A Re-Evaluation of the Role of Criminal law in
Combating Parental Violence in the Netherlands

Access to Criminal Justice for Child Victims of Parental Violence from a
Children's and Human Rights Perspective

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Abstract

This article analyses the scope of the responsibility of the State to ensure access to
criminal justice for child victims of parental violence from a children's and human
rights perspective and how this would serve the best interests of the child before,
during and after criminal proceedings. The purpose of this article is to establish
a human rights framework to promote better understanding of the multi-faceted
problems inherent in the combat of parental violence by means of the criminal justice
system, articulate obligations imposed upon States and facilitate a holistic approach.
The article also explores to what extent the Netherlands, presented as a case study,
meets the obligation to provide child victims of parental violence with access to
criminal justice and whether there is a need to re-evaluate the role of criminal law in
combating parental violence in the Netherlands.
Keywords

parental (sexual) violence – access criminal justice system

1 Introduction

Although Pinheiro stated in his worldwide study that all violence against children is preventable, parental violence has regrettably proven to be difficult to stop in the Netherlands throughout the last fifteen years. Experts raised concerns about the increase in parental and domestic violence because of the 'stay at home' measures during the Covid-19 pandemic. Their warning is justified as parental violence causes serious harm and too often leads to the death of children.

From 1985, victims of violence and their access to and place in the criminal justice system have received attention at the level of international and European human rights. According to the Convention on the Rights of the Child (crc), access to (criminal) justice for child victims of parental violence and safeguarding the best interests of the child victim are the responsibility of the Dutch State. The European human rights system, both from the Council

1 'No violence against children is justifiable; all violence against children is preventable.' P.S. Pinheiro World report on Violence Against Children (The United Nations Secretary- General’s Study on Violence against Children 2006) p. 13.
2 L. Alink et al., Nationale Prevalentiestudie Mishandeling van kinderen en Jeugdigen. Leiden, 2018; L. Alink et al., Kindermishandeling, Leiden, 2010; M.H. van IJzendoorn et al., Kindermishandeling, Leiden, 2005; These data studies from 2005, 2010 and 2018 show no decline in the estimated amount of parental violence cases in the Netherlands. The third study estimated the number of maltreated children in the Netherlands to be between 90,000 and 127,000, or 26 to 37 per 1,000 children.
4 T. Brown, When parents kill children, understanding filicide (Cham: Palgrave Macmillan, 2018) p. 18; Classification of parental homicides were distinguished by Resnick (1973), namely neonaticide (killing within 24 hours) and filicide (older than 24 hours), with filicide later being detailed to infanticide (up to one year) and filicide (from one year), see: P.J. Resnick, ‘Murder of the newborn: A psychiatric review of neonaticide’, American Journal of Psychiatry (1970,126,10) p. 1414–1420.
of Europe and the EU, has defined several (new) State duties to ensure access to criminal justice. In practice, however, empirical studies concerning the Netherlands have shown that several hurdles hamper access to criminal justice for victims of parental (sexual) violence. These hurdles concern their young age, their vulnerability because of the violent crimes, and their dependent status. The vulnerable status of child victims raises the question whether States not only have to provide access to criminal justice, but also to ensure effective access by assisting the child victim upon entering the criminal justice system.

In addition to these hurdles, there is also an ongoing discussion about the desirability of such access rights. Although it is becoming increasingly clear that children's and human rights give rise to protection against violence through criminal law enforcement, this is still controversial since human rights traditionally led to restrictions in the use of criminal law, representing the most severe instruments at the state's disposal. On the one hand, this debate argues for a more intensive use of criminal justice instruments to combat parental violence, emphasizing the vulnerability and dependence of the victim. On the other hand, it argues against overuse of the criminal justice system, drawing attention to the negative consequences for offenders and society invoking the so-called 'ultima ratio' principle.

Protection against parental violence is, even more than domestic violence, closely related to important values like family life and the rights of parents to raise their children in accordance with their own (religious) principles. These parental rights and concerns that the use of the criminal justice system could damage family relationships and break up families are also obstacles to the use of criminal justice in tackling parental violence in the Netherlands. Other concerns about the use of criminal law are that child victims will suffer additional damage due to the system's lack of child-friendliness. An additional reason why the use of criminal law in the Netherlands still plays a modest role is


11 Parliamentary Papers II 2005/06, 30316, nr. 3, p. 5.
that since the beginning of the 20th century, the Dutch State diminished the role of criminal law in dealing with parental violence in favour of responses based on civil law.\(^{12}\)

Despite policy strategies of the Dutch government that focused mainly on the prevention of parental violence and voluntary help for parents,\(^{13}\) parental violence figures have remained high in the Netherlands. The Children's Rights Committee has repeated its concern about this in 2022.\(^{14}\) Dutch governmental reports after children have died from parental violence show that much violence remains invisible.\(^{15}\) The question is therefore how the Netherlands should respond to existing violence that children suffer from in their home situation. Various amendments to the law and decentralization to the municipal level have been initiated to lead to improvements.

The reason for this study is that, despite the increased attention at the international and European human rights level, there is currently no complete picture of the duties of the State\(^{16}\) to utilize criminal law in the approach of parental (sexual) violence. Although the Dutch state\(^{17}\) has implemented international and European regulations in its national law, this study explores to what extent the Netherlands meets its duties to use criminal law when

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13 Since 2007, the Dutch government has had a national policy to prevent and address parental violence: Actieplan Aanpak kindermishandeling Kinderen Veilig Thuis (Kamerstuk 31015, nr. 16) 2007; Actieplan Kinderen Veilig, Actieplan aanpak kindermishandeling 2012–2016; Geweld hoort nergens thuis, Programma aanpak kindermishandeling en huiselijk geweld 2018–2021. This program has been incorporated into the Future scenario for child and family protection (2021–2026/2030).


15 In both 2013 and 2016, the Youth Care Inspectorates issued reports on children who died or suffered from severe violence and neglect. See: ‘Learning from calamities’, Collaborative Youth Supervision, Utrecht, 2013 and ‘Learning from calamities 2, safety of children in vulnerable families’, Collaborative Youth Supervision, Utrecht, 2016.

16 For the above purposes, the term ‘State’ must be interpreted broadly. It includes all public bodies (at the national, regional, and local levels) and legal entities governed by criminal law that are entrusted with performing a public task.

17 At present the Kingdom of the Netherlands consists of four countries, the Netherlands (the Realm in Europe), Aruba, Curaçao, and Sint Maarten. The remaining islands that made up the Netherlands Antilles are special Dutch municipalities (Bonaire, St. Eustatius, and Saba). This article only represents the situation in the Netherlands.
tackling parental violence, thereby combining theory and practice. This article also answers the question how this would fit in with the most used approach through civil law, the decentralization of parental violence approaches to the local level and the Dutch focus on general prevention by offering voluntary welfare services. Ultimately, the question whether the Netherlands needs to reevaluate the role of criminal justice in the approach of parental violence is answered. Additionally, this article aims to promote better understanding of the multi-faceted problems inherent in the combat of parental violence and facilitate a holistic approach, while it not only articulates State duties to provide access to criminal law, but also during and after criminal proceedings. This approach encompasses the questions whether and how criminal enforcement could benefit child victims and their family and serve the best interests of the child victim.

The second section of this paper provides a review of the special needs of victims of parental violence and the complexities that exist in accessing the Dutch criminal justice system. To assess the scope of the responsibility, the third section reviews the development of the duties of the State not only according to the CRC and the European Convention on Human Rights (ECHR), but also according to the European Social Charter (ESC), the more recent Lanzarote and Istanbul Conventions and European Union (EU) law. The fourth section compares these State duties to Dutch domestic law and practice and assesses what is already in place and what still needs to be done in this area. The research questions are answered in the conclusion of this article. The forms of violence that this article focuses on are serious parental physical, sexual, and psychological violence, often associated with serious neglect.

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Access to criminal justice for child victims of parental violence is a complicated issue, both on the individual level of the child victim and on the level of responsibility of the State. To understand these complexities, this section reviews the detrimental effects parental violence has on the victim, the occurrence, and the nature of parental violence as well as the challenges that the Dutch State faces in criminally responding to parental violence.

Parental violence and neglect undermine the basic sense of security and the natural bond between parents and child and thus, the sense of security and trust with which children stand in the world. Additionally, parental violence has serious detrimental short- and long-term effects on the health of children and contributes substantially to both child morbidity and child mortality. Consequently, parental violence is a serious public (mental) health issue in the Netherlands. Parental violence also results in economic costs due to health service utilization and productivity losses in adulthood. These productivity losses relate to the long-term effects of parental violence on mental and physical health, as this can cause depression, self-injurious behaviour, suicide, post-traumatic stress disorder, alcohol abuse, obesity, problematic sexual behaviour, and criminal and violent behaviour.

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22 The most described categories of motive for parents who kill their child are retaliating, discipline, the unwanted child (both newborn and older), secondary altruism, psychosis, and jealousy. See: A. Wilczynski, Child homicide (Glasgow: Oxford University Press, 1997) p. 63.
23 In the period 2009–2014 80 children were killed by their (step)parent(s) in the Netherlands, 80 % by their own parent and 12 % by their stepparent (the remaining 8 % concerned extra-familiar filicide), M. Liem & S. Haarhuis, ‘De epidemiologie van kinderdoding in Nederland, 2009-2014,’ Tijdschrift voor Veiligheid 2015 (14), p. 57,72.
domestic violence between adults are interrelated\(^{26}\) and have similarly high levels of occurrence. Both types of crime represent the majority of violent crimes reported to the Dutch police\(^{27}\) and are crimes that are difficult to stop, as is clear from the high rates of recidivism.\(^{28}\) These high rates of recidivism and the (often) hidden nature of the (sexual) violence, challenge the relevant institutions to effectively detect, address and stop this type of offence. Detecting and addressing parental violence is also complicated because it may conflict with the ‘right to family life’\(^{29}\) of parents and caretakers and with their parental authority.

On the individual level of the child victim, their battered status, dependency on the perpetrator and young age, while especially young children fall victim to parental violence,\(^{30}\) are complicating factors in their access to the criminal justice system, as these factors, for instance, generally make it hard to report the violence to the police. There are also complicating factors at the level of the responsibility of the Dutch State to adequately respond to parental violence by means of the criminal justice system. First, for a long time, civil law measures were considered the most appropriate response to parental violence and more in the best interests of children than the involvement of criminal courts.\(^{31}\) These civil measures lead to restrictions on parental authority and in many cases to placement in care.\(^{32}\) Second, since the turn of the century,


\(^{29}\) Article 8 ECHR.

\(^{30}\) Dutch research showed that 4% of the victims are younger than 4 years old and about half of the victims are 13 years old or younger, see: Offender Monitor Sexual Violence against Children 2015–2019, Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (The Hague: 2021), p. 72, 73.


\(^{32}\) In the year 2020, 34,265 children were placed out of home by a civil judge in the Netherlands, 17,945 children were placed in a foster family, 3,710 in a family home, 815
administrative legislation in the Netherlands aims at the general prevention of parental violence by deploying voluntary help in the welfare system under direction of the provincial authorities.\textsuperscript{33} Citizens and professionals, including the police, must refer parental violence to these authorities. As of 2013, professionals have been required to use a reporting code and since 2019, with regard to serious parental violence, there is a duty to refer.\textsuperscript{34} Since the decentralization of youth care in 2015 due to administrative law amendments, the municipalities have become responsible for combating parental violence and referral takes place to the Safe Home Centre.\textsuperscript{35} Third, although as of 2000 the focus has been on a multi-agency approach, this mainly focused on cooperation between the administrative law oriented youth care system and the civil child protection system. It was only in 2015 that policy was developed to promote cooperation between the youth care system and the criminal justice authorities.\textsuperscript{36} Finally, prosecuting parental (sexual) violence is difficult because of the hidden nature of this type of violence and the complications in evidence collection.\textsuperscript{37}

The special needs of child victims of parental violence, as considered in this section, are important indicators for the duties of the State to assist these victims in getting effective access to the criminal justice system. The following
section takes a closer look at the meaning and objective of the concept of 'access to criminal justice' and reviews the scope of the responsibility of the State in both ensuring access as well as taking the child victim's best interests as a primary consideration during and after criminal proceedings.

3 Access to Criminal Justice According to International Children’s Rights and European Human Rights

Vindication of the child victim’s rights is one of the objects of their access to justice. With the best interests of the child principle in mind, seven State duties regarding effective access to criminal justice emerge from the international and European human rights framework. These seven State duties are the duty to prohibit parental violence in the law (the duty to provide a legal framework); the duty to protect against repeat victimization (the duty to protect from further harm); the duties to investigate and prosecute; the duties to rehabilitate and compensate (duties of redress); and the duty to protect against secondary victimization. The following sections explain all seven State duties and their development over time. Subsection 3.1. starts with a review of the seven State duties according to the CRC and the CRC Committee. Subsection 3.2 reviews both the duties deriving from the European human

witness statement is the only proof, hampering evidence collection because of the “unus testis nullus testis” rule (one witness is no witness), a principle of evidence that the uncorroborated evidence of a single witness will be discounted, see: article 342 section 2 DCC. In addition, the child can often only be questioned once, which, without sufficient compensation, may violate the rights of the defense.


39 Symonds (1980) was the first to identify that a negative experience within the justice system could contribute to the suffering of victims and their trauma. This phenomenon can be described as a “secondary victimization” by the justice system, see: M.H. Elmi, I. Daignault & M. Hebert, ‘Child sexual abuse victims as witnesses: The influence of testifying in their recovery’, Child Abuse & Neglect (2018-12) p. 23.

40 Today, 196 countries have ratified the CRC, including two States with UN observer status, the Holy See and Palestine. The USA is the only country that has not yet ratified the CRC. See: J. Doek, ‘The Human Rights of Children: An Introduction’ in T. Liefaard & U. Kilkelly (eds), International Human Rights of Children (Singapore: Springer, 2019) p. 11.

41 The CRC Committee issues General Comments and monitors State compliance by observations of the domestic situation in the signatory States. The Optional Protocol to the CRC on a communications procedure, which entered into force in April 2014 and by
rights instruments (Council of Europe and EU) and the interpretation thereof by the corresponding monitoring bodies.

3.1 **The Seven State Duties According to International Children's Rights**

From a children's rights perspective, access to justice is an important part of the child's right to participation and the ability to lodge complaints and seek redress without parental consent before a court is particularly important in relation to complaints concerning parental (sexual) violence.

The CRC Committee addressed the first of the seven State duties, the duty to prohibit parental violence in the law, in its first General Comment on parental violence in 2006. The Committee stated that to make it absolutely clear that it is as unlawful to hit a child as it is to hit an adult, explicit prohibition of corporal punishment in civil or criminal legislation is required. Furthermore, criminal law must apply fully to assaults on children and repeal a defence in criminal proceedings such as 'reasonable chastisement', which might find the violence of a parent lawful.

The first children's rights instruments already addressed the duty of the State to protect against (repeat) victimization. – The 1959 Declaration of

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42 Under Article 12 of the CRC and the accompanying General Comment no. 12 of the CRC Committee, children's views must be considered and weight to be given to these views depending on their age and maturity.


44 The CRC Committee created two General Comments on parental violence: General Comment No. 8 (2006), 'The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment' and General Comment No. 13 (2011), The right of the child to freedom from all forms of violence. A General Comment is a further explanation of one or more articles of the crc and is considered an authoritative interpretation of the rights described in the treaty. Although General Comments have no legally binding effect, they are nevertheless important for States and an authoritative interpretation of the crc, see: J. Doek, ‘General Comments van het VN-Comité voor de rechten van het kind: betekenis voor de praktijk’, in: M.R. Bruning, K.F.M. Klep & E.C.C. Pusnkie (red.), ‘De invloed van 30 jaar Kinderrechtenverdrag in Nederland. Perspectieven voor de rechtspraktijk’, Deventer: Wolters Kluwer 2020, p. 16–18.

45 CRC GC 8, par. 31, 34: The Global Partnership to End Violence Against Children was launched in July 2016 by the UN Secretary-General. Today, the End Violence Partnership is the only global entity focused solely on Sustainable Development Goal 16.2: ending all forms of violence against children, www.endcorporalpunishment.org.

46 After the Great War, Eglantyne Jebb drafted the first children's rights, which were adopted by the League of Nations in 1924 and are known as the Geneva Declaration of the Rights of the Child.
the Rights of the Child stated that the child shall be protected against all forms of neglect, cruelty and exploitation.\textsuperscript{47} Thirty years later, the CRC adopted the child’s right to ‘life, survival and development’ as one of its general principles and stipulated that “no child shall be subjected to torture or other cruel, inhuman and degrading treatment or punishment.”\textsuperscript{48} The CRC makes it clear that all forms of violence from a smack to a beating should not be countenanced\textsuperscript{49} and requires the State to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Access to (civil and criminal) justice is one of these measures.\textsuperscript{50}

The duties of the State to investigate and prosecute cases of parental violence did not initially have a sound basis in the CRC Committee, who observed that the dependent status of children and the unique intimacy of family relations require that decisions to prosecute parents should be taken with great care and are, in most cases, unlikely to be in the child’s best interests. The aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions.\textsuperscript{51}

In 2011, the Committee’s standpoint on the duties to investigate and prosecute shifted, in line with the Model Strategies launched by the UN on the elimination of violence against children.\textsuperscript{52} The Committee stated that rigorous but child-sensitive investigation procedures help to ensure that violence is correctly identified and to provide evidence for, among others, criminal proceedings. When appropriate, criminal procedures should be established, and the perpetrators must be brought to justice in a swift and coordinated cross-sectoral manner. However, where perpetrators are primary caregivers, within the

\textsuperscript{48} Article 6 CRC, see also: https://www.humanium.org/en/the-principle-of-life-survival-and-development/, last retrieved May 2022 and Article 37 CRC. 
\textsuperscript{49} M. Freeman & B.J. Saunders, ‘Can we conquer child abuse if we don’t outlaw physical chastisement of children?’ \textit{The International Journal of Children’s Rights} (2014) 22(4) p. 691. 
\textsuperscript{50} Article 34, 19 CRC. 
\textsuperscript{51} CRC, gc 8, par. 35 and 41. 
\textsuperscript{52} The UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (2014) urge States to ensure that the primary responsibility for initiating investigations and prosecutions lies with the police, the prosecution and other competent authorities and does not require an official complaint to be filed by the child victim of violence or a parent or legal guardian of the child (Par. vi).
child's safeguards and depending on the severity and other factors, intervention measures focusing on social and educational treatment and a restorative approach are often preferable to purely punitive judicial involvement.\(^\text{53}\)

The **CRC** also addressed the **duty to rehabilitate**; the State must take measures to promote physical and psychological recovery and social reintegration of child victims. Appropriate health care and other treatment is required for the serious damage to the physical, psychological, and social development while giving due weight to the child's views, which is also in line with the child's right to the highest attainable standard of health. The Committee addressed the **duty to compensate** in its second General Comment in 2013 and formulated the **duty to protect against secondary victimization** with the obligation to enact child-sensitive criminal proceedings.\(^\text{54}\)

### 3.2 The Seven State Duties According to Council of Europe Legal Framework

Although the preceding subsection clarifies the duties from a children's rights perspective, it is important to add the human rights perspective, while the Council of Europe has also been active in the field of parental violence for a number of decades.\(^\text{55}\) This subsection reviews the seven State duties according to the **ECHR**, the **ESC**, the Lanzarote and Istanbul Conventions and the interpretation thereof by the European Court of Human Rights (ECtHR),\(^\text{56}\) the European Committee of Social Rights (ECtHR),\(^\text{57}\) the Lanzarote Committee and the Group of Experts on Action against Violence against Women and Domestic Violence (**GREVIO**).\(^\text{58}\)

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53 **CRC**, GC 13, par. 54 and 56.
54 Article 39, 24 and 12 **CRC**; **CRC**, GC 13, par. 56, 51.
55 The Council of Europe recommended States to prohibit parental violence in the law in 2004, Recommendation 1666 (2004), Europe-wide ban on corporal punishment of children 23 April 2004. Corporal punishment in Europe has largely been declared illegal, with 34 out of the 46 Council of Europe Member States prohibiting it in all settings, including the home (see https://www.coe.int/en/web/children/corporal-punishment, last accessed on 16 December 2022); See also the CoE Guidelines on Child Friendly Justice, par. 24; See also: Recommendation Rec (2006) 8 of the Committee of Ministers to member States on assistance to crime victims, adopted by the Committee of Ministers on 14 June 2006.
56 Decisions of the ECtHR are binding for the Member States and have a direct effect on the internal order of the Member State, Vermeire v Belgium 12849/87, while its enforcement is supervised by the Ministries Council.
57 The **ECSR** is designed to complement the ECtHR and oversees compliance with the **ESC** by managing a state reporting system and a collective complaints procedure.
58 The Lanzarote Committee monitors whether Parties effectively implement the Lanzarote Convention; **GREVIO** is the independent expert body that monitors the implementation of the Istanbul Convention by the Parties.
In 1985, the ECtHR stated in a (most notably Dutch) case, regarded as a leading judgment, that civil protection of wrongdoing such as the rape of a mentally handicapped 16-year-old girl, is insufficient, while fundamental aspects of private life are at stake. In such cases, effective deterrence is indispensable which can only be achieved by criminal-law provisions, which provide practical and effective protection.\(^{59}\) In 1998, the Court issued a similar judgment in a case of parental violence, referring to the duty to prohibit parental violence in the criminal law. The case concerned a stepfather who, after being charged with beating his stepson, had successfully invoked the English criminal defence of ‘reasonable chastisement’. Parental violence was, to a certain extent, allowed under English law, as long as it was seen as ‘reasonable’ and thus this legislation offered insufficient protection against parental violence.\(^{60}\) In a 2003 case, the Court even gave its opinion on the content of the desired criminal provisions by stating that provisions of rape of a minor do not require proof of physical resistance.\(^{61}\) More recently, in a case of parental sexual violence, the Court reiterated that effective protection requires efficient criminal-law provisions and that the protection afforded by civil and custody proceedings is insufficient.\(^{62}\) In 2003, the ECSR also ruled that the prohibition of all forms of violence must have a legislative basis regardless of where it occurs or of the identity of the alleged perpetrator and that the sanctions available must be adequate, dissuasive and proportionate.\(^{63}\) What is more, if the domestic criminal code only prohibits ‘violence against persons’, even when provisions enable to impose increased penalties when the victim is a

\(^{59}\) The case concerned a complaint about the failure to prosecute the rape suspect. ECtHR, X and Y v. the Netherlands, 26 March 1985, par. 27–30; see also: P.H.P.H.M.C. van Kempen, Repressie door Mensenrechten. Over positieve verplichtingen tot aanwending van strafrecht ter bescherming van fundamentele rechten (Nijmegen: WLP 2008), p. 86.


\(^{62}\) ECtHR, R.B. v. Estonia, 22 June 2021, par. 61; See also: A and B v. Croatia, 20 June 2019, par. 92.

\(^{63}\) omct v Greece (17/2003), par. 32 and omct v Belgium (21/2003), par. 39.
child, this is in breach of the ESC. Additionally, the ECSR ruled in 2006 that States’ domestic law must also prohibit and penalize psychological parental violence. Clear and precise domestic case law is needed as well, showing that the provisions have been interpreted as prohibiting corporal punishment and that the criminal defence of the ‘reasonable chastisement argument’ can no longer be used. States cannot tolerate ‘moderate chastisement’ and parental violence, even when it lacks gravity, is unlawful. The Lanzarote Convention also stipulates criminalization of parental sexual violence. Additionally, the Lanzarote Committee urged States, in its first implementation report in 2015, to review their criminal legislation and stipulate that the age limit for engaging in sexual activities is irrelevant and the use of force, coercion or threat is not a constituent element of the crime. The most recent Istanbul Convention also stipulates that sexual violence and rape are non-consensual sexual acts and that parental violence, including sexual and psychological violence, must be criminalized and punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness.

The ECtHR defined the duty to protect the child victim against repeat victimization for cases of parental violence for the first time in 2001 and 2002. In both cases, the British authorities did not take action to prevent a repetition of severe (sexual) violence. As soon as the domestic authorities are aware (or ought to be aware) that a child is victim of parental (sexual) violence, known as the ‘Osman test’, the State is under the obligation to put an end to it. In

64 omct v. Greece (17/2003), par. 38. See also: omct v. Belgium (21/2003), par. 44 and: Association for the protection of all children (APPROACH) v. Belgium (98/2013).
66 omct v. Ireland (18/2003), par. 57; See also: omct v. Italy (19/2003); omct v. Portugal (34/2006), par. 19, 20, 21 and 22.
67 Article 18 section 1 Lanzarote Convention.
68 First implementation report, p. 51.
69 Article 33 (Psychological violence), Article 35 (Physical violence) and Article 36 (Sexual violence) Istanbul Convention.
70 Article 33 (Psychological violence) Istanbul Convention.
71 Article 45 Istanbul Convention.
72 ECtHR, Z and others v. UK, 10 March 2001, par. 74,75 and ECtHR, E and others v. UK, 26 November 2002, par. 88, 92; See also: ECtHR A v. UK, 23 September 1998, par. 22; See also: S. Smet, ‘The ‘absolute’ prohibition of torture and inhuman or degrading treatment in Article 3 ECHR, truly a question of scope only?’ in: J. Gerards & E. Brems eds, Shaping Rights in the ECHR, the role of the European Court of Human Rights in Determining the Scope of Human Rights (Cambridge University Press, 2013) p. 293.
73 ECtHR Osman v. UK, 28 October 1998, par. 77 and 116; F.M.C. Vlemmix, Het moderne EVM (Den Haag: Boom juridische uitgevers, 2013) p.77; In ECtHR, D.P. and J.C. v. UK, 10 October
2007, in a case concerning the murder of the applicant's children by their father, who had been violent with them, the Court found that the competent authorities, particularly the police, had failed in their positive obligation to take preventive action to protect the children's lives.74 In 2011, the Lanzarote Convention introduced the duty to conduct a risk assessment in order to assess the possible risks of a repetition of the parental sexual violence.75 In 2018, the Lanzarote Committee urged States to put in place a risk assessment tool or procedure.76 Additionally, also with the aim to stop a repetition of the violence, the Lanzarote Convention introduced treatment for sexual offenders inside or outside prison.77 The duty to protect against repeat victimization plays an important role in the Istanbul Convention as well. Law enforcement agencies should respond to all forms of violence promptly and appropriately, conduct a risk assessment and offer adequate and immediate protection to victims.78 If needed for the safety of a child, a measure against a perpetrator may be withdrawal of parental rights, but States are also urged to set up support programmes aimed at teaching perpetrators non-violent behaviour in interpersonal relationships to prevent further violence.79

In 1985, in the aforementioned Dutch case, the ECtHR stressed the need to provide a minor with the possibility to file a complaint with the court about non-prosecution of sexual violence and thus allow them access to criminal justice.80 Although the Court professed a preference for criminal prosecution in 1995,81 and formulated a duty to prosecute in cases of extra-familiar sexual violence,82 its parental violence case-law, although clear on the duty to investigate, does not provide clarity on the duty to prosecute. In 2015, the Court held that states must conduct an official and prompt investigation, determine

2002, par. 110, the Court concluded that it had not been proved that the local authority had had knowledge of the stepfather's ill-treatment of the children.
75 Article 15 section 3 Lanzarote Convention.
77 Chapter V – Intervention programmes or measures, Articles 15, 16 and 17 Lanzarote Convention. See also: Second implementation report 2018, p. 52.
78 Art. 50 and 51 Istanbul Convention.
79 Art. 45 and 16 Istanbul Convention.
80 ECtHR, X.and Y. v. the Netherlands, 26 March 1985, par. 26–30.
82 M.C. v. Bulgaria, 4 December 2003
criminal liability if a child is injured by a parent and if such is the case, impose a penalty, but in 2017, the Court showed a restrained approach to prosecution of parental violence and only formulated the duty to investigate parental violence cases in a timely and effective manner. Similarly, the ECSR did not explicitly formulate the duty to prosecute, but stated that courts must interpret legislation as prohibiting corporal punishment and apply criminal law effectively. The Lanzarote Convention, however, is much clearer on the duties to investigate and prosecute than the ECHR and the ESC, while it highlights the importance of criminal proceedings. States must ensure an effective and swift investigation and prosecution of parental sexual violence. It is important to note that the Lanzarote Convention stipulates ‘ex officio prosecution’ of parental sexual violence for the first time in a Council of Europe Convention. In 2015, the Lanzarote Committee reiterated the importance of ex officio prosecution in its first implementation report about parental sexual violence. States must prosecute parental sexual violence without a report.

The Istanbul Convention also emphasizes the duty to investigate and prosecute and more importantly, the duty of ex officio prosecution.

When we look at the duty to rehabilitate, staying together of the family is an important point of attention, on which the Court has regularly ruled regarding civil proceedings for custodial placement. In such proceedings, the ECtHR wants States to comply with the right to family life of parents and children. The right to rehabilitation in criminal proceedings has not yet

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83 ECtHR, M. and M. v. Croatia, 3 September 2015, par. 145–152. In this case the ECtHR held that the Republic of Croatia had breached the child’s Article 3 and 8 rights because of the delay to the criminal proceedings concerning the father’s assault on the child and the lack of representation of the child’s wishes and feelings in the proceedings.

84 ECtHR, D.M.D. v. Romania, 3 October 2017, par. 51–55. See also the joint concurring opinion of judges De Gaetano, Pinto de Albequerque and Motoc advocating for a duty to prosecute on the part of the state.

85 omct v Greece (17/2003), par. 38; See also: ‘Children’s rights under the European Social Charter’, Information Document prepared by the Secretariat of the ESC, p. 6, 7; More generally, the ECSR held that States must act with due diligence to ensure that parental violence is eliminated in practice, see: omct v. Portugal (2006), par. 19, 20 and 21.

86 Not only professionals from the police and prosecution office have a duty to investigate, but also professionals from other branches like child protection and health professionals, Explanatory Report, p. 35; Article 30 Section 3 Lanzarote Convention.

87 Article 32 Lanzarote Convention, First implementation report, p. 52.

88 Art. 50 and 55 section 1 Istanbul Convention.

89 ECtHR, Wetjen and others v. Germany, 22 March 2018, the ECtHR found no violation of Article 8 because the German authorities had given sufficient reasons for the withdrawal of parental authority, the decision-making process had been fair, parents and children had been heard and the German courts also looked at the individual situation of the children. par. 84–87.
been sufficiently reflected in proceedings before the ECtHR. In contrast, the Lanzarote Convention emphasizes rehabilitation of the child victim and their family through mental health programmes and long and short-term assistance for the victim’s physical and psychosocial recovery. Additionally, the removal of the victim from their family environment should be seen as a procedure of last resort.\textsuperscript{90} The Istanbul Convention also stipulates a duty to rehabilitate in the form of easily accessible (sexual) violence centres, which provide for trauma support and counselling.\textsuperscript{91}

In 2017, the ECtHR ruled that the right to compensation of a child victim in criminal proceedings regarding parental violence, and a failure to examine this right, even though the victim did not claim compensation, was in breach of the victim’s right to a fair trial.\textsuperscript{92} The Lanzarote Convention does not provide for the duty to compensate,\textsuperscript{93} but the Istanbul Convention does include the obligation of compensation by the perpetrator or the State.\textsuperscript{94}

From 2002 onwards, the ECtHR paid attention to the seventh State duty, the duty to protect against secondary victimization. The ECtHR ruled that especially child victims have the right to be heard only once, outside the courtroom and without a confrontation with the alleged perpetrator, provided that the defence is sufficiently compensated for the lack of the opportunity to challenge and question the child witness at a court hearing.\textsuperscript{95} The Lanzarote Convention introduced several new rules to ensure a child-sensitive criminal procedure. The rule that stands out the most is that the State must provide free legal aid and appoint a special representative in parental violence cases, because the parent is precluded from representing the child because of a conflict of interests. Another important new rule is a court hearing without the presence of the public and that the victim does not have to be present during

\textsuperscript{90} Art. 14 section 1 and 3 Lanzarote Convention and Explanatory Report, par. 99.
\textsuperscript{91} Art. 25 and 26 Istanbul Convention.
\textsuperscript{92} D.M.D. v. Romania, 3 October 2017, par. 63–69; See also the CoE Guidelines on Child Friendly Justice on compensation for child victims of violence, par. 81.
\textsuperscript{93} Nor does this appear in the monitoring mechanism of the Lanzarote Committee.
\textsuperscript{94} Art. 30 Istanbul Convention.
\textsuperscript{95} The recording of the statement of the child victim and enabling the defense to view this at the court provides, in combination with other measures, enough compensation in order to give the alleged perpetrator a fair trial in accordance with Art. 6 ECHR, see: ECtHR, S.N. v. Sweden, 2 July 2002, par. 47 and 52; See also: ECtHR, D.T. v. the Netherlands, 2 April 2013, par. 50, 51. In this case the complaint of the perpetrator, the father of a 5-year-old girl, who sexually abused her, was declared inadmissible on the grounds that the denial of interviewing the young girl for the second time was justified in order to protect her against further harm due to the criminal proceedings.
court sessions. Limitation of child victim interviews and hearing the child by the same, properly trained, people in suitable premises are other relevant rules. Interviews must be (video)taped for use as evidence during criminal proceedings, but also for trauma therapy. The Istanbul Convention also gives victims the right to free legal assistance. Both conventions stress the importance of training about parental (sexual) violence for prosecutors, judges, and lawyers on how to prevent secondary victimization and stipulate a coordinated and comprehensive approach and effective cooperation by all relevant bodies and professionals involved in criminal proceedings to safeguard the child's best interests.

3.3 The Seven State Duties According to European Union Law

In addition to the duties of the State according to children's and Council of Europe human rights, the EU also provided for significant advances in its legal framework for victims' rights, which will provide a complete view on the scope of responsibility of the State. This subsection delineates the seven State duties according to the Charter of Fundamental Rights, post-Lisbon treaties and the secondary legislation, which is the Victims' Rights Directive, its predecessor, the Framework Decision and the Child Sexual Abuse Directive.

In 2010, with regard to the first duty to prohibit parental violence in the law, the EU conducted a feasibility study to assess the possibilities of harmonizing legislation on the prohibition of parental violence within the EU and concluded that no Member State criminalizes corporal punishment to the

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96 Art. 31 section 3 and 4 and Art. 36 section 2 Lanzarote Convention; See also: First Implementation Report 2015, p. 43.
97 Explanatory Report Lanzarote Convention, p. 35.
98 Art. 36 Section 1 Lanzarote Convention; Art. 15 Istanbul Convention.
99 First Implementation Report 2015, p. 51; Art. 7 Istanbul Convention, Explanatory Report Istanbul Convention, p. 43.
100 Traditionally in criminal law, EU legal acts are not directly applicable, as they are implemented in national law by enacting, supplementing, or changing existing national criminal law, see: Gruodytė, Edita, Milčiuvienė, Saulė and Palionienė, Neringa, ‘The Role of EU Principles in Criminal Law: is the Principle of Direct Effect Applicable?’, Baltic Journal of Law & Politics (2020, vol.13, no.2) p. 49–75.
extent that any act of physically disciplining of a child could be subject to a prosecution. Currently, 23 out of 27 Member States prohibit all corporal punishment, including within the family home. In 1979 Sweden was the first Member State to introduce such provisions and most recently France did so in 2019.

In 2000, the EU Charter of Fundamental Rights (the Charter) stipulated that victims must have legal aid in order to ensure access to justice and emphasized the right of victims to an effective remedy before a tribunal. The Charter acknowledged, for the first time in EU history, the importance of adhering to international children’s rights principles in the development and interpretation of EU measures and embeds the best interest principle as well as the participation principle. The post-Lisbon Treaty on European Union also emphasized the importance of the protection of children’s rights and more importantly, the competence of the EU to adopt legislation on the rights of individuals in criminal procedure.

Pre-Lisbon, the EU introduced minimum standards for victims of crime through the adoption of the 2001 Framework Decision on the standing of

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102 Finland (1983), Norway (1987) and Austria (1989) were the first countries to follow Sweden's example. See: M. Freeman, 'Children are Unbeatable', Children & Society (1999, 13) p 132, 133.


104 The Charter became legally binding and acquired the same legal value as the Treaties with the entry into force of the Lisbon Treaty in 2009, see: J. Gerards & E. Brems, 'Shaping Rights in the echr, the role of the European Court of Human Rights in Determining the Scope of Human Rights' (Cambridge University Press, 2013) p. 11.


victims in criminal proceedings (hereafter Framework Decision). Although the Framework Decision does not mention children explicitly, it already clearly stipulated the duty to protect against repeat victimization and implicated a duty to assess the risks. The Framework Decision mentions the importance of access to criminal justice for victims and the duties to rehabilitate and compensate, as Member States have to ensure that vulnerable victims can benefit from specific treatment best suited to their circumstances and that victims get compensation from the offender. Making the justice systems across Europe more child-friendly is a key action under the EU Agenda for the Rights of the Child and the Framework Decision stipulates special waiting areas in court premises as part of the duty to protect against secondary victimization. Additionally, Member States must provide a coordinated approach to avoid partial or inconsistent solutions, which may give rise to secondary victimization. In 2005, the European Court of Justice ruled that the Framework Decision purported to confer children the right to be heard outside the courtroom and, not uncontroversial, that the doctrine of indirect effect applied to the Framework Decision, so that children can exercise this right.

However, although the Framework Decision acted as a first legal instrument to improve the position of victims of crime, its effect depended on the implementation on the Member States, which did not take place adequately. The EU adopted a more comprehensive and improved instrument, the 2012 Directive establishing minimum standards on the rights, support, and protection of victims of crime (hereafter Victims’ Rights Directive), while in 2011 the EU already adopted the 2011 Child Sexual Abuse Directive (further: CSA Directive 2012/29/EU was one of the outcomes of the Victims’ Rights Package. Directives lay down certain results that must be achieved but each Member State is free to decide how to transpose directives into national laws.

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110 Art. 8(1) Framework Decision, Recital 3, Art. 2(2), Recital 1 and 3 and Art. 4(1), (9), Art. 9(1) and (2) Framework Decision.


112 Art. 8(3) Framework Decision, Recital 5 Framework Decision.


115 The Lisbon Treaty led to the adoption of the ‘Victims’ Rights Package’, which was released by the European Commission in May 2011. The Victims’ Rights Directive (Directive 2012/29/EU) was one of the outcomes of the Victims’ Rights Package. Directives lay down certain results that must be achieved but each Member State is free to decide how to transpose directives into national laws.
Directive).\textsuperscript{116} Although directives have a stronger legal status than framework decisions, the rights contained therein also have to be implemented in the Member States, which can again lead to the situation that victims cannot effectively use the rights enshrined in the directive, all the more so as victims can rarely invoke these rights directly or indirectly.\textsuperscript{117} In spite of these observations, the Victim’s Rights Directive and csa Directive include substantial changes that favourably influence the position of crime victims.\textsuperscript{118} An important advancement is that, unlike its predecessor, the Victim’s Rights Directive pays extensive attention to the rights of children and acknowledges child victims as ‘full bearers’ of these rights, including the right to protection, in accordance with the principle of the child’s best interests.\textsuperscript{119} The csa Directive stipulates the duty to prohibit parental sexual violence in criminal law and make it punishable and even specifies minimum-maximum sentences for parental sexual violence. The reference in the Directive to the age of consent though seems inappropriate and should not play a role when there is sexual violence by a parent, family member or person to whom the minor is entrusted.\textsuperscript{120} The Victim’s Rights Directive puts more emphasis on the duty to protect against repeat victimization than the Framework Decision, and introduces the duty to carry out an individual risk assessment, especially for child victims.\textsuperscript{121} In this regard, the csa Directive introduced effective intervention programmes for offenders on a voluntary basis in order to prevent and minimize the risks of repeated parental sexual violence.\textsuperscript{122} Additionally, both Directives introduce

\textsuperscript{116} Directive 2011/93/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, adopted on 13 December 2011, and replacing Council Framework decision 2004/68/jha, oj 2011, L 335/1. The deadline for its implementation by the Member States was 18 December 2013, nearly two years later: see Article 27(1).

\textsuperscript{117} Only if a Member State fails to discharge relevant obligations or fails to do so adequately or correctly (and the deadline for the Directive’s implementation has passed), does the question of relying on the Directive itself come into play by means of the doctrines of direct and indirect effect.


\textsuperscript{120} Directive 2011/93/EU, Art. 3(5)(i).

\textsuperscript{121} The Directive mentions the duty to protect against repeat victimization fifteen times. See: Directive 2012/29/EU Recitals 9, 17, 46, 52, 53, 54, 55, 57, 58, 63 and Articles 9, 12, 18, 22 and 26; Directive 2012/29/EU, Recital 55, and Art. 22(4).

\textsuperscript{122} Directive 2011/93/EU, Art. 24; See also Recital 39.
the **duties to investigate and prosecute**. Reporting crimes must be encouraged by a respectful response from the authorities\(^{123}\) and victims have the right to a quick notification if an investigation ends or the State decides not to prosecute and to a review by a different authority. Because of the difficulty to report parental sexual violence, the State has the duty to help victims in getting access to the criminal justice system and even has to ex officio prosecute these crimes.\(^{124}\) The Directives also stipulate the **duties to rehabilitate and compensate** victims through psychological counselling and trauma support and compensation by the offender.\(^ {125}\) States have to provide assistance for victims of parental sexual violence for as long as necessary for their physical and psychological recovery, which may even last into adulthood.\(^ {126}\) Another advancement is that both Directives set out clear rules about the **duty to protect against secondary victimization**, especially for victims of parental sexual violence. Victim interviews must be audio visually recorded, kept to a minimum and carried out only where strictly necessary. Additionally, interviews must be carried out by trained professionals, conducted by the same persons, on premises designed for that purpose and new court premises must create separate waiting areas for victims.\(^ {127}\) Interviews with victims of parental sexual violence, unless conducted by a prosecutor or a judge, must be conducted by a person of the same sex as the victim.\(^ {128}\) Child victims have the right to a lawyer in his or her own name and to a special representative in case of a conflict of interests with the victim’s parent.\(^ {129}\) When the parental violence has as sexual nature, this legal counsel has to be given free of charge, including for claiming compensation from the State.\(^ {130}\) Another important new rule is the possibility of a hearing in court without the presence of the public.\(^ {131}\)

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\(^{123}\) Directive 2012/29/EU, Recital 63.

\(^{124}\) Directive 2011/93/EU, Recital 26, Art. 15(1).


\(^{127}\) Directive 2012/29/EU, Art. 20(b), Art. 23(2)(a) and 19(2).

\(^{128}\) If the victim so wishes, Directive 2012/29/EU, Art. 23(2)(b), (c) and (d).


4 A Review of the Compliance of the Dutch State to Ensure Access to Criminal Justice

The children's rights and human rights framework makes it clear that the scope of the responsibility of States to ensure access to criminal justice is quite broad and encompasses seven duties to help and support the child victim of parental violence before, during and after criminal proceedings.132 This section presents an assessment of how the Dutch State incorporates these duties into Dutch law133 and practice. Since every state duty is made up of several instruments, the way in which this state obligation has effect in Dutch law is not discussed everywhere, but an attempt has been made to clarify the manner of implementation in Dutch law and practice. When the state duty is based on European Union law, attention will be paid to the implementation of these rights in Dutch law.

Both the children's rights and human rights documents provide for a duty to prohibit physical, sexual, and psychological parental violence in the criminal law.

The Dutch state banned parental violence by law in 2007 after it was twice reprimanded by the monitoring committees of the CRC and the ESC in 1999 and 2004.134 The Netherlands deliberately chose to include the prohibition of violence in the civil code,135 in line with several other European

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132 Victims in the Netherlands have 14 rights: (1) the right to information about victims' rights, (2) the right to an interpreter if the victim does not understand Dutch, (3) the right to inspect the documents, (4) the right to be informed when an offender goes on leave, is released or is not deprived of liberty, (5) the right to free help, advice and information, (6) the right to assistance by a lawyer in the event of a report and/or court hearing, (7) the right to protection, to prevent repeated or renewed victimization, (8) the right to report the crime, and also (9) the right to complain if the report does not lead to a criminal case, (10) the right to speak during a court hearing, (11) the right to request to speak with the suspect or perpetrator, (12) the right to claim compensation. See: www.fondsslachtofferhulp.nl/rechten-van-slachtoffers/, last retrieved March 2023.

133 P.H.P.H.M.C. van Kempen, S. Brinkhoff & M.J.M. Krabbe (eds), The criminal justice system of the Netherlands. Substantive criminal law, Criminal procedure law and Sanction law (Cambridge/Antwerp/Portland: Intersentia, 2018).


135 Art. 247 Civil Code: 'Parents may not use mental or physical violence or apply any other degrading treatment when they care for and raise their child'. This applies to legal guardians and stepparents as well (Art. 1248 DCC); See also: T. Liefaard & J.E. Doek, 'Fysieke en geestelijke mishandeling van kinderen: over begripsvorming en de grenzen
countries.\textsuperscript{136} The legislator was of the opinion that this prohibition, which had already led to much criticism,\textsuperscript{137} should not be included in criminal law because criminal prosecution of parents would have an adverse effect on family life and would not help to prevent violence.\textsuperscript{138} At the same time though, prohibition in the Civil Code could increase the use of criminal law, because this legal prohibition would make the criminal defence of the ‘reasonable chastisement’ useless,\textsuperscript{139} making it impossible not to classify parental violence as ‘assault’.\textsuperscript{140} However, because only the Civil Code was amended, the Dutch Criminal Code does not contain specific stipulations about parental physical, sexual and psychological violence.\textsuperscript{141} Except for the murder or manslaughter of a new-born baby by its mother, leading to lesser sentences,\textsuperscript{142} parental (sexual) violence is only covered by general provisions of criminal law. These general provisions are ‘common assault, aggravated assault, causing grievous bodily harm, manslaughter, murder, rape, sexual assault and abandonment of someone in need.’ Although judges are enabled to impose increased penalties when the perpetrator is a (step) parent,\textsuperscript{143} this structure does not meet human rights
standards. Additionally, the Dutch Criminal Code, unlike in other European countries,\textsuperscript{144} does not contain minimum sentences for parental (sexual) violence although, as of 2012, community service can no longer be imposed for (the repetition of) serious parental (sexual) violence.\textsuperscript{145} Coercion and (threat of) violence are not constituent elements of parental sexual violence,\textsuperscript{146} but sentences of sexual acts such as penetration of one's child between 12–15 years old are 30 percent lower than those for rape between adults.\textsuperscript{147} Higher sentences for parental sexual violence will enter into force,\textsuperscript{148} which will also apply for 16 and 17 year old children, a category that is not addressed in the current Criminal Code, but will still receive lesser sentencing than rape between adults. Additionally, prosecutorial guidelines\textsuperscript{149} on parental sexual violence prescribe fairly low sentences.\textsuperscript{150}


\textsuperscript{145} Stb. 2012, 1.

\textsuperscript{146} This is still the case for rape between adults, see: K. Lindenberg & A.A. van Dijk, Overhaul of the Dutch sexual offences? An analysis of the Dutch sexual offences in terms of consistency, complexity, and standards (Groningen: University of Groningen, wodc, 2015) p. 6. New legislation will enter into force in 2024: Act on Sexual Offences of March 2021, sex with another adult in the knowledge that the other person does not want it will be a criminal offence and coercion, violence, and threats will become aggravating factors, but no longer a requirement for a conviction.

\textsuperscript{147} Article 245 DCC stipulates 8 years imprisonment instead of 12 years imprisonment for sexual acts including penetration, the judge may raise the sentence by one third, according to Article 248 DCC.

\textsuperscript{148} Sentences for rape of one’s child between 0–12 years old will be raised from 12 (current DCC) to 15 years imprisonment and for sexual acts excluding rape, which is introduced as a separate offence, 10 years imprisonment. For children 12–16 years old the sentence for rape is raised from 8 (current DCC) to 12 years and for sexual acts excluding rape, which is introduced as a separate offence, 8 years imprisonment.

\textsuperscript{149} Prosecutorial guidelines have been drawn up by the national board of the Public Prosecution Service, the Board of PG, and give an indication of the penalty that the public prosecutor may demand in case of prosecution. For more information see note 159.

\textsuperscript{150} Prosecutorial guideline (2022R005) prescribes 120 hours community service and 2 months detention for assault of one’s child, which led to severe damage, 8-24 months detention (possibly partly conditional) for aggravated assault of one’s child, 4-8 years (possibly partly conditional) detention for attempted manslaughter of one’s child, 8-12 years for manslaughter or murder of one’s child, while the maximum prison sentence for manslaughter of an adult is 15 years detention, which will soon change into 25 years and the maximum sentence for murder of an adult is 30 years or life imprisonment.
Positive developments are that since 2013, parental sexual violence can no longer be statute-barred and since 2020 the statute of limitations for parental violence is extended by changing the starting point for this term to the day after the minor victim has turned eighteen.\textsuperscript{151} Although case law also needs attention, as there are regular criticisms that the penalties are too light\textsuperscript{152} in 2017 a parent was convicted for psychological parental violence for the first time.\textsuperscript{153}

States have the \textbf{duty to protect children against repeat victimization}, which encompasses (preventive) action by the police, an adequate risk-assessment, a multi-agency approach and treatment for offenders.

Tragically, the Dutch State is unable to prevent parental child killings, as research showed that in the period 2009–2014 eighty children were killed by their (step)parent(s).\textsuperscript{154} Other governmental investigations\textsuperscript{155} showed that regarding the death of 13 children and parental violence against 11 children in the period 2011–2016 (many) public authorities, including the police, were involved. The investigations concluded that the local authorities did not effectively escalate the case to a higher level of authority and revealed a lack of cooperation between the different civil and criminal authorities. An adequate

\textsuperscript{151} Parliamentary Papers II 2018/19, 35080, no. 3, p. 7.
\textsuperscript{152} Sentence of the District Court Assen of 2 years imprisonment, 1-year conditional for a father who had sexually violated (including penetration) his two daughters for many years from the age of being a baby led to critique by citizens in the Netherlands in January 2019, see: https://www.nu.nl/weekend/5705952/wordt-gepaste-straf-kindermisbruik-bepaald.html; In a similar case, the District Court ’s Hertogenbosch convicted a father for sexually violating his two daughters to 4 years imprisonment, 6 months conditional. The sexual violence, including penetration, started when the eldest daughter was 7 years old and continued for several years, see: Rb. Oost-Brabant 18 January 2022 ecli:nl:rbobr:2022:55; In another case, the District Court Rotterdam convicted a father who sexually violated (which also consisted of penetration) his daughter from the age of 9 until 17 years old to 3 years imprisonment, 8 months conditional, see: Rb. Rotterdam 15 February 2017, ecli:nl:rbrot:2017:1501.
\textsuperscript{154} These findings were in line with international studies that most child deaths are intra-family and committed in homes. The study also revealed that young children run the greatest risk of victimization, with male perpetrators making older victims than female perpetrators. Women are overrepresented among neonaticide offenders and very young children while men are the main perpetrators of revengeful infanticide, for example in the context of a divorce, those victims are generally older. See: M. Liem & S. Haarhuis, ‘De epidemiologie van kinderdoding in Nederland, 2009–2014’, Tijdschrift voor Veiligheid 2015 (14), p. 57, 71, 72.
\textsuperscript{155} Previous research into fatal violence in the Netherlands showed that in the period 1992–2006 there were a total of 134 child deaths, which equates to eight to nine child deaths per year, supranote 155, p. 57. Of all homicides in the Netherlands, the annual share of
risk assessment lacked as well as continuity of care and the authorities, most notably the police, did not interfere on time.\textsuperscript{156}

Although various interventions, imposed by a criminal or civil court, are possible in the Netherlands to stop parental violence, these cases do not always reach the court, partly because of the aforementioned lack of cooperation.\textsuperscript{157} To achieve better cooperation between the criminal, civil and administrative authorities, new policy documents were drawn up by the Public Prosecution Service in 2015 and 2017.\textsuperscript{158} Additionally, the Dutch Public Prosecutor issued prosecutorial Designations as of 2009, which mention children's right to protection.\textsuperscript{159} The Designation of 2016,\textsuperscript{160} focuses on the collaboration of the public prosecutor and the police with the network partners and explicitly mentions the child's right to protection and specific measures when their safety is under

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\textsuperscript{156} In both 2013 and 2016, the Youth Care Inspectorates issued reports on children who died or suffered from severe violence and neglect. See: ‘Learning from calamities’, Collaborative Youth Supervision, Utrecht, 2013 p. 10, 11 and ‘Learning from calamities 2, safety of children in vulnerable families’, Collaborative Youth Supervision, Utrecht, 2016, p. 11, 12.

\textsuperscript{157} These interventions are contact bans, restraining orders, obligation to treat, placing the suspect/offender in detention (criminal procedure). Civil measures are placing the child under supervision with or without the child being placed out of home or a termination of custody.


\textsuperscript{159} Designation investigation and prosecution of Parental Violence (2009A013). As to the status and normative effect of Dutch Codes (laws), decrees and designations. A law contains binding regulations and explains broadly which rules apply to a particular subject. The Senate and House of Representatives must approve a law. A decree is a more detailed description of the law and is binding as well. Designations and prosecutorial guidelines are issued by the Board of PG and mainly concern investigation, prosecution, and execution policy. These designations and guidelines have legal force and are binding on the Public Prosecution Service. Citizens can derive rights from it. In view of this, they are published in the Government Gazette and on the website of the Public Prosecutor.

\textsuperscript{160} Designation Domestic and Parental Violence (2016A003).
serious threat. These Designations also mention conditional sentences which include forced treatment and probation supervision. Although as of 2017, to implement the Victim's Rights Directive, the individual assessment to assess protection needs is implemented in Dutch law, implementation with the police still lacks in practice. Moreover, it is striking that in the most recent prosecutorial Designation of 2022 the individual assessment that the police should make is left to the Safe Home Centre, despite criticisms expressed by Grevio in 2020.

A positive development is that, to implement the Victim's Rights Directive, the police or the prosecutor must refer a child victim to victim support. Therapeutic support programmes aimed at teaching perpetrator parents to adopt non-violent behaviour towards their children, often incorporated in conditional sentences, to address underlying (aggression) problems, are another positive development. However, the National Rapporteur concluded that fewer and fewer convicts of child sexual violence received supervision from the Probation Service in the period 2015–2019.

The duty to investigate cases of parental violence is explicitly included in all human rights instruments, which emphasize a thorough police investigation and evidence collection, even without a report. Although a child victim of parental violence may be hesitant to report to the police, Dutch research showed that in most of the cases (48%), child victims reported the violence themselves. Parents (40%) and other family members

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161 The mayor and the chief Public Prosecutor can take specific measures to ensure the safety of victims.
163 Designation Domestic and Parental Violence (2022A001); Grevio’s criticisms are explained later in this section.
164 Art. 51 aa DCCP, Stb. 2017, 90.
165 Multi-systemic therapy is a judicial intervention considered the most effective. J. Snippe & J. van der Molen, Onderzoek justitieel interventiepalet kindermishandeling (Groningen WODC, 2019) p. 37; See also: https://www.kenniscentrum-kjp.nl/professionals/behandelmethoden/veilig-sterk-verder/ (last retrieved September 2022).
166 The National Rapporteur on Human Trafficking and Sexual Violence against Children was established in 2000 and investigates the nature and extent of human trafficking and sexual violence against children in the Netherlands, see: https://www.dutchrapporteur.nl/sexual-violence-against-children.
(5%) also reported to the police. Professionals from the Safe Home Centre or the Child Protection Board did not report parental violence frequently (7%).

However, several circumstances hamper the investigation by the Dutch police. First, as of 2007, the police must refer cases of parental violence to the Youth Care Bureau, the predecessor of the Safe Home Centre. As of 2015, due to the decentralization process, the police must refer to the Safe Home Centre, who will then start an investigation, so that the police will not investigate themselves. This problem not only exists with regard to parental violence, as research showed that victims of intimate partner violence who want to press charges have difficulties getting their cases taken up by the police and are discouraged to report these crimes. Grevio was informed that pressure is being put on these victims to accept action they do not want, such as referral to the Safe Home Centre. Second, the decriminalizing tendency seems to have been accelerated by the decentralization of 2015 because victims must also refer both domestic and parental violence to the Safe Home Centre instead of to the police. Thus, according to Grevio, the current emphasis in the Netherlands seems to be on social interventions in conjunction with the Safe Home Centre rather than on criminal justice interventions. Third, when there is a police investigation, as of 2013 the police have the legal right to dismiss a report about parental violence so that the report is not sent to the public prosecutor. Unofficially, the police already dismissed parental violence cases before 2013, which became apparent in a governmental report of 2010, which revealed that the police dismissed 27 per cent of the parental violence cases.

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170 See for information about the Safe Home Centre, supranote 35. Anyone can report to the Safe Home Centre, but most reports are made by the police. Teachers, assistants and care providers, nurses, (general) doctors, relatives, neighbors, or friends can also make a report.
171 See for information about the decentralization, supranote 35.
172 Grevio Report, p. 51.
174 Grevio Report, p.51; The same conclusion can be found in the report about the modernization of the sexual offences, Final Report on the modernization of the Sexual Offences Act, M. Winninghoff, 2019, p. 6.
175 Art. 152 section 2 Code of Criminal Procedure. As of 1950, the Supreme Court of the Netherlands condoned this practice and as of 2013 this became a legal right of a police officer.
As a result, these cases were not submitted to the public prosecutor. A lack of parental consent for evidence forensic examination of the child victim may hamper criminal investigations.

Fourth, a lack of parental consent for evidence forensic examination of the child victim may hamper criminal investigations. A positive development is that in the bill for the renewal of the Code of Criminal Procedure, in addition to a complaint about not prosecuting, citizens may also file a complaint if the police do not want to investigate their case.

The duty to prosecute has evolved in the human rights system and, since 2011, there has even been a duty to prosecute ex officio.

Dutch research showed that prosecution of parental violence does not happen frequently. In 2008, Dutch public prosecutors prosecuted 815 cases of an estimated 105,000 cases of parental violence and neglect. Ten years later, the number of reported cases of both parental violence and domestic violence to the Safe Home Centre totalled 64,095 cases in the first half of 2018. Of these cases, 420 were reported to the police and the public prosecutor and 395 to the Child Protection Board (civil law procedure). In the same year, other Dutch governmental research showed that, in many cases concerning violence against minors, there is ultimately no prosecution. In 2020, GREVIO reported that, while there are a few examples of good practice, it is particularly concerned about the low prosecution rate, the high number of waived cases and the low conviction rate considering the high incidence of domestic violence. Although based on these figures the total amount of cases that the police or the public prosecutor investigated cannot be assessed, the figures indicate a modest role of the criminal justice system in tackling parental violence. In 2015, the CRC Committee expressed its concern regarding the increasing number of incidents of parental violence in the Netherlands

180 Dutch Central Bureau of Statistics, Beleidsinformatie Veilig Thuis, Stand van zaken 1e halfjaar van 2018, p. 42, 43.
181 Sondorp & Hoogeveen, p. 86.
183 This is also the case in Finland despite the early prohibition of parental violence in the law in 1983, see: R. Kotanen (2021), Creating and Maintaining Structural Hindrances to Criminal Justice Control, a Policy Analysis on the Normalisation of Parental Violence as Crime in Finland. Social & Legal Studies, p. 1–21.
and recommended that all cases needed to be investigated, the alleged perpetrators prosecuted, the convicted punished, and the victims adequately compensated and rehabilitated.\footnote{Concluding Observations 2004, UN Doc CRC/C/NDL/CO/4, par. 36(a) and 37 (a).} In 2019, GREVIO also expressed its concern and noted that there is no specific plan nor a coordinated approach in the Dutch criminal justice sector as to meet the requirements of the Istanbul Convention in the area of criminal justice, save for a referral to the Safe Home Centre.\footnote{GREVIO, ‘Baseline Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) – Netherlands’ 15 November 2019, GREVIO (2019), par. 238. The Report covers the years 2016 and 2017.} GREVIO stated that the Dutch State must do more to ensure a prompt and appropriate response from the responsible law enforcement agencies in cases of domestic (including parental) violence.\footnote{This would require a variety of measures, including clear gender-based guidelines and the targeted training and specialization of law enforcement agencies.} Moreover, GREVIO found no data on \textit{ex officio} prosecution in the Netherlands,\footnote{GREVIO Baseline Evaluation Report Netherlands, January 2020, p. 53.} which had also led to critique by the National Rapporteur, who stated that it is unclear why the Public Prosecution Service launches few \textit{ex officio} investigations.\footnote{Report ‘Sexual Violence Against Children Offenders Monitoring Report 2015–2019’, p. 9, via: https://www.dutchrapporteur.nl/publications/reports/2021/07/16/sexual-violence-against-children-offenders-monitoring-report-2015–2019. The research of the National Rapporteur focuses on sexual violence against children in a broad sense, which covers sexual violence where the perpetrator may be the parent or caregiver, but also someone unknown to the child.} The Rapporteur also stated that few cases are reported and that in 2019 fewer cases have been forwarded to the Public Prosecution Service. Additionally, cases frequently end in a dismissal.\footnote{Usually a technical dismissal, due to lack of evidence, especially in cases of sexual violence, in which the evidence often consists only of the statements of the minor victim and the suspect. The National Rapporteur previously made a recommendation to focus on collecting technical evidence. Report ‘Sexual Violence Against Children Offenders Monitoring Report 2015–2019’, p. 103. A policy dismissal is a decision of the Public Prosecutor to waive prosecution, despite sufficient evidence, on the grounds of the public interest (Article 167 paragraph 2 DCCP). Prosecution is therefore possible, but not considered desirable, for example because intervention other than criminal law prevails or is desirable, see: Sexual Violence against Children 2015–2019, Dutch National Rapporteur on Trafficking in Human Beings and Offender Monitor Sexual Violence against Children, p. 201.} In 2021, the Rapporteur also expressed his concern about the long time between a report and a conviction, which influences the willingness to report negatively.\footnote{In 2019, it took 417 days to reach a verdict from the moment a case was registered with the Public Prosecution Service. In 2015, this was 359 days; https://www.nationaalrapporteur.
Despite these observations, there is also a development to increase and strengthen the criminal law response to parental violence in the Netherlands. As of 2003, the Dutch Public Prosecution Service has issued several Designations, which provide mandatory rules about the investigation and prosecution of domestic violence and since 2009, these designations also focus on the investigation and prosecution of parental violence.\(^1\) However, it is striking that the most recent 2022 Designation does not address the duty to prosecute ex officio, as does the 2016 Designation.\(^2\) Other positive developments are improvement of medical evidence collection by the establishment of a Dutch national Expertise Centre for Child Abuse in 2014.\(^3\) Moreover, in 2017, the Netherlands appointed specialized Public Prosecutors to increase the investigation and prosecution of parental violence\(^4\) and in 2020 a new medical policy regarding the identification of injuries in children was released.\(^5\)

With regard to the duty to (ex officio) prosecute, it is important to note that the Netherlands has a civil law legal system and that the Netherlands entrusts the prosecution of criminal offences exclusively to the Public Prosecution Service.\(^6\) Unlike in countries like Belgium, France, and Germany, victims in the Netherlands do not have autonomous access to prosecution.\(^7\) Only the Public Prosecution Service determines whether a criminal case will be

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\(^1\) Designation Domestic Violence (2003A003), see: supranote 160 for information about the status of Designations; Designation for investigation and prosecution of parental violence 2009 (Stcrt. 2009, 116).

\(^2\) Designations Domestic and Parental Violence 2016 and 2022.


\(^6\) Article 124 Law on the Judicial Organization.

prosecuted and/or brought to court, also known as the opportunity principle,198 guided by the aforementioned Designations. The accepted interpretation of this 'opportunity principle', which plays a fundamental role in the Dutch criminal justice system,199 is that the prosecution of criminal offences should not only occur based on the law, but also based on the general interests of society. The low rate of prosecution of parental and domestic violence in the Netherlands is difficult to explain in terms of this general interest of society. Citizens can file a complaint if the public prosecutor decides not to prosecute,200 but it is difficult for child victims to exercise this right.

As of 1989, children’s rights and human rights have been clear about the **duty to rehabilitate** child victims of parental violence.

Research shows that to achieve the goal of victim rehabilitation, emphasis should be placed on activities that enable survivors to reconnect with others and rebuild the self.201 This requires trauma treatment, but recent research shows that in the Netherlands as much as 25 to 30 per cent of traumatized children did not receive therapy or other help after a referral to the Safe Home Centre.202 Additionally, in 2019 and 2021, the National Rapporteur reported that child victims of parental sexual violence did not receive the right treatment in a timely manner.203

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198 Article 167 of the Dutch Code of Criminal Procedure stipulates that not all criminal offences need to be prosecuted. A policy dismissal is a decision of the Public Prosecution Service, in which, despite sufficient evidence, it waives prosecution of a criminal offense on the grounds of the public interest (Article 167 paragraph 2 DCCP). Criminal prosecution is therefore possible, but is not considered desirable, for example because of the minor significance of the fact, the health condition of the suspect, or because intervention other than criminal law prevails or is desirable, see: Sexual Violence against Children 2015–2019, Dutch National Rapporteur on Trafficking in Human Beings and Offender Monitor Sexual Violence against Children, p. 201.

199 The opportunity principle is a fundamental principle that colors the entire criminal process, and this will remain as a guiding principle in the new Code of Criminal Procedure, Explanatory Memorandum of the new Code of Criminal Procedure (official version July 2020), p. 591.

200 Article 12 Dutch Code of Criminal Procedure.


The duty to compensate developed only slowly in the children’s rights and human rights system, but the latest developments are that the victim has a right to compensation from the state, which is more in his interest than compensation from the offender.

In 1995, the Dutch State made the first amendments to the Criminal Code to give victims greater opportunities during the criminal proceedings to recover damages from the perpetrator. Since 2011, victims of violent or sex crimes can receive the full amount of compensation as an advance payment from the Dutch state. However, procedures to obtain compensation are difficult to access for the minor victim due to the lack of criminal proceedings.

The duty to protect against secondary victimization gained importance due to the jurisprudence of the ECtHR and more importantly due to EU law.

The implementation of the Framework Decision (2001) in Dutch law took quite some time, in 2011 a special victim paragraph was added to the Code of Criminal Procedure. This amendment strengthened the position of victims in the Netherlands and stipulates that the public prosecutor (and by extension, the police) and the judge must treat victims with care and that child victims are entitled to protection and victim support. In 2017, again well overdue in view of the 2013 implementation deadline, the Dutch State implemented the Victims’ Rights Directive in its legislation and thus several new rights for

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205 The compensation measure is the criminal measure that can be attached to the payment of compensation to the injured party. The compensation measure entails that the State is charged with collecting the compensation awarded. When the amount has been collected, the amount is paid to the victim.

206 The experience of children in the justice system can vary greatly depending on a number of factors, such as: the child’s age at the time of the prosecution, the relationship between the child and the perpetrator, the severity of the parental (sexual) violence experienced, the level of maternal support (in cases of parental sexual violence) and the availability of court preparation programs, the number of times the child is called to testify and the number of times the child is brought to court, see: M.H. Elmi, I. Daignault & M. Hebert, ‘Child sexual abuse victims as witnesses: The influence of testifying in their recovery’, Child Abuse & Neglect (2018-12) p. 24.

207 Until then victims’ rights had only been available in policy documents. See: C.P.M. Cleiren (2009), p. 486.

208 Articles 51aa and 288a, second paragraph, Dutch Code of Criminal Procedure. Before this, in 2004, the written victim statement and in 2005, the right to speak at a court hearing were introduced for victims, Wet van 21 juli 2004, Stb. 382; R.S.B. Kool, R.C. Passier & A. Beijer, Evaluatie Implementatie schriftelijke slachtofferverklaring (Utrecht: Willem Pompe Instituut voor Strafrechtswetenschappen, 2006) p. 2.
victims have been included in the Dutch Code of Criminal Procedure. An example of this is the right to a referral to victim support by the police or the Public Prosecutor. Also new was the implementation of an individual assessment by the police to determine their protection needs and take measures if necessary. The right to speak in court was extended and included the possibility to speak about the evidence and the sentence. However, Dutch research showed that in practice child victims cannot always make use of these newly acquired rights as, for instance, the child victim is often not assigned a lawyer. Additionally, a child victim under 12 years of age does not have an autonomous right to information, while their parents do have this right.

In addition to the amendment of the Code of Criminal Procedure the Netherlands adopted the Victims of Criminal Offences Decree, which provides rules for the hearing of children. These rules are also written down in a Memorandum issued by the police in 2016. This Memorandum however, only focuses on minors between the ages of 12 and 18 years old. Dutch research showed that the number of interviews is not always kept to a minimum and are not always recorded. Child victims of parental sexual violence have the choice to be heard by someone of the same sex, but in practice, victims do not always have a choice. Additionally, the presence of a legal representative or person of their choice during child interrogations, is often not permitted.

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211 Sondorp & Hoogeveen, p. 83.

212 Sondorp & Hoogeveen, p. 7, 8.

213 Besluit van 24 augustus 2016, houdende regels voor de rechten, de ondersteuning en de bescherming van slachtoffers van strafbare feiten, Stb. 2016, 310 (further: Victims of Criminal Offences Decree).

214 The Hoorrecht Memorandum gives minor victims the right to give his or her view on the event and the prosecution and to have it included in a recorded statement. See: Sondorp & Hoogeveen, p. 83.


216 Sondorp & Hoogeveen, p. 90.

217 Article 11 Victims of Criminal Offenses Decree; S.D.E. Leermakers, E.I. Simons & F. Noteboom, Aangifte doe je niet. Een studie naar de factoren die een negatieve invloed
even in child-friendly interrogation rooms.\textsuperscript{218} The interrogation by the judge also needs improvement in order to protect child victims against difficult questions by the defense lawyer.\textsuperscript{219} These implementation problems will hopefully improve soon, as the police, the Public Prosecution Service and the judiciary have invested in training and extra staff.\textsuperscript{220} Apart from the implementation of the Victim’s Rights Directive, positive developments are that in 2015 and 2017, with the aim to protect victims of parental (sexual) violence, two manuals were launched by the Prosecutor.\textsuperscript{221} The attention for the role of the criminal justice system for victims has recently resulted in a new proposal for the amendment of the Code of Criminal Procedure in the Netherlands.\textsuperscript{222}

Looking at the Netherlands as a case study, it is first noticeable that relatively few child victims have access to the criminal court. The Netherlands already decriminalized parental violence in the 1920s and included the prohibition of violence in the Civil Code in 2007, because of which the Criminal Code lacks specific provisions on parental (sexual) violence. Since the turn of the century, policy in the Netherlands aims at the general prevention of parental violence by deploying voluntary help in the welfare system under direction of the local authorities. In view of the fact that the number of victims has not dropped, and children regularly die as a result of parental violence, the Netherlands also fails to fulfil its duty to prevent the recurrence of parental violence. Collaborating, scaling up to a higher level in a timely manner and analysing risks must be improved. The duty to investigate is insufficiently met while paradoxically, since the prohibition of parental violence in the law in 2007, the police and the prosecutor have been given a subordinate role due to administrative law amendments. The emphasis on voluntary interventions only became stronger.

\textsuperscript{218} Sondorp & Hoogeveen, p. 89.
\textsuperscript{219} Sondorp & Hoogeveen, p. 89, 90.
\textsuperscript{220} The police hired extra staff, the teams have been structurally expanded by 127 FTEs, among other things to be able to start working on the requirements of the EU Victims’ Rights Directive, see: Sondorp & Hoogeveen, p. 79.
\textsuperscript{221} See: Supra note 159. These manuals have led to critique, see: B. Erens, C. de Ruiter, D. van Bragt & H. Otgaar, ‘De handreikingen van het Openbaar Ministerie. Onwetenschappelijk en niet kind gericht’, \textit{NJB} (2019, 1560) p. 1932; See also the reaction by the Public Prosecutor: E. Kwakman, K. Dekens, I. Rispens & M. Heestermans, ‘Handreiking samenwerken bij strafbare kindermishandeling’, \textit{NJB} (2020, 1502) p. 1730.
\textsuperscript{222} Amendment of the Code of Criminal Procedure, and the Code of Criminal Law in connection with the further strengthening of the position of the victim in criminal proceedings (Expansion of Victims’ Rights Act). 35349.
since the decentralization of 2015. Despite the increased attention of the Public Prosecutor, the duty to prosecute is only partially fulfilled while many cases are still dismissed, relatively few cases are prosecuted and the obligation to prosecute ex officio is not fulfilled at all. The duties of redress are also only partially fulfilled, as parental (sexual) violence is penalized low and up to 30 percent of the victims do not receive trauma care. Few victims receive compensation, neither from the perpetrator nor from the State, while in the authors’ opinion, the State would be the most appropriate party to financially compensate victims, in view of the extensive system of State duties, as has emerged from this article. Finally, the duty to prevent secondary victimization is partially met while, although sufficiently implemented in Dutch law, the effect is still insufficient in practice.

The next section, the conclusion of this article, reviews the question of what implications access to criminal justice has from the perspective of the best interests of the child, and whether there is a need to re-evaluate the role of criminal law in combating parental violence.

5 Conclusion

Since 2005, parental violence has not decreased in the Netherlands. This is cause for concern considering the lifelong impact this violence can have on children. If we label these children as victims, they gain, seemingly paradoxically, important rights. This contributes to the view that children, and not only adults, are holders of rights, instead of only young people in need of protection. As rights holders with the right to access the criminal justice system, the voices of child victims will be heard more clearly.223 As a result, more insights can be gained into the hidden phenomenon of parental violence and these victims can receive the help they need, both physically and emotionally. Granting child victims of parental violence access to the criminal justice system will give these children a much stronger position than they would have had traditionally in the civil child protection system. Not only can they benefit materially (for example through State compensation), but also from being able to enjoy the highest attainable standard of health (through trauma-related therapy as a form of rehabilitation).

223 Children are better protected (from abuse, neglect, etc.) where their agency rights are recognized, see M. Freeman, ‘Taking Children’s Human Rights Seriously’ in J. Todres eds, The Oxford Handbook of Children’s Rights Law (Oxford, 2020) p. 6.
The Netherlands, as a European State, has the duty to provide child victims of parental (sexual) violence with access to criminal justice. This general obligation is divided into seven duties, which together aim at a holistic criminal justice approach that serves the best interests of the child and his family. These seven State duties are the duty to prohibit parental violence in the law (the duty to provide a legal framework); the duty to protect against repeat victimization (the duty to protect from further harm); the duties to investigate and prosecute; the duties to rehabilitate and compensate (duties of redress); and the duty to protect against secondary victimization.

This study showed that the Netherlands is not yet sufficiently fulfilling its obligation to use criminal law to protect the human rights of child victims of parental violence. This is partly due to administrative law that has put criminal law at a distance and partly due to the dominant role of civil law in combating parental violence. The use of civil law alone, although understandable from a historical perspective, does not adequately meet current human rights standards, which deem the protection of civil and custody proceedings as insufficient. Another disadvantage is that civil proceedings do not satisfy the requirement of expressing public disapproval of serious offences, such as parental (sexual) violence, nor do they correctly identify the gruesome facts of parental (sexual) violence. In addition to this, the civil law child protection system was not built to create rights for victims in the first place as it regulates the law between citizens and does not contain all the different rules and procedures created to help victims of violence to rehabilitate through treatment and compensation. When the Dutch State created the civil child protection system, this element seems to have been overlooked and was unforeseen. What is more, in recent decades, victims’ rights have gained importance because of developments in international and European human rights standards. Nowadays, human rights urge the State to actively use the criminal law system in the combat of parental violence and have at the same time led to a criminal law approach that is more aware of the child’s best interests. Additionally, the criminal law system has effective tools to stop violence through police intervention and change of parental behaviour towards children through mandatory treatment.

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224 In criminal proceedings the facts are revealed much clearer. In practice it appears that neither the civil reports nor government reports by the Inspectorate show the facts of the parental (sexual) violence, sometimes resulting in death. Criminal judgments clearly reflect this, showing how horribly children may suffer at the hands of parents, see: A.E.J. Satink, ‘De Raad voor de Kinderbescherming en de bestrijding van ernstige kindermishandeling’, FJR (2018) p. 104.
programmes. The function of criminal sentences such as deterrence and prevention are of importance and the State cannot prevent a repetition of parental violence by policies that mainly focus on general prevention alone.

The seriousness of parental (sexual) violence and the serious damage it can cause, as well as the experience that other jurisdictions such as administrative and civil law cannot forestall or stop this violence, mean that the 'ultima ratio' or 'ultimum remedium' principle does not preclude the use of the criminal justice system in tackling parental violence. Parental violence still needs to be addressed with administrative and civil law measures, but due to the increased child-friendliness of criminal proceedings and other increased victim rights the past arguments that labelled the use of criminal law as inappropriate have become less relevant. Thus, the newly developed duties in the children's rights and human rights system require the Dutch State to re-evaluate the role of criminal law in combating parental violence and incorporate criminal enforcement within the existing civil and administrative law orientated system. The fight to put an end to parental violence could benefit from the tools the criminal law system offers to protect the most important children's rights: the right to 'life, survival, and development' and offers opportunities to break the circle of violence in families.