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03 Dutch penal law and policy Notes on criminological research from the Research and Documentation Centre Ministry of Justice The Hague The Netherlands

Victim services in the Netherlands by J.M. Wemmers and M.I. Zeilstra

Interest in the victims of crime is not a new or even recent issue in the Netherlands. As early as 1949, the Dutch criminologist, W.H. Nagel, commented on the dissatisfaction of victims whose cases had been dismissed by the public prosecutor (Nagel, 1949). It was not however until some 25 years later that a real concern for the victim in the form of research and public policy was observed. At this time women's groups began to voice their dissatisfaction with the treatment of

female victims, in particular as victims of sexual offences and complained of the secondary victimization that these women were often subjected to by police and justice officials. This period was also marked by an increasing crime rate, hence the position of the victim in criminal law began to affect more people and concern for the victim expanded (Van Dijk, 1982). It was argued that the criminal justice system focused all of its attention on offenders and left the victims standing in the cold. Victims who had reported a crime to the police, never heard anything more about their case and would typically find out that the offender had been caught and prosecuted only by reading it in the newspaper.

At the same time it was becoming more obvious that victims were often left with financial losses after their victimization which insurance did not cover: half of all victims of property offences have to pay for their material damages themselves (Smale, 1977, 1984). The position of victims of crime was clearly unfavourable and policy makers were looked to for change.

Criminal justice policy for victims

Present Dutch victim policy evolved during the eighties. Dutch policy has centred around improving the position of the victim within the existing criminal justice system. Three committees, named after their chairmen, were formed to address the concerns surrounding victims: the committees Beaufort, Vaillant and Terwee. In 1981 the Committee Beaufort published a report in which several suggestions are made concerning the treatment of victims of violent sex crimes. The report aimed at creating unity in police policy for the treatment of this group of victims. In January 1986, a special circular for the police was issued in which recommended police practice for the treatment of victims of sex crimes was outlined (Van Dijk, 1988; Staatscourant, 1987). The main issues of the recommendations are the victim's right to information, (emotional) support and her right to privacy. In 1983 a second committee, the Committee Vaillant, concluded that within the present judicial system, much more could be done for victims of crime (Committee Vaillant, 1985). In 1986 the recommendations were introduced as guidelines for police and prosecutors in the treatment of victims of serious violent and/or sexual offences and in 1987 they were expanded to apply to all victims of crime (Staatscourant, 1987). The central issue in the guidelines is the correct treatment of victims which includes victims' rights to information, restitution and the referral of (needy) victims to local support schemes.

In 1986 a new committee, the Committee Terwee, was established and published a final report in 1987 in which recommendations are made to adopt a set of legal regulations thus making compensation of the victim a penal sanction. This would make it possible for judges to impose compensation of the victim by the offender as a sentence, much like the present use of fines, and would require the office of the public prosecutor to monitor payment by the offender. We will return to a discussion of the recommendations made by this committee in our discussion of restitution and compensation but first we will further examine the contents of the Vaillant guidelines and their implementation by police and prosecutors.

The Vaillant guidelines

The guidelines are presented in their formal state, namely, as duties imposed upon police and public prosecutors. A

concrete organisation and procedure of how those involved should fill in the duties imposed upon them, is not provided in the guidelines. Consequently, their exact implementation varies between the regional offices of the police and prosecution. To list all the deviations is beyond the scope of this paper, however where relevant some differences will be outlined in the discussion of the various research projects. To begin with, the Vaillant committee recognizes the crucial role that police play for the victims of crime. For many victims the police represent their first contact with the justice system and many of them do not see much more of the system than that. Police should therefore receive victims in a correct manner. This includes referring 'needy' victims to victim assistance schemes or other help organisations. Secondly, they should inform the victim of the general penal procedures that follow after he has reported a crime to the police and ask the victim if he wishes to be notified of any changes or developments in the case. If the victim wishes to be kept informed, then police are required to contact the victim when any changes in the case occur.

The possibility of restitution should also be actively considered by police. When the offender is known at a relatively early stage, the police should actively stimulate (c.q. mediate) restitution between the victim and offender. Finally, the police should include information regarding all relevant interactions with the victim in the case report.

After the offender is found and the report has been sent to the office of the public prosecutor, the prosecutor is required to send a (standard) letter to those victims who have stated (to police) that they wish to be kept informed regarding their case. In this letter the victim is given the opportunity to: express his interest in information concerning the status and outcome of his case and express the wish for compensation of material damages suffered by the victim. Victims of serious violent and/or sexual offences are also invited to meet with the public prosecutor and discuss the case. The victim who, for example, wants to be kept informed on the developments in his case must send a letter back to the prosecutor in which his request is made explicit. The wishes of the victim are to be respected by the public prosecutor in his treatment of the case.

With the introduction of these guidelines, activities to develop victim services in the Netherlands have expanded. The major problems facing policy makers at the present seem to focus on the notification and restitution programs. In the following, we will present a description of these victim service programs and related research.

Information for victims of crime

With the introduction of the guidelines, the ministry of justice intended to make it easier for victims to obtain information concerning the status of their case and its outcome, directly from police and the office of the public prosecutor. In

accordance victim notification programs were introduced in these offices. These services, however, rely on the adherence of police and prosecutors to the guidelines. The extent to which they follow the guidelines determines the number of victims who can request information regarding their case. When only a marginal percentage of victims are offered these services, the effectiveness of the guidelines is brought into question. The extent to which the wishes of the victim are subsequently respected by police and/or prosecutors determines not only the effectiveness of the system but also the satisfaction of victims with the service as well as the criminal justice system in general.

In this respect, when the system fails to function properly it inversely effects victims' attitudes towards police and public prosecutors. Furthermore, the notification program may have unintended side-effects on victims receiving information. In this case, alterations to the system may be necessary. Besides the effects of the notification program on victims, the increasing communication with victims may influence public prosecutors. In the following the notification program will be discussed in relation to various experiments that have been carried out concerning its implementation and effects on victims. This will be followed by research regarding the meetings of prosecutors with victims.

The functioning of the new system

A study, in which the victim notification program of an office of the public prosecutor was evaluated in terms of its functioning¹ (Van Hecke et al., 1990), was conducted one year after the system was in operation; at this time it had been two years since the guidelines for victims of crime were introduced. In this particular jurisdiction, police had agreed to include the letters for victims in their case reports and the personnel of the prosecutor would subsequently mail the letters to the victims. Analysis of 102 case reports entering the office of the public prosecutor from local police units and in which victims were involved, revealed that a standard letter for the victim(s) was included in 35% of the cases.

This however does not necessarily imply that in the remaining 65% of the cases, the victims rights were ignored: the guidelines require that only those victims who have expressed an interest in information and/or restitution be sent a standard letter from the office of the public prosecutor. Unfortunately, it was usually impossible to derive from the reports whether the victims wished information or not: this occurred in only 6 cases. Of these 6 victims, 3 reports included a letter and 3 did not. In fact, in 73% of the cases which included a standard letter for the victim(s), there was no indication in the report that the victim desired information or restitution. The results suggest that victim notification is not yet operating optimally and many victims may still be missing out on their right to information regarding their case and the possibilities for restitution.

See for similar findings the results of the evaluation of an experimental victim notification program introduced in a middle-sized Dutch jurisdiction² (Groenhuijsen, 1988; Kalmthout and Walther, 1988).

Victims' requests

Of those victims who receive a letter from the public prosecutor, between 20% and 30% reply (Van Anandel, 1987; Van Hecke et al., 1990). Van Anandel inquired into why victims chose not to respond to the letter and what those who did respond thought of the answers they later received from the public prosecutor.

Van Anandel interviewed 20 victims who did not respond to the (standard) letter of the public prosecutor. Three main reasons are given for their failure to respond:

- The victim is not truly interested because his material losses are minimal or non-existent (full coverage by insurance) or he simply 'didn't get around to sending a reply'.
- The judicial procedure is unclear; he doesn't know what he can ask or expect of the public prosecutor.
- The victim is pessimistic regarding what he can expect from the public prosecutor.

The answers given by prosecutors to the questions that victims had asked in their letters, are mostly negative. Of the 20 victims in Van Anandel's study who received answers from the prosecution, not one received restitution or was returned the goods that had been stolen from him. Consequently, 13 of the 20 victims are dissatisfied with the answers that they received from the public prosecutor. Among their complaints are the long intervals between sending their response to the public prosecutor and subsequently receiving an answer to their questions (on the average 70 days), and although they were sent information, many felt that their specific questions were not answered.

The effect on victims

In another study carried out by Zeilstra and Van Anandel (1990), victims' responses to the standard letter are compared to those of victims who are 're-visited' by the police and a control group consisting of victims who receive neither a letter nor a visit.³ Re-visitation entails a second meeting with police, usually in the victim's home, after the victim has reported the crime and after the offender has been arrested. During these meetings, police will inform the victim of any developments in the case as well as provide the victim with information concerning crime prevention. The study included 234 victims of property offences and/or crimes against persons.⁴ The three groups were compared on a number of factors including feelings of vindictiveness, trust in and satisfaction with police and the justice department, coping with victimization, psychosomatic complaints, perceived safety and fear. The results provide insight into some of the short-term effects associated with the three treatments. Many of the

1 The study was carried out in a large industrial jurisdiction. The central city in this jurisdiction has a population of 576,232 inhabitants (Statistical yearbook, 1990).

2 This study took place in Breda, a jurisdiction in the southern part of the Netherlands. The city of Breda has a population of 121,362 inhabitants (Statistical yearbook, 1990).

3 The study took place in the cities of Alkmaar en Eindhoven: a middle and a large-sized city with populations of 88,571 and 190,736 respectively (Statistical yearbook, 1990).

4 The majority of the respondents are victims of (attempted) burglary (30%) or assault (29%). It should however be noted that the seriousness of the offences was restricted to medium-light offences. Serious offences such as (attempted) manslaughter were not included. Petty crimes such as bicycle theft and the destruction of property were only included if a minimum of Dfl. 500 in damages resulted from the offence.

comparisons show the expected trend namely: that re-visitation by police leads to more positive attitudes towards police and the justice department, and appears to have a more positive effect on the victims coping after his victimization than the standard letter which in turn, is better than doing nothing for the victim at all. Of particular interest is the finding that victims of burglary, a group which typically experiences fear after victimization, exhibit significantly more fear in reaction to the standard letter from the public prosecutor, than victims who receive no treatment. Burglary victims who are re-visited by police show significantly less fear than the burglary victims in the no-treatment group. The authors explain this finding referring to the extra information that police provide victims in the re-visitation program, such as precautions for prevention and safety.

In contrast to the positive reactions exhibited by burglary victims to re-visitation, victims who are related to their offenders (i.e. family members or former friends) appear to react negatively to re-visitation by police. This group of victims exhibit more fear and report more complaints than comparable victims who received a standard letter. These victims also judge conduct of police more negatively than victims who are not related to their offender. The authors suggest that victims may have certain expectations concerning what the police can do for them and in family disputes, the police fail to meet the expectations of the victim and prove to be powerless. The victim's attitude towards the police consequently worsens and their fear increases. The extra attention given to victims by police in the re-visitation program only exaggerates this effect.

In their conclusions, the authors warn that public prosecutors should exercise caution in sending a standard letter to burglary victims and suggest that for this group, re-visitation is preferable to the standard letter. When however, there is a relationship between the offender and the victim, re-visitation should be avoided.

The public prosecutor meeting with victims

The possibility for a victim to meet with the public prosecutor handling his case prior to the hearing has long existed within the Dutch criminal justice system. In this respect the guidelines have merely served to increase the general awareness regarding this possibility for victims and consequently increase its use. In general however, only the victims or survivors of serious violent and/or sexual crimes are given this opportunity. In the guidelines it is recognized that such a meeting may be beneficial to the victim and the prosecutor may use this opportunity to discuss his decision in the particular case with the victim.

In the earlier mentioned evaluation of a victim information system conducted by Van Hecke et al. (1990), a survey was conducted among the public prosecutors working in the particular jurisdiction in which they were asked about their meetings with victims. The prosecutors generally agreed that the purpose of the meetings was to give victims the opportunity to air their feelings about the case. A second purpose is to inform the victim of how he (the prosecutor) plans to handle the case. Many find the emotional confrontation with victims difficult. Some claim to be able to deal well with these confrontations while others dislike the position they are put in. Several of them complain that the particular victim correspondence system used in their office

has taken the decision to meet with a victim out of their hands: the standard letter sent to victims of serious aggressive or sexual offences automatically offers them a meeting with the prosecutor. When asked if the meetings with victims influence their judgement in a particular case, the responses are divided: some admit that meeting with the victim can have both a positive or negative effect on their subsequent decisions in the case while others deny that the meetings have any influence whatsoever.

The number of victims who meet with the prosecutor in the jurisdiction that was studied, is relatively low. In the first 15 months that the victim correspondence system was in operation, the average prosecutor had had 6 meetings with victims (Van Hecke et al., 1990).

Victim compensation and restitution

In order to stimulate compensation of the victim by the offender, a number of experiments have been and are presently being carried out. In accordance with the guidelines, which state that the settlement of damages should be actively stimulated at all stages in the judicial procedure, the experiments are conducted at various levels: police; prosecution; and lawyers.

Present possibilities for compensation and restitution

Beside the possibility to request compensation through the civil courts, provisions exist in the Netherlands for victims to claim damages from offenders within the criminal law. Presently, there are two possibilities within criminal law for victims to receive restitution by way of the criminal judge: firstly, the victim can file a civil suit for damages within the criminal trial; secondly the judge may impose restitution as a special condition with a (partially) suspended sentence. Acting as a civil party within the criminal trial is however subject to a number of limitations:

- A civil suit within the criminal trial cannot exceed the sum of Dfl. 1500 (for misdemeanours the limit is Dfl. 600).
- When damages exceed these maximum sums, remaining damages cannot be requested through civil court once the victim has acted as a civil party in the criminal trial.
- The value of the damage should be readily proven.
- The particular offence for which the compensation is requested, must be included in the summons.
- The victim requesting compensation in this manner must be present at the trial in order for the judge to grant it to him.
- Once granted compensation by the court, it is completely up to the victim to make sure that he gets his money.

The second option, namely imposing compensation of the victim as a special condition with a (partially) suspended sentence, is not restricted by these limitations, making it a more appealing option for victims. There is no limit on the amount of compensation that can be ordered and when the offender does not pay, he is threatened with the suspended sentence. Unlike a civil suit within a criminal trial however, victims cannot request that the public prosecutor demand such a sentence for the offender.

The third option: civil law allows victims to challenge offenders before the civil courts for any damages they may have suffered as a result of their victimization. However, civil procedures take a lot of time and money.

Besides the above possibilities for restitution via the courts,

there are some funds in the Netherlands providing state compensation for particular groups of victims. One such fund is 'The Damage Fund for Violent Crimes'. Again, there are a number of drawbacks related to this fund. To begin with, only victims of serious violent crimes with severe bodily injuries can file a claim and individuals who received injuries because they tried to intervene in a crime, are not entitled to compensation. A study under the Dutch population found that 60% believe the requirement of severe bodily injury to be too strict and 90% think the fund should be expanded to include those who are injured while trying to help (Cozijn, 1988). Perhaps the most important finding of this study is that although the fund has been in operation since 1976, the public is generally unaware of its existence (Cozijn, 1988). The intention of the introduction of the plans as outlined by the Committee Terwee is to enlarge the existing possibilities with reference to restitution for victims of crime. The most important proposals concerning the civil party are:

- Removal of the quantitative limits on the value of damages that can be obtained as a civil party within the criminal trial.
- Introducing qualitative restrictions on the nature of the damages that can be obtained within the criminal trial, in order to insure that the focus of the trial will remain on the criminal offence.
- Victims are no longer required to be present at the trial.
- Remaining damages which are not claimed in the criminal trial will be allowed to be pursued in the civil courts.

The Committee also suggests the introduction of restitution as a penal sanction. The proposed sanction will work much like a fine and will be subject to the same restrictions (i.e. cannot exceed the maximum fine available for the particular offence and cannot be less than five guilders). The public prosecutor is responsible for monitoring the payment of restitution and when the offender fails to pay, may apply incarceration. The plan has however received much resistance from public prosecutors who will have to monitor whether or not the offender has paid the damages to the victim. They view it as another addition to their already heavy workload and some protest that it places the prosecutor in the role of a collection agent (Van Hecke et al., 1990).

At first glance there appear to be several possibilities for victims to receive compensation and the guidelines have shone new light on their existence. In practice however, very few victims receive compensation from the offender. Research shows for example, that in only 7% of the cases (with victims) in which a criminal trial is held, compensation is appointed to the victim by way of a civil suit within the criminal trial or as a special condition with a (partially) suspended sentence. In the same study it was found that 7% of the victims received compensation from the offender or from the insurance, prior to the trial. Considering all of the possibilities for compensation, between 52% and 70%⁵ of the victims are left with material damages (Junger and Van Hecke, 1988). Most police forces and prosecutors, regard the victim as a person with emotional problems in the first place. His financial losses are usually overlooked, despite explicit instructions and intentions to do the contrary (Groenhuijsen, 1988). These findings suggest that although the guidelines have given police and public prosecutors well defined duties concerning victims, the position of the victim is still relatively weak.

Recent attempts to stimulate restitution have typically used experimental projects with financial compensation by offenders. Four of these projects are presented below.

The police and restitution

In the guidelines for police the most significant instructions regarding the compensation of damages are: police are required to ask the victim explicitly whether he wants to claim damages. Furthermore, police must inform the victim about the possibilities concerning the settlement of damages, to promote and - if appropriate - to mediate in the settlement (Staatscourant, 1987). Once again, the guidelines do not provide concrete instructions on how to fill in these duties. As a result, each police unit tends to interpret the guidelines in its own way. Consequently, the procedure followed and the extent to which compensation of the victim is achieved, can differ greatly between individual police units. Some forces pay little to no attention to restitution while others view it as an important part of victim assistance. The local execution of this task can differ on essential points.

State police

The previously mentioned study in the city of Alkmaar in which the re-visitation of victims by police was examined, also included the mediation of damages for victims (Zeilstra and Van Aniel, 1990). The experiment lasted ten months and four groups of the state police in the district of Alkmaar participated in it.

The procedure followed by police in reaching settlements between victims and offenders was as follows. Only offenders who have confessed their guilt to police can be approached regarding the payment of compensation to the victim. Severe recidivists are not included in the experiment and in questionable cases the public prosecutor should first be consulted. If restitution appears to be manageable (financially) and the offender is prepared to compensate the damages, the police approach the victim and inform him of their findings. If the victim agrees to restitution and he has demonstrable losses of at least Dfl. 500, police will attempt to reach a settlement between both parties. It should be mentioned that although police are engaging in a form of mediation, all contact occurs through the police. The victim and offender never meet.

The police aid in determining the amount of compensation the offender will pay the victim, if this will occur all at once or in instalments and the amount of the instalments. Within six months however, payment should be completed. Once both parties have voluntarily agreed on the settlement, police send both the victim and the offender a written confirmation of the agreement. Payments pass through the police: the offender deposits the money in a bank account belonging to the police and the police subsequently forward this money to the victim's account.

In total 42 cases were considered by the police for settlement of damages during the experimental period. In 4 cases the victim's losses were covered by insurance whereby he had no claim against the offender. Thus, 38 cases remained in which police tried to arrange the damages (90%). This resulted in 10 successful settlements between victim and offender (i.e. 26%

5 Victims in smaller jurisdictions receive compensation more often than victims in large (urban) jurisdictions.

of all cases where a settlement of damage is undertaken). Restitution was unsuccessful in 28 cases (74%). There are several reasons for failure to reach a settlement. The most important reason appears to be financial: in the majority of the cases (18) the offender had insufficient financial means to compensate the damage to the victim. Often this was because there was more than one victim involved so that the total amount that the offender had to pay was quite high (this applied to 17 cases). Sometimes the offender was prepared to compensate part of the damage but not the entire amount (to all victims). Partial compensation however, was not permitted within this experiment and these cases consequently led to an unsuccessful settlement. Other reasons for failure are: the offender later refused to pay damages (5 cases); the offender later denied the criminal act (3 cases); and the co-offenders refused to participate in a settlement (3 cases).⁶

Municipal police

In 1987 a second experiment with mediation by police was started. This project took place with the municipal police force of the city of Leiden.⁷ The duration of the experimental period was one year, after which the project was continued and is presently operating within the same police department's victim assistance project. The general idea behind the experiment was to provide victims with actual support through relieving them of any material losses resulting from the offence. At the same time, the offender would be confronted with the negative consequences of his act.

Like in the Alkmaar study, police fulfil an active mediating role while the victim and offender are never directly confronted with one and other. The types of cases eligible for mediation as well as the organisation of the project, differ however from the Alkmaar project. In Leiden only simple cases of theft, destruction of property and assault are included in the project whereas in Alkmaar more serious offences were considered for mediation. Furthermore only adult offenders could participate in the project. Also unlike Alkmaar, the Leiden project does not place a maximum or minimum value on the amount of damages which are eligible for negotiation and partial compensation is permitted provided the victim gives his consent.

Another important point on which the Leiden project differs from the Alkmaar project is the introduction of the police dismissal. At the time of the experiment in Alkmaar, the dismissal of a case by police was not yet recognized by law. Since then, police have been given the privilege to dismiss certain cases and although the project in Leiden took place prior to this law, it anticipated its introduction. Consequently, when the total damages are less than Dfl. 500, the offender is a first-offender and payment is successful, police have the authority to dismiss the case. This means that they do not forward the case to the office of the public prosecutor and instead, simply make a note of it. In similar cases with damages ranging between Dfl. 500 and Dfl. 1500, police can offer the offender a transaction. Transactions involve the paying of a sum to police whereby the case is again not sent to the prosecutor. The ability to offer offenders dismissal of the case is an important difference between the projects in Leiden and Alkmaar, giving police in Leiden a stronger

position in negotiating settlements with offenders. In accordance with the restrictions for dismissal and transactions, only first-offenders are included in the Leiden project. Again, this is an important difference with the Alkmaar project where somewhat more 'experienced' offenders were offered to participate in a settlement.

Finally, although the original plan in Leiden was that police would conduct all mediation, it soon became obvious that this task required too much work from police to be carried out beside their usual duties. This led to only a small number of cases in which restitution was attempted and the success of the experiment was threatened. To remedy the situation, a part-time position was created within the police unit. A new employee was recruited for 20 hours a week to carry out negotiations between victims and offenders and basically runs the project. Thus the organisation of this project differs significantly from that of project in Alkmaar that was mentioned earlier.

The results of the Leiden project show that a settlement of damages can be arranged in many cases. In 118 cases (with a known offender) the police tried to arrange compensation for the victim. This resulted in 72 successful settlements (i.e. 61% of all cases where compensation was attempted). Looking at the success rate for the three different types of offences included in the study, settlement was most successful in cases of theft (77%), followed by cases involving the destruction of property (58%) and cases involving assault (44%). Furthermore, cases with damages under Dfl. 500 were more successful than cases above Dfl. 500; 63% and 55% respectively.

Interviews with the project coordinator and police suggest that three factors influence the successful payment of compensation to victims by offenders:

- Timing: the sooner the offender is confronted with his criminal act and the sooner the value of the damage is known to the police, the better the chances for a successful settlement.
- Clarity: it is very important for the offender that the procedure and possible consequences of the settlement be clear to him.
- Assurance: restitution is more likely when it leads to lighter punishment for the offender. The possibility for police to dismiss a case upon payment of the damages to the victim, enlarges the likelihood that the offender will be motivated to agree to a settlement.

Victims' attitudes

A survey was conducted among the victims who participated in the project in Leiden. 50 victims were included in the survey which was conducted by telephone. Victims attitudes towards the criminal justice system, police, restitution and punishment were included in the survey.

Generally speaking, the reactions of the victims are positive. Approximately 90% of the victims are pleased with the way their first contact with police went. Receiving compensation does however, appear to influence victims' evaluation of their first contact with police: victims who actually received compensation from the offender are significantly more satisfied about their first police contact than victims who have

6 More than one reason was possible for the failure of a case.

7 Leiden is a small city located in the industrial part of the Netherlands. Its population is 107,893.

not received compensation (92% and 63% respectively). Receiving compensation also correlates with a higher evaluation of police behaviour in general. Victims who have received compensation gave a high police evaluation more often than victims who have not received compensation (48% versus 24%). Finally, victim compensation is related to judgements about the offenders punishment. Surprisingly, only 78% of the victims find that the offender has to be punished. Victims' views regarding the appropriate punishment of the offender depends on the received compensation. Victims who have received compensation from the offender, find significantly more often than victims who have not received compensation, that punishing the offender is not necessary, (88% and 68% respectively).

The public prosecutor and restitution

The above experiments with restitution took place at the level of the police. The ministerial guidelines state that public prosecutors should also actively consider compensation of the victim when handling a case. The possibility of the public prosecutor arranging restitution between victims and offenders is not new: prosecutors may for example dismiss a case on the condition that the offender pay the victim compensation as well as make use of the previously discussed options within the criminal trial.

At the present, one of the authors is involved in an experiment with restitution at the level of the public prosecutor.⁸ The experiment is still in operation and consequently we are as of yet unable to provide results. Because of the unique design of the project, we will however give a short description of the procedure followed. In this experiment a full-time 'mediator' has been employed by the prosecution. When the prosecutor (in practise this is usually a clerk) has a case which he thinks suitable for mediation, he hands it to the mediator. There are few restraints on the types of cases that can be included in the project: the offence may not be too serious and should fall under the general category of petty crime. The project is restricted to financial restitution and the reimbursement of material damages. Like the above experiments in restitution by police, the victims and offenders are not directly confronted with one another and all communication passes through the mediator. A report is made of each case, regardless of the outcome, and this is included in the case file. Hence, the public prosecutor handling the case is kept informed of whether settlement was attempted and what the outcome was.

Lawyers and restitution

In a second ongoing experiment⁹, cases in which the prosecutor has decided to try the case but for which a trial date must yet be set, are selected (at random) for mediation. Random selection implies that there are virtually no limits on the types of cases that can be included in the project. The project includes financial restitution as well as other

alternative forms of restitution and victims may claim both material and immaterial damages. The ideology behind this initiative is that a trial takes longer, is more expensive and less beneficial for both the offender and victim than mediation. During the experiment a temporary body has been created to carry out the organisational tasks, however the idea is that mediation is conducted by the lawyers of the involved parties. First the offenders and then the victims are approached and asked if they wish to attempt to reach a settlement. If either party disagrees, the unmarked file is returned to the office of the public prosecutor. If both parties are willing to negotiate a settlement, the case is sent to the lawyers.¹⁰ All negotiations are carried out by the lawyers and consequently direct confrontation between victims and offenders is avoided. If at this stage both parties fail to reach an agreement, the file is once again returned (unmarked) to the office of the public prosecutor. If however, an agreement is reached, the agreement is made binding and is set into a legal contract. At this point, the offender's case is automatically and unconditionally dismissed by the public prosecutor.

Summary and suggestions

The introduction of guidelines on the treatment of victims of crime by the ministry of justice in 1986 and 1987 aimed at improving the relatively poor situation for victims of crime. In these guidelines, specific duties for police and public prosecutors regarding the correct treatment of victims, are outlined. Further specifications regarding the optimal procedure or organisation to be followed in the application of the guidelines, are however not provided in the guidelines. Each organisation is free to interpret the guidelines into its existing structure as it sees fit. Hence, the extent to which and how the guidelines are realized, differs greatly between the various police units and offices of the public prosecutor. The organisation is further complicated by the fact that police and prosecutors are dependent on one another for a successful implementation of the guidelines. Police fulfil a bottle-neck function in the provision of services to victims. The victim notification programs illustrate the inter-dependence: police are expected to include information regarding the victim's wishes for notification and/or compensation in their reports. Failure by police to do so will often result in the exclusion of the victim from the notification program in the office of the public prosecutor.

Another issue related to the organisation of victim services is the level at which notification and restitution programs should be undertaken. The interdependence of the various levels of the criminal justice system complicates this issue. In this paper we presented experiments in restitution that take place at three different levels: police; the office of the public prosecutor; and lawyers. A fourth possibility is the criminal trial. Perhaps restitution should be attempted at any and all stages. In this case, failure at one level to reach a successful settlement may be rectified at a later stage. On the other hand, it may be considered improper to impose restitution on

8 The experiment takes place within the jurisdiction of Middelburg, a seaside area with a relatively sparse population and mainly tourist industry.

9 This experiment is being conducted by Van Hecke and Wemmers and takes place in the jurisdiction of Amsterdam.

10 Victims and offenders who do not have their own lawyers are supplied one free of charge. For the purpose of the experiment a list of lawyers associated with the project was put together. It is from this list that the victims and offenders are assigned their own lawyers.

suspected offenders who have not yet been given a fair trial. Building safeguards into the programs, such as voluntary participation by offenders, are necessary to insure the just treatment of offenders.

The successful implementation of the new victim services ultimately relies on initiatives by police and public prosecutors. These organisations exhibit some resistance to the changes as outlined in the guidelines. In particular, police and prosecutors are delegated additional duties in the guidelines. This increased workload forms the major complaint for police and prosecutors. The fact that restitution programs with a program coordinator lead not only to more cases in which restitution is attempted but also to more successful cases, suggests that extra manpower may be a necessary precondition for the successful implementation of the guidelines. The various studies presented here suggest that when restitution is left to the police or public prosecutor in general, the number and type of cases in which restitution is attempted will be limited. Regarding the victim notification programs however, the addition of a victim correspondence coordinator is apparently insufficient to insure the successful operation of the program.

The resistance of police and prosecutors to the guidelines is not surprising: the introduction of structural change into organisations is typically a difficult task and is commonly associated with resistance, fear and conflict (Chin and Benne, 1979). The extent to which the resistance by police and prosecutors to the guidelines is realistic or reactionary, is however difficult to assess. Nevertheless, police and public prosecutors play a crucial role with respect to the treatment of victims and the addition of new positions to these organisations may relieve some of the burden of this role but will not eliminate it. If the aims of the guidelines are to be fully realized, the resistance presently existing among police and public prosecutors to their new duties will have to be dealt with regardless of whether it is founded on a true incapacity of the criminal justice system or not.

Expanding the manpower in these organisations to compensate the increased workload involves additional costs. In Leiden for example, the salary of the (part-time) coordinator costs more than the sum of the amounts paid in restitution. This fact brings into question the profitability of victim services. On the other hand, restitution by police, where a police dismissal or transaction is applied, implies some relief in the workload of cases for the prosecution. This in itself involves a saving of time and hence money for the prosecution. Furthermore, successful payment of restitution by offenders can be considered with sentencing. In more serious cases, this may mean a reduced custodial sentence while in lighter cases, the successful payment of damages by the offender may lead to a dismissal. Victims who receive restitution often find this satisfactory punishment for the offender and do not believe that further punishment is necessary. When however, restitution is attempted in cases which otherwise would have been unconditionally dismissed, the costs for the criminal justice system increase. The fact that restitution is commonly employed in relatively minor offences with first-offenders and minimal damage, suggests that this may just be the case. However, this development can be unified with the recent Dutch policy to reduce the number of unconditional dismissals and increase the frequency of intervention (Committee Roethof, 1985). The extent to which

implementation of victim services will involve savings for the criminal justice system in the long run, is presently difficult to access. The possibility of increased costs for the system on the whole, may however be irrelevant with respect to the benefits for victims.

The variety between the various projects presently operating throughout the country result in two categories of effects for victims: those resulting from properly functioning programs and those resulting from programs that operate poorly. Unsuccessful implementation of the guidelines has repercussions for the victims whose rights are being denied. Victims who are wrongly excluded from the notification project, are unable to voice their wish for information regarding the status and outcome of the case, and are also unable to express the wish for restitution. The studies presented here suggest that this group forms up to 2/3 of all victims whose cases reach the desk of the public prosecutor. Furthermore, victims who are first properly treated by police and informed of the possibilities for notification and restitution may develop expectations that are subsequently disappointed. It is not surprising that this group of victims is found to be dissatisfied with the services provided by the prosecution. In this case one may wonder if it is not better to have never raised the expectations of the victim in the first place. This conclusion however, overlooks the positive results which the proper treatment of victims has been found to have. The studies presented here show that there is a definite interest among victims for both information and restitution: approximately 1/3 of the victims request notification regarding the status and outcome of their case and approximately 2/3 of the victims are left with material losses as a result of their victimization. Financial restitution is not only desirable for victims but also feasible, especially for property offences. Furthermore the restitution program appears to have a positive effect on the attitudes of victims towards the criminal justice system in general. Victims who receive restitution are more positive towards the criminal justice system than those who do not. Similar results are found with the notification programs however there it is commonly found that the answers given to victims by the public prosecution tend to be dissatisfying.

The present organisation of the victim service programs may however be too general. Different groups of victims may require different treatment. The negative side-effects of the standard letter used in the notification program for burglary victims is one example of this. More research regarding the effects of the programs on different types of victims is necessary. Otherwise attempts to help may backfire with certain types of victims. An optimal organisation should be responsive to the specific needs of different types of victims. The several studies presented, suggest that notification and restitution programs themselves, are both positive and realistic developments for victims of crime. However, there are several problems associated with the present organisation of these programs. Nevertheless, the findings indicate that these programs represent a worthwhile endeavour on the part of the justice department to improve the services it provides for victims. With further research into the organisation of these programs and their effects on both victims and offenders, the successful development of victim services in the Netherlands can be realized.

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