



Sentence increase for VPT offences

Summary

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Summary

Research into sentence increase for VPT offences

Verbal violence, physical violence, intimidation and threats: aggression and violence against employees with public duties, such as police, ambulance personnel and counter staff at city halls, is a social theme that has received a lot of attention in the media and government policy for years. Such violence can have serious consequences for the victim and can undermine government authority.

Offences against employees with public duties are referred to as VPT offences. VPT (*Veilig Publieke Taak*) stands for Safe Public Task. A fundamental principle of VPT policy is that aggression and violence against employees with public duties should be punished severely. This policy is outlined in the Public Prosecution Service's (OM) Directives for Criminal Proceedings (*Aanwijzingen*) regarding particular offences. This states the basic principle that the sentence mentioned in the directive (demanded at the hearing or imposed through a punitive order) is increased by 200% in the case of a VPT victim. Although there is no official policy in place, the judiciary does have "sentencing guideline points" (*oriëntatiepunten*) that suggest that certain offences may result in a sentence that is 33–100% higher for VPT victims.

This study aims to provide insight into how prosecutors and judges determine sentence demands and sentences for VPT offences. It sheds light on the types (and modalities) of sentences, their severity, and the extent to which sentence increases are applied for VPT offences.

The study was commissioned by the Research and Data Centre (WODC) and conducted by DSP-groep in cooperation with De strafzaak.

Main conclusions

The study's conclusions are based on document research, more than 30 interviews with prosecutors and judges, case law research and an analysis of OM data.

Normative framework

The 200% sentencing increase directive for VPT offences was introduced as part of the Safe Public Order programme. This programme was initiated in 2006 by the Ministry of the Interior and Kingdom Relations and the Ministry of Justice. Several employers (organisations), as well as the police and judiciary, have committed to it. The idea behind this approach is that aggression and violence against employees with public duties must be firmly dealt with and prevented as much as possible, as it has a powerful undermining effect on the functioning of the government and the performance of government tasks. In addition to the Directives for Criminal Proceedings that include the 200% directive, other important aspects of the Public Prosecution

Service's VPT policy are the so-called Unambiguous National Agreements (*Eenduidige Landelijke Afspraken* (ELA)) regarding the investigation and prosecution of VPT offences.

The Sentencing Directives Framework for Sentencing Adults (*Aanwijzing kader voor strafvordering meerderjarigen*), part of the Prosecution Directives, prescribes which types of persons qualify as VPT-ers. When a VPT-er is involved, the starting point is to increase the sentence mentioned in the applicable sentencing directive by 200%. The public prosecutor's policy further stipulates that all relevant circumstances, including the suspect's personal circumstances, will be taken into account when determining the appropriate sentence, with customization serving as the foundation for the decision.

The fact that a 200% increase in sentences was eventually chosen has a political-administrative background. There is no substantive reason for this. The sentence increase aims at both retribution and prevention.

The National Consultation on Criminal Law (*Landelijk Overleg Vakinhoud Strafrecht* (LOVS) guideline for judges states that the court may apply a 33-100% sentencing increase when a victim has a public duty. The enumeration of victims with a public duty is less extensive than that in the Sentencing Directives Framework for Sentencing Adults but is (presumably) not meant to be exhaustive. The 33% at the lower end of the range is based on the statutory sentencing increases. The 100% is based on the sentencing increase the prosecution assumed when the guideline points were set.

The method in practice: public prosecutors

Typically, prosecutors clearly determine whether the victim was carrying out a public duty at the time of the offence. In doing so, they rely on the Framework Instructions on Criminal Procedure for Adults and - to a lesser extent - the internal OM list of VPT professions. In addition, public prosecutors always have room for customisation. Even if a victim cannot be classified as a VPT victim in the OM policy, they may consider a sentencing increase appropriate.

Prosecutors consider it important to arrive at an appropriate and meaningful sentence for suspects. In this regard, most prosecutors see the directive as an important starting point for establishing the sentence. They formulate an introductory sentence using the directives, including a sentence type and the severity of the sentence. It is then modified in accordance with other relevant considerations. These factors vary from case to case, but they include the nature and seriousness of the offence, the impact on the victim, any damage, the defendant's person, judicial documentation, and personal circumstances. The public prosecutor determines a sentence that fits the offence and the accused based on these combined factors.

Under the prosecutors' policy, the introductory sentence should be increased by 200% when it is a VPT offence. The vast majority of prosecutors interviewed apply some degree of sentence increase. However, prosecutors rarely apply a 200% increase.

Prosecutors consider any harm sustained while performing their public duty as an additional factor in sentencing, and they also notify the accused of this to send a signal to (potential) offenders: you should stay away from people with a public duty. However, the strict application of a 200% sentence increase in VPT cases is not desirable, according to many prosecutors, as it would lead to disproportionate sentences. Therefore, most prosecutors do not carry out mathematical calculations of sentences. It is the final weighing of relevant factors that determines what is an appropriate and meaningful sentence. As a result, it is not possible to indicate exactly how the VPT aspect affects the sentence.

The method of determining the sentence to be imposed by criminal order for VPT offences is broadly similar to that of determining the sentence for VPT offences. However, there are two important differences. The first point concerns the types and modalities of sentencing: there is much more choice with regard to punishment than in the case of a criminal order. The second point concerns the fact that, in the case of a criminal order, possible verdicts of a judge are taken into account and thus also the LOVS guidelines. Indeed, a basic assumption is that when a criminal order is issued, the defendant should not receive a higher sentence than if the judge had imposed the sentence. When a sentence is formulated at the hearing, less consideration is given to the sentences that judges tend to impose. As a result, a sentence in a criminal order is usually lower than a sentence demanded in court for a similar offence.

The method in practice: judges

Judges see aggression and violence against persons with public duties as important issues. They do not consider it relevant whether a person can be classified under one of the categories of professions listed in the LOVS guidelines. In principle, if a person has been the victim of a criminal offence during his or her public duty, this is considered a criminal aggravating circumstance.

Judges are free within legal limits to determine an appropriate sentence. Therefore, the judiciary does not have a sentencing policy. Judges are not obliged to apply the LOVS guidelines. In practice, the LOVS guidelines are consulted to varying degrees as a guiding starting point for determining a sentence. For example, there are judges who use the LOVS guidelines as a standard starting point for determining the type and severity of the sentence, but there are also judges who do not use the guidelines. In all cases, the weighting of all relevant factors ultimately determines the sentence type and severity. The nature and seriousness of the offence, the circumstances under which it was committed, and the personal circumstances of the accused are central to this. Judges almost always consider the VPT aspect; it is an aspect of the nature and seriousness of the offence. This may but does not necessarily lead to a sentence increase. If the VPT aspect has been reflected in the sentence severity or sentence type, this is reflected in the sentencing motivation. Judges do not usually determine a specific sentence increase rate.

When determining a sentence, the prosecutor's sentencing order is also considered. If judges see a reason to deviate from the sentencing order, they do so. This often results in a lower sentence than that demanded by the prosecutor.

Sentences ordered and imposed in VPT offences

The general picture that follows from the analysis of OM data is that in cases where it has been proven that the accused committed an offence against a VPT person, the sentencing is slightly heavier than when the same offence was committed against a non-VPT person. However, there are big differences between one offence and another. There is no consistent picture. In the analysis of the OM data, cases in which only a single offence was declared proven were selected to eliminate the effect of the multiple proofs. Even in this selection of single cases, no consistent difference in sentencing can be observed between VPT and non-VPT cases. Some offences are punished slightly heavier if they are VPT offences, while others are punished slightly lighter. There are several possible reasons for this.

A possible reason for a heavier sentence is that the offence is seriously blamed on the accused, especially if he or she acted deliberately and is a repeat offender (recidivism). A possible explanation for a lighter sentence is, for example, that the accused acted out of a palpable emotion (a mother threatens to lose a child and hits an ambulance worker). Another possible reason for a lighter sentence in VPT cases is that relatively less serious cases of certain offences also flow in when they involve a VPT offence - thus making a lighter sentence appropriate. This is because VPT cases are (in accordance with the Uniform National Agreements) less likely to be dismissed and, therefore, more often prosecuted and brought to court than comparable non-VPT cases.

The degree to which the VPT factor influences the prosecutor's sentence order, the criminal order's sentence, and the court's sentence cannot be measured from the prosecution data or the verdict analysis. After all, determining a sentence is not a sum of several separate aspects, but a weighted judgment of all relevant factors. Every case is unique. The analysis of OM data does not show that 200% increased sentences are imposed or ordered for VPT offences than for the same offences with a non-VPT victim.

The case-law study demonstrated that sentences are decided based on all the facts and circumstances deemed relevant, which can differ greatly from case to case and from defendant to defendant. This was also mentioned in the interviews. The case law research does not support the notion that crimes with a VPT component result in heavier sentences. A heavier sentence is often justified by the fact that the offender was found guilty of a previous, serious, non-VPT offence or by the existence of substantial court records. The case law review also shows that when VPT offences are tried by multiple sentencing chambers, in about half of the cases, the priority is not punishment but treatment of the convicted person. This can lead to different sentence types, lower sentences or larger probationary parts of sentences.

Discussion

The present study was set up to ascertain whether there is actually an increase in sentencing for VPT offences. The reality surrounding criminal procedure and sentencing turns out to be more complicated and nuanced than the questioning assumes. The following discussion points demonstrate this.

Political and social calls for heavier sentencing are not blindly followed by the Public Prosecution Service and the sitting magistrates

The public debate may have unfairly created the impression that when a victim belongs to the VPT target group, a sentence is determined and then tripled. The actual formation of a sentence is much more complex and nuanced. The study shows that determining a sentence is tailor-made for prosecutors and judges, even for VPT offences. While the seriousness of the offence is considered, taking into account the VPT aspect, this is only one of many potentially relevant sentencing factors. The sentences imposed in VPT cases tend to be slightly higher but not much higher than in other cases. In the political-administrative appeal, sounding that a clear signal should be sent to the offender and society that aggression and violence against public workers are not permissible and should be punished severely, this is only highlighted as one of many factors of sentencing.

Different types of cases require different types of (meaningful) sentences

The debate on aggression and violence against public duty employees is often about 'only' swearing or aggressive behaviour towards a policeman or train conductor. In practice, however, VPT offences are often committed in the context of non-VPT offences. Relevant here is that some of the perpetrators of VPT offences are not calculating antisocial persons but persons with mental health problems. This has implications for the types of sanctions imposed. In about half of the VPT cases studied in which a multiple sentencing chamber tried the case, creating a treatment framework for the convicted person was considered more important than punishing the offender.

Aggression and violence against VPT officers are strongly attributed to the accused

The picture is thus more nuanced than may have been initially expected. Nevertheless, relatively severe sentences are imposed on offenders who have committed a VPT offence. In doing so, both prosecutors and judges send the message that the accused are strongly blamed for having used aggression or violence against employees with public duties. The seriousness of such cases is emphasised by prosecutors and judges in sentencing motivations, even by those who follow or apply the directives and guidelines less strictly. Also, cases with a VPT offence are dismissed significantly less often than non-VPT cases. However, according to many respondents, the 200% sentence increase described in the directives is rarely applied and would lead to disproportionate sentences.

A 200% sentence increase creates expectations that are not met

Several statutory sentencing provisions allow for a one-third increase in the maximum sentence in cases involving a VPT victim. The prosecution's choice of sentence increases in VPT cases, and the associated sentence increase rate of 200% is not legally substantive but politically motivated. Although the majority of the public prosecutors and judges interviewed think a higher sentence for VPT offences is appropriate because it sends a signal to society and offenders, there is no support among them for a 200% sentence increase percentage. Among victims, the percentage creates high expectations that are not met. Incidentally, within the context of this study, there are no indications that a heavier sentence is a more meaningful punishment.

Directives, guidelines, equality in law and arbitrariness

There are differences among prosecutors regarding the value of the Directives for Criminal Proceedings. Different schools can even be distinguished among judges regarding the value and use of the guidelines. Not (strictly) following the directives and guidelines for customisation does not imply arbitrariness or legal inequality. On the contrary, considering all relevant factors can promote legal equality. Especially the more experienced judges and prosecutors seem to attach less value to the guidelines and directives. They rely more heavily on their own experience and sometimes look at case law in similar cases.

Risks in expanding VPT target group: concept deflation and loss of focus

The VPT professional group is defined and delineated in various documents and agreements: broadly in the Instructions for the Framework for Criminal Procedure for Adults and the landmarks, and more extensively in, among others, the internal list within the Public Prosecution Service. However, this list is extensive and has many professions. There are possible risks associated with adding professions against which violence will be taken seriously, such as concept deflation, loss of focus, and signal value. In practice, officers and judges seem to take this into account. For instance, violence against a police officer is usually considered more punishable than violence against a shop assistant. Incidentally, it is not decisive for prosecutors and judges whether an occupation is classified as a VPT occupation. Decisive is whether a criminal aggravating circumstance is seen, not if a profession is listed. Against this background, striving for a complete list of professions is less relevant.

In conclusion

The study shows that the way prosecutors and judges determine sentences for VPT offences is more nuanced and complex than some might expect. The fact that sentences for VPT offences are generally not 200% higher than for non-VPT offences is partly because 200% sentence increases can lead to disproportionate sentences. Prosecutors' discretion and judges' magisterial freedom are essential for tailoring meaningful sentences based on a weighted assessment of all relevant factors. This research allows for reflection on (the communication of) the 200% directive. The above discussion points provide possible input for further thought. Furthermore, there are no indications that heavier sentences (alone) can contribute to reducing aggression and violence against public duty employees. Such an approach should always consist of a mix of measures, of which prevention should be an important part.

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