

Key Findings – National Report Germany

Online Meeting RE-JUST

04/06/2020

Key Findings

1. National legislation regarding the protection of victims' rights
2. Legal challenges encountered by victims in accessing the justice system important
3. Judicial practices to protect victims' rights - main practices

Background information

- Germany 16 Federal States
- Literature review
- Questionnaire responses from Justice Ministries, Ministries of Interior, Law Office and Victim Protection NGO

1. National Legislation I

- Different legislation for the protection of victims
 - *Strafprozessordnung* (StPO) (Criminal procedure code), in particular §§406 et seq.
 - *Leges specialis*
 - GewSchG (Protection Against Violence Act)
 - FamFG (Act on Court Procedure in Family & Non-litigious Matters)
 - PsychPbG (Law on Process support in Criminal Proceedings)

1. National Legislation II

- **Incidental action** (*Nebenklage*) (§§ 395 et seq. StPO)
= exception to principle of public prosecution
- Only expected in criminal offences affecting the infingened party's private sphere and personality
- Enables full participation during whole criminal proceeding → opportunity to allow personal interests to be satisfied
- Additional rights: information rights on current status of procedure; right to inspection of records, etc.

1. National Legislation III

- **Further rights in *Strafprozessordnung***
 - Questioning in accordance with particular protection needs (§48(3) StPO)
 - Hearing without e.g. defendant (§168e StPO) or audiovisual hearing (§247a StPO)
- ***Gerichtsverfahrensgesetz (GVG) (Court Act)***
 - Exclusion general public (§171b GVG)

1. National Legislation IV

- ***Drittes Opferschutzreformgesetz*** (third victim reform law) (January 2017)
 - Further steps taken to ensure standard of protection for victims
 - Greatest achievements: *Psychosoziale Prozessbegleitung* (psycho-social process support) (§406 g StPO & PsychPbG (law on psycho-social support in criminal proceedings)). Particularly entitled: children & minors, but also adult victims of violent or sexual offenses
- = implementation EU Victims' Rights Directive 2012/29/EU

1. National Legislation V

- ***Extrajudicial conflict elimination***
 - Victim-offender mediation (Täter-Opfer-Ausgleich (TOA)) (§§155a, 155b StPO, §46a StGB)
- ***Gewaltschutzgesetz (GewSchG)***
 - = preventive victim protection
 - E.g. restraining orders (§1 GewSchG, §§ 214, 49 FamG)

1. National Legislation VI

- ***Commissioner for Victims*** (*Beauftragter der Bundesregierung für das Anliegen von Opfern von Hinterbliebenen von terroristischen Straftaten im Inland*) (since April 2018)
- ***Härteleistungen Bundestag*** (since 2001)
- ***Opferentschädigungsgesetz (OEG)*** (victim compensation law) (since December 2019)
- ***Landesstiftung Opferschutz*** (individual federal state's foundation for victim protection)

2. Legal Challenges I

- Lack of knowledge, language, irregular residence status of victims
- Secondary victimisation
- Retraumatisation
- Insensitivity, lack of knowledge, uninformedness of judiciary staff and law enforcement officers

2. Legal Challenges II

- Legal claims are limited
 - Only for particular victims
 - defined in the law
- More offers for support through NGOs

3. Judicial Practices to Protect Victims I

- law enforcement officers
 - Delivery of information
 - Relying on NGOs
 - Protection, anonymisation

3. Judicial Practices to Protect Victims

II

- Joint litigation (Lawyer)
 - Free choice
 - Perception of the rights
 - Protection and representation

3. Judicial Practices to Protect Victims

III

- Different kind of hearings
- Psychosocial Process support
 - Special and intens form of preperation and company for court process

Conclusion

- Overall improvement (legislation; acceptance)
- Victim's Rights Directive implementation needs improvement (EU formal notice July 2019) → right to information on rights of victims & right to support & protection need to be implemented
- Most support still provided by NGOs and help centres
- Framework needs improvement: more judges; faster court hearings & judgements
- Need and wish for more training and more support through *Prozessbegleitung* for other victims of crime