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3E –RJ-MODEL

The 3E Model for a Restorative Justice Strategy in Europe
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(including research also in Turkey, the Netherlands, Denmark, Germany)
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Restorative Justice in Germany

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A. Introduction

The German criminal justice system differentiates between juvenile and general criminal law, providing for diverse measures and sanctions for adult, young adult and juvenile offenders. Main legal sources of the criminal procedure law are the Criminal Code, the Code of Criminal Procedure and the Juvenile Justice Act².

The Juvenile Justice Act (JAA) is applicable on juveniles 14 to 18 years old, and, - under certain circumstances - on young adults, aged 18 to 21 years³. In 1990, it has been amended and provided for a wider range of educational measures and diversion possibilities. Diversion is given priority, juvenile imprisonment is the "ultima ratio" if other formal sanctions like educational (directives, special care order) or disciplinary (warning, community service, fine, short detention) measures are not appropriate. Victim-offender mediation has been introduced with the first amendment of the JJA in 1990 as an educational measure in form of a directive.

Juvenile law is based on the approach of education of young persons and incorporates the principle of subsidiarity (or minimum intervention, priority of milder measures) and the principle of proportionality. Further main principles of criminal law are the principle of rehabilitation, of legality, of certainty and of non-retroactivity.

Regarding adults and young adults who do not fall within the scope of the JJA, the Criminal Code provides as main sanctions the penalties of imprisonment and fines and further auxiliary sanctions (such as driving ban). Diversion without any sanction or in combination with sanctions is set out in the Code of Criminal Procedure and the Criminal Code. Criminal law draws back to the civil law and follows continental law traditions.

As regards the Germany criminal procedure system, court levels are divided into Local Courts (*Amtsgerichte*), Regional Courts (*Landgerichte*), Higher Regional Courts (*Oberlandesgerichte*) and the Federal Court of Justice (*Bundesgerichtshof*).

Adult criminal cases in which the sentence is up to one year are heard by a judge of the Local Court. Is the sentence of three years maximum, the case is heard by a judge of a Local

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² The Juvenile Justice Act, literally translated as Juvenile Courts Act, entered into force in 1923. In parallel, the specific welfare system for young persons has been established, legally based on the Juvenile Welfare Act (1922). Germany implemented a "dualistic" approach of welfare and justice, *Dünkel* 2011, Germany. Country Report, p. 548.

³ The JJA is applied on young adults if their moral and psychological development is similar to that of a juvenile (§ 105 (1) No. 1 JJA) or if the motives and circumstances of the offence are those of a typical juvenile offence (§ 105 (1) No. 2 JJA).

Court and two lay judges. In more serious cases in which the sentence exceeds three years, cases are heard by three judges and three to six lay judges at the Regional Court. Appeals and certain crimes are referred to the Higher Regional Court, where five judges hear the cases.

With regard to juvenile criminal procedure, Germany has established a specialized Juvenile Court system. In case of prosecutions leading to non-custodial sanctions, a youth judge of the local court hears the case. Criminal cases in which a youth prison sentence is possible are heard by the Youth Court of the Local Court, where a youth judge is assisted by two lay judges. In very serious cases, cases are brought before the Youth Chamber of the Regional Court, which is composed by three judges and two lay judges.

During the 1970s, critics on the sanctioning system in Germany were gaining ground, searching for alternatives to sanctioning in order to promote the reintegration of offenders. Another important issue in criminology and criminal policy became the better implementation of victims' rights. Reforms focused on the empowerment of victims and worked towards more inclusion in criminal proceedings.⁴ Further, international restorative justice developments and especially the emergence of victim-offender reconciliation programs in North America inspired the movement in Germany.

The development of restorative justice in Germany can be characterized as a bottom-up movement, leading to criminal law reforms.⁵ The first victim-offender mediation pilot projects were established in the mid-1980s, focusing especially on juvenile and young adult offenders.⁶ Among the initiators were prosecutors, judges, criminologists and social workers⁷, legal aid services, youth court assistance, NGOs and youth welfare departments were responsible for the implementation of mediation. The pilot projects have been systematically evaluated by researchers.⁸ Given the promising experiences, the number of VOM projects has been on the rise since the end of the 1980s and, in 1990, the legislator introduced victim-offender mediation in juvenile criminal law. The legal enactment of victim-offender mediation positively affected the mediation offerings throughout Germany and led to the

⁴ See for instance *Schreckling* 1991, Bestandsaufnahmen zur Praxis des Täter-Opfer-Ausgleichs in der Bundesrepublik Deutschland; *Bannenberg* 2000, Victim-Offender Mediation in Germany; *Dünkel* 2011, Germany. Country Report.

⁵ *Schreckling* 1991, Bestandsaufnahmen zur Praxis des Täter-Opfer-Ausgleichs in der Bundesrepublik Deutschland, p. 13, 51 ff.

⁶ The first four pilot projects for juveniles were set up between 1985 and 1987 in the cities of Braunschweig, Reutlingen, Köln and München/Landshut. Regarding adults, the first project was implemented in 1984 in Tübingen.

⁷ *Schreckling* 1991, Bestandsaufnahmen zur Praxis des Täter-Opfer-Ausgleichs in der Bundesrepublik Deutschland, p. 51 f.

⁸ For further information, see *Marks/Rössner* 1990, Täter-Opfer-Ausgleich, p. 59 ff.; *Bannenberg* 1993, Wiedergutmachung in der Strafrechtspraxis, p. 91 ff.; *Dölling/Henninger* 1998, Sonstige Empirische Untersuchungen zum TOA, p. 203 ff.

expansion of mediation facilities. A survey conducted during the years 1993/1994, showed that victim-offender mediation was offered almost everywhere in Germany. 70% of the youth welfare departments in the old Federal States and 88% in the new Federal States reported that mediation was offered either by social workers at the juvenile welfare departments or private juvenile aid services.⁹ According to a national survey held in 1996, the number of victim-offender mediation projects increased from 226 in the year 1992 to 368 in the year 1995 (63%). The case number increased from about 5,100 to 9,100 (78%) within three years, involving 8,000 victims in 1995. However, most of the projects did not prioritize mediation and offered it as one of several educational measures.¹⁰ During a few years, the projects have been boosting all over Germany.¹¹

Today, victim-offender mediation has been nationwide established and has been experienced over more than 20 years, both in the areas of juvenile and adult criminal law. As another form of restorative justice, conferencing emerged in previous years, and first pilot projects have been established in 2006 in Northern Germany. Currently, a pilot project on Peacemaking Circles involving three European countries, led by the University of Tübingen, is being implemented.¹²

B. Legal framework of Restorative Justice

Over recent years, restorative justice approaches including mediation and restitution have been implemented in German criminal law. Further aspects have strengthened the victims' position in the criminal procedure.

In 1986, the Victims' Protection Act was passed, as a result of the reform developments to promote victims' rights. The Act led to improved information and protection rights of victims during trial and extended the combination of civil and criminal claims. Among the protection rights the law introduced provisions to exclude the public in order to protect the private sphere of the victim § 68a Code of Criminal Procedure, the possibility to refuse questions interfering the private sphere of the victim §§ 171, 172 GVG, Courts Organisation Act. Further, it introduced the provision in the Criminal Code (§ 46 CC) that the offenders' effort to work towards reconciliation had to be taken into account when establishing the sentence.

⁹ *Dünkel/Geng/Kirstein* 1998, Soziale Trainingskurse und andere ambulante Maßnahmen nach dem JGG in Deutschland, p. 89 ff., 167 ff.

¹⁰ *Wandrey/Weitekamp* 1998, Die organisatorische Umsetzung des Täter-Opfer-Ausgleichs in Deutschland, p. 130 ff.

¹¹ See *Netzig/Wandrey* 1997, Was ist drin, wenn TOA draufsteht?, p. 215.

¹² See below under D. Informal Referrals and Informal Initiatives.

With the first amendment of the Juvenile Justice Act (JJA) in 1990, the legislator provided for the legal framework for victim-offender mediation¹³ in juvenile law. The law extended the catalogue of educational measures and introduced victim-offender mediation as a new educational measure (§ 10 I No. 7 JJA). Following the reform developments since the 1970s, the legislator further widened the frame for diversion possibilities. Victim-offender mediation could be applied within the diversion strategy.

Mediation as a formal sanction can be ordered as an educational measure in form of a directive (§ 10 I No. 7 JJA). The section provides that "...the judge may instruct the juvenile to attempt to achieve a settlement with the injured person (victim-offender mediation)". The legislator places the accent on the effort of the offender to achieve reconciliation.

Furthermore, mediation can also be applied as the independent sanction of a disciplinary measure in form of restitution (§ 15 I No. 1 JJA). Restitution not only refers to financial compensation, but is also possible as unremunerated work. The provision (§ 15) exists already since 1953 in the JJA, but in practice has been rarely used. Only 2% of all juvenile criminal sanctions referred to § 15 I No. 1 JJA in the 1980s.¹⁴ Both the educational and disciplinary measure may also be part of a probation order (§ 23 I JJA).

In terms of diversion, mediation can be applied by juvenile public prosecutors under § 45 II JJA or by juvenile judges under § 47 I No. 2 JJA. Juvenile public prosecutors have to consider educational measures which have been enforced or initiated and may dismiss the case. The effort of the juvenile offender towards reconciliation with the injured person is seen as an equivalent to an educational measure (§ 45 II JJA). The same conditions apply to juvenile judges who can suspend the criminal proceedings if mediation efforts have been made. It lays in the discretion of juvenile public prosecutors and juvenile judges to apply these criminal law dispositions.

Given a successful mediation between victim and juvenile offender, or serious efforts towards reconciliation, either the juvenile prosecutor will dismiss the case with the consent of the juvenile judge, or, after a charge has been filed, the juvenile judge will dispense the court action.

In practice, mediation is most often applied as a diversion measure under § 45 II JJA in order to avoid formal court proceedings. Mediation as an educational or disciplinary measure (§§ 10, 15 JJA) is rarely used. The orders have been criticised because they are not conform to the principle of voluntariness in mediation.

¹³ In Germany, the term for victim-offender mediation is *Täter-Opfer-Ausgleich (TOA)*.

¹⁴ See *Bannenberg 2000, Victim-Offender Mediation in Germany*, p. 257.

There is no legal restriction on offences, usually minor and medium severity cases are selected for case referrals. It is considered that petty offences are excluded in order to prevent net-widening in the juvenile justice system.

In adult criminal law, victim-offender mediation has been introduced in 1994 in a new section (§ 46a CC). The section is based on an alternative draft on restitution (*Alternativentwurf-Wiedergutmachung*) elaborated in 1992 by a working group of German, Swiss and Austrian criminal law scholars (*Arbeitskreis deutscher, schweizerischer und österreichischer Strafrechtslehrer*), aimed at establishing restitution as a third independent track within the Criminal Code in addition to other measures and sanctions.¹⁵ Cases of minor and medium severity crimes (prison sentences up to one year) should preferably be dealt with by voluntary and full damage compensation and cases in consequence should be dismissed.

The section provides for victim-offender mediation (§ 46a No. 1 CC) and restitution (§ 46a No. 2 CC). Regarding mediation, the legislator set the conditions that 1) the offender has made an effort to achieve reconciliation with the victim, and 2) has made full restitution or restitution to a large extent, or has seriously tried to provide for restitution. The sincere efforts to achieve reconciliation or to provide for restitution usually come into play if the injured person does not agree to participate in victim-offender mediation. The legal consequence of the provision is the opportunity for courts to mitigate the sentence or, in cases where the sentences are imprisonment of up to one year or a fine of up to 360 daily units, to refrain from punishment.

There is no restriction on offences by law. As section 46a refers to sentences of up to one year or up to 360 daily units, but as well as to sentences exceeding one year, theoretically also serious offences can be considered. In practice, the majority of offences are of minor or medium severe character. However, petty offences shall not be included, as the law provides for the possibility of diversion without intervention in accordance with the principle of proportionality.

Possibilities to apply mediation as part of diversion measures are stipulated in the Code of Criminal Procedure (CCP). According to §§ 153, 153a CCP the public prosecutor and the judge have the possibility to dismiss the criminal proceedings under the conditions that minor offences are invoked and there is no public interest in the prosecution (low guilt of the offender).

Beside the restitution order (enacted since 1975), the legislator introduced in the year 1999 the opportunity to dismiss the case under the condition of victim-offender mediation

¹⁵ See for instance *Dölling et al.* 1998, *Täter-Opfer-Ausgleich*, p. 15.

(§ 153a CCP). The restitution order (§ 153a No. 1 CCP) stipulates that the accused needs to perform a specific service in order to repair the damage caused by the offence. The condition involving mediation is met if the offender makes serious efforts to reconciliation with the injured person and thereby entirely or predominantly makes reparations or seeks for reparation (§ 153a No. 5 CCP).

If a victim-offender mediation has previously taken place (not ordered by public prosecutor or judge), under the premises of § 46a Criminal Code, the public prosecutor or the judge can dismiss the proceedings (§ 153b CCP).

The Code of Criminal Procedure further provides that the prosecutor and the judge have to assess in every stage of the criminal proceedings whether victim-offender mediation has to be taken into consideration. In appropriate cases, they shall work towards mediation. The agreement shall not be accepted against the explicit will of the injured person (§ 155a CCP). Moreover, judges and public prosecutors are allowed to transmit personal data to an agency carrying out mediation or managing restitution (§ 155b CCP). The law further provides that at the first examination, in appropriate cases the accused shall be informed about the possibility of victim-offender mediation (§ 136 I CCP).

Victim-offender mediation is an alternative measure within the criminal law, which is possible at all stages of the criminal proceedings. It can also be carried out after conviction during detention, if the offender is willing to reconcile with the injured person. Further, mediation is possible when aiming at early release from prison.

Several assignment criteria have to be fulfilled in order to carry out victim-offender mediation:

Regarding the quality of the victim, the law does not specify requirements, but there is consensus that in principle, mediation should be carried out with a personal victim. Victimless offences shall not be taken into consideration for mediation, where the interpersonal relationship is of importance. Cases such as shoplifting, fraud or traffic offences without personal injury or material damage are usually not considered.

Further prerequisite is a confession of the accused or clarity about the circumstances of the offence. Victim and offender need to be willing to participate in mediation, there should be no pressure on both parties to agree to mediation.

The presence of a mediator is not legally required, although in practice a mediator often facilitates the meetings. Condition of mediation is a communicative process between accused and injured person aimed at resolving the consequences of the offence.¹⁶

¹⁶ *Dölling et al.* 1998, Täter-Opfer-Ausgleich, p. 16; *Rössner/Klaus* 1998, Rechtsgrundlagen und Rechtspraxis, p. 49 ff.

C. Actual Situation of Restorative Justice

The main implemented form of Restorative Justice in Germany is victim-offender mediation. In recent years, first conferencing pilot projects have been implemented in a community in Northern Germany, and an experimental project on Peacemaking Circles is under way.

Following the implementation of the first victim-offender pilot projects in the 1980s, the number of victim-offender mediation services has been on the rise, especially during the 1990s. As a survey by *Dünkel et al.* showed, in 1994 victim-offender mediation was available nearly everywhere in the old (70%) and especially in the new Federal States (88%).¹⁷ In 74% of all youth welfare districts mediation was an available option within the diversion strategy. Almost half of the juvenile welfare departments (48%) delivered mediation through their own services, 11% in conjunction with or alongside a private service and 14,5% exclusively by a private service. In most of the services in the youth welfare departments mediation was offered on an "ad hoc" basis, only 13% of the services reported mediation was the main service delivered.

Since the 1990s, the number of independent specialized services increased. There are more than 400 organizations and agencies delivering victim-offender mediation. Altogether, they have an annual caseload of about 20,000 cases, thereof 13,000 cases involving juveniles.¹⁸

At prison level, first pilot projects were carried out during last years.¹⁹ Within the frame of the EU MEREPS-Project "Mediation and Restorative Justice in Prison Settings"²⁰, a model project in a prison in Bremen was established between 2009 and 2011.²¹ Furthermore, research regarding the legal framework of victim-offender mediation in prisons and a survey on prison staff aiming at the assessment of attitudes towards Restorative Justice were conducted within the project in Germany.²² The pilot project on victim-offender mediation and Restorative Justice in the prison was carried out with the partner association "Täter-Opfer-Ausgleich Bremen e.V." and showed that mediation could be successfully implemented at prison level. As third parties such as supporters of victims and offenders were also involved in mediation procedures, a flexible approach in implementing mediation was considered to be of advantage.

Regarding the organizational structure, victim-offender mediation in Germany is carried out by various services. Most often, these are independent private or public organizations. In some new Federal States, such as Brandenburg and Sachsen-Anhalt, the ministries of justice

¹⁷ *Dünkel/Geng/Kirstein* 1998, Soziale Trainingskurse und andere ambulante Maßnahmen nach dem JGG in Deutschland, p. 167 ff.

¹⁸ *Kilchling* 2005, p. 242, 246 with further references.

¹⁹ For an overview, see *Hartmann et al.* 2012, Prison Mediation in Germany, p. 219 ff.

²⁰ The MEREPS project included research from Hungary, UK, Germany and Belgium and aimed at assessing the implementation of Restorative Justice in prison settings.

²¹ *Hartmann et al.* 2012, Prison Mediation in Germany, p. 241 ff.

²² *Ibid.*, p. 208 ff., p. 221 ff.

established special social services to carry out mediation, which run independently.²³ Public agencies such as social services of justice, juvenile court assistances and youth welfare agencies, which are also responsible for victim-offender mediation, have in recent years fewer cases delivered.²⁴

Public agencies which are connected to the formal court system work traditionally more offender-oriented, especially when social workers have to fulfil several duties beside mediation such as social training courses for offenders, etc., and are not fully specialized on mediation. In recent years, there has been a shift to mediation services running independently and being specialized on victim-offender mediation. Today, programmes are in principle both victim and offender oriented.

Financing depends on the kind of organization. Private services need to ensure funding independently or receive limited public funding, whereas public agencies are assured financing by municipalities, counties or Federal States. For the parties involved, victim-offender mediation in Germany is free of charges.

Statistics on victim-offender mediation

In Germany, there are no nationwide systematic statistics on mediation in penal matters. There exist a few data sources on victim-offender mediation, such as several surveys, the Federal Statistics on victim-offender mediation (*Bundesweite Täter-Opfer-Ausgleichs-Statistik*) and the Statistics on the administration of justice (*Rechtspflegestatistik*) including data on prosecution and conviction. The Statistics on prosecution and conviction (*Strafverfolgungstatistik*) do not explicitly refer to victim-offender mediation as part of diversion or educational or disciplinary measures.

Statistics on the administration of justice

The Statistics on the administration of justice, published annually by the Federal Statistical Office, include selected criminal justice data such as information on prosecution and conviction. In 2005, the publication offered for the first time information on victim-offender mediation (relating to the year 2004). The data refer to convicted (under adult criminal law) and persons ordered educational or disciplinary measures according to the Juvenile Justice Act which have been imposed to achieve a victim-offender mediation. Educational or disciplinary measures under the Juvenile Justice Act are the orders stipulated in § 10 I No. 7

²³ See *Steffens* 1999, Wiedergutmachung und Täter-Opfer-Ausgleich im Jugend- und Erwachsenenstrafrecht in den neuen Bundesländern.

²⁴ See *Kerner/Hartmann/Lenz* 2005, Täter-Opfer-Ausgleich in der Entwicklung, p. 4 f.

and § 15 JJA. The statistic does not contain data on victim-offender mediation in cases of diversion, which constitute the largest part of mediation cases.

Regarding the decisions including the order to achieve victim-offender mediation, the statistics indicate an increase in the total number of decisions from 2004 to 2008 (except the year 2005) and afterwards a gradual decrease of total numbers.

For the year 2004, courts imposed 1.134 decisions to seek victim-offender mediation, thereof 1.012 under juvenile law.²⁵ In 2005, the number slightly decreased²⁶, and has been on the rise on following years.²⁷ The number of decisions including victim-offender mediation in 2007 was 1.964, thereof 1.588 under juvenile law²⁸ and tripled in 2008 compared to 2006 with a total number of 3.754 decisions registered. Out of these, in 2008 there were 2.721 decisions under the Juvenile Justice Act including an order to achieve victim-offender mediation.²⁹ In 2009, the number slightly decreased again.³⁰

Regarding most recent developments, in 2010 the total number of court orders to seek victim-offender mediation was 3.594, out of which 2.688 under juvenile law.³¹

In 2011, the total number again slightly dropped to 3.377 decisions including victim-offender mediation, out of which 2.469 under juvenile law.³² The majority of decisions according to juvenile law in 2011 were disciplinary measures (1.317 decisions, 53%), followed by educational measures (1.021 decisions, 41%) and youth penalties (131 decisions, 5%). Referring to all, 84% of the persons ordered victim-offender mediation in 2011 were male and 16% were female.³³ In general, the vast majority of decisions up to 2011 were taken under the Juvenile Justice Act.

In relation, the overall sentencing rate slightly dropped from 2005 to 2011.³⁴ It has to be noted that the share of decisions including victim-offender mediation is less than 1% of all convictions.³⁵

²⁵ *Statistisches Bundesamt*, Rechtspflege, Ausgewählte Zahlen für die Rechtspflege, 2005, p. 75.

²⁶ 995 decisions were imposed to seek mediation, out of which 777 according to the Juvenile Justice Act, *Statistisches Bundesamt*, Rechtspflege, Ausgewählte Zahlen für die Rechtspflege, 2006, p. 75.

²⁷ For the year 2006, there have been 1.206 court orders to achieve reconciliation, thereof 953 under juvenile law, *Statistisches Bundesamt*, Rechtspflege, Ausgewählte Zahlen für die Rechtspflege, 2007, p. 75.

²⁸ *Statistisches Bundesamt*, Rechtspflege, Ausgewählte Zahlen für die Rechtspflege, 2008, p. 89.

²⁹ *Statistisches Bundesamt*, Rechtspflege, Ausgewählte Zahlen für die Rechtspflege, 2009, p. 89.

³⁰ In 2009, the total number of decisions including victim-offender mediation was 3.695, thereof 1.031 decisions under adult criminal law and 2.664 decisions according to juvenile law, *Statistisches Bundesamt*, Rechtspflege, Ausgewählte Zahlen für die Rechtspflege, 2010, p. 89.

³¹ *Statistisches Bundesamt*, Rechtspflege, Ausgewählte Zahlen für die Rechtspflege, 2011, p. 89.

³² *Statistisches Bundesamt*, Rechtspflege, Ausgewählte Zahlen für die Rechtspflege, 2012, p. 89.

³³ *Ibid.*, p. 89.

³⁴ *Ibid.*, p. 59.

³⁵ See the number of convicted persons up to 2011, *Statistisches Bundesamt*, Rechtspflege, Ausgewählte Zahlen für die Rechtspflege, 2012, p. 58.

Federal Statistics on victim-offender mediation

Since 1993, data on mediation in penal matters are collected in the Federal Statistics on victim-offender mediation.³⁶ The statistics provide data of victim-offender mediation agencies that voluntarily participate in the survey. The data refer to types of mediation facilities, categories of offences, case numbers, victims, offenders, results of the mediation and the criminal process and provide for in-depth information on the course and results of the mediation procedure. The aim of this data collection is to document the development of victim-offender mediation. However, due to the limited number of facilities the statistics are not nationwide representative. Yet, since its establishment, tens of thousands of cases have been evaluated.³⁷

In 2011, statistics referring to the years 2006-2009 were published.³⁸ In 2009, 23 victim-offender mediation services provided data on mediation, slightly more than in the years before³⁹. Between 2006 and 2009, the vast majority of facilities were independent organisations, only a very small proportion was Youth Court Services and Local Youth Welfare Departments. Independent organisations managed between 89% and 98% of all victim-offender mediation cases.⁴⁰

Regarding the target groups, the proportion of facilities providing mediation for juveniles and young adults was approximately 50% in the years 2006, 2008 and 2009 and in 2007 about 40%. Fewer facilities provide services for juveniles, young adults and adults and even less only for adults. In comparison, in 1993, about 90% of the facilities delivered services for juveniles and young adults.⁴¹

The majority of cases were managed by facilities offering mediation for juveniles, young adults and adults, which made up about half of the organizations.⁴²

Most of the organisations were specialized on victim-offender mediation (between 76% and 92% from 2006 to 2009), a smaller share partly specialized (which means that case workers have generally further tasks than victim-offender mediation) and to a small extent integrated or not specialized (mediation case workers may have several duties in the same case). This organizational type – integrated/not specialized - is often criticized by researchers and practitioners as it may infringe the principle of neutrality of mediators when fulfilling different

³⁶ These statistics were initiated by different institutes and departments of criminology of some German universities.

³⁷ *Kerner/Eikens/Hartmann* 2011, Täter-Opfer-Ausgleich in Deutschland, p. VI.

³⁸ *Kerner/Eikens/Hartmann* 2011, Täter-Opfer-Ausgleich in Deutschland.

³⁹ In 2008 15 facilities participated, in 2007 12 services and in 2006 18 services.

⁴⁰ *Kerner/Eikens/Hartmann* 2011, Täter-Opfer-Ausgleich in Deutschland, p. 6.

⁴¹ *Ibid.*, p. 8.

⁴² *Ibid.*, p. 9.

tasks for the accused or injured person. Since the establishment of mediation services, the number of specialized organisations has risen consistently.⁴³

Regarding the number of cases, in 2006 18 participating mediation services carried out 1.980 cases, in 2007 12 facilities conducted 1.454 victim-offender mediations, in 2008 15 facilities managed 2.786 cases and in 2009 23 services carried out 4.015 cases.⁴⁴

In terms of persons involved in victim-offender mediation, their number increased from 2006-2009. This is to be seen in relation to the higher number of participating mediation facilities. Beside injured persons and accused, further persons such as lawyers, family members or partners participated to a lesser extent. In 2006, 6.543 persons were involved, whereas in 2009 the number reached 10.321.⁴⁵

Regarding the age structure of the accused, the share of juveniles and young adults aged 14 to 20 years decreased from 57% in 2006 to 34% in 2009, whereas the proportion of adults aged 21 years and more increased from 2006 to 2009.⁴⁶

Considering case referrals, most cases are initiated during preliminary proceedings. In 2009, 81% of victim-offender mediation cases were referred at this stage, in 2008 75%, in 2007 83% and in 2006 82%. The proportion was even higher in previous years with almost 90% in 2003 and 2004.⁴⁷

Mostly public prosecutors initiate case referrals (almost 75% in average from 2006-2009). A smaller share of cases is also initiated by the Youth Court services, police, judges, accused, injured persons, probation services and court services.

After accusation, between 6% and 10% of cases were referred for the period 2006-2009. The smallest proportion of cases was referred during the main proceedings (between 0,8 % and 1,3 %). Slightly higher was the share of case referrals after the main proceedings (between 1,6 % and 1,3 %) for the same period.⁴⁸

Most of the cases refer to minor and medium severity offences. About half of the offences during 2006 and 2009 were bodily harm offences. To a smaller extent damage to property related offences, insult, offences against the personal freedom, theft and unlawful appropriation, robbery and blackmail and offences against the public order followed.⁴⁹ The offences are similarly distributed among the age group of juveniles and young adults and the age group of adults. A difference can be observed regarding robbery and blackmail, there is a slightly higher share among juveniles and young adults compared to adults.

⁴³ *Ibid.*, p. 8.

⁴⁴ *Ibid.*, p. 6, 12.

⁴⁵ *Ibid.*, p. 17.

⁴⁶ *Ibid.*, p. 22.

⁴⁷ *Ibid.*, p. 14.

⁴⁸ *Ibid.*, p. 14 ff.

⁴⁹ *Ibid.*, p. 26.

About two thirds of the accused knew the injured person well or a little.⁵⁰ Taking into account the willingness of accused and injured persons to participate in mediation, from 2006 to 2009, about 70% in average of the injured persons agreed to take part in mediation. Even more accused accepted to participate in mediation - about 85% in average.⁵¹ The willingness among juvenile and young adult offenders to participate was higher (in average about 90%) than among adults (almost 80% in average).

About 38% of cases from 2006 to 2009 were facilitated by a mediator, in almost 8% of the cases accused and injured persons met privately to reach an agreement. In more than half of the cases there has been no face-to-face meeting (indirect mediation).⁵²

The overwhelming part of cases resulted in a successful mediation. In average, in about 89% of the cases an agreement was reached. This is a long-term trend, as since 1993, the rate of successful mediation was 80% and higher.⁵³

Various agreements have been reached, ranging from apologies (the majority), damage compensation, compensation for immaterial damage, services for the victim, joint actions with the injured person, gifts, restitution and other agreements.⁵⁴ Regarding the age groups of juveniles/young adults and adults, most agreements were fulfilled totally or partly (more than 90%).⁵⁵

Starting from the case referral until return to justice officials, the average duration of the mediation procedure was about 21 weeks.⁵⁶

Most cases were dismissed by public prosecutors (in average 78% from 2006-2009). Between 20% and 30% of the cases were dealt with by the courts (dismissals or convictions).⁵⁷

Regarding successful mediations, about 83% in average from 2006-2009 of the cases were dismissed by the public prosecutor, 3% by the judge, 5% were convictions. As to mediations which have not ended with an agreement, 68% were diverted by public prosecutors, 0,8% dismissed by judges, 18% were convictions.⁵⁸

The most recent survey showed that in 2010, the number of participating facilities in the survey climbed to 33.⁵⁹ Findings were similar compared to previous years. Most cases were referred during preliminary proceedings (82%), to a smaller proportion after charges were

⁵⁰ *Ibid.*, p. 29.

⁵¹ *Ibid.*, p. 34 f.

⁵² *Ibid.*, p. 38.

⁵³ *Ibid.*, p. 41.

⁵⁴ *Ibid.*, p. 43.

⁵⁵ *Ibid.*, p. 46.

⁵⁶ *Ibid.*, p. 192.

⁵⁷ *Ibid.*, p. 48 ff.

⁵⁸ *Ibid.*, p. 52.

⁵⁹ *Kerner/Eikens/Hartmann* 2012, Täter-Opfer-Ausgleich in Deutschland, p. 6.

laid (10%), during trial (1,6%) and after trial (1,6%).⁶⁰ About half of the offences were bodily harm related offences (47%), followed by damage to property (11%) and property related offences (11%).⁶¹ 91% of mediated cases resulted in a successful agreement, whereof 92% were completely or partly fulfilled.⁶²

Evaluation studies

Since the establishment of victim-offender mediation projects, numerous evaluation studies on the programmes were undertaken.⁶³ The studies focused on the description of victim-offender mediation cases and the operation of the services. Later on, studies on the acceptance of victim-offender mediation and on recidivism followed.

Various studies dealt with the acceptance of victim-offender mediation by justice officials, lawyers and among the population.⁶⁴ As an example, a survey by *Kurze* (1997)⁶⁵ on criminal law judges and public prosecutors revealed that the idea of victim-offender mediation was positively considered by a large part of the respondents especially regarding the sustainable promotion of victims' rights in the criminal procedure.⁶⁶ The study further showed that the majority of judges and public prosecutors had already applied victim-offender mediation, but very rarely. He concluded that a small number of public prosecutors referred most cases.⁶⁷

A recent nationwide survey on prison staff as part of the MEREPS-Project "Mediation and Restorative Justice in Prison Settings" revealed that a large majority of respondents (87%) knew about victim-offender mediation and 78% of respondents supported the implementation of Restorative Justice in prison settings principally.⁶⁸

Several evaluation studies on recidivism showed positive results on the effectiveness of victim-offender mediation.⁶⁹ The studies may serve as one among many indicators to approaching the effectiveness of victim-offender mediation.

A recidivism study by *Busse*, published in 2001⁷⁰, showed positive results after victim-offender mediation in juvenile law. The study is based on the comparison group design. 151

⁶⁰ *Ibid.*, p. 12.

⁶¹ *Ibid.*, p. 22.

⁶² *Ibid.*, p. 36, 39.

⁶³ See for an overview *Marks/Rössner* 1990, Täter-Opfer-Ausgleich, p. 59 ff.; *Bannenberg* 1993, Wiedergutmachung in der Strafrechtspraxis, p. 91 ff.; *Dölling/Henninger* 1998, Sonstige Empirische Untersuchungen zum TOA, p. 203 ff.

⁶⁴ See for example *Sessar* 1992, Wiedergutmachen oder strafen; *Walter et al.* 1999, Täter-Opfer-Ausgleich aus der Sicht von Rechtsanwälten.

⁶⁵ *Kurze* 1997, Täter-Opfer-Ausgleich und Allgemeines Strafrecht.

⁶⁶ *Ibid.*, p. 22 ff.

⁶⁷ *Ibid.*, p. 27 ff., 56.

⁶⁸ *Hartmann et al.* 2012, Prison mediation in Germany, p. 225 ff.

⁶⁹ For an overview, see *Kempfer/Rössner* 2008, Kriminalprävention durch TOA, p. 6 ff.

⁷⁰ *Busse* 2001, Rückfalluntersuchung zum Täter-Opfer-Ausgleich.

offenders in two comparison groups were observed three years after victim-offender mediation or formal sanction. Those offenders who have participated in a victim-offender mediation showed a recidivism rate of 56%, whereas 82% of the offenders who were formally sanctioned reoffended. ⁷¹

Another study on recidivism by *Dölling et al.*⁷² also revealed positive results related to victim-offender mediation in juvenile law. In average, there have been 1,4 recidivism cases in the study group (130 cases) after victim-offender mediation. In comparison, 2,1 recidivism cases were registered for the comparison group (140 cases) without victim-offender mediation.⁷³

A further study by *Keudel*⁷⁴ presents results on the efficiency of victim-offender mediation involving adult offenders. According to the comparative study, only 26% of offenders who previously participated in victim-offender mediation reoffended, 74% did not reoffend.⁷⁵ The study revealed that the likelihood to reoffend after victim-offender mediation was in direct relation with previous offences and the level of violence of the offence, which is also valid for all sanctions. Due to the preventive impact and milder intervention, victim-offender mediation should be preferred.⁷⁶

Beside recidivism studies, in recent years more studies referring to the satisfaction among participants of mediation have been conducted.

A quantitative-qualitative study in the Federal States Brandenburg and Saxony-Anhalt aimed at comparing the different modes of operation of victim-offender mediation services in both Federal States.⁷⁷ The study was based on statistics of the Ministry of Justice on social services, statistical data of four independent mediation services in Brandenburg and statistical data from the Federal State organization of probation and offender services in Saxony-Anhalt. In addition, the *Gesellschaft für praxisorientierte Kriminalitätsforschung Potsdam e.V.* in cooperation with the University Marburg conducted a qualitative research and conducted interviews with victims, offenders, public prosecutors and mediators on their personal evaluation of mediation. In summary, the study showed high levels of satisfaction with the overall mediation offer. Victims stated positive the possibility to have direct contact to the offender and explain the consequences of the offence. They also found victim-offender mediation a preferable option to formal court proceedings and that their interests were safeguarded. Offenders positively stated the opportunity to explain their behaviour

⁷¹ *Ibid.*, p. 138 f.

⁷² *Dölling/Hartmann/Traulsen* 2002, Legalbewährung nach TOA im Jugendstrafrecht.

⁷³ *Ibid.*, p. 185 ff.

⁷⁴ *Keudel* 2000, Die Effizienz des Täter-Opfer-Ausgleichs.

⁷⁵ *Ibid.*, p. 110.

⁷⁶ *Ibid.*, p. 127 ff., 218.

⁷⁷ *Gutsche/Rössner* 2000, Täter-Opfer-Ausgleich.

personally to the victim, took the chance to resolve the conflict and to apologize. The relationship between victim and offender significantly improved in most cases after a face-to-face meeting.⁷⁸

Kunz conducted a study on victim-offender mediation projects in Saxony in which juvenile and young adult offenders and their victims were asked about their experiences with process, results, activity of the mediator and the level of satisfaction with these aspects.⁷⁹ The study revealed high levels of satisfaction: 62% of the injured persons were satisfied with the agreements. The vast majority of victims and offenders were satisfied with the activity of the mediator. 87% of the victims and 78% of the offenders found the mediator was competent and experienced, and 80% of the victims and 74% of the offenders stated they felt fairly treated by the mediator. Regarding the level of satisfaction with the overall victim-offender mediation, the majority of accused (63%) and of victims (72%) stated they were satisfied. The high level of acceptance is also shown in the statement that 72% of the injured persons reported that in another conflict they would participate again in a victim-offender mediation.⁸⁰

Another survey by *Bals et al.* on victims and adult offenders in North Rhine-Westphalia found similar results regarding satisfaction and acceptance with victim-offender mediation.⁸¹ Over 90% of the respondents stated they were satisfied with the overall victim-offender mediation and found it was a fair procedure. 21% of the victims were very satisfied, 52%, were satisfied, even more offenders stated they were very satisfied (43%), and satisfied (38%).⁸² Regarding the results of mediation, 18% of the victims pointed out they were very satisfied with the agreement, 43% were satisfied and 27% rather satisfied. As to the offenders, 55% reported the agreement was appropriate and 33% specified it was rather appropriate. However, 12% of the respondents (both groups) were not satisfied with the mediation results.⁸³

In terms of satisfaction with the activity of the mediator, the study revealed positive results: 89% of the injured persons were very satisfied (40%) and satisfied (49%). 60% of the offenders indicated they were very satisfied, and 31% were satisfied.⁸⁴ The majority of the respondents stated that the mediator was patient, fair, neutral and sympathetic.⁸⁵

⁷⁸ *Rössner* 2000, Ergebnisse und Defizite der aktuellen TOA-Begleitforschung – Rechtliche und empirische Aspekte, p. 20 f.

⁷⁹ *Kunz* 2007, Im Osten Was Neues: Täter-Opfer-Ausgleich aus Sicht der Beteiligten.

⁸⁰ *Ibid.*, p. 473 ff.

⁸¹ *Bals/Hilgartner/Bannenberg* 2005, Täter-Opfer-Ausgleich im Erwachsenenbereich; see also *Bals* 2006, Täter-Opfer-Ausgleich – Cui bono?

⁸² *Bals/Hilgartner/Bannenberg* 2005, p. 427.

⁸³ *Ibid.*, p. 413 f.

⁸⁴ *Ibid.*, p. 426.

⁸⁵ *Ibid.*, p. 419 ff.

Although victim-offender mediation is nationwide established, it is still not very well known across the country. There is a further need to promote victim-offender mediation in order to inform the population as well as justice officials. Conferences, workshops are being regularly organized, for instance by the Victim-Offender-Mediation Service Office in Cologne. Further events such as the German Prevention Day are a platform to promote victim-offender mediation and restorative justice. Several working groups on victim-offender mediation and crime prevention councils promote inter-institutional cooperation with police, prosecutors and judges. Training institutes across the country provide for training courses on mediation. The Victim-Offender Service Office provides for specialized training courses on victim-offender mediation.

Moreover, mediation courses and training programs are offered at numerous universities in Germany. Master's Degree programs on mediation are provided at the European University Viadrina in Frankfurt/Oder and at the FernUniversität Hagen, a state-maintained distance teaching university. The postgraduate courses can be completed in three semesters and tuition fees have to be paid.

D. Informal Referrals and Informal Initiatives

Conferencing

In 2006, in Northern Germany (Elmshorn) first pilot projects on conferencing have been implemented. The conferences⁸⁶ are inspired by the New Zealand model of Family Group Conferencing and the Belgian Hergo⁸⁷ and applicable on juveniles and young adults.

The conferences are a possible conflict resolution form in cases of medium severe offences. In general they involve more serious offences than mediation, such as assault, robbery, burglary, blackmail. Conferences include a wider circle of participants, beside victim and offender their supporters are invited, further lawyers, police officers, two mediators. In 2007, five conferences were conducted. The projects have been evaluated and found that participants worked together constructively, all five conferences resulted in an agreement based on the consent of all participants. Participants reported they were satisfied with the conferences.⁸⁸

The conferencing process shows several similarities to the victim-offender mediation procedure. After charges have been laid, public prosecutor and juvenile judge initiate a conference and refer a case to the conferring programme. The mediators contact first the

⁸⁶ In German called „Gemeinschaftskonferenzen“, *Hagemann* 2002, „Gemeinschaftskonferenzen“ als Konfliktregelungsinstrument – eine Weiterentwicklung des TOA?

⁸⁷ Herstelrechtlijk Groupsoverleg, *Hagemann* 2008, Erster Zwischenbericht über Gemeinschaftskonferenzen in Elmshorn, p. 8 f.

⁸⁸ *Hagemann* 2008, Erster Zwischenbericht über Gemeinschaftskonferenzen in Elmshorn, p. 12 ff., p. 39.

accused and afterwards the victim separately in order to inform about the conference and ask if they are willing to participate. If both agree to participate, mediators conduct preliminary meetings with the accused and the victims. In the further course of the proceedings, the mediators are looking for supporters and contact them. During the main meeting, the police officer communicates the facts related to the offence and afterwards the accused, the victim and the other participants have the opportunity to give statements. In case an agreement is reached by all participants, the signed protocol is sent to the public prosecutor and the judge. The agreement will be supervised by the mediators. First results are encouraging with a high potential for conflict resolution.⁸⁹ The conferences are still in an experimental phase, and the extension on further court districts is actually being discussed.

Peacemaking Circles

From 2011 to 2013, a pilot project under the title "How can Peacemaking Circles be implemented in countries governed by the 'principle of legality'?" is being implemented in Germany, Belgium and Hungary.⁹⁰ The EU funded project aims at assessing the potential of Peacemaking Circles in order to promote the practice in Europe. Within the course of the project, facilitators are being trained and the circle project will be monitored and evaluated.

E. The Key-Practitioners of Restorative Justice

Among the key practitioners for implementing victim-offender mediation in Germany are justice officials such as (juvenile) public prosecutors, (juvenile) judges, police, youth court workers, court workers, probation officers, further mediators, social workers and lawyers.

In Germany, the cooperation with public prosecutors is of major importance, as most of the cases resulting in victim-offender mediation are being diverted by (juvenile) prosecutors. Public prosecutors have an overview on the mediation procedure and are responsible for controlling it. Therefore inter-institutional cooperation focuses especially on public prosecutors. Usually they consult with police workers and Youth Court Service workers before referring a case to mediation services. The Code of Criminal Procedure (§ 136 I) also provides that public prosecutors shall inform the accused in appropriate cases about the possibility to participate in a victim-offender mediation.

After accusation, (juvenile) judges have the opportunity according to the law dispositions to dismiss the case after a successful mediation or serious efforts by the offender to reconcile,

⁸⁹ For process and results, see *Hagemann* 2008, Erster Zwischenbericht über Gemeinschaftskonferenzen in Elmshorn; *Blaser et al.* 2008, Gemeinschaftskonferenzen, p. 27 ff.

⁹⁰ For further information see: <http://foresee.hu/en/segedoldalak/news/592/be62ba50d6/5/?tbhrvaeisbeer=>, and <http://www.jura.uni-tuebingen.de/einrichtungen/ifk/forschung/implementing-peacemaking-circles-in-europe> (accessed on 07.06.2013).

or to mitigate the sentence. Especially in cases involving juveniles and young adults, the Youth Court Service proposes to carry out a mediation aiming to divert the case. Being in direct contact with the juvenile or young adult, Youth Court Service workers may first assess whether a case is suitable for mediation. Further, juvenile judges have the possibility to order victim-offender mediation by imposing an educational measure (§ 10 I No. 7 JJA), which is rather rarely used as it might infringe victim's and offender's rights to participate voluntarily.

Moreover, judges and public prosecutors shall assess in each stage of the proceedings whether mediation is suitable.

Police is the institution first in contact with the parties involved in a conflict and therefore may assess whether a case is appropriate for mediation or not. As in Germany neither the juvenile nor the adult criminal law provides for police diversion, the role of the police regarding victim-offender mediation is rather a limited one. Police workers are not directly involved in the mediation process, but they may initiate a case and propose it to the public prosecutor. It is finally in the discretion of the public prosecutor to refer the case. Police workers shall assess the appropriateness of a case for mediation and, as applying to prosecutors, inform the accused about the possibility of mediation (§ 136 I, § 163a IV Code of Criminal Procedure). Moreover, most Federal States elaborated guidelines on the procedure of victim-offender mediation or directives promoting reparation, victim-offender mediation and victims' rights (which also affects police work).

The Victim-Offender Mediation Service Office (*Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung*)⁹¹ in Cologne, an agency of the German Probation Association, Association of Social Work, Criminal Law and Criminal Policy, financed by the Ministry of Justice, was established in 1992 in order to promote the implementation of victim-offender mediation across Germany. Among the key activities of the Service Office are public relations, training and quality assurance and development. The Service Office works in close cooperation with the Federal Working Group on Victim-Offender Mediation (*Bundesarbeitsgemeinschaft Täter-Opfer Ausgleich e.V.*).

Regarding standards, at the first nationwide meeting of conflict advisors in 1993 a project group was established aiming at elaborating standards for the implementation of victim-offender mediation. The quality standards were first elaborated in 1994, several times

⁹¹ For further information, see <http://www.toa-servicebuero.de/>

revised and edited by the Victim-Offender Mediation Service Office and the Federal Working Group on Victim-Offender Mediation.⁹² The standards include

- conceptual requirements (case selection criteria, preconditions for victim-offender mediation, priorities, evaluation)
- organizational requirements (organizing institution, organization, accessibility)
- requirements on external presentation and cooperation (public relations, exchange of experiences, cooperation)
- requirements for mediators (qualification, methods, comprehension of the role, legal framework)
- requirements for the implementation of victim-offender mediation (contact, preliminary meetings, decision phase, face-to-face meeting, agreement).

The Federal Working Group on Victim-Offender Mediation in cooperation with the Victim-Offender Service Office award the seal of quality „Victim-Offender-Mediation-seal of quality“ – the only nationwide award for high quality conflict resolution work, based on the Victim-Offender Mediation standards..⁹³ Many victim-offender mediation facilities in Germany comply with the standards. In addition, several Federal States elaborated their own standards for the implementation of victim-offender mediation, which vary from region to region.

F. Case Study

The application of victim-offender mediation is possible at each stage of the criminal proceedings. First time offenders and repeat offenders are included. Victim-offender mediation can not be carried out in cases with petty offences, as these cases are to be diverted by public prosecutors without applying any intervention.

Regarding mediation during preliminary proceedings, the public prosecutor refers a case to a victim-offender mediation service in order to carry out mediation. Police, involved parties, the Youth Court Service, probation services or the Court Services may initiate the proceedings, but finally the prosecutor decides upon referral. After charges have been laid, the judge may refer a case to mediation services.

First, the criteria for the appliance of victim-offender mediation have to be checked. The offender must have admitted that he/she committed the offence.

⁹² *TOA-Standards*.

⁹³ See *Lippelt/Schütte* 2010, Innenansichten und Wirkungsforschung zum Täter-Opfer-Ausgleich im Jugendstrafrecht, p. 66.

Regarding the victim, in principle only a natural that has been concretely injured shall be involved. Institutions which have been damaged without a concrete contact person shall be excluded.

If the criteria are fulfilled, separate preliminary meetings with victim and offender take place. Usually, the offender will be invited first to clarify if he/she is willing to participate and to take responsibility for his/her behaviour. In case he/she accepts to participate in the mediation, the victim will be contacted. In a separate meeting with the victim, which may be accompanied by a family member or another supporter, he/she is asked about the participation in the procedure. If the victim does not accept a face-to-face meeting with the offender, other possibilities such as indirect mediation or other forms of reparation without a direct encounter will be discussed. The meeting aims at assessing the extent of the damage and the envisaged kind of reparation.

Both meetings must be in accordance with the principle of voluntariness to avoid putting pressure on victim or offender. The first contact with the parties aims at building trust with the mediator. The parties are informed about the mediation procedure and, in case the parties are represented by lawyers, these will be informed about the mediation procedure, to jointly discuss the issues.

Once the parties accepted to take part in the mediation, the face-to-face meeting follows. During this meeting, which is the "core element" of the mediation procedure, the mediator first summarizes the results of the preliminary meetings and provides further information on the mediation phases. Victim and offender have the platform to tell their perspectives. Regarding the victim, he/she has the possibility to describe the damage and the harm caused by the offence, and the emotions going with it. As to the offender, the motivation behind the behaviour and the emotions after the offence may be highlighted. The mediator facilitates the meeting and provides for a respectful communication between the parties. In the course of the meeting, the kind of reparation or service will be negotiated, which are often an apology, financial compensation or compensation for immaterial damage, restitution, a gift, service for the victim or joint activities. If successful, the parties reach an agreement which will be fixed. The mediator is responsible to control the fulfilment of the agreement, and finally, the public prosecutor or the judge will be informed about the process and the result of the mediation. The report is of importance because even if there is no agreement, the prosecutor or the judge has to consider the serious efforts made by the offender to reach an agreement with the victim.

Especially when victim-offender mediation leads to diversion and formal court proceedings are avoided, mediation offers a time-saving and cost-reducing alternative.

G. Current Reforms

In recent years, the entry into force of the Law on Mediation has been prepared. Finally, in July 2012, the law came into effect.⁹⁴ The “Law to promote mediation and other forms of alternative dispute resolution” implements the EU Mediation Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters. It regulates the definition of mediation, procedure, tasks and responsibilities of mediators (confidentiality, ongoing training, etc.), requirements for certified mediators, research and evaluation. These regulations are applicable to mediators in the different fields of mediation. The law brings changes to a few laws such as the Code of Civil Procedure, Law on Labour Courts, etc, but has no effect on the Code of Criminal Procedure, as victim-offender mediation is already specifically regulated by the code.

H. Evaluations and Recommendations

As research suggests, victim-offender mediation is an appropriate measure to strengthen the victim’s rights. Victims largely accept mediation agreements such as apologies, compensation, restitution, etc. and appreciate the active involvement in the conflict resolution proceeding. Mediation is suitable to reduce the fear of victims, and to safeguard their rights and interests. As well, offenders valued the direct contact with the victim, with the opportunity to take responsibility for their behaviour and provide for reparation. Offenders experience constructive ways of conflict resolution. Often, the relationship between victims and offenders improved significantly following a mediation. In most cases, offenders fulfil the mediation agreements. Both victims and offenders show high levels of satisfaction with the overall mediation process, the activity of the mediator and the agreements.

Further, it is demonstrated that mediation reduces the recidivism in comparison to formal sanctions and has preventive effects. In appropriate cases, it should be the preferable measure by justice officials. However, in practice victim-offender mediation is still reluctantly applied by a considerable part of justice officials. Although mediation is nationwide available, and mediation services tend to be more specialized, the potential for mediation is far from being exhausted. Only a relatively small number of cases is referred in practice, but more

⁹⁴ Law on Mediation of 21.07.2012, entered into force on 26.07.2012.

charges would be eligible for mediation.⁹⁵ Further action is needed in order to increase the acceptance among justice officials such as police, public prosecutors, judges and lawyers. Most cases are referred by public prosecutors, hence information about mediation at an early stage by the police would be of advantage. Similarly, lawyers could be more involved in order to inform participants and to promote a widespread practice of mediation.

Enhanced inter-institutional cooperation among all stakeholders and improved communication would be of further advantage to ensure a broader application of mediation. Still, there are regional differences among the Federal States regarding the practice of mediation. Better infrastructure and in-depth inter-institutional cooperation should allow for high quality mediation services across the country. Specialized and ongoing training of mediators are prerequisites to deliver high quality services and essential for the further development of victim-offender mediation. An increasing number of mediation facilities comply with the quality standards on victim-offender mediation, and the „Victim-Offender-Mediation-Seal of Quality“ based on the standards enhances transparency and confidence in the services.

Further systematic and continuing research on victim-offender mediation projects allows for the well-founded, need-oriented implementation of mediation. Beside mediation, the role of reparation and new restorative justice forms such as conferencing as constructive, dialogue-based and peace-enhancing measures should be strengthened.

I. Annex

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⁹⁵ For further information on research, see *Doak/O'Mahony* 2011, Developing mediation and restorative justice for young offenders across Europe, p. 1727. *Wandrey and Weitekamp* estimated the potential for case referrals to at least 20% of all offences, *Wandrey/Weitekamp* 1998, Die organisatorische Umsetzung des Täter-Opfer-Ausgleichs in Deutschland, p. 143.

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