL, in order to be able to provide for a just decision. In the ZSM-model, Victim Support NL assesses protection needs, damages and other needs of the victim and supplies the Public Prosecutor with the necessary information. As such Victim Support NL safeguards the victim's interests<sup>63</sup>.

Both interview respondents and between 70-90% of survey respondents agree that often or always victims receive the information and support specified under article 9 a-e (Table 9.1-4).

The Victim Monitor shows that victims are generally very positive about Victim Support NL's performance on the different aspects covered by article 9. The provision of information receives slightly higher scores than the assistance provided in the adherence procedure but dissatisfaction with the court's decision not to award a claim might explain this difference. Victims are less positive about the contribution of Victim Support NL to their personal safety and the prevention of (repeat) victimization, but in the Netherlands that is predominantly regarded as a police task. In 2016 Victim Support NL carried out a pilot aiming at the prevention of repeat victimization after burglary, by offering follow-up support, educational materials and the visit of a *PKVW*-consultant ('Police certificate for home safety') but research showed no effects to encourage further implementation<sup>64</sup>.

Another aspect of Article 9 Directive deals with specialist support services. In this context, the Netherlands provides for shelters for specific categories of victims.

The first type of shelter is for **victims of sexual offenses and/or domestic violence** (*Blijfhuizen*). The second specialist service focuses on **victims of human trafficking**. The Dutch government created the so called '*Categoriale Opvang voor Slachtoffers van Mensenhandel*' (COSM)<sup>65</sup>. This shelter was established 2010 and can house up to 50 individuals/families. The COSM is meant for non-resident victims (often mothers and their children). As most are victim of sexual exploitation and without a residential permit, they are granted a special status, including a stay in the shelter, for a maximum of three months. In that period they need to decide whether to make a complaint. Victims who previously have entered the procedure to acquire refugee status have no access to this type of shelter. When victims do not comply with these abovementioned conditions, most of them will be placed in so-called 'women's shelters' or 'social shelters'. Shelters provide – amongst others – counselling and psychological treatment, training in social competence and practical life skills, orientation on the labour market and rehabilitation programs from drugs or alcohol abuse<sup>66</sup>.

Throughout the Netherlands there are also several Centres for Sexual Offenses ('*Centra Seksueel Geweld*')<sup>67</sup>. Victims of sexual violence and abuse can contact the free, 24/7 available helpline<sup>68</sup> to be referred to the nearest by CSG. The CSG offers a combination of forensic, medical and psychological assistance. If necessary, the Centre can inform the Police in order to start a criminal investigation.

Victim Support NL and the police refer victims to specialized services, including shelters and '*Veilig Thuis*' ('Safe Home', a network of organisations that provide specialized help for victims of domestic/relational violence and child abuse)<sup>69</sup>, the CSG, specialized victim lawyers, Social Work Services, GP's and mental health care services. Victim Support NL also facilitates peer support groups and works together with victims' self-organisations.

61 Today Victim Support NL employs around 1000 volunteers and 450 paid staff.

62 Lünemann, Mein, Drost & Verwijs (2014).

63 [www.om.nl/onderwerpen/werkwijze-van-het-om/](http://www.om.nl/onderwerpen/werkwijze-van-het-om/)

64 Leferink et al (2017).

65 <https://www.wegwijzermensenhandel.nl/organisatieprofielen/CategorialeOpvangvoorSlachtoffersvanMensenhandelCOSM.aspx>

66 <https://www.fier.nl/opvang/blijf>

67 <https://www.centrumseksueelgeweld.nl>

68 0800 0188 (free of charge).

69 [www.vooreenveiligthuis.nl/](http://www.vooreenveiligthuis.nl/)

## ARTICLE 10 - RIGHT TO BE HEARD

*Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.*

The CCP provides for the legislation on the right to be heard during criminal proceedings. The main article is 51e CCP:

(2) *'The victim may make a verbal statement at the court session'*.

This second section gives the general rule on the right to be heard. However, the first section formulates some restrictions:

(1) *'The right to make a verbal statement at the court session may be exercised if the offense as charged in the indictment is a serious offense which carries a statutory term of imprisonment of at least eight years, or any of the serious offenses referred to in sections 240b, 247, 248a, 248b, 249, 250, 285, 285b, 300(2) and (3), 301, (2) and (3), 306 to 308 and 318 of the Criminal Code and section 6 of the Road Traffic Act 1994 ('Wegenverkeerswet 1994').*  
(...).

Only in cases where the suspect is charged for a **serious offense** (a statutory term of imprisonment of at least eight years) or any other serious offense stated in Article 51e (1) CCP, is the victim entitled to make an oral victim impact statement.

In addition to the first and second section *'the spouse, the registered partner or another life partner of the victim, the relatives in direct line, the relatives in the side lines up to and including the fourth degree and the persons who are dependent on the victim, as referred to in Article 51a (1b) CCP, may exercise the right to make an oral statement about the impact the criminal offense has had on this victim or surviving relative at the court session, if the victim or the surviving relative is actually incapable of exercising the right to make a verbal statement'* (Article 51e (7) CCP).

In cases of a **minor victim** article 51e (5) CCP mentions that:

*'Minor victims are allowed to make their own verbal statement when they have reached the age of twelve years. If the minor has not yet reached that age, but can be deemed capable of reasonably assessing his interest in that respect, he/she also receives the right to be heard (Article 51e (5) CCP). If the minor has not reached the age of twelve years, his/her right may be exercised by the legal representatives insofar that this representation is not contrary to the minor's best interests. (...) The presiding judge may, (...), decide to deny the legal representative the right to make a verbal statement at the court session, if he determines that this would be contrary to the minor's best interests (Article 51e (6) CCP).'*

Article 51e (3) CCP adds: *'The father or the mother of a minor victim who has a close relationship with that victim and persons who take care of or raise that victim as part of their family and have a close and personal relationship with the child, may, jointly or each separately, make a statement referred to in subsection (2) about the impact that the criminal offenses have had on them at the court session. (...)* In either section 51e (6) CCP or section 51e (3) CCP the right to be heard can be restricted or denied by the judge when it would be contrary to the minor's best interests.

As for the right to speak the Dutch legislation is of a rather unique nature. A limited right to give and Victim Impact Statement was introduced in 2005, but expanded over the following years. Since 2012 the oral statement may concern all issues at stake within criminal proceedings. Thus, the victim can state his/her oral opinion with regard to the evidence, the sentencing and the impact of the offence on the victim's life. If the victim is deceased or incapable to speak (including a minor), the relatives (max. 3) or a legal representative are entitled to make a statement. Recently, the right to be heard was extended to stepfamily.

Given the Dutch criminal proceeding to be of a non-bifurcated nature, the right to speak carries potential procedural risks that need to be managed by the presiding judge<sup>70</sup>. If the victim should address issues of evidence, it can be decided to swear him/her as a witness and as a consequence be subjected to cross-examination<sup>71</sup>. This bears within a potential risk for secondary victimisation, but such effects have not manifested on a large scale. Victim Support NL prepares victims who want to deliver a statement in court and often victims are accompanied by a Victim Support NL worker or a victim lawyer. The Victim Monitor does mention some discontent of victims with regard to the judge's attitude towards the victim's statement. A minority of these victims would have preferred a more extended reasoning or some other type of (oral) clarification considering the weight given to the victim's statement. However, overall victims positively evaluated the victim impact statement. A more recent survey, commissioned by the Council for the Judiciary, revealed that judges occasionally do not grant victims the opportunity to speak although this was requested in the pre-trial phase. Furthermore the 'listening skills' and empathy of (some) judges

<sup>70</sup> Keulen et al (2013).

<sup>71</sup> Candido et al (2017).

should be developed<sup>72</sup>. On an annual basis 250-350 Victim Statements are brought forward<sup>73</sup>. As a rule, oral statements tend to last between 10 to 20 minutes<sup>74</sup>.

Note, however, that the right to be heard addressed in Article 10 of the Directive in Dutch practice may coincide with the victim's right to explain his/her claim for compensation (article 51f CCP). Given the fore-mentioned non-bifurcated proceedings this calls for adequate direction by the presiding judge, especially given Dutch victim lawyers to actively pursue a full-dressed right to be heard.

Next to the oral Victim Impact Statement, Dutch victims may bring forward a written statement (the so-called '*Schriftelijke Slachtofferverklaring*'; *SSV*). Indeed, the victim may make use of both the *SSV* and the right to speak out in court. The majority of the victims opt for the *SSV*, which may also be read out in court. The *SSV* is not limited to certain offenses or statutory terms of imprisonment. The Public Prosecutor or presiding judge will usually refer to the *SSV* and/or quote sections<sup>75</sup>. Victim Support NL offers special services to assist victims to draw up a *SSV*. Annually 3000-4000 *SSV*'s are presented in court<sup>76</sup>.

The second part of Article 10 of the Directive concerns the **right to provide evidence**. The transposition of this element can be found in Article 51b (2-4) CCP. This provision needs to be distinct from the aforementioned right to state a victim's opinion with regard to the assessment of the evidence (Article 51f CCP). The focus of Article 51b (2-4) is the victim's right to participate in the pre-trial investigation. Given the nature of the Dutch criminal proceedings (predominantly based upon the 'dossier') the right to provide for evidence is of major concern to victims. At the moment of writing, these rights are subject to some discussion and possible revision in the context of the full revision of the Dutch CCP pending. The right to provide for evidence needs to be addressed in conjunction with the right to file a formal complaint in case of a termination of the case by the public prosecutor, the so-called Article 12 CCP- procedure<sup>77</sup>. For the past years there has been a significant rise of complaints. Moreover, the legislature intends to extend the rules: in the near future victims are also allowed to file a complaint when the victim's report was not (adequately) investigated upon.

72 Klantwaarderingsonderzoek Rechtspraak 2017, Landelijk Rapport, p. 14.

73 This is an estimation based on the cases in which Victim Support NL provides assistance to victims who wish to give a victim statement in court, there is no official registration.

74 Lens (2010).

75 Interviewees 2, 3 and 4.

76 This is an estimation based on the cases in which Victim Support NL prepares the statement, there is no official registration.

77 'Klachtprocedure'; see the comments for Article 11 Directive.

Additionally, Article 51b (2-4) CCP states that:

(2) *'The victim may request the public prosecutor to add to the case file documents that he considers relevant for the assessment of the case against the suspect or his claim against the suspect.'*

According to section 51b (3) CCP the public prosecutor may refuse to add these documents, *'if he is of the opinion that the document cannot be regarded as case documents or if he considers the addition of said documents or their inspection to be incompatible with the interests referred to in section 187d (1) CCP'*. Application of section 3, according to Article 51b (4) CCP by the Public Prosecutor has to be authorised in writing by the examining magistrate.

The Code does not mention specific rules for minor victims in relation to the right to provide evidence.

According to interviewees (1,2,3), all competent authorities take age and maturity of minor victims/witnesses into consideration. Since the Dutch population register is highly accurate, the age of the victim can always be verified. Maturity is assessed relying upon the expertise of trained professionals or the professional intuition of the experienced, senior functionaries, by taking into consideration behaviour, language and antecedents. There are special instructions, specialised functionaries and other provisions in place, as explained under Article 18, 21-24.

## ARTICLE 11 – RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE

*Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to review of a decision not to prosecute. Where the role of the victim will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. Member States also need to ensure that victims are notified of their right to receive, and that they receive sufficient information to decide whether to request a review.*

In accordance with Article 51ac (1b) CCP the Public Prosecutor shall provide for information on the decision not to prosecute the criminal offense. The information to be provided under section 51ac (1b) CCP, should at least include a motivation or a summary of the motivation for the decision not to prosecute (Article 51ac (3) CCP). Thus, the victim can request information with regard to the procedure to file a complaint against the decision at the Court of Appeal, as referred to in Article 12 CCP.

All victims are entitled to receive information and file a complaint against a decision not to investigate/prosecute. In practice, the decisions to terminate an investigation/prosecution are communicated in standardized documents, poorly motivated with general arguments mentioned in the Public Prosecutor Service guidelines. The victim is informed about the right to file a complaint at the Court of Appeal. Note that the Court provides for a full assessment, however, given the right to prosecute in the Dutch system to be a prerogative of the Public Prosecution Service (discretionary principle), a reticent assessment is in order. The Court can dictate the Public Prosecution Office to reopen the investigation or prosecution.

As already mentioned above, it is the duty of the public prosecutor to provide the victim with the necessary information, in case the decision is not to prosecute the criminal offense. If the decision relates to the discontinuation of the criminal investigation (Article 51ac (1a) CCP), then a police officer or another investigating officer may also be authorised to inform the victim (Article 51ac (2) CCP).

The victim is permitted to draw up the complaint against such decision by him/herself, but can call upon the assistance from a lawyer or Victim Support NL (free of charge). This service is announced on the website of Victim Support NL. The website also provides victims with a template and instructions, including a summary of all points the complaint should address and the contact details of the Courts of Appeal (the designated Court is determined by the location where the investigation was held). The information and the template are only available in Dutch. An English instruction is available via [www.overheid.nl](http://www.overheid.nl). The Victim Support NL website also gives an overview of different stages of the complaint procedure. Next, via [www.rechtspraak.nl](http://www.rechtspraak.nl) (the website of the judiciary) information is provided as well (in Dutch).

On an annual basis 2500 to 3100 complaints are filed at the Court of Appeal, which comes down to 147 complaints per 10.000 cases that were discontinued by either the police or the Public Prosecutor. Since 2010 the number of filed complaints has risen about 30%. Approximately 10-12% of complaints is ruled grounded<sup>78</sup>.

Currently, the complaint procedure under article 12CCP is under review with the objective to shorten the throughput time (the current standard of 6 months is rarely met, a delay of 6+ months is very common)<sup>79</sup> and to improve the motivation of the Court's decision in compliance with *PROMIS* (Project for Improvement of Motivation of Criminal Sentencing). *PROMIS* started in 2008 with the objective to explain the decision and underlying argumentation of the court in plain language, thereby increasing comprehensibility and acceptability of judicial decisions<sup>80</sup>.

<sup>78</sup> Lent et al (2016), Gend & Visser (2004).

<sup>79</sup> Rechtspraak – Kengetallen 2016, Tabel 5b: gerechtshoven, gerealiseerde doorlooptijden Strafrecht, pp 123.

<sup>80</sup> Interviewee 3, see also Groot-van Leeuwen, L. de, Laemers, M. & Sportel, I.; m.m.v. P. Frielink & P. van Kempen (2015).

## ARTICLE 12 - RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

*Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Member States shall facilitate the referral of cases, as appropriate to restorative justice services.*

First of all, we can determine that the restorative justice services exist in The Netherlands. Section 51h CCP provides for the legal basis.

(1) *'The Public Prosecution Service shall see to it that the police informs the victim and the suspect of the option of restorative justice services, such as mediation, at the earliest possible stage.'*  
(...)

(3) *'The Public Prosecution Service shall encourage mediation between the victim and the suspect or the convict, after it has made certain that the victim agrees to such mediation.'*  
(...).

The right to protect the victim in the context of the abovementioned restorative justice services is stated in articles 17 and 18 Decree Victims of Criminal Offenses.

*'When providing any restorative justice service, as referred to in Article 51h CCP, measures shall be taken to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation'* (Article 17).

Moreover, Article 18 (1a-1e) mentions the conditions that need to be met before applying restorative justice services. These conditions are:

- a. only use the service when it is in the interest of the victim, after considering the safety aspects, with the voluntary approval which may be withdrawn at any time;
- b. before agreeing on a restorative justice service, the victim receives full and objective information on the process and the possible outcomes, (...);
- c. the suspect or convict acknowledged the facts underlying the case;

d. the agreement, as referred to in Article 51h (2) CCP;

e. All information not expressed in public in the context of the applicability of Article 51h CCP, is confidential and shall not be disclosed publicly, unless the parties agree to public disclosure.

For the past three years developments with regard to mediation in penal matters have taken a significant turn in the Netherlands. Due to the growing amount of cases and the rise of the victim as a procedural participant, the criminal justice system is faced with the need to search for pragmatic solutions to address society's call for justice. In conjunction with the Public Prosecutor Service handling about 50% of the criminal cases by out-of-court sanctioning via the so-called Penal Order ('*strafbeschikking*'); mediation has come to the front as a useful instrument for settling minor offences<sup>81</sup>. Thus the increasing attention for mediation needs to be comprehended as being for an important part based on instrumentalist motives. Nevertheless, it is of major importance that the judiciary also tend to be in favour of applying mediation in criminal cases.

Restorative practices such as victim offender meetings and mediation, have for many years been a bottom-up phenomenon, several initiatives and pilots have run since the mid-nineties<sup>82</sup>. Evaluative studies reporting positive effects in 2015 stimulated further development accompanied by growing political support in Dutch Parliament<sup>83</sup>. The framework for restorative practices is voluntary participation, the victim's control over the process and the prevailing of the victim's interests<sup>84</sup>. Furthermore, participating in mediation must not result in secondary victimisation. To secure a positive experience, mediation sessions and victim-offender meetings are well-prepared, starting with separate interviews with the victim and offender, whereas the whole process unfolds under guidance of one or two independent, neutral (or 'bi-partial'), certified mediators.

Since 2005 mediation-bureaus<sup>85</sup> have been present in all regional courts and courts of appeal in order to provide mediation on referral by the Public Prosecutor or judge. If both victim and offender agree to mediation, the outcome/settlement will be weighed in the final decision of the Public Prosecutor or judge. Note that mediation is not fully integrated in the criminal proceedings; there's no diversion as such. There's an active NGO, Restorative Justice Netherlands (RJN), which successfully lobbies for the full implementation of mediation. RJN has a website: [www.restorativejustice.nl](http://www.restorativejustice.nl).

81 Such as theft, minor assault, threat, vandalism.

82 Cases handled in the pilots often concerned perpetrators known to the victim, or cases involving juveniles.

83 Cleven et al (2015).

84 Beleidskader herstelbemiddeling ten behoeve van slachtoffers

85 Mediation in civil law and family law cases is a long standing practice in the Netherlands.

In 2017 about 950 cases have been referred to the court's mediation bureaus. In the period January-May 2018 this amounted to 650 cases, indicating an increase of referrals. About one in two referred cases concerned minor violent crimes. About 70 to 80% mediations have been labelled as successful, meaning a settlement is reached between the suspect and the victim, and subsequently communicated to the public prosecutor and judge<sup>86</sup>.

Next to the possibility of mediation related to the outcome of criminal proceedings, mediation and victim-offender meetings are offered parallel to the criminal proceedings via the organisation '*Perspectief Herstelbemiddeling*'<sup>87</sup>. Victim-offender meetings can be held in all stages of the criminal proceedings, including the execution phase. Besides face-to-face encounters, mediation can take place through the exchange of letters or via an intermediary who goes back and forth between the two parties (*pendelbemiddeling*).

Mediators in service of the Court's bureaus and *Perspectief Herstelbemiddeling* are qualified professionals. Next to mediation within criminal proceedings, mediation is applied on the level of the police in case of neighbourhood-related crime. In these cases, the police co-operates with qualified mediators.

In prisons and forensic psychiatric facilities restorative practices are becoming more popular in view of the prospect that after detention or forensic psychiatric treatment victim and (ex-) offender can be confronted with each other incidentally, or intensively if there is some form of relationship between them. Restorative practices are welcomed as an instrument to prepare victim and ex-convict for future encounters outside the controlled environment of the prison or clinic. To safeguard the safety and interests of both parties a guideline has been drafted and is currently being implemented in forensic psychiatric centres<sup>88</sup>.

86 Infobulletin Mediation in strafzaken, de Rechtspraak/Openbaar Ministerie, June 2016 ([www.Rechtspraak.nl](http://www.Rechtspraak.nl)).

87 <https://www.perspectiefherstelbemiddeling.nl/>

88 Van Denderen, Bax & Sweers (2016).

## ARTICLE 13 - RIGHT TO LEGAL AID

*Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings.*

Article 51c CCP provides for legal basis for the provision of legal assistance during the investigative and trial phase. The victim may be assisted by a lawyer, by his legal representative and also by a person of his choice. For legal representation a special written power (issued by the victim) is required. The same rights are given to surviving relatives and to the heirs of a (deceased) victim.

The right to have access to legal aid mentioned in Article 13 of the Directive is related to the victim's status as a party to the criminal proceedings. Within the Dutch system, the victim is acknowledged as a 'legal participant' (*procesdeelnemer*) and holds no position as a 'legal party' on equal footing with the offender in the context of criminal proceedings.

Overall, the right to receive legal aid is sufficiently codified in the CCP. Article 51c (2) CCP is, however, broadly defined and permits the victim to receive representation by a person of his/her choice. That may include a relative, a companion, a Victim Support NL employee or by an assigned lawyer. The latter will be appointed to represent the victim's interests. Whether there is need for a 'legal representative', thus for the appointment of a lawyer, depends on the nature of the victim's claim. As a rule, lawyers are appointed to provide legal assistance on behalf of the victim's claim for pecuniary compensation (article 51f CCP). However, claims to a maximum of 25.000 euro do not need legal representation in court, and often assistance provided by Victim Support NL suffices<sup>89</sup>.

The victim may choose to appoint a lawyer of his/her own choosing, reclaiming the expenses via the civil proceeding initiated as an injured party. Note the regular tariffs set in the Act on Legal Aid (*Wet op de Rechtsbijstand*) will be applied (the so-called '*liquidatie tarief*'; also see Decree on the Tariffs in Criminal Proceedings 2003; '*Besluit Tarieven in Strafzaken 2003*'). Next, a victim may be entitled to partial or full legal aid paid for by the State, depending on the height of his/her

89 Kool et al (2016).

income<sup>90</sup>. A request to receive reimbursement of legal expenses (the so-called *'toevoeging'*) needs to be addressed to the Legal Aid Board (*'Raad voor de Rechtsbijstand'*). As a rule such a request will be submitted by a lawyer<sup>91</sup>. An English brochure explaining the services of the Legal Aid Board is available on their website<sup>92</sup>.

In order to be granted a fee, lawyers have to meet specific qualifications. Legal assistance towards victims of crime is becoming a specialised, however still limited branch of legal aid<sup>93</sup>.

**Victims of major crimes of violence and/or sexual assault** (so-called *'EGZ-zaken'*) are entitled to free legal aid regardless the height of their income (Article 44(4) Legal Aid Act). This same rule also applies for **family members of homicide victims**. In this context we should mention the Dutch foundation LANGZS (*Landelijk Advocatennetwerk Geweld- en Zedenslachtoffers*)<sup>94</sup>, financially supported by the Ministry of Justice and Security. It is a national network of specialized victim lawyers offering legal assistance to victims of serious violent and sex crimes. The police and Victim Support NL refer victims preferably to affiliated lawyers<sup>95</sup>.

As earlier stated, victims who do not belong to the category of the major crimes (EGZ-cases) or who do not meet the income criteria to be eligible for (partial) compensation of the legal expenses, may claim reimbursement via the claim as an injured party (Article 51 CCP, adhesion procedure). Legal expenses, however, do not fall under the heading of damage caused by the crime, but need to be presented as a separate item. Based on article 361 par. 5 related 592a CCP, the judge will have to decide upon this claim separately. If the victim has a legal expenses insurance, he/she cannot claim the lawyer's fee via the criminal proceedings.

<sup>90</sup> Victims are not sui generis entitled to free of charge legal assistance with respect to their participation in the trial and the effectuation of their rights. Subsidized legal assistance is based on a fixed tariff system. For example: for preparing and explaining a claim for compensation, the lawyer can expense a certain amount of hours. The same goes for representing the victim in court to speak in his behalf. Beyond this 'quota' of free legal assistance, victims can request reimbursement of additional expenses for legal assistance. The higher their income, the lower the reimbursement. This proportional principle applies to a broad spectrum of social provisions and taxes: beyond a certain minimum standard, one pays or receives in proportion to one's financial capacity.

<sup>91</sup> Interviewees 2, 3 and 4.

<sup>92</sup> [www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/12835\\_legalaid-brochure\\_2017.pdf](http://www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/12835_legalaid-brochure_2017.pdf)

<sup>93</sup> Kool et al. (2016).

<sup>94</sup> [www.langzs.nl/english/](http://www.langzs.nl/english/)

<sup>95</sup> Interviewee 4.

## ARTICLE 14 - RIGHT TO REIMBURSEMENT OF EXPENSES

*Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.*

If a victim has joined the proceedings as an injured party, the court which renders the judgment, shall decide on the incurred and future expenses (including expenses for legal aid and for a translator, travel expenses and costs for lost work days), Article 361(2) CCP). Note these expenses not to be part of the claim for pecuniary compensation<sup>96</sup>.

A victim, having filed a claim for compensation, will receive a written notice by the public prosecutor to appear at the court hearing. Therefore, the 'Criminal Cases Fees Act' applies to victims. This Act mentions e.g. that victims may receive reimbursement for travel and lodging expenses incurred due to their active participation in the proceedings. Costs that are not necessary in the context of exercising ones rights as an injured party in the criminal proceedings, cannot be reimbursed. If a victim wants reimbursement of his/her expenses, his/her claim needs to be well substantiated and limited to the expenses incurred. The judgment of the Court shall include a motivated decision on the eventual compensation of these expenses. In order for a claim to be admissible the next conditions should be met:

*"a) any punishment or measure is imposed on the defendant, or in the case the application of Article 9a CCP, and*

*b) damage or loss was directly inflicted on him by the offence found proven or by a criminal offence which, as is stated in the summons, the defendant admitted and was brought to the cognisance of the District Court, and which the District Court took into account in the imposition of the punishment"* (Article 361(2) CCP).

<sup>96</sup> Candido et al (2017).



As with regard to the lawyers' tariff, the so-called "liquidatie-tarief" (fixed tariff) is applied. The Court may choose to reimburse the real expenses, but as a rule opts for the fore-mentioned tariff. If the case is appealed before the Court of Appeal or the High Court, additional expenses can be added to the victim's compensation claim<sup>97</sup>.

## ARTICLE 15 - RIGHT TO THE RETURN OF PROPERTY

*Member States shall ensure that recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings.*

Article 94a CCP mentions the competence to seize property from the suspect. According to section 4 of this article property may also be seized from other people e.g. victims. Although this article does not mention any rules on the return of the property to the victims, it is understood as including victims. Additionally, in case there is no interest, or no longer an interest of the criminal proceedings to continue the seizure, the seizure shall be terminated and the object will be returned to the person from whom it was seized, e.g. the victim. (Article 116(1) CCP).

In case the property seized is defined as 'movable goods', it will be stored at the State Property Service of Movable Goods ('Domeinen Roerende Zaken'). If the seizure is terminated, the State Property Service of Movable Goods will send a written notification to the owner stating the place and the time the victim can pick up the goods. The police, Public Prosecution Office and the State Property Service of Movable Goods opened a helpdesk concerning seized property ('Beslagloket')<sup>98</sup> in 2016 where one can inquire by phone, email or in writing after seized property. Occasionally, property of victims that was not seized but recovered from the scene of the crime or the accident for reasons of possible emotional value will be kept in storage and returned to family members<sup>99</sup>.

The Public Prosecutor will decide when the order of seizure is removed. The period within which the seized property must be returned to the victim is 3 months. Research dated from 2017 has shown that in 2016 92% of the property was returned to the owner<sup>100</sup>. Note that this percentage covers the property of all types of owners, not only victims. However, it does show that the majority of seized property is returned within the given timeframe, and it seems plausible that most of the victim's property is returned in time. The victim can bring forward a request for the return of seized property to the judge when property is still under seizure at the date of the trial<sup>101</sup>.

98 [www.om.nl/onderwerpen/beslag/](http://www.om.nl/onderwerpen/beslag/)

99 Interviewee 1.

100 Beleidsdoorlichting 2017, Domeinen Roerende Zaken', November 2017.

101 Interviewee 3.

Recently, article 94a CCP came into force, introducing seizure on behalf of the injured party. This seizure aims to prevent assets in possession of the suspect to be channelled away or concealed, leaving the victim empty-handed in case his/her claim for compensation is granted. The seizure on behalf of the victim is executed by the Public Prosecution Service and the *CJIB* (Central Fine Collection Agency) <sup>102</sup>.

## ARTICLE 16 - RIGHT TO DECISION ON COMPENSATION FROM THE OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS

*Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.*

The right to file a claim for compensation within the criminal procedure is laid down in Article 51 f CCP:

*“Those who have suffered damages caused directly by a criminal offense, may adhere his claim for compensation in the criminal proceedings as injured party.”*

In case of the demise of the victim this right passes to the legal heirs (51f (2) CCP).

An evaluation in 2016<sup>103</sup> showed that in the period 2010-2014 victims filed a claim for compensation in 17.909 (criminal) cases. The success rate has increased from 2003 onwards, about 66% of these claims to be ruled (partially) admissible and awarded. The percentage of cases that was ruled to be completely inadmissible lowered to 1:5 cases. Overall, developments show compensation for victims to have become an integral element of the criminal proceedings. This goes for pecuniary and non-pecuniary damage, although the award of non-pecuniary damages is assessed by granting a ‘lump-sum’ mirroring the judiciaries willingness to grant compensation on the one hand, and the need to preserve the criminal nature of the proceedings on the other hand. Of its nature the award of non-pecuniary damage via criminal proceedings bears within a risk the claim to be ruled inadmissible as it may be found to present an undue burden to the prevailing criminal proceedings<sup>104</sup>.

The police is expected to inquire after a victim’s wish to claim compensation at the beginning of the investigation. The Prosecution Office will do so later in the proceedings, by sending a wish-

<sup>103</sup> Kool et all (2016).

<sup>104</sup> Candido et all (2017).

<sup>102</sup> Gijsselaar & Meijer (2014), Candido et all (2017).

form (*Wensenformulier*) and compensation form to the victim<sup>105</sup>. The compensation form will be included in the court file. Nevertheless, a victim is entitled to lodge such a claim orally as well at the actual court session, provided the claim is sufficiently substantiated and brought forward before the closing statements of the Public Prosecutor begin.

In case a written request for compensation was brought forward but not included in the criminal file; or in case the victim has not been notified of the date of the Court session, the judge can decide to adjourn the hearing (Article 281 CCP), to enable the injured party to be present at the trial session, and to bring forward and/or substantiate the claim. Although there is no legal obligation to adjourn in mentioned cases, internal regulations of the judiciary recommend that the presiding judge should honour a victims' request to the matter<sup>106</sup>. The Prosecutor can request adjournment on the victim's behalf. If for any reason attributable to the Prosecution Service a victim is *de facto* denied of his/her right to criminal compensation, he/she can submit a claim for compensation on grounds of omission by the Prosecution Service<sup>107</sup>.

Note that as of January 2019, the so-called *Affectieschade* (non-pecuniary damage claimed by affiliated persons not being the victim itself) can be claimed, in the context of both the civil and the criminal proceedings. The amounts are fixed, between 12,500 and 20,000 euros depending on the relation between the complainant and the victim, and the type of injury<sup>108</sup>.

If wished for, the victim may request statutory interest. This needs to be claimed as a separate item on the compensation form<sup>109</sup>.

As a rule, when awarding the claim for compensation, the judge will simultaneously impose the so-called *Schadevergoedingsmaatregel* (Compensation Order, Article 36f CC), providing the victim the accompanying legal advantage of compensation to be executed via the State (Central Fine Collection Agency, *CJIB*) and the *Voorschotregeling* (explained in the next paragraph). The Compensation Order being of a penal nature, comes with the sanction of substitute detention (*'vervangende hechtenis'*) in cases of non-compliance on part of the convicted offender. However, substitute detention does not replace the civil liability to pay for compensation and reservations are present amongst the judiciary to effectuate the measure.

If the *CJIB* within an eight months term cannot successfully collect the amount due from the offender, the victim is entitled to receive an advancement as part of the *Voorschotregeling* (State Deposit Fund, Article 36f (7) CC). Victims of serious violent and sexual crimes are entitled to a

105 See information provided under article 4.

106 Aanbevelingen civiele vordering en schadevergoedingsmaatregel m.b.t. de Wet Terwee en de Wet ter versterking van de positie van het slachtoffer, §2.

107 Aanwijzing Slachtofferrechten van het college van Procureurs-Generaal, Article 7.3.

108 Besluit vergoeding Affectieschade, Stb. 2018, 133

109 Candido et al (2017).

full advancement, all other victims can receive a maximum of 5000 euros. The victim's judicial rights with regard to the compensation will be ceded to the State. The *CJIB* is, however, quite successful in collecting the outstanding amount on behalf of the victim (in 2016 about 85% of the compensation orders was executed fully)<sup>110</sup>.

The decision on compensation claimed by the victim during the proceedings shall be pronounced at the final judgment in the criminal case, as referred to in Article 335 CCP<sup>111</sup>.

Given the indictment to prevail, the victim's claim for compensation – being of a civil nature based on tort law – should not be of a complex nature in order to meet the admissibility criterion 'not a disproportionate burden on the criminal proceedings' (Article 361 (3) CCP). If so, the claim will be ruled to be (partially) inadmissible, leaving the victim the right bring his/her claim before a civil court. Note the decision of the criminal court with regard to the victim's claim for compensation is solely open to appeal via the *criminal* proceedings in case the suspect or the Public Prosecution Service lodge an appeal with regard to the verdict. In case no such appeal follows, the injured party may appeal to the civil court. The civil judge issues his/her verdict during the court session.

Besides claiming for compensation in the criminal proceedings, the victim may address the Violent Offenses Compensation Fund, the Motor Traffic Guarantee Fund or his/her own insurance. When calculating the amount of compensation, the Criminal Injuries Compensation Fund Act states that the possibility of receiving compensation by other authorities, e.g. the civil court, will be taken into account<sup>112</sup>.

This means that victims can apply for compensation from the Violent Offenses Compensation Fund and file a claim for compensation in the criminal proceedings simultaneously. A compensation from Violent Offenses Compensation Fund will be netted with an eventual compensation awarded by the court. To apply for compensation from the Violent Offenses Compensation Fund, the victim is not required to have reported the crime to the police but a police report will help to substantiate the application. The maximum amount granted by the Violent Offenses Compensation Fund is €35.000<sup>113</sup>.

The Ministry of Legal Protection has announced to pursue the furthering of victims' compensation in the coming years. Given the limitations related to the pursuit of pecuniary compensation via

110 Khalidien ed. (2017: 82).

111 In cases ruled by a single judge, the (oral) verdict will be given instantly after the judge closed the criminal proceedings at court. This is including the decision on compensation. In case the procedure is held in front of a three-judge division, the verdict will be given on a separate date, being within fourteen days after the court session. In 2014 the average time for a single judge decision to be completed, meaning from the court hearing until the approval of the verdict, was 6 weeks. This timeframe is of importance in case the victim is not present at the criminal procedure. Irrespective of their presence in court, all victims receive a written statement on the verdict. In case of a three-judge division, the average time to complete a decision is 21 weeks. See: [www.rechtspraak.nl/SiteCollectionDocuments/Hoe-lang-duurde-de-afhandeling-van-zaken-in-de-afgelopen-jaren.pdf](http://www.rechtspraak.nl/SiteCollectionDocuments/Hoe-lang-duurde-de-afhandeling-van-zaken-in-de-afgelopen-jaren.pdf)

112 Beleidsbundel Schadefonds Geweldsmisdrijven, 1 May 2018, §1.5.

113 Beleidsbundel Schadefonds Geweldsmisdrijven, 1 May 2018.

the criminal proceedings, the government is willing to explore alternative routes e.g. creating an easy transfer of the victim's claim from the criminal proceedings to the civil court (so-called 'klapluik mechanisme', folding mechanism). Another option under exploration is the solicitation of the specialist expertise of assurance companies with regard to the calculation of complicated (personal) damages<sup>114</sup>.

In the context of the revision (in progress) of the CCP, it is worth mentioning that the Ministry intends to grant victims the right to cassation, entitling the victim to appeal to the High Court with regard to the denial of the claim for compensation.

<sup>114</sup> Slachtoffers als speerpunt: meerjarenagenda slachtofferbeleid 2018-2021, Ministerie van Justitie & Veiligheid, 22 February 2018.

## ARTICLE 17 - RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE

*Member States shall ensure that authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed. The authorities of the Member State where the criminal offence was committed shall be in a position: a) to take a statement immediately after the complaint is made to the competent authority; b) to have recourse to video conferencing and telephone conference calls for the purpose of hearing victims who are resident abroad.*

*Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.*

*Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.*

The first paragraph of Article 17 of the Directive is elaborated in the Regulation on General Information Provision for Victims<sup>115</sup>. In its Annex, containing further information on victims' rights, referral is made to victims abroad. A victim of a criminal offence outside the EU has to make a complaint in that particular country. A person of Dutch nationality being victim of a criminal offence committed in another Member State, can make a complaint in that particular Member

<sup>115</sup> Stcrt. 18951, 2017.

State, but in cases of severe violent or sexual crimes, or in case where one was not able to report to the local authorities, he/she is allowed to make a complaint in The Netherlands. Regarding this second option the Regulation refers to situations where circumstances did not allow for reporting abroad (e.g. immediate repatriation). The Prosecution Service has adapted his Directive on Victims' Rights conformingly<sup>116</sup>. Non-residents who are victimized in The Netherlands, can make a complaint in The Netherlands. However, the police or court can arrange a hearing via telephone or by video conferencing in case the victim has returned home.

Both survey respondents and interviewees agree in majority that to this respect sufficient provisions (e.g. equipment) are available (Table 17.2). They are less positive about the opportunity granted to file a complaint with the Dutch authorities in cases where the offense occurred abroad (Table 17.3).

According to the Prosecutorial Guidelines on Victims' rights, Article 17, paragraphs 2 (reporting a crime that took place in another Member State) and 3 (sending the report to the competent authorities of the Member State where the crime occurred) of the Directive are not implemented in Dutch legislation. The explanatory memorandum of the implementation act mentions that the reason for not implementing these paragraphs is that they provide the Member States solely with instructions and do not imply a duty for the Member State to legislate; their aim is to provide for a practical procedure. Point 10.10 of the Prosecutorial Guideline further mentions that information about the authorities in other Member States or contact information of those authorities can be found on the European Judicial Network (EJN). Moreover, 10.10 points out that victims are able to use the European Convention on Mutual Assistance in Criminal Matters between the Member States of the EU.

As with regard to the question whether foreign victims are treated differently than domestic victims, from a legal perspective all victims are treated equally. A considerable minority (45%) of the survey respondents however, indicate that in practice non-resident victims do not receive equal treatment (Table 17.4).

A report on cross-border victims dating from 2015<sup>117</sup> has shown that 89% is a victim of property crime. The research acknowledges that foreign victims receive equal rights, as well as support and advice from Victim Support NL, as Dutch residents do. However, foreign victims usually lack the information to access information and victim support. The researchers observed that foreign victims in need of help often turn to their consulate, the first priority being (apart from eventual medical assistance) repatriation or replacement of lost ID's and travel documents. Consulates and medical centres will seldom refer victims to local victim support organisations. The same

116 Directive on Victims' Rights (Board of Procurators General, 2018A005), Stcrt. 2018, 36061.

117 Van Wijk et al (2015).

goes for emergency call centres operated by travel insurance companies. Accurate registration and transfer of information between different jurisdictions remains an important bottleneck. In case a non-resident victim returns to his/her home country, Victim Support NL will make an effort to contact its counterpart organisation in that particular country as to take over the support, but, it is difficult for victim support organisations to keep track of victims after repatriation and continue the provision of information and assistance<sup>118</sup>.

Dutch citizens who have fallen victim to a serious sexual or violent crime that occurred abroad, may receive assistance from a case-manager of Victim Support NL (as referred to in Article 8 of the Directive). The case-manager provides - at the earliest possible - practical, legal and emotional support and tries to liaise between the different national and foreign authorities. However, not all the victims are aware that they qualify for Victim Support NL's assistance when the offence is committed abroad<sup>119</sup>.

Another relevant conclusion is that in the context of cross-border victimisation the exchange of information between the competent authorities abroad and Dutch institutions is a bottleneck. As a consequence, Dutch victim support workers and lawyers may not receive the files on the criminal case from the foreign Public Prosecution Office. This is due to the fact that Victim Support NL is not acknowledged an official status in other countries comparable to the one it holds in the Dutch system. Furthermore, the fact that some Member States do not have a single national institution for victim support but a variety of organisations, complicates communications and coordination even more<sup>120</sup>.

Besides the implementation of the Directive 2012/29/EU, the Netherlands also implemented the European Protection Order, which is in force since January 1st 2015<sup>121</sup>. This order reaffirms some rights given to all victims within the Member States. If in the Dutch jurisdiction victims are provided with protective measures, such as a restraining order, this measure remains valid in any other Member State when the victim returns to his/her own residence. Similarly, 'foreign' protection orders shall be upheld in the Netherlands<sup>122</sup>.

118 Interviewee 4.

119 Interviewee 4.

120 Van Wijk et al (2015).

121 Stb 2015, 81.

122 Lünemann, Mein, Drost & Verwijs (2014).

## ARTICLE 18 - RIGHT TO PROTECTION

*Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.*

Regarding the availability of protective measures, these can be of a different legal nature and be applied by distinct authorities. The mayor for instance may rule a local prohibition order based upon the Local Government Act, implying that an individual may not be allowed access to a certain area of the community. The latter can also be based upon the *Wet tijdelijk huisverbod* (the Temporary Domestic Prohibition Order Act)<sup>123</sup> in case of domestic violence (this may apply to the home or a temporarily shelter). Both are measures of an administrative legal order.

The Public Prosecution Service can apply a criminal behavior order based upon article 509hh CCP, a measure for the prevention of public disorder in general. The order may entail that the suspect is ordered to stay away from a specific area, refrain from contact with a specific person or persons, report at specific times to the investigating officer designated for that purpose, or to attend certain support group or courses (e.g. anger management, relational therapy, drug abuse prevention) to prevent future criminal behavior. The judge may issue similar behavior orders as part of the sentence based upon article 14c CC. Moreover, the judge may issue obligatory treatment. For example, the order may entail admission to a health care institution<sup>124</sup>.

If protection is desired preceding the criminal trial, the victim may address the civil court requesting a restriction order based in a so-called '*kort geding*' (condensed trial). The Probation Service, whose task it is to provide for a report on the person and circumstances of the suspect in preparation of the court hearings, is expected to advise on the appropriateness of protective and preventive measures with regard to the victim(s).

123 Stb. 2015, 40.

124 Candido et al (2017).

An evaluative study of 2014 concluded that an adequate instrumentation of protective measures is in place, and that magistrates are genuinely inclined to put it to use, but that systematic enforcement is problematic. This observation is confirmed by the results of the survey. A majority of the respondents agree that victims and their family members sometimes receive adequate protection from retaliation, intimidation and emotional/psychological harm, whereas about 20% thinks this happens rarely or often (Table 18.1-2). Since the individual assessment was not yet implemented in 2014, the access to protection measures of more vulnerable victims was mentioned as a point of concern by the authors of the evaluation report. Furthermore, a victim cannot put forward a claim for protective measures in the criminal proceedings (as opposed to the civil proceedings), but must address a request to the Public Prosecutor. It was felt that to this regard the legal position of the victims should be improved<sup>125</sup>.

Worth mentioning is the AWARE system for victims of stalking and inter-partner violence. It offers a mobile alarm button for immediate police response in situations of threat, combined with a program of individual counselling and/or peer support, coordinated by the association of women's shelters<sup>126</sup>. In order to be eligible, the relationship between the victim and the perpetrator should have ended, the perpetrator should be demonstrably dangerous (violence occurs or there is a serious threat) and the victim should be willing to report to the police. The Dutch Association for Municipalities stated in 2011 that 85% of the municipalities in the Netherlands used AWARE. Research has shown that victims feel acknowledged and safer, and have more trust in their environment after using AWARE. Repeated victimization is often prevented, the police responds quicker and communication between police and victim support services has improved<sup>127</sup>.

With regard to protective regimes of questioning, distinct measures can be applied both for the police interrogation, interrogation by the investigatory judge and the trial judge. As for **sexual offences and human slavery**, the interrogation will, as a rule, not take place at trial, but in the cabinet of the investigative judge in the presence of the defense lawyer and in absence of the suspect<sup>128</sup>.

With regard to **minors**, interrogations are limited pursuing a onetime interrogation only, by a specialized police officer, preferably in a 'child friendly' interview room, where the interview is (video)recorded in order to be presented in court<sup>129</sup>. Next there are arrangements such as live-interrogation via a video link to be taken in separation from the offender. Note the Dutch system does as a rule not apply cross-examination in full trial.

Finally, the Dutch penal law provides for so-called protective **witness** arrangements, but these

125 Lünemann, Mein, Drost & Verwijs (2014).

126 [www.blijfgroep.nl/aware-alarmsysteem](http://www.blijfgroep.nl/aware-alarmsysteem)

127 <https://www.huiselijkgeweld.nl/doc/Methodebeschrijving-AWARE.pdf>

128 Aanwijzing Zeden (2016A004), Article 4.3.

129 Besluit Slachtoffers van strafbare feiten, Article 14.

only apply in major cases concerning e.g. human trafficking, trafficking of drugs or organized crime<sup>130</sup>. Examples are securing the home of the witness or accommodation in a safe house<sup>131</sup>.

The vast majority of the survey respondents agree that victims and their family members are treated with dignity and in a respectful manner by the authorities during questioning and testifying (Table 18.3a-e). The protective measures mentioned in this section can be applied to family members as well, although the use will be rather restraint<sup>132</sup>.

130 Besluit getuigenbescherming, Stb. 2006, 21.

131 Lünemann et al.(2014).

132 For a comprehensive overview of all protective measures we refer to Lünemann and Mein (2014).

## ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER

*(1) Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.*

*(2) Member States shall ensure that new court premises have separate waiting areas for victims.*

Protective measures to prevent contact between victim and offender during the investigative phase and during the court sessions are specified in the Decree Victims of Criminal Offenses, Articles 11-16.

The Council for the Judiciary has developed a protocol in order to prevent secondary victimisation within court premises where criminal proceedings are conducted, the so-called *Modelregeling inzake passende verblijfsomgeving slachtoffers* (Regulation concerning a victim-appropriate court environment). The practical execution of the Regulation is currently under evaluation, for it is known that not all court premises live up to the standards prescribed<sup>133</sup> (Table 19.1-2).

The Regulation provides instructions for separate waiting areas for suspects and victims and their family, and a correct treatment by the court's clerks. Next, within the court's administration written arrangements need to be in place concerning the communication between the *Slachtofferloket*, the Court's clerks and the victim's lawyer or case-manager of Victim Support NL (if appointed). These arrangements provide instructions how to communicate with the victim, and the execution of the arrangements within the premises. Of importance is to stress the clerks' task to inform the trial judge, the defence and the Public Prosecutor about the victim's presence preceding the court session. The court's clerk therefore needs to be informed by the Public Prosecution Office and the Court's administration concerning the presence and needs of the victim, e.g. his/her wish to make use of the right to give a victim an impact statement and to claim compensation.

If the victim has opted to be present, he/she is entitled to await the trial in a separate waiting

133 Interviewees 3 and 4.

room, and have some basic facilities (toilet, coffee/tea, journals) at his/her disposition. At the moment, not every Dutch court has such waiting rooms available. Next, the victim and his/her family are entitled to be seated at a place of their preference in the courtroom. According to the victims' lawyers association LANGZS, this rule is not lived up to adequately, victims are still being seated at the back row of the courtroom or even on the public gallery<sup>134</sup>. The results of a customer satisfaction survey amongst victims who attended court sessions point in the same direction<sup>135</sup>. Nevertheless, others state that in major cases the courts do pay attention to the place of the victim and their representatives in the court room; as for the minor cases handled by a single judge, criticism is significant.

Most survey respondents agree that separate waiting areas for victims are available for victims in most court buildings, but separate entrances are not, since all visitors have to pass the security checkpoint. In police stations, separate waiting areas are observed as less common (Table 19.1-2).

In the post-trial phase authorities are increasingly inclined to issue tailored protection orders, such as a prohibition to visit the home town of the victim's family, or the cemetery where the victim is buried, when granted furlough or early, conditional release to convicted offenders.

134 LANGZS (2016).

135 Klantwaardering Rechtspraak 2017 Landelijk rapport.

## ARTICLE 20 - RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS

*Member States shall ensure that during criminal investigations: a) interviews of victims are conducted without unjustified delay; b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; c) victims may be accompanied by their legal representative and a person of their choice; d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.*

For the elements stated in Article 20 of the Directive we shall first refer to Article 9 (1a-b, d) of the Decree on the Victims of Criminal Offences. This Article mentions three of the four elements required regarding the Directive: interviews of victims are conducted without unjustified delay; the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings. Article 51c (1-2) CCP mentions the last element required regarding the Directive: victims may be accompanied by their legal representative and a person of their choice for moral support.

With regard to unjustified delay in conducting interviews with victims, these interviews are usually planned in consultation with victims<sup>136</sup>. The majority of the survey respondents express unjustified delay seldom or never occurs in cases of violent crime, but are more common where non-violent crime is concerned (Table 20.1-2).

In addition, we note that child victims who have reached the age of twelve are questioned under the regular regime. The special regime as described under Article 18 of the Directive may apply if indicated. Apart from biological age, developmental age is taken into consideration<sup>137</sup>. Defence for Children mentions that the regime for questioning applied for child victims under twelve years is similar to the ones applied upon adult victims<sup>138</sup>. Victims with intellectual disabilities or

136 [www.politie.nl/aangifte-of-melding-doen](http://www.politie.nl/aangifte-of-melding-doen)

137 Interviewees 1, 2 and 3.

138 Hokwerda et al (2015).



with cognitive disability that have reached the age of twelve years are interviewed in a setting designed to put the victim at ease.

Child victims under the age of twelve are to be interviewed in a child-friendly environment, a studio. The standard is to interview child victims once, and to prevent repetitive questioning. Therefore, the interview is taped and the defendant's lawyer is invited to put forward questions and to watch the interview behind a blind mirror<sup>139</sup>. If there is no studio available, or the interview is not to be postponed, the interview is to be written down *ad verbatim*. A similar regime works for adult victims whose interview cannot be postponed. The underlying assumption is that a second interview may not be possible due to the vulnerability of the victim. If the defence calls for a second interview, the Public Prosecutor may refuse. Subsequently the judge will have to decide whether and how a repeated interview is to be conducted. If needed, the judge may request an expert-report concerning the mental state of the victim with regard to questioning. Although Defence for Children observes that the implementation of the Directive has led to improvement of the practice and expertise concerning under-aged and mentally disabled victims, there is still reason for concern with regard to restricting the number of interviews, privacy and information to child victim's parents and/or lawyers<sup>140</sup>.

Preceding the filing of a report of a sexual crime, a preliminary conversation (informative interview) is held by the police office to inform the victim about the judicial consequences of filing an official report. In this stage a victim may have assistance from a lawyer, but in practice this remains difficult. In case the victim has assistance of a lawyer, the latter may – as a rule – not interfere with the interrogation. Nevertheless, if the victim's lawyer is of the opinion that the interview brings harm upon the victim, he/she will come forward pointing out to the interviewer that burdensome questioning must be prevented given the victim's (human) rights. Given victim's assistance by lawyers to be a specialised branch being performed by a minority of the lawyers, the latter will generally only be the case in major criminal cases.

As for **medical examination**, this will only be conducted with consent of the victim and will be executed by a forensic examiner at the police station or at a Centre for Sexual Violence. However, the victim is free to have the examination conducted by a physician of his/her choice<sup>141</sup>.

139 Aanwijzing huiselijk geweld en kindermishandeling, Article 6.3.

140 [www.defenceforchildren.nl/media/1599/minderjarige-slachtoffers-van-seksueel-misbruik-in-het-straftproces.pdf](http://www.defenceforchildren.nl/media/1599/minderjarige-slachtoffers-van-seksueel-misbruik-in-het-straftproces.pdf)

141 Aanwijzing zeden.

## ARTICLE 21 - RIGHT TO PROTECTION OF PRIVACY

*Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy of the victim. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.*

It is possible with regard to the protection of privacy and safety of the victim, to omit certain personal data when making a report. The so-called complaint under number allows for the victim to be indicated with a certain code and all personal information that may lead to identification of the victim is omitted from the official report<sup>142</sup>. The victim's personal data is known to the police, the Public Prosecution Service and the judge, but not to the defence. If the defence objects, an investigative judge will examine the request to decide whose interests prevail. A second option is the 'complaint under domicile of choice', whereby the victim's address details are substituted with the address details of a police or victim support office. However, research shows that it is insufficiently clear for victims that this option exists, although the police are under obligation to provide this information pro-actively. An evaluation study of 2015 concluded that frequently police officials are insufficiently aware of the measures and the importance of protecting the privacy of victims<sup>143</sup>.

Furthermore, when a victim wants to receive compensation from the suspect/convicted offender, he/she needs to fill in a compensation form. In 2015 the Ministry of Justice has introduced a new compensation form. The first part (part A) contains personal information, being name, surname, date of birth and place of residence/contact place. Address, telephone number and citizen service number are not required, but can be mentioned in the second part (B) that is not to be revealed to the suspect<sup>144</sup>. In this sense, Victim Support NL advises victims to be cautious with regard to publishing personal information on websites and social media, to protect their privacy<sup>145</sup>.

142 Aanwijzing Slachtofferzorg, Article 3.3.

143 Malsch et al (2015).

144 Decree of the Minister of Safety and Justice of December 2 2015 (reference 708251), establishing the form for requests for compensation in the criminal procedure, Stcrt. 2015, 708251 For an example: [https://www.slachtofferhulp.nl/globalassets/media/strafproces/voorbeeldbrieven/verzoek\\_tot\\_schadevergoeding.pdf](https://www.slachtofferhulp.nl/globalassets/media/strafproces/voorbeeldbrieven/verzoek_tot_schadevergoeding.pdf)

145 Research has shown that victims appreciate the efforts of the police, Public Prosecution Service and Victim Support NL to prepare victims for the possible media attention. Victim lawyers occasionally act as spokesperson on behalf of the victim or family members (Interviewee 4).

Court hearings in the Netherlands are public (Article 269(1) CCP with the exception that the suspect is a minor. The presiding judge can decide part of or the entire hearing be held behind closed doors in the interest of the public decency, public order, state security, and if required in the best interest of minors, or in the interest of respect for the personal life of the defendant, other participants in the criminal proceedings or persons otherwise involved in the case. An order to have non-public trial session can be requested by a victim. The District Court will make a decision after hearing the Public Prosecutor, the defendant and the other participants in the criminal proceedings on this matter<sup>146</sup>. As a rule, children of 12 years or younger are not allowed to attend criminal Court sessions. In some cases the presiding judge can deny access to (unaccompanied) minors.<sup>147</sup>

Normally, during the court session and in the verdict, the name of the victim will be mentioned. The victim can request that his/her name will not be revealed. As a rule, verdicts will be anonymized before publishing<sup>148</sup>.

In certain cases the victim may speak during the criminal procedure, as referred to in Article 51e CCP. This means instant publicity as the media may be allowed to be present in case of a public trial, as well as many journalists, blog and Twitter users, while being at the court hearing. However, there are some rules and limitations for journalists during the criminal proceedings. They are allowed to make a press drawing, but it is prohibited to make image- and/or sound recordings inside the Court, without prior consent. Journalists need to request prior permission from the victim.

A little less than half of the survey respondents agree that the competent authorities take often or always all necessary, appropriate and lawful measures to ensure protection of victims' privacy, although a considerable minority agrees that this is dependent upon the type of crime. When child victims are concerned, almost 60% state that sufficient measures are taken (Table 21.1,2,5). Protection measures are considered efficient by a small majority, however, a third of the respondents is of the opposite opinion (Table 21.4).

As to the self-regulatory measures of the media, the Council of Journalism uses a code of conduct. If a victim suffered injury as a result of journalist action (such as the violation of his/her privacy), the victim may file a complaint at the Council of Journalism. The Council accepts the complaint only when the complainant previously has made his/her complaint known to the editor or employing medium of the journalist in question and did not receive a satisfying response. The Council will review the complaint during a hearing. Neither complainant nor accused are obliged to appear. The Council cannot issue fines, only impose the publication of the decision and/or rectification in the concerning medium. The Council's rulings are published on its own website. Adherence to the code is voluntary, there are no sanctions in place for non-compliance with the Council's decisions<sup>149</sup>.

146 Candido et all (2017), Van der Leij (2015).

147 [www.rechtspraak.nl/Uw-Situatie/Naar-de-rechter/Zitting-bijwonen](http://www.rechtspraak.nl/Uw-Situatie/Naar-de-rechter/Zitting-bijwonen)

148 Interviewee 3.

149 See [www.rvdj.nl/](http://www.rvdj.nl/)

## ARTICLE 22 - INDIVIDUAL ASSESSMENT OF VICTIMS TO IDENTIFY SPECIFIC PROTECTION NEEDS

*Member States shall ensure that victims receive a timely and individual assessment to identify specific protection needs due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.*

Until June 1, 2018 the Dutch legislation did not provide for an individual assessment as mentioned in Article 22 of the Directive. Nevertheless, the Dutch authorities did acknowledge the vulnerability of specific types of victims (e.g. minors, women, people with disabilities, victims of sexual violence). This led up to directions provided in manuals of the police, guidelines of the Public Prosecution Service and protocols applied by the judiciary. However, since the Dutch government was of the opinion that implementation of the Article 22 of the Directive called for a specific instrument, pilots to develop and implement such an instrument were initiated. Two pilots have been completed, a third one is pending.

Up until now, the focus has been the operational organization of the individual assessment within the police force, since policy officers usually are the first in contact with victims<sup>150</sup>. The so-called staff members *Intake & Service* assess and register specific victim's needs when victims file a complaint. This information is passed on to Public Prosecution Office and (with consent of the victim) to Victim Support NL as part of the 'chain approach' provision of information and support<sup>151</sup>. This fits within the current Dutch policy, starting from the thought that criminal enforcement, especially the application of procedures, needs to take into account the victim's needs. Both Article 51aa CCP and Article 10 of the Decree on Victims' Rights emphasize the victim's right to receive just treatment, indicating that the service provided by the police and the Public Prosecution Service within the pretrial investigation needs to take into account the victim's needs.

The aim of the instrument under development (*'Beoordelen en beschermen'*; to assess and protect), is to collect data that profile the individual victim's needs and that will enable the competent authorities and other actors involved to employ a person-oriented approach (*'persoonsgericht*

150 For this purpose all police officials received training and the police force extended with 124 fte, see <https://www.politie.nl/nieuws/2018/juni/1/00-meer-aandacht-voor-bescherming-slachtoffers.html>

151 [www.rijksoverheid.nl/actueel/nieuws/2018/06/01/eerste-concrete-stap-meerjarenagenda-slachtofferbeleid-is-een-feit](http://www.rijksoverheid.nl/actueel/nieuws/2018/06/01/eerste-concrete-stap-meerjarenagenda-slachtofferbeleid-is-een-feit)

*werken*'), implying the application of specialized support, special questioning regimes, protection orders etc. if indicated. Protective measures on behalf of the victim need to be balanced against the rights of the defendant, given the need to uphold the rule of law.

The indicators on which the assessment is based, are similar to those mentioned in the Directive (the nature of the offence, the nature and amount of damages, the presence of specific victim's characteristics) and specified in Article 10 of the Decree on victims of Criminal Offences. Circumstances demanding, the police may decide to apply protective orders against the victim's wish. Here, the police are expected to cooperate closely with social agencies. When a case is taken up for prosecution, the Prosecution Office will review and if necessary update the assessment and protective measures already in place. Victim Support NL takes an active role as well in monitoring and reporting updates on the victim's needs and wishes to this respect<sup>152</sup>.

The individual assessment has been piloted and implemented predominantly within in the so-called "ZSM-werkwijze" (ASAP procedure, the stream of cases that refer to minor offences settled by the Public Prosecution Service). The next step will be to implement the individual assessment protocol in the workflow of other categories of cases, the so-called impact cases and highest impact cases (homicide, severe sexual/violent crimes). That being said, in the latter category a special protocol (the aforementioned 'Maatwerkprotocol') has been in operation since 2008. The family liaison officer (police), case coordinator (prosecution) and casemanager (victim Support) offer intensive, long-term, coordinated and personalized information and support, monitoring.

As for the pilots, the information collected by the police via the assessment 'Beoordelen en Beschermen' has shown to provide for added value with regard to the decision-making by the Public Prosecution Service and the support as given by Victim Support NL. Cases show that adequate protection has been organized, preventing secondary and repeated victimisation. As for Victim Support NL, the individual assessment is used to 'tailor' its services to the individual's needs. Victim Support also has a monitoring function with respect to the effectiveness of the applied measures and is expected to update the Prosecution Office when vulnerabilities and protection needs change in the course of the criminal proceedings.

## ARTICLE 23 - RIGHT TO PROTECTION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS

*(1) Member States shall ensure that victims with specific protection needs may benefit from the measures. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.*

*(2) During criminal investigations, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment, may benefit from the following measures: a) interviews with the victim being carried out in premises designed or adapted for that purpose; b) interviews with the victim being carried out by or through professionals trained for that purpose; c) all interviews with the victim being conducted by the same persons; d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships being conducted by a person of the same sex as the victim, if the victim so wishes.*

*(3) During court proceedings, victims with special protection needs shall also have the following measures available: a) measures to avoid visual contact between victims and offenders; b) measures to ensure that the victim may be heard in the courtroom without being present; c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; d) measures allowing a hearing to take place without the presence of the public.*

152 [www.slachtofferhulp.nl/nieuws/2018/een-individuele-beoordeling-is-vanaf-1-juni-onderdeel-van-de-aangifte/](http://www.slachtofferhulp.nl/nieuws/2018/een-individuele-beoordeling-is-vanaf-1-juni-onderdeel-van-de-aangifte/)

Over the years and already preceding the taking effect of the Directive, special arrangements have been introduced for minors, victims of sexual violence, and victims (or witnesses) with diminished mental capacities up until 16 years of age and victims of human trafficking, besides the protection needs ensured to all victims of crime.

Child witnesses under the age of 12 years should be interrogated by trained police officers, in a studio that is adapted for such interrogations ('child-friendly interview studio', see under Article 24). As a rule these instructions are applied, but if no specialist officer is available and it is in the interest of justice not to postpone the interrogation, the victim will be questioned by a non-specialist. Videotaping the interview prevents multiple interrogations, since the law accepts the written report and the tape as evidence in court. Before the interrogation, the child and his/her representatives are given a tour of the location to become more familiarized. Note the defence lawyer is entitled to watch the interrogation (via a blinded screen) and to pose questions. As for victims with diminished mental capacities, the police may consult an (external) expert for advice. There are no specific rules concerning the interrogation of minors from 12 years onwards.

With regard to the timing, the interrogation of the child-victim may not be unduly delayed and the length of the interrogation will meet the child-victims mental and physical abilities (average length: 1.15 hrs).

Police interrogation of victims of sexual violence is to be executed by an officer of the same sex. Nevertheless, this rule is not always applied in practice (provided the victim does not object). Before filing an official complaint of a sexual offense, the victim will be informed by the police about the consequences of filing a complaint and will be given a fortnight to consider whether (s) he pursue the complaint. This conversation will be held by two police officers, one of them being a specialised detective.

As a rule, adult victims of sexual offences will not be questioned in court, but in the cabinet of the investigative judge. If interrogation in court is nevertheless indicated, this session will be closed for public, and can even be done without the suspect being present (being represented by his/her lawyer). It is, however, up to the judge to decide whether the victim needs to be questioned in court. Given the burden for the victim, such a request is usually denied.

The victim of a sexual offence has the right to be assisted by a lawyer or a trustee. The latter may, however, not be present during the interrogation. Nevertheless, an exception can be made if consented upon by the prosecutor. As mentioned, in cases of sexual violence a lawyer will be appointed free of charge to assist the victim after the complaint has been filed. A specialised lawyer is to be preferred, but these are not always available. If the Public Prosecution Service decides to terminate the case, the victim will be informed both in writing and orally.

When the case is taken to court, the Public Prosecutor is expected to arrange a meeting with the victim<sup>153</sup>, to inform him/her about the case and to be informed about the victim's special needs/wishes. The aim of the meeting is to fully inform the victim as to prevent false expectations (with regard to sentence and compensation) and thus secondary victimisation. Usually the victim's lawyer or a victim support worker will accompany the victim. In major cases, the Prosecutor will also arrange a meeting after the trial session.

For victims of human trafficking, the special regime in place was earlier explained under Article 9. As most are victim of sexual exploitation and without a residential permit, they are granted a special status, including a stay in the shelter, for a maximum of three months. In that period they need to decide whether to make a complaint. In case an offender is convicted, victims may apply for a prolonged residential permit. The National Rapporteur on Human Trafficking recommends that in the interest of safety and wellbeing of victims, they are granted a prolonged residential status at the beginning of the prosecution phase<sup>154</sup>. Furthermore, the general provisions for victims of sexual violence apply.

With regard to the so-called *LVB*-category (persons with mild intellectual disability), there's a growing awareness amongst the criminal justice authorities to pay special attention to these individuals. How to approach and communicate with *LVB*-victims is now part of police training. In view thereof a special guideline was developed and implemented in collaboration with the *LVB* research group of Leiden University of Applied Sciences<sup>155</sup>. This research group is currently developing a guideline in collaboration with Victim Support NL.

Approximately two thirds of survey respondents agree that in general interviews with victims are carried out in premises designed or adapted for that purpose, are carried out by or through professionals trained for that purpose and that interviews with victims of sexual violence, gender-based violence, etc. are conducted by a same-sex interviewer. A little less than half of the respondents agree that interviews are carried out by the same person (Table 23.1a-d). The interviewees add that the success of such measures depends on the availability of information, the awareness and priorities of the actors involved and the available capacity of trained personnel. Although no significant structural problems are reported, incidents where lack of knowledge, information or prioritization impeded an accurate response to specific protection needs, are not uncommon.

<sup>153</sup> The victim can indicate his wish for a meeting with the prosecutor on the fore-mentioned 'bullit list'; the form on which victim can 'tick' the provisions and rights he wishes to exercise. In 'spreekrechtwaardige zaken', cases that qualify for a Victim Impact Statement, the prosecutor is expected to pro-actively arrange a meeting, on other cases the meeting is arranged at the request of the victim. An evaluation study of the practical implantation of different victims' rights and provisions (Drost et al, 2014) points out that both professionals and victims endorse the meeting with the prosecutor in terms of mutual understanding, correct treatment and management of expectations.

<sup>154</sup> Nationale Rapporteur voor de Mensehandel en Seksueel Geweld tegen Kinderen (2017).

<sup>155</sup> <https://www.hsleiden.nl/binaries/content/assets/hsl/lectoraten/lvb-en-jeugdcriminaliteit/publicaties/handreiking-lvb-politie.pdf>

## ARTICLE 24 - RIGHT TO PROTECTION OF CHILD VICTIMS DURING CRIMINAL PROCEEDINGS

*Member States shall ensure that where the victim is a child: a) in criminal investigations, all interviews with the child victim may be audio visually recorded; b) in criminal investigations, and proceedings, competent authorities appoint a special representative for child victims where the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family; c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.*



Image 1 and 2 - Child-friendly interview rooms.

The underlying assumption is that a second interview may not be possible due to the vulnerability of the victim. If the defence calls for a second interview, the prosecutor may refuse. Subsequently the judge will have to decide whether and how a repeated interview is to be conducted. If needed, the judge may request an expert-report concerning the mental state of the victim with regard to questioning. Although Defence for Children observes that the implementation of the Directive has led to improvement of the practice and expertise concerning under-aged and mentally disabled victims, there is still reason for concern with regard to restricting the number of interviews, privacy and information to child victim's parents and/or lawyers<sup>156</sup>.

With regard to the timing, the interrogation of the child-victim may not be unduly delayed and the length of the interrogation will meet the child-victims mental and physical abilities (average length: 1.15 hrs). There are no specific rules concerning the interrogation of child-victims from 12 years onwards. Apart from biological age, developmental age is taken into consideration<sup>157</sup>. For example, victims with intellectual disabilities or with cognitive disability that have reached the age of twelve years are interviewed in a special room as well.

In case of a conflict between the parents' interest and the child victim's interest, the court can appoint a legal representative, a so-called *bijzondere curator* (special curator). The latter implies that the parents were deprived of their legal authority. This might be the lawyer that assists the victim during the criminal case. Further, youth service can appoint a guardian, who may support the child victim and as such be present at the criminal proceedings. If the Youth Protection Board has appointed a guardian, he will be the one who acts as the legal representative and the victim's lawyer does not hold any substitute parental authority.

<sup>156</sup> Hokwerda et al (2015).

<sup>157</sup> Interviewees 1, 2 and 3.

## ARTICLE 25 - TRAINING OF PRACTITIONERS

*Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to enable them to deal with victims in an impartial, respectful and professional manner.*

*Member States shall request that those responsible for the training of lawyers, judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase awareness of the needs of victims.*

*Member States shall encourage initiatives enabling those providing victim support and restorative justice to receive adequate training and observe quality standards to ensure such services are provided in an impartial, respectful, and non-discriminatory manner.*

*Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.*

*Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.*

Education and information on general and more specific victims' rights and needs is included in the professional training of police officers, personnel in the public prosecution service (both prosecutors and supporting staff) and magistrates in court. The Study Centre for Justice, the educational institute for magistrates in the Prosecution Service and judiciary, offers different basic and specialised courses<sup>158</sup>. Furthermore the courts organize thematic information and study sessions to promote awareness on victims' rights. The Council for the Judiciary has published a manual 'Victims and Criminal Justice'<sup>159</sup> that is available to magistrates, police officers, lawyers working directly with victims and the general public<sup>160</sup>.

Public Prosecutors and judges also are instructed to take special training if they work in the youth-section. Next, the Public Prosecutors and judges are expected to take some annual courses

158 See [https://ssr.nl/aanbod/strafrecht/?q=&specialisatie\[\]=144](https://ssr.nl/aanbod/strafrecht/?q=&specialisatie[]=144)

159 Candido et al (2017).

160 Interviewees 2 and 3.

to update their knowledge; the ones chosen will relate to the nature of the cases handled, which might be sexual violence, trafficking in human beings or other specific victimisation situations related to certain crimes. Notwithstanding a certain degree of specialisation within the Dutch courts and amongst Prosecutors, there are no special courts for sexual violence, trafficking in human beings, etc. Thus there is no specific capacity building plan with regard to working with gender-based violence, except at the police level.

As mentioned in the comments under article 23, police officers that question child-victims, especially child victims of sexual violence, are certified. The same goes for those officers who question adult victims of sexual violence. In preparation of the implementation of the individual assessment all police officers received a special training. General and special training is organised by the Police Academy<sup>161</sup>.

Victim Support NL has a comprehensive training program for support workers, offering a combination of courses, e-learning and on-the-job-training on both legal and psychosocial subjects. The curriculum is developed by the organisation's in-company Victim Support Academy that lends its expertise to other organizations as well (Interviewee 4).

As pointed out previously, victim lawyers that operate under the State-funded legal assistance program for victims of sexual and violent crimes are required to have completed the basis training course in order to register. Since July 1 2018, only lawyers that have completed a basic course (average 3 day's training) are qualified to act as the victim's legal representative. Since then, about 400 lawyers have registered. Courses to meet these standards are provided for by commercial legal organisations.

Concerning restorative justice services (RJ), these are on the rise in the Netherlands. Training of mediators is based on commercial footing, being supervised by a branch-organisation<sup>162</sup>. Recently, RJ has received a political upgrade, due to the support of Dutch Members of Parliament. As a result, each court has been appointed a mediation bureau, staffed with qualified mediators. Moreover, there's a tendency to train prosecutors and judges, not in the sense of becoming a mediator – since mediation is a diverted path from the court's session – but to become familiar with mediation techniques. Given the growing popularity of RJ there is some current concern with regard to the standards of qualification, but this concern does not relate to the mediators appointed to the courts' bureaus since this personnel has to answer the qualifications set by the Mediation Federation.

161 Decree on Victims of Criminal Offenses, Article 11.

162 Federation of Mediators Quality Register Netherlands, <https://mfregister.nl/>

Apart from formal education and training activities, each year a considerable number of symposia, expert meetings and thematic sessions on victim related subjects is organized on an incidental basis, by universities, victim (self-)organisations, professional associations, the Ministry of Justice and Safety and the different actors in the Criminal Justice system.

About half of the survey respondents agree that police, prosecutors, judges and lawyers are sufficiently trained regarding the needs of victims. With regard to victim support workers 90% agree that victim support officers are sufficiently trained (Table 25.1a-e). The results of the national Victim Monitor (2012 and 2016) underwrite this observation: victims are in majority (very) positive about the treatment and response they receive from the police, prosecution, judiciary and Victim Support NL.

## ARTICLE 26 - COOPERATION AND COORDINATION OF SERVICES

*Member States shall take appropriate action to facilitate cooperation between Member States to improve victims' access to the rights set in the Directive and such cooperation shall at least aim at: a) exchange of best practices; b) consultation in individual cases; c) assistance to European networks working on matters directly relevant to victims' rights.*

*Member States shall take appropriate action aimed at raising awareness of the rights set out in the directive, reducing the risk of victimisation, and minimizing the negative impact of crime and the risk of secondary and repeat victimisation, of intimidation and retaliation, in particular targeting groups at risk such as children, victims of gender-based violence and violence in close relationships.*

### INTERNATIONAL COOPERATION AND PROMOTION

Article 26 of the Directive is not transposed as such. Nevertheless, the Netherlands is a party to a series of Conventions related to the right of victims, for example<sup>163</sup>:

- Council of Europe:
  - European Convention on Mutual Assistance in Criminal Matters, April 1959 (in force in the Netherlands since 1969)
  - European Convention on the Compensation of Victims of Violent Crimes, November 1983 (in force in the Netherlands since 1988)
  - Convention on Cybercrime, November 2001 (in force in the Netherlands since 2007)
  - Council of Europe Convention on Action against Trafficking in Human Beings, May 2005 (in force in the Netherlands since 2010)
  - Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, October 2007 (in force in the Netherlands since 2010)

<sup>163</sup> For a complete overview see <https://verdragenbank.overheid.nl/nl>

- United Nations
  - Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 2 December 1949 (into force in the Netherlands since 1951)
  - United Nations Convention against Transnational Organised Crime, September 2003 (in force in the Netherlands since June 2004)
  - Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, November 2000 (in force in the Netherlands since 2005)
- European Union
  - Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, May 2000 (in force in the Netherlands since 2005)

Moreover, victims of cross-border crimes<sup>164</sup> receive sufficient assistance and cooperation on paper, but not in practice. Note the position of victims of cross-border crime are not mentioned in the latest policy letter of the Minister of Legal Protection (June 2018), suggesting that the issue will not be addressed in the coming Act on the Improvement of Victims' Rights (2019). Victim Support NL has expressed a clear concern with regard to the need to further the position of cross-border crime victims<sup>165</sup>.

The position of cross-border victims marks the need for intra-EU cooperation, expressed, as presented, amongst others, in the Strategic Agenda of 2015 presented to the Council of the EU<sup>166</sup>. The Agenda mentions to support the establishment of a European Victims' Rights Network, the Eurojust Regulation and the European Public Prosecutor's Office Regulation. Furthermore, we refer to multilateral agreements between the Member States aiming at joint fight against (organised) crime. Almost none of these agreements fully focus on the rights of the victim of cross-border crimes. However, a relative recent exception is the bilateral agreement signed by The Netherlands and Ukraine concerning the attack on Flight MH17<sup>167</sup>. This agreement ensures that during the criminal proceedings in The Netherlands, all the victims involved will be part of the trial, irrespectively of their nationality.

<sup>164</sup> E.g. Dutch citizens becoming a victim in another Member State and/or citizens of other Member States becoming a victim in the Netherlands.

<sup>165</sup> Victim Support NL, reaction on the multi-year agenda for victim policy, [https://www.slachtofferhulp.nl/globalassets/media/corporate-nieuws/2018/20180315\\_reactie\\_shn\\_op\\_de\\_meerjarenagenda\\_slachtofferbeleid\\_pdf.pdf](https://www.slachtofferhulp.nl/globalassets/media/corporate-nieuws/2018/20180315_reactie_shn_op_de_meerjarenagenda_slachtofferbeleid_pdf.pdf)

<sup>166</sup> Strategic Agenda of 2015 presented by The Netherlands, Slovakia and Malta to the Council of the EU, [www.eu2017.mt/Documents/Trio%20Programme/Trio%20Programme%20\\_EN.pdf](http://www.eu2017.mt/Documents/Trio%20Programme/Trio%20Programme%20_EN.pdf)

<sup>167</sup> Trb. 2017, 102.

## NATIONAL COOPERATION AND PROMOTION

On a national level the Dutch actors in the criminal justice system cherish a long tradition of chain cooperation (*'ketensamenwerking'*). Additionally, victims' rights have been a priority for succeeding governments, translating to generous funding and progressive victim policies structured around what are considered the five basic needs of victims: 1) recognition and information (proper treatment) 2) participation & voice, 3) protection, 4) support and 5) reparation<sup>168</sup>. Expenditures rose from €54 million in 2014 to €73 million in 2017. This amounts to 0,6 % of the total budget of the Ministry of Justice and Safety. Approximately 53 % of this amount is awarded to Victim Support NL, and 30% to the Violent Offenses Compensation Fund.

As a result, victims are facilitated with a high level of comprehensive multidisciplinary support, spanning the entire criminal procedure from reporting a crime to the execution of the sentence. Coordination and consultation are embedded at different administrative and operational levels. As a consequence of this progressive approach, victim support became an established and accepted phenomenon in Dutch practice.

A typical example is the integration of the victim's needs and interests in the *ZSM*-procedure. The Public Prosecution Office, police, Probation Service, Youth Care and Protection Board and Victim Support NL literally sit together to discuss a 'meaningful settlement' (*betekenisvolle afdoening*) of minor crime cases. In preparation hereof, Victim Support NL will pro-actively enquire after the victim's needs and wishes with regard to protection, compensation and/or mediation, and report back to the *ZSM*-table. The Probation Service supplies information about the offender (or Youth Care and Protection Board in case the suspect is a minor). The Public Prosecutor weighs both party's interests – giving special interest to the victim's wish for compensation and safety needs – as well as the public interest in his/her final decision. A recent evaluation learned<sup>169</sup> that the role and performance of Victim Support NL within the *ZSM*-procedure 'is of essential value' and thoroughly appreciated by the police and the Prosecution Service.

A second example is the so-called *Maatwerk* protocol, where the police family liaison officer, the Prosecution's case coordinator and the Victim Support NL case-manager work closely together to provide victims of severe violent and sexual crimes and family members of homicide victims with outreaching, comprehensive, long-term, tailored support and information. Worth mentioning is also the development of a comprehensive online Victim Portal, to provide victims with real-time case information and integrated services in one portal<sup>170</sup>.

In recent years the Ministry of Justice has adopted a pro-active role to improve the position of the

<sup>168</sup> Victim Policy. Letter of the State Secretary of Safety and Justice to the Second Chamber of the States General, 11 February 2013, kst. 33552 (2).

<sup>169</sup> Kool et al (2018).

<sup>170</sup> Chain-wide plan action plan: En route to the elaboration and realisation of the criminal justice system's ambitions, July 2018.



victim both in law *and* practice, amongst others by initiating two large-scale projects: Focus on Victims (*'Slachtoffers Centraal'*; 2007-2009) and Justice for Victims (*'Recht doen aan slachtoffers'*; 2014-2016). Focus on Victims intended to improve the operational quality of victims' support along three pillars: the quality of the services and provisions, the streamlining and congruency of workflow processes and the accessibility and 'user-friendliness' of provisions for compensation. Justice for Victims followed in 2014 to give effect to the policy letter of the then State Secretary of Safety and Justice<sup>171</sup>, positioning victims' rights at the core of the criminal proceeding and translating the aforementioned five victim needs to tangible objectives and actions, such as the development of the individual assessment tool and the online Victim Portal.

On 22 February 2018 the 'Multi-annual Victim Policy Agenda 2018-2021' was presented by the current Minister of Legal Protection, giving continuance to past efforts to 'position the victim in the hearts, minds and actions of all Criminal Justice professionals'<sup>172</sup>. Results to be achieved are (inter alia):

- More legal remedies for victims in case a claim for compensation is ruled inadmissible or is rejected.
- Participative rights for victims in the executorial phase (e.g. during hearings with regard to the prolongation of forensic psychiatric treatment and conditional release from prison).
- A National Compensation Fund for family members of victims murdered abroad.
- An integrated information and service portal for victims (Victim Portal)

Worth mentioning, finally, is the rich academic and applied research tradition with regard to victims' needs and rights in the Netherlands, contributing to evidence-based policy and practice. Numerous explorative and evaluative studies have been carried out over the past years, addressing many aspects of victimisation, such as type of crime, vulnerable groups, secondary and repeat victimisation; victims' rights and provisions, services and support. An important resource is the Victim Monitor, commissioned by the Scientific Research and Documentary Centre of the Justice Department (*WODC*) and designed by the International Victimology Institute Tilburg (*INTERVICT*) in 2008. The Victim Monitor allows for victims to rate the quality of performance of the police, Public Prosecution Office, the judiciary and Victim Support-NL vis-à-vis victims' rights in the criminal proceedings. Results of consecutive measurements were published in 2009, 2013 and 2017 and used to review and fine-tune policies and practices.

171 Kst-33552-2, 2013.

172 Kst-33 552-43, 2018.

## GOOD PRACTICES

The previous analysis reveals a generally well-functioning system of rights, provisions and support for victims. In this short chapter we present what we consider to be good practices and the underlying success factors.

### Simple language and supporting communication tools

The Dutch government has adopted the B1-language level as standard for all communications with citizens. As written documents constitute the lion's share of (formal) communication in the Criminal Justice System, this is an important step forwards to give effect to the victim's right to understand and be understood. The police, Public Prosecution Service, judiciary and other agencies increasingly make use of supporting communication tools such as educational videos, infographics, testimonials and FAQ's. In policy guidelines police officials and Public Prosecutors are encouraged to communicate in person with victims to explain decisions regarding the (dis) continuance of the investigation/prosecution, especially in cases of severe crime.

### Reaching out to victims

Reaching out to victims has been a basic principle from the outset of victim support in the early 80's. Various reasons (lack of knowledge, aversion to the victim label, stress, denial, shame) prevent victims from actively seeking contact and help<sup>173</sup>. Over the years, Victim Support NL and the police have developed an automated system for consent and referral, which enables Victim Support NL to approach close to 200.000 victims annually. The Prosecution Office manifests itself more and more as an active referrer, thus providing a second 'entrance' for victims that, for some reason, fell off the radar in the investigative phase. Victim Support NL has expanded its outreaching approach online by introducing webcare and targeted campaigns using social media platforms. Lowering the threshold for victims is also pursued by opening anonymous communication channels, such as chat and online communities.

### A-to-Z approach

The key objective of Dutch victim policy is to provide victims with information and support before, during *and* after the trial, especially in cases of high impact crime. In recent years attention has shifted to the execution phase, inter alia by efforts to improve the existing victim notification scheme with regard to the detention, forensic psychiatric treatment and release of convicted offenders. In collaboration with the Prison Service, Probation Services and forensic psychiatric treatment centres restorative practices are promoted. Furthermore, the victim's needs for protection are made part of the risk assessment in preparation of leave and (conditional) release. Increasingly, the authorities are inclined to issue tailored protection orders, such as a prohibition

173 Leferink & Van Wesel (2016).

to visit the home town of the victim's family, or the cemetery where the victim is buried. The pending development of an integrated online Victim Portal will elevate the A-Z approach to a next level.

### **Securing compensation for victims**

It is safe to say that the Dutch practice for compensation of victims is top of the bill in Europe. The combination of an easy accessible claim procedure, including an online claim form, free of charge assistance (either by Victim Support NL or a victim lawyer), the application of the compensation measure and the State Deposit Fund that grants victims a (partial) advancement pay, guarantees that in the vast majority of cases prosecuted, the damages the victim suffered as consequence of the crime, are – at least partially – compensated with a minimal amount of effort on the victim's part. In addition, the Violent Offenses Compensation Fund offers redress for victims independent of the criminal proceedings, inviting victims to submit a request and offering guidance in the application process.

### **Participation and voice**

Exercising rights in a system as complex and emotionally strenuous as the criminal justice system, i.e. being a true participant, is very hard without accurate information and assistance. In the Netherlands we witness a genuine, joint effort of the criminal justice actors to include and facilitate victims to exercise their rights to the fullest possible. The government is prepared to respond – to the extend due process allows – to the issues raised by victim advocates. This is illustrated by the implementation of the Victim Statement of Opinion in 2012, a very broad interpretation of the right to be heard. Although this might expose victims to direct questioning by the defence, victims are well prepared for this and in many an occasion the victim's lawyer will speak on the victim's behalf.

### **Steady funding**

An important pillar under the high level of victim support services and provisions in the Netherlands is secure funding by the State. Expenditures rose from €54 million in 2014 to €73 million in 2017. This amounts to 0,6% of the total budget of the Ministry of Justice and Safety. Approximately 53% of this amount is awarded to Victim Support NL, and 30% to the Violent Offenses Compensation Fund. Compared to many of its European sister organisations, Victim Support NL can rely on substantial and structural government support that enables it to cater to the needs of a great number of victims, as well as to steadily innovate and expand its services.

### **Chain approach**

The multilateral collaboration and exchange of information between the different actors in and around the criminal justice system is key ingredient for the success of the effectuation of victim rights. Victim Support NL, although being an independent NGO, is acknowledged as full partner of the criminal justice institutions. On the administrative and official level, consultation bodies have been established, providing for managerial and operational coordination. This enables the parties involved to align different workflow processes. This multilateral collaboration is the foundation under the online Victim Portal as well.

# GAPS, CHALLENGES AND RECOMMENDATIONS

In the previous chapter we have pointed out a (not exhaustive) number of good practices and key success factors for the successful conversion of the 2001 Framework Decision and 2012 Directive provisions to a solid legal position for victims and a well-functioning system of victim support and protection. There are, however, issues that call for attention.

## **Masked vulnerabilities: *LVB* and (functional) illiteracy**

Implementation of the individual assessment has only just begun, so little can be said about its efficacy. Nevertheless, there is some concern regarding the access of certain victim populations to the criminal justice system and victims' rights. Many individuals with *LVB* (mild intellectual disability) and/or (functional) illiteracy<sup>174</sup> mask their vulnerability to avoid negative labelling. As a consequence they are easy overlooked by the system, more so because they often lack in assertiveness and awareness to know when and where to ask for help. Although *LVB* victims and, to a lesser degree, people with literacy problems – are being prioritized by authorities and service providers, practical yet non-stigmatizing remedies are yet to be developed.

## **Cross-border victims tend to get lost in translation**

Becoming a victim outside ones country of residence severely impairs access to victims' rights and provisions. Foreign victims in need of help often turn to their consulate, the first priority being (apart from eventual medical assistance) repatriation or replacement of lost ID's and travel documents. Consulates and medical centres will seldom refer victims to local victim support organisations<sup>175</sup>. The same goes for emergency call centres operated by travel insurance companies. Accurate registration and transfer of information between different jurisdictions remains an important bottleneck. It is also difficult for victim support organisations to keep track of victims after repatriation and continue the provision of information and assistance. Victim Support NL would welcome a dedicated liaison officer in every victim support organisation in Europe, making part of an international operational network.

## **Cybercrime and hate crimes underreported**

While offline criminality is steadily decreasing in the Netherlands, the proportion of victims of online crime, varying from hacking, identity theft and extortion to dating scams, is on the rise. Although these crimes can have a serious impact on victims, the police usually stand empty-handed for perpetrators are either untraceable or out of reach. Victims have reported to feel

discouraged by the police to file a complaint, or refrain from doing so for reasons of self-blame and shame. Hate crime is another category showing high levels of underreporting due to feelings of shame and fear for stigmatization. This is especially true for the HLBTQI population. Victims need to feel safe to report and to receive a respectful and non-judgemental treatment to build trust. Shame and (self-)blame is also what prevents victims of sexual offenses, abuse and human trafficking to step forward.

## **Length of procedures represent an added burden**

Lengthy procedures are a common, yet unwelcome phenomenon in the criminal justice system. The average length of a minor crime case is 5 months (disposal by the Public Prosecution Service) to 7 months (court decision). In cases of severe crime and when appeal or cassation is lodged, the duration of the criminal procedure can stretch for many months, if not years. This poses a burden on victims, both financially – in terms of compensation of damages – and emotionally. Decreasing processing time is an important priority for the coming years. The out-of-court *ZSM*-procedure is a good example of a practical and – in theory – victim-friendly approach. However, speediness and diligence are hard to reconcile. Meeting certain production targets should never be pursued at the expense of paying thorough attention to victims' needs and interests.

## **Procedural Participant vs. procedural party**

Being a mere participant in the Dutch criminal justice system, the victim is not equipped with similar legal remedies as the defendant. Neglecting the rights of a victim bears no real sanction for the police or the Public Prosecution. The victim can lodge a complaint or turn to the media, and may get an apology, or, in some cases a substitute compensation, but not a retrial. Thus the position of the victim is intrinsically weak(er), more so since 'efficient production' is undeniably an important priority in the (overburdened) criminal justice system. To give but one example: when the date for a court session is set, it is a rare exception that a victim would be consulted regarding his/her availability for that date. Quite regularly victims turn up in vain in court because they received no or late notification of adjournment or rescheduling of sessions. Sometimes court clerks and judges aren't even aware that victims are present. We would recommend to rethink seemingly insignificant practical procedures, such as setting a court date, from a victim's perspective and to devise more 'inclusive' practices as a token of recognition. After all, the actual experience of the victim remains for an important part dependent upon the goodwill and discipline of professionals in the criminal justice system since the Minister for Legal Protection has clearly expressed that the position of the victim will not be upgraded to that of full-blown procedural party.

174 1,8 million people in the age category 16-65 years (Nationale Rekenkamer, 2016).

175 Van Wijk et al (2015).

### Dark number and access to rights and support

Most victims' rights are linked to the criminal justice system. If victims do not connect with the system, there is a more than considerable risk that they remain out of sight of other institutions as well, in particular Victim Support NL and the Violent Offenses Compensation Fund. In the introduction we presented some statistics on victimisation in the Netherlands. What stands out is the large difference between victimisation as reported in the Safety Monitor and crimes reported to the police. The conclusion is that many crimes go unreported and many victims remain outside the scope of the criminal justice system.

## CONCLUSION

The present national report, completed within the context of project VOCIARE, aimed at assessing the practical implementation of the Victims' Directive in the Netherlands, through the examination of legal and policy instruments, statistics, academic and evaluative research reports, as well as the analysis of information collected through the survey and interviews, leads to the conclusion that the Netherlands harbours a well-organized, well-funded and well-functioning system of victims' rights, provisions and support. It is capable to receive large numbers of crime victims in different phases of the criminal proceedings and provide the information, provisions, support, compensation and protection as the Directive requires.

Through research, it was possible to identify several good practices, such as:

- Adopting easy to understand language in official communications between authorities and victims (and citizens in general) and the use of supporting communication tools,
- An active, outreaching approach that stretches from the very beginning of the criminal proceedings unto the execution phase and even beyond,
- The multidisciplinary collaboration and chain approach in the criminal justice system, centred around five fundamental victim needs.
- Ample funding and incessant political support, and a strong focus on implementation and evaluation to secure evidence-based policy and practice.
- The broad interpretation of victims' rights such as the right to compensation and the right to speak and the shared responsibility of criminal justice actors to facilitate the effectuation.

Nevertheless, the authors expressed their concern with regards to

- 'Masked' vulnerabilities, e.g. mild retardation and/or literacy problems, and underreported crimes such as hate crime, cybercrime, sexual crime. Common denominator is fear for stigmatization, shame and (self-)blame.
- Victims do have ample participative rights but no real legal remedies to 'enforce' the effectuation of their rights. The victim is not a procedural party in the legal sense and that makes his position vis-à-vis the other parties intrinsically weaker.
- The criminal justice system is expected to meet certain criteria with regard to performance (production) and efficiency. The main priority is the investigation and prosecution of offenders. Speeding up and condensing procedures will certainly be welcomed by victims, but may come at the expense of due consideration for their needs and rights in procedures.
- Last but not least: victims who do not report to the police have a limited possibility to effectuate victims' rights, since the main entrance to victims' rights and support is the criminal justice system.

Notwithstanding these concerns, the Dutch authorities and criminal justice actors can rightly assert that the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime is fully implemented in the Netherlands, in legislation, provisions as well as in daily practice. But... the devil is in the details. The core business of the criminal justice system is and will be to investigate and prosecute offenders. There is an undeniable tension between the procedural rights and interests of the victim and of the offender. The mere fact that the rights and provisions of the offender have a much firmer legal basis, will tend to tip the scale to the latter in times of pressure. Finally, from day to day the 'victim-friendliness' of the criminal justice procedure depends less on what is written in the law than on the attentiveness, adequate knowledge, available time and attitude of the individual professionals in the criminal justice system. Without disregarding the expertise, continuous efforts and dedication of many of these professionals; there will always be room for improvement.

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<https://www.wodc.nl/>

## ANNEX 1 TABLES

### Overview of respondents

Organisation/professional background	N
victim support	19
lawyer	13
police	7
public prosecution office	6
ministry of Justice & Safety	1
regional public safety office	1
restorative justice	1
violent offenses compensation fund	1
Total	49

### 3.1 In your opinion, are there sufficient measures to help all the practitioners involved to recognize individual communication needs of victims?

	Frequency	Percent	Valid Percent
insufficient	1	2%	2%
rather insufficient	8	16%	16%
neutral	7	14%	14%
rather sufficient	20	41%	41%
sufficient	13	27%	27%
Total	49	100%	100%
no answer	0	0%	
Total	49	100%	

### 3.2 Are there regular inquiries to ensure that victims have understood the information they are provided?

	Frequency	Percent	Valid Percent
always	3	6%	7%
often	8	16%	18%
sometimes	20	41%	44%
rarely	8	16%	18%
never	5	10%	11%
Total	45	90%	100%
no answer	5	10%	
Total	49	100%	



3.3 Is information adapted to be understood, in particular, by the following groups of victims?

3.3.a children

	Frequency	Percent	Valid Percent
always	7	14%	18%
often	11	22%	28%
sometimes	10	20%	26%
rarely	10	20%	26%
never	1	2%	3%
Total	39	<b>80%</b>	<b>100%</b>
no answer	10	20%	
Total	49	100%	

3.3.b people with hearing impairments

	Frequency	Percent	Valid Percent
always	4	8%	27%
often	1	2%	7%
sometimes	4	8%	27%
rarely	3	6%	20%
never	3	6%	20%
Total	15	<b>31%</b>	<b>100%</b>
no answer	34	69%	
Total	49	100%	

3.3.c people with intellectual disabilities

	Frequency	Percent	Valid Percent
always	3	6%	10%
often	7	14%	24%
sometimes	6	12%	21%
rarely	6	12%	21%
never	7	14%	24%
Total	29	<b>59%</b>	100%
no answer	20	41%	
Total	49	100%	

3.3.d persons who do not speak the language in which the proceedings are conducted

	Frequency	Percent	Valid Percent
always	2	4%	6%
often	7	14%	20%
sometimes	13	27%	37%
rarely	10	20%	29%
never	3	6%	9%
Total	35	71%	100%
no answer	14	29%	
Total	49	100%	

3.3.e illiterate people

	Frequency	Percent	Valid Percent
always	2	4%	7%
often	5	10%	17%
sometimes	11	22%	37%
rarely	7	14%	23%
never	5	10%	17%
Total	30	<b>61%</b>	<b>100%</b>
no answer	19	39%	
Total	49	100%	

3.3.f (partially) blind people

	Frequency	Percent	Valid Percent
always	4	8%	27%
often	1	2%	7%
sometimes	4	8%	27%
rarely	1	2%	7%
never	5	10%	33%
Total	15	<b>31%</b>	<b>100%</b>
no answer	34	69%	
Total	49	100%	

3.4 How often are victims accompanied by a person of their choice?

	Frequency	Percent	Valid Percent
always	2	4%	5%
often	16	33%	40%
sometimes	16	33%	40%
rarely	5	10%	13%
never	1	2%	3%
Total	40	82%	<b>100%</b>
no answer	9	18%	
Total	49	100%	

3.5 How often are the following reasons used to refuse accompaniment for the victims?

3.5.a contrary to the interests of the victim

	Frequency	Percent	Valid Percent
always	0	0%	0%
often	6	12%	25%
sometimes	5	10%	21%
rarely	4	8%	17%
never	9	18%	38%
Total	24	<b>49%</b>	<b>100%</b>
no answer	25	51%	
Total	49	100%	

3.5.b the course of the proceedings would be prejudiced

	Frequency	Percent	Valid Percent
always	3	6%	10%
often	7	14%	23%
sometimes	10	20%	33%
rarely	4	8%	13%
never	6	12%	20%
Total	30	<b>61%</b>	<b>100%</b>
no answer	19	39%	
Total	49	100%	

3.6 In your experience and opinion, do the authorities use language that is easy to understand in their communication with victims?

3.6.a the entire communication is made easy to understand

	Frequency	Percent	Valid Percent
agree	8	16%	16%
partially agree	17	35%	35%
neutral	2	4%	4%
partially disagree	14	29%	29%
disagree	8	16%	16%
Total	49	100%	100%
no answer	0	0%	
Total	49	100%	

3.6.b all authorities use language that is easy to understand

	Frequency	Percent	Valid Percent
agree	6	12%	12%
partially agree	17	35%	35%
neutral	5	10%	10%
partially disagree	13	27%	27%
disagree	8	16%	16%
Total	49	100%	100%
no answer	0	0	
Total	49	100%	

3.6.c easy to understand language is used throughout the country

	Frequency	Percent	Valid Percent
agree	3	6%	6%
partially agree	14	29%	29%
neutral	7	14%	14%
partially disagree	15	31%	31%
disagree	10	20%	20%
Total	49	100%	100%
no answer	0	0%	
Total	49	100%	

4.1 Do victims receive the information required from the Directive upon first contact with the relevant authority?

	Frequency	Percent	Valid Percent
full info	5	10%	10%
most info	19	39%	39%
partial info	20	41%	41%
little info	5	10%	10%
no info	0	0%	0%
Total	49	100%	100%
no answer	0	0%	
Total	49	100%	

4.2 when a victim comes into contact with an authority, how often is information provided through the following means:

4.2.a internet

	Frequency	Percent	Valid Percent
always	4	8%	11%
often	7	14%	20%
sometimes	12	24%	34%
rarely	7	14%	20%
never	5	10%	14%
Total	35	<b>71%</b>	<b>100%</b>
no answer	14	29%	
Total	49	100%	

4.2.b orally

	Frequency	Percent	Valid Percent
always	2	4%	11%
often	14	29%	20%
sometimes	20	41%	34%
rarely	4	8%	20%
never	2	4%	14%
Total	42	86%	100%
no answer	7	14%	
Total	49	100%	

4.2.c leaflets, brochures or similar

	Frequency	Percent	Valid Percent
always	13	27%	28%
often	25	51%	53%
sometimes	8	16%	17%
rarely	1	2%	2%
never	0	0%	0%
Total	47	96%	100%
no answer	2	4%	
Total	49	100%	

4.2.d video

	Frequency	Percent	Valid Percent
always	0	0%	0%
often	2	4%	6%
sometimes	10	20%	32%
rarely	11	22%	35%
never	8	16%	26%
Total	31	63%	<b>100%</b>
no answer	18	37%	
Total	49	100%	

4.2.e other, which

4.3 is the information offered without a need for a request from the victim

	Frequency	Percent	Valid Percent
yes	21	43%	48%
depends on the victim	18	37%	41%
no	5	10%	11%
Total	44	90%	100%
no answer	5	10%	
Total	49	100%	

5.1 To your knowledge, do victims receive a written acknowledgment of their formal complaint?

	Frequency	Percent	Valid Percent
always	9	18%	19%
often	25	51%	53%
sometimes	10	20%	21%
rarely	2	4%	4%
never	1	2%	2%
Total	47	<b>96%</b>	<b>100%</b>
no answer	2	4%	
Total	49	100%	

5.2 From your experience, are victims enabled to make a complaint in their own language?

	Frequency	Percent	Valid Percent
always	17	35%	49%
often	12	24%	34%
sometimes	3	6%	9%
rarely	2	4%	6%
never	1	2%	3%
Total	35	71%	<b>100%</b>
no answer	14	29%	
Total	49	100%	

5.3 From your experience, are victims enabled to make a complaint through receiving linguistic assistance?

	Frequency	Percent	Valid Percent
always	18	37%	47%
often	13	27%	34%
sometimes	5	10%	13%
rarely	1	2%	3%
never	1	2%	3%
Total	35	78%	100%
no answer	11	22%	
Total	49		

6.1 Are victims informed of their right to receive information about their criminal proceedings?

	Frequency	Percent	Valid Percent
always	10	20%	22%
often	27	55%	60%
sometimes	4	8%	9%
rarely	3	6%	7%
never	1	2%	2%
Total	45	<b>92%</b>	100%
no answer	4	8%	
Total	49	100%	

6.2 How often do victims receive information when they request it?

	Frequency	Percent	Valid Percent
always	8	16%	19%
often	26	53%	62%
sometimes	6	12%	14%
rarely	2	4%	5%
never	0	0%	0%
Total	42	<b>86%</b>	100%
no answer	7	14%	
Total	49	100%	

6.3 How often is information not provided to victims, based on their role in the cjs?

	Frequency	Percent	Valid Percent
always	0	0%	0%
often	0	0%	0%
sometimes	23	47%	72%
rarely	9	18%	28%
never	0	0%	0%
Total	32	<b>65%</b>	100%
no answer	17	35%	
Total	49	100%	

6.4 In your opinion, do victims find the reasons provided for any decision generally sufficient? In your opinion, do victims find the reasons provided for any decision generally sufficient?

	Frequency	Percent	Valid Percent
always	0	0%	0%
often	9	18%	20%
sometimes	20	41%	44%
rarely	11	22%	24%
never	5	10%	11%
Total	45	<b>92%</b>	<b>100%</b>
no answer	4	8%	
Total	49	100%	

6.5 Are victims informed about their right to be notified of the release or escape of the offender?

	Frequency	Percent	Valid Percent
always	2	4%	6%
often	9	18%	26%
sometimes	14	29%	40%
rarely	7	14%	20%
never	3	6%	9%
Total	35	71%	<b>100%</b>
no answer	14	29%	
Total	49	100%	

6.6 Upon their request, are victims notified of the release or escape of the offender?

	Frequency	Percent	Valid Percent
always	3	6%	10%
often	13	27%	43%
sometimes	11	22%	37%
rarely	3	6%	10%
never	0	0%	0%
Total	30	61%	100%
no answer	19	39%	
Total	49	100%	

7.1 In your experience, are interpreting services made available (more than one choice possible):

	Frequency	Percent	Valid Percent
at police interviews	31	63%	63%
during investigations	12	24%	24%
before the prosecutor	21	43%	43%
during the entire trial	29	59%	59%
only during their testimony	4	8%	8%
not available	13	27%	27%
no answer	0	0%	

7.2 are interpreting services free of charge

	Frequency	Percent	Valid Percent
yes, fully	28	57%	80%
yes, up to a certain amount	0	0%	0%
yes, for certain steps in the proceedings	3	6%	9%
yes, but with limitations	2	4%	6%
no	2	4%	6%
Total	35	71%	<b>100%</b>
no answer	14	29%	
Total	49	100%	

7.3 In your opinion, what are the main problems you can identify with ensuring the right to interpreting services? (Multiple answers possible)

	Frequency	Percent	Valid Percent
Denial of the right to interpreting services	0	0%	0%
Lack of availability of interpreters	19	39%	39%
Poor quality of interpretation	3	6%	6%
Interpreting services available only under limited circumstances (conditional to active participation)	5	10%	10%
Interpreting services do not address victims' vulnerability (e.g.: woman victim of sexual violence with interpretation services by a male interpreter)	8	16%	16%
Risk of interpreter bias	1	2%	2%
Interpreting services are available but not free of charge	6	12%	12%
Interpreting services are provided in a language other than the victim's own language	14	29%	29%
False assumption that victims understand the language of the proceedings well enough	2	4%	4%
Interpreting services are not provided to avoid delays in proceedings	15	31%	31%
Other	2	4%	4%
Do not know	0	0%	0%

7.5 In your experience, which of the following documents are considered essential to be translated and made available to the victim in translated form? (Multiple answers possible)

	Frequency	Percent	Valid Percent
Information to be provided from first contact	19	39%	54%
Decisions not to proceed with or end an investigation or not to prosecute	15	31%	43%
Notification of time and place of trial	16	33%	46%
Final judgement	12	24%	34%
Reasons for decision not to prosecute or to end the investigations	14	29%	40%
Reasons for final judgement	12	24%	34%
Information on the status of the criminal proceedings	15	31%	43%
None of the above	10	20%	29%
All of the above and others. Which?	5	10%	14%
no answer	14	29%	

7.7 Are translations provided free of charge?

	Frequency	Percent	Valid Percent
yes	17	35%	85%
yes, but with limitations	2	4%	10%
no	1	2%	5%
Total	20	41%	100%
do not know	29	59%	
Total	49	100%	

7.9 In your opinion/experience, which are the main problems with respect to translations?

(Multiple answers possible)

	Frequency	Percent	Valid Percent
Information not being deemed essential for translation	16	33%	48%
Denial of the right to translation	0	0%	0%
Lack of availability of translators	11	22%	33%
Poor quality of translations	2	4%	6%
Available but not in a timely manner	9	18%	27%
Restrictions in the documents with respect to their translatability	2	4%	6%
Risk of translator bias	1	2%	3%
Translations are available but not free of charge	4	8%	12%
Translations are provided in a language other than the victim's own language	3	6%	9%
False assumption that victims understand the language of the proceedings well enough	18	37%	55%
Essential documents are translated orally in a manner that, in practice, does not guarantee fulfilment of the victim's rights	5	10%	15%
Translation not provided to avoid delays in proceedings	5	10%	15%
Other	3	6%	9%
Do not know	16	33%	

8.1 In your opinion, how often are victims referred to victim support services by the competent authorities? In your opinion, how often are victims referred to victim support services by the competent authorities?

	Frequency	Percent	Valid Percent
always	10	20%	21%
often	35	71%	73%
sometimes	3	6%	6%
rarely	0	0%	0%
never	0	0%	0%
Total	48	<b>98%</b>	100%
no answer	1	2%	
Total	49	100%	

8.2 In your opinion, do victim support services meet the needs of victims of crime?

	Frequency	Percent	Valid Percent
always	5	10%	10%
often	32	65%	65%
sometimes	12	24%	24%
rarely	0	0%	0%
never	0	0%	0%
Total	49	<b>100%</b>	<b>100%</b>
no answer	0	0%	
Total	49	100%	

8.3 In your opinion, what is needed to improve victim support services in your country (more than one choice possible):

	Frequency	Percent	Valid Percent
More funding	25	51%	53%
Better legislation	6	12%	13%
Better policies	11	22%	23%
More government involvement in providing offers of support	18	37%	38%
More involvement of non-governmental organisations in providing offers of support	7	14%	15%
Better geographical coverage	7	14%	15%
More professionals	29	59%	62%
More training offers	12	24%	26%
More volunteers	7	14%	15%
Quality standards for services	16	33%	34%
Better services for certain groups of victims (which – open question)	19	39%	40%
Do not know	2	4%	

9 To the best of your knowledge and experience, do all victims receive the following services?

9.1 Information, advice and support relevant to the rights of victims

	Frequency	Percent	Valid Percent
always	20	41%	41%
often	25	51%	51%
sometimes	4	8%	8%
rarely	0	0%	0%
never	0	0%	0%
Total	49	100%	100%
no answer	0	0%	
Total	49	100%	

9.2 Information about direct referral to existing relevant specialist support services

	Frequency	Percent	Valid Percent
always	10	20%	22%
often	26	53%	57%
sometimes	6	12%	13%
rarely	4	8%	9%
never	0	0%	0%
Total	46	<b>94%</b>	<b>100%</b>
no answer	3	6%	
Total	49	100%	

9.3 Emotional and psychological support

	Frequency	Percent	Valid Percent
always	14	29%	30%
often	23	47%	49%
sometimes	10	20%	21%
rarely	0	0%	0%
never	0	0%	0%
Total	47	96%	100%
no answer	2	4%	
Total	49	100%	

9.4 Advice relating to financial and practical issues associated with the criminal offence

	Frequency	Percent	Valid Percent
always	10	20%	21%
often	23	47%	49%
sometimes	12	24%	26%
rarely	2	4%	4%
never	0	0%	0%
Total	47	<b>96%</b>	100%
no answer	2	4%	
Total	49	100%	

9.5 Advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation

	Frequency	Percent	Valid Percent
always	6	12%	15%
often	6	12%	15%
sometimes	22	45%	56%
rarely	5	10%	13%
never	0	0%	0%
Total	39	<b>80%</b>	<b>100%</b>
no answer	10	20%	
Total	49	100%	

10.1 To the best of your knowledge and experience, how often are victims heard and enabled to provide evidence during criminal proceedings?

	Frequency	Percent	Valid Percent
always	2	4%	5%
often	13	27%	32%
sometimes	13	27%	32%
rarely	12	24%	29%
never	1	2%	2%
Total	41	84%	100%
no answer	8	16%	
Total	49	100%	

10.2 To the best of your knowledge and experience, is the right of the victim to be heard limited in certain phases of the proceedings (e.g. investigation proceedings, institution of proceedings, main proceedings)?

	Frequency	Percent	Valid Percent
yes	12	24%	24%
no	22	45%	45%
do not know	15	31%	31%
Total	49	100%	100%
no answer	0	0%	
Total	49	100%	



10.4 In your opinion and experience, is the right of the victim to be heard limited by the role of the victim in the proceedings (e.g. witness, injured party, civil party in criminal proceedings)?

	Frequency	Percent	Valid Percent
yes	20	41%	41%
no	13	27%	27%
do not know	16	33%	33%
Total	49	<b>100%</b>	<b>100%</b>
no answer	0	0%	
Total	49	100%	

10.6 In your opinion and experience, where a child victim is to be heard, how often is the child's age and maturity taken into due account?

	Frequency	Percent	Valid Percent
always	11	22%	26%
often	22	45%	51%
sometimes	9	18%	21%
rarely	1	2%	2%
never	0	0%	0%
Total	43	<b>88%</b>	100%
no answer	6	12%	
Total	49	100%	

10.7 In your opinion/experience, are there sufficient measures to assess a child's age and maturity?

	Frequency	Percent	Valid Percent
insufficient	14	29%	29%
rather insufficient	10	20%	20%
neutral	25	51%	51%
rather sufficient	0	0%	0%
sufficient	0	0%	0%
Total	49	100%	100%
no answer	0	0%	
Total	49	100%	

12.1 Are restorative justice services available in your country?

	Frequency	Percent	Valid Percent
yes	31	63%	94%
no	2	4%	6%
Total	33	67%	100%
no answer	16	33%	
Total	49	100%	

12.2 If the previous answer is yes: In your opinion, are there sufficient safeguards in place, which protect the victim from secondary and repeat victimisation, intimidation and retaliation, throughout the restorative justice process?

	Frequency	Percent	Valid Percent
no, they are not protected from secondary and repeat victimisation	9	29%	41%
no, they are not protected from intimidation	8	26%	36%
no, they are not protected from retaliation	3	10%	14%
not at all	2	6%	9%
Total	22	71%	100%
no answer	9	29%	
Total	31	100%	

17.1 To the best of your knowledge and expertise, how often are competent authorities in a position to take a statement immediately after a victim resident in another Member State makes a complaint?

	Frequency	Percent	Valid Percent
always	1	2%	4%
often	10	20%	43%
sometimes	7	14%	30%
rarely	5	10%	22%
never	0	0%	0%
Total	23	<b>47%</b>	100%
no answer	26	53%	
Total	49	100%	

17.2 In your opinion and experience, do competent authorities have all the necessary available means (i.e. videoconference, telephone conference calls or other) for the purposes of hearing a victims who is a resident abroad?

	Frequency	Percent	Valid Percent
insufficient	0	0%	0%
rather insufficient	8	16%	16%
neutral	3	6%	6%
rather sufficient	14	29%	29%
sufficient	24	49%	49%
Total	49	100%	100%
no answer	0	0%	
Total	49	100%	

17.3 In your opinion/expertise, how often are victims resident in your Member State granted the right to make a complaint to your national competent authorities if they were unable to do so in the Member State where the crime was committed?

	Frequency	Percent	Valid Percent
always	1	2%	7%
often	1	2%	7%
sometimes	4	8%	27%
rarely	9	18%	60%
never	0	0%	0%
Total	15	31%	<b>100%</b>
no answer	34	69%	
Total	49	100%	

17.4 In your opinion, are victims who are residents in another Member State treated differently from national victims?

	Frequency	Percent	Valid Percent
yes	9	18%	45%
no	11	22%	55%
Total	20	40%	100%
no answer	29	59%	
Total	49	<b>100%</b>	

17.5 If the previous answer is yes: In your opinion, do the differences in treatment between national and cross-border victims affect the successful access to rights of the latter?

	Frequency	Percent	Valid Percent
a lot	2	20%	20%
significantly	4	40%	40%
moderately	4	40%	40%
a little	0	0%	0%
not at all	0	0%	0%
Total	10	100%	100%
no answer	0	0%	
Total	10	100%	

18.1 In your opinion, how often do victims and their family members receive adequate protection from intimidation and from retaliation?

	Frequency	Percent	Valid Percent
always	0	0%	0%
often	10	20%	24%
sometimes	23	47%	55%
rarely	9	18%	21%
never	0	0%	0%
Total	42	<b>86%</b>	100%
no answer	7	14%	
Total	49	100%	

18.2 In your opinion, how often do victims and their family members receive adequate protection against the risk of emotional or psychological harm?

	Frequency	Percent	Valid Percent
always	0	0%	0%
often	9	18%	21%
sometimes	23	47%	55%
rarely	9	18%	21%
never	1	2%	2%
Total	42	<b>86%</b>	<b>100%</b>
no answer	7	14%	
Total	49	100%	

18.3 In your opinion and experience, are victims and their family members treated by the authorities in a respectful manner and with dignity?

18.3.a At questioning by the investigating authorities

	Frequency	Percent	Valid Percent
always	4	8%	10%
often	29	59%	73%
sometimes	7	14%	18%
rarely	0	0%	0%
never	0	0%	0%
Total	40	<b>82%</b>	<b>100%</b>
no answer	9	18%	
Total	49	100%	

18.3.b At questioning by the prosecuting authorities

	Frequency	Percent	Valid Percent
always	7	14%	17%
often	31	63%	74%
sometimes	4	8%	10%
rarely	0	0%	0%
never	0	0%	0%
Total	42	<b>86%</b>	<b>100%</b>
no answer	7	14%	
Total	49	100%	

18.3.c When testifying

	Frequency	Percent	Valid Percent
always	5	10%	12%
often	29	59%	71%
sometimes	7	14%	17%
rarely	0	0%	0%
never	0	0%	0%
Total	41	<b>84%</b>	<b>100%</b>
no answer	8	16%	
Total	49	100%	

19 Are you aware of any of the following arrangements being present in your country?

(Multiple answers possible)

19.1 Separate waiting areas for victims and offenders

	Frequency	Percent
at the police	15	31%
in court buildings	42	86%
does not exist	4	8%
do not know	1	2%

19.2 Separate entrances within the premises

	Frequency	Percent
at the police	10	21%
in court buildings	19	40%
does not exist	24	50%
do not know	4	8%

20.1 In your opinion and experience, are interviews with victims of violent crimes conducted without unjustified delay?

	Frequency	Percent	Valid Percent
always	2	4%	5%
often	23	47%	58%
sometimes	12	24%	30%
rarely	2	4%	5%
never	1	2%	3%
Total	40	<b>82%</b>	<b>100%</b>
no answer	9	18%	
Total	49	100%	

20.2 In your opinion and experience, are interviews with victims of non-violent crimes conducted without unjustified delay?

	Frequency	Percent	Valid Percent
always	0	0%	0%
often	17	35%	43%
sometimes	20	41%	50%
rarely	2	4%	5%
never	1	2%	3%
Total	40	82%	<b>100%</b>
no answer	9	18%	
Total	49	100%	

20.3 In your opinion, when there are unjustified delays, what are the reasons for such a delay?

	Frequency	Percent
Police have work overload	36	73%
Priority is given to other cases or more serious crimes	30	61%
Procedural requirements	5	10%
Delay in collaboration between authorities	18	37%
Other	4	8%
Do not know	8	16%

20.5 In your opinion and experience, is the number of interviews of victims kept to a minimum and are interviews carried out only where strictly necessary for the purposes of the criminal investigation?

	Frequency	Percent	Valid Percent
always	5	10%	13%
often	23	47%	58%
sometimes	10	20%	25%
rarely	1	2%	3%
never	1	2%	3%
Total	40	<b>82%</b>	<b>100%</b>
no answer	9	18%	
Total	49	100%	

20.6 In your experience, are victims able to be accompanied by a person of their choice?

	Frequency	Percent	Valid Percent
always	7	14%	18%
often	14	29%	37%
sometimes	13	27%	34%
rarely	3	6%	8%
never	1	2%	3%
Total	38	78%	100%
no answer	11	22%	
Total	49	100%	

20.8 In your experience and opinion, are medical examinations kept to a minimum and only carried out where strictly necessary for the purposes of the criminal proceedings?

	Frequency	Percent	Valid Percent
always	13	28%	45%
often	13	28%	45%
sometimes	2	4%	7%
rarely	0	0%	0%
never	1	2%	3%
Total	29	62%	100%
no answer	18	38%	
Total	47	100%	

21.1 In your opinion and experience, how often do competent authorities take all necessary, appropriate and lawful measures to ensure protection of victim's privacy?

	Frequency	Percent	Valid Percent
always	3	6%	6%
often	18	37%	38%
sometimes	19	39%	40%
rarely	7	14%	15%
never	1	2%	2%
Total	48	98%	<b>100%</b>
no answer	1	2%	
Total	49	100%	

21.2 To the extent of your knowledge and expertise, are protective measures applied only to victims of certain crimes?

	Frequency	Percent
yes	16	33%
no	20	41%
do not know	13	27%
Total	49	<b>100%</b>

21.4 In your opinion, to what extent do you consider existing protection measures effective in safeguarding the victim's privacy?

	Frequency	Percent	Valid Percent
inefficient	1	2%	2%
rather inefficient	16	33%	33%
neutral	4	8%	8%
rather efficient	25	51%	51%
efficient	3	6%	6%
Total	49	<b>100%</b>	<b>100%</b>
no answer	0	0%	
Total	49	100%	

21.5 In your opinion and expertise, how often do competent authorities take legally permissible measures to prevent the public dissemination of any information that could lead to the identification of a child victim?

	Frequency	Percent	Valid Percent
always	3	6%	9%
often	17	35%	49%
sometimes	12	24%	34%
rarely	3	6%	9%
never	0	0%	0%
Total	35	<b>71%</b>	<b>100%</b>
no answer	0	29%	
Total	49	100%	

21.6 To the extent of your knowledge and expertise, are the media encouraged to adopt self-regulatory measures to ensure the victim's privacy?

	Frequency	Percent
yes	19	39%
no	7	14%
do not know	23	47%
Total	49	100%

22.1 In your opinion and experience, how often are victims provided with an individual assessment of their protection needs?

	Frequency	Percent	Valid Percent
always	1	2%	3%
often	12	24%	32%
sometimes	11	22%	29%
rarely	12	24%	32%
never	2	4%	5%
Total	38	<b>78%</b>	<b>100%</b>
no answer	11	22%	
Total	49	100%	

22.2 In your opinion and experience, are the wishes of victims (including whether or not they wish to be granted special measures of protection) taken into account in this process?

	Frequency	Percent	Valid Percent
always	0	0%	0%
often	14	29%	31%
sometimes	18	37%	40%
rarely	13	27%	29%
never	0	0%	0%
Total	45	<b>92%</b>	<b>100%</b>
no answer	4	8%	
Total	49	100%	

22.3 Is a risk and threat assessment also conducted?

	Frequency	Percent	Valid Percent
always	1	2%	3%
often	3	6%	9%
sometimes	12	24%	36%
rarely	15	31%	45%
never	2	4%	6%
Total	33	67%	<b>100%</b>
no answer	16	33%	
Total	49	100%	

22.4 Is there the possibility to adapt the assessment later on?

	Frequency	Percent
yes	17	35%
no	10	20%
do not know	22	45%
Total	49	100%

22.5 (Only if the answer to question 4 is A) What criteria are used as a basis for a decision to adapt the assessment later on? **NO ANSWERS**

	Frequency	Percent	Valid Percent
severity of the crime			
degree of harm suffered			
no answer			
other			

22.7 What measures are in place to ensure that unnecessary interactions are kept to a minimum and interactions with authorities are made as easy as possible? (Multiple answers possible)

	Frequency	Percent	Valid Percent
practical protocols	18	37%	78%
templates	15	31%	65%
questionnaires	8	16%	35%
additional psychological examining methods	2	4%	9%
none	0	0%	
other	0	0%	
no answer	26	53%	

23.1 In your experience and opinion, are victims with specific protection needs able to benefit from the following measures during criminal investigations?

23.1. A Interviews with the victim carried out in premises designed or adapted for that purpose

	Frequency	Percent	Valid Percent
always	6	12%	15%
often	18	37%	46%
sometimes	10	20%	26%
rarely	4	8%	10%
never	1	2%	3%
Total	39	<b>80%</b>	<b>100%</b>
no answer	10	20%	
Total	49	100%	

23.1.B Interviews carried out by or through professionals trained for that purpose

	Frequency	Percent	Valid Percent
always	8	16%	24%
often	14	29%	41%
sometimes	10	20%	29%
rarely	2	4%	6%
never	0	0%	0%
Total	39	69%	<b>100%</b>
no answer	15	31%	
Total	49	100%	

23.1.C All interviews are conducted by the same person

	Frequency	Percent	Valid Percent
always	1	2%	3%
often	13	27%	45%
sometimes	10	20%	34%
rarely	4	8%	14%
never	1	2%	3%
Total	29	59%	<b>100%</b>
no answer	20	41%	
Total	49	100%	

23.1.D All interviews with victims of sexual violence, gender-based violence, etc. are conducted by a person of the same sex as the victim

	Frequency	Percent	Valid Percent
always	2	4%	6%
often	21	43%	64%
sometimes	7	14%	21%
rarely	3	6%	9%
never	0	0%	0%
Total	33	67%	100%
no answer	16	33%	
Total	49	100%	

23.2 In your experience and opinion, are victims with specific protection needs able to benefit from the following measures during court proceedings?

23.2.A Measures to avoid visual contact between victims and offenders

	Frequency	Percent	Valid Percent
always	5	10%	15%
often	6	12%	18%
sometimes	13	27%	38%
rarely	8	16%	24%
never	2	4%	6%
Total	34	69%	<b>100%</b>
no answer	15	31%	
Total	49	100%	

23.2.B Measures to ensure that the victim may be heard in the courtroom without being present (use of communication technology)

	Frequency	Percent	Valid Percent
always	2	4%	6%
often	7	14%	22%
sometimes	7	14%	22%
rarely	12	24%	38%
never	4	8%	13%
Total	32	<b>65%</b>	<b>100%</b>
no answer	17	35%	
Total	49	100%	

23.2.C Measures to avoid unnecessary questioning concerning the victim's private life not related to the offence

	Frequency	Percent	Valid Percent
always	1	2%	4%
often	7	14%	25%
sometimes	11	22%	39%
rarely	7	14%	25%
never	2	4%	7%
Total	28	<b>57%</b>	100%
no answer	21	43%	
Total	49	100%	

23.2.D Measures allowing proceedings to take place without the presence of the public

	Frequency	Percent	Valid Percent
always	1	2%	3%
often	4	8%	10%
sometimes	16	33%	41%
rarely	16	33%	41%
never	2	4%	5%
Total	39	80%	100%
no answer	10	20%	
Total	49	100%	

24.1 To the extent of your knowledge and expertise, how often are interviews with child victims recorded audiovisually?

	Frequency	Percent	Valid Percent
always	10	20%	40%
often	10	20%	40%
sometimes	5	10%	20%
rarely	0	0%	0%
never	0	0%	0%
Total	25	<b>51%</b>	100%
no answer	24	49%	
Total	49	100%	

24.2 To the extent of your knowledge and expertise, where there may be a conflict of interest and/or the holders of parental responsibility are precluded from representing a child victim, how often is the child appointed a special representative by the competent authorities?

	Frequency	Percent	Valid Percent
always	3	6%	16%
often	8	16%	42%
sometimes	3	6%	16%
rarely	3	6%	16%
never	2	4%	11%
Total	19	<b>39%</b>	<b>100%</b>
no answer	30	61%	
Total	49	100%	

24.3 To the extent of your knowledge and opinion, how often is a child victim granted the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility?

	Frequency	Percent	Valid Percent
always	1	2%	7%
often	4	8%	29%
sometimes	4	8%	29%
rarely	4	8%	29%
never	1	2%	7%
Total	14	<b>29%</b>	<b>100%</b>
no answer	35	71%	
Total	49	100%	

25.1 In your opinion and experience, do the following professionals receive sufficient training regarding the needs of victims?

25.1.A police officers

	Frequency	Percent	Valid Percent
sufficient	5	10%	11%
rather sufficient	14	29%	31%
neutral	14	29%	31%
rather insufficient	11	22%	24%
insufficient	1	2%	2%
Total	45	92%	<b>100%</b>
do not know	4	8%	
Total	49	100%	

25.1.B prosecutors

	Frequency	Percent	Valid Percent
sufficient	8	16%	19%
rather sufficient	14	29%	33%
neutral	14	29%	33%
rather insufficient	6	12%	14%
insufficient	1	2%	2%
Total	43	88%	<b>100%</b>
do not know	6	12%	
Total	49	100%	

25.1.C judges

	Frequency	Percent	Valid Percent
sufficient	5	10%	13%
rather sufficient	14	29%	36%
neutral	11	22%	28%
rather insufficient	8	16%	21%
insufficient	1	2%	3%
Total	39	<b>80%</b>	<b>100%</b>
do not know	10	20%	
Total	49	100%	

25.1.D lawyers

	Frequency	Percent	Valid Percent
sufficient	7	14%	17%
rather sufficient	16	33%	39%
neutral	8	16%	20%
rather insufficient	10	20%	24%
insufficient	0	0%	0%
Total	41	<b>84%</b>	100%
do not know	8	16%	
Total	49	100%	

25.1.E victim support workers

	Frequency	Percent	Valid Percent
sufficient	24	49%	51%
rather sufficient	19	39%	40%
neutral	4	8%	9%
rather insufficient	0	0%	0%
insufficient	0	0%	0%
Total	47	<b>96%</b>	100%
do not know	2	4%	
Total	49	100%	

25.1.f Other professionals (administrative authorities, first responders, etc.)

	Frequency	Percent	Valid Percent
sufficient	4	8%	11%
rather sufficient	14	29%	40%
neutral	10	20%	29%
rather insufficient	6	12%	17%
insufficient	1	2%	3%
Total	35	71%	100%
do not know	14	29%	
Total	49	100%	

26.1 To your knowledge and experience, has the government of your country initiated, sponsored or otherwise ensured awareness-raising campaigns?

	Frequency	Percent	Valid Percent
yes	19	39%	66%
no	10	20%	34%
Total	29	59%	100%
no answer	20	41%	
Total	49	100%	



26.2 If the answer to question 1 is yes): In your opinion, how adequate and efficient were these campaigns?

	Frequency	Percent	Valid Percent
inefficient	0	0%	0%
rather inefficient	2	11%	11%
neutral	10	53%	53%
rather efficient	4	21%	21%
efficient	3	16%	16%
Total	19	100%	100%
no answer	0	0%	
Total	19	100%	

26.3 To your knowledge and in your experience, has your government initiated, sponsored or otherwise supported or ensured research and education programmes?

	Frequency	Percent	Valid Percent
yes	16	33%	76%
no	5	10%	24%
Total	21	43%	100%
no answer	28	57%	
Total	49	100%	

26.4 If the answer to question 3 is yes: How adequate and efficient were these programmes in your opinion?

	Frequency	Percent	Valid Percent
inefficient	0	0%	0%
rather inefficient	1	6%	6%
neutral	6	38%	38%
rather efficient	5	31%	31%
efficient	4	25%	25%
Total	16	<b>100%</b>	<b>100%</b>
no answer	0	0	
Total	16	100%	

## ANNEX 2 CONTACT LIST OF INTERVIEWED PROFESSIONALS

#	Name	Position/organisation	Date of the interview
1	Bauke van Bourgondiën	Strategic policy officer, Program for Victim Support Police	8 & 9 April 2018
2	Esther van de Watering	Policy officer victims' rights Prosecutor's General Office Public Prosecution Service	17 May 2018
3	Ralph Beaujean	Advisor/researcher Criminal Law Council for the Judiciary	18 May 2018
4	Sonja Leferink	Researcher/senior policy Officer Victim Support NL Research fellow/science practitioner INTERVICT	01 June 2018

# ANNEX 3 TRANSPOSITION TABLE CONCERNING THE IMPLEMENTATION ACT OF DIRECTIVE 2012/29/EU

Article Directive	Article Implementation Act	Implementation through existing legislation
1.1	2 <sup>nd</sup> sentence: 51aa (1) and 288a (2) CCP 1 <sup>st</sup> and 3 <sup>rd</sup> sentence do not imply a legislative obligation	
1.2	51aa(4) CCP (EM <sup>1</sup> §2.2)	
2.1	51a(1) CCP	
2.2	51a(2) CCP	
3.1 & 3.2	do not imply a legislative obligation, 51c (6) CCP	
3.3	51c (1) and (2) CCP	
4.1	51ab CCP	
4.2	51ab(2)	
5.1	163 (5) and (6) CCP	
5.2	163 (3) CCP	
5.3	163 (7) CCP	
6.1 & 6.2	51ac (2) j° (1) CCP	
6.1 a)	51 ac (1) a & b CCP	
6.1 b)	51ac (1) f CCP, in appeal 413 (2) CCP	
6.2 a)	51ac (1) g CCP	
6.2 b)	51 ac (1) CCP & EM	
6.3	51 ac (3) & (4) CCP	359 j° 349 j° 358 CCP
6.4	EM (51 ac (2) CCP)	
6.5	51ac (5) & (6) CCP	
6.6	51 ac (6) CCP	
7.1	51c (5) CCP j° 1.5 Law on tariffs for criminal procedures	
7.2	EM	
7.3	51ca (1) & (2) CCP j° 1.5 Law on tariffs for criminal procedures	
7.4	51ca (1) CCP	
7.5	51ca (1-4) CCP	

7.6	51ca (8) CCP	
7.7	51ca (6) & (7) CCP	
7.8	EM by 51ca	
8.1	51aa (3)a	
8.2	51aa (2)	
8.3	Regulation delegated by 51aa (3)a CCP	6,8 & 9 Law on Justice Subsidies
8.4	Regulation delegated by 51aa (3)a CCP	ibid.
8.5	Regulation delegated by 51aa (3)a CCP	
9.1	Regulation delegated by 51aa (3)a CCP	
9.2	Regulation delegated by 51aa (3)a CCP	
9.3	Regulation delegated by 51aa (3)a CCP	
10		51e & 51b (2) CCP
10.1	Regulation delegated by 51aa (3)c CCP	
10.2		51e & 51b (2) CCP
11.1		12 CCP
11.2	n.a.	
11.3	51 ac (3) j° 1 CCP	
11.4	n.a.	
11.5	n.a.	
12.1	Regulation delegated by 51h (4) CCP	12 Law on Justice Subsidies
12.2	Regulation delegated by 51h (1) & (4) CCP	
13	51 c (1) & (2) CCP	
14		6 Law on tariffs for criminal procedures (witnesses) and 592 a CCP (injured party)
15		116, 118 a & 119 CCP
16.1		51f & 51G j° 335 CCP
16.2		
17.1 a)		161, 163 CCP
17.1 b)		131a CCP, 78a CC
17.2		161, 163 CCP
17.3		p.m.
18	Regulation delegated by 51aa (3)c CCP	
19.1	Regulation delegated by 51aa (3)c CCP	
19.2		Regulation concerning a victim-appropriate court environment) <sup>2</sup>
20. a)	Regulation delegated by 51aa (3)c CCP (EM § 2.13)	Letter of the Minister of Safety & Justice, 9 July 2013, Parliamentary Minutes 2012-2013, 29 628, nr 404, pp. 4-6

20. b)	51 aa (1) j° 51aa (3) c CCP (EM § 2.13)	
20. c)	51 c (1-3) CCP	
20. d)	Regulation delegated by 51aa (3)c CCP (EM § 2.13)	
21.1		34 (4), 187 d-1 190 (3), 226 a – 226 f264 269 CCP, 15 Law on Police Registrations, 2:13 Decree on Police Registration, 39 f Law on criminal procedural and judicial registrations
21.2	do not imply a legislative obligation (EM § 3.9)	
22	Regulation delegated by 51aa (3)c CCP	
23	Regulation delegated by 51aa (3)c CCP	
24	Regulation delegated by 51aa (3)c CCP	
6-24 in appeal	416 (passerelle clause) & EM §2.7 and concerning 415, 413 (2) CCP (information on the court session), 51ac (1) h CCP (information on appeal)	
25	do not imply a legislative obligation	
26	do not imply a legislative obligation	
28	do not imply a legislative obligation	

**(Footnotes)**

- 1 Explanatory Memorandum of the bill, kst34236 nr. 3, Parliamentary ear 2014-2015
- 2 Regulation of the Council for the Judiciary



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