



Notorious complainants in Pro Justitia evaluation

Summary

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Summary

Cause

Pro Justitia evaluation is a pre-trial psychiatric evaluation commissioned by the judiciary, the Public Prosecution Office, or the defence's request. The consequences of a Pro Justitia evaluation can be significant for a defendant because that person, for example, if he (or she) is declared (partially) legally insane, can be imposed a TBS¹ measure. Because of these consequences, the evaluation must be conducted carefully. If a person under evaluation believes that the evaluation has not been carried out properly, he (or she) can file a complaint with various authorities.

The Netherlands Institute for Forensic Psychiatry (NIFP) and the Pieter Baan Centre (PBC)² are dealing with suspects who frequently initiate complaints procedures as a result of Pro Justitia evaluations.

The former director of the NIFP and the former head of Legal Affairs at the PBC and the portfolio holder Reporting at the NIFP wrote this on 21 June 2019.

According to them, several "complainants make very fanatic use of their legal options. They are outraged by the injustice done to them and have a strong conviction about it. This behaviour is often inherent to their problems." These 'complainants' would not accept the judgment made in the pro Justitia reports. Moreover, the authors say that such complaints procedures would cause the criminal process to "more or less" go wrong.

Asked about the opinion piece in a newspaper during the general consultation Implementation of the TBS measure on 25 July 2019, the Minister for Legal Protection has promised to inform the House of Representatives about the extent of the problem of notorious complainants and whether there is reason to examine the right of complaint critically. Commissioned by the External Scientific Policy Research Department of the Scientific Research and Documentation Centre (WODC), DSP-groep has studied the nature and scope of the complaints submitted by individuals following a Pro Justitia evaluation. This study took place from January 2021 to September 2021.

Goal and approach

This study looked at the complaining behaviour of adults under Pro Justitia evaluation in the context of criminal law, focusing on the number of complaints procedures from 2016 to the present. We distinguish three types of complainants:

¹ TBS is a Dutch measure for (partially) legally insane criminals. They receive specialized care, either in a specialized detention center or in freedom under strict conditions.

² The PBC is a detention centre in the Netherlands in which defendants accused of committing a serious crime are examined for possible mental disorders related to the crime.

- ③ Complainants who have started a one-off complaints procedure against one person.
- ③ Complainants who have started a complaints procedure against the same person several times at one or more authorities.
- ③ Complainants who have started a complaints procedure several times against several people at one or more authorities.

The study has the following three-fold problem statement (central research questions):

1. How often and through which procedures do defendants about whom a Pro Justitia report has been drawn up submit one or more complaints?
2. What are the consequences/costs of multiple complaints behaviour?
3. Are there differences between non-, single and multiple complainants and their complaints?

To answer the central research questions, we interviewed various stakeholders and performed a document analysis to draw up a formal framework. Because the various complaint-handling bodies lack registration data for complaints submitted due to a Pro Justitia evaluation, a survey was conducted among 423 Pro Justitia reporters. Of these, 164 responded. The survey results were then extrapolated based on data from the NIFP on the total number of Pro Justitia evaluations conducted in the past five years. This allowed us to estimate how often the entire population of Pro Justitia reporters has dealt with a complaints procedure in the past five years. In addition to the survey, we spoke with nine Pro Justitia reporters (six with experience with complaints, three without experience) to gain qualitative insight into the impact of complaints behaviour. We also analysed six NIFP complaint files and conducted case law research into disciplinary decisions from the past five years. Finally, various interviews took place with the following parties: representatives of NIFP, Healthcare Disciplinary Board, PBC, DJI, NRGD, the legal profession.

Before discussing the results of the study, it is important to point out that the study has some limitations:

- ③ Complaints-handling bodies do not keep records of the number and characteristics of complaint procedures submitted as a result of Pro Justitia evaluations. The costs associated with a complaints procedure could not be quantified either. This means that some sub-questions could not be answered.
- ③ In the study, we focused on complaints arising from Pro Justitia evaluations conducted in the context of a criminal case. However, Pro Justitia evaluations into family law cases are also carried out. Findings of family law cases are limited in the study.
- ③ The number of complaints procedures should be interpreted with some caution. One reason for this is that several respondents shared experiences with complaints procedures that took place more than five years ago, while the extrapolation is based on the past five years. Furthermore, it cannot be ruled out that mainly reporters who have experience with complaints procedures completed the survey. There is also the risk of overestimating the number of Pro Justitia evaluations conducted by reporters, which influences the extrapolation.

- ① At the start of the study, the aim was to analyse 40 complaints. Because the NIFP does not archive complaints systematically, ultimately, only six complaints could be analysed. Therefore, in addition to the written complaints, we conducted a case law study into the decisions of the Medical Disciplinary Court.

The right of complaint

The right of complaint for individuals who wish to submit a complaint about a Pro Justitia report is written in Chapter 9 of the General Administrative Law Act (Awb) and the Individual Health Care Professions Act (Wet BIG). Based on the General Administrative Law Act, an individual can submit a complaint about the functioning of (an employee of) an administrative body. The NIFP and the Judicial Institutions Service (DJI) – as administrative bodies – have an internal complaints procedure to follow up on such complaints. They may conclude that a complaint is (partially) justified. However, this has no binding consequences for the reporter but can improve the internal organisation. If the individual is not satisfied with the handling of the complaint by the administrative body, he can submit his complaint to the National Ombudsman. The National Ombudsman checks whether or not an administrative body to which the complaint relates has behaved appropriately in the matter. He can then make recommendations to the administrative body. The administrative body is then obliged to inform the complainant 'within a reasonable time' of how the recommendations will be followed up and implemented.

Suppose a defendant has a complaint about the quality of the individual actions of the psychiatrist or psychologist. In that case, he can also submit a complaint to the Healthcare Disciplinary Board. The Healthcare Disciplinary Board assesses whether the diagnosis made by the reporter follows logically from the report or whether there are (culpable) shortcomings in the conduct of the evaluation and the preparation of the report. Suppose a complaint is deemed to be justified, the Healthcare Disciplinary Board can, among other things, reprimand a reporter, warn or, in the worst case, cancel the BIG registration in the BIG register. In that case, someone can no longer perform his work as a psychologist or psychiatrist and, therefore, not as a Pro Justitia reporter. The complaint is dealt with by the regional Healthcare Disciplinary Board and on appeal by the central Healthcare Disciplinary Board.

A defendant can also report an individual reporter to the Board of the Netherlands Register of Judicial Experts (NRGD Board). Although the NRGD is in principle not a complaint-handling body, a report can lead to the Board of Judicial Experts initiating an investigation. When applying for re-registration, the psychologist or psychiatrist will be asked whether disciplinary decisions have been made and, if any, these will be included in the assessment of the application. After a notification or during an application assessment, the Board may decide that someone will lose their registration in the NRGD or will not be eligible for re-registration. Without registration, someone can no longer work as a reporter.

Various provisions have been included in the multiple complaints procedures and in the different laws to limit the possibilities for a person to complain repeatedly.

Body	Limits the possibilities of notorious complaining:	Clause:
National Ombudsman	Yes, with regard to successive complaining several times in succession to the same organisation/parallel complaining	Art. 9:23 Awb
NIFP	Yes, with regard to objection against a complaint to the same organisation/parallel complaining	Art. 4 paragraph e Complaints procedure NIFP
DJI	Yes, regarding successive complaining	Factsheet Complaints procedure DJI
Healthcare Disciplinary Board	Yes, related to appeal/successive complaining to other organisation	Brochure Healthcare Disciplinary Board

Findings: complaint behaviour in practice

Nature and size

In the past five years, an estimated 68 complaints have been filed (directed against a Pro Justitia reporter). 14 of these 68 complaints can be classified as multiple (with several authorities or directed against several persons). Compared to the total number of Pro Justitia evaluations in that period (22,570), this results in a complaint percentage of 0.3%. The chance of multiple complaints in the event of a complaint is negligibly small (0.06%).

In most cases, a complaint is submitted to the Healthcare Disciplinary Board or the relevant NIFP office. In several cases, the management or other branches of the NIFP are also involved. Sometimes other bodies are contacted as well, such as the Supervisory Committee, where someone has been investigated. However, based on the available data, we must conclude that such parallel complaints procedures are exceptional.

If a reporter receives a complaint, it is usually because the defendant believes that he has not been able to make sufficient/incorrect use of his right of inspection or correction. A reporter's biased attitude is also relatively often cited as a reason for a complaint. The reasons are similar for single and multiple complainants.

It is virtually impossible to make statements about what characterizes (multiple) complainants due to the limited number of complaint procedures. With some caution, a few respondents indicated that there might be a connection between the complaint sensitivity of cases and (a history of) stalking. A certain tenacity in the offender's attitude towards other authorities such as the police can also be a signal. A few interviewees do not rule out the possibility that there is a connection between the psychopathology of the person under evaluation - in particular with regard to a personality disorder - and the extent to which someone

complains, but this cannot be established with certainty based on the limited number of complaint procedures. Due to the little experience with multiple complainants, it is also difficult to say how multiple complainants differ from one-off complainants and whether there are differences.

Consequences of complaint procedures

The study only established the outcomes of complaints procedures handled by the NIFP and the Healthcare Disciplinary Board (this concerns the vast majority of complaints). In most cases, complaints are considered unfounded. In the past five years, if complaints are considered (partly) justified, it has only resulted in a reprimand or warning by the medical disciplinary committee. There has been no deletion in the BIG or NRGD register as far as is known. In the experience of the legal profession, complaint procedures that run at the Healthcare Disciplinary Board take longer than the duration of the criminal case. As a result, complaint procedures usually do not influence the processing time of the criminal case.

Although the number of (multiple) complaint procedures is minimal, the impact on reporters can be significant. They speak of feelings of fear, uncertainty and anger. Reporters indicate that they are concerned about the complaints procedure, especially if it concerns a disciplinary complaint. They find it difficult to estimate in which direction the Healthcare Disciplinary Board will decide. Due to worrying, a complaints procedure instinctively takes up a lot of time for reporters. The actual time they spend drafting defences and attending hearings is less than 10 hours for 39% of the reporters and between 11 and 50 hours for 36%. A small proportion (17%) had lost more than 50 hours, and the remaining 7% did not know.

The time investment for the NIFP, the VVAA - which provides support to reporters employed by the NIFP in the event of a disciplinary complaint - and the Healthcare Disciplinary Board are not registered and could therefore not be quantified.

Perceived chance

Among reporters who have not had to deal with a complaints procedure, we see that a quarter consider the chance they will have to deal with a complaint in the near future to be fair or high. Just like legal employees from the NIFP and PBC, they think that the complaints made to Healthcare Disciplinary Board are increasing. This cannot be substantiated based on figures from the Healthcare Disciplinary Board, and we also see a declining trend in the number of disciplinary complaints. With the vast majority of reporters who have no experience with a complaints procedure, we do see that the perceived chance of complaints influences their willingness (somewhat to very much) to work as a Pro Justitia reporter.

The reduced willingness among this group seems to be due to confusion about what a (disciplinary) complaints procedure entails, what the outcomes of complaints procedures are and what support reporters can expect from the NIFP. Especially among freelance reporters, there appears to be a lack of clarity about the support that the NIFP can offer.

Conclusion and discussion

An opinion piece in a Dutch newspaper (NRC) has led to MPs expressing doubts about the right to complain. The parliamentary questions led to the present study. The main conclusion is that the number of Pro Justitia evaluations leading to a complaints procedure is less than 1%. Notorious – or multiple - complaining behaviour is rare. This finding is at odds with the picture painted in the opinion piece. In addition, a lack of systematic registration with the NIFP and other complaints-handling organizations made it difficult to get a complete picture of how often complaints are made. The fact that complaints about Pro Justitia reports and reporters are not made as often as expected does not alter the fact that the impact on reporters can be high if there are complaints.

Relatively few complaints are, in fact, good news for reporters and the NIFP. The study shows that Pro Justitia reporters estimate the chance that a complaint will be filed against them much higher than is actually the case. The perception of the outcome of complaint handling is also much more negative than the facts justify. This misconception also seems to affect the willingness of reporters to continue their Pro Justitia work. We have not looked into the reasons for this incorrect image of the probability of complaint. In the study, several reporters expressed the need to be better informed by the NIFP about the real risk of a complaint and the outcome of complaint handling and disciplinary proceedings. Not only to be 'reassured' but also to be well informed about the current explanation (by the disciplinary board) of the applicable procedures and code of conduct. This would require the systematic registration of complaint procedures at the various complaint-handling bodies. Only then can a realistic picture be drawn up about the probability and consequences of a complaints procedure.

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DSP-groep is een onafhankelijk bureau voor onderzoek, advies en management, gevestigd aan de IJ-oevers in Amsterdam. Sinds de oprichting van het bureau in 1984 werken wij veelvuldig in opdracht van de overheid (ministeries, provincies en gemeenten), maar ook voor maatschappelijke organisaties op landelijk, regionaal of lokaal niveau. Het bureau bestaat uit 40 medewerkers en een groot aantal freelancers.

Dienstverlening

Onze inzet is vooral gericht op het ondersteunen van opdrachtgevers bij het aanpakken van complexe beleidsvraagstukken binnen de samenleving. We richten ons daarbij met name op de sociale, ruimtelijke of bestuurlijke kanten van zo'n vraagstuk. In dit kader kunnen we bijvoorbeeld een onderzoek doen, een registratie- of monitorsysteem ontwikkelen, een advies uitbrengen, een beleidsvisie voorbereiden, een plan toetsen of (tijdelijk) het management van een project of organisatie voeren.

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Meer weten?

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