

Victim Impact Statement



Implementing the EU Directive:

The voice of the victim in court; the victim impact statement in the Netherlands

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Victim Impact Statement



Let's play the victim impact statement quiz:

The VIS quiz!

Victim Impact Statement



- **History and development**
 - ✓ **EU Directive**
 - ✓ **The Netherlands**
- **Policy Victim Support NL**

Victim Impact Statement & EU Directive



Article 10 (1) EU Directive:

**Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence.
(...)**

Victim Impact Statement & EU Directive



Q 1.

Proposition: as a result of the EU Directive there is an obligation for the Member States to make it possible for the victim to make a statement during the trial (hearing)?

Yes or No?

Victim Impact Statement & EU Directive

This does not mean a victim impact statement during trial is mandatory.

- (...) it must be possible for the victim to be permitted to give testimony which can be taken into account as evidence. [But not during trial]
(Court of Justice 9 October 2008, C-404/07 Katz case)
- (...) to make a statement or explanations in writing. (Recital 41).
- (...) to ensure that all victims have an opportunity to provide information, views or evidence throughout criminal proceedings. The applicable procedural rules (how and when victims may be heard) is left to national law. (Guidance Document, p. 29).

Victim Impact Statement & EU Directive



Good practice suggests (Guidance Document p. 29):

(1) that a victim should be free to present to the authorities concerned his/her view about the manner in which he/she would like to participate in the trial

and

(2) that the Member State would respect and fulfil this request, to the greatest extent possible.

Victim Impact Statement & EU Directive



In the Netherlands:

- **Oral victim impact statement**
- **Written victim statement**
- **Talk with de public prosecutor**

Victim Impact Statement Development in the NL



Q 2.

In the Netherlands it is possible to make a written VIS since 1976.

Yes or No?

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No →

- **The first VIS was introduced in Fresno County (California) in 1976.**
- **The written VIS was introduced in the Netherlands in 2004 and the right to speak in court in 2005.**
- **The law that introduced the right to speak was an initiative by members of parliament (not government).**

Victim Impact Statement Development in the NL



The VIS was restricted:

- Limited to severe crimes as described in the law (↔ EU framework, and now EU Directive)
- Victim can only speak about impact the crime has had on him/her (e.g. not about the criminal case, the accused or appropriate punishment)
- The statement can not be used as evidence
- Only the victim (or one surviving relative)

Victim Impact Statement Development in the NL



Q 3.

Why was VIS restricted?

- **The VIS would otherwise take too much time.**
- **To protect the victim from being questioned as witness (secondary victimization).**
- **The victim should not be a second prosecutor.**

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Q 4.

What were the goals when introducing the oral VIS?

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Goals of the VIS:

- **To give voice to the victim (procedural justice).**
- **Emotional recovery**
- **To inform the judge**
- **To confront the accused**

Victim Impact Statement Development in the NL



Evaluation of the oral VIS (2010):

- **Victims were positive**
- **Circle too restricted**
- **Victims want to speak not just about the impact (and they don't!)**
- **Not much trouble**
- **No therapeutic benefits**

Victim Impact Statement Development in the NL



NL:

About 1 million victims a year.

About 10% victims violent crimes.

About 60.000 criminal cases in court.

Q 5.

How many of them use the right to speak in court and how many victims file a written statement?

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Figures:

- 300 victims use the right to speak
- 4500 victims file a written statement

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**Along came a new State Secretary (= Deputy Minister) of
Security and Justice, Fred Teeven:**

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Q 5.

What was Fred Teeven's profession before he went into politics?

- a. He was a baker in Utrecht, famous for his croquettes.**
- b. He was a 'soft' judge in juvenile court.**
- c. He was a notorious criminal defence lawyer.**
- d. He was a public prosecutor, known as a 'crime fighter'.**

Victim Impact Statement Development in the NL



Fred Teeven was a public prosecutor. And he is very victim minded. →

First expansion VIS (2012): the circle of persons who can speak in court.

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Q 6.

Who can make a victim impact statement in court since 2012?

- a. The victims of all crimes.**
- b. Parents of minors.**
- c. More than one surviving relative.**
- d. Representative (e.g. family member, lawyer, or Victim Support NL)**

More answers are possible.

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Second expansion (proposal for new law was presented to parliament last week).

Q 6.

What expansion brings this new law?

- a. VIS possible for victims of all crimes.**
- b. VIS is no longer limited to the impact the crime has had on the victim.**
- c. The victim can make an impact statement + his lawyer can use advisory right.**

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Under the new law the VIS will no longer be limited to the impact the crime has had on the victim.

Q7.

What can be the implications?

If the victim incriminates the accused, he can be called as a witness.

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Q 8.

Proposition: Under the current law a written victim statement is restricted in the same way as an oral VIS.

Yes or no?

**There are no restrictions to the written statement (since 2011).
(which is really a way to be 'heard' properly and to supply
evidence cf. article 10 (1) EU Directive).**

Victim Impact Statement Procedure



Q 7.

How will the victim know that he can use the right to speak in court or file a written statement?

- a. Victim Support NL notifies the victim.**
- b. The public prosecutor's office will sent the victim information that he can speak in court.**
- c. The victim has to find out himself.**
- d. The victim can read it in the newspaper.**

Victim Impact Statement Procedure



The public prosecutor's office sends a 'menu' to the victim. This menu includes a question about a talk with the public prosecutor. (Mandatory in cases the victim is allowed to speak in court.)

Q 9.

What do you think is this talk about?

Victim Impact Statement Procedure



The Victim is informed about the case by the public prosecutor:

- **Final result of the investigation.**
- **The legal position (proof).**
- **The legal proceedings in court.**

- **This can (also) also be used to let the public prosecutor know about the impact of the crime (personally).**
- **Nb. Protection order.**

Victim Impact Statement Procedure



Victim Support NL or a lawyer can provide assistance.

Q 10.

Why do victims often choose for support by Victim Support NL?

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Victims choose for Victim Support NL:

- **Because the prosecutor's office refers to Victim Support (→ demand for high quality)**
- **Accessible**
- ✓ **Free of charge (but sometimes so is a lawyer)**
- ✓ **Nearby**
- ✓ **Many victims are already client or have been approached before by Victim Support**

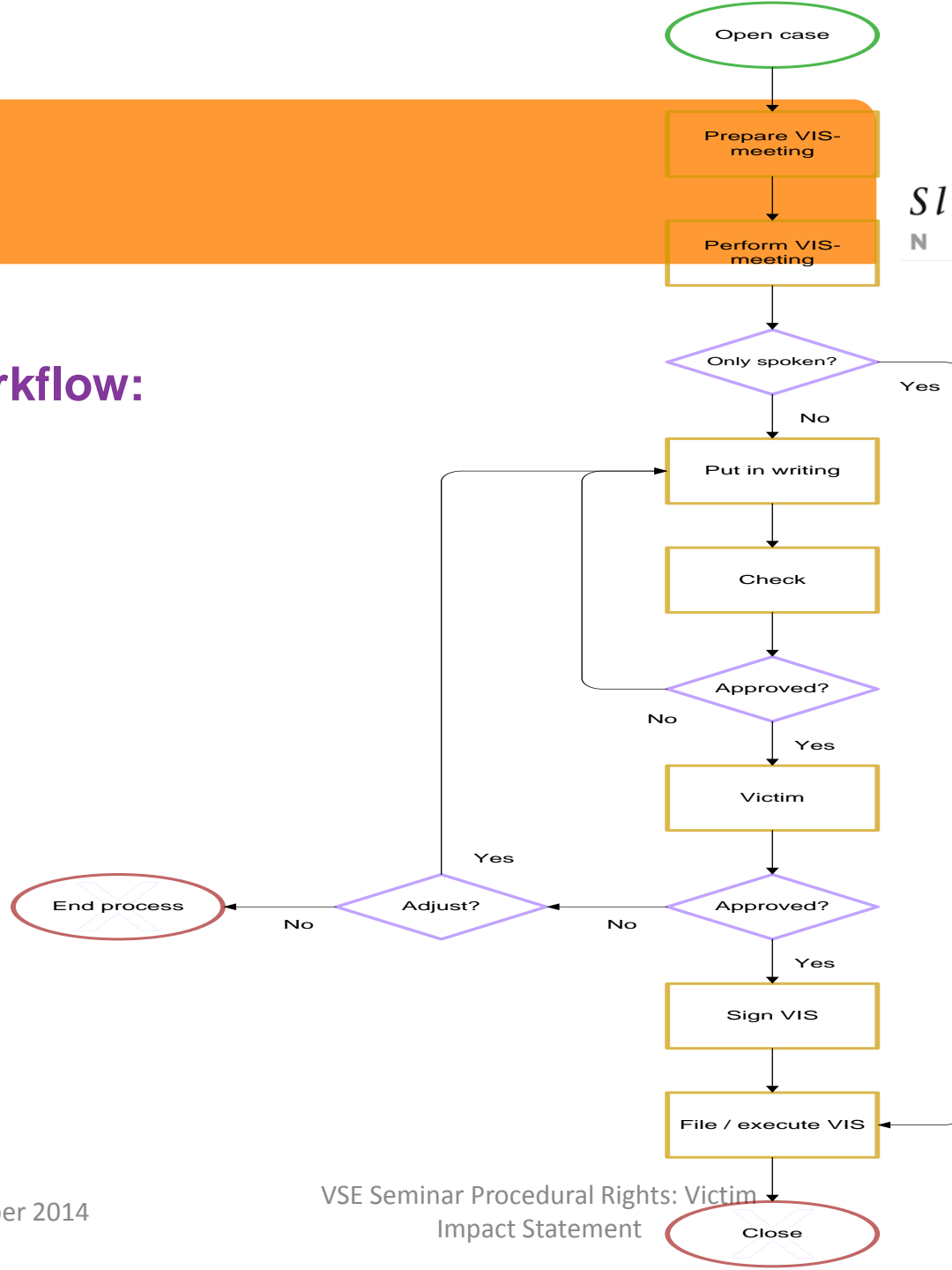
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- Legal advisors are trained to prepare victims for VIS and how to write a statement.
- They all work according to a protocol.



Workflow:



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Meeting victim – legal advisor:

- **Inform**
- **Prepare**
- ✓ **What is allowed; procedure.**
- ✓ **Talk only about impact: physical + psychological**
- **Advice: also a written statement**

Q 11.

Why this advice?

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Written statement is a back up (2x).

1. The victim can read the statement him/herself

2. Legal advisor can read the statement

If the victim is prepared by Victim Support to speak in court → legal advisor accompanies victim to court (self-reliance of the victim)

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If it is necessary or requested, the legal advisor is spokesperson:

- **VIS (read the written statement) and/or**
- **Civil claim**
- ✓ **explain**
- ✓ **answer questions**
- ✓ **respond to defence**

But this has nothing to do with the VIS

Victim Impact Statement



The end of this quiz.

And the winner is...