

THE FIGHT FOR LEGAL VICTIM STATUS

**A Study from a Human Rights Perspective on the Legal
Victim Status of Parents in the Criminal Proceedings of the
Amsterdam Child Sexual Abuse Case***

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ABSTRACT

This study focuses on one of the major questions that came into light in the criminal proceedings of the Amsterdam Sexual Abuse Case (hereafter: *Roberts M.* case), namely: the legal victim status of the parents. The perpetrator chose his victims, with an average age of just eight months, on the basis of their young age and limited communication skills.¹ Research from social sciences and law has shown that due to the young age of these victims no distinction should be made between the child as a victim and the nurturing parent. The parents, especially mothers, are intensely connected to the development and nurturing of the infant. Hence, experts argue, doing harm to one is harm to the other. This study will evaluate existing and developing International, European and Dutch Law on victims' rights and will examine the case *Roberts M.* on the implementation of victims' rights and the current denial of parents' legal victims' status. The aim is to provide a solid recommendation for future practice.

KEYWORDS

Human Rights Law – Victims' Rights – Amsterdam Child Sexual Abuse Case (Amsterdamse Zedenzaak) – Legal Victim Status

* Translation from Dutch (Amsterdamse Zedenzaak); also known as the *Roberts M.* case, named after the perpetrator.

¹ Court of Appeal Amsterdam, 26 April 2013, *Case No.* 23-002662-12, *LJN* BZ8885, p. 12.

Foreword

This paper forms a part of my master study LLM International & European Public Law – Human Rights. After several years of study at Tilburg University, I have come to the point to give an ending to this chapter, which also marks the beginning of a new chapter in my academic life.

The topic of sexual violence and the marks it leaves on the victims has always interested me as, in my opinion, these types of crimes harms a person's dignity the most. I have chosen to focus on the direct family members, more specifically the parents of very young victims of sexual violence. For the ones familiar with the case examined in this study, how disturbing was it to hear on a December night in 2010 that more than 80 babies, toddlers and infants have been subjected to sexual abuse by their care taker? The most appalling of all is the fact that parents have trusted this person to be responsible and caring of their child. In the Dutch public debate many questions arose of how these crimes could have been committed in a day care without anyone noticing it. One of the major questions arising in the criminal proceedings of the case was the question of the legal victims' status of the parents. I, for one, am extremely interested in this issue as the uniqueness of the case and the development of victims' rights under International and European law brings new light to this topic.

I would like to thank my thesis coordinator dr. Conny Rijken for her advice, input, and guidance. She was meant to be my supervisor ever since I started the master, even if I was not the most punctual student at all times. Also I would like thanking prof. dr. Rianne Letschert for her time, effort and putting me in touch with the right people. Her willingness to be a second reader strengthens the quality review of this paper. Furthermore, I would like to express my gratitude to attorney at law mr. Richard Korver for providing me the unique opportunity to conduct research at his law practice. It was inspirational to see someone so passionate about getting justice for the 'ignored parties'. His advice and many discussions we had were of great value for me as a student and as a person. Lastly I would like to thank my family for their unconditional support.

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“Summum ius summa iniuria...”

The strictest justice may be the greatest injustice

(Cicero, ‘De Officiis’, 1, 10, 33)

1. INTRODUCTION

December 2010 is engraved in the memories of more than 80 Dutch households as the start of their worst nightmare. The Dutch community was shocked, enraged, and hurt when the case of a male baby sitter and day care employee Roberts M. came into light. For years Roberts M. had been working in personal spheres and in several day cares, when the 27 year old was arrested and accused of sexually abusing infants between the ages of 0 - 4 year old. Also, his partner Richard van O. was arrested for being an accessory in the criminal acts. The investigations started when the American authorities tipped the Dutch authorities that an unidentified infant was traced in child pornographic materials in which also an illustration of a well-known Dutch brand was visible. With minimum information available, the Dutch authorities decided to broadcast this picture on the crime stopping television program 'Opsporing Verzocht' on December 7th in order to trace down the infant and thus the perpetrator.²

Many parents feared the worst when it led to the arrest of Roberts M., their baby sitter or day care employee, hoping their child was not one of the victims. This so-called Amsterdam Sexual Abuse Case (Dutch: Amsterdamse Zedenzaak) became the largest in Dutch history when the criminal investigations and proceedings resulted in the finding that 87 children under the age of four, of which the youngest was only 19 days old, have been sexually abused by their care taker *Roberts M.* The parents of 67 children filed charges against Robert M. Due to extremely young ages of these infants, the legal question arose whether parents of these child victims could also be considered as victims in the criminal proceedings. In this case three forms of parents victim' status can be distinguished:

1. *Indirect victim*
2. *Direct victim*
3. *Victimization to the benefit of their child*

The status of (1) *indirect victim* is granted symbolically, as the Court of Appeal acknowledged the suffering of the parents. However, the status of indirect victim does not bring any legal value at place. The status of a (2) *direct victim*, however, would grant the parents all the victim's rights as applicable to the direct child victims as well. In April 2013, the Court of Appeal, following the decision of the District Court of

² Information retrieved on September 2nd 2013 from news station NOS: nos.nl/artikel/350415-zedenzaak-na-ruim-eeen-jaar-van-start.html

Amsterdam, rejected the claim of reimbursement and victim recognition by the parents on the ground that parents cannot be seen as direct legal victim in the criminal procedure and thus cannot be granted victim's rights. Furthermore, there is the question of the (3) *victimization of parents to the benefit of their child* and the legal victim status that comes along. Meaning, parents have suffered certain harm or loss due to the criminal act, which the child would have suffered if he/she would come of age. The replacements of furniture and travel costs in order to attend hearings are some examples. Hence, the parents suffered harm or loss to the benefit of their child. The Court, as will be evaluated later in this study, also rejects this form of victim status.

The international community has been trying to provide a legal platform for victims of crimes by creating conventions, declarations, recommendations, framework decisions, directives, advisory reports and so on, in order to provide legitimacy for victims' rights in the criminal justice process. The leading character of the international community on involving victims of crimes in criminal proceedings forms the background of further analysis in this study. With an eye on the victims' rights developments under International and European Law, I aim to analyse the existence of International and European legal instruments and its application in national criminal proceedings. As The Netherlands has been a leading State Party to several international treaties and other forms of agreements³, it is of utter importance to be leading and forward thinking in its national legislation as well. By studying the

³ The Netherlands is State Party to or has signed the following, but not limited, binding or non-binding international agreements of different form which are also victim centred and/or related to the topic of this study:

- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse, adopted in 1985 by the United Nations General Assembly, adopted by the consensus of the Netherlands.
- Convention on the Rights of the Child, adopted by the UN in 1989, signed by the Netherlands on 26 January 1990.
- European Convention on Human Rights, ratified by the Netherlands in August 1954, and founding member of the Council of Europe.
- CoE Recommendation (1983) in the Compensation of Victims of Violent Crime.
- CoE Recommendation (1985) on the Position of Victim in the Framework of Criminal Law and Procedure.
- CoE Recommendation (1987) on Assistance to Victims and the Prevention of Victimisation.
- CoE Recommendation (2006) on Assistance to Crime Victims.
- EU Framework Decision on the Standing of Victims in Criminal Proceedings (2001/220/JHA).
- EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA).

Dutch case *Roberts M.* on the implementation, success and failures of International and European standards on legal victims status I strive to address the occurred problems and provide a possibly solid recommendation for future practice.

1.1. Research Question

I endeavour to analyse the claim of legal victim status by the parents in the case of *Roberts M.* through the examination of International and European legal instruments. In order to conclude this study with an accurate recommendation the central research question of this study is formed as follows:

"To What Extent Is The Criminal Procedural Status Of Parents As Victims in Child Sexual Abuse Cases Granted And/Or Protected Under International and European Law, And What Potential Effect Could This Have For The Current Rejection of Parents' Victim Status In The Dutch Case Roberts M.?"

By firstly looking at the available hard and soft law instruments on the International as well as European level applicable to the Netherlands. I attempt to create a framework in which further analysis is made possible. The focus of this research is limited to Child Sexual Abuse cases and in particular limited to victims from the age of 0 – 4 years old, similar to the child victims in the *Roberts M.* case. As explained later in this study, granting parents of child victims of sexual abuse legal victim status in this age range is a special procedure and thus will form the centre of study. Mention should be made that the perpetrator *Roberts M.* selected his victims on the basis of age and limited communication skills.⁴ Therefore, the research is restricted to the question whether parents of babies and toddlers are granted and / or protected by the victims' rights status on the International as well as the European level and what this could mean for the legal procedure or developments in the case *Roberts M.* and unfortunate future cases in the Netherlands.

⁴ Court of Appeal Amsterdam, 26 April 2013, *Case No.* 23-002662-12, *LJN* BZ8885, p. 12.

1.2. Method

I have had the unique opportunity to do independent research on this case through a human rights perspective in the law firm Korver and Van Essen Lawyers. Attorney at Law, mr. Korver is representing 52 out of the 67 child victims included in the indictment whom are subjected to horrific acts of sexual abuse and their parents. This study will focus primarily on the legal victim status of parents of sexually abused children. Starting from the roots of victim's status under international and European law to the examination of the legal victim status in the case study of the Netherlands.

In order to provide an answer on the aforementioned research question, the method used in this study is a self-developed research process called E-A-R: Evaluation, Application, and Recommendation. The first part of this study is called 'Evaluation' in which Chapter 2 and 3 will form the background. Evaluation consists of studying International, European, and National definitions of Child Sexual Abuse and victim (Chapter 2) and the implementation of victims' rights (Chapter 3). The second phase is called 'Application' and it is covered in Chapter 4. It consists of accurately studying the judgement of the Dutch Court of Appeal in the *Roberts M.* case, looking at interdisciplinary research in the field of law, sociology and psychology and applying the knowledge gained on international and European victims' rights in this present case. Chapter 5 will continue the application phase in which I will discuss possible legal international procedures that are open for the (parents of) victims in the *Roberts M.* case. I strive to answer the research question in Chapter 6. The third phase is covered in Chapter 7 and is called 'Recommendation'. In this chapter I aim to provide new arguments that have not been taken into consideration in the *Roberts M.* case and in the light of the (upcoming) developments of victims' rights under international human rights law I strive to provide a solid recommendation for future practice.

1.3. Sources

The sources used in this study are to be considered of primary or secondary origin (Elias & Nolo, 2009, pp. 22-27). Primary sources are amongst others: official International or European legal instruments and national legislation such as the Dutch Criminal Code⁵ or Code of Criminal Procedure⁶. These primary sources can be divided into binding and non-binding instruments. Legally binding treaties, conventions, covenants and protocols are known as hard law. Non-binding international declarations, standards, principles, guidelines, resolutions and recommendations are referred to as soft law. Although non-binding, these instruments provide guidance for State in their enactment of certain rights. Secondary sources are in this context non-legal instruments such as literature, advisory reports, journals, and case law. A great part of this research is conducted through the application of the documents used by the law firm 'Korver & Van Essen' and the official documents of the District Court and the Court of Appeal situated in Amsterdam regarded the case *Roberts M.* and his partner *Richard van O.* Due to the discretion of the case no reference will be made to confidential documents, as the privacy of the direct child victims, their parents, and the accused will be the priority. Other references to documents used or created by the afore-mentioned law firm are made under the approval of mr. Korver. Nevertheless, the research itself, consisting of Evaluation, Application and Recommendation, is done independently and does not necessarily reflect the opinion of the aforementioned law firm.

⁵ Wetboek van Strafrecht (The Netherlands)

⁶ Wetboek van Strafvordering (The Netherlands)

2. VICTIMS OF CHILD SEXUAL ABUSE

In the first part of this study I aim to evaluate the existing laws or regulation on the subject of sexual abuse followed by chapter 3 on victims' rights. One of the major questions concerning victims' rights in the case of *Roberts M.* was who can be regarded as a victim under national law and whether International and/or European Law provides a different answer. In the following paragraphs I will give a definition for further use in this study of both the act of crime itself, without the intense discussion of substantive law, and the definition of the victim as generally accepted under International Human Rights Law and also evaluate the definition of sexual abuse laid down in the Dutch Criminal Code and Criminal Code of Procedure.

2.1. Definition of Child Sexual Abuse

Due to the limited length of this study the focus will be on the procedural law rather than substantive law, however the terms used in this study should be defined first. With regard to the case study *Roberts M.* the act of crime defined here as 'Child Sexual Abuse', consists out of all forms of sexual acts, as well as child pornography. For the sake of this study the definition of Sexual Abuse is extracted from the Lanzarote Convention of the Council of Europe. According to this convention Sexual Abuse shall include but will not be limited to, '*engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities*' and '*engaging in sexual activities with a child where; use is made of coercion, force or threats; or abuse is made of a recognised position of trust, authority or influence over the child; or abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence*'⁷.

Sexual abuse has various definitions in different legal systems, which makes the criminal process more complex as questions could arise whether, for example, the producing, possession, and / or distributing of child pornography could fall under the term child sexual abuse. Child pornography is seen as an extended part of Sexual Abuse, and in this study will fall under the scope of the term Child Sexual Abuse with

⁷ CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote 25.X.2007, article 18.

specific reference to term child pornography when deemed necessary due to its additional dimension and consequently the additional effects for the victims; the existence and distribution of child pornographic photo- and film materials on the Internet. Support to this form of reference can also be traced back in the Resolution 1307 the Parliamentary Assembly of the Council of Europe which says under point two, and I quote: ‘Child pornography in itself represents sexual abuse of children and encourages further such abuse’.⁸ The reference to the term child is made on the basis of the definition provided in the Convention on the Rights of the Child: “*a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*”⁹

2.1.1. Implementation within the Netherlands

In addition to the commitments coming along with the adoption of the Lanzarote Convention, the Netherlands is also State Party to the UN Convention on the Rights the Child. Article 34 of this convention requires its State Parties to take ‘all appropriate measures to protect the child from all forms of sexual exploitation and sexual abuse’ (BNRM, 2011, p. 15). Any form of sexual activity by an adult with children younger than sixteen year old has been criminalized under Dutch law. Article 245 of the Dutch Criminal Code prohibits the sexual intercourse or other forms of sexual activities by an adult with someone between the ages of twelve and sixteen with a punishment of a maximum of eight years imprisonment, whereas article 244 of that same code concerns the prohibition of sexual activity by an adult, including sexual intercourse, with a child under the age of twelve and punishable with a maximum of twelve years imprisonment.¹⁰ Sexual intercourse can in this context be defined as both penetrative and non-penetrative (Cleiren & Verpalen, 2012, p. 1369). As the age component is relevant for the criminal act, the elements ‘intentionally and knowingly’ are not required (Cleiren & Verpalen, 2012, p. 1368). Less severe form of

⁸ Parliamentary Assembly of the Council of Europe, Res. 1307 (2002), ‘Sexual Exploitation of Children: Zero Tolerance’. Also referred to in the 2011 Child Pornography report of the Dutch National Rapporteur on Trafficking in Human Beings.

⁹ Convention on the Rights of the Child, adopted by the UN in 1989, signed by the Netherlands on 26 January 1990, article 1.

¹⁰ Wetboek van Strafrecht (The Netherlands), article 244 and 245.

sexual activity with someone under the age of sixteen is punishable under article 247 of the Dutch Criminal Code.

As argued before, child pornography is an extension of sexual abuse and its prohibition is derivable from the aspiration to protect children from sexual abuse. Article 240b of the Dutch Criminal Code constitutes the implementation of the prohibition of child pornography in several forms, including: producing, offering, distributing or transmitting, procuring, or possessing child pornography. Noticeably, the definition of the present article 240b Dutch Criminal Code is similar to the definition provided by the Lanzarote Convention.¹¹ This is the first convention mentioning the extra dimension accompanying child pornography; namely, the digital and technological element.

Furthermore, aggravating circumstances¹² can lead to higher sanctioning in the afore-mentioned articles. With regard to aforementioned articles, the influence of the Lanzarote Convention is worth mentioning.¹³ Article 28 of the Lanzarote convention sums the aggravating circumstances as follows:

*“ Article 28 – Aggravating circumstances
Each Party shall take the necessary legislative or other measures to ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention:*

- a the offence seriously damaged the physical or mental health of the victim;*
- b the offence was preceded or accompanied by acts of torture or serious violence;*
- c the offence was committed against a particularly vulnerable victim;*
- d the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority;*
- e the offence was committed by several people acting together;*
- f the offence was committed within the framework of a criminal organisation;*
- g the perpetrator has previously been convicted of offences of the same nature.”¹⁴*

Article 248 Dutch Criminal Code has been improved due to the implementation of the Lanzarote convention. Under section 2 of this article one can read that the aggravating

¹¹ CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote 25.X.2007, article 20.

¹² Translated from the Dutch ‘strafverzwarende omstandigheden’.

¹³ Official Document: 33 580 Implementatie van de richtlijn 2011/93/EU van het Europees Parlement en de Raad ter bestrijding van seksueel misbruik en seksuele uitbuiting van kinderen en kinderpornografie, en ter vervanging van Kaderbesluit 2004/68/JBZ van de Raad (PbEU L 335).

¹⁴ CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote 25.X.2007, article 28.

circumstances include victimizing a child that is trusted under his/her care and caution.¹⁵ On the basis of this article, and taking into account article 28 of the Lanzarote convention, it can be said that the child as such is a vulnerable victim and the abuse of a child subjected to the care of the offender is an aggravating circumstance. Hence, the *Roberts M.* case is to be regarded as a special case considering the amount of children (vulnerable group) sexually abused by their caretaker (aggravating circumstance).

2.2. Definition of the term Victim

When defining the term ‘victim’ under international law, a distinction can be made between ‘hard’ and ‘soft’ law. Hard law is known as covering all legally binding instruments, whereas soft law refers to non-binding instruments. However, the latter one should not be underrated (Groenhuijsen & Letschert, 2012). The argument can be found in studying the implementation status of various instruments. Soft law instruments can for example evolve into customary international law. Also, these non-binding instruments may form an important tool in how to interpret other binding provisions that may be alike. The definitions presented hereafter can be categorized under either hard or soft law.

UN Victims’ Rights Declaration

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) is legally non-binding but could nevertheless form a part of customary international law. The declaration recommends certain measures to be taken on behalf of victims of crime in all layers of law, whether on international or national level, in order to improve the position of victims in the criminal justice systems (UN ODCCP, 1999). Article 1 of this declaration is as follows:

1. *"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in*

¹⁵ Wetboek van Strafrecht, artikel 248 lid 2: De in de artikelen 240b, 242 tot en met 247 en 248a tot en met 248e bepaalde gevangenisstraffen kunnen met een derde worden verhoogd, indien de schuldige het feit begaat tegen zijn kind, een kind over wie hij het gezag uitoefent, een kind dat hij verzorgt of opvoedt als behorend tot zijn gezin, zijn pupil, een aan zijn zorg, opleiding of waakzaamheid toevertrouwde minderjarige of zijn minderjarige bediende of ondergeschikte.

violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. [...] *The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.*¹⁶

As can be seen above, the term victim is defined broadly as it includes individuals or a group of persons who suffered harm as a result of the omission of any crime within the jurisdiction of a State party. The importance of the definition for this study is particularly to be found in the second part of article 1. The scope of the term victim is expanded to include ‘immediate dependants of the direct victim’ who have suffered harm. Regarding the parents of the child victims in the Amsterdam Sexual Abuse case, the definition of victim provided in the UN Victims’ Rights Declaration would cover the legal victim status of parents as well. According to this definition, parents of child victims of sexual abuse can fall under the scope of ‘victim’ when suffering one of the above-mentioned forms of harm, which will be examined later on.

In 2005 there was the discussion of introducing an UN Convention on Justice and Support for Victims of Crime and Abuse of Power, initiated by the World Society of Victimology and INTERVICT.¹⁷ The intention behind such convention is to convert the basic principles into ‘hard law’ and thus binding all State parties to the provisions laid down in the convention. Notion should be made that the provisions in the draft convention are consistent to the basic principle, if not more detailed. In addition to the binding nature of a convention, arguments in favour of such a document are as follows; increasing visibility of victims’ issues, publicly pressuring State parties on the ratification and implementation process if they do not comply adequately (Groenhuisen, 2006). As this convention is still in its ‘draft’ phase and is not adopted, it will not of further consideration in this study.

¹⁶ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse, adopted in 1985 by the United Nations General Assembly, adopted by the consensus of the Netherlands, article 1.

¹⁷ The draft convention is put online by the World Society of Victimology and INTERVICT

Council of Europe

On the regional level, the Council of Europe emphasised the importance of providing a legal basis for rights and protection of victims of crime. The first legally binding European instrument was the 1983 European Convention on Compensation of Victims of Violent Crimes.¹⁸ However, the Convention remains vague on a proper definition of the term victim. It rather implies who is entitled for compensation by the State, when other sources are not fully available: *‘those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence’*.¹⁹ The scope of this criterion is limited to victims harmed *directly* to an *intentional* crime of violence. The sexual abuse of infants does not necessarily have to cover the *intention* to harm the parents, although it can be argued, as seen in chapter 4 of this study, that the harm caused to the parents can be one of the direct result of the criminal act, which is not the view the Court took in the present case study.

Further evaluation on victims’ rights brings us to the CoE Recommendation of 1985, which states that it must be *‘a fundamental function of criminal justice to meet the needs and to safeguard the interest of the victim’*. This document basically illustrates the crucial importance to take into account the needs of the victim throughout the entire justice process. The most comprehensive document was yet to come. In the 2006 Recommendation of the Council of Europe, the Committee of Ministers provided a definition of victims that is in line with the definition provided by the UN Basic Principles of Justice for Victims of Crime and Abuse of Power. The definition in this recommendation is as follows:

“For the purpose of this recommendation,

*1.1. Victim means a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of the criminal law of a member state. The term victim also includes, where appropriate, the immediate family or dependants of the direct victim.*²⁰

Noticeably, the recommendation also recognized the phenomenon of secondary victimisation (UN ODCCP, 1999, p. 9), defining it as harm not directly occurred as a result of the criminal act but ‘through the response of institutions and individuals to

¹⁸ European Convention on the Compensation of Victims of Violent Crimes (Strasbourg, 24.XI.1983).

¹⁹ European Convention on the Compensation of Victims of Violent Crimes (Strasbourg, 24.XI.1983), article 2 under a.

²⁰ CoE Recommendation Rec(2006)8 on Assistance to Crime Victims, 1. Definitions.

the victim'.²¹ Moreover, the Recommendation refers to the notion of vulnerability as well, of which article 3.4 reads: “States should ensure that victims who are particularly vulnerable, either through their personal characteristics or through circumstances of the crime, can benefit from special measures best suited to their situation”.²² Also, according to this recommendation parents of child victims of sexual abuse, when the harm can be demonstrated, could fall under the umbrella of the legal victim status. Henceforth, when denied victim status, persons falling under the definition under 1.1 could be subject to secondary victimization.

The EU Directive of 2012

The EU directive of 2012 establishing minimum standards on the rights, support and protection of victims of crime is legally binding and imposes formal obligations on Member States. The legally binding nature of this document pressures the Member States to either adapt their legislation or take policy measures in order to comply with its obligations. In accordance with the Lisbon Treaty, the framework decision of 2001 is replaced by the EU Directive of October 2012 establishing minimum standards on the rights, support and protection of victims of crime. The term victim was defined in the 2001 framework decision as follows; “Article 1 (a) ‘victim’ shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State”²³

The definition of victim laid down in the EU directive of 2012 reads:

“Article 2 Definitions

1. For the purposes of this Directive the following definitions shall apply:

(a) ‘victim’ means: (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence”²⁴

The question is here whether the scope or definition of victim has changed. When looking at the article defining the term victim one notices that it covers natural

²¹ CoE Recommendation Rec(2006)8 on Assistance to Crime Victims, 1. Definitions.

²² CoE Recommendation Rec(2006)8 on Assistance to Crime Victims, article 3.4.

²³ EU Framework Decision on the Standing of Victim in Criminal Proceedings 2002/220/JHA, 15 March 2001, article 1.

²⁴ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 2.

persons suffering harm directly caused by a criminal offence or family members of a person who died as a result of the criminal offence. Thus, mental harm for example can be caused as a direct consequence of the crime. However, afore coming to any kind of conclusion, one should study the preamble of this document precisely and judge the provisions while taking the goals and intentions, as set forth in the preamble, into account. Paragraph 19 of this preamble says:

*“A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them. **It is possible that family members of victims are also harmed as a result of the crime.** In particular, family members of a person whose death has been directly caused by a criminal offence could be harmed as a result of the crime. **Such family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive.** However, Member States should be able to establish procedures to limit the number of family members who can benefit from the rights set out in this Directive. **In the case of a child, the child or, unless this is not in the best interests of the child, the holder of parental responsibility on behalf of the child, should be entitled to exercise the rights set out in this Directive.** This Directive is without prejudice to any national administrative procedures required to establish that a person is a victim.”²⁵*

Also in the preamble section above one could distinguish indirect victims, whom are entitled to protection in the directive; direct victims; and parents exercising the rights on behalf of their child. Although the latter one is of great importance, legal representation of victims does not fall under the scope of legal victim status. The parents in the *Robert M.* case were regarded as the legal representative of their victimized child.

When implementing the provision on the rights and duties of victims in, amongst others, criminal proceedings, one should take into account that under ‘a natural person’ the immediate family that suffers harm as a result of the criminal offence also falls under that definition, as seen in the preamble. A distinction is made between family members of deceased victims whose death was as a result of the

²⁵ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), preamble under paragraph 19.

criminal act, and family members who have suffered harm in addition to the victim him or herself. Arguably, parents of very young child victims of sexual abuse may fall, when one considers the objectives of the directive, under the term victim and they may be granted victims' rights, including recognition, participation and compensation. This increased level of rights for both the direct victim as well as his/her family member that has suffered harm as a result of the criminal act should be taken into account by both the legislative body as well as the judicial body, as anticipation of the directive is possible. The consequences of non-implementation of a EU provision with direct effect was to be found in the *Pupino* case at the European Court of Justice²⁶. Although this case concerned a EU framework decision, the same perspective could be taken for the directives, which have direct effect to begin with. Meaning, one should also look at other provisions and / or the objectives of the EU regulation when assessing an article.

2.2.1. Implementation within the Netherlands

On the domestic level, the Netherlands has been leading in developing and implementing victims' rights. In 1992 the Law Terwee²⁷ was introduced, of which the greatest improvement was involving the victim in the criminal proceeding as a litigant. The legal status of the victim was defined in article 51a of the Dutch Criminal Code Procedure, although no reference was made to term itself: *“One who has suffered direct harm as a result of the criminal act can be added, regarding his or her claim for compensation, as the injured party in the criminal proceedings”*²⁸

Studying the parliamentary history preceding this law, one can comprehend what is meant with 'one who has suffered harm as a direct result'. The parliamentary note says: *“direct harm is present when someone is impaired in the interest that is protected through the criminalized offence. Generally, criminal laws do not protect the interest of third parties, henceforth only the victim can claim the legal position of*

²⁶ European Court of Justice, Criminal proceedings against Maria Pupino Case, C-105/03.

²⁷ Translated from Dutch: Wet Terwee. Signed on 23 December 1992, came into force on 1 April 1993.

²⁸ Wetboek van Strafvordering (The Netherlands), article 51a. Translated from Dutch: *“Degene die rechtstreeks schade heeft geleden door een strafbaar feit, kan zich terzake van zijn vordering tot schadevergoeding als benadeelde partij voegen in het strafproces.”*

a wrongful party”.²⁹ The victims’ legal status was therefore still limited after the integration of the Law Terwee. Not until 2005 did victims have the right to be heard in criminal proceedings. In line with her obligations under the EU Framework Decision of 2001, the Dutch legislator has broadened the rights of victims in criminal proceeding. The scope of victims was, nevertheless, still restricted to the definition provided in 1992. On January 1st 2011, the Law for the Improvement of the Victims’ Position in Criminal Procedure was introduced, resulting in a definition of victim and their rights under title IIIA in the Criminal Code of Procedure.³⁰ Contrary to the law and the interpretation of the judiciary, Dutch experts have included closest family members of victims under the scope of the term victim in research conducted on request of the European Commission (Report Victims in Europe, 2009, pp. 36-37).

As seen in the previous paragraph, the EU framework decision of 2001 is replaced with the EU directive of 2012. Although the Netherlands has until 16 November 2015 to fully implement the directive on its domestic level³¹, anticipating on the directive is possible and should be taken into account when assessing cases in the subject matter of a certain directive.

2.3. The Legal Status

The legal status of the victim can vary in different criminal justice system but in this context, also taking into account the criminal justice of the Netherlands, is defined as the official role and function of the injured/disadvantaged party that grants him/her, depending on the circumstances of the specific case, available victims’ rights in the criminal proceedings.³² This can include the right to respect, recognition,

²⁹ Memorie van Toelichting (Parliamentary History) on Article 51a of Wetboek van Strafvordering (The Netherlands) (1989-90, 21 345 nr. 3) p. 11., translated from Dutch: “*Van rechtstreeks schade is sprake indien iemand is getroffen in een belang dat door de overtreden strafbepaling wordt beschermd. In het algemeen beschermen strafbepalingen niet het belang van rechtsopvolgers noch dat van derde belanghebbenden, zodat doorgaans alleen het slachtoffer zelf zich als benadeelde partij kan toevoegen in het strafproces.*”

³⁰ Wetboek van Strafvordering (The Netherlands), Title IIIA.

³¹ Official Government Release, ‘Quarter Overview of EU Directives’ Implementation’ (Dutch: Kwartaaloverzicht implementatie EU Richtlijnen), 2012-2013, 21 109 nr. 212, p. 82.

³² EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), preamble under paragraph 20 (underline and emphasis added): *‘The role of victims in the criminal justice system and whether they can participate actively in criminal proceedings vary across Member States, depending on the national system, and is determined by one or more of the following criteria:*

participation, and compensation. The victim is then a participant in the criminal proceedings, rather than a third party. Another form of legal victim status is that of victim as a witness, but this form will not be elaborated on in this study. As seen in the previous paragraph the condition for the legal victim status is at minimum ‘suffering harm as a direct result of the criminal act’.

2.4. Sub-Conclusion

Concluding this chapter we have seen that the inclusion of immediate family who have suffered harm as a result of the criminal act is not consistent in all layers of law. The non-binding, but nevertheless very significant, UN Declaration of 1985 could be interpreted as including, on the first sight, parents who have suffered harm as a result of the sexual abuse of their child while it has defined victim more broadly. The 2006 Recommendation of the Council of Europe is rather alike. The binding nature of the 2012 EU directive establishing minimum standards on the rights, support and protection for victims of crime defines the term victim as the one suffering harm as a direct result of the criminal act. Nonetheless, when studying the objectives of the provisions in the directive, it becomes clear that the EU directive also protects immediate family who have suffered harm and that they are granted and protected by the victims’ rights in the directive. On the question whether parents of child victims of sexual abuse might fall under the scope of victim when the direct harm suffered as a result of the abuse can be proved, we have arguably seen three affirmations hitherto, of which one, the EU directive of 2012, is legally binding for The Netherlands. However, on the domestic level, the Dutch legislator and, as we will see later on, the Dutch Courts, has a different view while the term victim is interpreted as being restrictive to the one suffering harm from the direct result of the assault aimed at him or her.

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- * *whether the national system provides for a legal status as a party to criminal proceedings;*
 - * *whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness;*
 - * *and/or whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have the legal status of a party to the criminal proceedings.*

Member States should determine which of those criteria apply to determine the scope of rights set out in this Directive where there are references to the role of the victim in the relevant criminal justice system.’

3. VICTIMS' RIGHTS IN CRIMINAL PROCEEDINGS

Afore examining the *Roberts M.* case and the ruling the Dutch Court of Appeal, the victims' rights in criminal proceedings will be presented in this chapter. The core of the aforementioned International and European instruments on victims' rights is as follows. Victims should:

- be treated with compassion and respect for their dignity³³,
- receive information³⁴,
- be heard and their views be considered³⁵,
- be protected for privacy and safety³⁶,
- have access to support³⁷,
- and they should have the right to restitution by the offender and / or State compensation³⁸.

³³ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 1. CoE Recommendation Rec(2006)8 on Assistance to Crime Victims, 2. Principles. UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse, adopted in 1985 by the United Nations General Assembly, adopted by the consensus of the Netherlands, article 4.

³⁴ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 4, 6. CoE Recommendation Rec(2006)8 on Assistance to Crime Victims, 4. Role of the Public Services. UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse, adopted in 1985 by the United Nations General Assembly, adopted by the consensus of the Netherlands, article 5, 6.

³⁵ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 10. CoE Recommendation Rec(2006)8 on Assistance to Crime Victims, 4. Role of the Public Services. UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse, adopted in 1985 by the United Nations General Assembly, adopted by the consensus of the Netherlands, article 6 (b).

³⁶ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 18, 20, 21, 22, 23. CoE Recommendation Rec(2006)8 on Assistance to Crime Victims, 6. Information. UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse, adopted in 1985 by the United Nations General Assembly, adopted by the consensus of the Netherlands, article 6 (d).

³⁷ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 8, 9. CoE Recommendation Rec(2006)8 on Assistance to Crime Victims, 5. Victim Support. UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse, adopted in 1985 by the United Nations General Assembly, adopted by the consensus of the Netherlands, article 14, 15, 16, 17.

³⁸ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 14. CoE Recommendation Rec(2006)8 on Assistance to Crime Victims, 7. Right to Effective Access to

These rights can be divided in interactional, procedural and distributive justice. Interactional justices relates to the enactment of the procedure (Laxminaryan, 2012, p. 59), whereas procedural justice is considered to centre on fairness in the process (Wemmers, 2010, pp. 32-33). Distributive justice is perceived to be the consistency of the outcome of the trial with certain norms and morals victims ought of great importance (Wemmers, 2010, p. 30; Lind & Tyler, 1988). Mention should be made that interactional and procedural justice is of greater importance for victims than distributive justice as the process itself has a stronger impact on victims. The concept of fairness is particularly sensible for victims in the proceedings. Due to the limited length of this study, I will focus on what according to the previous research (See: Maercker & Muller, 2004; Maguire, 1991; Goodey, 2005; Waller, 2011) victims of crime find uttermost important and what falls under the core element of interactional justice: *respect & recognition*, the core element of procedural justice: *participation*, and also the core of distributive justice: *compensation* (Report Victims in Europe, 2009).

3.1. Respect & Recognition

Victims of crime have the need to be recognized as victims before the law and to be treated with respect by authorities and in the criminal proceedings (Herman, 2003, pp. 159-166; Waller, 2011, pp. 29-30). The UN Declaration of 1985 mentions that '*victims should be treated with compassion and respect for their dignity*'.³⁹ The Recommendation of the CoE is more detailed on this subject matter and reads: '*States should ensure the effective recognition of, and respect for, the rights of victims with regard to their human rights; they should, in particular, respect the security, dignity, private and family life of victims and recognise the negative effects of crime on victims*'⁴⁰ and '*States should identify and support measures to encourage respect and*

Other Remedies, 8. State Compensation. UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse, adopted in 1985 by the United Nations General Assembly, adopted by the consensus of the Netherlands, article 12, 13.

³⁹ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse, adopted in 1985 by the United Nations General Assembly, adopted by the consensus of the Netherlands, article 4.

⁴⁰ CoE Recommendation Rec(2006)8 on Assistance to Crime Victims, article 3.1 (underline added).

*recognition of victims and understanding of the negative effects of crime amongst all personnel and organisations coming into contact with victims’.*⁴¹

Furthermore, both the EU Framework Decision of 2001 as well as its 2012 Directive successor put strong emphasis and pressure on respecting and recognizing victims and their rights, of which the latter even more comprehensive. The EU Directive on the minimum standards of victims’ rights elaborates on this notion as follows.

‘Article 1. Objectives

*1. (...) Member States shall ensure that victims are recognized and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victims support or restorative justice services or a competent authority, operating within the context of criminal proceedings.*⁴²

The reference to respect and recognition is made all throughout the Directive. Of particular interest is the notion that both direct victims as well as their close family members who have suffered harm as a result of the crime have access to support and protection under this directive. According to research conducted in 27 Member States of the European Union, 58% of local victims’ rights experts found that victims were not being adequately recognized or respected by their own criminal justice system (Report Victims in Europe, 2009, p. 38). This is quite worrisome as the EU framework decision of 2001 also obliged States to *ensure* respect and recognition for victims of crime. The most significant change coming along with the ratification of the 2012 Directive is its direct effect. Hence, the European Commission could, after a MS implements the directive within the specified term, bring an infringement case for ‘non-communication’ against the MS whenever he does not (fully) comply with the provision laid down in the Directive and thus does not respect community law. Whenever deemed necessary, the European Commission could forward the case to the European Court of Justice as the last step.⁴³

⁴¹ *Idem*, article 4.1 (underline added).

⁴² EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 1.1. (underline added).

⁴³ Treaty on the Functioning of the European Union (TFEU), article 258. Also see: ec.europa.eu/eu_law/infringements/infringements_en.htm

3.2. Participation

The core element of procedural justice is the right to participation. Participation constitutes several rights, including the right to be heard through an oral or written Victim Impact Statement.⁴⁴

Although slightly vague, the right to be heard is codified under the UN Declaration of 1985, reading: *'Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system'*.⁴⁵ The fact that the Netherlands has introduced the Victim Impact Statement as late as 2005 is quite shocking. The advocacy to provide victims with the opportunity to be heard is seemingly a decades long process. Moreover, the right to be heard is also codified in the binding EU Directive of 2012, of which article 10.1 reads: *'Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.'*⁴⁶

The right to participation can also include, in addition to the Victim Impact Statement, the right to legal assistance⁴⁷, restorative justice⁴⁸, and the right to reimbursement of expenses⁴⁹. Furthermore, the concept of private prosecution can

⁴⁴ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), preamble under paragraph 41.

⁴⁵ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse, adopted in 1985 by the United Nations General Assembly, adopted by the consensus of the Netherlands, article 6.B.

⁴⁶ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 10.1.

⁴⁷ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), Article 13 Right to legal aid: *'Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.'*

⁴⁸ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 2.1 (d): *'restorative justice' means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party'.*

⁴⁹ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), Article 14 Right to reimbursement of expenses: *'Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant justice system. The*

also be a part of victims' participation in criminal proceedings (O'Hara, 2005; Report Victims in Europe, 2009, p. 45).

3.3. Compensation

The right to compensation forms an essential component of distributive justice. A claim for compensation for the wrongful act is from origin a tort law procedure, which could be adhered by the injured party to the criminal proceedings in some countries as a substantial part of its victims' rights (Mulder, 2013, p. 13). Scholars have attached different aims to the concept of compensation. On the one hand, compensation can serve as a retributive tool for victims (Kaptein, 2004; Orth, 2003, p. 175). While on the other hand, the claim for compensation can have a symbolic and emotional value for victims of crime in the form of acknowledgement for their suffering (Mulder, 2013, pp. 111-131).

The recent EU directive reaffirmed its position by the inclusion of article 16:
'1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings. 2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.'⁵⁰

Hence, according to community law, the compensation claim can form a part of the criminal proceedings. This can be initiated by the office of prosecutor, the judge, or by the victim self, within his/her legal status (Report Victims in Europe, 2009, p. 104). Within the criminal justice system of the Netherlands, as well as within several other civil law Member States of the European Union, victims could adhere⁵¹ their civil claim into the criminal proceedings under the condition that the victim must be a legal party in the process (Report Victims in Europe, 2009). The advantage of the adhesion of the compensation claim within the criminal proceedings is the fact that in many jurisdictions, including the Netherlands, the State makes use of an advance payment of - a part of - the compensation to the victims, after the courts' affirmative

conditions or procedural rules under which victims may be reimbursed shall be determined by national law.'

⁵⁰ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 16 (underline added).

⁵¹ See for example the Dutch Criminal Code of Procedure (Wetboek van Strafvordering), article 51f.

assessment, if the offender is not able to do so him or herself.⁵² Notion should be made that the adhered parties in the Netherlands are not allowed to request for expert-witnesses during criminal proceedings to support their claim for compensation or any other form of requests that may risks the accessory character of the adherence procedure in the criminal process.

3.4. Sub-Conclusion

In sum, interactional, procedural and distributive justice forms the centre of study. Respect and recognition form the core of interactional justice. Research has shown that victims find the symbolic value of being recognized and treated with dignity for the harm caused to them of uttermost importance. These rights have their legal basis in both non-binding instruments, such as the UN Basic Principles and CoE Recommendation, as well as the binding instruments, such as the EU framework decision of 2001 and the directive of 2012. The same goes for participation as the core of procedural justice. Although participation is a broad concept of which under its umbrella fall several rights, the focus of attention will be on the right to be heard. The core of the distributive justice is compensation. Although slightly on a lower rank of value for victims, the symbolic justice creates a fundamental part of their recovery process.

⁵² Wetboek van Strafrecht (The Netherlands), article 36f (6).

4. CASE STUDY: ROBERTS M.

The core of this study is essentially covered in this chapter, forming the start of the application phase. Through the evaluation of existing International and European victims' rights instruments, we have been guided to the assessment of *Roberts M.* case. As mentioned before, this case has raised new questions in the field of victims' rights due to its unique character. A shocking 87 very young children have been subjected to appalling sexual abuse, of which 67 were included in the indictment with the approval of the parents. The age range starts from as young as 19 days and as old as 3 years, with an average age of only 8 months. Due to young age of these infants, the question was raised whether their parents were victimized as well and could fall under the legal victim status under the Dutch Law. The ruling of the Court of Appeal will be divided in four parts; the general part, consisting of the implementation and interpretation of the law and definition of victim, will be discussed in the next paragraph. The other parts will be separately analysed on the victims' rights subjects of respect & recognition, participation and compensation.

4.1. Court's Ruling

With regard to the legal victim status of parents the Court wanted to elucidate the definition of victim and its status under Dutch law. The Court referred in essence to the Law for the Improvement of the Victims' Position in Criminal Procedure of 2011. The fundamental change was the fusion of the terms victim and 'disadvantaged party'.⁵³ Additionally, the victims' rights were broadened and codified under one section in the Criminal Code of Procedure. The Court focused in particular on articles 51a.1, 51e.1 and 51f.1 of the Criminal Code of Procedure.⁵⁴ Translated from Dutch, the articles read as follows.

⁵³ Court of Appeal Amsterdam, 26 April 2013, *Case No.* 23-002662-12, *LJN* BZ8885.

⁵⁴ *Wetboek van Strafvordering* (The Netherlands).

Article 51a.1 CCP⁵⁵

A victim is the one who has suffered material or other form of harm as a direct result of the criminal act. A victim can also be a co-operation who has suffered material or other form of harm as a direct result of the criminal act.

Article 51e.1 CCP⁵⁶

The victim or a dependant of a deceased victim may issue a statement on the hearing about the impact of the criminal act(s), specified in the fourth subsection, have caused on him.

Article 51f.1 CCP⁵⁷

The one who has suffered direct harm as a result of the criminal act can, regarding his claim for compensation, adhere as a disadvantaged party in the criminal proceedings.

The Court interpreted these articles as follows:

“Victims of crime have been added as a separate legal party in the Criminal Code of Procedure. The granted victims’ rights can in principle be exercised by the victim himself, if not through his attorney or legal representative. Two exemptions can be distinguished in this matter: 1) the right to be heard can also be exercised by another person rather than the victim himself, and 2) in case of a deceased victim some rights will be granted to his dependants. Only the victim can issue a claim for compensation.”⁵⁸

Henceforth, in the Courts’ opinion only the one to whom the offence was aimed at and as a consequence has suffered harm is entitled to the victims’ rights set out in the

⁵⁵ Wetboek van Strafvordering (The Netherlands), article 51a.1 (Dutch, emphasis added):

“Als slachtoffer wordt aangemerkt degene die als rechtstreeks gevolg van een strafbaar feit vermogensschade of ander nadeel heeft ondervonden. Met het slachtoffer wordt gelijkgesteld de rechtspersoon die als rechtstreeks gevolg van een strafbaar feit vermogensschade of ander nadeel heeft ondervonden.”

⁵⁶ Wetboek van Strafvordering (The Netherlands), article 51e.1 (Dutch, emphasis added):

“Het slachtoffer of een nabestaande kan op de terechtzitting een verklaring afleggen over de gevolgen die de strafbare feiten genoemd in het vierde lid bij hem teweeg hebben gebracht.”

⁵⁷ Wetboek van Strafvordering (The Netherlands), article 51f.1 (Dutch, emphasis added):

“Degene die rechtstreeks schade heeft geleden door een strafbaar feit, kan zich terzake van zijn vordering tot schadevergoeding als benadeelde partij voegen in het strafproces.”

⁵⁸ Court of Appeal Amsterdam, 26 April 2013, Case No. 23-002662-12, LJV BZ8885, (emphasis added) p. 31. (Translated from Dutch): Slachtoffers van delicten zijn sinds 2011 als afzonderlijke procesdeelnemers in het Wetboek van Strafvordering opgenomen. De hun toegekende rechten kunnen in beginsel alleen door henzelf worden uitgeoefend, al dan niet via een advocaat die hen bijstaat of iemand die hen vertegenwoordigt. *Daarop bestaan twee uitzonderingen: 1) ook anderen dan de slachtoffers kunnen het spreekrecht uitoefenen, en 2) indien het slachtoffer is overleden, komen bepaalde rechten aan de nabestaanden toe. Het is alleen het slachtoffer dat een vordering tot schadevergoeding kan indienen.*

code. The Court refers to the parliamentary history preceding this provision in which the legislator mentions the definition provided by the EU framework decision of 2001.⁵⁹ Basically, the legislator as well as the Court interpret the provision in the framework decision as well as the Criminal Code of Procedure as only being applicable for the one who is harmed by the provision in the Criminal Code upon which he/she was ought to be protected from⁶⁰, in this case it would be the young infants selves. Exemptions are made for the dependants of deceased victims, and more recently by the ratification of Dutch law in September 2012, the opportunity provided for parents of very young victims to be heard during the criminal proceedings.⁶¹ Henceforth, the claim of the parents to be regarded as victims in the criminal justice process was fully rejected.

The attorney of 52 child victims and their respective parents, mr. Korver, argued that parents should, primarily, be regarded as direct victims as well. Hence, falling under the conditions laid down in article 51a CCP. The main argument was the concept of symbiosis. According to the attorney, the testimonies of the experts in the criminal proceedings of the Court of Appeal parents of very young infants are to be considered a special case as their pain and suffering is interrelated. The three experts that were asked to testify were paediatrician dr. Landsmeer-Beker, child psychologist prof. dr. Lamers-Winkelmann and child psychiatrist dr. Vögtlander.⁶² Independent from each other, all three experts came to the conclusion that parents of very young infants are also victims of a criminal act due to ‘two-unity’ between them. Paediatrician Landsmeer-Beker argued as follows: *“Especially in their first years, children live for and of their parents, and vice versa”*.⁶³ Likewise, child psychiatrist Vögtlander stated: *“Children depend in their first six years, especially and most*

⁵⁹ Court of Appeal, 26 April 2013, *Case No.* 23-002662-12, *LJN* BZ8885, p. 30.

⁶⁰ Court of Appeal, 26 April 2013, *Case No.* 23-002662-12, *LJN* BZ8885, p. 28. See also the parliamentary history (Dutch): *Memorie van Toelichting*, 1989-1990, 21 345, nr. 3, p.11.

⁶¹ Court of Appeal, 26 April 2013, *Case No.* 23-002662-12, *LJN* BZ8885, p. 30. See also the law of 12 July 2012, amendment of article 51e (2) Wetboek van Strafvordering (The Netherlands) (Dutch): Het slachtoffer, de vader of de moeder van een minderjarig slachtoffer die een nauwe persoonlijke betrekking met dat slachtoffer hebben en personen die dat slachtoffer als behorende tot hun gezin verzorgen en opvoeden en in een nauwe en persoonlijke betrekking tot het kind staan kunnen, gezamenlijk of elk afzonderlijk, op de terechtzitting een verklaring afleggen over de gevolgen die de strafbare feiten genoemd in het eerste lid, bij hen teweeg hebben gebracht.

⁶² Court of Appeal, 26 April 2013, *Case No.* 23-002662-12, *LJN* BZ8885, p. 26.

⁶³ Plea of the victims’ attorney mr. Korver, trial date 22 March 2013, own translation.

definitely in the first three years, on the care of the parents. They form a 'two-unity' due to development of the child's brain, which is still in progress."⁶⁴

The victims' attorney also reached out to several other researchers and experts in the field of sociology, psychology and law to prove his statement. The Dutch child trauma centre (Kinder- en Jeugd traumacentrum), for example, stated in a letter to mr. Korver that parents of these child victims are subjected to Post-Traumatic Stress Syndrome (PTSS) due to the criminal act directed to their child.⁶⁵ Also representatives of the International Victimology Institute Tilburg (INTERVICT) shared the opinion of the victimisation of parents and their right to legal victim status.⁶⁶

Questions arise with regard to the accurateness of the afore mentioned argument; to what extent the legal victim status of parents is legitimate under International and European Human Rights law; and whether the Court has applied and interpreted the national law in accordance with binding International & European Law, which is superior to national legislation according to article 93 and 94 of the Dutch Constitution. These questions will be answered as far as possible under paragraph 4.2 and 4.3, as the next sections cover the Court's assessment of procedural and distributive justice.

4.1.1. Respect & Recognition

Victims find receiving respect and recognition for the wrongdoing crucial for their ability to cope (Wemmers, 2009). For the sake of humanising the criminal justice system, the Court socially recognized parents of the children as victims. The judgment covers a great part of this social recognition, which comes essentially down to verbalising the pain and harm caused to the parents as a result of the criminal act directed to their child.⁶⁷ Nevertheless, the respect provided for the parents of the child victims should not be overlooked. The victims were granted the opportunity to question the experts-witnesses, through their lawyer, in the criminal proceedings. Furthermore, the parents had the opportunity to be guided and assisted by Victim

⁶⁴ Idem.

⁶⁵ Letter from 'Kinder- en Jeugd traumacentrum' to mr. Korver from Korver & Van Essen Lawyers, date: 27 February 2013.

⁶⁶ Letter from professor dr. Letschert and dr. Pemberton (INTERVICT) to mr. Korver, date: 15 and 18 March 2013.

⁶⁷ Court of Appeal, 26 April 2013, *Case No.* 23-002662-12, *LJN* BZ8885, p. 26-27.

Support. The Court did not, however, legally recognize the parents as victims in the criminal process. This is quite dissatisfactory for the parents as they seek validation as victims in the criminal process itself.

4.1.2. Participation

With regard to the participation of the victimized parents, the Court refers to the 2012 amendment of the victims' rights in the CCP expanding the entitled participants for a Victim Impact Statement.⁶⁸ Consequently, parents are entitled to practice their right to be heard, of which many also did. The District Court remarkably anticipated on this amendment in its verdict of 21 May 2012 regarding this case. The victims' attorney argued in his plea at the Court of Appeal that the Court should also anticipate on the promised amendment proposal by the Secretary of State of the Safety and Justice, mr. Teeven, which would include parents of very young child victims under the scope of legal victim status in the criminal justice.⁶⁹ The Court of Appeal agreed to decide that the anticipating on this announcement was not justified, as it was not yet formed to a decent proposal. Also, the Court argued, even when the announcement would be converted into an amendment proposal the parliament could still reject it, as the proposal will be subjected to voting.

4.1.3. Compensation

With regarding to the redress for the harm the victims have suffered, three categories of compensation can be distinguished in this case. The first one is the claim for compensation by the child victims conducted through their legal representatives / parents for the immaterial harm they have suffered. This category will not be further discussed here as the Court has granted compensation for the immaterial harm suffered by the child victims; the compensation varies from €2.000 - €6.000 for the violation of physical integrity to €8.000 for the violation of the right to privacy for the child victims subjected to pornography, both laid down in the European Convention on Human Rights.⁷⁰

⁶⁸ Law of 12 July 2012, amendment of article 51e (2) Wetboek van Strafvordering (The Netherlands).

⁶⁹ Plea of the victims' attorney mr. Korver, trial date 22 March 2013 ; Court of Appeal, 26 April 2013, *Case No.* 23-002662-12, *LJN* BZ8885, p. 33 ; Letter of the Secretary of State of the Safety and Justice Ministry, 2012-2013, 33 552, nr. 2.

⁷⁰ Court of Appeal, 26 April 2013, *Case No.* 23-002662-12, *LJN* BZ8885, p.35.

The second category is the claim of the parents as also being a victim of the crime directed at first sight towards the child. This category of compensation constitutes the distributive element with regard to the legal victim status of the parents. The parents are of the opinion that they have been victimized as well due to the sexual abuse of their child by *Roberts M.* The victims' attorney argued, on the basis of testimonies of different experts, that the parents have suffered both mental as well as physical harm *as a direct result of the criminal offence*. Also, their career and/or study have been negatively affected due to the criminal act. Additionally, parents try to protect their harmed child and themselves by changing physical things that could remind them to the crime or even move out of their house. The consequences of the crime also include the harm caused to the family as a whole. The traumatic stress has its deep effect on the parents, individually as well as collectively. A crucial aspect of the crime committed by *Roberts M.* was the fact that the parents trusted him as a caretaker of their child. Their trust has been broken and this will have further impact on the way they perceive trusted and close relationships. The fact that they, in baby-sitting cases at home, have paid *Roberts M.* for taking care of their child while they were on a night out results in more stress and blaming themselves. Yet, the Court rejected this claim and did not consider the harm as summed above as sufficient enough to cover the conditions laid down in article 51a.1 CCP.

The third category is the claim for compensations for the parents themselves as a result of the costs made which the child would have claimed if he/she had made him/herself. Known as 'displaced damage' (*Verplaatste schade*), it essentially refers to costs such as travel, administrative, forced work leave to take care of their child, replacing several home interior and so on. The Court also rejected this claim for compensation, which is in contrast to the advice of the Attorneys General. In their view, the parents could claim for compensation for these displaced costs in the criminal process.⁷¹ They have referred to the case of 2 July 2002 brought before the Dutch Supreme Court.⁷² The Supreme Court discussed the definition of 'displaced damage'⁷³, which is a civil claim for compensation in the criminal proceeding as a

⁷¹ Court of Appeal, 26 April 2013, Case No. 23-002662-12, LJN BZ8885, p.27.

⁷² Hoge Raad (Supreme Court of the Netherlands), 2 July 2002, LJN AE2642.

⁷³ Hoge Raad (Supreme Court of the Netherlands), 2 July 2002, LJN AE2642, under paragraphs 13 and 14, (Translated from Dutch): (13.) *De ouders van een kind dat letsel oploopt, kunnen van de door het kind geleden en nog te lijden schade slechts in hun hoedanigheid van ouder of voogd vergoeding vorderen. Indien de ouders evenwel bepaalde kosten die voor het kind uit het letsel voortvloeien voor hun rekening nemen, kunnen ze daarvan op grond van art. 6:107, eerste lid, BW in beginsel zelf*

third party due to the criminal act directed to another party. The Court of Appeal disagreed and remained solid in its perspective that only the ones who meet the requirements in article 51a.1 CCP are authorized to start a claim for compensation. Hence, the Court rejects this third category of claims as well.

On the contrary, in another sexual abuse case (2010) the District Court of Alkmaar agreed to decide that the mother of the abused juvenile victim has the right to compensation on the basis of ‘displaced damage’ (*Verplaatste Schade*) for the material loss caused due to her work leave in order to take care of her daughter short after the abuse took place.⁷⁴ The inconsistency by the judicial authorities in this field is rather remarkable. Another contra argument for equalising ‘displaced damage’ with the victim legal status under article 51a.1 CCP is the fact that ‘displaced damage’ has its legitimate base in article 6:107 Dutch Civil Code. Translated from Dutch article 6:107 (1) Civil Code reads as follows:

“If someone has sustained physical or mental injuries as a result of an event for which another person is liable, then this other person must compensate not only the damage of the injured person, but also the costs which a third party has made on behalf of the injured person, insofar the injured person, if he had made these costs himself, could have recovered them from the liable person. The pervious sentence does not affect costs which are made by virtue of an insurance.”⁷⁵

On the basis of the article above one could reason that costs the parents made as a result of the criminal act, which the child victim would have made him/herself, could be compensated. The condition here is not that the parents should have a legal victim status, but that there must be a *causal relation* between the costs the parents have made and the sexual child abuse.⁷⁶ When looking at examples of costs parents have made and included in their claim for compensation one could argue that these

vergoeding vorderen. Ingevolge art. 6:107 BW komt een schadevergoedingsaanspraak immers toe aan derden die ten behoeve van degene die lichamelijk of geestelijk letsel oploopt, kosten hebben gemaakt, mits degene die lichamelijk of geestelijk letsel heeft, de bewuste kosten wanneer hij ze zelf zou hebben gemaakt, van de aansprakelijke persoon had kunnen vorderen.(14.) Deze schade wordt dan aangemerkt als ten behoeve van het kind gemaakte kosten, waarvan de ouders vergoeding kunnen vorderen, als verplaatste schade (Schadevergoeding, A.T. Bolt (red.), art. 6:107 BW, aant. 6 en 54).

⁷⁴ Rechtbank Alkmaar (District Court of Alkmaar), 18 februari 2010, LJN BL4561, in Dutch: “Ad. 5 In tegenstelling tot de raadsman is de rechtbank van oordeel dat een rechtstreeks verband bestaat tussen de derving van de vakantiedagen door de moeder van de benadeelde partij en het bewezenverklaarde. Uit de toelichting op de vordering blijkt dat deze schadepost vakantiedagen betreft die in april 2009 zijn opgenomen door de moeder om zorg te verlenen aan haar dochter”.

⁷⁵ Burgerlijk Wetboek (The Netherlands), article 6:107.1 translation retrieved on 13 August 2013 from: <http://www.dutchcivillaw.com/civilcodebook066.htm>, (emphasis added).

⁷⁶ Hoge Raad (Supreme Court of the Netherlands), 2 July 2002, LJN AE2642, under paragraph 18.

are as a result of the criminal act itself and made to the benefit of their child. The purchase of new furniture, for example, since the old ones were visible in the pornographic materials their child was traced in. Another example is the loss of income as at least one of the parents stayed home after they found out about the abuse of their child in their familiar day care or by their trusted baby sitter. Costs of judicial assistance they have made to the benefit of their child to seek for justice. Medical and therapeutic costs of parents and their family as a result of the impact the abuse have made on them. It can be argued that all of these examples are losses as a direct result of the criminal act: there would not be such costs at that period of time if the abuse would not have taken place. Hence, it can be argued, there is a *condicio sine qua non* between the costs of the parents and the criminal act.

The analysis will continue from here on with the second category; namely, the legal victim status of the parents. Mention should be made that further research is necessary on the subject matter of the civil procedure ‘displaced damage’ (*Verplaatste schade*) of third parties within criminal proceedings. As illustrated earlier, courts on different levels are not in agreement with exactly what costs can be regarded as direct or indirect result. This is quite worrisome as the chances of legal insecurity and arbitrary will increase.

4.2. Child Victims as a Vulnerable Group: Special Procedure

While introducing this research I have made a reference to child victims as a vulnerable group and why the consideration of parents as victims in such cases is a special procedure. In the following I will examine the vulnerability of children as victims and analyse whether and, if so, why parents of these young child victims should be regarded as legal victims as well.

Many researchers have tried to define vulnerability with regard to child victims of sexual abuse. Two sorts of vulnerability can be distinguished; one that is fixed by birth and one that is variable, thus depending on the circumstances or nature of the crime (Chapman & Carbonetti, 2011). Children are considered to be vulnerable by the very fact that they are under a certain age to be fully independent (Goodey, 2005, p. 71; Finkelhor & Dzubia-Leatherman, 1994, p. 177). The second element of vulnerability lies in the type of crime; sexual abuse is seen as a crime of which the

victims are in need for special treatment (Groenhuijsen & Pemberton, 2009, p. 54). The third element of vulnerability is the circumstance that the same person that was responsible for their care abused these children; hence the relationship with the offender was a close and familiar one. As I have pointed out earlier in this study these are the aggravating circumstances that could lead to a higher punishment of the offender. Arguably, this element should also count for aggravating circumstances resulting in a higher compensation. Thus, the approach to specific aggravating circumstances should be applicable both ways.

According to research conducted by Victim Support Europe & INTERVICT on behalf of the European Commission, an explicit definition of vulnerability is not provided in the domestic legislation of Member State of the EU. An implicit reference to special treatment of certain victims in international, regional, or national legislation is sufficient to establish the label ‘vulnerable victim’ (Report Victims in Europe, 2009, pp. 39-40).

The aforementioned research showed that the Netherlands, alike the other 26 researched MS, does not have an explicit definition of a vulnerable victim included in its legislation. However, depending on the victims’ age, handicap or the type of the crime special treatment is required. This is sufficient enough to assess that the Netherlands has a special procedure for vulnerable child victims. With respect to the available legal instruments, I have mentioned the fact that Council of Europe Recommendation of 2006 made a reference to vulnerable victim. Likewise, the binding EU framework decision of 2001⁷⁷, although quite vague (Groenhuijsen & Pemberton, 2009), as well as the new Directive of 2012⁷⁸ make a reference to vulnerability. Especially, the recent directive tries to define the term vulnerable victim itself. The article 22 under (2) and (3) of the directive provides a base for assessment of victims in need for special treatment:

“ 2. The individual assessment shall, in particular, take into account:

(a) the personal characteristics of the victim;

(b) the type or nature of the crime; and

⁷⁷ EU Framework Decision on the Standing of Victims in Criminal Proceedings (2001/220/JHA). (2.) *Each Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances.*

⁷⁸ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA).

(c) the circumstances of the crime.

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable.

In this regard, 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 shall be duly considered."⁷⁹

As the case *Roberts M.* is distinctive in the high amount of the utmost youngest child victims that became subjected to sexual abuse by their day caretaker and/or sitter, it is difficult to find a relatively comparable case in other States. When assessing the child victims in the *Roberts M.* case with the criteria in article 22 of the EU Directive it can be concluded that these child victims (*age / personal characteristic*) have been subjected to sexual abuse (*nature of crime component*) by their care taker (*personal relationship and dependency component*) on the basis of their limited communication skills (*personal characteristics*) so that they could not share the horrific abuse with anyone. In sum, the child victims in the *Roberts M.* case are to be considered as extremely vulnerable and special treatment of these victims is required.

4.2.1. Victimisation of Parents

Now that we have considered the vulnerability of the child victims the focus is on the special procedure; the question is in how far the parents are victimized. Research has shown that parents suffer a high risk of Post-Traumatic Stress Syndrome (PTSS) (Brewin, Andrews, & Valentine, 2000), mothers even a significantly higher risk (Manion, et al., 1996; Kelley, 1990), and an increased chance of falling into a depression (Elliot & Carnes, 2001; Davies, 1995) after finding out that their child has been sexually abused.

Considering the parents of the child victims in the present case, several Victim Impact Statement which they have provided in court are assembled, with their

⁷⁹ EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 22.

approval, in the book ‘Recht van Spreken’ (Right to Speak) by mr. R. Korver. Translated from Dutch, parents verbalized the impact of the abuse on their lives as follows.

1. *“The first six months we stayed home a lot. Sometimes my wife could not go to work as panic attacks appeared once in a while. Every night we speculated what consequences of the abuse our child would experience in the future. Also during the weekends we were constantly thinking about the abuse. We would talk in English to prevent our oldest one from understanding us. [...] As parents we have been in therapy several times. Our relationship was under pressure. The whole case brings out anger, grief, and stress in our family. The only thing that remains is doubt. The pain and guilt slightly fade away, unfortunately the doubt remains. We doubt whether there is any connection between the abuse and the repeated sickness of our child. Medical research has shown that our youngest child has herpes (like Roberts M. does). Is our child infected by Roberts M.? [...]”*⁸⁰

2. *“I am declared unfit to work. My contract as a manager has not been extended after two years because I did not recover 100%. [...] Early February 2011, I started to visit a psychologist, who diagnosed me with the Post-Traumatic Stress Syndrome as a result of the sexual abuse. The recovery process is slow due to the fact the case is still in progress.”*⁸¹

3. *“We have given our child in the hands of someone we trusted, where we thought our child would be safe. Instead the evil, which we could not have imagined it existed, visited us. Without our knowing, our child has been abused, stained, penetrated, violated and harmed in his first and second year. And we, we have not protected him” [...] We were confronted with another shock when the experts of the Child and Juvenile Trauma Centre concluded that there we were in a disconcerted parent-child relationship. The therapist said: ‘You were not there for him when he needed you the most’ [...] Recently I feel weaker, vulnerable, and insecure. Weaker, like I risk to get defeated by something or someone whom I have thought I could win, but who is mastering me slowly. Vulnerable, because my ability to cope is decreasing. Mistakes at work are increasing and I see it as failing as a person.”*⁸²

4. *“I am furious that a fundamental value in my life, the trust in a fellow human being, is taken away from me because of this man.”*⁸³

5. *“Since spring last year nothing has been the same anymore, I am on work leave. I have weekly psychotherapy to cope with all that happened. How could I have send my child to that day care? Why have we not, as parents, noticed anything? I was awake*

⁸⁰ Korver, R. ‘Recht van Spreken: Slachtoffers in het Nederlandse Strafproces’ (Right to Speak: Victims in the Dutch Criminal Procedure), Arbeiderspers: 2012, Slachtofferverklaring (Victim Impact Statement) AC, p. 32-33.

⁸¹ Idem, Slachtofferverklaring (Victim Impact Statement) AE, p. 37.

⁸² Idem, Slachtofferverklaring (Victim Impact Statement) AG, p. 42.

⁸³ Idem, Slachtofferverklaring (Victim Impact Statement) AH, p. 51.

for nights and have not slept much. Crying fits on the schoolyard or any contact with strangers makes it very difficult for me to continue with day to day activities.”⁸⁴

As can be read in these quotations of several Victim Impact Statements written by the parents of the child victims the major consequences of the abuse are: Post-Traumatic Stress Syndrome, depression, work leave, disability to work, breach of trust which has its effects in social contacts, tensed parent-child relation, guilt and blaming themselves. Research on non-abusing parents of their sexually abused child conducted by Davies (1995) has shown that 67% of the parents had significant parenting problems, 60% was depressed and suffered from PTSS, 57% had relationship problems with their child victim, and 67% was suffering from unresolved anger. Davies illustrated his findings in the table below (Parental Distress and Ability to Cope Following Disclosure of Extra-Familial Sexual Abuse, 1995, p. 405).

Family Relationships & Mental State	Type I N = 11 (37%)	Type II N = 7 (23%)	Type III N = 12 (40%)	Total N = 30 (100%)
Severe marital and sexual problems	1 (9%)	2 (29%)	11 (92%)	14 (47%)
Relationship problems with victim child	1 (9%)	5 (71%)	11 (92%)	17 (57%)
Significant parenting problems	1 (9%)	7 (100%)	12 (100%)	20 (67%)
Depressed mood	3 (27%)	3 (43%)	12 (100%)	18 (60%)
Post Traumatic Symptoms. (e.g. intrusive thoughts, flashbacks)	3 (27%)	3 (43%)	12 (100%)	18 (60%)
Anxiety based symptoms. (e.g. Panic attacks, fears)	0 (0%)	0 (0%)	8 (67%)	8 (27%)
Unresolved anger	5 (45%)	3 (43%)	12 (100%)	20 (67%)
Loss of significant relationship (as a consequence of disclosure)	3 (27%)	4 (57%)	5 (43%)	12 (40%)

Note. Type I: Parents able to cope following initial period of distress.
 Type II: Parents able to cope following initial period of distress but with significant problems.
 Type III: Parents unable to cope.

Another study on the impact of sexual abuse on non-abusing parents (Dyb, et al., 2003) showed that the abuse as well as the criminal proceedings and the attention through the media resulted in high and chronic stress, I quote:

“Results: Hearing about the sexual abuse, testifying in court, hearing the verdict, and being exposed in media reports were all related by the parents as distressing events. The majority of the parents experienced secondary life changes after the alleged abuse. Four years after the alleged sexual abuse, one-third of the parents reported a high level of PTSD Intrusive symptoms and one-fourth reported a high level of PTSD Avoidance symptoms. There was a significant positive correlation between a measure

⁸⁴ Idem, Slachtofferverklaring (Victim Impact Statement) AS, p. 79.

of psychological well-being and PTSD. Secondary life changes and locus of control significantly predicted PTSD. (Dyb, et al., Alleged Sexual Abuse at a Day Care Center: Impact On Parents, 2003, p. 939)''

The secondary life changes mentioned above are, for example, loss of their job, moving to another city, change of social environment, change in daily activities such as childcare and daily routines (Dyb, et al., 2003, p. 943). These consequences were as a direct (quitting job due to the disclosure of the abuse in order to take care of the child) as well as indirect effect (change of social environment) of the sexual child abuse.

I have studied the plea of mr. Korver⁸⁵, attorney of 52 child victims and their parents, on the damages that were claimed by his clients and their parents within the criminal proceedings of the *Roberts. M.* in order to demonstrate in how many of these case claims were made on, for example, the work leave of a parent after the disclosure of the child abuse. The results are presented in table 1 below.

Table 1. Material damages – Claim for Compensation

Type of Material Damage	Child Cases N = 52 (100%)
- Replacing furniture and/or other interior pieces traced in pornography materials in which their child was seen in	8 (15%)
- Administrative or travel costs made due to the criminal process	44 (84%)
- Reclamation of baby-sitting costs paid to <i>Roberts M.</i>	12 (23%)
- Income loss due to work-leave or study delay after disclosure of the abuse	19 (36%)
- Medical or therapeutic costs	18 (34%)

Administrative costs and (phone bills) and travel costs (flights and parking costs to attend the criminal proceedings) were claimed with 84% the most, followed by the

⁸⁵ Plea on the explanation of the claims for compensation for the child victims and their parents, trial of 22 March 2013, Court of Appeal, Mr. Korver.

claim for income loss due to the disclosure of the sexual abuse in 36% of the cases. Hence, it can be argued that parent in this present case, as seen in their Victim Impact Statement and in the research above, have been victimized and disadvantaged as well.

4.2.2. The Argument of Symbiosis

The victims' attorney in this present case brought forward another interesting argument, supported by several experts that he contacted. Some experts have been mentioned earlier in this study when the court's ruling was assessed, as they were heard as expert-witnesses during the proceedings in appeal. Nevertheless, mr. Korver's viewpoint was supported by some others as well. Dr. A. Bentovim, child and adolescent psychiatrist and the founder of the Child Sexual Abuse Assessment and Treatment Service at Great Osmond Street Hospital in London, stated in a letter to the victims' attorney:

"[...] Until children are of a full school going age, they have not achieved the degree of separation which would see them as separate entities. In the preschool age they are very much an integral unit with their parents and any abusive act against a child can be considered an abusive act against a parent. [...]"⁸⁶

The accuracy of such a statement can be verified by studying other research conducted on the subject matter of a symbiotic state in infants. Previously, we have seen why child victims of sexual abuse are to be considered as extremely vulnerable. With regard to the argument of symbiosis, the vulnerable status of child victims is very much related. Psychological research has shown that the vulnerability of child victims has its foundation in *dependency* (Finkelhor & Dzubia-Leatherman, 1994, p. 177). The level of vulnerability increases with the younger the age of the child, accordingly the more dependent he/she is as well.

The term symbiosis is defined by Oxford dictionaries as an '*interaction between two different organisms living in close physical association, typically to the advantage of both*'.⁸⁷ Mahler (1975) is known in psychological research as advancing the idea of the 'symbiotic state' of an infant with his/her mother, I quote:

"From the second month on, dim awareness of the need-satisfying object marks the beginning of the phase of normal symbiosis, in which the infant behaves and functions as though he and his mother were an omnipotent system – a dual unity within a

⁸⁶ Letter from Dr. Anton Bentovim to mr. Korver from Korver & Van Essen Lawyers, 2013.

⁸⁷ Definition retrieved on 14 August 2013: oxforddictionaries.com

common boundary (Symbiosis and Individuation: The Psychological Birth of the Human Infant, 1975, p. 44)

The idea of a full symbiotic phase was, however, later moderated due to empirical research that showed infants advanced capacities in, amongst others, cognition and perception which results in the ability to differentiate self from mother and others (Pine, 2004). Interestingly, Pine pointed out another remarkable psychological analysis that may have its influence on the case *Roberts M.*:

“When something the infant experiences crosses paths with experiences that are emotionally fraught for the mother, that are full of conflict, anxiety, and/or ambivalence, her handling of the infant will reflect that conflict and affect the child in profound ways. It will magnify the infant’s experience in ways that give it a focal, conflict, centrality. This is the way the mother’s timetable is locked into that of the infant.” (Mahler's Concepts of "Symbiosis" and Separation-Individuation: Revisited, Reevaluated, Refined, 2004, p. 519)

Therefore, it can be argued that the sexual abuse experienced by the child in the present case has direct harm to the child victim, but due to the impact the abuse has on the parents, as demonstrated under paragraph 4.2.1, a circle is created as the emotional experiences of, especially the mother, is reflected back to the infant with greater damage as a result. In sum, parents suffer direct harm as a result of the sexual abuse of their very young child. By not treating the harm of the parents, the damage to the child may be enlarged.

4.2.3. Secondary Victimization

The aspects of vulnerability and as a result the special treatment procedure are related to another notion of victimization, namely the secondary victimization. Essentially, the concept of secondary victimization entails that a victim is firstly harmed by the criminal act and once again by the criminal justice system due to the lack in contented treatment (Orth, 2002; Wemmers, 2013). This can have its form in the lack of recognition, respect, and the denial of participation or compensation. Wemmer demonstrated (2013) that how criminal justice treats victims has impact on their recovery and the level of Post-Traumatic Stress Syndrome. Hence, the denial of legal victim status for parents of the sexually abused children in the *Roberts M.* case may

be result in secondary victimization as they have been denied the victim legal status in the criminal procedure.

4.3. International & Regional Human Rights Perspective

Having examined the victimization of the parents the question is whether there is a legal basis on the international and European level that could justify the discussed arguments. As argued above, the victimization of the parents as the caretaker of their young child reflects back to the recovery process of the abused child self. One could say that out of protection of the vulnerable child, his/her parents should be granted legal victim status as well, in cases where damage to the parents' health or income can be detected. Studying this hypothesis, I will firstly look into the international and binding UN Convention on the Rights of the Child, which the Netherlands has signed. Article 3.1 reads:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”⁸⁸

In other words, every decision weighted by, in this case, the Court should have processed the interest of the child as its first concern. According to the recent General Comment of UN Committee on the Rights of the Children, the term ‘best interest of the child’ should be interpreted as ‘ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.’⁸⁹ Meaning, the best interest of the child is the general aim and purpose throughout the convention. The holistic development can be defined as taken into account the child’s physical, mental, spiritual, moral, psychological and social development.⁹⁰ All the rights laid down in the convention are equal; the one does not outweigh the other. The legal usage of this article is, admittedly, rather complicated due the vagueness of the provision. However, the implementation of article 3.1 CRC in a legal case requires the expert thoughts of, for example, medical doctors, psychologist, psychiatrist, behavioural therapist and so on. by way of examining

⁸⁸ Convention on the Rights of the Child, adopted by the UN in 1989, signed by the Netherlands on 26 January 1990, article 3.1 (emphasis added).

⁸⁹ UN Committee on the Rights of the Children – General Comment, No.14, 29 May 2013, p. 3.

⁹⁰ UN Committee on the Rights of the Children – General Comment, No. 5, 27 November 2003, p.4

whether a certain decision is contrary to the best interest of a child (Blaak, et al., 2012, p. 10).

Regarding the present case, expert-witnesses have shared their view with the Court that there is a ‘two-unity’ between the young infant and his/her parent. I have demonstrated several empirical and academic research results that essentially state harm to extremely young infants, which is the case, is harm to their parents. Not treating the parents in their recovery results in even bigger damage to the child’s development after the abuse, like a vicious circle. Although this specific article was unfortunately not mentioned during the proceedings before the Court of Appeal in the present case, the judges are supposed to be aware of the law on the basis of the *ius curia novit* principle codified under article 25 RV (Dutch Law for the legitimate practice of the judges). Dutch Courts are in disagreement with regard to the direct effect of article 3.1. CRC. Studying Dutch case law shows that some Courts accept the direct effect while others deny it. In 2011 the Court of Appeal in The Hague was of the opinion that in special circumstances a solution should be provided to prevent a breach of article 3 CRC, even when national law stands in the way.⁹¹ Nonetheless, through the General Comment, the Committee on the Rights of the Children clarified the binding and direct nature of article 3.1 CRC calling the best interest of the child a substantive right, a fundamental legal principle and a rule of procedure.⁹²

On the regional level, the European Union effort to in-cooperate the CRC in its community law is worth mentioning. Article 2.5 of the Lisbon Treaty states that the Union, and thus its Member States, will ‘*contribute to the protection of human rights and, in particular, the rights of the child*’.⁹³ The Lisbon Treaty realized its promise by, at minimum, making the EU Charter of Fundamental Rights legally binding to EU institutions and the Member States. Article 24.2 of this Charter is nearly identical to article 3.1 CRC saying that ‘*in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration*’.⁹⁴ The interpretation method should be regarded in the same manner as article 3.1. CRC, illustrated above. Mention should be made,

⁹¹ Hof ’s-Gravenhage (Court of Appeal), 21 juni 2011, *LJN BQ8697*.

⁹² UN Committee on the Rights of the Children – General Comment, No. 5, 27 November 2003, under paragraph 5. p. 4.

⁹³ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, article 2.5.

⁹⁴ Charter of Fundamental Rights of the European Union, 2000/C 364/1, binding after entry into force of the Lisbon Treaty in 2009, article 24.2.

however, that the EU Charter has a limited application ex article 51 until 54. Article 52 under 5 clarifies the limitation as it reads: *“The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by Institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality”*.⁹⁵

Furthermore, the victimization of the parents falls within the context of harm suffered by family members of the victim as a result of the criminal act in the preamble of the EU Directive of 2012 establishing minimum standards on the rights, support, and protection of victims of crime. In other words, article 2.1. of the Directive⁹⁶ not only defines the term victim it also covers parents of very young infants as the argument of symbiosis and victimization as victims in criminal proceedings. The Dutch Court is obliged to follow international or European provisions that are binding to the Netherlands, even if the national law is in conflict with the provisions, on the basis of articles 93 and 94 of the Dutch Constitution.⁹⁷

⁹⁵ Charter of Fundamental Rights of the European Union, 2000/C 364/1, binding after entry into force of the Lisbon Treaty in 2009, article 52 (5).

⁹⁶EU Directive of 25 October 2012 (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of crime, replacing EU Framework decision (2001/220/JHA), article 2.1 under (i): *“a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence”*.

⁹⁷ Grondwet van het Koninkrijk der Nederlanden (*Dutch Constitution*), translated from Dutch:

Article 93

Provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents shall become binding after they have been published.

Article 94

Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions.

4.4. Sub-conclusion

The analysis of the Court's ruling was discussed in four fold. In general, the Court of Appeal dismissed all the claims in which it was argued that the parents made costs as a result of the abuse. However, the Court broadly recognized the victimization of the parents in the *Roberts M.* case. Which certainly has a great impact on the recovery of the parents due to its symbolic value. Furthermore, parents were provided the opportunity to be heard in the criminal proceedings through the right on a Victim Impact Statement. The compensation of the claims were, however, dismissed on the conditions of a victim as laid down in the Dutch Criminal Code of Procedure. The arguments of the victims' attorney were presented and verified by studying psychological and empirical research on the concepts of (secondary) victimization of the parents and the symbiotic relation between the infant and his/her parents. Additionally, an overview of the exact claimed damages in the present case were demonstrated. Overall, it can be argued that the parents have been disadvantaged and victimized mentally and economically. From a human rights perspective one could look at the 'best interest' principle laid down in the CRC, for a support of the argument of symbiosis: harm to the infant is harm to the parent. Also, for a healthy and progressive recovery of the child victim, the parents need to have the feeling of recognition that they have been victimized as well and get the support they need.

5. INTERNATIONAL & REGIONAL LEGAL PROCEDURES

Roberts M. has announced that he will forward the case to the Dutch Supreme Court as he disagrees with the ruling of the Court of Appeal, in which he has been sentenced for 19 years imprisonment and forced involuntary commitment. Currently, the cassation on behalf of the injured party (victims) is being prepared as well. The main characteristic of a case in cassation is that the facts of the case will not be re-examined, unlike by the Court of Appeal. Yet, the case is being examined on the accurate interpretation of the law. If the Supreme Court agrees to decide that parents of the child victims in this case should be regarded as victims under international and regional law, if not under national legislation, the case will be re-directed to the Court of Appeal. However, in case the Supreme Court is of the opinion that the Court of Appeal has correctly assessed the victim legal status, is there any other international or regional legal procedures open for the parents?

The child victims and their victimized parents can start a procedure at the European Court on Human Rights on the grounds of violation of articles 8 jo. 13 ECHR. Article 8 of the European Convention reads:

“ Everyone has the right to respect for his private and family life, his home and his correspondence”.⁹⁸

The dynamic character of this article enables different forms of interpretation. Research conducted by order of the Council of Europe illustrates a test in order to comprehend whether a violation of article 8 ECHR is present (Roagna, 2012, p.11). The first question that needs to be asked is whether and why there could be a violation of family life. In the present case, the child victims and their parents argue that there is a disturbance in family life due to the criminal act. The expert-witnesses have supported this view and argued that there is an imbalance, instability and disturbance in the family life. As demonstrated in chapter 4.2.1 the effects on the parents and family as a whole are evident. The second question admissibility is there any interference by the State that resulted in the disturbance of family life? The answer here is a negative one. However, the research also illustrates another possibility; the positive obligation of the State with regard to family life. When studying the jurisprudence of ECtHR it is noticeable that there rests a positive obligation on article

⁹⁸ European Convention on Human Rights, article 8.

8 ECHR. In *Gaskin v The United Kingdom*⁹⁹ the Court made use of the so-called ‘fair-balance’ in order to decide on the positive obligation:

*“In accordance with its established case-law, the Court, in determining whether or not such a positive obligation exists, will have regard to the ‘fair balance’ that has to be struck between the general interest of the community and the interests of the individual”*¹⁰⁰

Furthermore, on the basis of article 13 ECHR everyone has the right to an effective remedy. Hence, the Court of Appeal in Amsterdam should have treated the argument of family life, which was presented by the victims’ lawyer, sufficiently and explanatory by also taking into account article 13 ECHR and 3 CRC. Hence, the victims could present their case of violation of family life to the ECtHR on the basis of article 34 ECHR, only when the cassation procedure at the Supreme Court turns out negative as well.¹⁰¹ The reference to case law could be the preceded case *Rees v The United Kingdom*¹⁰² as the fair balance test was one of the first major tool as well. Hence, the fair balance is essentially the balancing of interests.

Looking at the presented arguments with regard to the harm done to the child as well as to the parents, it is in the best interest of the child to keep the family life stable and balanced. This is where article 3 CRC comes at hand, which enables a legal procedure at UN- Rights of the Child Committee as discussed below: *the best interest of the child should be the primary consideration*. The recovery process of the child victim in this case is more effective when the parents get the treatment they need in

⁹⁹ ECtHR, *Gaskin v. The United Kingdom*, 7 July 1989, 10454/83, para. 42-49.

¹⁰⁰ *Idem*, para. 42.

¹⁰¹ European Convention on Human Rights, article 35:

1. *The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.*

2. *The Court shall not deal with any application submitted under Article 34 that*

(a) is anonymous; or

(b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3. *The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:*

(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

4. *The Court shall reject any application, which it considers inadmissible under this Article. It may do so at any stage of the proceedings.*

¹⁰² ECtHR, *Rees v. The United Kingdom*, 17 October 1986, 9532/81.

order to be the strong and stable parents they need to be for their child. During the hearing, expert-witnesses have argued that it is in the best interest of the child to include the parents in all the treatments. Consequently, loss of income is at stake, as parents need to take workdays off or pay for treatment themselves. These are costs they have made themselves in order to provide their child a secure and safe home for the sake of a healthy family life that has got disturbed as a direct consequence of the criminal act.

With regard to violation of article 3 CRC as such and the individual complaint procedure at the UN- Rights of the Child Committee it is worth mentioning that an additional protocol has been introduced by CRC on 19th December 2011 called the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.¹⁰³ On the basis of article 5 of the protocol an individual can file a complaint against the State Party for one or more violated rights of the CRC. Until now only 37 States have signed the protocol, with only 6 ratifications. Thus, the protocol has not entered into force yet. Unfortunately, the Netherlands failed to sign or ratify the protocol enabling an individual complaint procedure.

Hence, taking into account all the afore-mentioned arguments the most effective legal regional instrument left for the victims seems to be the complaint procedure at the European Court of Human Rights.

¹⁰³ 11.d Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, New York, 19 December 2011.

6. CONCLUSION

This study was guided through the following research question:

“To What Extent Is The Criminal Procedural Status Of Parents As Victims in Child Sexual Abuse Cases Granted And/Or Protected Under International and European Law, And What Potential Effect Could This Have For The Current Rejection of Parents' Victim Status In The Dutch Case Roberts M.?”

The analysis was set off by firstly distinguishing three forms of parent’s victims’ status. The first one the parents as indirect victims of the criminal act directed towards their child. In the underlying case the Court of Appeal gave a symbolic value to this status. However the legal victim status of parents, which the Court rejected, can be divided in ‘direct victim’ or ‘victimized to the benefit of their child’. By firstly studying international and regional legal instruments on the definition of victim we have seen that there is an agreement on the inter-state level.

The UN Victims’ Rights Declaration defined a victim as a person suffering harm, including mental injury, emotional suffering or economic loss. The 2006 Recommendation of the Council of Europe took the same stand. Interestingly, the recommendation specified the term vulnerability, which should be viewed as a special case in need of special measures that is best suited to the situation. The EU directive of 2012 defined victim somewhat the same. However, one can read in the preamble of the directive that close family members of the direct victim can also be victimized as a direct cause of the criminal act. Hence, all of the above lead to the standpoint: parents (immediate family) of very young infants (vulnerable group, age component, limited communication skills) subjected to sexual abuse (nature of crime is severe: vulnerable group) by their caretaker (personal relationship, dependency of the child, trust) should be regarded as victims (close dependant relationship with their child, responsible for their child, suffering mental harm, emotional suffering and/or economic loss).

However, the Court of Appeal rejected the claim of the parents to be regarded as a direct victim and/or victimized to the benefit their child. The rejection of was based on a restrictive interpretation of Dutch law, arguing that a direct victim is only the one to whom the offence was aimed at and who suffered harm as a result of that. Thus, the child victim can only be the direct victim according to the Court. Nevertheless, I have provided several in depth arguments that demonstrate the harm

suffered by the parents. By looking at the evidence provided by the victims' attorney during trial and verifying it with additional and in-depth research I have illustrated the harm as Post-Traumatic Stress Syndrome, depression, disturbance in family life and personal relationships, secondary life changes as loss of income, job, change of social environment etcetera. Another argument drawn by the victims' attorney was the argument of symbiosis; harm done to the child is harm to the parent. Supported by social-psychological research I have tried to demonstrate that the young infant is not fully connected to the parents through symbiosis. The infant is able to differentiate people and moods for example. Nevertheless, due to the very close relationship, vulnerability and level of dependency (the level of vulnerability increases with the younger the age of the child, accordingly the more dependent he/she is as well) the treatment of the parents is necessary for an effective and healthy recovery of the child victim. The fact that the Court of Appeal also rejected the legal status of parents being victimized to the benefit of their child is another topic and needs more research. However, I have argued that the compensation for loss suffered by parents to the benefit of child, not as their legal representative but as parents suffering loss due to criminal act and for the purpose of a healthy recovery of their child, should be compensated.

Hence, the legal victims' status of parents in criminal proceedings could be granted when looking at international and regional legal provisions. In particular, the victims could fall back on article 3 of the CRC: it is in the best interest of the child to provide legal remedy to the parents and recognize them as victims in the criminal procedure. Now that the legal victims' status of the parents is rejected in the *Roberts M.* case the following potential effect could come to light. First of all, the cassation procedure is still in process. Meaning, the Supreme Court (Hoge Raad) in the Netherlands will study the ruling of the Courts of Appeal on the correct implementation of the law. Therefore, there is a chance that the ruling will be overruled if the Supreme Court decides that the ruling was not in accordance with international, European or National law, as I have argued. If the cassation procedure is not in favour of the parents, then, as argued, the most effective legal instrument left is that of starting a procedure at the European Court of Human Right on the basis of the Netherlands violating articles 8 (Right to Family Life) and 13 (Right to an Effective Remedy) in combination with article 3 CRC (Best Interest of the Child).

7. RECOMMENDATION

While writing this paper I have stumbled into several interesting problems that victims and their immediate family members suffering harm may face. I would like to provide my humble recommendation regarding victims' rights in criminal proceedings:

- Amend the definition of victim in the new EU Directive establishing minimum standards for the rights of the victims of crime as such to clearly include close family members who can be proof to be affected by the crime as well.
- The judicial bodies should be allowed to provide victims the opportunity to involve expert-witnesses in the criminal proceedings themselves in order to prove their harm and/or loss. In the current case victims, through their legal representative, were only allowed to question the expert-witness during trial. What if the prosecutor did not request the Court for hearing expert-witnesses? The victims should be able to do so themselves.
- More research is needed on the question of the legal victim status of parents in sexual child abuse cases. Due to the uniqueness of the case there is a lack of scientific research on this subject matter.
- The inconsistency of the Dutch courts with regard to displaced damage is remarkable: some Courts grant compensation for parents suffering economic loss as a result of harm done to their child and forcing them to stay at home and take care of their child, while others reject this claim. Some Courts provided arguments for their rejection, while others fail to provide any explanation and avoid the discussion.
- The judicial bodies should take the claim of victims and their immediate family members who suffered harm seriously and take sufficient time to do so. Although the Court in this case did take a day to hear the expert-witnesses and three days for Victim Impact Statement, the Court failed to sufficiently address why there is no violation of article 8 ECHR for example.
- The Netherlands should sign and ratify the additional protocol of the CRC, introduced on December 19th 2011, as should the other State Parties to the CRC. In order to provide individuals the opportunity to file a complaint when they feel a right, as set out in the CRC, is violated by the State Party. This will strengthen the CRC and its influence.

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9. ATTACHMENTS

Gerechtshof Amsterdam

Zitting d.d. 22 maart 2013 om 14:00 uur

Parketnummers: 23-002662-12 en 23-002663-12

**TOELICHTING VORDERING BENADEELDE
PARTIJ**

[REDACTED]
advocaten : mrs. W. Anker en T. van der Goot

en

[REDACTED]
advocaten : mrs. O.P. Kuit en H.F. van Kregten

Versillende benadeelde partijen

advocaat : mr. Richard A. Korver

Edelgrootachtbaar College!

Voordat ik een aanvang zal maken met de toelichting van de vorderingen van de individuele kinddossiers, zal ik allereerst een aantal algemene opmerkingen maken over bepaalde materiële schadeposten. Wegens proces efficiëntie en om herhaling zoveel mogelijk te voorkomen zal ik enkele terugkerende materiële schadeposten in zijn geheel behandelen, en hier bij individuele kinddossiers niet meer op terugkomen, tenzij er vragen omtrent een specifiek kinddossier bestaan.

Voor al deze materiële schadeposten heeft bovendien te gelden dat zij in de vordering voldoende en adequaat zijn onderbouwd en derhalve ik U Hof verzoek dat deze schade voor integrale vergoeding in aanmerking dient te komen.

Kosten voor oppasdiensten Roberts M.

In de kinddossiers met nummers 4, 5, 10, 16/17, 18, 32/33, 34/36, 38 en 124 wordt als schadepost opgevoerd kosten voor de oppasdiensten van Roberts M. Bij al deze vorderingen heeft te gelden dat ouders Roberts M. hebben betaald om op hun kind te passen, en de zorg van hun kind aan hem overlieten. Ouders betaalden Roberts M. om te zorgen en te waken over de kinderen, dit is uiteraard niet gebeurd. Ouders voelen zich misleid door de listen van Roberts M. en voelen zich daarbij eveneens bestolen.

Voor deze kosten heeft te gelden dat dit schade van de ouder is, maar zeker ook schade van het kind. Ouders waren in de veronderstelling dit bedrag ten bate van hun minderjarige kinderen te hebben besteed, echter na bekendwording met handelen danwel nalaten van verdachte(n) blijkt dat dit ten nadele van het kind is aangewend. Bovendien is dit bedrag nu reeds uitgegeven en kan het niet meer ten bate van het kind worden aangewend.

Daarnaast heeft nog te gelden dat indien verdachte deze gelden zou houden, hij zich onrechtmatig verrijkt. Het komt mij en ouders dan ook voor dat al deze betaalde oppaskosten aan Roberts M. voor integrale vergoeding in aanmerking komen.

Kosten voor psychische en/of medische hulpverlening c.q. kosten eigen risico zorgverzekering

In de kinddossiers met nummers 5, 18, 19/20, 27, 30, 32/33, 38, 43, 47, 65, 67, 99, 106, 109, 124 en 125 wordt als schadepost opgevoerd psychologische of medische hulpverlening c.q. kosten van eigen risico zorgverzekering.

Uit het verhoor van de deskundigen ter zitting van 12 maart 2013 blijkt dat zij overigens allen van oordeel zijn dat therapie van de ouder noodzakelijk is in het belang van het kind.

Lamers heeft ter zitting van 12 maart 2013 verder verklaard dat indien de ouder zelf geen psychische klachten ondervindt van het misbruik het toch van belang is dat ouder mee gaat naar de sessies¹. Het is belangrijk voor het kind dat het weet dat hij/zij niet alleen slachtoffer is, maar dat het hele gezin het leed draagt. Dit draagt bij aan het verwerkingsproces van het kind. Bovendien is dit ook in het belang van het kind omdat de ouder dan leert hoe met het kind om kan worden gegaan, en hoe het kind opgevangen dient te worden. Uit pedagogisch oogpunt is therapie voor ouders dan ook noodzakelijk.

Alle therapie die ouders hebben gehad – en sommige van hen nog steeds hebben – is vanuit pedagogisch opzicht van cruciaal belang. Bovendien heeft te gelden dat door therapie de stressreactie, die zij allen direct na het misbruik hebben ondervonden in de vorm van ongeloof, walging en vermijding, sneller verwerkt kon worden. Hierdoor waren de ouders sneller in staat om te beginnen met hun verwerkingsproces en de stabiliteit en ondersteuning te geven die de minderjarige nodig had. Deskundigen zijn het er ook allemaal over eens dat een onrustige, gestresste en instabiele ouder niet bijdraagt aan het verwerking van het trauma bij het kind.

Bij kind en ouder is er sprake van een twee-eenheid. Het trauma van de ouder is het trauma van het kind. Het is van belang dat het trauma van de ouder eerst wordt verwerkt, zodat de ouder volledige ondersteuning kan bieden aan het kind. Alle vormen van therapie die ouders hebben gehad waren derhalve in het belang van hun kind(eren).

Voorts blijkt uit onderzoek dat het voor slachtoffers van misbruik belangrijk is dat zij kunnen herstellen in een stabiel gezin. Betrokken, ondersteunende en op hun kinderen gerichte ouders die in staat zijn om spanning en zorgen in hun gezin laag te houden zorgen ervoor dat hun kind in de loop van de jaren kan herstellen². Wanneer ouders in mindere mate kunnen reageren op de behoeften van het kind behielden die kinderen een hogere posttraumatische stressstoornis-score. Als er op het gezin een grote mate van spanning aanwezig blijft, uit zich dat in blijvende problemen c.q. grotere schade bij het kind.

Door de therapie was het voor sommige ouders ook noodzakelijk om oppas te regelen voor hun kind(eren), of hebben zij van hun werk vrije dagen moeten opnemen. Bovendien hebben sommige ouders ten behoeve van de therapie reis- en/of parkeerkosten gemaakt. Ook deze kosten zijn aan te merken als kosten gemaakt in het belang van het kind. Dit wordt eveneens ondersteund door deskundige Landsmeer³. Deze kosten staan in direct verband met de therapie, en zijn noodzakelijk gemaakt ten behoeve van de therapie van de ouder in het belang van het kind. De kosten voor therapie en de daarbij horende overige kosten zijn in dit verband dan ook aan te wijzen als kosten van het kind en dienen voor integrale vergoeding in aanmerking te komen.

Inkomstenderving c.q. studievertraging

In de kinddossiers met nummers 5, 13/14, 27, 29, 30, 31, 38, 47, 65, 72, 81, 99, 106, 109, 120, 124, 125 en 128 hebben ouders als schadepost aangevoerd inkomstenderving c.q. kosten in verband met een studievertraging.

¹ Uitwerking verhoor deskundigen, (Lamers) p. 11

² Onderzoeksrapport dr. Linda M. Vogtlander, *Seksuele traumatisering en de psychische gevolgen bij baby's, peuters en kleuters, een review*, p.57

³ Uitwerking verhoor deskundigen (Landsmeer) p. 6

Ten aanzien van al deze schadeposten heeft te gelden dat ten gevolge van het strafbaar handelen danwel nalaten van verdachten de ouders niet in staat zijn geweest om hun werkzaamheden en/of studie voor 100% te verrichten zoals voor de bekendwording met de feiten. Alle ouders hadden na het misbruik een posttraumatische stressreactie. Hierdoor zijn verschillende ouders niet in staat geweest om volledig te kunnen functioneren op werk of studie. De gemoedstoestand van de ouders en de werkzaamheden/studie waren niet met elkaar te combineren. Om een zo snel mogelijk herstel van de ouders te bevorderen was het noodzakelijk dat zij verlof namen, minder uren maakten of hun studie pauzeerden.

Bovendien is het inmiddels een algemeen bekend feit dat een ouder die last heeft van stress en zorgen niet goed kan inspringen op de behoeften van het kind⁴. En vooral in de periode na het misbruik is het van groot belang dat de ouders zoveel mogelijk hun eigen zorgen en stress kunnen verwerken, zodat zij hun kind kunnen helpen bij het verwerken van het eigen trauma zodat de schade bij het kind nog enigszins beperkt wordt. Enkel een stabiele ouder is immers in staat om een beschadigd kind te verzorgen en te ondersteunen. De inkomstenderving en/of kosten in verband met een studievertraging zijn in dit licht dan ook te zien als schade van het kind.

Daarnaast heeft nog te gelden dat door de inkomstenderving en door de kosten in verband met een studievertraging er minder welzijn in het gezin was en meer zorgen bij ouders, en mede daardoor een verminderd welzijn bij het kind. De gedeelde inkomsten en/of de gemaakte kosten voor studie kunnen nu niet ten bate van het kind worden aangewend, hierdoor heeft het kind ook directe schade opgelopen.

Het komt mij en ouders dan ook voor dat al deze kosten voor integrale vergoeding in aanmerking komen.

Kosten voor vervanging meubilair c.q. verhuizing

In de kinddossiers met nummers 1, 13/14, 32/33, 38, 51 en 124 hebben ouders meubilair verwijderd en vervangen of zijn ouders verhuisd. Ouders hebben meubilair vervangen omdat dit in direct verband stond met het misbruik. Uit de betreffende kinddossiers bleek immers dat het kind op het meubelstuk was misbruikt, bovendien was hiervan ook foto- en soms videomateriaal van vervaardigd. Voor ouders en kind(eren) waren deze meubels een traumatrigger, en bij het zien van het meubelstuk kwamen er herinneringen en beelden naar boven van het misbruik. De meubels zouden door ouders voor altijd geassocieerd worden met het misbruik. Het zien van de meubels leverde veel stress en zorgen op bij ouders en ook bij kind, en resulteerde in onrust binnen het gezin, en derhalve onrust bij het kind. Ouders hebben de meubels dan ook verwijderd en vervangen in belang van het kind. De kosten hiervan kunnen dan ook worden aangemerkt als schade van het kind.

Net als bij het meubilair heeft hetzelfde te gelden als bij de woning. Sommige ouders woonden op steenworp afstand van het Hofnarretje of van Roberts M. Het was voor ouders en kind een enorme stressfactor dat zij dagelijks werden geconfronteerd met het misbruik door het zien van het Hofnarretje of de woning van Roberts M. Ouders zagen zich dan ook genoodzaakt om te verhuizen, om de spanningen en stress enigszins te vermijden en te verminderen. Dit hebben zij gedaan in het belang van hun kind. Indien ouders minder last hebben van zorgen en stress zijn zij beter in staat om het kind op te vangen en te helpen bij het verwerken van zijn/haar trauma. Hierdoor kan de schade bij het kind beperkt worden. Deze kosten zijn derhalve ook aan te merken als schade van het kind.

Het komt mij en ouders dan ook voor dat al deze gemaakte kosten voor integrale vergoeding in aanmerking komen.

Voor alles: Indien u al niet zou menen dat ouders pro se recht hebben op vergoeding, dan heeft het kind dat recht wel, zo stellen mijn cliënten nu het gaat om noodzakelijke kosten ten behoeve van het kind als direct gevolg van de gepleegde strafbare feiten.

⁴ Uitwerking verhoor deskundigen, (Vogtländer) p. 15

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Haarlem, 27 februari 2013

Geachte mijnheer Korver,

In reactie op uw verzoek om informatie en ervaring over het slachtofferschap van de ouders wier kinderen seksueel misbruikt zijn door Robert M. hebben wij de volgende antwoorden samengesteld op basis van onze klinische ervaring in het werken met gezinnen waarvan jonge kinderen slachtoffer zijn geweest van seksueel misbruik buiten het gezin. Voor een wetenschappelijke onderbouwing verwijzen wij naar de verklaringen van de getuigen deskundigen in de zaak van Robert M.

Alle ouders die bij het Kinder- en Jeugdtraumacentrum zijn geweest voor hulpverlening aan hun gezin nadat een of meerdere van de kinderen seksueel misbruikt bleek te zijn geweest door Robert M. lieten zelf een posttraumatische stress reactie zien.

Voor een goed begrip eerst de definitie van een traumatische ervaring:

"Een traumatische ervaring heeft betrekking op een gebeurtenis die dood, ernstig letsel of bedreiging van de fysieke integriteit van zichzelf of van een andere persoon inhoudt. Daarbij ervaart de persoon intense angst, hulpeloosheid of afschuw over de gebeurtenis".

Uit deze definitie van een traumatische ervaring kan geconcludeerd worden dat het seksueel misbruik van hun kind(eren) voor ouders een traumatische ervaring is.

De reacties op traumatische ervaringen zijn in fasen in te delen:

1. Eerst een reactie van verbijstering en ongeloof
2. Dan een fase waarin herbelevingen van de traumatische ervaringen worden afgewisseld met periodes van vermijding en ontkenning van wat er is gebeurd of wat doet denken aan de ervaringen
3. Als laatste fase de verwerking, het wereldbeeld, het mensbeeld en het zelfbeeld is aangepast aan wat er is gebeurd. Het leven staat niet langer op zijn kop.

Voor het verwerken van een traumatische ervaring zijn rust, zelfzorg en stabiliteit helpende factoren, waardoor de ervaringen achter zich gelaten kunnen worden.

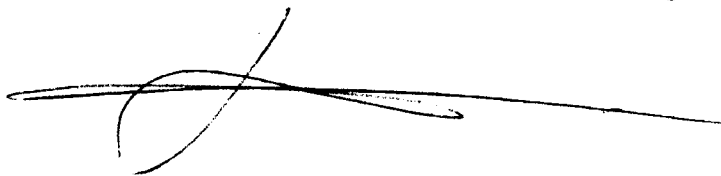
Verzwarende factoren voor de ouders van de kinderen die door Robert M. seksueel zijn misbruikt zijn:

1. Het gaat om (zeer) jonge kinderen die volledig afhankelijk zijn van de zorg van volwassenen.
2. De ouders hebben hun kind in vertrouwen overgelaten aan het kinderdagverblijf en/of de oppas, Robert M. Alle ouders moeten leven met een enorm schuldgevoel en het besef dat ze niets hebben kunnen doen. Ouders moeten opnieuw leren wie ze wel of niet kunnen vertrouwen, waarbij ze zich ook realiseren dat er geen zekerheden zijn.
3. Ouders realiseren zich dat zij hun kind niet hebben kunnen beschermen, dat het kind weerloos was en er niets over heeft kunnen zeggen.
4. Ouders maken zich zorgen om de toekomst van hun kinderen en vragen zich af in hoeverre het seksueel misbruik invloed zal hebben op het leven van hun kinderen.
5. Voor traumaverwerking zijn de kinderen afhankelijk van de rust en stabiliteit die ouders kunnen bieden. Ouders moeten dat bieden terwijl ze tegelijkertijd het verhaal van het seksueel misbruik moeten kennen.
6. De ouders worden voortdurend herinnerd aan het seksueel misbruik; door het kind zelf, het huis, de omgeving van het kinderdagverblijf, speelgoed van een kind, een fles cola, vragen van familie en collega's, medisch onderzoek van het kind, psychische klachten bij het kind, de voortdurende rechtszaak, en alle aandacht in de media.
7. Om goede en veilige hulpverlening aan het kind te bieden, zullen ouders regelmatig werk moeten verzuimen. En sommige ouders durfden niet hun kind elders onder te brengen en zijn gestopt met werken.
8. Er zijn ouders verhuisd, omdat het misbruik thuis heeft plaatsgevonden en ze voortdurend herinnerd werden aan het misbruik door hun huis en hun meubels.
9. Het feit dat er beelden zijn gemaakt van het misbruik die niet te verwijderen zijn.

Door de ernst van het misbruik, en bovenstaande verzwarende factoren, komen ouders onvoldoende toe aan verwerking en is de kans groter dat ze een posttraumatische stressstoornis ontwikkelen. Veel ouders hebben eerst zelf hulpverlening nodig gehad om in staat te zijn hun kinderen voldoende ondersteuning te kunnen bieden bij de verwerking. Ouders zijn op deze wijze ook zelf slachtoffer van het feit dat Robert M. hun kind(eren) seksueel heeft misbruikt.

Met vriendelijke groet,

Jiska de Bruin, GZ psycholoog, in opleiding tot psychotherapeut
Danielle Steggink, psychomotorisch therapeut
Margreet Visser, klinisch psycholoog & coördinator Kinder- en Jeugdtraumacentrum



Drs. Margreet Visser

Margreet Visser is klinisch psycholoog, cognitief gedragstherapeut en coördinator van het Kinder- en Jeugdtraumacentrum. Ze heeft gedurende haar hele carrière met veel uiteenlopende getraumatiseerde mensen gewerkt; eerst met volwassenen en nu alweer ongeveer 10 jaar met kinderen en hun ouders. In het kader hiervan heeft ze de Horizonmethodiek voor kinderen en hun ouders na ruzie en geweld in het gezin mede ontwikkeld.

To: Richard Korver – email korver@korver-vanessen.nl

Dear Mr Korver

Thank you for your mail and letter concerning the sexual crime case.

You have asked me to consider some specific issues relating to the parents of the children who were so seriously and extensively sexually abused. The issues are:

1. Whether I consider parents whose children are under the age of 2 years of age who have been sexually abused, are they a victim of this crime as well?
2. Do I consider parents of children under the age of 2 who are sexually abused and where the abuse has been recorded and distributed, a victim of that crime.
3. Would I consider the invasion of the privacy of the child as a breach of the privacy of the parents as well?

I would wish to indicate that my response relates not just to children under the age of 2, but under the age of 5 years.

In my view, for children who are basically in preschool years and whose principal and major attachment is to their parent, any abuse of a child of those parents is also an abuse and a crime against the parents themselves.

Until children are of a full school going age, they have not achieved the degree of separation which would see them as separate entities. In the preschool age they are very much an integral unit with their parents and any abusive act against a child can be considered an abusive act against a parent. This is particularly the case here where the individuals responsible for abusive actions were trusted and were in a parental role to the children in terms of providing care. Therefore the extreme breach of trust that an abuse of a very young child entails, is by definition an abusive act against the parent and a betrayal of trust which would certainly be expected to be experienced as a severe traumatic event for the parents, resulting in the sort of symptoms which are reported.

The fact that material was recorded and distributed is an additional form of abuse. This an abuse not only of the children to an extreme degree, but again of the parents because of the flagrant betrayal of the parents having shared the parental role with individuals providing care for very young children.

I would also consider the abuse of a child an invasion of a child's privacy and personal space to be an abuse of the parent who has such a close attachment and link to the young child.

I am Dr Arnon Bentovim, Consultant Child & Adolescent Psychiatrist. I have worked in the field of child protection and child sexual abuse for over 40 years. I was responsible for establishing the Child Sexual Abuse Assessment and Treatment Service at Great Ormond Street Hospital, the first in Europe, and have researched and

practiced in the field of sexual abuse for many years. I have had considerable experience of seeing parents where very young children have been seriously abused, and can confirm that the experience can be uniquely traumatising and have extreme effects on the parents who would therefore be considered to be a victim of the criminal act.

I currently practice at The Child & Family Practice, 57a Wimpole Street in London. I am a Visiting Professor to the Royal Holloway University of London. A full CV can be provided on request.

**DR ARNON BENTOVIM MB BS FRCPCH FRCPsych MInstPsychoanal DPM
CONSULTANT CHILD & ADOLESCENT PSYCHIATRIST**



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- THERAPY

- DR ARNON BENTOVIM

- RICHARD BECKETT

DR ARNON BENTOVIM

Consultant Child and Adolescent Psychiatrist
MB.BS, FRC Psych, DPMB

Arnon Bentovim is a Child and Adolescent Psychiatrist, Psychoanalyst and Family Therapist who has worked as a Consultant at Great Ormond Street Children's Hospital and London's Tavistock Clinic and now practices at the Child & Family Practice in Wimpole Street. He is visiting Professor at the Royal Holloway College.

Dr Bentovim has been concerned with maltreatment intervention for many years and conducted research into what leads young people into sexually harmful behaviour..

Dr Bentovim has been associated with SWAAY since 1989, when he was involved in our first referral. Since then, he has taken a lead role in supporting the development of our therapeutic services, providing consultancy and overseeing the assessment and treatment of our young people. He is also a highly respected voice in his field, presenting papers on the treatment of sexually harming young people at national and international level and contributing to publications exploring the development and effectiveness of SWAAY care.

Dr Bentovim is Chair of the Lucy Faithfull Foundation, the UK-wide child protection charity working to reduce the risk of children being sexually abused.

PRIVACY POLICY

SWAAY ADMINISTRATION EARLEY READING RG6 7XD

INTERVICT

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Geachte heer Korver,

Middels dit schrijven wil ik uw standpunt onderschrijven dat de ouders van zeer jonge kinderen die seksueel misbruikt zijn als *direct* slachtoffer moeten worden erkend die *rechtstreeks* nadeel ondervinden van het hun kinderen aangedane seksuele misbruik. Volgens de definitie zoals neergelegd in artikel 51a Sv wordt de volgende persoon als slachtoffer aangemerkt:

"Als slachtoffer wordt aangemerkt degene die als rechtstreeks gevolg van een strafbaar feit vermogensschade of ander nadeel heeft ondervonden. Met het slachtoffer wordt gelijkgesteld de rechtspersoon die als rechtstreeks gevolg van een strafbaar feit vermogensschade of ander nadeel heeft ondervonden."

Dit is in lijn met de definitie zoals neergelegd in de recent aangenomen Europese Richtlijn inzake Minimumstandaarden voor slachtoffers van misdrijven (artikel 1 stelt hier als volgt: ('slachtoffer is: i) een natuurlijke persoon die als rechtstreeks gevolg van een strafbaar feit schade, met inbegrip van lichamelijke, geestelijke of emotionele schade of economisch nadeel, heeft geleden). In de preambule van deze Richtlijn wordt tevens gesteld (paragraaf 19) dat het mogelijk is dat familieleden van het slachtoffer eveneens schade wordt berokkend als gevolg van het strafbare feit.

Dat ouders direct economisch nadeel ondervinden van het seksueel misbruik dat hun kind is aangedaan staat buiten kijf. Het gaat hierbij onder meer om gederfde inkomsten, vervanging van materiaal zoals inventaris dat aan het misdrijf doet terugdenken, etc. Daarnaast heeft klinisch psychologisch onderzoek aangetoond dat seksueel misbruik van een kind ook door ouders als een traumatische gebeurtenis wordt ervaren, hetgeen mogelijkwijs tot post traumatische stress symptomen kan leiden (ander direct nadeel als gevolg van een strafbaar feit zoals neergelegd in de definitie van slachtoffer conform art. 51a Sv).¹

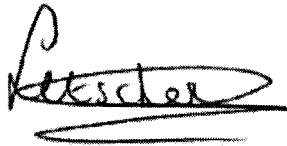
¹ Zie onder meer Elliot en Carnes, Reactions of Nonoffending Parents to the Sexual Abuse of their Child: A Review of Literature, *Child Maltreatment*, 2001, 6:314, pp. 320-321, Dyb et al, Alleged Sexual Abuse at a Day Care Center: Impact on Parents, *Child Abuse and Neglect*, 27 (2003), 939-950. Davies, Parental Distress and Ability to Cope Following Disclosure of Extra-Familial Sexual Abuse, *Child Abuse and Neglect*, 19, 4, 399-408.

Reference
13.006/RL/ES

Onderzoek van sociaal psychologen heeft duidelijk gemaakt dat voor personen die een traumatische ervaring hebben ondergaan als gevolg van een misdrijf, het krijgen van een eigenhandige positie binnen de strafrechtelijke procedure (de erkenning van het slachtofferschap) bij kan dragen aan de verwerking van het opgedane leed. Uit onderzoek weten we verder dat *ontkenning van slachtofferschap* slachtoffers niet helpt bij hun verwerking. Derhalve zou het kunnen dat de ouders in de onderhavige zaak de definitie als zijnde direct slachtoffer als erkenning van hun slachtofferschap ervaren. Ik zal geen uitspraken kunnen doen of dit voor de ouders in deze zaak het geval is aangezien ik de ouders zelf niet heb gesproken. Het feit dat de betreffende ouders zich willen laten bijstaan door een advocaat (en spreekrecht en een schadevergoedingsrecht claimen) maakt dit echter zeer aannemelijk.

Hopende u hiermee voldoende geïnformeerd te hebben.

Hoogachtend,



Prof. Dr. Mr. Rianne Letschert
International Victimology Institute
Tilburg Law School / Tilburg University

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Geachte heer Korver,

Middels dit schrijven wil graag uw standpunt en het standpunt van professor Letschert onderschrijven dat de ouders van zeer jonge kinderen die seksueel misbruikt zijn als direct slachtoffer moeten worden erkend die rechtstreeks nadeel ondervinden van het hun kinderen aangedane seksuele misbruik. Deze brief werkt de laatste alinea van het schrijven van professor Letschert nader uit.

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Het staat vast dat sociale erkenning van het slachtofferschap (zie Maercker en Muller, 2004, voor een overzicht Maercker en Horn, 2012) en sociale steun (Brewin, Andrews en Valentine, 2000, Ozer, Best, Lipsey and Weiss, 2003) van belang zijn voor de verwerking van slachtoffers van misdrijven. Een uitblijven van sociale steun/ een overwegend negatieve reactie is een grote risicofactor voor het ontwikkelen van PTSS (Brewin et al, 2000). Een dergelijke negatieve reactie vanuit de omgeving - waaronder de justitiële autoriteiten (zie Frazier en Haney, 1996, Ahrens, 2006) - wordt ook onder de term secundaire victimisatie gevat. Een sterke vorm van deze secundaire victimisatie is ontkenning van het slachtofferschap (het bekende blaming the victim: bijvoorbeeld Ullman, 1999), maar ook het ontkennen van het belang dat slachtoffers hebben bij de strafzaak (zie Shapland et al, 1985). Dat laatste is dan ook een kernpunt van het nationale en internationale streven van de slachtofferbeweging (bijvoorbeeld Groenhuijsen en Letschert, 2008).

Zoals ook uit het meer algemene onderzoek naar procedural justice blijkt is het betrekken van belanghebbenden bij een rechtsprocedure van belang voor hun perceptie van die procedure (Tyler, 1990), wat ook voor slachtoffers geldt (Wemmers, 1996). Ook de uitkomst van de procedure (zie Orth, 2003) alsook specifieke op slachtoffers gerichte instrumenten als de victim impact statement (Roberts en Erez, 2004) blijken hun waarde voor een grote deel te ontleen aan de erkenning die eruit spreekt.

Hopende u hiermee voldoende geïnformeerd te hebben,
hoogachtend,

i.o. 

Dr. Antony Pemberton
International Victimology Institute Tilburg
Tilburg Law School/ Tilburg University

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Reference
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