

# Summary

## Background

Criminal law recognizes the aggravating element for suspects of crimes against civil servants who are ‘formally and legally in pursuance of their profession’ (so-called aggravated offences). In cases where the victim is a civil servant, the legal maximum penalty is raised by one third compared to the basic offence. Besides aggravated offences, the system employs the criminal proceedings directive (Polaris directive - in Dutch criminal law). This directive allows an increase of sanction points in cases of aggression and acts of violence against civil servants (so-called qualifying victims), which has subsequently led the prosecution to demand higher sentences in court.

However, for civil servants who did not fall into this category, such as fire fighters and paramedics, nothing had yet been formalised. In response to the programme of action ‘Aanpak agressie en geweld tegen werknemers met publieke taken’ (TK 2006-2007, 28684 no. 100) or ‘Policy in cases of aggression and violence against civil servants’ the criminal proceedings directives of the PPS (Public Prosecution Service) were adapted to ensure a more appropriate reaction to cases of aggression and violence directed at these professionals (December 2006).

Especially noteworthy is the fact that the adaptation applies to all employees/professionals and not to civil servants exclusively. It means that e.g. shop assistants too, come under the scope of this directive. In more detail, the adaptation of the directive entails:

- The category of qualifying victims has been broadened. The aggravating element ‘the victim is a civil servant or any other person obviously in charge of security, law and order maintenance and/or supervision’ has been replaced by a much more comprehensive description, viz: ‘those who became a crime victim in the course of carrying out their profession, or were hindered in carrying out their profession by a crime’.
- In cases of violence against professionals the demanded sentence/sanction points is/are doubled. The previous directives stipulated a penalty increase of a mere 25 per cent.
- In cases of violence against victims of civil courage the demanded sentence/sanction points is/are doubled as well.
- In cases of victim-perpetrator dependency the demanded sentence/sanction points is/are increased by one third.
- An increase from 7 to 12 basic points (used to determine the penalty level) for the basic offence of assault.

It is not entirely clear whether the increase applies to the demanded sentence or to the number of basic points that BOS\* attributes to a case. Communication concerning the directive seems to suggest that the policy is to double the demanded sentence (*kamerstukken II, 2006-2007, 28684, no. 100* - documents Dutch equivalent House of Commons), whereas BOS merely increases the *basic points*. Due to influence by other offence specific elements, therefore, the increase of the demanded sentence need not always be 100% or 33% (Chapter 2).

\* Translator's note: BOS stands for *Beslissing Ondersteunend Systeem*; a computer application designed to support a correct implementation of the Polaris directive. Legal professionals have access to this tool.

## **General aim and research questions**

This research comprises an evaluation of the implementation of the directive. The general research aim is to ascertain to what extent cases of violence against employees/professionals (in the course of their work) are processed in conformity with the stipulations, and which points of improvement might be suggested. The research is limited to three types of qualifying victims, viz. police officers, other professionals and civil courage victims. 'Dependent' victims (victim-perpetrator dependency) were only included to ascertain the total number of cases.

This research also throws light on how aggravated offences - in which the capacity of the victim is essential - are concluded. In order to clarify: when a 'civil servant during or in line with the legal pursuance of his duties' is defamed (art. 267 sub 2 Sr) or assaulted (art. 304 sub 2 Sr), the maximum prison sentences as mentioned in the equivalent basic offences are increased by one third.

The main research questions study the actions of the PPS and the Judiciary. Also, some questions deal with possible motives of the PPS to adhere to the current penal policy or to refrain from doing so; some questions deal with the number of qualifying victim cases and the number of aggravated offences.

## **Research methods**

In order to answer the research questions, a combination of quantitative and qualitative methods was used. First, the WODC-PPS data were studied and analysed. This provided information on the size of the group of qualifying victims, the way in which the PPS processed these offences, and the judge's verdict. These results were then compared to those of 'ordinary' victims. Comparisons were also made between aggravated and basic offences. Furthermore, file research was conducted on PPS files and court files. Using these files, information was gathered on demands for pre-trial detention, the claim of the prosecution, the stipulated outcome of BOS, the prosecutor's indictment and the ruling by the presiding judge.

Finally, prosecutors and prosecutors' clerks were interviewed. The research focussed on three categories of offences, viz. defamation/insult, intimidation and violence/

assault. The violence/assault category was further broken down into: overt violence (with physical injury), simple assault, assault with physical injury, pre-meditated assault, assault with grievous bodily harm and pre-meditated assault with grievous bodily harm.

## Results – Analysis of PPS data

### - Comparison qualifying versus ordinary victims

*How many criminal cases involving qualifying victims were presented and concluded since 1 December 2006, arranged by type of victim and type of offence?*

From 1 December 2006 up to and including 30 April 2008 the PPS took on 80651 relevant cases. 11.7% (9474) of these offences concerned qualifying victims. In that same period 39934 of these cases were concluded. 13.7% (5483) of which concerned qualifying victims. One third of the cases with qualifying victims concerned police officers; also one third concerned other professionals. Little over 5% applied to victims of civil courage and little over one quarter involved dependants.

Very few qualifying victims appear in the defamation/insult category. They are spread evenly among the categories intimidation and violence. Police officers and other professionals more often fall victim to intimidation, whereas victims of civil courage and dependent victims are more often victims of violence. Looking exclusively at the year 2007 qualifying victims make up 11.8% of the total of 63330 cases. In 2423 cases this concerns a police officer (32.4% of the qualifying victims count). In 2639 (35.3%) cases other professionals are involved, in 391 (5.2%) of the cases we are dealing with a victim of civil courage and in 2037 (27.2%) cases with a dependent person.

*In what manner are above-mentioned cases concluded? (dismissal, (out of court) settlement, summons)*

In cases involving qualifying victims more summonses are issued and fewer settlements are imposed than in cases involving 'ordinary' (non-qualifying) victims. In 82% of the qualifying victim cases summonses are issued, as opposed to 70.1% in cases of ordinary victims; for settlements these figures are 16.2% and 28.1% respectively. Particularly in cases involving police officers, summonses are more common, viz. 86.4% of the total number of cases.

In cases involving qualifying victims the 'Arrest - Administer' procedure (Dutch Aanhouden – Uitreiken procedure or AU-procedure) is used more frequently than in cases involving ordinary victims. In this procedure the arrested person is served a summons or proposed a settlement without delay. The Arrest - Administer procedure is used in 48.3% of the qualifying victim cases, as opposed to 44% of the non-qualifying victim cases.

In cases involving qualifying victims pre-trial detention is demanded more often than in cases involving ordinary victims; 13.6% as opposed to 6.7%.

*Is there uniformity in the conclusion of similar cases between: various district offices, various victims and various offences?*

The average settlement sums in cases of qualifying victims are higher than in cases involving ordinary victims. Defamation/insult cases show a 20% increase, intimidation a 36% increase and violence/assault a 43% increase. Particularly cases involving police officers correlate to the higher average of the settlement sums. Intimidation of a police officer shows an increased settlement sum of 38% on average, in violence/assault cases this is 67%.

A statistically significant difference is found between district offices in the size of the settlement sums in qualifying victim cases. However, this difference is very small.

*Which sentences does the judge impose in qualifying victim cases? Are sentences imposed by the judge higher in qualifying victim cases compared to similar non-qualifying victim cases?*

The percentage of guilty verdicts is practically equal in both qualifying and non-qualifying victim cases. The percentage of acquittals is slightly lower. Imprisonment sentences occur more often in qualifying victim cases than in non-qualifying; whereas fines are less commonly imposed.

The average fine is higher in qualifying victim cases than in non-qualifying victim cases: 24% in intimidation cases and 20% in violence/assault cases.

Imposed community service and imprisonment sentences in qualifying victim cases are lower than or at the same level of those in non-qualifying victim cases. In violence/assault cases the average community service sentences are the same in qualifying and non-qualifying cases; imprisonment sentences are 10% lower. Contrarily, in intimidation cases community service sentences are 10% lower for qualifying than for non-qualifying victim cases, but the averages for imprisonment sentences are the same.

#### *- Comparison aggravated versus basic offence*

*How many aggravated offences were presented involving 'a civil servant during or in line with the legal pursuance of his duties'?*

Between 1 December 2006 and 30 April 2008 (included) 9790 aggravated offences were presented, 12.1% of the total number of defamation/insult, intimidation and violence/assault cases. The larger part of this percentage involves defamation/insult of a civil servant on duty, to wit 8858 cases. A further 932 cases of assault of a civil servant on duty were presented. Of this total number of cases, 6579 were concluded; 6039 of which dealt with aggravated defamation and 540 with aggravated violence/assault.

*In what manner are above-mentioned cases concluded?*

In aggravated offences fewer summonses are issued than in similar basic offences; more often settlements are offered. In 61% of the aggravated offence cases summonses are issued, as opposed to 74% in basic offence cases. For settlements the

figures are 38% and 24% respectively. These differences are caused by the offence of aggravated defamation: in 58% of these cases summonses are issued and in 40% settlements are offered. In aggravated violence/assault cases percentages tally with earlier discussed findings concerning qualifying victims.

In aggravated offences the Arrest – Administer procedure occurs more frequently, and in more instances pre-trial detention is demanded. In 60% of the aggravated defamation cases the Arrest – Administer procedure is applied, as well as in 55% of the aggravated violence/assault cases. In basic offences these percentages are 52 and 44 respectively. Pre-trial detention is demanded in 8% of the aggravated violence/assault cases, as opposed to 5% in the non-aggravated (basic offence) cases.

*Are settlement sums in aggravated offences higher than in similar basic offence cases?*

Settlement sums in aggravated cases are on average higher than in basic offence cases. In aggravated defamation offences penalties are – on average – 32% higher than in the basic equivalent and in cases of aggravated assault the penalties are 55% higher than in the basic offence of assault.

The same holds true for the actual fines. The average sums for aggravated defamation are 23% higher; the average sums for aggravated assault are 24% higher.

*Which sentences does the judge impose for aggravated offences?*

As with qualifying victim cases, community service and imprisonment sentences in aggravating offence cases are equal to or lower than those in basic offence cases. For aggravated defamation the sentences are practically the same as for the basic offence; community service sentences are on average 3% lower and imprisonment sentences are the same. In cases of aggravated assault the sentences are lower than for the basic offence. Community service sentences show a 13% difference, imprisonment a 15% difference.

*Overlap qualifying victim and aggravated offence*

Implementation of the directive presents the PPS with three lines of action in cases of defamation or assault of a civil servant on duty: 1) to indict for the aggravated offence, 2) to indict for the basic offence and explicitly mention the qualifying victim and 3) to indict for the aggravated offence and explicitly mention the qualifying victim.

In cases of defamation of a civil servant on duty the PPS nearly always opts for the aggravated offence and not for the basic offence with explicit mention of the qualifying victim. In cases of violence/assault directed against said civil servant, the matter is more complex. Figures show that in cases of assault directed against police officers the choice for the aggravated offence is made in 80% of the cases; in assault offences directed against other professionals this is considerably less often the case. For this group 13% of the cases are treated as aggravated offences. This is due to the fact that this group also includes non-civil servants. Therefore, it is not always possible to opt for the aggravated offence.

Since it is possible to indict for the aggravated offence and at the same time explicitly mention the qualifying victim, an overlap occurs in the volume figures (duplicates). After correcting for these duplicates 18372 cases of qualifying victimisation were presented in the research period mentioned above. 11535 of these have been concluded to date.

A comparison of presented cases versus concluded cases shows that a larger part of qualifying victimisation cases has been concluded as compared to non-qualifying victimisation cases. This suggests that the completion time of qualifying cases is shorter.

## **Results – File research**

*Which ‘other professionals’ fall victim to defamation, intimidation and violence/assault? What is the percentage of civil servants among this group?*

Civil servants make up 24% of the group ‘other professionals’. Catering employees (14%), security personnel (9%), (para) medics (9%), shop assistants (8%) and public transport employees (8%) also occur frequently in this category.

*Does the Public Prosecutor follow the directive where it concerns imposed settlements, demanded sentences and demands for pre-trial detention?*

### *Pre-trial detention*

Analysis of PPS data shows that orders for pre-trial detention occur more often in qualifying victim cases than in non-qualifying victim cases. Analysis of the files containing qualifying victim cases shows that in 95% of the cases where pre-trial detention was demanded, it was indeed ordered. Obviously, there is a strong correlation between demanding and ordering pre-trial detention. The higher percentages of pre-trial detention orders imply that in qualifying victim cases the Public Prosecutor indeed demands pre-trial detention, in conformity with the directive.

### *Settlement*

Analysis of the height of the settlement sums in qualifying victim cases shows that the settlement sums in these cases were higher than in non-qualifying cases, but that this increase (20% for defamation, 36% for intimidation and 43% for violence/assault) did not reach the 100% increase made possible by the directive. In the file analysis a comparison was made between the settlement according to BOS terms and the actual settlement that was demanded. Results show that the average settlement sum that can be inferred from the BOS terms is 380 euros, whereas the average settlement sum demanded in actual cases was 291 euros. This adds up to 76% of the sum inferable from BOS. In cases where the directive would imply a 100% increase, the demand would have to be 200% of the BOS outcome for ‘ordinary’ victim cases. Findings indicate that the actual outcome is 152%, viz. 76% out of 200%. This again, indicates that the actual increase as compared to the BOS outcome for ordinary victims is 52%. For settlements the Public Prosecutor does not entirely follow the directive.

### *Demanded sentence*

A similar result is found when analysing court files. Here too, the demanded sentences in qualifying victim cases are approximately 25% below the BOS outcome. Again, this implies that in cases where BOS would indicate a 100% increase in a qualifying victim case, the actual increase would be 50%.

### *Do sentences imposed by the judge correspond to the sentences demanded by the Public Prosecutor?*

Analysis of the PPS data shows that average imposed sentences in qualifying victim cases do not exceed those in non-qualifying/ordinary victim cases. This can partly be explained by the fact that the Public Prosecutor does not strictly follow the directive, as was shown by the comparison of the BOS outcome and the actual demand.

Another possible explanation could be that the judge does not follow the prosecutor's demand. The discrepancy between the increase stipulated in the directive and the non-occurrence of differences in imposed sentences can only partly be explained by the fact that the judge fails to follow the prosecutor's demand. There was only a minor difference between the level of the prosecutor's demand and the sentence imposed by the judge. Moreover, demand and sentence are closely connected. This follows from analysis of both the PPS files and the court files.

The above implies that an explanation for the findings is partly to be found in (a combination of) the following two situations:

1. The doubling of sanction points as stipulated in the directive is applied only to the basic points of the sentence demanded, not to the entire sentence demanded. As exemplified in Chapter 2, this means that - in cases where other offence specific elements occur - the increase in line with the directive is not 100%, but turns out to be less. However, the effect of offence specific elements appears to be very small (96% instead of 100%).
2. The doubling of sanction points may mean that a different, more severe type of penalty will be imposed, or that a summons is issued instead of a settlement. As a result these facts are no longer included in the calculation of the average settlement sum or fine. This lowers the found averages for the various types of penalties. At the same time a change of penalty type implies that the values found for community service and imprisonment in qualifying victim cases, apply to relatively less serious offences than in non-qualifying cases.

### *How prevalent are qualifying references in the Public Prosecutor's closing speech and in the verdict of the court, and to what extent are these references presented in a societal context?*

In approximately one third of the prosecutors' closing speeches concerning cases of qualifying victims, reference is made to the aggravating character of the victimisation. This is also the case in 40% of the verdicts. In a minority of cases (29% of the closing speeches and 23% of the verdicts) explicit mention is made of social unrest caused by aggravated victimisation.

## Results – Interviews Public Prosecutors and prosecutors' clerks

The Public Prosecutors state that they follow the directive. In cases concerning qualifying victims they arrive at a higher demanded sentence than in cases with 'ordinary' victims. Therefore, the qualifying status of the victim is an aggravating factor in relation to the demanded sentence, even more so because these victims should not be hindered in carrying out their professional duties. Remarkable aspect is that Public Prosecutors connect qualifying victims predominantly to the public services sector. Shop owners e.g. also qualify for the directive, but this seems to be largely unknown. Furthermore, the interviews show that in cases with qualifying victims the Public Prosecutor does indeed demand a higher sentence, but that this is generally not a 100% increase. Therefore we can state that there is indeed an increase in the demanded sentence, but no doubling thereof. The Public Prosecutors state that they want to provide a 'tailor made' service.

### Overall conclusions

There are various criteria to ascertain to what extent the PPS follows the directive. More specifically for: demands for pre-trial detention and the use of Arrest – Administer procedures in qualifying victim cases, the percentage of summonses and settlements, the percentage of imprisonment verdicts in cases preceded by a summons, and adhering to the BOS outcome in qualifying victim cases, which should lead to an increase in the demanded sentence.

- First, the results indicate that the PPS more frequently demands pre-trial detention and follows the Arrest – Administer procedure in qualifying victim cases than in non-qualifying ('ordinary') victim cases.
- Second, more summonses are issued and fewer settlements are imposed.
- Third, it was found that in cases where summonses are issued, more imprisonment sentences are imposed.
- Fourth, it was found that, in similar cases, the Public Prosecutor demands a higher sentence in cases with qualifying victims than in cases with non-qualifying victims. The higher sentence does not become apparent in the reported averages of imposed sentences in qualifying versus non-qualifying cases, but as a result of a changed penal modality the sentences imposed in qualifying victim cases relate to lighter offences. The BOS outcome, however, is not fully observed. The increase of the sentence is below what is stipulated in the directive. Rather 50% than 100%. Professionals at the PPS explain that they consider BOS to be a tool from which they may deviate in any specific case, depending on the circumstances relevant to the case. It appears that these circumstances have a curbing effect on the increase.

Finally, some improvements are suggested, mainly with reference to communicating the directive and to the mathematics underlying BOS.