



Evaluatie Implementatie schriftelijke slachtofferverklaring

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Summary

Call for research

As a tradition victims of crime are not awarded a position of their own within the framework of criminal procedure. However, there is an actual tendency to alter this subordinated position. Just recently the Dutch government enacted a draft tending to introduce legal rights for victims within the Dutch Code of Penal Procedure. Preceding studies by the research-project *Strafvordering 2001* provided the systematic review needed. Furthermore, in 2001 written victim impact statements have been introduced on an experimental basis; a nation-wide introduction followed in 2004. Only several months later, in January 2005, the right towards an oral victim impact statement came into being (article 336 DCCP). Although the legislator did not call upon the Public Prosecutor's Office to facilitate this provision, to render the services needed was felt to be a task for the Public Prosecutor's Office. Therefore, from January 2005 the District Prosecutor's Offices, in cooperation with the Dutch Victim Support (*Slachtofferhulp Nederland*) carry out the task to inform victims of crimes regarding the 'rights' towards the written and oral victim impact statement.

Outline

As little was known about the manner in which the Public Prosecutor's Office and the Dutch Victim Support have organized the execution of the victim impact statement an evaluation was indicated. The underlying report provides such an evaluation. Research was done at several District Public Prosecutor's Offices: Alkmaar, Assen, Den Haag, Middelburg, Roermond and Utrecht. Besides studying documents (as far as available), interviews were taken from personnel of the District Public Prosecutor's Office as well as the so-called reporters Victim Impact Statement ('reporter') employed by the Dutch Victim Support. The aim was to evaluate the way in which the written and oral victim impact statement were implemented by the organizations Public Prosecutor's Office and Victim Support.

As the written victim impact statement aims at informing the magistrate in regard to the effects of the indictable offence for the individual victim, additional interviews were taken from magistrates at the District Courts involved. Furthermore a limited questionnaire was set out among barristers.

Results

Resemblances and differences

As the Public Prosecutor's Office provided for a framework for the implementation of the written and oral victim impact statement local practice shows resemblance. Nevertheless, as the District Public Prosecutor's Offices function as relative autonomous organizations, the realm of central instructions is limited. Still, the data show resemblance, even within diversification. To put it on other words: local practices provide similar solutions to the problems involved.

Efforts made by the District Public Prosecutor's Office

Most of the District Public Prosecutor's Offices involved set out a policy to implement the written victim and oral impact statement. Proceedings were written in order to match existing administrative processes. Furthermore, in some places information desks were set up, sometimes in joined cooperation with the Dutch Victim Support.

However, local efforts differ. Not every District Public Prosecutor's Office involved invested as much as one ought to. Causes vary from coincidental circumstances such as a temporary shortage in staff to – what seems to be – a structural lack of priority towards victim support policy. Also the expanding tasks the District Prosecutor's Offices have to deal with as a result of victim support policy have to be mentioned as a relevant factor. As the Public Prosecutor's Office makes it its task to watch over the victim's interest responsibilities increase, however without corresponding growth of financial means. Especially, the lack of time given to prepare the administration towards new tasks is mentioned. As for the written and oral victim impact statement, the directive presented by the Public Prosecutor's Office was published just one month before the written respectively the oral victim impact statement had to be executed, thus leaving the District Public Prosecutor's Offices insufficient time to take proper preparations. As a result, implementation and execution of the victim impact statement have gone hand in hand.

Made to measure

For all that, the District Public Prosecutor's Offices have executed the victim impact statement in a careful and loyal manner. One genuine belief that the written and oral victim impact statement must be 'made to measure'. In contrast with the compensation order (article 36f Dutch Penal Code), the execution of the written and oral victim impact statement is believed to imply 'careful treatment'. It is not the victim's money which is at stake, but the victim himself. Therefore a certain expertise is felt to be needed, by the reporter, as well as by the personnel of the District Public Prosecutor's Office.

However, this belief renders the execution of the victim impact statement certain vulnerability. Coincidental circumstances, as absence through illness or departure of employees may cause problems, as substitution cannot be arranged immediately as expertise is felt to be required.

A similar observation can be made for the position of the reporters, employed by the Dutch Victim Support. Working as a reporter requires specific knowledge, as well as the capability to work autonomously. As is the case for the victim care workers at the District Prosecutor's Office, one fulfills its tasks with care and loyalty. Although financial means are felt to be sufficient, there is no room for further expansion of activities. Moreover as reporters financially fully dependent on subsidy by the Department of Justice, the lack of structural finance is felt to be quite problematic.

Logistic conditions

Although the cooperation is evaluated positively, the Dutch Victim Support calls attention to a certain lack of awareness at the (District) Prosecutor's Office(s) regarding the logistic needs of the reporters. Indeed the reporters highly depend on the District Public Prosecutor's Office to do their job. For to be able to draw up a written victim impact statement, the reporter needs to have disposal over the personal notes of the victim, as well as relevant case-information (such as the report of the crime and relevant parts of the indictment). In case this information is not received in due time, this may cause time trouble for the reporter.

In all, as time-management lies at the heart of the written and oral victim statement, here lies the weak spot. As the aim is to provide actual information about the aftermath of crime for the victim, written victim impact statements have to be written just before the court session. Although, in itself this does not need to cause problems, time trouble may rise as the reporter is often confronted with urgent requests, caused by an omission of the District Public Prosecutor's Office. As this happens on a regular basis, reporters have to work under pressure of time and seldom manage to reach the standard term of two weeks before the court-session. More likely is the written victim impact statement been sent in a week, or – as a rule – two days in advance.

The victim: an uncertain factor

Nevertheless, it is not just due to omission by the District Public Prosecutor's Office that time trouble may raise. Merely as important are the inadequate reactions of victims. The District Public Prosecutor's Offices tend to accommodate victims by maintaining the terms set out for response flexible. As the Directive on the Oral and Written Impact Statement mentions seven days in order to respond to the offer regarding the written victim impact statement, no consequences are attended to exceeding the official term. Thus, requests to draw up a written victim impact statement are often passed to the reporters on short notice, causing time trouble.

As for the reporter, the victim is an even more insecure factor, for a personal contact is a needed in order to be able to draw up a written victim impact statement. Reporters frequently mention time-consuming, indirect activities, such as making phone-calls or last minute countermands, causing a loss of working hours. As a result there is often no time left to have the written victim impact statement signed by the victim, as is required. For that matter, the reporters do not put to much weight to this omission, as long as the victim has given his consent, one way or the other. However, no statement is send to court unless the victim is informed about the contents and has agreed to it. For certain the finding that, as a rule the written victim impact statement is not ready – as agreed upon – two weeks before the court-session, is to be related to the victim as an uncertain factor.

Indeed, it is to be acknowledged that the victim is an autonomous factor within the execution of the written and oral victim impact statement. All the more because the point of departure lies in the making amends to the victim, at least as far as possible having regard to the mission of the District Public Prosecutor's Office to maintain public order. As for the Dutch Victim Support taking care of the victim's need is core-business. Nevertheless, it's clear that as far as the District Public Prosecutor's Offices and the Dutch Victim Support are concerned a choice is made in favor of the victim.

In accordance with the Directive?

As to the question whether or not the District Public Prosecutor's Offices carry out the instructions given by the Board of the Prosecutors the following can be stated.

As is set out in the Directive Oral and Written Victim Impact Statement, most of the District Prosecutor's Offices concerned follow the procedures prescribed by central level; a distinction between criminal cases with or without applied remand custody is made. Due to the strictly structured procedure administrative process regarding the written victim impact statement do not cause trouble in cases with custodial remand. As prosecution is to be expected, the District Public Prosecutor's Office may safely inform the victim as to the possibility of an oral and written victim impact statement. Conversely, in cases without custodial remand time-management may cause trouble as the administrative course is less structured and prosecution is insecure.

For this reason the Board of Prosecutors ordered that in cases without custodial remand information regarding the oral and written impact statement may not be sent before prosecution positively has been decided upon. The Directive prescribes the sending of the first letter, containing general information about the penal process and the offer to get help from the Dutch Victim Support, in an early stage. Information in regard to the written and oral victim impact statement is subject of a second letter, to be sent after one has decided to prosecute. Nevertheless, most of the District Public Prosecutor's Offices concerned combine the two letters, inserting a reservation in regard to a positive decision towards prosecution. Thus, one states to serve the victim, as well as the administration. From the victims perspective it is better to receive one letter containing all relevant information. As for the District Public Prosecutor's Office is concerned, a reduction of the administrative actions is reached as well as a clear and, even more important, early insight into the claims of the victim.

Another divergence to be mentioned regards the fact that the District Prosecutor's Office involved do not strictly hold on to article 302 DCCP. The Directive makes clear that the oral and written impact statement may only be applied in case there is an indictable offence threatened with eight years or more imprisonment, or one of the specified offences mentioned in article 302 DCCP. Although most of the District Public Prosecutor's Offices concerned hold on to this rule, one does not exclude that the impact of an indictable offence not mentioned in article 302 DCCP may cause to inform the victim of the possibility to have a written victim impact statement drawn up.

Clearly these are exclusions to the rule. Beside, the information can be presented in a less formal manner, such as an informal letter written by the victim, whether or not with assistance from the reporter. Another option to provide information to the judge is to have an interview with the victim by the Public Prosecutor, and have this report added to the dossier.

Article 302 DCCP

Despite these exclusionary cases, the limitations mentioned in article 302 DCCP are acknowledged as just. Although one emphasizes that the impact of an indictable offence is not to be forecasted, limitations are necessary in order to prevent an unjust use of the written and oral victim impact statement. Surely there will be cases in which the impact of the indictable offence would have given cause to draw up a written victim impact statement, but it also may be the other way around: not all cases which fall within the reach of article 302 DCCP are felt to justify such a provision.

The written vs. the oral impact statement

As mentioned above the written and oral impact statement is related. Although the legislator doesn't hold to such a condition, policy is directed towards having the oral victim impact statement preceded by a written victim statement. Indeed, the written impact statement is seen as a full-fledged alternative for those victims, who for some reason do not want to give an oral statement in court. Thus, a kind of diversion seems to be created towards the written impact victim statement. On the whole, findings confirm a strong connection between the written and oral victim impact statement.

Preparation needed

All respondents subscribe the need for preparation. The victim who wants to make an oral victim impact statement should be prepared, preferably by having a written victim impact statement drawn up or otherwise by means of an oral instruction by the reporter. The motives behind this strong urge for preparation are twofold. At first one wishes to prevent secondary victimisation for the victims. Secondly one feels the need to control the session in court, as

well as to safeguard the right to a fair trial. Also a loss of time as a result of unprepared oral victim impact statements should be prevented.

That's why the victim should be clearly informed as to the characteristics of the criminal process, especially regarding the peculiar limitations to be taking into account regarding the oral written victim statement. Here, the reporter has the crucial task to provide the victim with the information needed, as well as to advise him what use of the provisions seems suitable. As a result limited use is been made of the oral victim impact statement. The majority of the victims involved waive their right to make an oral victim impact; one suffices to have a written victim impact statement drawn up.

For that matter it should be made clear that there are all kind of reasons which may cause to waiver the right to speak out in court. Particular, due to the conversation between the victim and the reporter emotions may have been tempered, reducing the urge to make an oral victim impact statement in court. Moreover, the belief that the reporter is capable of drawing up a proper written impact statement seems to be of importance and gives way to decline the right for an oral victim impact statement. Yet there are other, more personal reasons to decline an oral victim statement.

Related to this issue it's important to make clear that the magistrates highly value the written impact statements. As a rule the written impact statements provide the magistrate a concise and clear picture of how the indictable offence has affected the victim and what the (future) consequences may be. Indeed, the concise and clear character of the written impact statement, in connection with its preparative function, seem to have contributed a lot towards the taking away of the original objections against the oral victim impact statement amongst the judiciary.

How to shape to the oral victim impact statement

Although the magistrates agree upon the need for preparation, the way in which the oral and written victim impact statement is handled in court may differ. As the district courts involved have deliberated about the subject, the outcomes may differ. Some district courts have drawn up rules, others didn't. As a result there are significant differences in the way the written and oral victim impact statements are handled in court. For instance in some places the judge reads out the written victim impact statement in court, and subsequently inquires if the victim has something to add, the latter implying the use of an oral victim statement thus confirming the aforementioned connection between the oral and written victim impact statement.

Elsewhere the victim is given the choice to read out the written victim impact statement himself, or to have this done by the magistrate. Subsequently the victim is invited to add an oral victim impact statement. Although the connection between the oral and written impact statement seems less important here, one has to keep in mind that the information provided by the written impact statement enables the magistrate to prepare for the court-session, including the announced oral victim impact statement.

In addition a remark is to be made regarding the exceeding of the terms by the reporters. As the written victim impact statement includes essential information need for the preparation of the court-session, the magistrates are somewhat impeded by the late term sending of the statements by the reporter. On the other hand, as the written impact statement as a rule is concise and clear, the magistrates are able to take notice of the information enclosed easily. Nevertheless, one would prefer receiving the statements in time.

The same observation counts for the defence, as they too do not receive the written victim impact statement in time. However, as the defendant is not the addressed person, the consequences are minor. Although from the perspective of the defence objections are made against

the written and oral victim impact statement, one does not have the judicial means to do anything about it.

The additional value of the oral victim impact statement

As already mentioned, policy sets out the written victim impact statement to be a fully fledged alternative for the oral victim impact statement, at least for those victims who – for reasons of their own – decline their right to make an oral victim impact statement. Nevertheless, respondents are of the opinion that making an oral victim statement has an additional value. Giving oral information in court by a victim is felt to have far greater impact than providing information by means of a written victim impact statement. There is however one condition: the impact of the oral victim impact statement depends on the fact whether or not the victim has been prepared to speak out in court. A carefully prepared address by the victim during the court-session may impress the magistrate, as well as the defendant. What is more, it provides tools for the magistrate to outweigh the impact of the indictable offence in the verdict. Conversely, unprepared oral addresses make a slight chance to be taken into consideration by the magistrates. Although such ‘loose’ speeches may help the victim to overcome the aftermath of the indictable offence, the magistrate cannot deal with it in the context of the verdict.

In all, one must not have too high hopes as to the extent in which the written or oral victim impact statement influences the magistrate’s decisions. If there is any impact what so ever, it is restricted to the domain of sentencing, moreover, to the margins of the sentencing-decision. Nevertheless, as the quantitative impact of the oral victim impact statement is limited, this lies somewhat different for the qualitative impact. Most of the magistrates involved value the oral victim impact statement as a means to reflect upon the social impact of the indictable offence. Being forcefully confronted with the impact of the facts summoned, awareness is raised by the magistrates, thus calling them to reflect upon the social impact thus providing legitimacy to the verdict. Yet, as it stated above, one must place this finding into perspective.

Another dimension of the oral victim valued by the magistrates is the confrontation of the defendant with what he has done to a fellow human-being.

The extent of the use

The data referring to the extent of the use of the written and oral victim impact statements were gathered in various ways. As for the oral victim statement no figures can be given, due to the fact that no registration is being kept. Relying upon the respondents few oral victim impact statements have been made; on a yearly basis up to a maximum of five to ten victims up most have given an oral statement in court.

In most cases the oral statements have been prepared by a written victim impact statement. In those cases the procedure most frequently used has been to read out the written victim impact statement by the magistrate, giving the possibility to provide oral additional information. In some cases, the victim choose to read out a statement of his own.

Conversely, the written victim impact statement has been used more often. As for the reporters, some state that there is an increase in the use of written victim impact statement, as others do not. Yet, as the written victim impact statement becomes widely known a future increase may not be excluded. As for now, the use varies from one and a half percent to less than one percent per inhabitant per district. In all, these figures do not indicate a standard use of the written impact statement in criminal cases.