

DE BESCHERMING VAN MINDERJARIGE SLACHTOFFERS

IMPLEMENTATIE VAN INTERNATIONALE VOORSCHRIFTEN IN NATIONALE
WET- EN REGELGEVING EN IN DE PRAKTIJK

SUMMARY

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Summary

Reason and purpose

Several international regulations aim to protect underage victims of crime in criminal proceedings. In the Netherlands, attention is paid to these regulations in various legislation. The reason for this study is that, despite the increased attention, there is no complete picture of the obligations that the Netherlands has based on the international regulations with regard to the protection of underage victims at this moment.

The aim of this study is to map to what extent international regulations regarding the treatment and position of underage victims have been implemented in national legislation and in practice. An additional goal is to identify areas where gaps may exist and in which area the Netherlands goes beyond what is prescribed or recommended internationally. With the results, the Ministry of Justice and Security wants to be able to direct and prioritize (policy) efforts in the coming years. The study has been conducted commissioned by the WODC at the request of the management for Victim Policy of the Ministry of Justice and Security.

The following research questions are answered in this study:

1. What obligations does the Netherlands have under international guidelines and treaties when it comes to the protection of underage victims of crimes within the context of the application of criminal law?
2. Which of these obligations have so far been implemented on paper in the Netherlands and how?
3. Have the obligations implemented on paper also been implemented into practice. To what extent has this been done or not (yet been) done?

Research justification

We searched internationally and nationally for sources with an emphasis on underage victims. We are not exhaustive in all the regulations that apply, but indicate where points of interest or specific points have been mentioned with regard to underage victims. The practical part was emphatically exploratory in nature: it is not pretended to be able to provide a complete picture of the practice on all subjects.

To bring some order to our research, we have distinguished the following four themes:

- Position and participation: full participation in the criminal proceedings
- Information, recognition and treatment: providing information and the way in which this is done
- Protection, care, help and support: protective measures and facilities
- Injury and recovery: the facilities specifically aimed at recovery

For each theme, we look at different types of offenses (including sex offenses, human trafficking, sexual abuse and sexual exploitation) and stages in the criminal justice chain (investigation, prosecution and trial).

The methods we have used are:

- Desk research:
 - Research publications (via internet search, legal intelligence);
 - Databases related to international and national legislation (via Eur-lex and Kluwer Navigator);
 - Jurisprudence (via coe.int and rechtspraak.nl).
- Interviews.

For the practical part (the third research question), a total of 14 (mostly telephone) interviews were conducted: 16 officials from 10 involved organizations were interviewed. The interviews were conducted in the period from February to April 2020. The analysis was carried out along the lines of the thematic subdivision, analogous to the different themes used in the study. In order to be able to make well-founded statements about the practice, efforts have always been made to make the connection between findings from the interviews and the available literature. Interviews were conducted at both policy and practical level.

Policy level:

- Ministry of Justice & Security;
- National Police;
- Nationwide Parquet;
- Victim support Netherlands.

Practice level:

- National Police - Unit Amsterdam;
- Public Prosecution Service (District Public Prosecutor's Office East Brabant & The Hague);
- Victim Support Netherlands;
- National Lawyers Network for Violence and Moral Victims (LANGZS);
- CKM Center for Child Trafficking Human Trafficking;
- Defense for Children;
- Nidos;
- William Schrikker Group (WSG).

International and national framework

In this study we examine international regulations. This is a broad concept. The diagram below shows which international regulations are meant in this study and which regulations are and are not binding for the Netherlands.

International	
Binding regulations	Non-binding regulations
<p>Convention</p> <ul style="list-style-type: none"> - Convention for the Protection of Human Rights and Fundamental Freedoms; - Convention for the Protection of Human Rights and Fundamental Freedoms; - Warschau convention; - Lanzarote convention; - Istanbul convention; - Convention on the Rights of the Child; - International Covenant on Civil and Political Rights; - Charter of Fundamental Rights of the European Union. 	<p>Resoluties (EU):</p> <ul style="list-style-type: none"> - European Parliament, March 11th 2015 about the combating the sexual abuse of children on internet; - European Parliament, October 26th 2017 on combating sexual harassment and abuse in the EU (2017/2897(RSP)); - European Parliament, December 14th 2017, on the implementation of Directive 2011/93/EU of the European Parliament and of the Council of December 13th 2011 on combating the sexual abuse and sexual exploitation of children and child pornography (2015/2129(INI)).
<p>EU Directive and Regulation</p> <ul style="list-style-type: none"> - Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 	<p>Guidelines United Nations</p> <ul style="list-style-type: none"> - Guidelines for Action on Children in the Criminal Justice System (ESR United Nations, 1997).

<p>on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA;</p> <ul style="list-style-type: none"> - Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA; - Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. - Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) 	<ul style="list-style-type: none"> - EcoSoc Resolutions of UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, July 22th 2005 (ECOSOC/RES/2005/20). <p>Guidelines Council of Europe</p> <ul style="list-style-type: none"> - Guidelines on child friendly justice (Council of Europe, 2010). <p>Others Guidelines</p> <ul style="list-style-type: none"> - Guidelines on the protection of child victims of trafficking (UNICEF, September 2006); - Luxembourg Guidelines: Terminology Guidelines for the protection of children from sexual exploitation and sexual abuse. Bangkok: ECPAT 2016.
	<p>Protocols</p> <ul style="list-style-type: none"> - UN Palermo Protocol (15 november 2000); - Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, New York, may 25th 2000.
	<p>General comments</p> <ul style="list-style-type: none"> - UN General comments no. 6, Convention on the Rights of the Child; - UN General comments no. 12, Convention on the Rights of the Child.

It varies per regulation whether the regulation is specifically aimed at minors. In Dutch legislation we mainly see provisions that apply to all victims and that are often elaborated in further legislation. The Dutch Code of Criminal Procedure mainly focuses on the general procedure and contains only a few provisions that apply specifically to minors. The position of minors is further elaborated in lower legislation¹².

The provisions in international regulations and national legislation can be divided into the aforementioned themes.

All provisions cited for each theme in this study can be found in the overview in Appendix 1.

Findings

Theme: Position and participation

According to international regulations and national law, an underage victim must be able to fully participate in criminal proceedings. Practice shows that the possibilities for this purpose are

¹ In this study, we look at *Besluit slachtoffers van strafbare feiten* for the police and the judiciary, Ministerial arrangements with regard to the provision of information and case information, policy rules on guidelines with regard to sexual abuse and human trafficking and various indications.

² Although we have not investigated this, it is conceivable that this difference in focus between international and national legislation also influences practice in the Netherlands.

increasing. Underage victims, like adult victims, have various rights, such as the right to assistance, to give their opinion, the right to information and the right to be heard. They are also entitled to (effective) support from organizations. When it comes to the right to assistance, it is possible to refuse assistance by police, public prosecutor, examining magistrate or judge in the Netherlands (ex article 51c of the Dutch Code of Criminal Procedure). In practice, we see that the support for minors during the reporting process could be even better. Partners such as lawyers and victim support are involved relatively late in the criminal proceedings. An early approach, which is increasingly being done by SHN, is a positive development in this regard.

Theme: Information, recognition and treatment

Underage victims have both international and national rights to information and must have access to information. Internationally, the right to information is seen as a precondition for taking decisions as minors. Victims must be informed about their rights and it must be clear what protective measures they can use. Information should be given to the victim as soon as possible. Internationally the term "first contact" is used, nationally also the term "immediately" is used. Both articles 4 to 6 of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and article 5 '*Besluit slachtoffers van strafbare feiten*'³ list the information to be provided to victims. Contrary to what is prescribed internationally, Dutch police and justice regulations make a distinction between underage victims under the age of 12 and those over the age of 12. Under 12 years of age, the information should only be provided to the legal representatives. Those over the age of 12 are asked who should receive the information. This point deserves attention since it is unclear whether the Netherlands sufficiently guarantees the interests of minors under 12 and if this complies with international legislation. Both international regulations and Dutch legislation prescribe that information must be comprehensible to the minor, both at language and at development level. In practice, respondents think this can be done better.

In the prosecution and trial phase, according to international regulations (article 6 EU minimum standards, 2012/29/EU), the (underage) victim must always be actively informed about what is going on in the criminal proceedings. In article 51ac of the Dutch Code of Criminal Procedure, we see that the victim, on his request, must be provided with information on certain elements in the criminal procedure. This is in accordance with international regulations. In practice it is the case that underage victims are regularly not informed about the decision regarding the prosecution, its background or about the settlement of their case. Even if underage victims try to obtain information regarding the aforementioned themselves, this sometimes fails.

The way in which underage victims must be heard is laid down in legislation both internationally and nationally. Points mentioned in the legislation are that a underage victim should not suffer trauma from the questioning, the questioning must be done by trained personnel, preferably by the same person and of the same sex as the minor. Rules regarding the audio-visual recording of an interrogation are left to the countries according to international law. If it is a minor, recording is preferred. Nationally there is an obligation to make an audio recording of all victims under the age of 18. Recording of both image and sound (audio-visual) in some cases is mandatory for underage victims. This depends on the nature of the case and the vulnerability of the victim concerned. Victims under the age of 12 must

³ Decree on victims of criminal offenses.

also be interviewed in a special interview studio according to national law. In practice, we see that minors under the age of 12 are questioned by trained and certified personnel, but this does not apply to older adolescents.

According to international regulations, hearings should be kept "once-only". According to national regulations this should be kept to a minimum. In practice, we see that this often fails.

Internationally, non-binding regulations (guidelines from the Council of Europe) focus on the recognition and treatment of victims. In addition, attention is also often paid to the fact that sufficient trained and qualified persons must be employed. A binding regulation, namely the "EU Minimum Standards Directive, 2012 / 29.EU" also states that professionals who work with underage victims must receive specialized training. At national level, this is insufficiently seen in regulations. Although investments have already been made into practice in training and skills, improvements are possible in particular with regard to the capacity and deployment of these specialists.

In common and relatively less serious offenses, the underage victims relatively often come into contact with workers who have insufficiently trained skills in dealing with this target group. In recent years, efforts have been made to train specialists, particularly in the police and the Public Prosecution Service, and to a lesser extent in judges.

There is still room for improvement in some areas, particularly in terms of the capacity and commitment of these specialists (think of broader commitment and involvement of family investigators).

In order to implement these and other changes, it is necessary to continue implementation in work processes at the police and also at the other partners. It is also necessary to work on a culture in which victim's rights are seen as an obvious part of the work. In this context, it remains to be seen whether the use of the term victim care sufficiently covers what is requested above. With regard to the broad group of victims of crime, an extensive implementation program has been carried out at the police in recent years. In some areas, more specific attention is still needed for victims under the age of 18. Only if the police can proceed to implement new work processes for this group; then it can sufficiently meet international regulations in due course.

Theme: Protection, care and support

Both internationally (Article 22 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime) and nationally (Article 10 '*Besluit slachtoffers van strafbare feiten*'), provisions have been included on the use of specific protective measures to protect underage victims. Both regulations regard the minor as a person who is extra vulnerable and must therefore receive extra protection. This still requires an individual assessment by the police. The determination of the (physical) protective measures that are next to be implemented are still under development.

Avoiding eye contact, specific rules on interrogation, not being present at the hearing and non-public hearing are specific protective measures that apply internationally.

In Dutch practice, steps still need to be taken to comply with the international rules regarding the protection of the victim's privacy (anonymity)⁴.

Internationally, there is a lot of attention for help and support (assistance, processing, information provision) of underage victims. These are also included in Dutch legislation. In both human trafficking

⁴ This concerns the protection of the victim's privacy, such as protecting the victim's address in the file.

cases and sexual exploitation cases, there is a lot of international attention for measures of recovery and support. There are points of improvement in the Netherlands on this theme.

Theme: Injury and recovery

Underage victims are entitled to take measures to recover from what has happened to them. According to the 'UN general comment no. 6 of CRC', Member States should strive for culturally appropriate, gender-specific mental health care and qualified psychosocial counselling. We do not see any specific provisions on this at national level. Based on this study, there also is little to say about this in practice. However, we do see both international and national facilities in criminal proceedings that can be used for *restorative justice*. Points for improvement in assistance are expertise in trauma care and the possibilities of therapeutic support for relatives of an underage victim.

Underage victims are entitled to compensation, both internationally and nationally. We see that actually getting a compensation in the Netherlands is not always easy. Several steps are required in the process (including participate as an injured party, assistance is needed) to actually be able to get the claim for compensation.