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Secondary Traumatic Stress within the Judiciary and Judicial Staff: What measures to be taken?

LinC
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General remark: this report should be read in conjunction with the power-points and papers as provided by the speakers, available at: http://www.igo-ifj.be/nl/event/int-102-533

Introduction

Welcome by Jos De Vos, adjunct-director IGO

Overall objective:

- Sensitise magistrates on the position of victims in the justice system;
- Look at best practices.

Objective of the seminar:

- Inform on the EU Directive;
- Inform on different national systems;
- Contribute to sensitization of magistrates;
- Contribute to the understanding of different national practices;
- Provide a forum for exchange.

Best practices in the EU

General introduction of the EU Directive – Sabrina Bellucci

Victim Support Europe (VSE) groups all victim support organisations in the 27 Member States and promotes victims' rights. VSE supports the EU Directive and its implementation.

The EU Directive can be considered as a major step forward in the protection of victims' rights, which was initiated by the European Commission. This Directive has quite some budgetary impacts, e.g. with regard to translation. The deadline for implementation is 16 November 2015. Some countries have already adopted some legislation, such as Scotland, while other are quite late, such as France.

The field of application of the Directive is quite large, including physical persons, but companies could be included as well. Victims of any type of crime and any nationality are covered.

Compared to the 2001 Framework Decision, the Directive is binding. The following elements for example stand out:

- The idea of family members as victims was included as an innovation.
- Victims are approached in an individualised manner, which is linked to the personalised assessment.
- The child victim is considered as vulnerable.
- The right to review a decision.

Ms Bellucci provided an overview of the different articles of the Directive (see power-point). Some of the remarkable elements are the following:

- Needs and answers should be matched;
- Victims are to get a personalised approach;
- Professionalism and respect stand out as important principles;
- Right to information is considered as paramount, in which the translation from technical to simple language is important;
- Victim assistance services should be both generalised and specialised throughout the countries, VSE in this regard stresses the importance of a free service on the basis of solidarity;
- Victim assistance is not related to a complaint;
- Participation in the criminal proceedings in the first place includes that the victim should be heard: when heard by a magistrate as the representative of the system, this means a lot to the victim to be reassured;
- The right to get costs reimbursed of course also has budgetary implications;
- Art 18-24 deal with protection of victims, which is also quite new. It is about preventing secondary victimisation, which can be linked to the individual assessment on which France has been working.

Some of the findings include the fact that approaches are very different throughout Europe and that there might be different understandings of whether the measures of the Directive are nationally provided for. In the future, victims will be able to complain about the Directive's implementation. VSE is delighted with the formal text on victim rights but in practice victims are really looking for respect and professionalism. Giving them consideration as magistrates is crucial and Ms Bellucci claims we need to work on how this can be provided for.

The first aid of victims – Sabrina Divoy and Patricia Vanderlinden

Ms Divoy introduces the work of the psycho-social team of the federal police, which is usually referred to as 'the stress team'. It consists of both social workers and psychologists. It is a service for members of the police for any problems they may have in their professional life, in the first place for the federal police but they can also operate in crisis situations for the local police. The service is free of charge and de-localised when possible. The team works on request of the person concerned; confidentiality is respected (anonymity is possible when there is e.g. a problem with the boss); professional secrecy is foreseen. The team works on problems in the professional context, not in the private life although this line cannot always be strictly drawn. A partnership with other departments is possible, e.g. a medical service or authorities.

Crisis intervention includes a 24h duty in any language, which deals with any critical incident that may arise e.g. shootings, injuries, attacks, accidents but also dealing with victims on the scene. Private incidents mainly cover suicide prevention. In first instance, the team tries to diffuse the situation e.g. two accidents in one day, then the team goes to the scene and enables them to talk about it, to 'get it out'. The team offers support both on the scene and afterwards, which can be done individually or through debriefing sessions. The social workers go back to the police after a couple of days in order for normalisation of feelings to be given a place. The 'esprit de corps' is underlined, in order for colleagues to feel supported by one another. The team will assess whether there is post-traumatic stress, which the psychologist can address. When the magistrate comes to the scene, this will have a calming effect especially when the police officer is a victim: they feel recognised in their duties. The media has an important role to play as well, e.g. when disclosing personal details this can be a real issue, especially in cases of rebellion so the police worry about revenge.

Besides crisis intervention, the team provides training to police on how to receive people in traumatic situations since the central stress team cannot always get there (quickly). They point out that reactions are normal in an abnormal situation. As magistrates you could also be effected and this kind of support could also be set up.

Responding to a question, Ms Divoy clarifies that the idea is not to move the police officer from action to administration, but taking a couple of days off in order to take a distance may be needed. Previously, these things were considered as 'soft' or 'weak', while this perception has changed: people can all be affected by such events. In-depth psychological treatment is not always necessary but support is. A prosecutor points out that her colleague rather pays for a psychologist herself since she thinks it could affect her file. Therefore, there is still a lot of work to be done to stress the fact that it is available to all and that these emotions can happen to all. Ms Divoy explains how they install supervision groups for e.g. a computer crime unit where people have to look at images of all kind. Ms Bellucci stresses that the top has to point out that reacting to emotions is part of the job: the institution as such has to reflect on how to

include the emotions and accept among the colleagues that this is important and not a sign of weakness.

Disaster victim identification team – Patricia Vanderlinden

This team is part of the federal police, within the judicial police department, working on disappeared and deceased people and works in close relation with Interpol. Identification of people is important to respect the human aspect. In Belgium, DVI is not limited to catastrophes but could also include crimes and suicides. Ms Vanderlinden explains the work of the DVI more concretely (cf. slides). Some issues come to the fore:

- When addressing the family of killed person, DVI has the face of the 'bad news issuer': they have to ask a lot of questions to fill in the forms, which can be very disturbing. Relatives often feel guilty, so they try and tell them nothing could have changed what happened.
- Emotions vary enormously between people.
- Clear information on what happened exactly is important to be sure as family member that you get true information, even if the info is hard to take in. If needed, professionals should voice that they do not know rather than trying to comfort the family.
- DVI works together with (local) victim support and red cross, in order to make sure that the family will be followed up further.
- Working with the media can be problematic, but they are needed as well: they create information and rumours.
- COL 17/2012 can create problems since visual identification is not always accurate because of denial. It can also create traumatisation.
- Disbelief of the family happens e.g. in catastrophes when their relative is not identified and DNA analysis can take quite some time. Generally, identification can take a long time and be complicated, e.g. when dealing with different counties.
- Victim support can be required even when the body is not found yet. DVI cannot always disclose to the family that a body was found, although the media might have found out already.

The Belgian system for victim support – Pierre Rans and Patricia Seret

Part 1: where do we come from?

Before 1985, courts mostly focused on the offender. Attention to the victim was limited to claiming compensation, while in 1985 one started to look at financial compensation due to cases such as the gang of Brabant Walloon.

There must be a distinction between aid and assistance although they may overlap, since in Belgium these competences are given to different services: police assistance, reception at the level of the prosecutor and victim support within the Communities, which generally could be termed as 'victim aid'.

There are different objectives of victim aid:

- Prevent secondary victimisation by the police or judicial authorities, e.g. by avoiding the word 'corpse' when talking about the deceased.
- Help the victim to overcome the trauma, bring out the own resources and find a new balance.

The principles are that the victim is an actor; victims' rights are recognised; the victim should not be responsible for state tasks; and the state should coordinate all agencies working in victim assistance.

Victims' rights have been extended and include:

- Recognition of fundamental rights;
- Different statutes for victims: 'simple' victim, 'personne lésée' (mostly be informed), 'partie civile' (to become a party to the case);
- Rights in the phase of execution of sentences since 1998, adapted with the law of 2006;
- Law on mediation since 2005: victim can ask to set up a mediation at any time;
- Since 1997, different guidelines have been issued to ensure the implementation of these legislative measures (see power-point).

Part 2. Competences of the different actors

Police and magistrates are to implement services to victims, but can also refer to victim support. Not only the chef de corps and police/magistrates having the task of victim aid are important: every police officer and magistrate has the task of addressing the victim in a respectful way. The NICC research (Lemonne et al. 2007; Lemonne & Vanfraechem 2010) showed that although victims were content with victim aid, they especially had expectations towards professionals with regard to respectful treatment, information, referral to specialised services, etc. Therefore, both police and magistrates should be attentive to victim needs and refer when needed. The contact with a magistrate can be very important for the victim, e.g. a victim was severely hurt after a violent attack. Because of judicial problems, the offender was released. Pierre Rans has encountered the victim to explain what had happened and referred her to victim aid, which had helped her to feel reassured. The victim reception service can be present in that case to support.

It is important to note that more and more specialised services come to the fore that provide for psychological support.

Conclusions:

- The victims have expectations towards professionals.
- Mostly the Directive seems to be implemented in the legislative framework…
- … but there is a need to ensure the effective implementation in practice! This entails both training for professionals (police and magistrates) and a need for resources (how to keep thousands of victims informed?).

Part 3. Reception of victims

The main aim of victim reception is to make the intervention of the justice system more personal. Secondary victimisation by the system should be avoided. The service is asked for by the magistrate, either on a systematised basis or in individual cases, after which the service writes the victim (or calls them in urgent cases). The victim herself can also solicit for the service when she has a question, but then still the magistrate has to agree with the intervention of the service.

The so-called 'justice assistance' can be seen as the link between the victim and the magistrate. He gives information on the criminal proceedings and starts from the idea that the victim should be active in asking for information and contacting the service. The service guides the victim in e.g. looking into the file, giving information on the legal procedures, assistance during the trial, etc. Ms Seret gives concrete examples of what the work could entail. It is clear that it can be very important for the victim to be supported by someone who knows the system. Another aspect of the aspect is the orientation: you meet a victim and find out what the victim may need. Addresses can be given and other actors can be contacted by the justice assistance.

To conclude, the place of the victim is recognised in the criminal proceedings. The victim needs to be respected and victim reception works to inform the victim and treat them in a humane way. It is about explaining in simple words how the system works: victims do not always get information and therefore this service may be important.

<u>How to help magistrates with secondary victimisation</u> – Jacques Roisin & Martine Stassin

Mr Roisin explains how secondary victimisation might work: victims complained about not being recognised by the justice system, which felt like another victimisation. Light sentences also felt like they were not considered. Why is the lack of consideration so important to the victim? The impact can be traumatic and the threat can violate the internal psyche. When this traumatisation is not dealt with, they go into survival mode and might live as if the victimisation defines their whole being. Furthermore, they might feel more angry towards the professionals not recognising them, than towards the offender; they might not have confidence and trust in humanity. Therefore, magistrates have a great responsibility.

Secondary victimisation of professionals afterwards came to the fore, also called 'vicarious' victimisation or 'compassion fatigue'. The necessity of empathy pops up: the victim wants to relate what happened so the professional (support or magistrate) can understand the unique implications. Because of this empathy, the professional runs the risk of somehow living the trauma. Supervision and talking to colleagues may be important in this regard. Magistrates may be less confronted with this than therapists, since their main role is not to listen concretely to the stories. Secondly, there is a difference with regard to the 'facts': therapists do not need to know the

details thus the victim does not need to re-tell, although it may sometimes be needed to avoid denial. The therapist has to take the victim story as the truth. Magistrates hear the objective facts and may thus be shocked in their worldview since these negative things become very real.

Ms Stassin further explains how these processes can lead to secondary victimisation for magistrates which takes place in a certain institutional context: description of facts, being present at the scene, meeting victim and offender, etc. can be traumatising. Mechanisms of defence are humour, cynicism and taking a distance. This can help but also lead to tiredness, feeling outside of the world, detached from personal relations. Professionally there might be a banalisation and one can lose contact with colleagues due to a defensive attitude. One can thus go into survival modus, which is the case for not only magistrates but other justice personnel as well. The social and institutional context can make things more complicated: public pressure, complexity of the legislative framework, difficult working hours and other material circumstances, loneliness of the job, etc. This leads to almost a schizophrenic position where the magistrates needs to take distance and at the same time be involved.

Because of these findings, a 'intervision' group for magistrates was set up in 2007-2008 (pilot project funded by the Red Cross and the European Commission) since there was no space to speak, although this is generally changing: younger magistrates talk and support one another about these realities that are intrinsic to the work. The spirit of the corps seems to be crucial in this regard in order to be open. A contradiction seems to prevail: one the one hand, magistrates are to be open to victim stories but on the other hand there seems to be no space for themselves to voice their emotions. Certain safeguards were set up: neutrality of the rooms, no hierarchical relations, support by psychologists, etc. In a secure framework, people are able to communicate and step out of the isolation. The evaluation was positive and therefore a proposal was handed in to IGO. At the same time, the question was posed whether an urgency team of psychologists could be set up. There is a small service at the Ministry of Justice and proposals are being made.

Practical exercises in workshops

Report "Keep your emotions clean"

Emotions as such are not problematic, unless they are too intense since then the limbic system is overwhelmed. Breathing abdominally helps. Showing empathy to people can be done through listening silently.

Report "How meeting the needs of the members of the judiciary?"

People expect more and more from the justice system, also because links with family, relatives and others are weakened and thus the justice system is the only institute one can turn to and expectations are high. As magistrate you are always confronted with negative concerns, happenings and emotions. Therefore, a feeling of powerlessness

towards the hurt and anger of victims can come to the fore. How can we combat this stress that can lead to depression, burnout, suicide? As soon as there are symptoms, one should open up although this is not easy since it might be considered as a weakness. This may be also difficult since the magistrate often works alone, in increasingly difficult circumstances. Furthermore, it is unhealthy to always work on the same topic and therefore one should be able to switch between them. A good life-work balance is important, which is difficult with the increasing availability of cell phone, PC, etc. There is a need for magistrates to become aware of the problem.

Report "If one person suffers, the whole network suffers"

Unwritten rules in society are important to understand the consequences of trauma. People confronted with trauma may feel alone and helpless, which can lead to a tunnel view. The trauma becomes dominant and can affect the environment. What we can do about this, depends on the role (therapist of magistrate). There are different dilemmas that come to the fore: victim-offender, conflicting demands, etc. Talking about it as a magistrate is necessary, but professional secrecy can be an impediment. Support is needed in order to avoid reacting annoyed and one needs to see the positive sides of the job. It is important to understand the personal limits of an individual.

Report "Effective management of post-secondary stress"

The top of the iceberg stands out intelligence, but underneath is the emotional intelligence which is invisible from the outside but broadly available. Emotional intelligence was not so important in the assessment. An exercise shows how people react differently to different happenings. Interesting to note is that the first case is remembered but not necessarily with the most impact. It is important to show emotional intelligence towards victims, but the biggest obstacle in that regard is that it can be considered as a lack of impartiality.

Testimony of prosecutors in dealing with high impact crimes

Testimony of a Belgian prosecutor – Yves Vandenberge

Mr Vandenberge talks about Kim De Gelder who killed different babies on 23/11/2009. He explains how De Gelder has threatened him various times and the date of release will stress him. Although he has suffered, he has never asked for help, also because he did not know help was available. Mr Vandenberge was more oriented towards the victims than towards his own emotions and difficulties.

Mr Vandenberge gives more information about Kim De Gelder and his acts, which seems to have been motivated by hate towards the society and a bit his parents: he felt not recognised as "on top of society". Going to the place of horror was difficult: ambulances, police and others were present. Mr Vandenberge's colleague had to leave the place because of the horror. Mr Vandenberge shows pictures of the crime scene. It was hard to identify the babies since the caregivers were taken to the hospital and the

babies did not have ID's. Family members, friends and acquaintances were grouping around the crèche in order to get more information. Victim support was present, but the prosecutor and investigating judge tried to give information towards the victims in between. A crisis centre was set up.

Even though the situation was traumatising, it needed a professional approach from the magistrates in which the suffering could not be addressed at that moment, which popped up later when the first investigations were done and lasted for some weeks. Mr Vandenberge did not ask for help and did not know this help was available. Support at home and a good Belgian beer was of help. Nevertheless, feelings continued: the first investigations were done quickly but secondary victimisation started again due to the further investigations asked by the defence, as well as the complaints the defence brought towards the experts. This has led to a serious delay of the process, which brought the victims to Mr Vandenberge as prosecutor, who was left feeling helpless. The role of the press was also important: a Swedish lady said she was involved (the investigation said she was not), the media stated justice did not work and asked the prosecutor's discharge. Even after the process, experts had questioned the outcome, which again led to secondary victimisation for both victims and magistrates. Even in the magazine of the justice ministry, experts questioned the magistrates, which Mr Vandenberge experienced as tertiary victimisation.

To conclude he states that victims have the right to professionalism and information, how can we ensure a timely process? For magistrates: there should be a right to support and the ability to response to accusations of press and advocates.

In reaction to this testimony, a prosecutor testifies how her colleague was called to a scene of two murdered children, which affected her enormously and she had no emotional support afterwards. Colleagues tried to support her but extra support would have been helpful. Mr Vandenberge confirms this and adds furthermore that the magistrates at that moment have the extra task of supporting the victims although their first task was to investigate. He does not know whether the victims appreciated it, but he saw it has his role to be at the same time objective and support the victims.

A judge asks what could have helped and what was lacking? For Mr Vandenberge psychological help was not needed, but the fact that he had to remain silent while he was attacked during and after the process was frustrating. Therefore, a central institute that could give general objective information without abusing professional secrecy would have been helpful. This would give judicial, technical support. Another judge comments this is the role of the press magistrate who could play a more active role rather than a reactive role stepping in only when the media asks for it. Mr Vandenberge agrees, but in such a heavy case the press magistrate is a direct colleague of the same prosecutor's office and therefore a central institute could analyse what has been said in the press. The goal is then that the institute gives more general information, since society at large is affected. The institute could ask for the media not to abuse the situation and be more objective. The press magistrate would

then focus on the facts. Not reacting is seen as admitting something went wrong. There could be a problem with the freedom of press, which should be balanced with the right of the prosecutor to be treated humane. In Spain, the same problem exists: the media can be considered as the fourth power. The bureau of press can give information, but the problem is that the media want exclusive information. If the magistrate reacts, it is a war that cannot be won since there are so many things happening in the media. Furthermore, the media do not give information but opinions and therefore the process might be run in the media next to the 'real' judicial process. A prosecutor thinks we should get out of the dynamics of getting into war with the media and closing up: as press communicator she tries to support her colleagues and give immediate information rather than in a formal press conference a couple of days later. She tries to treat the press as a partner, which leads to the facts that she is being listened to. There will always be journalists that try and dig into the dirty details, but generally a relation can be built up in the spirit of mutual respect. An investigating judge comments she would be very, very careful to give information on the crime scene because you go into the flow of speedy information which is not always correct on the spot. The prosecutor gives very basic information of who is there, not on the details of the content, which can help to pass on the information afterwards. A deputy prosecutor general comments there is a difference between crisis communication and general information: professional help (professional communicators rather than magistrates) should be called in when it is about crisis communication.

Testimony of a Spanish prosecutor – Manuel Moix Blázquez

Mr Moix Blázquez explains the position of the victim in the Spanish justice system. The prosecutor is to protect the victims' rights and therefore the prosecutor's office in Madrid has set up a victim unit to support victims and avoid secondary victimisation. The service is voluntary, free of charge and includes social, economic and psychological help all in the same spot. The prosecutor can give information on the state of affairs.

Mr Moix Blázquez explains the case of a Brazilian lady who was brought to Spain, into a house of prostitution, where she also had to sell cocaine. She was able to escape and reported to the police, which led to a criminal process. The support service opens up a dossier on the basis of a number in order for the identity to remain anonymous. First of all, the prosecutor explains the service and the rights in the penal procedure both orally and in writing. The victim can decide whether or not to apply to the service. In this case, the victim was mistrusting of the system, fearful, she had a lack of self-confidence, felt humiliated and lonely. The prosecutor had the feeling his words run into a wall and therefore he had to convince the victim to build trust. The victim decided to accept the help and had contact with the multidisciplinary team. A dossier is made up by the police covering the risks. With these two reports, the needs are known and an individual programme can be set up. The same prosecutor, social worker and psychologist will follow up the victim, which leads to trust building. She

was helped to find a place to leave, have her documents regularised and she was accompanied during the process. The problem was that she was irregularly in Spain and therefore the documents had to be regularised in order for her to be able to testify in court. She was not able to work and so the service helped her to get money to live, to be able to follow training (she could not work) and be able to stay in Spain. The service follows the victim even after the process, e.g. when the offender will be released. Personal security is considered to be important. The victim rather than the crime is considered as central. The victim is seen as a person who looks for help, rather than just a witness.

Testimony of a Dutch prosecutor – Maaike Van Kampen

Ms Van Kampen shows a film about a case on child pornography, in which Robert Mikelsons has abused several children. Images of the US were shown in "Opsporing verzocht", which led to the discovery of Robert M. where various images and films were found. He worked as caregiver and babysitter and confessed to abuse of toddlers. During the investigation and trial, there was a lot of attention to the victim. Investigation and prosecution became secondary. Anonymity was considered as paramount, which led to a lot of dilemmas. A distinction was made between group A of which Robert M. had confessed, group B where it was unclear and group C of parents of children that went to the day-care where he worked. Some wanted to be informed, others not at all. Names were replaced with numbers and Mikelsons agreed to not naming children at the trial. The trial commenced in March 2012 and parents were granted the right to speak on behalf of the children, which is normally only granted to direct victims but which could not be exercised by these young children. There was no legal basis, but prosecutors asked for it and the courts granted it. In the meantime, legislation was adapted. Parents were able to testify behind closed doors. Experts pointed out long term effects including incontinence, risk of drugs or alcohol abuse, lack of self-confidence.[1] Negative effects can be greater for under five years old. Furthermore, the fact that he was the caregiver could create confusion. Parents can be traumatised, not in the least by the fact that others have seen these pictures. The fact that the prosecutors focused from the start on the victims gave the investigation a lot of dignity, which is needed in such a case.

An investigating judge asks whether there was a comment by the defence on the website? There was not since it was an internal website to inform the victims before the press. It dealt both with content and procedure.

An investigating judge asks whether the same attention would be given to all victims, that are less mediatised? In Spain, all victims get this attention and have the same rights, but the needs may be different. In the Netherlands, all victims have the same rights which have been improved greatly over the last years: they get the information as from the investigation phase.

[1] A psychologist remarks that children may be wounded for the rest of their lives, but this can be doubted since some therapies can help.

Recommendations of good practices in the Belgian legal system – Isabelle De Tandt

Ms De Tandt focuses on the role of the liaison officer concerning victim policy. Victim policy is considered to be a task of all justice personnel and consists of helping the victim to overcome the trauma and take up their lives, as well as preventing secondary victimisation. The objective of all legislative measures is to give victims information. Her task as liaison officer is to ensure that all magistrates take up this task and refer victims to victim reception when needed; to support the prosecutors; to coordinate and sensitise; to be an intermediary between the victim and/or justice assistance and the prosecutor's office; to liaise with magistrates; to locally coordinate the victim policy; to look for solutions for structural problems; and to be the contact person for the expertise network which is the first contact point with the prosecutor's offices.

How to sensitise the prosecutors? A meeting was held with regard to e.g. the circular letter on giving people the chance to say goodbye to the deceased, to explain the prosecutors' tasks. Different realities exist over the counties. Furthermore it proves to be difficult to give the victim the same position as the offender. Nevertheless, information should be given to all victims. The liaison officer might receive victims to give further information, e.g. in the case of a murderer who was in a psychiatric institution and then rather quickly released.

Victim reception should be involved quickly for victims to be given information rather fast, certainly before the press. This service should be present in the justice palace and all justice personnel should be aware of this service. Ms De Tandt gives a concrete example to illustrate the importance of the service of victim reception and the different tasks the justice assistants can take up; as well as the immense impact of the attitude of both the prosecutor and the judge.

The magistrate should be available for giving information, but not decide instead of the victim e.g. in (not) viewing pictures. With regard to giving things back to the victim, this should be considered carefully (what to give back and to whom?). Generally, a respectful attitude is crucial.

Recommendations for an optimal training of judges, prosecutors and their staff – Ramona Richiteanu

Secondary victimisation seems to be a normal part of life, which does not mean it is less of an occupational hazard. Therefore, a programme was developed in Romania focused on emotional intelligence.

Stress can be positive (you becomes focused) as well as negative (distress). The idea is to find coping mechanisms to reduce the stress. The seminar has mostly focused on reactive coping (compensate harm done), but other coping mechanisms are possible as well, namely anticipatory, preventive and proactive. The training in Romania is mainly focused on preventive coping through role playing.

Emotional intelligence is needed to be successful: you recognise and manage your own emotions and those of others. Daniel Goleman has a model to develop emotional intelligence and proactive competences. In Romania, this is further worked out in 'personal development workshops', both for initial and follow-up training. This workshop includes the following topics: competence profile, self-knowing, me and the Other, and career decision. Emotional intelligence is seen as a an efficient way to manage emotions.

Recommendations include the development of such workshops in initial and continuous training throughout Europe; refer to concrete experiences of magistrates; and being aware of the local circumstances. The main message is to focus both on the professional and human perspective.

Recommendations on improving the legislation on victim support – Marta Valcare Lopez

In Spain, there is an expert in every prosecutor's office and a big sensitivity towards victims, due to a history of terrorist attacks. This sensitivity has been broadened to all victims. The penal system has been moved from the sole interest in the offender to attention for victims' rights. State and (judicial) authorities should have victims' rights as first point of attention. Victims are needed for the proceedings, but victims often feel disappointed with the proceedings, for various reasons. Recommendations cover three domains.

Right to protection: avoid re-victimisation and secondary victimisation as well provide for compensation. To adopt protective measures, special needs of the victim (children, mentally disabled) have to be taken into account, as well as the type and circumstances of the offence. To avoid secondary victimisation is crucial to avoid emotional suffering. Measures include protocols for police and judicial authorities so they know what to do; facilitate victim reporting; concentrate victim interviews; medical examination to be reduced to the minimum; and foreign victims should be able to give testimonies directly after the crime, if possible in their own country. For vulnerable victims, their needs should be addressed e.g. by providing for a same-sex interrogator, be careful with questioning the private life, and avoiding contact with the perpetrator. To repair the damages, compensation, reparation and restitution can be important. State compensation needs to be ensured due to its task to protect all citizens. Criminal and civil questions should be able to be dealt with in the same trial.

Right to information: victims should be informed about their right to complain, the proceedings, the end of the trial, the outcome of the trial and the appeal.

Participation in the trial: this may vary according to the national system, but generally more participation improves the victims' position. This can be done through acting as a prosecuting party (e.g. review the decision not to prosecute) and through restorative justice.

Restorative justice in the EU Directive – Katrien Lauwaert

Ms Lauwaert focuses in the context of this seminar on the role of the victim in restorative justice as well as of the judiciary: what can you as a magistrate take away from this? Besides the academic debates about what restorative justice entails, it is practically important that it is generally about changing lenses when looking at a conflict: victim and offender have to live with what happened, which can be done through a dialogue in a quite informal setting. The idea is to look back to reach towards the future. In Europe this is done mainly through victim-offender mediation and family group conferencing (which includes supporters of victim and offender). The EU Directive refers to a process to participate actively in the resolution of the offence through the help of an impartial party. This dialogue can either be direct or indirect.

In Europe, restorative justice has been developed over the last 20 years so that in each country there is some practice and/or legislation. The extent to which it is implemented differs greatly. The process can be integrated into or complementary to the judicial process. These developments have been supported by European legislation, such as the Council of Europe Recommendation of 1999 and the 2001 EU Framework Decision on victims (now replaced by the EU Directive, which is binding).

Why would we offer restorative justice to victims? Generally for those victims interested in participating there is often a benefit, such as active participation, communication with the offender, obtaining information, achieving an apology, financial reparation (which is often not the main concern to them), decrease in anxiety and anger, and preventing recidivism (i.e. process of desistance).

The judiciary has an important role to play in continental European countries since they have the task to inform victims and raise awareness; they are the gatekeepers; they may homologate the results; and the results could be taken into account in the sentencing. Providing information is key, which in the EU Directive is formulated as a minimum standard (art. 4.1.j). In Belgium, there should be information included in the complaint form: magistrates have the legal obligation to inform victims, which was explicated in COL5/2014.

Another aspect of restorative justice concerns the safeguards for victims, since the question arises whether there are risks e.g. that the victim may be used. The EU Directive therefore includes an article (art.12) on safeguards in order to avoid secondary victimisation: voluntariness, confidentiality, safety, acknowledgement of the facts by the offender (not admitting full guilt) and restorative justice should be in the interest of the victim (and not be used for benefit of the offender).

How do you go about it in practice? In Belgium, different types of restorative justice practices exist: penal mediation at the level of the prosecutor; mediation and conferencing for juvenile offenders at the level of the prosecutor and judge; and restorative mediation (introduced in the law in 2005). Restorative mediation can

happen in every phase; all persons with a direct interest can ask for it; the judiciary has to inform; professional mediators work for an independent ngo (Suggnomè and Médiante); the process is confidential; the judge can take the outcome into account and he has to mention the mediation in the judgement. Médiante deals with various types of offences.

Victim-offender mediation in serious crimes – Antonio Buonatesta

A small video is shown to understand the practicalities of mediation: in 2011 a television programme was set up on two murdered children, of which the father 15 years later met the murderer. It shows different testimonies of what cases meant for both victim and offender and why they opted for mediation. The victim relates what her many questions were after the offence. When she talked to the mediation service and received information on the process, she understood she could pose these questions. The offender relates how meeting the victim helped him to understand what the offence had meant to her. The video shows how victims may not forgive or excuse the offender, but it can help somehow to understand what happened and alleviate anxieties.

Mr Buonatesta explains that professionals may fear secondary victimisation, while practice shows that people are willing to meet even in murder cases. In Belgium, various people meet (mostly indirect) a year and still reservations are made, especially by magistrates and victim aid. The fear behind this is that the offender would use the victim.

Some safeguards are to be provided to ensure that things run well for the victim: judicial, conceptual and methodological. Judicially, mediation should be seen as a benefit for both parties and not have a predefined outcome or effect on the judicial outcome. Both parties should have equal access to mediation, which in the penal framework is not always the case. Conceptually, it is important to see mediation as a place for communication independent of preconceived goals. Methodologically, victims should be able to voice all feelings and emotions, and identify their own expectations. For example, the first concern is not to hear an apology, although this might come out of the process; they may want to voice anger and feelings of revenge. In other words: victims may have expectations that do not at first sight fit into a restorative philosophy. Nevertheless, these emotions can be voiced and a communication can be set up in order to find certain (possibly limited) solutions. In practice, the victim too can 'use' the offender and both could 'instrumentalise' one another. Thus there is no predefined concept of mediation and therefore in the Belgian legislation there is no limit with regard to the cases: all cases can be referred, even if (of course) not all will be able to be continued. When the request for mediation is made by the offender, mediation will only proceed when the offender's ability links with the victim's expectations.

Another aspect deals with the concerns of professional actors towards mediation, which is related to the gap between the philosophy and practices: it was firstly

developed in the juvenile justice field where the first concern was to make the young offender aware of the consequences of his deeds. In the adult field, diversion was also a first concern. Therefore, this might have installed the view of mediation being mostly implemented for the offender.

A judge asks whether the mediator manipulates the victim when he only gives limited information of the offender to the victim as to convince her to participate? Mr Buonatesta explains that it is not as simple as he has been able to portray the complex process in his presentation: the mediator explores with the victim what she wants to get out of it and what the service entails, rather than just saying what the offender wants to get out of it. A judge relates how she has seen that Médiante can come to good outcomes. Nevertheless, now rumour goes in prison that one should address Médiante in order to get a better position in the 'Tribunal Application des Peines' (the court that decides on the execution of punishment). How can the mediator be sure that the offender is honest in his will to participate? The mediator cannot on beforehand screen out people, but take it on a case-to-case basis and ensure that minimally the offender at least wants to listen to what the victim has to say. Furthermore, the fact that the offender contacts Médiante as such has no influence on the decision of the court.

Conclusions and suggestions – Inge Vanfraechem

Ms Vanfraechem points out again the two main objectives of the seminar: to inform about the Directive and national practices; and to bring up the topic of secondary victimisation. She presents some of the issues that have been brought forward throughout the seminar, both in the presentations and in informal conversations. A common element that comes to the fore in the two objectives is the importance of recognising emotions as normal and the importance of being approached in a humane manner.

(1) The position of the victim and the EU Directive

Generally, victims are looking for information. They want to be treated with respect and professionalism, which leads to feelings of recognition. The question arises whether magistrates can and should have a direct contact with victims? Generally, the appreciate victim aid, but the contact with the magistrate is considered as separately important.

Victim legislation differs throughout Europe and therefore the impact of the Directive will vary. The question arises to what extent the Directive will have an impact: will Member States claim they 'do well' in the implementation in order not to have to implement extra measures that will cost money under budgetary constraints? With regard to the national and local situation: are magistrates aware of victim-related legislative measures which may be scattered over different legislations? Are there practical suggestions to be made to implement these measures in practice?

A question that often came to the fore in the debates is related to the balance between victim recognition/empathy and neutrality of the magistrates? The testimonies at this seminar show that the balance can be achieved in practice, but it is dependent on the magistrate's attitude and capabilities. How can this attitude of respect and recognition be institutionalised?

Lastly, can restorative justice offer possibilities to install a more victim focused approach to justice? Can it offer a place and space to the victim which the justice system cannot since it was not set up to do so?

(2) Secondary victimisation of magistrates

The first question to be posed, bluntly, is whether there is a problem or are we creating one? The seminar showed how emotions are natural, but this is a fact that may be hard to accept. Generally, concerns may be voiced among colleagues, but this openness may not always be present: how can implicit institutional norms be challenged? How to create openness towards this problem and break the silence?

Secondly, magistrates do not ask for help and seem not to be aware of the help available. Is there a task to be carried our regarding sensitisation? Should a national stress team be set up, as it exists for the Belgian federal police? Do international examples exist in this regard?

Societal changes and challenges come to the fore: expectations towards the justice system rise, but at the same time resources diminish and judgments have to be taken in a shorter time. Victims tend to have great expectations towards the justice system and may feel disappointed when the system does not fulfil these expectations. There may thus be a need for a societal debate on the possibilities of the justice system. The role of the media clearly plays a role in different aspects. The question arises how magistrates may build resilience to these societal pressures.

Concluding words

Jos De Vos thanks the speakers, participants and organisers and announces that IGO will set up a training with regard to secondary victimisation in 2015.

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This report reflects only the view of the speaker and that the Commission is not responsible for any use that may be made of the information it contains.