

# VOCIARE

GERMANY

## NATIONAL REPORT



**Victims of Crime  
Implementation Analysis  
of Rights in Europe**



**VOCIARE**  
Victims of Crime  
Implementation Analysis  
of Rights in Europe

promotor



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### DISCLAIMER

All views expressed in the present report are those of the authors and not of the European Commission. Most findings of the report are based on the research conducted by national researchers, between June 2018 and March 2019, and any inaccuracies in the interpretation of national results lays with the authors of the present report only. Additional support research, in particular regarding international experiences, was conducted by the authors of the present report.

The findings compiled in the present report represent, to the best of authors' abilities, the current situation of the practical implementation of the EU Victims' Rights Directive. Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date. However, it was still important to offer the first overall picture, even if incomplete, of the practical implementation of the Directive, to inform future work of Victim Support Europe, its members and the policy initiatives at the EU and national level. Future efforts will be plan to improve the findings and provide a more detailed analysis of key rights defined in the Directive.

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## EXECUTIVE SUMMARY

Directive 2012/29/EU, commonly known as the Victims' Directive, establishes minimum rights to all victims of crimes and constitutes the core of the European Union's legislative package aiming to guarantee that all victims of crimes have access to information, support and protection.

Member States were required to transpose the Directive into national legislation but need to guarantee its correct implementation in practice as well. This implementation has proved to be complex and challenging. Hence, the present national report aims to assess the practical implementation of the Victims' Directive in Germany.

After thorough assessment, it was possible to detect gaps and challenges in the practical implementation of the Directive.

Through the Law to Strengthen the Rights of Victims in Criminal Proceedings (Third Victims' Rights Reform Act), Directive 2012/29/EU was sufficiently taken into account in legislative terms. Only in a few places does German law actually deviate from the wording of the Directive: For example, pursuant to Article 4 of the Directive, victims are to already receive the available information provided by the competent authorities from the "*first contact*". German law, however, provides for informing of the victims "*as soon as possible*" so that information is not able to be secured at the time of the first contact. In this respect, German law should be amended. While in other places the minimum standards of the Directive are also observed, the legal framework should be broadened to strengthen victims' rights even more. This will be noted at the relevant places.

But especially through the evaluation of the online survey and the interviews, it has become apparent that victims' rights provided for by law are sometimes not sufficiently implemented in practice. Where the victims receive information, they are not informed about the scope of their legal rights and thus are often unable to make use of the information. It has also become clear that victims themselves have to take the initiative to exercise some of their rights: For example, there is often an application requirement. If the victim does not understand this, there is no automatism that ensures the victim will be informed, for instance that the offender is to be released from prison. Furthermore, a written acknowledgement of a complaint is only given upon application. In this respect, the application requirement should be reconsidered, but it must also be ensured that the victim wishes the information in the first place. In addition, many practitioners criticise the bureaucracy, maintaining it is to blame that applications get lost, for example over the course of time and therefore were often simply not taken into consideration at a later stage of the proceedings (e.g. enforcement proceedings after the judgement has become legally binding).

It would be desirable in future if, in this context, mechanisms and systems were developed to eliminate these bureaucratic hurdles. The above-mentioned application requirement should also be better formulated.

Furthermore, sufficient information should be available in foreign languages since some police stations are not well equipped with information brochures in different languages although these – in theory – exist.

It would also be desirable to make use of audio-visual enquiries more frequently whenever there is an imminent risk of serious detriment to the well-being of the witness were he or she to be examined in the presence of those attending the main hearing.

Furthermore, the recording of audio-visual enquiries by a judge in investigation proceedings is only a possible option. Only the examination *shall*, after evaluation of the relevant circumstances, be recorded and conducted as a judicial examination if the interests meriting protection of persons of less than 18 years of age as well as of persons who as children or juveniles have been aggrieved as a result e.g. of criminal offences against sexual self-determination or against life can thus be better safeguarded or there is a concern that it will not be possible to examine the witness during the main hearing and the recording is required in order to establish the truth. There is no clear obligation and therefore audio-visual enquiries are seldom recorded.

Another revealed gap is that persons involved with victims by reason of their work do not always have access to the necessary training or further training opportunities for dealing with and enforcing victim's rights. More seminars and training opportunities should be offered in this respect.

Nevertheless, good practices were discovered as well: the right to be heard is respected effectively. The position of the victim in criminal proceedings has changed noticeably, allowing him or her to play a more active role in criminal trials.

Moreover, victim support organisations effectively offer important assistance to victims. They offer help nationwide on a very high level (e.g. by assisting in making applications, offering psychological assistance or accompanying victims to trial).

Also the adhesive procedure has proved itself in practice: it provides a simplified means for a victim to enforce civil claims against the offender within the criminal trial. No second civil application has to be sued.

From a legislative standpoint the Directive has been well implemented into German Law. In practice, however, the situation can sometimes be difficult, also depending on the availability of material (e.g. information-brochures in foreign languages, equipment for audio-visual enquiries

in all courts and police stations). Furthermore, differences unfortunately occur due to the different commitment of every individual helper.

The following analysis may help filling these gaps.

# INTRODUCTION

The present national report aims at assessing the practical implementation of the Victims' Directive in Germany in the context of project VOciare - Victims of Crime Implementation Analysis of Rights in Europe.

For this purpose, an adequate methodology was created and adopted. The first two steps taken in order to begin this report were a legislative analysis and a mapping of competent authorities and organisations. In order to assess how the Victims' Directive has been implemented, it is vital to know more about national legislation, to know how the Directive was transposed into national law in order to further analyse if such legislation is being implemented, how and by whom. Mapping competent authorities and organisations is essential to guarantee that detailed answers will be provided by the competent authorities and organisations which relate to victims.

To support the work presented in this report, three research tools were developed in order to obtain the desired information: a desk research, an online survey, and interviews.

The desk research was the first stage of national research. It included research of legal and policy instruments as well as, internal administrative provisions or self-regulatory policies, and academic articles.

The national online survey was a particularly important tool for the research as it enables a much broader evidence base and allows for statistical analysis. It consisted of closed-ended questions directed at organisations and practitioners having contact with victims (judges, prosecutors, lawyers, police, psychologists, scientists and other victim support professionals). In view of the requirements under the General Data Protection Regulation, a press statement was published in professional circles and on the homepage of the WEISSER RING, inviting all professionals to participate in the survey.

The third instrument, the interviews, served as an addition to desk research. Any questions to which desk research could not respond, or where findings were inconclusive, the researchers identified a stakeholder/key informant with whom to discuss such specific questions, in addition to the list of questions which were provided via the research tools. A total of **6** interviews were conducted. A written record was taken of the statements made in each interview. Where the interviewee had consented to publication, the names of the interview partners were indicated in the study. The profession was always indicated.

The above-mentioned research avenues were intended to supplement each other and to close existing knowledge gaps arising during the lifetime of the study. A duplication of information was avoided. Where relevant information had already been procured through scientific work, no further research was done.

Regarding its structure, this report first provides a basic overview of the legal framework, an important element to take into account in a first approach in order to understand the transposition status of the Directive into national law. Subsequently, an evaluation of the practical implementation of the Directive will be presented. This document will explain if and how articles and rights provided by the Directive are transposed into German law. Each right will be briefly described and explained, as well as its transposition and practical implementation. Furthermore, after such thorough analysis, a chapter on good practices will be presented, as well as a chapter identifying gaps, challenges and recommendations. These are very important chapters in this report, since they provide practices which might be good practices to be implemented by other Member States and be maintained in Germany, and they also provide information on what is lacking or failing in the practical implementation and can be improved. This is vital for Germany itself and for other Member States which might present similar less positive aspects. The final chapter will provide a conclusion of this report.

# BASIC OVERVIEW OF THE LEGAL FRAMEWORK

The Victims' Directive was adopted on 25 October 2012 by the European Parliament and the Council, and Member States were required to transpose it into national law until 16 November 2015<sup>1</sup>. In Germany the Directive was transposed into national law through the Law to Strengthen the Rights of Victims in Criminal Proceedings (*Gesetz zur Stärkung der Opferrechte im Strafverfahren*) also referred to as the Third Victims' Rights Reform Act (*3. Opferrechtsreformgesetz*) of 21 December 2015, which entered into force as national law on 31 December 2015. But a multitude of laws substantially strengthening the rights of victims already existed prior to the implementation of the Directive, which only had to be strengthened by the Third Victims' Rights Reform Act.

The Crime Victims Compensation Act (*Opferentschädigungsgesetz – OEG*) has existed since 1976. It provides victims of violent crimes with a claim against the state (*Aufopferungsanspruch*). The aim is to provide compensation for injuries and financial damage suffered due to a physical attack.

The Protection of Victims Law (*Opferschutzgesetz*) from 1986 improved the position of victims of sexual violence. The Policies for Criminal and Administrative Fine Proceedings (*Richtlinien für das Strafverfahren und das Bußgeldverfahren – RiStBV*) enacted in 1994 are a further milestone for victim protection in Germany. In the RiStBV, for example the treatment of witnesses (which includes victims) in criminal proceedings was addressed for the first time.

The Witness Protection Law (*Zeugenschutzgesetz*) regulated in particular the protection of underage witnesses by allowing the use of video and audio tape recordings to avoid multiple interviews. In addition, the Victim Claims Protection Law (ensuring civil claims of the victim) and the Crime Suppression Law (*Verbrechensbekämpfungsgesetz*) from 1998 were further steps. The Crime Suppression Law added section 46a to the German Criminal Code (*Strafgesetzbuch, StGB*), introducing the possibility of a type of mediation referred to as victim-offender mediation under criminal law. This new approach reflects the discovery that achieving a settlement between victim and offender (independently of the criminal proceedings) can be positive for both sides.

The Protection against Violence Act (*Gewaltschutzgesetz*) was enacted in 2002 and still plays an important role in particular in the context of domestic violence and stalking. It enables victims to obtain a preliminary injunction against the offender through emergency proceedings, for example to restrict the offender from contacting or approaching the victim.

<sup>1</sup> All Member States, with the exception of Denmark, opted into the Directive system.

The First Victims' Rights Reform Act (*1. Opferrechtsreformgesetz*) of 2004 further improved the rights of victims. It included, for example provisions for avoiding multiple interviews, improvements with regard to the private accessory prosecution (*Nebenklage*) and the victim's counsel (*Opferanwalt*), made it easier to enforce damages and strengthen the adhesive procedure (*Adhäsionsverfahren*).

The Law to Improve the Rights of Victims of Sexual Abuse (*Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs – StORMG*) included improvements such as the publicly funded provision of a victim's representative. It also gave victim witnesses the express right to comment on the consequences of the crime. The rules for videos recording an interview by judges were extended in order to avoid the need for interviewing victim witnesses during the trial if possible.

In 2007, the Law on Criminal Stalking (*Gesetz zur Strafbarkeit beharrlicher Nachstellungen*) penalised stalking behaviour under section 238 StGB. In 2009, the Second Victims' Rights Reform Act provided additional information rights and facilitated private accessory prosecutions. Subsequently, infringements such as forced marriage were criminalised, which also served to protect victims.

Some of the legal instruments provided by the Victims' Directive to protect victims therefore already existed under German law. As existing laws merely had to be adapted and expanded, the terminology of German law is not always in line with the terms used in the Directive. The German provisions, for example do not use the term "victim". It is however ensured, that existing terms such as "*Verletzter*" (injured party) used in criminal law and criminal procedural law or "*Geschädigter*" (injured party) used under the Victim Compensation Law are interpreted in conformance with the Directive.

Some measures required by the Directive fall under the legislative responsibility of the German federal government, like criminal law and criminal procedural law. But the German states have some responsibilities due to Germany's federal structure. In particular, articles 8, 9, 12, 19, 23 and 25 of the Directive fall in part under the competence of the states, which in some cases results in different laws. However, it has been ensured that the laws of the states, for example relating to police law, comply with uniform protection standards.

The Third Victims' Rights Reform Act in particular led to changes in the existing Code of Criminal Procedure (*Strafprozessordnung – StPO*) and the Judicature Act (*Gerichtsverfassungsgesetz – GVG*). This includes the addition of provisions taking into account the particular vulnerability of injured witnesses in need of protection, which require a written confirmation of the complaint, provide for psychological and social support during proceedings and substantially improve the information rights of the victims.



However, the statutory texts do not contain any direct reference to the Victims' Directive.

In order to better grasp how the Victim's Directive is being implemented in Germany and to what extent victims' rights are being upheld, a few considerations regarding the German criminal proceedings are necessary.

The German Code of Criminal Law contains three different types of crime: an *Antragsdelikt* is a category of offence which cannot be prosecuted without a complaint by the victim or without such formal complaint only in specific cases. Within this category one can further differentiate between private and semi-public crimes. The *private crimes* can only be prosecuted with a complaint by the victim whereas *semi-public crimes* can be prosecuted with a complaint by the victim and in cases of special public interest (which has to be decided by the public prosecution authority) without a formal complaint by the victim.

The third type is crimes which are automatically prosecuted with no need for a complaint or a public interest to prosecute (*Offizialdelikte*). These are serious crimes like murder or manslaughter.

Criminal Proceedings have 5 stages in Germany: the *investigation proceedings* (carried out by the public prosecution with the help of police), the *intermediate proceedings* (where it is decided whether a formal charge is brought before a criminal court), the main *criminal trial*, the *appellate phase* and the *enforcement proceedings*.

As for the roles of the victim during criminal proceedings, the victim may be heard as a *witness* in the investigation proceedings and the main trial. This is why many rights guaranteed to witnesses also apply to victims as witnesses. Some of the rights established in the Directive therefore apply to all witnesses in Germany.

Victims may also be *private prosecutors*. This is applicable when public prosecution decides to close the proceedings without any trial. Victims may then in certain cases (e.g. trespass, defamation, stalking) act as prosecutor without public prosecution to be involved. So it applies to less serious crimes.

The right to file a *private accessory prosecution* is provided by section 395 StPO and does not apply for all types of crimes. It is different to the private prosecution mentioned above. It means they may join the public prosecution in the main trial as joint plaintiffs. As a rule, only especially serious offences qualify, such as crimes against sexual self-determination, murder, human trafficking, and the infliction of bodily harm.

Furthermore, victims are equal parties within the Victim-Offender-Mediation (*TOA*). It helps them play a more active role in criminal proceedings.

# EVALUATION OF PRACTICAL IMPLEMENTATION

## ARTICLE 2 - DEFINITIONS

*For the purposes of the Directive a 'victim' is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence or a family members (the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim) of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.*

German law does not use the literal word "victim". Instead, the laws which, for example establish the rights of crime victims or regulate criminal proceedings use the terms "*Verletzter*" or "*Geschädigter*" (injured party). These terms are not defined by law. Instead the definition is given through the longstanding judicial practice of the relevant courts<sup>2</sup>.

The reason for the lack of unified terminology is that the protection of victims has evolved over the course of many years and was integrated into various existing laws.<sup>3</sup>

The German Code of Criminal Procedure does not contain an unambiguous definition of the term "injured party", which has to be derived from the relevant functional context.<sup>4</sup> To be regarded as injured party a direct criminal infringement of rights is required.<sup>5</sup> An injured party can be anyone

<sup>2</sup> e.g.: OLG Stuttgart, NJW 2001, 840; OLG Brandenburg, FamRZ 2009; OLG Stuttgart, Beschl. v. 19.09.2011 - 4 WS 198/11.

<sup>3</sup> e.g.: BT-Drucks. 18/4621, 13.

<sup>4</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, Vor § 406d Rn. 2. München: Verlag C.H.Beck.

<sup>5</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, Vor § 406d Rn. 2, §172 Rn. 9 ff. München: Verlag C.H.Beck.

who has gained a financial claim due to the criminal offence<sup>6</sup>. The filing of a criminal complaint by the injured party is not a requirement.

The German Criminal Code establishes the so-called victim-offender mediation (*Täter-Opfer-Ausgleich*) under section 46a. Despite the fact that the official heading of the norm refers to "Opfer" (victim), the subsequent text of the law again uses the term "*Verletzter*" (injured party) while discussing the parties involved. Despite the heading, the terminology is therefore similar to the StPO (see above).

The so-called adhesive procedure (section 403 et seqq. StPO) allows the injured party or its heir to pursue a financial claim deriving from the offence in the criminal proceedings against the offender.

The Victim Compensation Law (*Opferentschädigungsgesetz – OEG*), which entered into force on 16 May 1976, provides for a claim against the state. It uses the term "*Geschädigter*" to designate the claim holder. This includes every natural person with legal capacity. According to section 1 BGB, legal capacity begins upon completion of birth, if the child shows a sign of life.<sup>7 8</sup>

In section 1 of the Protection against Violence Act (*Gewaltschutzgesetz – GewSchG*), an "injured person" (*verletzte Person*) is defined as anyone injured by an intentional attack on his body, health or freedom.

Furthermore, there is no general definition of the term "*victims with special protection needs*". Nevertheless, Sec. 48 para. 3 StPO about the duties of witnesses states: if the witness is also a victim of the offence, enquiries and necessary examinations must be carried out taking the victim's particular vulnerability and protection needs into account, e.g. by excluding the public from trial. This section was established according to the Victims' Directive in 2015 to implement Articles 18 and 21 of the Directive. It is a general provision which itself only has a declaratory effect. It does not give a specific definition.

In contrast to the Directive, under German criminal law and criminal procedural law, legal persons may be entitled as an injured party.

The Directive 2012/29/EU included family members and other close persons under the term "victim", going for a wider definition than German law.<sup>9</sup> In the event of a homicide, the term

<sup>6</sup> This includes dependents entitled under section 844 para. 2 German Civil Code (BGB) (LG Gießen NJW 1949, 727) and (where physical property is damaged) both the owner as well as the tenant or leaser (Zabeck, (2018). Karlsruher Kommentar zur Strafprozessordnung, § 403 Rn. 1-12, beck-online.).

<sup>7</sup> Gelhausen, R; Weiner, B. (2015). Opferentschädigungsgesetz Kommentar. Munich, Verlag C.H. Beck, p. 17.

<sup>8</sup> However, the Federal Social Court (Bundessozialgericht) also includes conceived but unborn children (so-called *nasciturus*) under the law's protection. The term covers both direct as well as indirect damage and injury, as long as it is based on an intentional physical attack. Psychological violence is not currently covered by the law, but its inclusion is increasingly the subject of discussion. Indirect injuries are in particular psychological "shock injuries" suffered by secondary victims, such as witnesses of violent crimes.

<sup>9</sup> Weiner (2018). BeckOK StPO Kommentar, § 406d Rn. 1-5, beck-online.



"victim" pursuant to Article 2 para. 1a of the Directive also covers family members, a term which includes a person living in a committed intimate relationship with the victim as well as the dependants of the victim. Under German law, when a victim is killed, section 395 StPO only provides the option to file a private accessory prosecution (where an affected party may join the public criminal proceedings) for the children, parents, siblings, spouses, or registered civil partners of the deceased victim. The law is therefore narrower than required by the Directive. In order to conform to the Directive, persons meeting its requirements (stable, committed, continuous and intimate relationship, and joint household) should also be qualified as injured parties.<sup>10</sup>

Same-gender partnerships are also covered. German law always requires marriage or a registered civil partnership, while mere life companions are not covered within the scope of protection.

German law does not differentiate between EU citizens and German citizens. The StPO and the StGB do not discriminate against third-country nationals either.

However, benefit claims by third-country nationals under the Victim Compensation Law (OEG) require legal residence of certain duration.

In conclusion, the term should be expanded to cover life companions living in a cohabitative union in the same household in order to ensure conformity with the Directive.

<sup>10</sup> Weiner (2018). BeckOK StPO Kommentar, § 406d Rn. 1-5, beck-online.

## ARTICLE 3 - RIGHT TO UNDERSTAND AND BE UNDERSTOOD

*Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings. Communications with victims should be provided in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including (but not limited to) any disability. Victims should, in principle, be allowed to be accompanied by a person of their choice in the first contact.*

Article 3 of the Directive has been implemented, for example through sections 406 d-j StPO by the Third Victims' Rights Reform Act

Sections 406i and j StPO require that injured parties must be informed as "early as possible", generally in writing and (to the extent possible) in a language they understand about their rights under sections 406d to 406h StPO in criminal proceedings, and that they must be informed in particular of the following: the option of filing a criminal complaint, the option of joining the public criminal proceedings by way of a private accessory prosecution (section 395 StPO), of applying for legal aid, of involving an interpreter (sections 185, 187 II GVG), the possibility to be compensated as a witness and to participate in the victim-offender mediation (section 46a StGB).

The requirement of understandable language also ensures that the type of information provided is adapted to the special requirements of the injured party, for example by the use of simple, easy to understand language.

Article 3 para. 3 of the Directive is implemented through section 406f para. 2 StPO. This provision allows the injured party to be accompanied by a person of trust in all phases of the proceedings. This person does not have to be a lawyer, it can be anybody the victim trusts. This is intended to provide psychological support when victims of violent crimes are questioned.<sup>11</sup>

<sup>11</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, Vor § 406f Rn. 4. München: Verlag C.H.Beck.

The law allows rejecting this person of trust only under the very restrictive condition that admitting such person would imperil the purpose of the investigation (e.g. if this prevented the establishment of the facts of the case). The person in charge of the interview is responsible for this decision, which is not subject to appeal.

The requirements of the Directive have therefore been implemented in national law. However, the phrase “as early as possible” should be supplemented to ensure that the information is provided already during “first contact” as required by the Directive.

The evaluation of the survey shows that in practice – as opposed to the legal situation – there is a necessity for further improvement with respect to understanding the law and being understood.

For example, two-thirds of the interviewees in the online survey believe that there are insufficient if any, adequate aids to help practitioners in contact with the victims to recognize the communication needs of the victims. In addition, one third of the professionals asked in the survey think that victims are never, seldom or only sometimes asked whether they understand the information they have been provided with.

In the opinion of the interviewees, the most common form of assistance within the context of Article 3 of the Directive is that information is provided in other languages when the victims do not have a good command of the German language. But this, too, is sometimes insufficiently implemented.<sup>12</sup>

By contrast, special kinds of information are only sometimes provided to children, persons with hearing impairments, mental disorders, or blind people.

Assistance for illiterate persons is rarely provided.

The interview partners also see a clear need for improvement in this respect: many officials complied with the legal information obligation, but left it at distributing handouts and brochures. It was often not clear for the victims which information was relevant for their case. They felt left alone and insufficiently informed.<sup>13</sup>

One of the interview partners stated, for example that as legal counsel for the victims, he asked his clients at the first meeting if they had received this information on their rights. They often said no and at the same time he saw a relevant information brochure sticking out of their documents. This also shows that information has often been passed on but not explained. In many cases, victims can make little use of it.<sup>14</sup>

<sup>12</sup> Interview no. 3.

<sup>13</sup> Interview no. 1.

<sup>14</sup> Interview no. 5.

Forms in simple language and translations in all necessary languages exist (e.g. on the home page of the Federal Justice Ministry in 29 languages<sup>15</sup>); however, these are not available at all police stations. This would be helpful in practice according to one of the interviewees.<sup>16</sup>

When answering the question as to how often victims are accompanied by a person of their trust, the answers in the survey differ widely. For instance, approximately the same numbers of interviewees are of the opinion that victims are often, sometimes or seldom accompanied respectively by a person of their trust.

The surveys reveals that one reason for the authorities preventing the victim from being accompanied by a person of his/her trust is often seen in the fact (above-average response) that the proceedings could be negatively influenced.

In summary, more care should be taken in practice to provide the competent authorities on location with as many information brochures as possible and other information sources in various languages and in simple language that is understandable.

Furthermore, persons being in first contact with victims (e.g. police officers) should guarantee that victims receive the necessary help also to understand their rights laid down in the information brochures (e.g. by making contact with victim support organisations). Police officers should be guides to victims in this respect.

<sup>15</sup> [https://www.bmjb.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe\\_node.html](https://www.bmjb.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html) (25.09.2018).

<sup>16</sup> Interview no. 3.

## ARTICLE 4 - RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH THE COMPETENT AUTHORITY

*Member States shall ensure that victims are offered, without unnecessary delay, from their first contact with a competent authority, information about the type of support the victims can obtain and from whom; the procedures for making a formal complaint; how and under what conditions they can obtain protection, access legal advice and legal aid; access to compensation; entitlement to interpretation and translation; special measures if they are resident in another Member State; contact details for communications about their case; available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.*

In Germany, sections 406i and 406j StPO implemented by the Third Victims' Rights Reform Act regulate the information to victims about their rights in the criminal proceedings. Section 406i StPO covers the provision of information about rights within the criminal proceedings, while section 406j StPO sets out a victim's rights outside of these proceedings. In both cases, victims must be informed as early as possible, generally in writing, and (to the extent possible) in a language they can understand about their rights within and outside of the criminal proceedings<sup>17</sup>. To ensure that information is provided as early as possible, the information should be provided at the time of the criminal complaint, otherwise during the first interview as a witness during the preliminary proceedings.<sup>18</sup>

The public prosecutor verifies whether the police have provided the information. If this is not the case, the prosecutor will do so. The information is generally provided in writing. In exceptional cases, information may be provided verbally, but this must then be recorded on file.<sup>19</sup>

There is no requirement to provide all details. It is sufficient to inform the victim of his/her rights.<sup>20</sup>

<sup>17</sup> See above under Article 3.

<sup>18</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 406i Rn. 3. München: Verlag C.H.Beck.

<sup>19</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 406i Rn. 4. München: Verlag C.H.Beck.

<sup>20</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 406i Rn. 5. München: Verlag C.H.Beck.

The victim must be informed about the rights as stated in the footnote<sup>21</sup>.

The list of information duties listed here is not exhaustive. Depending on the circumstances of the case at hand, additional information may be provided, for example with regard to accommodation in a women's shelter.<sup>22</sup>

Regarding victims' rights outside of the criminal proceedings (section 406 j StPO, concerning e.g. civil law claims against the offender), victims must be informed about the following rights as stated in the footnote<sup>23</sup>.

Pursuant to Article 4 para. 1 lit. h of the Directive, the Member States are required to ensure that victims are informed about available procedures for making complaints, if their rights are not respected by the competent authority operating within the context of criminal proceedings. German law, however, does not stipulate a general duty to provide the information mentioned above at the beginning of the proceedings. It is only necessary to inform the victim about available remedies. The law will therefore have to be adapted accordingly, because there is no general board for complaints.

About half of the interviewees in the survey stated that from the first contact with the competent authorities, the victims receive scarce information. In the interview, a former police officer pointed out that this information often depended on the commitment of the individual police officers on location. Sometimes, victims were sufficiently informed from the first contact in the police station, but sometimes this was unfortunately omitted.<sup>24</sup>

Another interview partner is able to confirm this: As legal counsel, he was not present from the first contact at the competent authorities and was therefore not able to assess the situation easily; he doubted though whether each victim received the necessary information.<sup>25</sup>

<sup>21</sup> The right to receive information about the state of the proceedings, the right to consult the files, the option of being assigned a victim's counsel, the right to receive psychological and social support during the proceedings, the right of the victim entitled to file a private accessory prosecution to be provided counsel, the option of filing a complaint with regard to an offence, the option of joining the public prosecution by filing a private accessory prosecution, being provided legal counsel or granted reimbursement for legal costs, as well as the right to receive interpreter and translation services in the criminal proceedings, the option of pursuing a financial claim arising from the offence, the right to receive compensation as a witness (if a witness statement is made), restorative justice through victim-offender mediation, if there are indications that the injured party is in particular need of protection, the injured party should be informed of the provisions for its protection at the appropriate time during the further proceedings, and in addition, injured parties who have not reached the age of majority and their representatives should be informed of the provisions for their protection at the appropriate time during the further proceedings.

<sup>22</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 406i Rn. 9. München: Verlag C.H.Beck.

<sup>23</sup> That they are able to assert financial claims (to the extent that these cannot be pursued through an adhesive procedure during the criminal trial) through the civil courts and that they may apply for legal aid to be granted, that they may request injunctions against the defendant under the Protection against Violence Act (GewSchG), that they may claim benefits under the Victim Compensation Law (OEG), that they may be able to claim compensation under federal or state administrative provisions, and that they may receive support and help from victim support organisations, for example in the form of counselling, the provision or arrangement of accommodation in a shelter, or through the arrangement of therapeutic services (medical or psychological), or further psychological and social support services.

<sup>24</sup> Interview no. 3.

<sup>25</sup> Interview no. 5.

In everyday practice, the authorities should therefore confer more importance to observing the information rights of victims from the first contact.

The survey also shows that victims frequently receive information in the form of brochures. This is the most widely spread information resource preferably used by victim support organisations as well as competent authorities. Reference is made here, however, to statements of the interview partners who criticised that the brochures handed out are not sufficiently explained.<sup>26</sup> While this is not the task of the police, care should be taken to ensure that the authorities give the victims a certain degree of support in this respect and refer them to victim support organisations.

In contrast, victims are less frequently referred to information from the Internet.

According to the survey, information videos are seldom used among professionals who have contact with victims. It would be desirable if this medium were used more often in this context.

Insofar, it seems as if information was being handed out to victims from a purely technical viewpoint, but it is critical that the victims often do not understand this information. In this respect, competent authorities should ensure that victims seek appropriate help from victim support organisations.

<sup>26</sup> Interviews no. 3, no. 5

## ARTICLE 5 - RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

*Member States shall ensure that victims receive written acknowledgement of their formal complaint. Where they do not understand or speak the language of the competent authority, they should be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance. The acknowledgement should be translated free of charge where the victim doesn't speak the language.*

The rights a victim has when filing a complaint are set out in section 158 StPO. A criminal complaint may be filed verbally or in writing with the prosecutor's office, the police authorities, individual policemen, and at the local courts. Verbal complaints must be recorded. In general, complaints may also be filed by non-injured parties or anonymously. However, upon their request, victims of crimes must receive written confirmation that the criminal complaint has been received. This acknowledgement should include a brief summary of the information provided by the victim with regard to the notified crime at the time and place in which it occurred. This acknowledgement can be denied if it might put the criminal investigation (or the investigation in another criminal case) at risk.

While this provision reflects the implementation of the Directive in German law, in practice, the complainant was already being provided with a written acknowledgement of receipt indicating the case number and the investigating authority. No. 9 RiStBV stipulates that receipt of the complaint must be confirmed, unless such confirmation is unnecessary under the circumstances. However, the RiStBV is merely an internal administrative policy, effective only within the public authorities, so that an implementation in the form of a general law would be desirable.

Where victims do not speak the German language, they shall receive the necessary assistance to enable them to make the complaint in the language they can understand (section 158 IV StPO). This does not necessarily require involving an interpreter; this task can also be performed by a person with the sufficient language skills. This provision reflects the implementation of the Directive in German law. In case of violation of this right, the only avenue of appeal is a disciplinary

complaint (Dienstaufsichtsbeschwerde).<sup>27</sup> This is no legal remedy specifically for this kind of violation, but one which applies to all breaches of law of the person responsible. It is a complaint made to the superior.

At the request of the injured party, the written acknowledgement of the complaint must be translated into a language understandable to the injured party. Again, there is an application requirement. This provision reflects the implementation of the Directive in German law. Here, too, the only avenue of appeal is a disciplinary complaint.

In this regard, the requirements of the Directive have been comprehensively implemented into German law and there is no further need for legislative action.

It is problematic though that acknowledgement of the complaint is only issued at the request of the victim. The written acknowledgement should be a matter of course.<sup>28</sup>

One of the interview partners also criticises in this context that it is necessary to request acknowledgement of the complaint: sometimes victims didn't know that they have to file such an application. Upon request of the victims, the police often stated after the questioning that such acknowledgement was not customary. This was, however, important for the victim in another context if the offence had an impact on other fields of law. As a lawyer, he then had to subsequently try to obtain this acknowledgement and frequently even draw the attention of the authorities to section 158 StPO.<sup>29</sup>

But another interview partner confirms from his experience at the police that written acknowledgements did not pose a problem as a rule, in particular if the victim made the request.

<sup>30</sup>

The survey shows that this requirement of the Directive is not always implemented in practice: Approximately half of the interviewees state that written acknowledgement of the complaint is only issued sometimes. The possibility of filing a complaint in a foreign language is perceived very differently: An almost equal number of those surveyed believe it is possible for victims to always, often, sometimes, rarely or never file a complaint in a foreign language respectively<sup>31</sup>.

In this respect, the application requirement for the written acknowledgement of the complaint should be reassessed. In practice, it is up to the victim alone whether an acknowledgement is issued. The victim is, however, for the most part not sufficiently informed and is not aware at

<sup>27</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 158 Rn. 31. München: Verlag C.H.Beck.

<sup>28</sup> Interview no. 3

<sup>29</sup> Interview no. 5.

<sup>30</sup> Interview no. 3.

<sup>31</sup> One of the interview partners specially recognises these communication difficulties as a problem and calls for improvements. In trial, interpreters were a matter of course; in his capacity as a former police officer, he was not aware of translations free of charge at the police authorities (interview no. 3).

all that this acknowledgement is an option. In addition, a victim often files a complaint under exceptional emotional circumstances and is not sufficiently capable of keeping track of all the further steps of the proceedings.



## ARTICLE 6 - RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE

*Member States shall ensure that victims are notified without unnecessary delay of their right to receive information related to criminal proceedings: any decision not to proceed with or to end an investigation or not to prosecute the offender; the time and place of the trial, and the nature of the charges against the offender; of any final judgement in a trial and of information about the state of the criminal proceedings, in accordance with their role in the criminal justice system; about the reason which led to the above mentioned decisions; notification in case the person remanded in custody, prosecuted or sentenced concerning the victim is released from or has escaped detention.*

The rights of the victims to receive information about the case are set out in section 406d StPO. Victims of crimes must receive the following information upon their request: the discontinuation of the proceedings, the time and place of the trial and the charges levelled against the offender, and the results of the trial.

This information should be provided to the victim insofar as it concerns the victim. The prosecutor or the court making the decision is responsible for informing the victim.<sup>32</sup> The law does not specify exactly how this information is to be provided, but the decision must be communicated to the victim in a way that it is understandable for the victim.<sup>33</sup> If this is done verbally, it must be noted in the files.

The victim must furthermore be informed, whether the convicted offender was ordered to refrain from contacting or engaging with the victim, measures involving the detention of the defendant or convict are ordered or ended, or if the offender is granted leave from detention for the first time. However, this information will only be provided to the victim if the victim demonstrates a legitimate interest, and if there is no overriding legitimate interest of the offender precluding the provision of such information. If the victim's private accessory prosecution has been admitted, it is not required to demonstrate its legitimate interest, but the question whether the offender

<sup>32</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 406d Rn. 3. München: Verlag C.H.Beck.

<sup>33</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 406d Rn. 2. München: Verlag C.H.Beck.

has an overriding legitimate interest remains. The victim must also be informed whether the defendant or convict has escaped from any detention measures, and which measures have been taken to protect the victim (if any), whether the convict is again granted leave from detention, a legitimate interest has been demonstrated or is obvious, and there is no overriding legitimate interest of the convict precluding the provision of such information.

The victim must be informed about these rights upon the pronouncement of the verdict or the discontinuation of the proceedings.

Such notification may be dismissed if the victim cannot be contacted at the address provided by him/her. There will be no investigations to determine the victim's place of residence in order to provide the victim with the information. This is based on the reasoning that a victim can be expected to ensure that he/she can be contacted if interested in the progress of the proceedings.<sup>34</sup>

If the victim is supported by legal counsel, the legal counsel may receive the information on behalf of the victim.

Currently, victims are informed about the location and date of the trial only upon request, unless they joined the proceedings as joint plaintiffs (private accessory prosecution or private prosecution) or are summoned to the trial as witnesses.

From the perspective of the practice, the responses to the survey here tend to differ widely and are not very informative. It is apparent though that victims often obtain information if they request it. However, it is noteworthy that, in practice, the victim is seldom informed about the offender escaping or being released from detention.

One of the interview partners recognises that the problem in practice is the obligation to make an application. Upon his appointment as legal counsel, he would, in his first written statement, immediately file this application to inform the victim. This also functioned well in the investigation proceedings. However, as soon as criminal proceedings are concluded with legal effect, the criminal file is returned to the prosecution which has to create a new file for the enforcement proceedings. In the process, information about an application being filed (as mentioned above) often went missing. He was therefore in favour of affixing a note to the file cover. The judicial authorities had not considered this necessary up to now. In practice, it resulted in the legal counsel filing the application again (as a precaution) in the enforcement proceedings.<sup>35</sup>

In this respect, there is a need for improvement to actually implement the victims' information rights. The application requirement should also be modified. In the case of the relevant application, measures should be taken to ensure that the victim is actually informed if wanted.

<sup>34</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 406d Rn. 10. München: Verlag C.H.Beck.

<sup>35</sup> Interview no. 5.

## ARTICLE 7 – RIGHT TO INTERPRETATION AND TRANSLATION

*Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings are provided, upon request, with interpretation at least during any interviews or questioning and with translation of information essential to the exercise of their rights in criminal proceedings in accordance with their role. Victims may challenge a decision not to provide interpretation or translation.*

Pursuant to sections 161a V, 163 VII StPO and section 185 GVG, the victim, if he/she is to be deposed as a witness, is entitled to interpretation and translation services in all phases of the proceedings. If not necessary, the personal presence of an interpreter can be dispensed. In these cases, the interpreter may participate in the trial through videoconferencing technology.

Moreover, the translation of written documents is only available in cases of a private accessory prosecution, and such translation must also be required<sup>36</sup>. This falls short of the requirements under the Directive, which covers translation for victims in general. The restriction only to the joint plaintiff as a special party to the proceedings should therefore be cancelled in view of the Directive.

If the victim does not speak German, it may request to be informed about the place and time of the trial in a language he/she can understand.

In 2016, Germany had a total of 8,843 formally employed translators and interpreters.<sup>37</sup>

The state judicial administrations maintain a database with all sworn and publicly appointed or authorised interpreters and translators for almost all languages.<sup>38</sup> “Qualified interpreters are only difficult to find for sign languages or rare languages such as Mongolian or certain Arabic dialects”.<sup>39</sup>

<sup>36</sup> section 397 III StPO and section 187 II GVG.

<sup>37</sup> <https://de.statista.com/statistik/daten/studie/243308/umfrage/anzahl-der-beschaefigten-dolmetscher-und-uebersetzer-in-deutschland/> (12.07.2018).

<sup>38</sup> <http://www.justiz-dolmetscher.de/> (12.07.2018).

<sup>39</sup> Schorn, Dr. W; on: <https://www.lto.de/recht/job-karriere/j/dolmetscher-uebersetzer-gericht-justiz-qualifizierung/> (12.07.2018).

“The official authorization, appointment and swearing-in of translators and interpreters is governed by the laws of the individual states of the Federal Republic of Germany, and are therefore subject to state-specific requirements.”<sup>40</sup>

According to the results of the online survey and the experience of the practitioners, interpretation services are offered in all stages of the proceedings. It seems that this is generally guaranteed, only not during investigation proceedings, where there might be gaps.

All interviewees state that interpretation services are offered free of charge, whereby two of the surveyed were not able to give an answer.<sup>41</sup>

According to the survey, the most frequent problems that arise with respect to interpretation services are the lacking availability of interpreters and the fact that the particular vulnerability of the victims is often not taken into consideration (e.g. when male interpreters are in charge of supporting female victims of sexual offences). The interviewees state that all important documents were generally available in foreign languages<sup>42</sup> - research reveals some contradiction in this regard. Some professionals stated that translated applications or similar documents were not always sufficiently available at the competent authorities on location. Instead, it would be helpful and desirable to make improvements in this regard.<sup>43</sup>

<sup>40</sup> <http://www.justiz-dolmetscher.de/> (12.07.2018).; requirements can be: qualification, personal eligibility, being sworn to secrecy.

<sup>41</sup> Interviews no. 1, no. 2, no. 3, no. 5, no. 6.

<sup>42</sup> Currently there are brochures for victims of crime in 29 languages available on the homepage of the German Federal Ministry of Justice; [https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe\\_node.html](https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Opferhilfe_node.html) (24.09.2018). These are: Albanian, Arabic, Armenian, Bulgarian, English, Farsi, French, Georgian, Greek, Italian, Croatian, Latvian, Lithuanian, Dutch, Pashto, Polish, Portuguese, Romanian, Russian, Serbian, Slovak, Somali, Spanish, Tigrinya, Czech, Turkish,

Hungarian, Urdu and Vietnamese.

<sup>43</sup> Interview no. 3.

## ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES

*Member States shall ensure that victims have access to confidential victim support services, free of charge, before, during and for an appropriate time after criminal proceedings. Member States shall facilitate the referral of victims, by the competent authority that received the complaint to victim support services. Member States shall take measures to establish specialist support services in addition to, or as an integrated part of, general victim support services. Member States shall ensure that access to any victim support service is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.*

In Germany, victims can receive help wherever they are. In all German states victims are provided with information or other support free of charge. There was no need for implementation of the Directive since there has been a well functioning system of information to victims, their referral to supporting organisations and access to help.

Almost all police stations have special victim protection officers. There are, for example 5 such officers in Rhineland-Palatinate.<sup>44</sup> These are especially trained and offer victims, witnesses and relatives counselling either in person or via phone. They arrange additional support services locally, by, for example, connecting them with non-governmental victim support organisations.

Police stations can provide victims with support information through the Internet database "VIKTIM". "VIKTIM" is an internal police database maintained by the North Rhine-Westphalian State Office of Criminal Investigations (Landeskriminalamt) since 2005. All German states have access to the database and are allowed to include their own publications in order to expand the provided service. The purpose of VIKTIM is to provide information relating to the protection of victims and on how to deal with victims professionally. **One of its most important functions is to facilitate contact with support organisations.**

The websites of all state police authorities and justice authorities provide information for victims in this regard, often linked to other information websites. One example is the website of the

<sup>44</sup> <https://www.polizei.rlp.de/de/aufgaben/opferschutz/opferschutzbeauftragte/> (19.07.2018).

Bavarian Justice Ministry.<sup>45</sup>

Another Internet-based source of information is the online database ODABS<sup>46</sup> (Online Datenbank für Betroffene von Straftaten), developed by the Kriminologische Zentralstelle e. V. on behalf of the Federal Ministry of Labour and Social Affairs. Victims can use ODABS to find specialised support facilities in their vicinity. The online database builds on a victim support catalogue (Opferhilfeatlas) also published by the Kriminologische Zentralstelle e. V.

The victim support catalogue collates the result of the first Germany-wide quantitative survey of all facilities which, according to their own understanding, consider providing support and care to the victims of crimes as one of their priorities. The catalogue provides an overview over the victim support landscape and with regard to organisations and financing, personnel, provided services, clients, specialisation, and contacts and cooperations.<sup>47</sup>

On its homepage<sup>48</sup>, the Federal Ministry of Justice and Consumer Protection (BMJV) lists links to the victim support sites of the German states, which provide information for the various regional victim support facilities in the respective Länder. There is also a link to the online victim database ODABS, the WEISSER RING e. V. and the working group of victim support organisations, which are active Germany-wide.

The confidentiality requirement stipulated by the Directive is covered by the data protection requirements under the Federal Data Protection Act (BDSG) and the state laws. In addition, some organisations themselves are committed to comprehensive data protection.

Aside from the information websites provided by federal and state authorities, the victim support organisation WEISSER RING e. V. also provides online counselling for victims via online messages. The online counselling is anonymous, free of charge and available throughout Germany. All data are encrypted, stored on an external server and thus kept absolutely confidential. Anyone enquiring will receive a personal answer to their request within 72 hours.<sup>49</sup> The counsellors arrange for help and provide victims with further information about their options.

WEISSER RING e. V. also operates a hotline (116 006), where victims can reach out to receive help between 7 am and 10 pm. The victim will receive counselling on how best to receive help and support. This service also cooperates with other support services to arrange individual help as quickly as possible.<sup>50</sup>

<sup>45</sup> <https://www.justiz.bayern.de/service/opferschutz/> (13.07.2018).

<sup>46</sup> <https://www.odabs.org/> (12.09.2018).

<sup>47</sup> <http://www.krimz.de/forschung/opferhilfe-atlas/> (19.07.2018).

<sup>48</sup> <http://www.bmju.de/SharedDocs/Abteilungen/DE/AbtII/IIA3.html?nn=1470246> (19.07.2018).

<sup>49</sup> <https://weisser-ring.de/hilfe/onlineberatung> (13.07.2018).

<sup>50</sup> <https://weisser-ring.de/hilfe/opfer-telefon> (13.07.2018).

In addition, victim support organisations as well as police and judicial authorities lay out flyers at public buildings and courts, in order to provide information to victims directly at court or if they file a criminal complaint at a police station.<sup>51</sup>

A criminal complaint is not a precondition for the victim to receive help.

The described information services are available for all victims in general. There is also a broad spectrum of information services for certain groups of victims, such as for victims of domestic violence (BIG e.V.) and victims of sexual abuse (Gemeinsam gegen sexuellen Missbrauch e.V., Violetta Hannover, gegen Missbrauch e.V., Tauwetter, Frauen gegen Gewalt e.V., Wildwasser Wiesbaden e.V.). These are only a few examples of a very large number of organisations.

All interview partners take the view that the support of victims functions very well in Germany through the victim support organisations.<sup>52</sup>

The various services worked very well together according to the interview partners.<sup>53</sup>

The online survey also sheds a positive light on the victim support services in Germany: Half of those surveyed are of the opinion that victims are often directed to support services by the competent authorities. In contrast, half of the interviewees believe that this only happens sometimes. In addition, support services always or often attended to the special needs of the victims.

Despite this, the interviewees of the online survey see the need for improvement in some areas: In this context, the financing of the support offers is frequently mentioned. Moreover, more NGOs should be incorporated in the support (the success of collaboration differs from region to region), there should be more training for the helpers, as well as more volunteers and predefined quality standards for the facilities.

51 <https://weisser-ring.de/media-news/publikationen/broschueren-faltblaetter> (13.07.2018); <http://www.opferhilfe-berlin.de/netzwerk-kooperation/downloads> (13.07.2018).

52 Interview no. 3, no. 5, no. 6. Only one of the interview partners pointed out that particularly for victims of sexual violence the inhibition threshold was very high to seek help at one of the victim support organisations. The victims feared they would have to relate all the details of the offence once again (interview no. 5).

53 Interview no. 5.

## ARTICLE 9 - SUPPORT FROM VICTIM SUPPORT SERVICES

*Victim support services shall, as a minimum, provide: a) information, advice and support relevant to the rights of victims; b) information about or direct referral to any relevant specialist support services in place; c) emotional and psychological support; d) advice relating to financial and practical issues arising from the crimes; e) advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation. Specialist support services shall develop and provide: a) shelters or any other appropriate interim accommodation for victims; b) targeted and integrated support for victims with specific needs such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships.*

Under Germany's federal structure, the German states are responsible for providing general victim support services.<sup>54</sup> However, this does not mean that States also organize or run victim support services. **There is no governmental support and no authorities that deal with victim support.** Nevertheless, some states give financial support to victim support organisations.

The victim support services offer counselling for problems and fears relating to the crime, psychological and social support (for example, support for processing trauma), information about victims' rights and general help as well as the option of being personally accompanied when going to the police or filing applications. Some organisations such as WEISSER RING also provide financial help in emergencies.<sup>55</sup>

Some states have established special state foundations. One example is the victim support foundation of Lower Saxony, which is government-financed.

54 Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU. Retrieved from [https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2) (13.07.2018).

55 Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU. Retrieved from [https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2) (13.07.2018).



The Hanauer Hilfe and the Wiesbadener Hilfe e.V. (which receives a fixed amount of financing from the Hessian Justice Ministry) should also be mentioned.<sup>56</sup>

Some foundations also provide financial support for victims of crimes (particular violent crimes).

One example given is Stiftung Rheinland-Pfalz für Opferschutz which only provides financial support for victims in urgent need.<sup>57</sup>

The Arbeitskreis der Opferhilfen in Deutschland serves as an umbrella organisation for various regional victim support organisations. "Since its establishment, "ado" has been the forum for facilities providing counselling for victims of crimes. (...) This forum is therefore used by a wide range of specialists: By counsellors working with victims of all types of crimes, as well as, for example by projects supporting and counselling victims of right-wing violence, by counselling centres limited to homosexual male victims, and for victim-offender mediation programmes which seek to prioritise the interests of the victim in the context of conflict mediation."<sup>58</sup>

The organisation WEISSER RING e. V. was founded in 1976. It maintains a Germany-wide network of contact points for crime victims (currently 420) as well as a victim hotline (available from 7 am. to 10 pm.) and online counselling (see above). WEISSER RING is also involved in crime prevention. The organisation has 50,000 members and employs 3,000 volunteers. "Here, crime victims will receive quick and direct help regardless of gender, age, religion, nationality, and political conviction."<sup>59</sup>

There are also a large number of non-government local and regional victim support facilities and counselling centres (more than 1,000), which in many cases receive financial support from the states.<sup>60</sup> At these victim support facilities and counselling centres, both volunteers as well as full-time employees provide counselling and care for people who have become victims of crimes. Some of these have already been indicated above as examples.

These facilities pursue the services set out by the Directive: provision of information and support, emotional and psychological support, prevention of secondary victimisation and protection from intimidation and retaliation.

Some support services specialise in helping victims of **specific crimes**. These include in particular sexual offences, but also racist, xenophobic, homophobic, trans-phobic, or anti-Semitic attacks.

<sup>56</sup> <https://www.wiesbadener-hilfe.de/ueber-uns/der-verein.html> (13.07.2018).

<sup>57</sup> <https://jm.rlp.de/de/themen/opferschutz/stiftung-rheinland-pfalz-fuer-opferschutz/> (25.09.2018).

<sup>58</sup> <https://www.opferhilfen.de/> (13.07.2018).

<sup>59</sup> <https://weisser-ring.de/weisser-ring/der-verein> (13.07.2018).

<sup>60</sup> Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU, 13. Retrieved from [https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2)

There is a broad spectrum of services for certain groups of victims, such as for victims of domestic violence (BIG e.V.) and victims of sexual abuse (Gemeinsam gegen sexuellen Missbrauch e.V., Violetta Hannover, gegen Missbrauch e.V., Tauwetter, Frauen gegen Gewalt e.V., Wildwasser Wiesbaden e.V.). These are only a few examples of a very large number of organisations.

In many cases, these facilities are also engaged in prevention, for example by providing information about right-wing violence or by advocating for the interests of affected groups.

Accommodations or provisional accommodation (e.g. women's shelters or psychotraumatology) are available. As an example, Rhineland-Palatinate, a German state of average size, has 17 women's shelters (which include 14 counselling centres), 12 women's emergency hotlines and competence centres for sexualised violence, 16 intervention agencies, as well as additional specialised counselling and support facilities for areas like human trafficking, prostitution or forced marriage.<sup>61</sup>

The provision of assistance by these facilities and victim support services does not depend on the seriousness of the crime; the aim is to ensure that victims receive the help they need.

Here, too, the online survey also sheds a positive light on the situation in Germany: Victims frequently receive relevant information, counselling and help concerning their rights, as well as information about special support facilities. Accordingly, emotional and psychological support is also often given.

Sometimes, victims receive information regarding financial and other practical aid in conjunction with the offence as well as about prevention to avoid repeated victimisation.

<sup>61</sup> Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU, 13. Retrieved from [https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2)



## ARTICLE 10 - RIGHT TO BE HEARD

*Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.*

The victim's right to be heard during the criminal proceedings follows (among other provisions) from section 69 StPO which deals with the interviewing of witnesses. This provision applies for any witness interview, and is not victim-specific. While section 69 StPO as such covers all interviews by judges, section 161a I sent. 2 and section 163 II sent. 1 StPO extend the application of its provisions to prosecutorial and police interviews.<sup>62</sup>

Under section 69 I StPO, the victim is obligated to (and therefore granted the right to) provide a coherent account of the events. The victim is entitled to present its account without being influenced by questions or reservations.<sup>63</sup> However, section 69 II StPO allows follow-up questions after the account is presented.

Section 69 para. II sent. 2 StPO (from 1 September 2013) provides victim witnesses with a right to testify on the consequences of the crime. This is a victim-specific provision. However, section 238 para. 1 StPO tasks the presiding judge with ensuring that the trial is not unreasonably delayed by overly extensive witness testimony, and that the judge has the authority to impose some restrictions on the right to testify for objective grounds.

Every victim is entitled to this right to testify without restrictions and regardless of the nature of the crime.

Interviews of witnesses are generally carried out orally. Written testimony is not permissible, although section 186 GVG provides for an exception. Persons with speech or hearing impairments may be questioned by means of written communication. During preliminary proceedings (not during the court trial), preliminary written testimony may be allowed on certain issues.<sup>64</sup> This requires that the witness is credible and is expected to provide a complete account.

Sections 33, 33a StPO regulate the granting of a legal hearing prior to a court decision. This provision is not victim-specific either, but applies for victims during a trial, if they are parties to the proceedings, for example through a private accessory prosecution (where the victim joins the public criminal proceedings, see above; section 395 StPO) or if the pending decision impacts their rights.<sup>65</sup> This provision ensures that the fundamental right to be heard (Article 103 German Constitution) is observed.

Section 257c III 3 StPO also grants all parties to the proceedings the right to comment before any plea bargain is struck. This non-victim-specific procedural provision is generally applicable to victims who have filed a private accessory prosecution (section 395 StPO). However, the joint plaintiff does not have an absolute right to be heard, as his/her objection cannot prevent an agreement which, after all, only affects the legal sanctions, whose nature and scope the joint plaintiff cannot influence anyway.<sup>66</sup>

Here, too, the Directive makes improvements necessary: the joint plaintiff should be entitled to participate in any talks about a plea bargain, his/her consent should be required for serious crimes of violence or sexual abuse and the joint plaintiff should also be entitled to appeal against any punishment falling short of the legally required standards, given the crime and guilt of the offender.<sup>67</sup>

The rights of the victim previously provided for function very well in practice. In this context, nearly all the interviewees in the online survey stated that victims were always or often heard during the criminal proceedings.<sup>68</sup>

Regarding whether the right to be heard is restricted in some phases of the criminal proceedings, it has been identified that, in principle, the right of the victim to be heard was not restricted by the role of the victim in the criminal proceedings. This shows that the victim in criminal proceedings at least no longer plays a subordinate role.

The result of the survey is, however, ambiguous regarding the question about whether the right to be heard was restricted in some phases of the criminal proceedings: One half of those surveyed see a restriction, while the other half is not of this opinion. In any case, most interviewees state that in principle, the right of the victim to be heard was not restricted by the role of the victim in the criminal proceedings. This shows that the victim in criminal proceedings at least no longer plays a subordinate role.

One of the interview partners states that all persons involved in the proceedings were subject to

<sup>62</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 33 Rn. 4. München: Verlag C.H.Beck.

<sup>63</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 33 Rn. 4. München: Verlag C.H.Beck.

<sup>64</sup> Strafrechtspolitische Forderungen des WEISSEN RINGS (2017), p. 8, Mainz.

<sup>65</sup> Interview no. 1, no. 2, no. 3, no. 5, no. 6.

<sup>62</sup> Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 69 Rn. 1. München: Verlag C.H.Beck.

<sup>63</sup> BVerfGE 38, 105, 117.

<sup>64</sup> RiStBV no. 67; according to RiStBV only in "suitable cases"; no clear definition given and subject to discretion of interviewer.

the same rules so that nobody was given preference.<sup>69</sup>

Only victims who have the right to file a private accessory prosecution are entitled to move for the admission of evidence. In these cases, the victim (as a joint plaintiff) can also move for the admission of evidence. The joint plaintiff may be represented by legal counsel, but this is not required to file an evidence motion. The court may reject motions for the admission of evidence only in specific cases, such as where circumstances are obvious and do not require evidence, or if the motion is intended to delay the proceedings (section 244 StPO). If a motion for evidence is rejected without justification, the verdict is subject to appeal on points of law, section 337 StPO. It has been identified that these mechanisms work well in practice and that victims are often able to file applications to produce evidence or be able to present evidence.<sup>70</sup>

This also functions very well according to the online survey among practitioners. In this context, nearly all the interviewees in the online survey state that victims always or often file applications to produce evidence or be able to present evidence.

The right of the victim to be heard also applies to child victims. They, too, have the right to comment on the consequences of the crime, and to present a coherent account of the events (as witnesses, see above).

During the criminal trial, interviews of child witnesses shall take due account of their age and special consideration shall be paid to their needs. This follows, for example from section 19 RiStBV: Where possible, repeated interviews of children and juveniles prior to the trial should be avoided due to the emotional stress this causes the witnesses.

In addition, when interviewing witnesses under the age of 18, audio and video recordings should be used in order to avoid the need for repeated interviews, section 58a StPO. The presence of a trusted person should also be ensured.

Both the online surveys as well as the interviews demonstrate that age and the maturity of a child victim in criminal proceedings is almost always taken into consideration. However, there was some indication that mechanisms enabling the determination of children's maturity are inadequate.

Moreover, children often undergo a psychological assessment of their competency to testify<sup>71</sup>. However, in respect to child-oriented interviews and the fact that these should always be related to the age of the child, there have been indications of a situation in which a case where a 14-year-

<sup>69</sup> Interview no. 5.

<sup>70</sup> This also functions very well according to the online survey among practitioners. In this context, nearly all the interviewees in the online survey state that victims always or often file applications to produce evidence or be able to present evidence (Interview no. 1, no. 2, no. 3, no. 5, no. 6).

<sup>71</sup> Interview no. 5.

old child had been questioned and there was the impression that the child was significantly more mature than it was treated like by the judge<sup>72</sup>.

This example clearly shows that a great deal of sensitivity and experience is required in dealing with child victims. In this context, research revealed that family judges, who carry out interviews through video recording more often, have experience in contact with children than other professionals<sup>73</sup>.

<sup>72</sup> Interview no. 5.

<sup>73</sup> Interview no. 5.

## ARTICLE 11 – RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE

*Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to review of a decision not to prosecute. Where the role of the victim will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. Member States also need to ensure that victims are notified of their right to receive, and that they receive sufficient information to decide whether to request a review.*

Proceedings may be discontinued for various reasons during different stages.

First, proceedings might terminate for lack of evidence.

The investigating prosecutor is responsible for deciding whether to indict a suspect. Unless there is sufficient evidence for filing a charge, proceedings are terminated. Sufficient evidence for filing a charge is present, if based on the entire content of the case file and a preliminary assessment of the crime it appears likely that the accused will be sentenced.<sup>74</sup>

If the victim has filed a criminal complaint, it must be informed of the discontinuation of proceedings.

The victim may object to the decision not to prosecute within two weeks after its announcement. The objection must be lodged with the superior of the responsible prosecutor pursuant to section 172 I StPO. The victim must be instructed about this right in the termination order and informed about the applicable deadline for the objection. The prosecutor's superior may then either order that charges be filed or reject the objection. If the superior rejects the objection, the victim has one month to apply for a court decision through an action to force criminal prosecution (Klageerzwingungsverfahren section 172 II StPO).

Under German criminal procedural law, some minor offences do not provide for any appeal against the decision to terminate the proceedings. In these cases, the victim may file a private

<sup>74</sup> BGH 23, 304, 306.

prosecution (Privatklage) pursuant to section 374 StPO, affording the victim a legal remedy against a prosecutorial decision not to prosecute for such offences. Pursuant to section 376 StPO, even if there is sufficient evidence for filing a charge, the prosecution will only file such charges if it is in the public interest.<sup>75</sup> Section 374 StPO provides a complete list of the minor offences to which this applies (e.g. unlawful entry, insult or property damage).

Other rules apply where proceedings are terminated due to lack of public interest in prosecuting them (section 153 et seqq. StPO). The prosecutor can decide not to prosecute if offences are minor, or if – where proceedings involve multiple offences – some of those offenses are of relatively little significance. In these cases, the victim is so far **not** expressly provided with any avenue for complaint or appeal, unlike in cases where proceedings are terminated for lack of evidence pursuant to section 170 II StPO. However, the victim may remonstrate (Gegenvorstellung) or file a disciplinary complaint (Dienstaufsichtsbeschwerde, section 147 GVG).<sup>76</sup> These two measures have no formal requirements and are not subject to any deadlines, but they are also generally unsuccessful in practice.

Regarding a decision not to open the main trial, the filing of public charges is followed by interlocutory proceedings (Zwischenverfahren), during which the court decides whether or not to proceed to the main trial. If the victim has filed a private accessory prosecution and is thus a joint plaintiff, it may file an immediate complaint (sofortige Beschwerde, section 400 II StPO) if the opening of the main trial has been rejected.

Since therefore not all decisions/orders to discontinue/terminate proceedings provide the victims with a remedy, improvements should be made to ensure that victims are provided comprehensive protection.

The WEISSER RING has been demanding for a long time that victims should generally have the option of filing an action to force criminal prosecution, in order to ensure that all interests of victims are duly taken into account. In addition, it is worth considering whether partial termination of proceedings pursuant to section 154 StPO should be possible only with the consent of the victim, insofar as the victim was directly affected by the offence on which the charge is based that is to be dropped.<sup>77</sup>

An interview partner also states that verifying such decisions was not very promising (only in the single-digit percent range) and thus not realistic on the whole. As a rule, the reasons for discontinuing proceedings were also upheld by the public prosecution and therefore sufficient and comprehensible for lawyers.<sup>78</sup>

<sup>75</sup> Hoven, Dr. E. (2014). Zum Umgang mit "geringfügigen Straftaten im materiellen und prozessualen Recht, JuS 2014, 975, from beck-online.

<sup>76</sup> OLG Karlsruhe, BeckRS 2015, 1652.

<sup>77</sup> Strafrechtspolitische Forderungen des WEISSEN RINGS (2017), p. 9, Mainz.

<sup>78</sup> Interview no. 5.

## ARTICLE 12 - RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

*Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Member States shall facilitate the referral of cases, as appropriate to restorative justice services.*

The concept of restorative justice has been implemented in German law since 1994 through the procedure known as victim-offender mediation (TOA) pursuant to section 46a StGB.<sup>79</sup>

In each phase of the trial, the prosecution and the court will review whether victim-offender mediation can be achieved (i.e. an out-of-court conflict settlement), and they should promote this course of action in suitable cases. The policies regulating the restorative justice services implementing the victim-offender mediation do contain a non-exhaustive list of which cases are generally suitable, but the policies are not binding.<sup>80</sup>

If the process is successful, this may result in a lighter sentence pursuant to sections 46 a, 49 I StGB.

Victim-offender mediation can be applied both for adult as well as juvenile offenders.

Victim-offender mediation requires the consent of the victim. It is available only if the victim is a natural person. It also requires that the offender admits to his crime (see above) and that both are prepared to attempt mediation.<sup>81</sup>

The process provides an opportunity for the victim to actively pursue its own interests. The offender should not be enabled to “buy his way out of jail”; the process should rather emphasise

the communicative process between victim and offender.<sup>82</sup>

The aim is to compensate (in immaterial and material terms) for the suffered injury, i.e. to make amends for the crime, and (as a second step) the actual compensation.<sup>83</sup>

The offender must confess his guilt to the victim, substantially admit to the wrong he has done and respect the position of the victim.<sup>84</sup> The result is then recorded in an agreement.

The victim-offender mediation is carried out by various restorative justice services in the German states. These services all base their work on the standards set out by a federal working group set up for this purpose (Bundesarbeitsgemeinschaft Täter-Opfer-Ausgleich e.V.) and the TOA Service Büro in Cologne, in order to ensure a high level of quality and the protection of the victims;<sup>85</sup> the services train and provide mediators for the process. They set out policies for the victim-offender mediation.

The Directive also requires that a repeat victimisation of the victim through the victim-offender mediation is avoided.<sup>86</sup> The restorative justice services have also laid down this aim in their policies.

Section 155b StPO regulates the data protection requirements. The provision covers data protection in relation to use and processing of personal data for purposes of the victim-offender mediation and restorative justice, in order to ensure that personal data do not fall into the wrong hands and are used for inappropriate purposes. The prosecution or the courts are responsible for transferring the required information from the case files. The transfer is done either at the own initiative of the prosecution or court or upon request by the mediation service. There is no express requirement for the data subject to consent to this transfer. Data transport must be limited to required data. The body in charge of the victim-offender mediation is allowed to use and process the transferred personal data only insofar it is necessary for carrying out the victim-offender mediation or to achieve restorative justice, and only to the extent that there is no overriding legitimate interest of the data subject. In addition, personal data are only to be collected, and collected data only processed and used, if the data subject has consented to such collection and use, and if this is necessary for carrying out the victim-offender mediation or to achieve restorative justice. The data must be destroyed a year after the criminal proceedings have been closed, section 155b IV StPO.

<sup>79</sup> Stree, Kinzig. (2014). Schönke/ Schröder Strafgesetzbuch Kommentar, § 46 a Rn. 1, München: C.H. Beck.

<sup>80</sup> Service Büro für Täter-Opfer-Ausgleich und Konfliktschlichtung (2017). TOA-Standards, 7th edition, Köln. Hartmann, Dr. Arthur; Haas, Marie (2014). Die EU Opferrichtlinie.

In general: all crimes included as long as offender shows regrets; this would most commonly be in cases of less serious crimes. But not possible concerning crimes against a firm with no contact person (conversation between victim and offender must be possible).

<sup>81</sup> Service Büro für Täter-Opfer-Ausgleich und Konfliktschlichtung (2017). TOA-Standards, 7th edition, p. 8-9, Köln.

<sup>82</sup> Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU, 13. Retrieved from [https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2)

<sup>83</sup> Fischer (2016). Strafgesetzbuch Kommentar, § 46 a Rn. 10, München: C.H. Beck.

<sup>84</sup> BGH 48, 134, 141.

<sup>85</sup> Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU, 13. Retrieved from [https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2).

<https://www.bag-toa.de/> (16.07.2018).

<https://www.toa-servicebuero.de/> (16.07.2018).

<sup>86</sup> Service Büro für Täter-Opfer-Ausgleich und Konfliktschlichtung (2017). TOA-Standards, 7th edition, p. 8, Köln.



After the victim-offender mediation is concluded, the body responsible for the process issues a report either to the competent court or the prosecution (depending on the progress of the proceedings and the point in time at which the mediation is carried out). The consequences of a successful victim-offender mediation depend on the seriousness of the crime, the degree of culpability and the public interest in a prosecution. The sentence may be reduced or, if it does not exceed either a prison sentence of one year or a fine of 360 daily rates, it may be dispensed with.

Where no victim-offender mediation is carried out or if it is unsuccessful, this must not negatively influence the following proceedings or legal consequences.<sup>87</sup>

Under German law, the victim-offender mediation can be carried out in all stages of the proceedings. In practice, however, mediation is currently still somewhat underused.

German **statutory law** as such does not sufficiently reflect the Directive; however, according to Hartmann et al. taking into account the Mediation Act (Mediationsgesetz) and the non-binding, but generally observed, standards for the victim-offender mediation, the Directive is adequately implemented in practice.<sup>88</sup>

The explanatory statement in the draft of the Mediation Act (which is only applicable in Civil Law cases) in contrast clearly points out that it does not apply to victim-offender-mediation (TOA), because despite of some similarities this is a very special field.<sup>89</sup>

The interviewees of the online survey pointed out that the victims involved in the victim-offender mediation were not protected from repeat victimisation, intimidation and retaliation.

One of the interview partners from the legal field considers the victim-offender mediation in Germany very good. The prosecution generally welcomed the fact that the offender sought to make amends in this respect. The lawyers tended to encourage the victim-mediation more frequently. In the opinion of the interviewee, the frequency of implemented victim-offender mediations also depended on the situation in each state: He had the feeling that justice ministries often passed on relevant instructions quasi "from above" to prosecution offices and courts.<sup>90</sup>

Regarding restorative justice, it is often problematic that the offender contacts the victim directly and unrequested for the purpose of issuing an apology.<sup>91</sup> This may cause new psychological distress for the victim as it might not be ready for a confrontation.

Overall, the victim-offender mediation is rarely used in practice, but the situation appears to be improving.<sup>92</sup>

87 Heintschel-Heinegg, Bernd (2018). BeckOK Kommentar Stragesetzbuch, § 46a Rn. 15. München: C.H. Beck.

88 Hartmann, Dr. Arthur; Haas, Marie (2014). Die EU Opferrichtlinie.

89 BT-Drucks. 17/5335, p. 11.

90 Interview no. 5.

91 WEISSER RING Stiftung. Forschungsbericht Belastung von Opfern in Ermittlungsverfahren\_2017\_07\_08. Heidelberg, Mannheim, Gießen, Germany.

92 Lackner, Kühl (2018). Strafgesetzbuch Kommentar, § 46a Rn. 1. München: C.H. Beck.

## ARTICLE 13 - RIGHT TO LEGAL AID

*Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings.*

German law provides victims with the option of seeking advice from a lawyer and retaining his services for out-of-court representation even before the criminal trial begins.

Where victims lack the financial means to afford a lawyer and if they are in need of one, they may apply for legal advice assistance (Beratungshilfe) at the local court of competent jurisdiction. If this application is granted, the state will pay for the provision of advice and/or the out-of-court representation of the victim. In case of a negative decision there is the legal remedy of commemoration, a very general way to review decisions of judicial officers.

If the court still refuses the request for legal advice assistance, victims may be able to petition victim support organisations such as the WEISSER RING to receive financial support for obtaining legal advice.

Subject to certain conditions, the victim is entitled to be provided with a legal counsel pursuant to section 397a para. 1 StPO. The provision lists a number of serious crimes<sup>93</sup> which allow for the appointment of a victim's representative; the list is exhaustive. Here, the financial situation of the victim is of no importance.

If the joint plaintiff fails to meet the requirements of para. 1 (i.e. if he is not the victim of one of the crimes listed there), he may still be provided with legal aid pursuant to para. 2, enabling him to engage a lawyer or another person.<sup>94</sup>

If victims are entitled to enforce their rights by way of private accessory prosecution, they may be provided (if they so need - see above) with legal aid and a lawyer, sections 406h III no. 2, 397a StPO. A victim's counsel is provided if the victim is unable to adequately safeguard its own interests or if he/she cannot be reasonably expected to do so. A victim generally able to safeguard its own interests without involving a lawyer may not be reasonably expected to do so

93 E.g. sexual abuse, rape, human trafficking, murder, manslaughter, grievous bodily harm, (...).

94 Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 297a, Rn. 6. München: C.H.Beck.



in particular due to psychological effects suffered because of the crime or its consequences.<sup>95</sup> If the joint plaintiff shows signs of helplessness, weakness and isolation because of the crime, it will often be considered unreasonable for the victim to confront the offender and the court during the proceedings. This serves also to prevent a secondary victimisation.<sup>96</sup>

The same also applies for the adhesive procedure, i.e. if the victim enforces its civil claims in criminal proceedings pursuant to section 404 V StPO.

Victims in need of financial support may also apply for legal aid in the context of the action to force criminal prosecution pursuant to section 172 III sent. 2 StPO. This is particularly important for these proceedings from the victim protection viewpoint, as the action to force criminal prosecution requires representation by legal counsel (section 172 III para. 2 StPO).

Legal aid may also be granted for offences prosecuted by the victim through a private prosecution (Privatklage), section 379 III StPO.

The court may also assign a counsel to the witness. The court will assign a counsel to witnesses who are not supported by legal counsel during the interview and whose legitimate interests cannot be given due consideration otherwise, if special circumstances apply due to which the witness is unable to exercise his rights during the interview, section 68b StPO. Special circumstances are circumstances which result in the witness being too overwhelmed to exercise his/her rights appropriately. This applies as a rule for immature child or juvenile witnesses, in particular if they are the victims of the crime that is the object of the trial.<sup>97</sup>

The provision does not apply where witnesses are questioned by experts.<sup>98</sup>

The option of assigning a legal counsel is not limited to the main trial, but exists for every judicial, prosecutorial or police interviews of witnesses.

As the claim for legal aid in Germany requires “need” (Bedürftigkeit), there are many borderline cases where the victim does not receive legal aid. In addition, the court must determine that the victim is not able to safeguard its own interests, or cannot be reasonably expected to do so; this decision includes a wide scope for discretion. In practice, this may lead to unjustified financial burdens for victims. The WEISSER RING has long demanded that joint plaintiffs in criminal proceedings should be generally provided with legal aid, and that the presence of legal counsel during the main trial should be considered necessary.<sup>99</sup> In addition, the assessment of necessity should be based on the “seriousness of the crime and its consequences”.<sup>100</sup>

<sup>95</sup> Meyer-Goßner, Schmitt (2018). Strafprozessordnung, § 397 a, Rn. 9. München: C.H. Beck.

<sup>96</sup> Weiner (2018). BeckOK stop, § 397a Rn. 17-18, beck-online.

<sup>97</sup> Monka (2018). KK-StPO, § 68b Rn. 5-6, beck-online.

<sup>98</sup> Monka (2018). KK-StPO, § 68b Rn. 5-6, beck-online.

<sup>99</sup> Strafrechtspolitische Forderungen des WEISSEN RINGS (2017), p. 2-3, Mainz.

<sup>100</sup> Strafrechtspolitische Forderungen des WEISSEN RINGS (2017), p. 3, Mainz.

## ARTICLE 14 - RIGHT TO REIMBURSEMENT OF EXPENSES

*Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.*

Witnesses duly summoned and deposed at court are entitled to receive witness compensation. The same applies for witnesses who have been duly summoned but not questioned. The claim for witness compensation is governed by the Judicial Remuneration and Compensation Act (Justizvergütungs- und Entschädigungsgesetz – JVEG).

Witnesses therefore receive e.g. reimbursement for travelling costs (Reisekostenersatz). This refers to the costs for using public means of transportation; the actual costs are reimbursed, including expenses for seat reservation and conveyance of the required luggage, though costs are limited to travel in first class. Witnesses travelling with their own car receive a rate of currently € 0.25 per kilometre plus parking fees.

Witnesses also receive reimbursement for expenses (Aufwandsentschädigung). This reimbursement can only apply if a trial is not held at the place of residence of the witness. The witness will then receive a per diem as well as the costs for overnight accommodation, if necessary.

They can also receive reimbursement for other expenses. This includes in particular the cost for any necessary substitutes and (if required) persons accompanying the witness, as well as for copies, printouts and electronic files.

Furthermore, compensation for time expended is granted. If the witness does not incur any costs, he/she will at least receive compensation for the time expended. According to section 20 JVEG, the current rate is € 3.50 per hour. This compensation will be paid regardless of whether the witness loses earnings or incurs disadvantages in relation to housekeeping, which are already covered by witness compensation.

Some witnesses may also get compensation for disadvantages in relation to housekeeping. Witnesses keeping house for more than one person receive € 14 per hour if they are not gainfully employed or if they are working part-time and are summoned as witnesses outside of their agreed regular daily working hours.

Witnesses also receive compensation for lost earnings. The amount of compensation is determined by their regular gross income, including the social security contributions payable by the employer. However, this compensation is limited to no more than € 21 per hour and 10 hours per day.

Witnesses who have their habitual place of residence abroad may be granted higher compensation than set out in sections 20 to 22 at the reasonable discretion of the court; their personal circumstances, in particular their regular income shall be taken into account.

A claim for witness compensation must be filed within three months. After this time period, the claim lapses. The witness must be instructed about this consequence. The time period begins on the day of the interview.

The witness may also be paid in advance if significant costs are expected.

According to section 472 StPO, the joint plaintiff may also be reimbursed by the convict.

## ARTICLE 15 - RIGHT TO THE RETURN OF PROPERTY

*Member States shall ensure that recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings.*

Confiscated or seized property must be returned to the victim, if it is no longer used for purposes of the criminal proceedings, section 111n I StPO. Section 111n StPO is therefore mandatory law. At the conclusion of the investigative proceedings, the decision about when to return such property is taken by the investigating prosecutor; thereafter, it is the responsibility of the court dealing with the main case, section 111o I StPO.

Depending on the documentation in the files, the decision about a return can be made without taking evidence. The decision can be made in any phase of the proceedings, even after the proceedings have been concluded with final effect. Such property must only be returned if the conditions for such return clearly apply. This means for example that the ownership must be clear. If it is not obvious that the conditions for the return of property are met, the seizure of such property shall persist.<sup>101</sup> The property may therefore only be returned to the known injured party (section 111n III StPO), and not to third parties moving into the legal position of the injured party (e.g. heirs, insurance company). If the injured party is unknown, neither the prosecution nor the court is obligated to investigate further. The injured party in this case is anyone who has actually lost possession of the property due to a crime, regardless of how exactly this came about.<sup>102</sup> Pursuant to section 111n III sent. 1 StPO, the property must not be returned if there are any conflicting third-party rights<sup>103</sup>.

The party concerned may appeal the decision of the prosecution and apply for a court decision, section 111o II StPO. A complaint may be filed against the court decision pursuant to section 304 I, II StPO.<sup>104</sup>

If property is damaged due to a culpable violation of duties to observe proper custodial care, the

<sup>101</sup> Köhler, M. (2018). Mayer-Goßner/ Schmitt Strafprozessordnung Kommentar, § 111n, Rn. 16, München: C.H. Beck.

<sup>102</sup> Huber (2018). BeckOK StPO, § 111n Rn. 6, beck-online.

<sup>103</sup> e.g. another person claims ownership.

<sup>104</sup> Köhler, M. (2018). Mayer-Goßner/ Schmitt Strafprozessordnung Kommentar, § 11o, Rn. 3, München: C.H. Beck.

affected party is entitled to damages arising from the public-law custodial relationship.<sup>105</sup> There is no statutory provision covering financial loss, in particular because the Criminal Compensation Act (*Strafverfolgungsentschädigungsgesetz*) does not apply for the injured party. There are no statistics in Germany which provide information on how long it takes on average until seized property is returned to victims.

The WEISSER RING demands that in practice, an effort should be made to return seized property as quickly as possible (since the procedure often takes too long) to the victim and to provide appropriate compensation to the victim for any financial losses suffered due to this seizure according to sec. 7 of the German Code for the Compensation of Criminal Prosecution (StrEG).<sup>106</sup> This Code is (until today) only applicable to the offender, but not to the victim. This leads to the fact that the victim can only claim compensation according to the law for compensation of witnesses and he/she therefore is in a disadvantage. The compensation paid is inferior.

<sup>105</sup> Gerhold (2018). BeckOK StPO, § 94 Rn. 27-30, beck-online.

<sup>106</sup> Strafrechtspolitische Forderungen des WEISSEN RINGS (2017), p. 12, Mainz.

## ARTICLE 16 - RIGHT TO DECISION ON COMPENSATION FROM THE OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS

*Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.*

German law offers different ways for a victim of crime to claim damages.

Sections 403 et seq of the German Code of Criminal Procedure (StPO) regulate **compensation claims in criminal proceedings**. This adhesive procedure was implemented into the German Code of Criminal Procedure before the Directive became effective. It was enacted in 1943.

Infringed persons and their heirs, even if they do not participate in the criminal proceedings are entitled to such compensation. A person who is indirectly affected by the crime (for example, the tenant who is not the owner in the case of arson) is entitled as well.<sup>107</sup>

However, the compensation claim in criminal proceedings against a juvenile offender (aged 14 to 18) is not to be applied. Nevertheless, compensation in these cases may be claimed before civil courts if parents have not fulfilled their parental responsibility.

The infringed person has to bring a property claim against the accused arising out of the criminal offence, such as compensation, and if damages are to be paid for an injury to body, health, freedom, or sexual self-determination, reasonable compensation in money may also be demanded for any damage that is not a material loss. This claim can be made parallel to the criminal proceedings before the same criminal court which makes it easier for the complainant and ensures that only one court deals with the same subject matter (only one trial is necessary).

The claim may be made by written application or orally to be recorded by the registry clerk. When the claim is brought forward in the criminal proceedings, it can also be made orally during the trial, but prior to the pleading of the prosecution. Representation by a lawyer is not necessary, but possible.<sup>108</sup>

<sup>107</sup> Meyer-Goßner/Schmitt (2018). Strafprozessordnung, § 403 Rn. 2. München: Verlag C.H.Beck.

<sup>108</sup> Meyer-Goßner/Schmitt (2018) Strafprozessordnung § 404 Rn. 8. München: Verlag C.H.Beck

The claim has to contain all information on the subject matter and the grounds for filing the claim; It has to be sufficiently precise regarding the asserted damages.<sup>109</sup>

The opportunity of making a compensation claim within the criminal proceedings unfortunately is rarely used in practice. A reason might be that criminal judges have to face the difficulty of dealing with civil law matters.

There is a difference in the federal states of Germany since jurisdiction is organized by the “Länder”. The law applicable on the above procedure is federal law, but the awareness of this procedure seems different in the 16 states. The state of North Rhine-Westphalia for instance published a brochure to inform victims of crime about the opportunity to claim compensation in criminal proceedings. Unfortunately there are no statistics, but it is very likely that victims here make use of the above-mentioned procedure more often since they are better informed about their rights.

In practice, however, it has been pointed out that victims obtain compensation decisions within a reasonable time and experiences are largely positive.<sup>110</sup>

The interviewees are very positive about the adhesive procedure in Germany: It was deemed appropriate and sufficient.<sup>111</sup>

It offered the victim a quick way to obtain financial compensation.<sup>112</sup>

One had to bear in mind, however, that the adhesive procedure harboured a cost risk, if an acquittal was obtained. Legal counsels were therefore wary to avail themselves of the adhesive procedure if the situation concerning evidence proved difficult, and wait first of all for a conviction before subsequently enforcing claims under civil law in civil proceedings.<sup>113</sup>

Furthermore, it is also possible to bring the **claim before a civil court** and separate both trials. In this case the claim must be subject to the ordinary jurisdiction and must not yet be pending before another court (e.g. a criminal court).

Section 46 et seqq. of the German Criminal Code (StGB) provide for a **restorative justice system** which also may include a restitution to be given by the offender to the victim or other steps to prevent the offender from causing future harm. This also makes compensation possible without bringing a claim before a court in the terms described above.

109 Meyer-Goßner/Schmitt (2018) Strafprozessordnung § 404 Rn. 3. München: Verlag C.H.Beck

110 WEISSER RING Stiftung. Forschungsbericht Belastung von Opfern in Ermittlungsverfahren\_2017\_07\_08. Heidelberg, Mannheim, Gießen, Germany.

111 Interview no. 4.

112 Interview no. 1.

113 Interview no. 2.

## ARTICLE 17 - RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE

*Member States shall ensure that authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed. The authorities of the Member State where the criminal offence was committed shall be in a position:*

*a) to take a statement immediately after the complaint is made to the competent authority; b) to have recourse to video conferencing and telephone conference calls for the purpose of hearing victims who are resident abroad.*

*Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.*

*Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.*

If the victim resides in Germany, but becomes the victim of a crime outside Germany, a complaint may be filed with a German authority. The provision purposely disregards the nationality of the complainant and thus also covers EU citizens and citizens of non-EU countries.

This provision was implemented as section 158 III StPO pursuant to Article 11 II of the Framework Decision of the EU Council of 15 March 2001 on the standing of victims in criminal proceedings.



Under this provision, the prosecution is obligated to transmit the criminal complaint filed by the victim to the competent prosecuting authority of a different EU Member State.

The obligation to transmit a criminal complaint, however, only applies if the offence in question was exclusively committed in another Member State, the complainant victim resides in Germany, the victim expressly demands that the complaint be forwarded, and the offence is not prosecuted in Germany.<sup>114</sup> This may be the case, for example, if German criminal law is not applicable<sup>115</sup>.

The prosecution may refrain from transmitting the complaint if it knows that the foreign authority is already aware of the substantial facts of the offence, or if the offence committed abroad is of minor significance (e.g. the pickpocketing of an item of low value) and the victim would have been easily able to file a complaint in the foreign country,<sup>116</sup> section 158 III sent. 2 no. 1 and no. 2 StPO.

Even if the above mentioned requirements are not met, the prosecution may forward other criminal complaints at its discretion in individual cases. The right to file criminal complaints in Germany for crimes committed abroad and the transmission of such complaints is in principle unrestricted, but in some cases subject to the discretion of the caseworker.

If a victim filing a complaint does not speak German, it must be provided with the help necessary to enable it to file the complaint in a language he/she understands.<sup>117</sup> Depending on the circumstances, this may require an interpreter; however, it is sufficient to offer the victim the assistance of a civil servant able to speak the language or of a person accompanying the victim, if this is sufficient to ensure reasonable communication.<sup>118</sup>

The victim is provided with interpretation and translation services in all phases of the proceedings.

As discussed above, problems only occur in few cases where rare languages or sign language interpreting is necessary. However, these are merely practical and certainly not systematic problems.

During the proceedings, foreign victims are treated the same as German victims. Therefore, through a corresponding application of section 160 StPO, witness testimony of foreign victims must be recorded immediately in order to investigate the facts of the case. Consequently, in criminal proceedings, the same provisions apply for German citizens and foreigners alike.

It is only language barriers that sometimes pose different challenges to be overcome. But this, too, is merely a practical problem.

114 Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 158 Rn. 28. München: Verlag C.H.Beck.

115 see sections 7-9 StGB.

116 BT-Drucks. 16/ 12098, p. 23.

117 Meyer-Goßner; Schmitt (2018). Strafprozessordnung, § 158 Rn. 31. München: Verlag C.H.Beck.

118 In this regard, the comments on Article 7 apply.

Research did not allow the assessment of how often the authorities are able to record the statements of foreign nationals without delay.

However, there is a tendency to consider the technical equipment insufficient when questioning victims who reside in another country from afar.

Practitioners also criticise this in the interview: The technical possibilities for video recordings are not adequate at many of the police authorities.<sup>119</sup>

Most of the interviewees of the online survey could not answer whether victims are subsequently able to file a complaint in another country if this is not possible in the country in which the criminal offence occurred. A few affirm this though (always or often).

The question whether foreign nationals tend to be treated differently than nationals in the proceedings is not answered conclusively. Likewise, no clear statement can therefore be made whether unequal treatment leads to an impact on victims being able to exercise their rights that are residents of other countries.

119 Interview no. 3.



## ARTICLE 18 - RIGHT TO PROTECTION

*Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.*

Victims in Germany are protected by a range of specific protection measures which take different threats into account.

Protection measures include measures adopted by the police to protect against threats (Gefahrenabwehr), such as police orders to vacate and/or avoid certain locations in cases of acute danger. The police may also approach and talk to the offender on an informal basis (Gefährderansprache). This may not lead to any immediate legal effect but demonstrates to the victim that it is being taken seriously and that a solution is being sought. In difficult and acute cases, the police may take a violent offender into police custody (Polizeigewahrsam) for a short period. Here only a short overview of measures can be given since Police Law is a matter of state legislation. The above mentioned protection measures apply to all German federal states.

Police protection measures are generally found to be effective in acute threat situations. However, compliance with orders to vacate/avoid certain locations and protective orders is often not reviewed and violations are not effectively punished.<sup>120</sup>

As police law falls under the legislative jurisdiction of the German states, it is not possible to name universally applicable sources. However, in terms of the content, these powers are identical throughout Germany.

It is also possible to apply for (civil law) protection orders under the Protection against Violence Act (Gewaltschutzgesetz). These include the prohibition of contact with or approaching the victim

<sup>120</sup> Zoom – Gesellschaft für prospektive Entwicklungen e.V. (2016). Bedarfe und Rechte von Opfern im Strafverfahren Informationen und Empfehlungen für Polizei, Justiz und Opferunterstützungseinrichtungen, Befunde einer Studie zu Erfahrungen von Opfern häuslicher Gewalt im Strafverfahren vor dem Hintergrund der deutschen Umsetzung der EU-Opferschutzrichtlinie. Göttingen Münster.

and/or surrender of the home.

Stalking and threats cases are problematic. Women threatened by domestic violence report that they sometimes do not receive sufficient protection in cases of stalking and threats. In these cases, if the offender has not committed acute physical violence, police sometimes invokes lack of legal authority.<sup>121</sup> There have reportedly also been cases in which the police minimised the importance of the offender's behaviour, as the victim was only contacted but there was no physical violence.<sup>122</sup>

In several German states, the offender may be prevented from contacting the victim while in detention. Contact by mail and phone can be prohibited. If a leave of detention is granted, the offender may be ordered to refrain from approaching or contacting the victim.

Cases in which the offender is entitled to be in contact with his/her children are very problematic. An access right can be misused in order to seek contact with the victim (for example the mother/father, in cases of domestic violence).<sup>123</sup> In these cases, the youth welfare departments often provide help. Where parents are unable to maintain contact without the conflict flaring up again, they can offer supervised access to the children. This is regulated by the family court, section 1684 para. 4 sent. 3 and 4 BGB. In Germany, this mechanism is frequently used in practice.<sup>124</sup>

In criminal proceedings, section 68 StPO allows for the witness to limit the information he/she provides during the main trial about him/herself (such as location of residence), if there is a threat to his/her legally protected interests (para. 2) or even his/her life and limb (para. 3). This provision also applies for victims. A witness/victim may give another address.

Section 68a I StPO also stipulates that questions injurious to the honour of the witness (and therefore also the victim) or which concern his personal life must only be asked if they are absolutely required. Furthermore, section 68a II StPO restricts in particular questions relating to the relationship with the accused or the victim to necessary matters.

Sec. 176 and 177 GVG allow the presiding judge to prevent disturbances and to maintain law and order within the trial. This may also include the protection of victims whenever there is a risk of intimidation or retaliation. To achieve this he can exclude persons disturbing order from trial.

German law does provide options to protect the data of the victims from others, in particular from the offender. However, the WEISSER RING believes that this does not provide sufficient protection for victims. Since 1998, the organisation has, for example demanded the introduction of a data protection book (Datenschutzheft) for victim data, access to which should require

<sup>121</sup> Zoom – compare footnote no. 111.

<sup>122</sup> Zoom – compare footnote no. 111.

<sup>123</sup> Zoom – compare footnote no. 111.

<sup>124</sup> Interview no. 5.

overriding interests. In addition, victims should in general always be enabled to provide a different service address, which is not only subject to the special conditions of section 68 StPO.<sup>125</sup>

Overall, the survey reveals that victims and their relatives are treated with respect and dignity by the competent authorities during questioning.

According to the online survey, however, victims and their family members in practice only sometimes or seldom receive sufficient protection from intimidation and retaliation. In addition, those concerned only sometimes or seldom receive protection from emotional or psychological harm.

The result of the interview with a former police officer and a legal counsel for victims reveals another picture of the situation: Generally, protective measures were adapted to the respective victim and an individual risk evaluation was carried out.<sup>126</sup>

Sometimes, however, protective measures, as experienced by the police, failed due to the resistance of the victim: For example, victims sometimes refused to be included in the witness protection programme.<sup>127</sup>

One victim's lawyer, when representing victims of sex offenders who are not in custody, states that he always sent a fax immediately to the relevant police authorities drawing attention to a possible acute threat situation. He was not aware of problems in this respect, at least if the threat situation had been reported to the police accordingly.<sup>128</sup>

To summarise the implementation of Article 18 of the Directive, it can be said that the legal situation in Germany puts into effect the right to protection theoretically. Nevertheless, the protection, e.g. within the meaning of the demands of the WEISSER RING could be expanded.

Moreover, the opinions here about the practical enforceability differ quite significantly: For instance, some of those surveyed state that victims are seldom sufficiently protected, while others assess the situation quite differently based on their own experience in practice.

125 Strafrechtspolitische Forderungen des WEISSEN RINGS (2017), p. 7, Mainz.

126 Interview no. 3, no. 5.

127 Interview no. 3.

128 Interview no. 5.

## ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER

*(1) Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.*

*(2) Member States shall ensure that new court premises have separate waiting areas for victims.*

Witness protection rooms or at least separate rooms are implemented in justice and police buildings throughout Germany in all states. This has been unanimously confirmed by the interviewees.<sup>129</sup>

Almost all regional court districts in Germany have a **witness support centre** with trained and qualified personnel. This, too, has been unanimously confirmed by the interviewees.

Many German courts provide important information for witnesses on their homepage or refer (via the homepage) to witness support provided by qualified employees of the justice social service (Sozialdienst der Justiz).<sup>130</sup> It is the task of witness support centres to reduce the stress on witnesses which may arise during court proceedings. For this purpose, witness supporters or victim helpers are generally available as points of contact. They help witnesses in connection with the main trial and will in particular answer general questions relating to the structure of the proceedings in understandable language.

This service is also provided by the WEISSER RING. All witnesses are in general informed about the availability of witness support when they are summoned to their court date.

A meeting of offenders and victims should be prevented in police stations as well. This is done by **scheduling appointments** appropriately. This works well in practice. To ensure this, the

129 Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU, 13. [https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2) (19.07.2018); Interviews no. 1, no. 2, no. 5.

130 <https://ordentliche-gerichtsbarkeit.hessen.de/ordentliche-gerichte/olg-frankfurt-m/zeugenbetreuung> (16.07.2018).

WEISSER RING offers to provide someone to accompany the victim during the proceedings, in order to provide emotional support to the victim. In addition, psychological and social support (Psychoziale Prozessbegleitung) is provided to victims throughout Germany. This is a special, non-legal form of support provided during criminal proceedings, which is available in particular to especially vulnerable victims. Victims are supported before, during and after the trial.

The counsellors are neutral with regard to the criminal proceedings and provide information to the victims; they are not allowed to give support.

All states are asked to take the requirements of the Victims' Directive into account in future construction projects or should ensure that victim protection rooms are included in the qualitative requirements description, insofar as the circumstances of the construction allow.

So-called “**sample room requirement programmes**” (Musterraumbedarfsprogramme) should contribute to this by stipulating an effective separation of victim witnesses and suspects to avoid any encounters. This is considered a very important measure in order to prevent suspects from psychologically or physically affecting threatened persons and witnesses.<sup>131</sup>

This positive picture is confirmed by the online survey for the most part. There are **separate waiting areas** for victims and offenders both in court buildings as well as at the police authorities. When questioned about separate entrances, most of the interviewees were not able to answer. One interview partner, however, sees room for improvement, since separate entrances in smaller courts are not present and not possible for security reasons.<sup>132</sup>

The staggered summoning to the questionings functions well in practice both at the courts as well as at police authorities according to the survey and the interviews.<sup>133</sup> The interviewees also state that there are witness information centres nationwide at the courts and that reference was made to such centres in the summons. These centres made sure that victims in court were well taken care of and, e.g. drew their attention to the separate witness rooms.<sup>134</sup>

Despite this fact, it was generally inevitable, due to the obligations of the witness – at least in the case of grownup witnesses – that contact took place in the court room.<sup>135</sup>

<sup>131</sup> Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU, 13. [https://www.bmjust.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjust.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2) (19.07.2018).

<sup>132</sup> Interview no. 5, no. 1.

<sup>133</sup> Interview no. 5, no. 6.

<sup>134</sup> Interview no. 1, no. 2, no. 5.

<sup>135</sup> Interview no. 3.

## ARTICLE 20 – RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS

*Member States shall ensure that during criminal investigations: a) interviews of victims are conducted without unjustified delay; b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; c) victims may be accompanied by their legal representative and a person of their choice; d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.*

It is important that the victim is questioned as early as possible during the investigation, in order to enable the victim to talk about the crime and to reassure the victim that he/she is being taken seriously. German law does not stipulate any requirement for the victim to be questioned without undue delay. However, a requirement to carry out questioning as quickly as possible may follow from the prosecution's duty to investigate (Ermittlungsverpflichtung). The prosecution is obligated to investigate the facts and circumstances of the case, and an early interview may be required to obtain evidence.

The Policies for Criminal and Administrative Fine Proceedings (Richtlinien für das Strafverfahren und das Bußgeldverfahren – RiStBV) also include provisions and procedures relating to how to go about interviewing victim witnesses. While this is an administrative provision which applies only internally within public authorities, it must be observed whenever a victim is questioned.

According to section 19a para. 1 RiStBV, where it is apparent that the interview of a victim involves significant psychological stress, the victim should be treated with special sensitivity and consideration. In this context, sections 68a, 68b StPO are of particular importance as they protect a victim's honour and provide for the option of a victim's counsel. This is intended to avoid a secondary victimisation and the infliction of further harm through the criminal proceedings.

In addition, section 19a para. 2 RiStBV ensures that a questioning of the victim by the accused or his defence counsel does not put any more stress on the victim than is required to establish the truth. This is to generally give sufficient consideration to the rights of the victim as well as the

offender. Here, too, a secondary victimisation through targeted questioning (e.g. with the aim of making the victim partly responsible for the crime) is to be prevented.

Interviews must furthermore only be carried out to the extent that it is necessary. No. 19a para. 3 RiStBV requires that repeated interviews must be generally avoided. A study of the WEISSER RING foundation, however, has shown that a total of 25% of victims were questioned more than once during the investigation, while 11 of 251 victims had to undergo a third and fourth interview.<sup>136</sup> Nevertheless, the study indicated that the repeated interviews were necessary in 80% of the cases.

An interviewee from the legal field confirms in this context that unnecessary interviews did not take place, but pointed out that this partially meant that many questionings were necessary: For example, in the case of sexual abuse of minors, 4 (necessary) interviews were realistic. First of all, the victim was questioned at the police, then the video questioning by the judge, frequently followed by a statement which was necessary in order to draw up an assessment of the victim's competency to testify, and sometimes the child also had to be questioned once again in the main proceedings, if there were still open questions.<sup>137</sup>

German law provides for additional victim protection by **allowing** for video interviews during the investigation (sections 58a, 168e StPO), so that the witness may be questioned at a different location if an interview in the presence of the accused would be severely detrimental to the welfare of the witness. This facultative provision applies to all witnesses (regardless of age).

Also the **recording** of audio-visual enquiries in investigation proceedings is a possible option (sec. 58a StPO). Only the examination **shall**, after evaluation of the relevant circumstances, be recorded and conducted as a judicial examination if the interests meriting protection of persons of less than 18 years of age as well as of persons who as children or juveniles have been aggrieved as a result e.g. of criminal offences against sexual self-determination or against life can thus be better safeguarded or there is a concern that it will not be possible to examine the witness during the main hearing and the recording is required in order to establish the truth. This is an advice. There is no clear obligation and therefore audio-visual enquiries are seldom recorded.

The interview during the investigation should ideally be carried out immediately by a judge, so that no further interviews are required later on, section 58a StPO. An investigation by a judge can be done in all cases, but it should be done in cases involving young people victims of crimes (section 58a I sentence 2 StPO). So it is made possible also for adults, but more frequently it is carried out in cases involving young people (for more information on child victims see below Art. 24).

<sup>136</sup> WEISSE RING Stiftung. Forschungsbericht Belastung von Opfern in Ermittlungsverfahren\_2017\_07\_08. Heidelberg, Mannheim, Gießen, Germany.

<sup>137</sup> Interview no. 5.

The WEISSER RING demands that judges receive training in this area, as this is often not done in practice. Sections 58a and 255a StPO should be revised to advice for video interviews in more cases (up to now this is only a facultative provision concerning witnesses in general and an advice for cases involving child-witnesses); it should not only be carried out exclusively in cases of juvenile victims.<sup>138</sup>

Section 406f para. 1, para. 2 StPO allows the victim to be represented by a lawyer – a victim's counsel (Verletztenbeistand) and to be accompanied by a person of trust. These rights, too, aim to avoid a secondary victimisation of the victim through the investigation and the criminal proceedings. It is especially the accompaniment by a trusted person which provides psychological support to victims.

The survey revealed that victims are often questioned in practice without undue delay. This applies to both violent crimes as well as non-violent offences.

Insofar as delays do sometimes occur, the reasons for such are due to overwork at the police authorities where other more serious crimes are given priority, or due to delays in the cooperation with authorities.

The number of interviews is generally kept to a minimum. In addition, it is mostly made possible for victims to have a person of their choice accompany them. This is not the case if the accompanying person is also to be heard as a witness.<sup>139</sup>

Finally, medical examinations are also generally restricted to an absolute minimum.

<sup>138</sup> Strafrechtspolitische Forderungen des WEISSEN RINGS (2017), p. 10, Mainz.

<sup>139</sup> Interview no. 5



## ARTICLE 21 - RIGHT TO PROTECTION OF PRIVACY

*Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy of the victim. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.*

German law ensures protection of the victim's privacy through various measures.

First, a witness may be allowed to give his/her place of business or employment or another service address instead of his/her residential address, if there is reason to believe that giving the residential address would put protected interests of the witness or another person at risk, or if there is reason to believe that witnesses or other persons would be subjected to inappropriate influence (section 68 para. 2 StPO).

If there is reason to believe that revealing the identity of the witness or his/her place of residence or whereabouts would give rise to a threat for life, limb or freedom of the witness or another person, the witness may be allowed to withhold information about his/her person or to give information only in relation to a former identity, section 68 para. 3 StPO.

The witness must be notified of these options. The witness should also be assisted with regard to the naming of a service address.

The prosecution safely guards the documents which ensure that the identity or place of residence of the witness can be established. These documents must only be included in the file if there is no longer a threat.

Measures for witness protection also apply for the conclusion of the witness interview (see above explanations on Article 18 of the Directive).

Audio and TV recordings for broadcast as well as audio and video recordings for public presentation or for publication of the content are not allowed. The court may allow audio transmission to a working room for persons reporting for the press, radio, TV or other media. The audio transmission

may be partly excluded in order to protect the legitimate interests of the participants or third parties, or in order to ensure the efficient conduct of the proceedings, section 169 para. 1 GVG.

The court may allow audio recordings of the hearing, including the pronouncement of judgements and decisions in exceptional cases, for scientific and historic reasons, if the trial has extraordinary historic importance for the Federal Republic of Germany. The recording may be partly excluded in order to protect the legitimate interests of the participants or third parties or in order to ensure the efficient conduct of the proceedings, section 169 para. 2 GVG.

The unauthorised use of recordings is subject to claims for damages as well as injunctive relief claims under civil law; the victim may also be entitled to these claims<sup>140</sup>. Recordings may also constitute a criminal offence, as section 33 German Artistic Copyright Act (Kunsturhebergesetz) may apply. This offence is a private prosecution offence (Privatklage), which means that the prosecution will generally not file for a public indictment, and that the victim itself has to file criminal charges. This appears to be ineffective in practice.

The German Press Council (Deutscher Presserat) is the self-regulatory supervisory body for the media. The Deutsche Presserat was founded in 1956 by journalist and press publishers.

The Deutsche Presserat is supported by the Deutscher Journalisten Verband (DJV), the Deutscher Journalistinnen- und Journalisten-Union (dju), the Bundesverband Deutscher Zeitungsverleger (BDZV) and the Verband Deutscher Zeitschriftenverleger (VDZ). It is not subject to government influence and thus guarantees independent supervision. This applies to cases discussed in the media.

The victim's right to privacy is therefore in general comprehensively protected under German law. However, particular care must be taken that existing exceptions are not applied too often.

Research shows that professionals' opinions regarding the protection of victims' privacy is inconclusive. Many consider that the competent authorities often take suitable measures, but other consider this is not always the case.

Half of those surveyed are of the opinion that the competent authorities often take suitable measures to protect the private sphere of the victims. Almost half, however, believes that this is only sometimes or seldom the case. According to the survey, it is also not possible to clearly determine whether there are differing degrees of protection of the private sphere depending on the different crimes: An equal number of interviewees are of the opinion that this was the case or that no difference was made respectively. Just as many did not answer the question here.

<sup>140</sup> examples: sections 823, 1004 BGB (a civil claim applicable here).



Nevertheless, the majority believes that the measures taken tended to be efficient.

The statements concerning the question on whether the identification of child victims is sufficiently prevented or whether the media has undertaken a voluntary commitment to protect the private sphere of victims are unfortunately not conclusive.

## ARTICLE 22 - INDIVIDUAL ASSESSMENT OF VICTIMS TO IDENTIFY SPECIFIC PROTECTION NEEDS

*Member States shall ensure that victims receive a timely and individual assessment to identify specific protection needs due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.*

With regard to the performance of investigative measures in relation to the victim of a crime, section 48 para. 3 StPO (“victims with special protection needs”) obligates the investigative authorities to assess the victims’ protection needs on an individual basis upon its first contact with the law enforcement authorities. This section was introduced into German Law after the Directive entered into force. As stated, there is no clear definition of victims with special protection needs.

The aim of this assessment is to apply special protection measures to victims as early as possible. In this context, the personal circumstances of the victim as well as the type and circumstances of the crime must be taken into account. This section applies to all interrogations and examinations and is therefore formulated in an open manner.

The following factors must be examined in particular:

1. whether an imminent risk of serious detriment to the victim’s welfare requires a separate and audio-visual interview,
2. whether overriding legitimate interests of the victim require the exclusion of the public, and
3. to which extent non-essential questions relating to the personal life of the victim may be dispensed with.

The protective measures no. 1–3 are considered the rule and not the exception. Further measures can and should be taken.

These protective measures in particular aim at avoiding multiple interviews, preventing a direct meeting of victim and accused, and avoiding unnecessary questions relating to the victim’s personal life.

The law does not define “specific need for protection” (besondere Schutzbedürftigkeit). Nevertheless, due to this obligation to examine the needs of the witness, investigative authorities are tasked to take measures to prevent a secondary victimisation already at an early stage, and to take specific victim protection measures during the further proceedings in accordance with the explanations for the other articles.

Still it would be desirable to make this provision more concrete and provide a specific methodology on how to assess victim’s needs.

## ARTICLE 23 – RIGHT TO PROTECTION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS

*(1) Member States shall ensure that victims with specific protection needs may benefit from the measures. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.*

*(2) During criminal investigations, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment, may benefit from the following measures: a) interviews with the victim being carried out in premises designed or adapted for that purpose; b) interviews with the victim being carried out by or through professionals trained for that purpose; c) all interviews with the victim being conducted by the same persons; d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships being conducted by a person of the same sex as the victim, if the victim so wishes.*

*(3) During court proceedings, victims with special protection needs shall also have the following measures available: a) measures to avoid visual contact between victims and offenders; b) measures to ensure that the victim may be heard in the courtroom without being present; c) measures to avoid unnecessary questioning concerning the victim’s private life not related to the criminal offence; d) measures allowing a hearing to take place without the presence of the public.*

There is no general definition of the term “victims with special protection needs” under German Law (see section above). Nevertheless, Sec. 48 para. 3 StPO about the duties of witnesses states: is the witness also victim of the offence, enquiries and necessary examinations must be carried out taking the victim’s particular vulnerability and protection needs into account, e.g. by excluding the public from trial. This section was established according to the Victims’ Directive in 2015 to implement Articles 18 and 21 of the Directive.

It does not provide for a specific definition.

Furthermore, this section does not provide any specific rights to victims with special protection needs. The rights of victims listed below already existed under German Law before the Directive entered into force. This is why the provision of sec. 48 para. 3 StPO only has declaratory character.

In Germany, almost all courts now have special rooms for witnesses. They are also mandated for newly constructed buildings (see above).

In addition, it is common practice for the police to question victim and offender separately, to avoid any contact between the two at the police station and thus to prevent a repeat victimisation. This is established practice, though not mandated by law. It is rather the result of the victim protection training for the relevant professions.

It is also common practice to have the same person carry out the interview, and in cases of sexual violence, the victim may request that the questioner be an officer of the same gender.

As described above, the interview is carried out taking into account the special victim’s rights.

The Policies for Criminal and Administrative Fine Proceedings (Richtlinien für das Strafverfahren und das Bußgeldverfahren – RiStBV) also include provisions and procedures relating to how to go about interviewing victim witnesses. While this is an administrative provision which applies only internally within public authorities, it must be observed whenever a victim is questioned.

According to no. 19a para. 1 RiStBV, where it is apparent that the interview of a victim involves significant psychological stress, the victim should be treated with special sensitivity and consideration. In this context, sections 68a, 68b StPO are of particular importance as they protect a victim’s honour and provide for the option of a victim’s counsel. This is intended to avoid a secondary victimisation of the victim and the infliction of further harm through the criminal proceedings.

In addition, no. 19a para. 2 RiStBV ensures that a questioning of the victim by the accused or his defence counsel does not put any more stress on the victim than is required to establish the truth. This is to generally give sufficient consideration to the rights of the victim as well as the

offender. Here, too, a secondary victimisation through targeted questioning (e.g. with the aim of making the victim partly responsible for the crime) is to be prevented.

Interviews must furthermore only be carried out to the extent that it is necessary. No. 19a para. 3 RiStBV requires that repeated interviews must be generally avoided.

In addition, the public may be excluded under special circumstances pursuant to section 171b GVG: The public may be excluded to the extent that circumstances relating to the personal life of a participant in the proceedings, a witness or the victim of a crime are discussed, whose public discussion would infringe upon legitimate interests. Only if public interests override these interests is the public not to be excluded.

In this context, reference must be made to section 68a StPO: A witness may be allowed to give his place of business or employment or another service address instead of his residential address, if there is reason to believe that giving the residential address would put protected interests of the witness or another person at risk, or if there is reason to believe that witnesses or other persons would be subjected to inappropriate influence, section 68 para. 2 StPO.

If there is reason to believe that revealing the identity of the witness or his place of residence or whereabouts would give rise to a threat for life, limb or freedom of the witness or another person, the witness may be allowed to withhold information about his person or to give information only in relation to a former identity, section 68 para. 3 StPO.

According to the online survey, questionings are mostly carried out by specially trained persons; in most cases, the same person carries out the questioning if several interviews are necessary. In addition, victims of sexual offences are often able to be questioned by a person of the same gender.

## ARTICLE 24 - RIGHT TO PROTECTION OF CHILD VICTIMS DURING CRIMINAL PROCEEDINGS

*Member States shall ensure that where the victim is a child: a) in criminal investigations, all interviews with the child victim may be audio visually recorded; b) in criminal investigations, and proceedings, competent authorities appoint a special representative for child victims where the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family; c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.*

No. 19 para. 1 RiStBV seeks to protect minors by stipulating that multiple interviews of child witnesses before the trial should be avoided. This serves to protect the minor from the psychological stress possibly associated with an interview.

German law allows video recordings of all interviews during the investigation and the use of such recordings as evidence during the trial (sections 58a para. 1 sent. 2 no. 1, 255a para. 2 StPO). This is a discretionary provision, i.e. video recordings may be made but are not mandatory. This is in line with the requirements of the Directive. However, in particular for crimes involving the sexual abuse of children, interviews are regularly recorded in practice and the provision recommends recording. No. 19 para. 2 RiStBV also requires this. It also emphasises that the child witness should be allowed to be accompanied by a person of trust.

According to sections 397a para. 1, 406g para. 3 StPO, the victim must be provided a counsel for private accessory prosecution (Nebenklageanwalt) and/or counsellor providing psychological and social support. The costs are covered by the state. Section 397a StPO enumerates crimes which require that the victim is assigned this counsel and/or counsellor. It is a mandatory provision for crimes such as sexual coercion, sexual abuse of helpless persons, child abduction or crimes causing grievous bodily harm. Crimes against victims under the age of 18, or victims who are

unable to fully protect their own interests, are also especially emphasised by this provision, such as charges of sexual abuse of children, sexual coercion, or rape. In the case of sexual abuse and mistreatment of child victims, this also applies beyond the age of 18.

Section 68b para. 2 StPO also provides for the assignment of a witness counsel. This provision is not specifically tailored to the requirements of children, but does apply to them.

According to sections 1900, 1916 BGB, a child may be assigned a special guardian (Ergänzungspfleger) in cases where, for example one parent is an accused in the criminal proceedings. This is because the law precludes the parent from representing the child, as the parent will be unable to exercise the rights and interests of the child, for example, with regard to the right to refuse to give evidence (§ 52 para. 2 sent. 2 StPO) adequately and without conflict of interest. Pursuant to no. 19 para. 3 RiStBV, the prosecution is tasked with applying for a corresponding decision of the family court as quickly as possible.

In addition, German law allows the exclusion of the public from trials where the indictment includes sexual crimes or serious violent crimes against victims under 18 years of age, section 171b VVG. This serves to take the special vulnerability of children and young people into account. If the witness files a corresponding motion, the provision is even mandatory. On the other hand, the public is not allowed to be excluded if a witness objects.

The German law thus takes the special needs of child victims into account. However, according to Graf-van Kersteren, these statutory protective mechanisms do not ensure sufficient protection of child victim witnesses in practice: the waiting areas of the courts are not always in line with the requirements of children's protection needs or do not offer protection against stress or threats; in court proceedings children are often questioned in ways, with child witnesses frequently feeling pressured.<sup>141</sup> In order to solve these practical problems, the expert suggests providing child witnesses with better access to information about the proceedings which is suitable for children. In addition, child hearings should in general be designed to be more child-friendly, applying the UN Convention on the Rights of the Child, and counsels should be assigned on a regular basis in order to represent the perspective and interests of children and juveniles.<sup>142</sup>

The participants in the online survey take the view that recorded audio-visual questionings of child victims are only sometimes or seldom carried out. However, this contradicts the result of interview no. 5 in which the interviewee (a victim's legal counsel) states that this took place frequently. In this respect, the situation seems to be different depending on the district.<sup>143</sup> Interviewee no. 3 is of the same opinion: Video questionings of child victims or adolescents were

<sup>141</sup> Graf-van Kersteren, A. (2018). Kindgerechte Justiz, NDV Nr. 4/2018, p. 170 ff, p. 172/174. BERLIN: Verlag des Deutschen Vereins für öffentliche und private Fürsorge e.V.

<sup>142</sup> Graf-van Kersteren, A. (2018). Kindgerechte Justiz, NDV Nr. 4/2018, p. 170 ff, p. 175 f. BERLIN: Verlag des Deutschen Vereins für öffentliche und private Fürsorge e.V.

<sup>143</sup> Interview no. 5

standard.<sup>144</sup> There was, however, a need for improvement at some of the police departments concerning the room where the video questionings take place.<sup>145</sup>

Children are always or often cared for by a special guardian, if the parents are not allowed to represent the child. Interview partner no. 5 also sees this the same way and adds, however, that this is the case because it is to be avoided in the procedure that the relevant testimony was unusable in the event of illegal representation.<sup>146</sup>

144 Interview no. 3.  
145 Interview no. 5.  
146 Interview no. 5.

## ARTICLE 25 - TRAINING OF PRACTITIONERS

*Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to enable them to deal with victims in an impartial, respectful and professional manner.*

*Member States shall request that those responsible for the training of lawyers, judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase awareness of the needs of victims.*

*Member States shall encourage initiatives enabling those providing victim support and restorative justice to receive adequate training and observe quality standards to ensure such services are provided in an impartial, respectful, and non-discriminatory manner.*

*Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.*

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There are government-run continuing education programs established under the Third Victims' Rights Reform Act. One example is the State Office for Training, Continuing Education and Personnel Matters of North Rhine-Westphalia's Ministry of the Interior, one of the largest European education providers in this context.<sup>147</sup>

Particularly for **police officers**, sensitivity regarding victim protection is of special importance, as they are usually the first ones to contact with the victim soon after the crime.

The topic of victim protection is therefore a crucial part of police training in the German states, which have legislative jurisdiction in this area.

147 <https://lafp.polizei.nrw/artikel/das-landesamt-fuer-ausbildung-fortbildung-und-personalangelegenheiten> (19.07.2018).



In Baden-Württemberg, the training for the intermediate police service already includes several hours of training on the appropriate psychological and legal handling of victims and witnesses.<sup>148</sup> This is often done in cooperation with WEISSER RING.

Police training is not limited to victim protection in general. In-depth modules deal with the specific victim groups. Baden-Württemberg, for example has modules on the topic “violence in social networks/stalking”, “violence against women” and “domestic violence”,<sup>149</sup> which provide additional knowledge and train practical application during operational training.

The Institute for Continuing Education of the Police College of Baden-Württemberg also offers seminars on matters of victim protection. These are for example “The professional handling of victims – law and victimology” or concern general areas like sexual offences or interview techniques.<sup>150</sup>

The relevant victim protection topics are examined more deeply in bachelor programmes at the police academies and police colleges at the state and federal level for officers in the higher intermediate police service. The subjects include criminology, criminalistics, ethics, victim protection by the police, questioning techniques, and the topic of victimisation.<sup>151</sup>

**Judges and prosecutors** also play a crucial role in victim protection. In this context, their training has a focus on training communicative skills, for example in order to make the interview of a victim as unbiased, respectful and empathetic as possible and to sufficiently address the victim’s needs.<sup>152</sup> In addition, these groups of professionals are also trained particularly with regard to joint actions and victim-offender mediation in order to familiarise them with the options for the active participation of the victim in the criminal proceedings. Training relating to the psychology of interviewers and how to deal with children in a criminal trial is also very important in this context. One example in this area is the work of the German Judicial Academy.<sup>153</sup>

The WEISSER RING demands that judges should receive additional training in regard to video interviews, as these are too often neglected in practice.<sup>154</sup>

148 Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU, S. 17. [https://www.bmju.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmju.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2) (19.07.2018).

149 Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU, S. 17. [https://www.bmju.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmju.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2) (19.07.2018).

150 <https://www.hfpol-bw.de/index.php/institutsbereich-kriminalitaetsbekaempfung> (19.07.2018).

151 Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU, S. 16. [https://www.bmju.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmju.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2) (19.07.2018).

152 Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU, p. 18. [https://www.bmju.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmju.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2) (19.07.2018).

153 [https://jm.rlp.de/fileadmin/mjv/Service/Fortbildung/Tagungen\\_2018\\_-\\_V\\_4.pdf](https://jm.rlp.de/fileadmin/mjv/Service/Fortbildung/Tagungen_2018_-_V_4.pdf) (19.07.2018).

154 Strafrechtspolitische Forderungen des WEISSEN RINGS (2017), p. 10, Mainz.

The education of **lawyers** at the universities and during the legal traineeship does not however focus sufficiently on victim protection. While the course programs offer criminology as part of criminal law,<sup>155</sup> and interview psychology may sometimes be chosen as key qualifications during the legal traineeship, all of these modules are only voluntary parts of the training as a lawyer and not mandatory. A few procedural principles relating to victim protection play a role in the preparation for the second state law examination, but not in practice.

Since all legal trainees undergo practical training as prosecutors, it would make sense to provide some mandatory training on how to deal with victims in this context. In order to fill such gaps, the Academy of the WEISSER RING<sup>156</sup> organises courses on victim protection, as well as the continuing education courses dealing in particular with victims of sexual violence, which are provided in this area by the counselling centres for sexually abused girls and young women such as VIOLETTA (Hanover).<sup>157</sup>

According to section 23 Federal Budget Code (BHO), the federal government can promote victim support initiatives and projects if these cannot be funded at all or not sufficiently without this financial aid. In 2011 and 2012, the federal government, for example supported continuing education programme victim support officers offered by the Alice Salomon University in Berlin.<sup>158</sup>

The survey indicates that practitioners tend to consider victim-related training courses unsatisfactory that are offered to the police, prosecution, judges and lawyers. However, most of the persons surveyed are of a different opinion concerning the members and staff of victim support organisations: In this context, two-thirds of the interviewees believe that the staff of these organisations receives sufficient training.

The interview partners are not able to say too much about existing training offers: For example, nothing is known about training offers in the judicial field<sup>159</sup> and for lawyers, there is only a very limited offer.<sup>160</sup>

According to interview partner no. 2, however, those concerned in the judicial area seem better trained.

Only within the scope of a seminar for specialist lawyers for criminal law was there an advanced training course on the topic “Psychological Basics in the Questioning of Witnesses”.<sup>161</sup> But these

155 Vgl. als Beispiel: <https://www.jura.uni-konstanz.de/studium/staatsexamensstudiengang/schwerpunktstudium/schwerpunkt-bereiche/> (19.07.2018), Schwerpunktbereich 5.

156 <https://weisser-ring.de/weisser-ring/weisser-ring-akademie> (19.07.2018).

157 <https://www.violetta-hannover.de/fachkraefte/fortbildungstermine/opferschutz-der-praxis> (19.07.2018).

158 Bundesministerium für Justiz und Verbraucherschutz. Bericht zur Umsetzung der Richtlinie 2012/29/EU, p. 18. [https://www.bmju.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht\\_BundLaender\\_AG.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmju.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2) (19.07.2018).

159 Interview no. 1, no. 2.

160 Interview no. 1, no. 3, no. 5.

161 Interview no. 1.

courses were more tailored to the role of the defence counsel, so that victims' rights tend to play a subordinate role here.<sup>162</sup>

Therefore, it must be concluded that the offer of appropriate training measures for involved professionals has to be substantially extended and improved. Even in the training courses on criminal law, the focus is still on the defence and / or the person of the offender. This should change in future.

The WEISSER RING is particularly committed in this respect. For 10 years now, the organisation has been offering training courses in this area. A seminar for lawyers is, for example held annually. Importance is given not only to addressing procedural and legal issues related to victims, but also to conducting psychological talks with traumatised victims.

<sup>162</sup> Interview no. 5.

## ARTICLE 26 - COOPERATION AND COORDINATION OF SERVICES

*Member States shall take appropriate action to facilitate cooperation between Member States to improve victims' access to the rights set in the Directive and such cooperation shall at least aim at: a) exchange of best practices; b) consultation in individual cases; c) assistance to European networks working on matters directly relevant to victims' rights.*

*Member States shall take appropriate action aimed at raising awareness of the rights set out in the directive, reducing the risk of victimisation, and minimizing the negative impact of crime and the risk of secondary and repeat victimisation, of intimidation and retaliation, in particular targeting groups at risk such as children, victims of gender-based violence and violence in close relationships.*

The collaboration on international level and the regular exchange between victim support organisations, including those outside of Germany, is important when it comes to strengthening the rights of victims.

This is an express aim of the WEISSER RING: to collect the knowledge and the experience gained from work with victims of crime, to expand on it and strengthen it across borders from the legal standpoint. This was also the motivation for forming the European Forum for Victim Services in as an umbrella organisation for the European victim support initiatives which was later renamed Victim Support Europe. The WEISSER RING has supported this idea from the beginning and is one of the founding members of VSE. Today, the network comprises 43 member organisations from 26 countries. Regular conferences, productive cooperation and the improved position of the victim in the criminal procedural law of the EU Member States are visible successes of the work of the network.<sup>163</sup>

One of these projects is VOCIARE, which is the subject of this research and which specifically works for high standards of victim protection across borders.

<sup>163</sup> <https://weisser-ring.de/weisser-ring/victim-support-europe> (19.07.2018).

Other projects in which WEISSER RING e.V. is a registered partner are for example a project with the European Parliament on How can the EU and Member States better help the victims of terrorism?, the project Countering THB Protecting Victims and Enhancing Financial Investigations with ERA and a workshop held with members of Victim Support Europe organized by WEISSER RING e.V. in February 2013.

Projects on European level are often funded by the Justice Programme of the European Union.

But apart from this cooperation on EU level WEISSER RING also maintains close links with the German Foundation for International Legal Cooperation (IRZ). Between 2016 and 2018 the project Enhancing the efficiency of the public prosecutor's offices of Bulgaria and Romania in the field of dealing with victims of crime and promoting their cooperation with local and foreign victim support organisations was successfully completed. Besides increasing the efficiency it also aimed at training the respectful treatment of victims of crime in these countries as well as strengthening cross-border cooperation. Seminars and meetings were held in Germany, Bulgaria and at the EU institutions and about 175 persons working in the field of victim protection were educated.

Furthermore, WEISSER RING e.V. as well as other German victim support organisations regularly participates in international meetings like the Victim Support Europe annual conference.

Aim of these meetings, workshops and conferences is exchanging good practices in the field of victim support, strengthening cooperation between organisations and thereby improving the situation of victims.

Due to its obligations under European Union Law Germany has implemented Directives which concern victim protection or victims' rights in general.

On EU level, one main step to assess victims' rights was the Stockholm programme which aimed at examining on how the situation of victims in Europe can be improved. The Framework Decision on the Standing of Victims in Criminal Proceedings was adopted on 15th March 2001. It was then followed by the Directive on Compensation to crime victims (Directive 2004/80/EC) on 29th April 2004 which had to be implemented into the member states' law by 1st January 2006. In 2002 another Framework Decision on Combating Terrorism was adopted.

But undoubtedly the most important EU legislative act was the Victims' Directive 2012/29/EU establishing minimum rights to all victims of crimes.

At international level the UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Resolution 40/34), the Declaration on the Protection from Enforced Disappearance (Resolution A/RES/47) and the UN Commission Resolution on Human

Rights (Resolution 2005/35) are essential acts which are also binding for Germany (the legal force depending on the decision making body).

At regional international level the Council of Europe's Conventions, Guidelines and Recommendations play an important role (like the European Convention on the Compensation of Victims of Crime from 1983 which was ratified by Germany, the Guidelines on the Protection of Victims of Terrorist Acts (2005) and the Recommendations on Assistance to Crime Victims (2006) and on Assistance to Victims and the Prevention of Victimisation (No R (87) 21)).

These given examples only provide a general overview on Germany's international efforts and obligations concerning victim support and the protection of victims' rights.

But also on regional level of the German Länder authorities collaborate with authorities from neighbouring states. There is for example a permanent task force cooperation between authorities of France, Luxemburg, Wallonie and the German Länder Rhineland-Palatinate and Saarland. This task force "inter-regio" arranges meetings for professionals in criminal law (like police officers) also dealing with victim support matters and for example creates brochures with all relevant information for cross-border victims.

Such cooperation plays an important role for victim support in every single cross-border case since fast and unbureaucratic help can be guaranteed through the existing networks. It works very well in Germany.

# GOOD PRACTICES

Throughout the development of this report, good practices have been identified regarding the practical implementation of the Victims' Directive in Germany. All of them seem transferable and possible to implement in other Member States.

It is particularly noteworthy that German courts put the **right of the victim to be heard** into practice very well. In this way, the position of the victim in criminal proceedings has changed noticeably, allowing it to play a more active part in the proceedings. The same rules apply for all parties. The victim is guaranteed the right to present the case from his/her own perspective without being influenced. In this regard, special needs of child-victims are also respected. Moreover, the victim has the right to present and take evidence. The **right to legal aid** is also guaranteed under German law, e.g. by providing financial aid. When there is a decision not to prosecute, victims are informed and – depending on the offence – may force criminal prosecution or may file a private prosecution.

The assistance offered by **victim support services** is consistently described as positive. The support of victims not only functions very well, but also applications or information relevant for the proceedings are always provided. In urgent cases, these organisations also provide financial aid to help bridge emergency situations unbureaucratically. Victims get access to victim support services easily also with the help of the competent authority which may act as a guide. Victim support services help in different ways, e.g. by providing psychological assistance, counselling, financial aid, training for professionals and helpers and accompanying the victim to police, court and authorities.

In general, victims receive a **written acknowledgement** of the formal complaint. When making the application they also receive all relevant **information** concerning their case as envisaged by the Directive.

Furthermore, the conciliation process referred to as **victim-offender mediation** functions very well in practice. It offers benefits both for the victim (who is able to include his/her own needs) as well as for the offender (who is able to show contrition and hope for a lighter sentence as the case may be).

In addition, the **adhesive procedure** has clearly proved itself in practice: It presents a simplified and thus quick means for the victim to be awarded claims for damages under civil law already in the criminal proceedings. This lessens the mental burden often associated with prolonged proceedings.

The interviewees often referred in particular to the witness **information centres** established at the courts. These support the victim in the proceedings and frequently, in cooperation with the police authorities, prevent an encounter of offenders and victims, and draw attention to the available witness rooms, thus relieving the burden of the victims in the court proceedings. Police and public prosecution help **avoiding contact** between victim and offender by scheduling appointments accordingly. The **protection** of victims is also ensured before and during criminal proceedings: police protection measures are regarded to be effective in acute threat situations and victims are always treated in a respectful manner. During criminal proceedings victims are treated with special sensitivity and consideration. Therefore, **repeated interviews are avoided** where these are not necessary. Furthermore, German Law provides for **audio-visual interviews** when being in the same room with the offender creates unbearable psychological stress for the victim. In addition, **recorded interviews** taken by a judge can be used in the main hearing in certain cases.

In sec. 48 para. 3 StPO German Law respects “**victims with special protection needs**”. Although there is no clear definition of the term the provision forces interviewers to assess the special needs and take these into account when interviewing victims.

Finally, it is worth mentioning that **cross-boarder cases** are dealt with excellently. The support of foreign nationals does not seem to be a problem since brochures are available in many different languages and translation and interpretation services are available. This also regards German nationals falling victims in other countries. In general, there is good cooperation and a lot of effort is made at **international level**. German authorities collaborate well with authorities from other (EU member-) states and especially victim support organisations regularly meet at EU and international level to exchange knowledge and good practices.

These good practices reveal that victims' rights are considered important within the German legal system.



# GAPS, CHALLENGES, AND RECOMMENDATIONS

Throughout the present research, some gaps and challenges regarding the practical implementation of the Victims' Directive in Germany have been identified.

First, with regard to the **term "victim"** and their rights the Directive provides a broader definition which also includes rights guaranteed to life companions. German Law only includes family members. It would be desirable to expand the term.

**Information** should be given to victims from the "first contact" and not "as soon as possible", as the German law provides. The relevant **Information** should not simply be passed on to victims without further comment, but the authorities should always take care to help if needed and refer victims on to victim support organisations. Only in this way it can be ensured that the information provided has also been understood, enabling the victims to effectively exercise their rights. This should be a matter of course, even if legal counsel is not called in to take over the informing subsequently. In this regard, communication needs of victims should also be better recognised (e.g. concerning blind victims, victims with hearing impairments or mental disorders or illiterate persons). In addition, sufficient information should be obtainable in **foreign languages** at the police authorities on location. In case the relevant information is not given a general board for **complaints** should be established.

The **application requirement** should be improved, both in respect to the written acknowledgement of a complaint as well as to providing information about the escape or release of the offender from detention. Effective victim protection demands a certain degree of automatism in this context. Victims are often overwhelmed in the special situation of filing a complaint and simply have other worries on their mind than the necessary application. But here, attention should also be paid to the will of the victim which may be contradictory. For instance, not every victim wishes to be informed about the release of the offender as the case may be.

Furthermore, the **recording of audio-visual questioning** of child victims by a judge should be carried out more often, if not made mandatory, for all intents and purposes. Moreover, **audio-visual questioning** should be used more often in trials also in other relevant cases. Providing the courts and police authorities with the corresponding technical equipment is obviously essential for this. In view of the understaffing of some courts, the number of judges should possibly be increased, to the extent that audio-visual interviews actually fail to take place due to insufficient staff.

Concerning **plea bargain**, a victim should have the right to participate, at least in cases of serious crimes of violence or sexual abuse. This, of course, must include the right to appeal against a decision. When **partial termination** of proceedings according to sec. 154 StPO (minor offences) is in question, this termination should only be possible with the consent of the victim.

Furthermore, WEISSER RING demands **legal aid** to be granted to the joint plaintiff in all cases and that this is not made dependant on financial need of the victim. **Seized property** should be released quickly and the victim should receive compensation for seized property on the same conditions as the offender.

As regards "**victims with special protection needs**" a clear definition or a proceeding for individual assessment in relevant cases should be elaborated in order to guarantee the same standards.

Finally, persons that are involved with victims by reason of their work do not always have access to the necessary **training** or further training opportunities for dealing with and enforcing victims' rights. This criticism concerns almost all professionals. It is important in this respect, for example to coach these persons in communication skills and psychological support of the victims, as well as offer seminars specifically on victims' rights to lawyers, and where applicable, a specialist lawyer's course in criminal law. This is where the offender obviously still plays a greater role than the victim.



# CONCLUSION

The present national report, completed within the context of project VOciare, aimed at assessing the practical implementation of the Victims' Directive in Germany, through a desk research complemented by the collection of surveys and the conduction of interviews with different groups of stakeholders working in the criminal justice system – police officers, prosecutors, lawyers and victim support officers. The present report analysed both the transposition of the Victims' Directive into national law as well as the practical implementation of each of the rights established in the same Directive, identifying good practices and shortcomings.

The research shows that the Directive has been implemented well in Germany from a legislative standpoint. The Third Victims' Rights Reform Act implemented provisions of the Victims' Directive which had not already been provided by German Law. Nevertheless, there is a suggestion for improvement regarding information which should be given to victims from the "first contact" and not "as soon as possible", as German law provides.

In practice, however, the situation sometimes presents itself differently. Interviews provide views that differ from one another to a certain degree. Often, the differences are dependent on the commitment of the individual helpers, but probably also on the individual regional court districts and federal states in Germany. In this respect, it would be desirable to establish a uniform situation.

As to good practices in Germany the work of victim support organisations has to be emphasized. Research as well as the survey and interviews show that there is a nationwide network of collaborating victim support services. These provide excellent assistance in many ways and act as guides to lead victims through the often difficult criminal and administrative procedures. Furthermore, victims are treated with respect and special consideration for their needs throughout the criminal proceedings. Their role is regarded as important and they are taken seriously.

One gap that should be closed soon is the application requirement both in respect to the written acknowledgement of a complaint as well as to providing information about the escape or release of the offender from detention when the victim wishes to be informed. It would also be desirable that audio-visual questioning is used more often in trials as well as the recording of interviews taken by a judge.

These gaps and challenges should, however, be remedied in order to guarantee comprehensive protection of victims. Nevertheless, the Directive seems well implemented in Germany. The revealed gaps can and should be addressed soon as most of them solely pose practical problems.

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## APPENDIX 1 – CONTACT LIST OF INTERVIEWED PROFESSIONALS

#	Name	Institution	E-mail	Phone #
1	Joachim Breu	Lawyer		
2	Angela Mohrmann-Krützfeld	Lawyer		
3	Helmut Will	Police Officer		
4		University professor		
5	Thomas R. J. Franz	Lawyer		
6	Stephanie Ihrler	Lawyer		



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