

Victim's Voice



**Reflections on the introduction of the
Victim Statement of Opinion
Edinburgh – 30 May 2013**

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Victim's Voice

All victims
should have an
unrestricted right
to speak in court
about whatever
they choose to



Victim's Voice

All victims?

An unrestricted right?

In court?

About whatever they choose to?

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Victim Impact Statement (VIS) in Dutch law

- High impact crimes (> 8 years imprisonment)
- Victims, family member(s) of homicide victims → recent expansion: representation is allowed in certain cases.
- Written or oral statement (oral statement does not count as evidence)
- Short time (10 minutes) before final pleas
- **VOS: speaking about the impact and circumstances of the crime, the perpetrator, the evidence and the appropriate punishment**
- The prosecutor and defendant's counsel are not allowed to question the victim on his statement

Victim's Voice

All victims?

- Certain categories of crime?
- Contra-indications? (contact with offender = harmful)

An unrestricted right?

- Right to fair trial (art. 6 CPHR) for the offender, but also for the victim?
- If VSO leads to acquittal?
- If VSO leads to questioning by defendant's lawyer?

In court?

- Restorative justice/ADR as an alternative?

About whatever they choose to?

- Unsubstantiated allegations
- Swearing, calling names, outbursts

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Why victims should NOT have a right to give a statement/opinion:

- At odds with the presumption of innocence (*alleged* offender)
- An inquisitory (truth finding) system does not allow for an equal position for the victim (State versus offender)
- Expression of grief, anger and feelings of revenge (on part of the victim) interfere with the impartial, objective and rational character of the procedure.
- The contribution of the victim will lead to an unreasonably severe sentence (punitivism)
- Empty shell: court does/should not take statement into account

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Why should victims have the right to give a VSO?

- Full participation (more equal to prosecution and defence) → procedural justice
- VIS implies self censorship → frustration, secondary victimisation (?)
- Victim's opinion is relevant (as the wronged party)
- Prosecutor is not the victim's council, but represents the State
- Professional judges are very capable of making impartial, objective and balanced decisions
- Victims can be prepared (management of expectations)
- Causal effect on punishment???

Victim's voice

Possible solution: 2 phased trial

- Examination of the evidence → guilty or not?
- Determining the sentence → victim can give an opinion on all aspects of the case, including punishment

But...

- The accused only then becomes an offender after being found guilty (presumption of innocence) → 'presumption of victimhood'???
- Victim can only exercise rights when the perpetrator has been found guilty → another form of censorship

Victim's Voice

**All victims
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unrestricted right
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Directive?**



Good Practices victim support



Victim Support NL organises a seminar on Good Practices in the Netherlands on October 31 and November 1 2013.

Subjects are

- Electronic transfer of information between police, prosecution service and victim support
- ICT support for VSO's
- Effective models for collaboration in the CJP between police, prosecution and VS NL
- Casemanagement for victims of high impact crimes.

Are you interested in these subjects and do you want to have more information? Send an e-mail to v.vanlange@slachtofferhulp.nl and receive more information.