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Slachtofferadvocatuur

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2018

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citation for published version (APA)

Elbers, N. A., Meijer, S., Becx, I. M., Schijns, A. J. J. G., & Akkermans, A. (2018). *Slachtofferadvocatuur: De rol van de advocatuur in de bijstand van slachtoffers van ernstige gewelds- en zedenmisdrijven*. NSCR. <https://www.wodc.nl/onderzoeksdatabase/2840-positie-van-de-slachtofferadvocatuur.aspx>

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Summary research report:

Title: Victim representation: The role of lawyers representing victims in severe crime and sexual offenses

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Summary

Victim representation has been increasingly developed in the context of criminal law. The role of the victim in court participation has changed during the last decade from a passive spectator to a participant whose rights have been increased. In that respect, the role of ‘victim lawyers’ has increased. In recent years, the Dutch government has provided resources for victim representation, firstly in the form of special state funding, enabling victims of serious crime and sexual offences access to a lawyer, regardless of income, without having to contribute financially. Secondly, in the form of development of a specialised education course for lawyers, about how to assist victims of serious crime and sexual offences. This report has investigated to what extent lawyers of victims of serious crime and sexual offenses contribute to the realization of victim rights. The research was commissioned by the Research and Documentation Centre (WODC).

The role of the legal profession has been examined in the context of five victim rights: (1) the right to general and case-related information, (2) the right to access the file, (3) the right to add documents to the file, (4) the right to submit a claim for damages and (5) the right to speak. The research methods were: a desk research on the legal framework; questionnaires completed by 148 victim lawyers: and 20 interviews with stakeholders (police, Victim Support the Netherlands, Public Prosecution Service, and judges). The findings are clustered per victim right:

Right to information. The interviewed participants (police, Victim Support the Netherlands, the Public Prosecution Service and judges) consider it their duty to provide the victim with information about (their part of) the criminal procedure. The bottlenecks that lawyers experience are that they are not always informed in time of the start, adjournment or progress of a hearing. The added value of the victim's lawyer with regard to the right to information is that the lawyer is involved throughout the process, so that s/he has an overview and can provide information and clarifications about what is going on at all stages. Unlike the police, Public Prosecution Service or judge, the lawyer is the person who exclusively serves the interests of the victim (his client).

Right to access the file. The legal practice is still exploring how to implement the right to access the file. Of all victims’ rights, lawyers experience most hold-ups around the right to access the file. Among public prosecutors, there is still a lot of discussion about when victims can access the file, how, under which conditions, and whether the complete or only certain parts of the file are provided. For example, the access to privacy-sensitive data of the suspect

(such as a psychiatric report) is still under discussion. The regulations are unambiguous in themselves, namely that the victim has the right to access information, but the practice is still looking for how the regulations can best be implemented. The added value of the legal profession currently is that victims with a lawyer are more likely to have access to the file.

Right to add documents to the file. Adding documents to the file does not seem to be very common in practice. Lawyers in general only experience only a few bottlenecks regarding exercising this right. One bottleneck that is mentioned is that the documents that are submitted do not always end up in the file. The added value of the legal profession is that lawyers, because of their helicopter view and due to their close contact with the victim, are able to assess whether evidence is missing in the criminal investigation. In their capacity as lawyers they can sometimes also acquire certain documents through a different route that can serve as proof.

Right to speak. The right to speak is not used very often in practice, in the sense that the victim does not often speak during the hearing. In contrast, written victim impact statements are often added to the file. There are not many bottlenecks around the right to speak, except that it is unclear at what time, how often and for how long the right to speak can be exercised. Lawyers see a modest role for themselves in realizing the right to speak. Interviewed lawyers mainly forewarn the victim in order to prevent the latter becoming abusive in court. Some interviewees indicate that Victim Support the Netherlands plays an important role in supporting victims in the emotional aspect of the right to speak (about the consequences of the crime), and that the legal profession has a role to play in the legal part (about the evidence and the sentencing). The legal practice is still looking for the best interpretation of when and how often the right to speak during the hearing can take place.

Right to claim compensation. Interviewed stakeholders indicate that victims frequently use the right to claim compensation in the criminal trial. A bottleneck that victim lawyers experience with regard to the right to compensation is that the Public Prosecution Service does not always distribute the compensation claim to all parties in time. Judges, on the other hand, think that lawyers do not submit the compensation claim on time. Victim lawyers state that judges and public prosecutors, in their experience, do not always have sufficient knowledge of the principles of civil liability and compensation law to be able to judge the claim in the best possible way. Lawyers and other interviewed professionals see an important task for the legal profession in assisting victims with regard to the right to compensation, especially when the claim is complicated, for example, in cases where the victim suffers from permanent disability. The legal profession has the expertise in calculating the compensation claim, or can hire the expertise to calculate it.

Traditional role and psychosocial role. In addition to the victim rights investigated above, the victim lawyer has two overarching qualities that are important in assisting victims in the criminal trial. Firstly, the traditional role of the lawyer. The core values of the lawyer – being the stakeholder only representing the victims’ interests (partiality) and having the possibility to enforce certain rights under procedural law (the process monopoly) - are an important added value. Secondly, victim lawyers also have added value in a psychosocial sense. The assistance of a victim lawyer can contribute to empowerment of the victim in the criminal trial (which possibly leads to better recovery).

Finally, it was investigated to what extent victim lawyers are enabled to carry out their duties. Three elements have been distinguished: referral, training, and remuneration.

Referral. Victim lawyers indicated that victims are usually referred to them in one of four ways: via Victim Support the Netherlands, family and friends, other lawyers, or via the internet. Victim Support the Netherlands refers to the website of the Legal Aid Council. Some of the victim lawyers say that Victim Support regularly refers to them; others say that Victim Support Netherlands refers too little to them. Victim lawyers believe that the police and the Public Prosecution Service could refer more. As a good practice, some refer to the referral via the victim of “Duty services” (in Dutch: piketdienst) that has been set up in three regions. The Duty service is a list of specialized victim lawyers from the region. The service is set up by victim lawyers, who make a timetable with lawyers at duty and forward it to the police. When a victim reports a serious crime or sex offence, the police can contact the lawyer at duty.

Education. Lawyers assisting victims of serious violent and sex offences who wish to get remuneration from the Legal Aid Council must be either affiliated to a specific professional association for personal injury lawyers or have followed the basic or specialised training to represent victim in criminal cases. The basic course is a 3 or 4 days course addressing the basic principles of personal injury law and criminal law. The specialisation training is more intensive (17 meeting x 3 hours) than the basic training and also more extensive, with more room to exchange knowledge, ideas and experiences among participants. Lawyers who participated in the survey indicated that they were satisfied with the basic training, but also indicated that further specialization is required for assistance with larger and heavier cases. The specialization course could not be evaluated, among others because since 2015 (which is the year the specialisation course was established) till now (2018), only 30 lawyers have participated in this specialization training.

Remuneration. Almost all victim lawyers in the survey indicated that they worked on the basis of the Legal Aid Council remuneration. This remuneration is an overall fee covering 11 hours. A few lawyers work on the basis of the hourly rate of legal expenses insurance. Both in the questionnaire and in the interviews, it was mentioned that the remuneration of the Legal Aid Council is insufficient in relation to the required work. As a result, some lawyers choose not to attend all trial sessions, such as pro-forma hearings and other pre-trial sessions - if they are spread over several days. Further research is desirable to determine whether this has an impact on the chances that a claim for damages is (entirely) awarded. It is also important to carry out follow-up research into the experiences of victims with regard to victim lawyers.