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Protecting fundamental freedoms

A closer look at protective measures for victims based on the EU directive and the European Convention on Human Rights (ECHR)

Robin Fontijne (strategic policy advisor)
& Eva Fechner (policy advisor)

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Contents

1. Goals of protective measures

Preventing repeated victimization

- The same person becomes the victim of a similar criminal offence (by the same offender) after the primary victimisation.
- Main factors causing repeated victimization:

Financial crimes	Violent crimes	Sex offences and domestic violence
Living in a ‘criminal hotspot’. Social and demographic factors: ex. younger people who live alone are more likely to experience repeated victimisation….	Previous victimisation, income, drug use, violent behavior….	Frequency of the previous victimisation, drug use, the perception of being safe, **self-blaming**, …

L. van Reemst, T. F. C. Fischer & J. D. M. van Dongen (2013). Risicofactoren voor herhaald slachtofferschap. Een literatuurscan

Preventing secondary victimisation

- Aggravation of the victim's initial suffering or harm (caused by the legal process)
- Examples of causes of secondary victimization:
  - Victim blaming
  - Unfair treatment
  - Lack of services/information
  - Lack of effectuation of victims' rights
- Types and consequences of secondary victimization:
  - Aggravation of the initial trauma that is caused by the primary victimization;
  - Negative effects on the trust of the victim;
  - Obstruction of the recovery.

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2. EU Directive 2012/29

Establishing minimum standards on the rights, support and protection of victims of crime

Case study nr. 1: Anna and Tim

Prevention of repeated victimization

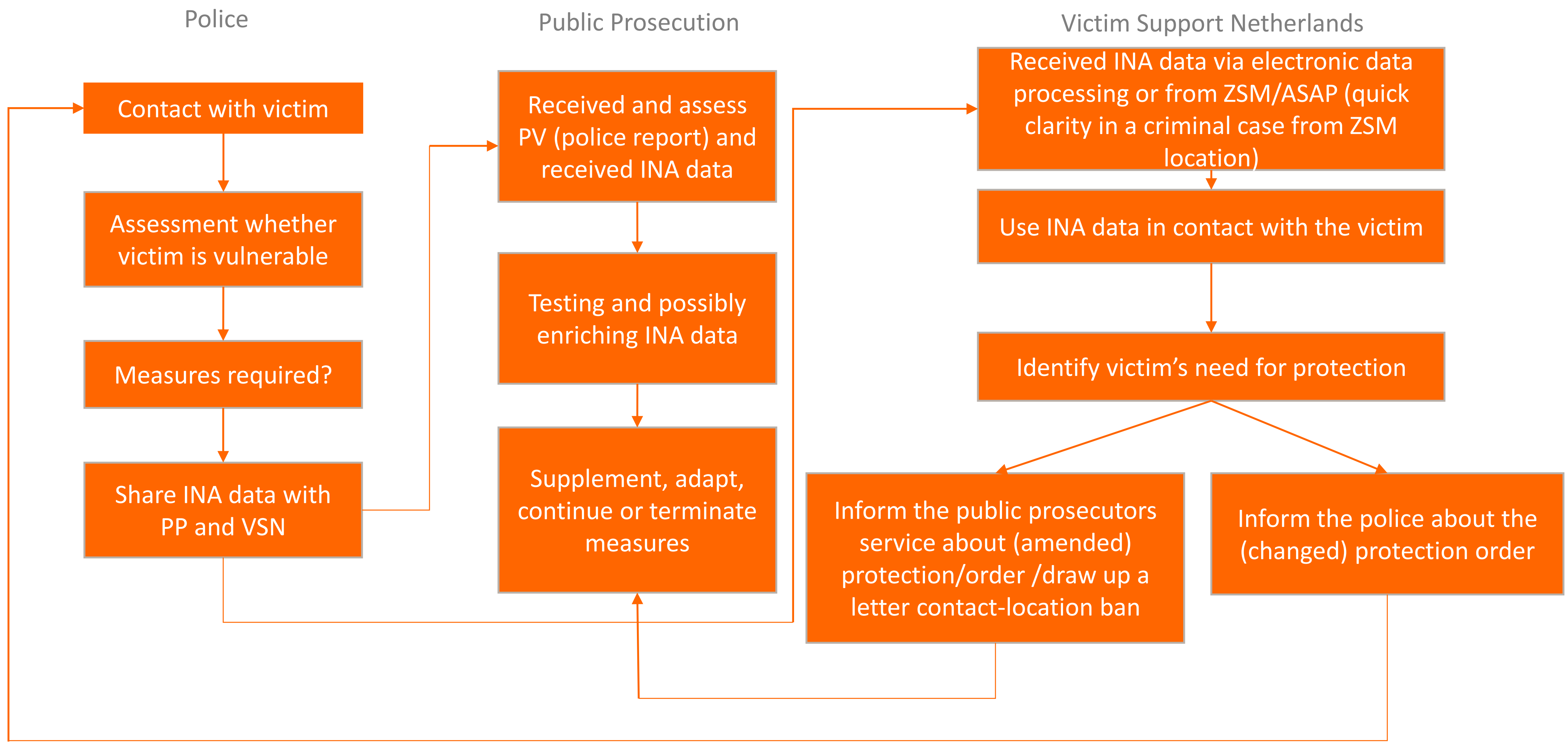
Anna and Tim

- Their relationship ended because of Tim’s possessive behavior.
- Anna moves out with their son.
- Tim sends Anna multiple text messages, begging her to rekindle their relationship.
- Tim threatens to hurt Anna and their son via text message.
- One evening, Anna saw Tim near her home.
- The next morning, Anna’s windshield has been damaged.
- Anna relocates to a different city and decides to make a formal complaint against Tim.

The Dutch ‘ZSM’ system

- Collaboration between chain partners to ensure a diligent, prompt and tailored decision. VSN-paralegals are present.
- Detained and non-detained suspects.
- Possible decisions:
  - Subpoena
  - The case is handled by the public prosecutor (if necessary with a session at the public prosecution’s office)
  - Transaction
  - The case is dismissed
  - Extrajudicial: Halt / mediation
  - Session with the examining magistrate
  - Decision is postponed (ex. because more evidence is needed)
- *At the moment it is unclear whether Tim is being prosecuted.*

Chain Work Process Assess & Protect



Article 22: Individual needs assessment

A timely and individual assessment to identify specific protection needs and to determine whether and to what extent the victim would benefit from special measures as provided in articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

The individual needs assessment shall take into account:

1. The personal characteristics of the victim;
2. The type or nature of the crime;
3. The circumstances of the crime.

Particular attention should be paid to victims:

1. Who have suffered considerable harm due to the severity of the crime,
2. Who have suffered a crime committed with a bias/discriminatory motive,
3. Whose relationship to and dependence on the offender make them particularly vulnerable.
4. Victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities

Screening Assessment for Stalking and Harassment (SASH)

- Goal: to prioritize in case of stalking.
- The higher the SASH-score, the more protective measures are needed.
- Instructions: Y = yes, N = no, U = unknown.

1. Seeking proximity Has the suspect sought physical proximity?	Y/N/U
2. Threats, intimidation, aggression Does the suspect threaten the victim/their family or does the suspect act in an intimidating or aggressive way towards the victim/their family?	Y/N/U
3. Unauthorized entry Has the suspect entered the home of the victim without authorization?	Y/N/U
4. Property damage/theft Has the suspect stolen or damaged the victim's property?	Y/N/U
5. Breaching legal boundaries Has the suspect ignored a police warning or breached legal orders regarding stalking (ex. Restraining order)?	Y/N/U
6. Escalation Does the stalking or nuisance become worse over time?	Y/N/U
7. Last resort thinking* Has the suspect reached a point where they have nothing to lose? Ex.: "if I can't have her, no one can have her"	Y/N/U

* Last resort thinking is seen as a weighty factor.

8. Unavoidable contact Does the victim have to maintain contact with the suspect because of the situation? Ex.: the victim and suspect have children together, work together or live in the same neighborhoud.	Y/N/U
9. Previous stalking/harassment Has the suspect previously stalked or harassed someone (irrespective of whether the police was involved at that time)?	Y/N/U
10. Previous violence Does the suspect have a history of physical (and/or sexual) violence? Towards this victim or others, before or during the current stalking?	Y/N/U
11. Mental health problems Does the suspect have mental health problems (ex.: history of mental health problems, indications that the suspect might be suicidal, bizarre behaviour)?	Y/N/U
12. Problematic substance use Does the suspect have issues that are caused by substance abuse (ex.: aggression, issues at work).	Y/N/U
13. Significant loss Has the suspect suffered a significant loss which causes stress (Ex.: losing a job, home or loved one)?	Y/N/U

Has there been a sexual relationship between the victim and suspect? If YES: answer questions 14-16 and assess the risk based on questions 1-16. If NO: do not answer questions 14-16 and assess the risk based on questions 1-13.	Y/N/U
14. Victim fear* Is the victim afraid that their (ex-)partner might seriously hurt them or kill them?	Y/N/U
15. Possession/jealousy Is the (ex-)partner extremely possessive or jealous regarding the victim?	Y/N/U
16. Disputes over children/property Are there currently (legal) issues or procedures regarding the guardianship over the children or property?	Y/N/U

* Victim fear is seen as a weighty factor.

Level of concern

Low	Mediocre	High
• 0-2 factors are present; and • None of the factors with a * are present.	• More factors are present; and • None of the factors with a * are present.	• Many factors are present; or • One or more of the factors with a * are present.
Standard procedure: The stalking will end without interventions/with minor interventions (ex.: conversation with suspect)	Prioritize the case: Plan of approach and multiple interventions (incl. arresting the suspect).	The case necessitates an urgent and thorough procedure.

Gut feeling:

Regardless of the outcome of the SASH, do not ignore your gut feeling.

If you think this case contains a high risk based on your intuition, then at least treat it as a case of mediocre concern.

Extensive alleged conduct:

If the victim indicates that there is extensive stalking (ex.: multiple cameras, 24/7 surveillance or conspiracies by groups of people, this could be an indication of a psychiatric illness.

Assess the case based on the reality of the nuisance and refer the victim to mental healthcare if necessary

Article 18: Right to protection

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from **secondary and repeat victimisation**, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

See also art. 52 in the Preamble:

Measures should be available to protect the safety and dignity of victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, such as interim injunctions or protection or restraining orders.

Protective measures during the investigation (1)

Regarding privacy:

1. Not mentioning any irrelevant personal information in the complaint.
2. Filing a complaint using a different address.
3. Filing a complaint anonymously.
4. The employer files the complaint for the victim.

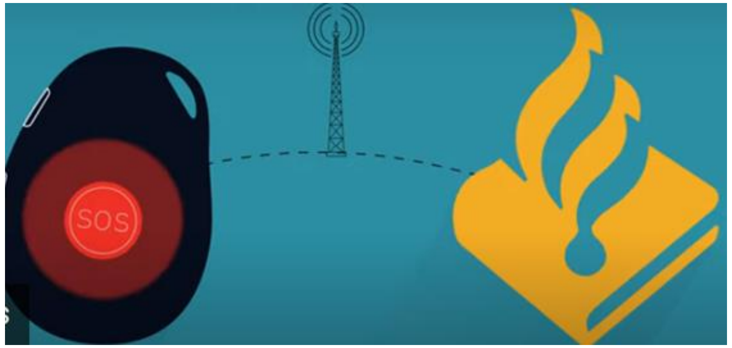
Personal referral:

1. Personal referral to the police/public prosecution/VSN.
2. Referral to Safe At Home/Youth Services.
3. Support by a family detective.
4. Special work instructions in case of domestic violence, stalking, youth, sexting and honour-related violence.
5. Mediation.

Protective measures during the investigation (2)

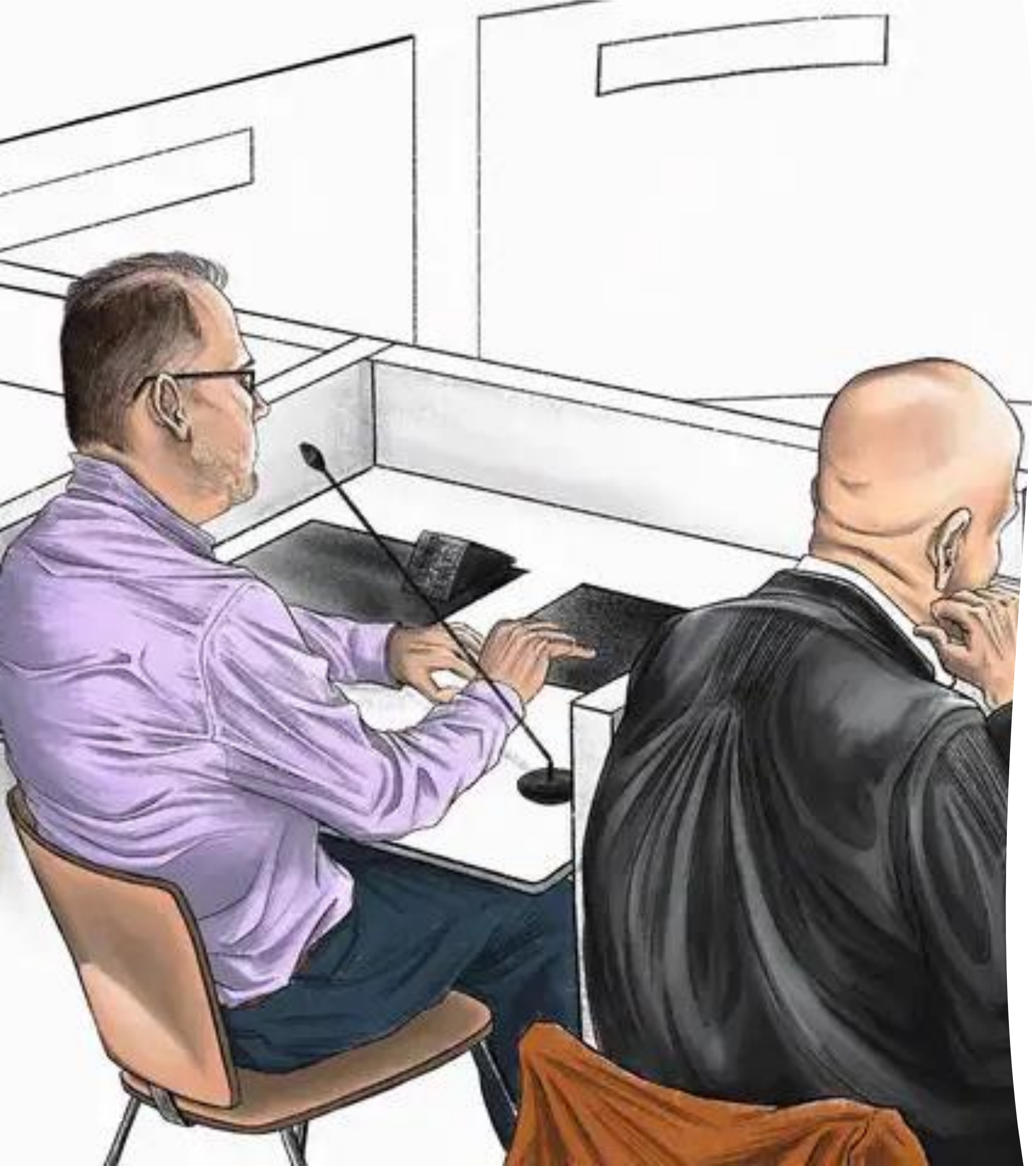
Regarding physical safety:

1. Agreement on location: Agreements between the victim and the police, which can be directly invoked when the victim calls the emergy number.
2. Restraining order: will be discussed more broadly later.
3. Crisis shelter: shelter on a specific/secret location.
4. Personal security: of the victim and/or their home.
5. AWARE-button: Portable alarmsystem with which victims of stalking/domestic abuse can reach the police.



Case study nr. 2: sexual abuse of minors in Alem

Prevention of secondary victimisation



Case facts:

- At least 24 victims in total, mostly 3-12 years old.
- Sexual abuse of 8 victims.
- Manufacturing child pornography.
- Most victims did not know they were victims until the police contacted them.
- The suspect is being prosecuted.

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See also art. 52 in the Preamble:

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Protective measures during the investigation (1)

1. Interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority (art. 20)
2. The number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation (art. 20)
3. Victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary (art. 20)
4. Medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings (art. 20)

Protective measures during the investigation (2)

1. Interviews with the victim in premises designed or adapted for that purpose (art. 23)
2. Interviews with the victim by or through professionals trained for that purpose (art. 23)
3. All interviews with the victim by the same persons unless this is contrary to the good administration of justice (art. 23)
4. All interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced (art. 23)
5. Measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence (art. 23)

Kleine getuigen en slachtoffers: zo gaat het eraan toe in verhoorkamers voor kinderen | Eva Jinek

Protective measures during the trial/court hearing

1. Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact (art. 19)
2. Member States shall ensure that new court premises have separate waiting areas for victims (art. 19)
3. Measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology (art. 23)
4. Measures to ensure that the victim may be heard in the courtroom without being present (art. 23)

[Zittingen in coronatijd: water bij de rechtsstatelijke wijn - Het Advocatenblad]

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Research

Does the current Dutch legal system suffice to prevent confrontations between victims and offenders?

Does the current Dutch legal system suffice to prevent confrontations between victims and offenders?

Underlying problem: victims are confronted with their offenders in their home environment after the prison sentence or detention in a psychiatric facility.

Long-term supervision Act (2018): unlimited supervision with respect to sex-offenders and violent offenders after the prison sentence or detention in a psychiatric facility.

→ For example: restraining orders, alcohol prohibition,…

Research questions:

1. Which legal measures currently exist to prevent confrontations between victims and offenders?
2. To what extent and how are these measures used in practice?
3. Does the current legal system suffice to prevent confrontations between victims and offenders?

Measures during the pre-trial investigation

<table>
<tr><th></th><th>Investigation</th><th>Prosecution</th></tr>
<tr><td>Public prosecution</td><td colspan="2">The behavioral instruction by the public prosecutor (art. 509hh CDCP)
- Max. 90 days.
- Can only be prolonged if the suspect is being prosecuted (max. 1 year in total).
- Possible in case of suspicion of crimes which cause serious disturbance of the public order and fear of recurrence, fear of burdensome behavior towards others or fear of recurrence leading to danger to goods.</td></tr>
<tr><td></td><td></td><td>Penal order (art. 257a CDCP)
- Max. 1 year.
- Possible in case of crimes that can be punished with a prison sentence of <6 years.</td></tr>
<tr><td></td><td></td><td>Conditional dismissal of prosecution (art. 167 CDCP)
- Max. 1 year.
- Possible when prosecution is dismissed based on grounds of common interest.</td></tr>
<tr><td>Judge</td><td>Conditional dismissal of the pre-trial detention (art. 80 CDCP)
- Until the verdict.</td><td></td></tr>
</table>

Other	**Prohibition to enter the home** - When the presence of the suspect seriously endangers the other inhabitants. - Max. 10 days + prolongation to max. 4 weeks. - The mayor/adjunct-public prosecutor decides
	Restraining order via civil law - In case of an unlawful act (not necessarely a crime). - Mandatory legal representation + court fees. - No legal maximum duration. - The civil judge decides.

Measures at the time of conviction

Judge	**Conditional (prison) sentence (art. 14 DCC)** - Max. 3 years (in case of fear of recidivism of violent or sex offences: max. 10 years). - Possible in case of conviction of a prison sentence of max. 2 years, fine or community service or detention.
	Measure restricting the freedom of movement (art. 38v DCC) - Max. 5 years (incl. duration of other sentences)
	Psychiatric treatment with behavioral measures (art. 38 DCC) - Possible in case a crime that can be punished with a prison sentence of 4+ years, or other specified crimes. - Duration of 2 years + prolongation until the max. of 9 years is reached.
	Conditional detention for systematic offenders (art. 38p DCC) - Possible in case of a crime for which pre-trial detention is allowed and the offender has been convicted 3+ times in the last 5 years. - Max. 3 years + 3 years prolongation.

Measures during the execution phase (1)

<table>
<tr><td>Public prosecution</td><td>Conditional release from prison (art. 6:2:11 CDCP)
- Possible in case of a conviction of a prison sentence of 1+ year
- Max. 2 years + max. 2 years prolongation. In case of sex- or violent offender: unlimited prolongation.</td></tr>
<tr><td rowspan="2">Judge</td><td>Conditional release from a psychiatric institution (art. 6:6:10 CDCP)
- When the risk of recidivism is suffiently reduced.
- Unlimited prolongation of 1 or 2 years.</td></tr>
<tr><td>Measure restricting the movement and influencing the behavior (art. 38z DCC)
- Possible when the offender is convicted of a prison sentence/detention in a psychiatric hospital.
- Decision about the execution: at the end of the conditional release from prison/psychiatric institution.
- Max. 2-5 years + unlimited prolongation.</td></tr>
</table>

Measures during the execution phase (2)

Other	**Conditional pardon** - Possible when new facts become known after the conviction, based on which the judge would have not convicted the offender or when the sentence does not serve any purpose anymore. - Max. 2 years. - The Minister and King decide.
	Penitentiary Programme - After a conviction of a prison sentence of max. 1 year.
	Conditional leave from prison/psychiatric institution - Duration depends on the type of leave (re-integration/personal circumstances/…) - The head of the prison or psychiatric institution decides.

Restraining orders during the execution phase: application in practice

- Restraining orders are more frequently imposed during the conditional release from prison than during the conditional release from a psychiatric institution (18,4% vs. 9%).
- Average duration of the restraining orders:
  - Conditional release from prison: 1,83 years
  - Conditional release from a psychiatric institution: 1,64 years
  - Measure restricting freedom of movement: 3,69 years
  - Restraining order via civil law: 1,75 years.
- Restraining orders during the conditional release from a psychiatric institution often regard non-specified areas, such as playgrounds --> problematic for supervision!
- Restraining orders during the conditional release from a psychiatric hospital are often meant to protect potential new victims instead of the original victims.
- Not much information about the wishes of victims.
- Restraining orders are not often violated.

Main findings and bottlenecks

1. The importance of procedural justice.
2. Area bans cannot be supervised without electronic monitoring.
3. Leave from prison/psychiatric institution vs. Conditional release: different interests.
4. (Almost) no legal representation during the execution phase.
5. Obstacles in the information from the probation services to the police.
6. Violation of restraining orders is not always a criminal offence in itself.
7. Victims are not always informed/consulted regarding changes in restraining orders.
8. **In practice: the current Dutch law does not suffice to prevent confrontations between victims and offenders after the prison sentence/detention in a psychiatric institution.**

Conclusion: Dutch law = insufficient to prevent confrontations between victims and offenders

Because restraining orders during the execution phase aim at gradual reintegration…

- ➢ The criteria for prolongation of restraining orders are linked to the risk of recidivism or seriously burdensome behavior towards the victim.
- ➢ If there is no such risk, there is no legal base for prolongation.

Discussion

A clean slate for the offender vs. the fear and wellbeing of the victim?

Lifelong prohibition to live in a certain area?

- ✓ Belgium: sex offenders with victims who are minors: prohibition to live in a certain area for 1 – 20 years.

Protection of privacy

Article 21 of the Directive

Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members.

Consequence:
An amendment to the Expansion of victims' rights Act was adopted, obliging professionals to refrain from mentioning irrelevant personal information in the case file.

Protection of privacy: measures

1. Anonymizing the personal data of the victim in all documents that are added to the case file.
2. Filing a complaint using a different address.
3. The employer files the complaint for the victim.
4. Filing a complaint anonymously.
5. Participating in the court hearing via a videoconference (art. 23).
6. Shielding the victim in the courtroom (art. 19).
7. Requesting the court to not mention the name of the victim during the court hearing (paragraph 54 preamble).
8. Measures allowing a hearing to take place without the presence of the public (art. 23):

Mraovic v. Croatia (ECtHR, 2020): *In criminal proceedings concerning such a serious and intimate crime as rape, in line with the applicable international and European Union standards, the exclusion of the public from part or all of the proceedings might be necessary for the protection of rape victims' private life, in particular their identity, personal integrity and dignity. This might be necessary not only to protect the victims' privacy, but to protect them from secondary trauma and/or re-victimisation.*

3. European Convention on Human Rights (ECHR): Positive obligations


Rome,
November 4th 1950
SARR

EU Directive and ECHR → National law

National law cannot deviate from the applicable international law (art. 26 and 27 of the Vienna Convention on the Law of Treaties 1969).

Effect of international law in national legal systems:

Monism:

- International law and national law are seen as 1 legal system. International law can be directly applied by national judges and can be directly invoked by citizens.
- Examples: The Netherlands (art. 93 and 94 Dutch Constitution), Belgium, France.

Dualism:

- International law and national law are seen as separate legal systems. International law must be transposed into national law to be valid.
- Examples: Denmark, Norway.

Exception for EU law:

- Van Gend en Loos v. Nederlandse Administratie der Belastingen (1963) → vertical direct effect.
- Flaminio Costa v. ENEL (1964) → supremacy.

Relevant ECHR-articles

Article 2 ECHR: the right to life

- Incl. situations in which the life of the victim is at risk.
- Examples: attempted homocide, threatening while attempting to open the victim's door.

Article 3 ECHR: the prohibition of torture

- Incl. abuse, as long as a minimum level of severity is reached.
- Examples: rape, serious violent crimes, abuse resulting in serious physical injuries.

Article 4: the prohibition of slavery and forced labour

- Incl. human trafficking.

Article 8 ECHR: the right to respect for private and family life

- Incl. stalking and other breaches of the right to privacy.
- Can be seen in combination with article 3.

Negative and positive obligations

Negative obligations:

An obligation to refrain from doing someting.

Positive obligations:

An obligation to actively do something.

Example:

Article 3 ECHR: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

- **Negative obligation**: member states should not subject people to torture or inhuman or degrading treatment or punishment.
- **Positive obligation**: member states should take steps to prevent torture and inhuman or degrading treatment or punishment.

3 types of positive obligations

1. The obligation to establish and apply in practice an **adequate legal framework** affording protection against ill-treatment by private individuals;
2. The obligation to take the **reasonable measures** that might have been expected in order **to avert a real and immediate risk of ill-treatment** of which the authorities knew or ought to have known, and
3. The obligation **to conduct an effective investigation** when an arguable claim of ill-treatment has been raised.

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Europe's top human rights court rules against Russia in landmark domestic violence case

Russia ‘unwilling to recognise the seriousness and scale of the problem of domestic violence’, court finds

Europe's top human rights court rules against Russia in landmark domestic violence case | The Independent | The Independent

Volodina v. Russia (ECtHR July 9th 2019) (1)

May 2015: Volodina and Mr. S. separate, Volodina moves out. Mr. S. threatens to kill Volodina and her son and damages Volodina's windscreen.

January 2016:

- Volodina lodges a complaint regarding the windscreen. The police declines to institute criminal proceedings, because Volodina had repaired the windscreen. Volodina relocates to a different city and searches for a new job online.
- Volodina is abducted by 'a human resources manager' a.k.a. Mr. S. and Mr. S. physically abuses Volodina. Volodina calls the police to report the abuse, but the police declines to institute proceedings due to the lack of a written complaint.

March 2016: Volodina withdraws her previous complaints and the police makes a final decision not to investigate, holding that no crime had been committed.

May 2016: Mr. S. physically abuses and threatens Volodina. Volodina reports the abuse and the police records her injuries. The abuse took place in a different region (Samara), so the police forwards the complaint to that region.

Volodina v. Russia (ECtHR July 9th 2019) (2)

July 2016: Volodina flees to Moscow. Mr. S. goes to Moscow, threatens and attacks her. Volodina logded a criminal complaint against Mr. S.

August 2016:

- The Samara police orders Volodina to undergo a medical assessment, which she refuses to do. The Samara police declines to institute proceedings (the verbal treats were not specific enough and a single punch in the face was not prosecutable).
- Mr. S. texts Volodina that he damaged the braking system of her car. The police confirms this. The Moscow police declines to institute proceedings because Volodina and Mr. S. knew each other, had lived together before and had maintained a common household", and because Volodina had not submitted an independent assessment of the damage caused to her car.

September 2016: Volodina lodged a complaint seeking a review of the decision regarding the braking system of the car. She stresses that the police did not investigate the text messages in which S. showed the intention of killing her by damaging the brakes of her car. The police declines to institute proceedings (Mr. S.' actions did not constitute a criminal offence).

Volodina v. Russia (ECtHR July 9th 2019) (3)

September 2016: Volodina finds a GPS tracking device that Mr. S. put in the lining of her bag. Volodina reports this to the police, who joined it to the case file without initiating an inquiry.

March 2018:

- Mr. S. shares Volodina's private photographs on social media without her consent. The police initiated a ciminal investigation, which has not yielded any results at the time of the ECtHR judgement.
- Volodina receives threatening phonecalls from Mr. S., while he stands in front of her house. The police declines to investigate, because he did not go up to her flat.
- MR. S. physically abuses Volodina and steals her purse, including her cellphone and personal documents. The police declines to open an investigation, because MR. S. later returned the cellphone and documents.
- Volodina asked the police to grant her state protection. The application was sent to the Court, which decided to leave this matter for the police to decide. The police did not take any decision.

Volodina v. Russia (ECtHR July 9th 2019) (4)

The applicant complained that the domestic authorities had failed to protect her from treatment – consisting of repeated acts of domestic violence – proscribed by **Article 3** of the Convention and to hold the perpetrator accountable. She also alleged a breach of **Article 13** of the Convention, taken together with **Article 3**, on account of deficiencies in the domestic legal framework and of the absence of legal provisions addressing domestic violence, such as restraining orders.

Type 1: an adequate legal framework

The obligation to establish and apply in practice an **adequate legal framework** affording protection against ill-treatment by private individuals.

1. If the ill-treatment falls under articles 2 or 3 ECHR (homicide [incl. attempt] or torture [incl. serious abuse]): effective **criminal law** provisions to protect citizens against ill-treatment.
2. Effective **application** in practice.
3. Procedural law must provide for sufficient **measures to investigate, prosecute and sanction** ill-treatment.

Type 1: an adequate legal framework

Assault on family members is considered a criminal offence only if committed for a second time within twelve months or if it has resulted in at least “minor bodily harm”.

→ *Requiring injuries to be of a certain degree of severity as a condition precedent for initiating a criminal investigation undermines the efficiency of the protective measures in question because domestic violence does not always lead to physical injury.*

Russian law leaves the prosecution of charges of minor harm to health and repeat battery to the initiative of the victim.

→ *This is not sufficient. A private prosecution puts an excessive burden on the victim of domestic violence, shifting onto her the responsibility for collecting evidence capable of establishing the abuser’s guilt to the criminal standard of proof. The prosecuting authorities should have been able to pursue the proceedings as a matter of public interest, regardless of the victim’s withdrawal of complaints.*

Russia did not fulfil the positive obligation to establish and apply effectively a system punishing all forms of domestic violence and providing sufficient safeguards for victims

Type 2: measures to avert a real and immediate risk of ill-treatment

The obligation to take the **reasonable measures** that might have been expected in order **to avert a real and immediate risk of ill-treatment** of which the authorities knew or ought to have known, and

- If there was a real and immediate risk of ill-treatment against a (specific) individual (see also Osman v. United Kingdom),
- And the authorities knew or ought to have known that there was such a risk,
- The authorities must take all reasonable measures to avert the risk.

Type 2: measures to avert a real and immediate risk of ill-treatment

The officials were aware, or ought to have been aware, of the violence to which the applicant had been subjected and of the real and immediate risk that violence might recur. Given those circumstances, the authorities had an obligation to take all reasonable measures for her protection.

- *The Russian authorities did not make any genuine attempt to prevent the recurrence of violent attacks against the applicant.*
- *Volodina did not receive any decision regarding her application for state protection.*

The Court considers that the response of the Russian authorities was manifestly inadequate, given the gravity of the offences in question. They remained passive in the face of serious risk of ill-treatment to the applicant and, through their inaction and failure to take measures of deterrence, allowed S. to continue threatening, harassing and assaulting the applicant without hindrance and with impunity.

Type 3: an effective investigation into allegations of ill-treatment

The obligation **to conduct an effective investigation** when an arguable claim of ill-treatment has been raised.

1. The investigation must be prompt and thorough.
2. The authorities must take all reasonable steps to secure evidence concerning the incident, including forensic evidence.
3. Special diligence is required in dealing with domestic-violence cases

Type 3: an effective investigation into allegations of ill-treatment

The Russian authorities carried out a series of short ‘pre-investigation inquiries’ in response to Volodina’s complaints.

→ *Such inquiries do not meet the requirements of article 3 ECHR. The Court has held that a refusal to open a criminal investigation into credible allegations of serious ill-treatment is indicative of the State’s failure to comply with its procedural obligation under Article 3.*

The Russian Government blamed the applicant for a lack of initiative in pursuing criminal-law remedies.

→ *The Court cannot accept this view. The provisions of Russian law that make a criminal investigation strictly dependent on the pursuance of complaints by the victim are incompatible with the State’s obligation to punish all forms of domestic violence.*

The Russian Government contended that the applicant could have used other legal remedies (civil law).

→ *Such an action could have led to the payment of compensation but not to the prosecution of those responsible and hence does not fulfil the requirements of article 3.*

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention;

3. *Holds*, unanimously, that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds*, unanimously, there has been a violation of Article 14 of the Convention, taken in conjunction with Article 3;

5. *Holds*, by five votes to two,

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts:

      (i) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

      (ii) EUR 5,875.69 (five thousand eight hundred and seventy-five euros 69 cents) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, payable into the bank account of the applicant's representatives;

Other illustrations of positive obligations

Duty to create an adequate legal framework

- M.C. v. Bulgaria
- Volodina v. Russia

Duty to take measures to avert real and immediate risks of ill-treatment

- Osman v. the United Kingdom (1998)
- Kotilainen e.a. v. Finland
- Kontrová v. Slovakia

Duty to investigate

- M. S. v. Italy
- V. C. v. Italy
- Safi e.a. v. Greece
- J. I. v. Croatia
- C. v. Romania

Police have "Osman" duty to investigate in date rape cases

7 March 2014 by Rosalind English

DSD and NVB v The Commissioner of Police for the Metropolis [2014] EWHC 436 (QB) – read judgment

The police have a duty to conduct investigations into particularly severe violent acts perpetrated by private parties in a timely and efficient manner. There had been systemic failings by the police in investigating a large number of rapes and sexual assaults perpetrated by the so called "black cab rapist" amounting to a breach of the of the victims' rights under Article 3 of the ECHR.

Application of the positive obligations by VSO´s

1. Protective measures → when requesting restraining orders.
2. Effective investigation → when requesting to review a decision of the public prosecutor/police not to investigate the case
   - Art. 11 Directive: Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the <u>right to a review of a decision not to prosecute</u>. The procedural rules for such a review shall be determined by national law.
3. … ?

slachtoffer HULP NEDERLAND

Thank you.

Slachtofferhulp Nederland
Vandaag Verder

0900-0101
www.slachtofferhulp.nl