

Procedural Rights



Procedural rights - the victim's perspective

Sonja Leferink – Victim Support

NL

Outline

- Introduction
- Concepts of procedural justice, distributive and retributive justice
- Procedural justice translated to procedural rights in the criminal justice procedure
- Victims' experiences
- Challenges

Introduction



What is, in your opinion, the most important procedural right for victims and why?

Theoretical concepts

- Procedural justice → the fairness and the transparency of the processes by which decisions are made (Lind & Tyler) → participation, voice, ‘stakeholder’, agency
- Distributive justice → the fairness in the distribution of rights or resources
- Retributive justice → fairness in the punishment of wrongs

Not exclusively linked to victims or CJ-procedure.

Importance of PJ

- Trust in the criminal justice system → +/- 80% of all crimes go unreported
- Prevention of secondary victimisation → victims are 'forgotten' in the offender oriented CJ system.
- Legitimacy of the CJ system as core institution of society (acceptance of actions and decisions)
- Complying with international (EU) law
- ...?

Victims needs & Justice

Needs	Proc. Jus.	Dist. Jus.	Ret. Jus.
Acknowledgement			
Respectful treatment			
Information			
Retribution			
Compensation			
Safety			
Voice, participation			

Victims needs & Justice

Needs	Proc. Jus.	Dist. Jus.	Ret. Jus.
Acknowledgement	X		
Respectful treatment	X		
Information	X	X	
Retribution			X
Compensation		X	X
Safety		X	
Voice, participation	X		

Procedural justice → procedural rights

Procedural rights

- Right to report and to receive a copy (initiating prosecution ≠ private prosecution)
- Right to information (about compensation and support)
- Right to be kept informed of the progress of the criminal proceedings
- Right to add information to the criminal file, to be allowed access to the criminal file and to receive copies (restricted)
- Right to give a victim impact statement in court (restricted)
- Right to claim compensation in the CJ procedure (adherence procedure)

Procedural justice → procedural rights

Procedural rights (2)

- Right to appeal to a decision of the prosecution (art 12)
- Right to a (free) lawyer (restricted)
- Right to translation
- Right to respectful treatment
- Right to be kept informed about the execution of the sentence
- Right to file for protective measures

! Right is no guarantee !

Performance

- What is the performance of key actors in the CJ-procedure with regard to procedural, distributive and retributive justice (see hand out)?
- ‘Victims monitor for CJ system’:
 - Evaluation of performance of different key actors
 - Importance of different aspects of services, efforts and attitude.

Hand-out

	Support/Right			
Need	Police	Prosecution	Judge	Victim Support
Treatment (PJ)	Being taken seriously	Being taken seriously	Being taken seriously	Being taken seriously
	Respectful treatment	Respectful treatment	Respectful treatment	Respectful treatment
	Listening carefully	Listening carefully	Listening carefully	Listening carefully
	Speed of actions		Professionalism (impartial)	Professionalism
	Protection of privacy	Protection of privacy	Protection of privacy	Protection of privacy
	Referral (to support)			
Information (PJ/DJ)	About CJ proceedings	About CJ proceedings	About CJ proceedings	About CJ procedure
	About different forms of support & rights	About different forms of support & rights		About victims rights
	About one's own actions	About one's own actions	About one's own actions	About one's own actions
Participation (PJ)	A voice in decisions made in CJ proceedings	A voice in decisions made in CJ proceedings	A voice in decisions made in CJ proceedings	Support during participation in CJ procedure
	Being heard	Being heard	Being heard	
Acknowledgement (PJ/DJ/RJ)	<i>Overlap with treatment, compensation and retribution</i>	<i>Overlap with treatment, compensation and retribution</i>	<i>Overlap with treatment, compensation and retribution</i>	<i>Overlap with treatment, compensation and retribution</i>
Compensation (DJ)	Effort to get compensation for victim	Effort to get compensation for victim	Awarding compensation	support for preparation in and submission damage claim
Safety (DJ)	Protection against revictimization	Protection against revictimization	Protection against revictimization	
	Prevention advice	Prevention advice		Prevention advice
Dealing with feelings of fear (?)	Decreasing feelings of fear	Decreasing feelings of fear		Decreasing feelings of fear
				Emotional support
Retribution (RJ)	Investigating the offender	Prosecuting the offender	Sentencing the offender	
	Arresting the offender	Getting the offender convicted		

> 60% positive
30 – 50% negative
>50% negative

Bold | Of highest importance to victims

Victims' evaluation

- Relative good performance on procedural rights items
- Lesser performance on distributive and retributive items
- Treatment, information and retribution are deemed the most important aspects of victims' rights and services

Challenges

- Procedural justice is important, but distributive and retributive justice just as much
- On what aspects does the CJ system in your country perform well?
- What aspects do need improvement?
- How can we accomplish that?