

# Mediation or Offender-Victim-Compensation in the (Juvenile) Penalty System in Germany

## Definition Offender-Victim-Compensation (or Mediation)

Offender-victim-compensation (OVC) is a measure of extrajudicial settlement of conflicts called *mediation* in criminal cases. There are no specified proceedings. Its particularities are voluntary participation of offender and victim in order to clear the consequences of a conflict by means of mutual communication. This makes it distinct from the decreed effort for an OVC (§ 59a Abs. 2 Nr. 1 StGB), the voluntary restitution by the offender (§ 46a Nr. 2 StGB) and the procedure of adhesion (see Wikipedia).

## Fields of Application

In Germany not all crimes are regulated by mediation or OVC, for example grave offences such as murder, manslaughter or rape cannot be cleared by mediation or respectively OVC. But it is an ideal measure in the cases of theft, vandalism, threat or humiliation. *Very often* mediation or the OVC is *used for youths*, but can also be seen as an option for adults. The process can only take place if offender and victim agree and the application is regarded as useful (see Wikipedia).

*Following successful test projects the offender-victim-compensation was legally incorporated into the juvenile penalty system in 1990.* Due to the positive results the offender-victim-compensation was then, in 1994, introduced as a new § 46a StGB in the general penalty law and designed as ground for mitigation (see Federal Ministry of Justice 2005).

## The whole point (Sinn und Zweck)

Mediation respectively OVC is the attempt to get offenders and victims, who are prepared to do so, to the round table and give them the chance to agree on the kind, manner and amount of compensation of the caused material and immaterial damage under surveillance of a neutral mediator. The offender is given the chance to identify with the victim – which can build up a hindrance for a new offence (see Wikipedia).

## Offender-Victim-Compensation in Juvenile Court Aid

Parts of the offers of juvenile court aid are accompanying work sessions, social training courses and the offender-victim-compensation. This is where offenders and victims are in direct confrontation and seek compensation for a criminal offence. According to DVJJ (Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen) –vice Susanne Zinke this is supposed to be much more difficult for youths than to remain in custody, because here they have to take responsibility. Vice versa the victims have a chance to “get rid of their rage”. The quota of re-offence lies partly under ten percent, compared to 87 percent after custody.

The costs for such offers are lower than the average 150 Euros per day in prison, as Sonnen emphasizes. Nevertheless the number of juvenile prisoners has increased by more than one third over the past five years. Six to seven percent of the juvenile offenders, well 540,000 yearly, ended up in prison (see „Mehr Hilfe für jugendliche Straftäter gefordert“; Agence France-Presse AFP vom 23.05.2003).

## The Role of the Mediators

In literature as well as in practice the incompatibility of mediation and social care is discussed because the mediators should be unbiased. This, however, cannot be guaranteed if there is a relationship with an affected person, be it the suspect or the victim, at the same time. Even if the mediators are able to separate the jobs of social care and mediation for themselves, the change from biased social care to neutral mediation would

be difficult to understand by the clients. Therefore the OVC should only be performed by specialized acting mediators (see Federal Ministry of Justice 2005).

### **Empirical Results respectively Evaluation of the Offender-Victim-Compensation proceedings respectively Mediation**

Results from quantitative research, increasing case numbers, but large regional differences

- OVC is used for all offences (especially also offences of violence), not only for minor offences
- 70% of all OVC offences are applied for physical assault, 8.5% for property and capital offences, 2.7% for robbery/blackmail, and 0.5% for property damage

### **Concerning offenders/victims**

- The offenders are mostly male, over 60% accept the accusation, over 75% are prepared for compensation
- In over 70% of the cases offenders and victims knew each other at least superficially
- In over 80% of the cases successful efforts of compensation can be achieved
- 87% of the court cases are withdrawn in the case of successful compensation

### **From the re-offence research**

- After OVC offenders fall back significantly less than after formal sanctions (money penalty etc.)

### **Positive signals from qualitative research**

- Offenders as well as victims saw their interests guarded and the social situation was improved decisively (see Rössner 2007).

### **Offender-Victim-Compensation or Mediation in Development**

The results of the works of the so-called „mediation centres“ performing offender-victim-compensation have been stated in the offender-victim-compensation statistic since 1993. This project which has been initiated and supervised by several criminological research institutions is probably unique in Europe. In the following several important developments in regard to the application of the offender-victim-compensation in the youth penalty system will be outlined:

Since the beginning of the evaluation of the relevant data in the year 1993 almost all institutions taking part were dealing directly with juvenile offenders. Of all participating institutions their number decreased in the course of the time. Still the largest age group of accused persons remained the one of youths and adolescent between 1993 and 1998.

In absolute figures the number of accused adult persons increased from 427 in 1993 to 2,432 in the year 1999, whereas the number of accused youths and adolescent increased from 951 in 1993 to 4,398 in 1999. This state of facts changed within the last two years of evaluation, since then the age group of accused youths and adolescent has decreased proportionately and in absolute figures. In the year 2002 both of the large destiny age groups are equally represented in the offender-victim-compensation. The number of the accused youths and adolescent is now 2,537, the number of accused adolescent 2,148.

### **The number of cases in the institutions**

Starting point for the counting are all cases the OVC institutions (youth welfare departments, social services of justice/court aid, independent institutions) were entrusted with, on account of case allocation and requests of different institutions or persons.

<b>Case numbers in the institutions</b>										
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Initial cases	1238	1652	1813	3392	3976	4311	5177	3711	3052	4466
Procedural holdbacks	172	279	167	314	660	405	223	115	78	85
Cleared cases	1066	1373	1646	3078	3316	3906	4956	3596	2974	4381

„Procedural holdbacks“ are the collection of circumstances that exclude further application of an OVC process (for example death of a person involved) (see Federal Ministry of Justice 2005).

### **Software zur Erfassung von Täter-Opfer-Ausgleichen in Deutschland**

In the year 2002 interested institutions were offered a cost-free case processing software especially programmed for OVC institutions, financed by the Federal Ministry of Justice. This software also includes a module for an automatic creation of the data for the OVC statistic within the daily case work.

### **Selected cases: Projects of the “Diakonie” for Juvenile offenders**

The Diakonie work with convicted persons accompanies youths who committed a crime in the time after their conviction. It is always the aim to prevent a relapse. To give the young people the chance to use their conviction for a new start, they are trained and looked after by members of the Diakonie. Coming to terms with their own guilt is a great challenge for many youths.

### Settling conflicts – solving problems – Offender-Victim-Compensation for 14 to 21 year olds in Delitzsch and Eilenburg

A dialogue between the accused and the harmed person – that is the aim of the offender-victim-compensation which the Diakonische Werk Delitzsch/Eilenburg offers to young offenders and their victims. A personal encounter makes it possible to come to terms with the offence.

The participants are accompanied by two graduated social experts and are prepared for the meeting in individual consultations. The compensation dialogue is supposed to help coping with the incidents and settle the conflict, or even agree on a compensation. (see [www.diakonie-delitzsch.de](http://www.diakonie-delitzsch.de))

### Made a mess – what now? Ambulant social measures in Auerbach

Work in public interest, care instruction, social training course – this could be the judicial conditions. The Diakonie in Auerbach enables criminal youths between 14 and 21 years to fulfil those conditions. The young people are acquainted with values and norms by public work in a club, church community or youth centre. This gives them the chance to partly compensate their wrong behaviour. Under care instruction the youths should be enabled to lead their lives in their own responsibility with the intensive help of their social trainer. The social training course, in which the youths deal with topics such as debts,

problems of addiction, but also with the actual deed/offence, serves a new orientation and change of behaviour.

#### „KICK“ – Intensive Social Training in Pirna

The project KICK of the Diakonie Pirna is an intensive social training which addresses youths with abnormal behaviour. The youths take part due to judicial instruction after violence and drug offences. Subject of the training are the aims of the individual youths. The mediators help towards possible changes of perspective. The young people take small but concrete steps towards the future. The success of the project is evident. After finishing the KICK-course 80 percent of the participants did not commit further crimes.

#### Monastery instead of prison – „Project Chance“ of Christliches Jugenddorfwerk Deutschland (CJD)

High, secured walls and locked doors are part of the every day life in prison. In the monastery Kloster Frauental this cannot be found. In Germany the “Project Chance” in Baden-Württemberg is the first test project of juvenile custody in a free way. Multiple and intensive offenders between 14 and 18 years who were sentenced without suspension for the first time, can take part in this project of the CJD Creglingen instead of imprisonment.

In the former Zisterzienser monastery the young offenders undergo an individually designed and temporarily limited training under the supervision of graduated social mediators. During their stay the daily routine of the youths is strictly regulated: getting up at 5.50 a.m., four kilometres forest run, breakfast, eight hours work at the renovation of the old monastery, group sessions, house services.

All this is supposed to teach the young men values such as responsibility, reliability and stamina so that a re-integration into society will be possible. More than 20 youths have already run through the project successfully.

(see [www.cjd-creglingen.de](http://www.cjd-creglingen.de))

#### Not left alone after prison – Project „Betreutes Wohnen“/guarded living for released prisoners in Würzburg

Very often the return into normal life is not easy for released prisoners. Therefore there is the project “Betreutes Wohnen” of the diakonische Christopherus society.

The released prisoners do not have to occupy themselves with the search for a flat but can primarily work off administrative jobs and the search for a place of work.

Looking for a flat will only be the second step, aided by two graduated social mediators. All this makes it easier to re-integrate into society and decreases the danger of a relapse into criminal activities. And besides all this there is a central consulting agency for released prisoners where those affected will find support in daily difficulties.

(See: [www.christophorus-wuerzburg.de/bw.php](http://www.christophorus-wuerzburg.de/bw.php))

### **Further Proceedings of Mediation within the Juvenile penalty system**

According to the juvenile criminal law the lawyer has the possibility to refrain from prosecution in the case of minor offences if there has already been a reasonable sanction. This procedure is called **Diversions**. At present two different procedures of diversion are tested in different places in Germany:

1) So-called “Teen Courts”, also called pupils’ courts, introduced since 2000 in Bavaria. In this proceeding the juvenile offender is presented to a jury of the same age who sentence the delinquent for a measure. This can be a written letter of excuse to the victim, social work hours, or similar. This under the condition that the offender admits his crime and agrees to a hearing before a “Teen Court”.

2) The procedure called „Yellow Card“ the close cooperation of different administrations is in the foreground. The youth is directly confronted with three administrations, in the presence of his parents. At first, policemen question the delinquent. In the room next door an official of the youth welfare administration explains the implications and consequences of his criminal offence and agrees on an appropriate sanction. In the end the public prosecutor explains that he could have introduced a criminal prosecution but in this case would refrain from it. The whole procedure is built on the expectation that the offender becomes aware of his wrong behaviour and a relapse will be prevented.

### **Definition: Law Court Associated Mediation**

The law court associated mediation describes the relation between the mediation process and the law court process. According to their closeness to the law court process can be differentiated:

- Pure mediation: mediation is carried out as independent procedure.
- Law court associated mediation: is like pure mediation an independent procedure, but mediated by initiative of the judge in charge of the case.
- Law court internal mediation: as for the law court mediation this is an isolated procedure. But by contrast the internal mediation is performed by a judge not in charge of the case. The law court internal mediation is a sub-category of the law court associated mediation
- Integrated mediation: in contrast to pure mediation integrated mediation is useful within consultation, a law court process or where ever there is a conflict potential.

### **Law Court Associated Mediation in Germany**

There were and still are different attempts in Germany to combine court proceedings and mediation (see. zum Folgenden *Abschlussbericht des Niedersächsischen Justizministeriums „Gerichtsnaher Mediation in Niedersachsen“ 2005*):

In Cologne there is mediation office of the local lawyers association in the law court building since the beginning of 2001. Despite full information of the public as well as the lawyers and judges only 14 cases had been taken into mediation between February 2001 and December 2002. The mediants had visited the mediation office before the process of their own accord. None of the procedures was caused in a court reference.

In the years 2000 and 2001 the Ministry of Justice of Baden-Württemberg carried out a model scheme at the district court and the magistrates court in Stuttgart. The involved judges were supposed to suggest and recommend mediation to the process parties in appropriate cases. The listed lawyers and other mediators lowered their fees. The department of justice held out the prospect of disclaiming the court fees after a mutual settlement of the process. All in all only 37 procedures were given the incentive of mediation, of which only 11 processes ended in mediation.

Since May 2001 the magistrates court in Hannover has a mediation project which is entertained and advised by the association Fairmittelt e.V. The mediation office at the magistrates court in Hannover offers a low-barrier possibility within daily opening hours to discuss the chances and limits of a mediation process personally with trained mediators. If the parties decide for a mediation an interdisciplinary operating team of mediators accompanies the interviews. The majority of mediated cases are family conflicts.

Mostly the processes go into mediation before the process: more and more parties and lawyers do not follow the judges recommendation but address the mediation office by own initiative beforehand. And increasingly the judges at the magistrates court in Hannover suggest mediation to those involved in pending processes. Related to this the mediation office carried out a cost-free further training in mediation for judges.

Since January 2004 there is a mediation project in Mecklemburg-Vorpommern closely related with the one in Niedersachsen. A mediation offer guided by judges is presented as procedure to the partners at the district court Rostock, the higher regional court Rostock and the administrative court Greifswald. The project wide success quota is more than 70 percent. Especially the development at the regional court Rostock, with 150 cleared mediations and consequently 126 terminated legal proceedings between 1.1.2004 and 31.10.2004, confirms the preliminary experiences in the course of the Niedersachsen project in regard to the offer of mediation at regional courts.

In Bavaria mediation has been offered since January 2005 at selected regional courts and administrative courts and since 2004 at the social court in Munich.

In Berlin a workshop has been occupied with the preparation of a mediation project, which is supposed to involve the courts of the ordinary jurisdiction, since summer 2004. The workshop wanted to present concrete recommendations for the planning of the project in summer 2005. Since 2004 there has been a mediation project of the Senate of Justice at the administrative court Berlin.

In Nordrhein-Westfalen mediation has been offered at the regional court Paderborn and the administrative court of the same area since 2004.

In Hessen a mediation project is carried out at all administrative courts and also at the higher administrative court Kassel.

In Baden-Württemberg the participants of pending proceedings at the administrative court Freiburg have the option of mediation since spring 2002.

In Niedersachsen mediation is offered at the regional courts Braunschweig and Verden and also at the social court in Lüneburg.

### **Political Frame Work**

In the course of the autumn conference the ministers of justice in Germany decreed with the resolution of November 2005 to support the consensual settlement of conflicts and emphasized the support of the extrajudicial settlement of conflicts as a prevailing political aim.

On the political level will have to be decided if the legal politics in Germany will actively support the strengthening of mutual conflict resolution proceedings – also – by means of offering such proceedings on the part of the judicial system and how such an offer can be designed concerning structure and contents. (see. *Abschlussbericht des Niedersächsischen Justizministeriums „Gerichtsnaher Mediation in Niedersachsen“ 2005*)

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