

Victims' Rights and Safety

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1 Introduction

Crime victims have a substantial need for protection, especially when they are involved in a personal relationship with the offender.¹ This need has been increasingly recognised by legislators at both national and international levels. Within the European Union (EU), Directive 2012/29/EU provided Member States with minimum standards for the rights, support and protection of crime victims. Legally, this protection can be provided by protective measures including so-called protection orders. This type of order, also referred to as a restraining order, prohibits a person from entering a certain area or multiple areas or from communicating with the victim or both. The order sets behavioural rules that can be imposed within criminal, civil and administrative proceedings and aims to protect a person against any 'criminal act that may endanger his or her life, physical and psychological integrity, freedom, or sexual integrity'.² From this description, it follows that these orders should result not only in the prevention of repeated victimisation of violent crimes (objective safety) but also in the enhancement of victims' perceptions of safety (subjective safety). Currently, little is known about the enforcement practice of these orders and the extent to which these orders are effective. Although two recent Dutch studies have shown that victim protection by means of protection orders has many limitations with regard to its effectiveness,³ the real cause and extent of the limitations are inconclusive. This is partly caused by the difficulty of conducting a study with a sound quasi-experimental design.⁴ Besides actual effects on repeated victimisation, it is also important to gain more insight into the perceived effectiveness. This refers not only to the perception of

victims but also to the perception of offenders as well as professionals working in the criminal justice chain, as these perceptions may differ.⁵

Besides measures to guarantee the safety of victims, the aforementioned EU Directive also constituted minimum standards for victims' rights. Subsequently, many Member States introduced new legislation and policy to acknowledge and procedurally safeguard victims' rights. The procedural measures may extend to all phases of the criminal proceedings. Examples vary from possibilities of offender-victim mediation in the pre-trial phase; the victims' right to be informed of the progress of the criminal proceedings; to have access to the case file; to speak at the trial and make a victim impact statement in the sentencing phase; and lastly, the right to be informed of the progress of the execution phase of the offender, and to be involved in and speak at certain freedom granting hearings in this phase. Without detracting from the value of this development one may question the way in which these victims' rights relate to the nature of criminal proceedings and to the offenders' rights. Another important ongoing debate is whether, with the increase in rights, sufficient attention is paid to the actual victims' perspective and the risk of feelings of procedural injustice or secondary victimisation for victims and next of kin.

In this special issue we have gathered contributions from multiple disciplines about these and other pending questions and new developments regarding victims' rights and safety. The diversity of the global theme of victims' rights and safety is clearly demonstrated by the articles in the issue, which cover different topics and reflect interdisciplinary perspectives.

2 Content of the Special Issue

In the article *Ruled by fear or safety-related empowerment: The experience and meaning of penal protection orders in intimate partner violence in the Netherlands*, Irma Cleven provides important insight into victims' perceptions on the effectivity of penal protection orders. A novel approach is used to analyse the experience and meaning of unsafety as well as the contribution of penal protection orders to victim empowerment in cases of intimate (ex-)partner violence, including (ex-)partner stalking. The article truly contributes to the existing

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1 A. ten Boom and K.F. Kuijpers, 'Victims' Needs as Basic Human Needs', 18 *International Review of Victimology* 155 (2012).

2 Directive 2011/99/EU; S. van der Aa, 'Protection orders in the European Member States: Where Do We Stand and Where Do We Go From Here?', 18 *European Journal of Criminal Policy and Research* 183 (2012).

3 S. van der Aa, K. Lens, F. Klerx, A. Bosma & M. van den Bosch, *Aard, omvang en handhaving van beschermingsbevelen in Nederland. Deel 1: Wettelijk kader en handhaving* (2012); T. Fischer, I. Cleven & S. Struijk, *Handhaving en veiligheid bij strafrechtelijke contact-, locatie- en gebiedsverboden ter bescherming van slachtoffers* (2019).

4 Fischer et al., above n. 3.

5 I. Cleven, T. Fischer & S. Struijk, 'In het belang van het slachtoffer', *Tijdschrift voor Criminologie* 1 (2020).

victimological and criminological literature, providing a conceptual framework on safety-related empowerment combined with 'the Big Two' of agency and communion. Furthermore, the findings may result in useful implications for practice, particularly the implication that deterrence of the offender should not be the sole aim of enforcement actions. Professionals should, to quote the author, 'also ensure that victims' sense of self-efficacy and expected support is enhanced or at a minimum not decreased. Such an approach would result in a greater contribution of protection orders to future victims' safety and well-being'.

Victims' perception is also the central point of view of the article *How do victims with the need for protection judge their experiences with the police in the Netherlands? An exploration*. The article not only contributes to the existing knowledge of victims' protection needs but also exploratively addresses the comparative question of how crime victims who turn to the Dutch police in order to seek protection judge their experiences with the police, in comparison with victims reporting for other reasons. Using an existing data set based on a survey among crime victims of 12 years and older, the explorative research design contains two dependent variables: the victim's perception of the police's contribution to his or her safety and the victim's perception of the police informing him or her after having reported. The overall conclusion is that most victims' perceptions of the police's contribution to their safety are rather negative, whereas victims' perceptions of police information is judged positively by a larger group of respondents, regardless of their reporting reasons. I endorse Annemarie ten Boom's statement that this is hopeful since information is found to contribute to feelings of subjective victim safety.

The next article, *Victim-offender contact in the resocialisation process of offenders suffering from a mental disorder during execution of the Dutch TBS order*, focuses on the interaction between victims and offenders. More specifically, it concerns mentally ill offenders who have been given a so-called TBS order by the judge and were placed in a forensic psychiatric hospital. Receiving treatment to diminish the disorder and the subsequent safety threat for society, a resocialisation process is key to the TBS execution phase. Lydia Dalhuisen and Alice Bosma address the important topic of the interplay between the offender's step-by-step return to society and the victims' needs and interests relating to acknowledgement. The authors conclude that this involves a careful balancing of needs and interests of both victims and offenders as the offenders' disorders can heighten the risks of unsuccessful or even counterproductive victim-offender contact. Yet, in their opinion, carefully executed victim-offender contact that includes thorough preparation, managing expectations and choosing the right type of contact can contribute to both successful resocialisation as well as victim acknowledgement.

The importance of needs and interests is not limited to victims and offenders. In the Netherlands penal protection orders function not in a vacuum but in a criminal

justice chain, with many phases and professionals involved and thus with different aims, perspectives and legal characteristics to identify. It is precisely this complex interplay that is addressed in the article *Dutch penal protection orders in practice: A study of aims and outcomes*. This article uses the theoretical framework of 'street-level bureaucracy' and addresses coping strategies in practice, based on data from interviews with criminal justice professionals, victims and offenders. The authors Tamar Fischer and Sanne Struijk exploratively analyse which coping mechanisms and agency types the professionals tend to apply in order to meet the legislative aims and to protect victims as effectively as possible.

Although there is a worldwide trend to provide additional victims rights, one may question the extent to which and the purpose for which victims actually need more rights. That question is extensively addressed in the article *Victims' Fundamental Need for Safety and Privacy and the Role of Legislation and Empirical Evidence*. Stating that many of these rights are focused on victims who wish to step out in the open and to orally express their views and experiences in court, the author instead focuses on victims' wishes not to play an active role in the criminal proceedings for fear of invading their safety and privacy. Questioning the empirical basis for the present victim legislation, the author, Marijke Malsch, concludes with a plea for a more extensive use of empirical findings that shed light on true victim wishes instead of presumed victim wishes.

The special issue is rounded off with a comparative study on the adopted approaches of EU Member States to meet the specific procedural needs of hate crime victims in criminal procedures. The article *A comparative perspective on the protection of hate crime victims in the European Union: New developments in criminal procedures in the EU Member States* reports on the results of an EU-wide comparative survey of hate crime victims within national criminal procedure. In short, the survey has revealed the widely dispersed practices of the EU Member States with regard to the national definitions of hate crime and the treatment of hate crime victims within criminal proceedings. The survey further indicated that the level of procedural protection provided to hate crime victims is uniformly dispersed. Discussing these findings, Suzan van der Aa, Robin Hofmann and Jacques Claessen not only advocate the need for more research, particularly on the distinctive needs of the different and heterogeneous groups of hate crime victims and the effectiveness of protection measures, but also call on Member States to expand their current corpus of protection measures to address some of the victims' most urgent needs. It is an essential call that applies worldwide in order to be able to achieve the most effective protection for all victims.