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# Pro Victims Justice through an Enhanced Rights Protection and Stakeholders Cooperation

## THE VICTIMS RIGHTS AND ASSISTANCE MECHANISM IN GERMANY

DAGMAR FREUDENBERG, PUBLIC PROSECUTOR RET., SCIENTIFIC ASSISTANT, ZOOM E.V.  
ON BEHALF OF CRIME PREVENTION COUNCIL OF LOWER SAXONY, GERMANY

[INFO@LPR.NIEDERSACHSEN.DE](mailto:INFO@LPR.NIEDERSACHSEN.DE)

[WWW.LPR.NIEDERSACHSEN.DE/](http://WWW.LPR.NIEDERSACHSEN.DE/)

# General Aspects and Definitions

- ▶ Victim is the natural person who has suffered harm including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence – no misfortunes
- ▶ Victims are also family members 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
- ▶ ‚Family members‘ means the spouse, the person whos 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 dependnts of the victim – Member states may may limit the number of family members who may benefits from the rights; in Germany: spouses, relatives by blood and marriage in direct line also if they are divorced

# Legislative Framework

- ▶ Directive 2012/29/EU
- ▶ 3. Victim's Right Reform Act (Opferrechtsreformgesetz – 3.ORRG –)
- ▶ Criminal Code (Strafgesetzbuch)
- ▶ Criminal Procedural Code (Strafprozessordnung)
- ▶ Istanbul Convention
- ▶ Federal States measures (in several Federal States): e.g.
  - ➔ Victim Protection Conception in Lower Saxony (Opferschutzkonzeption)
  - ➔ Action Schedule III against violence in partnership (formal: domestic violence) in Lower Saxony
  - ➔ regulation for cooperation of the Ministries of Internal Affairs, Justice and Social Affairs against Human Trafficking in the purpose of sexual crimes in Lower Saxony

# Right on Information during criminal proceeding

- ▶ Every victim
- ▶ At the earliest possible starting date, in written way and easy understandable language
- ▶ During the first contact with police or justice
- ▶ About all rights an injured person has in the criminal proceeding as there are
  - right to make a complaint
  - right to participate as accessory prosecutor with legal assistance, in severe cases free of charge
  - right to benefit free of charge from an interpreter
  - right to be respected and protected in the special needs
  - right to get compensation from the accused person
  - right to get compensation by restorative justice measures

# Right on information outside Criminal Proceeding

- ▶ Complaint by civil law, if not in criminal proceeding
- ▶ Demand an order by the Violence Protection Act (e.g. ban order, restraining order)
- ▶ Demand of an entitlement to benefit
- ▶ Demand on compensation from Federal or Federal State Government
- ▶ Getting social support by NGOs
- ▶ Demand of Professional Psychosocial Support
- ▶ Getting protection device e.g. shelters, safeguarded flats, data protection
- ▶ Demand of trauma support and counselling

## Right to accessory prosecution in criminal proceeding

- ▶ In severe crimes with legal support free of charge
- ▶ Including
  - the right to participate during the whole criminal proceeding
  - the right to be heard,
  - the right to ask questions to the defendant, to witnesses and to experts
  - the right to propose evidence
  - the right to appeal, if the defendant is acquitted – no right to appeal for getting a higher punishment
  - the right to get support avoiding confrontation with the defendant in severe cases of protection for the victim– e.g. hearing by video in the trial, hearing in absence of the defendant, non-public hearing in the trial

# Social support

- ▶ Given by different NGO's, mostly for targeted groups of victims e.g. victims of domestic violence and stalking, victims of sexual violence, victims of gender-based violence, victims of human trafficking for different purposes, victims of exploitation, victims of hate crime, child victims in general, - may be given by Professionals or Volunteers
- ▶ Professional Psychosocial Support for all victims with special needs, as mentioned before and free of charge for victims of severe crimes, legally consolidated and standardized since 1 January 2017

# Responsibility for ensuring victim's right

- ▶ For questions of legal policy the government and the Ministries of Justice, Internal Affairs and Social Affairs
- ▶ During the investigation the prosecution office together with the local police and during the trial the courts
- ▶ Regarding the legal counselling the lawyers and attorneys
- ▶ For the safety of victims the police
- ▶ For questions of compensation, medical care and entitlement of pension caused by the crime the Federal Ministry of Labour and Social Affairs



# Right for Compensation

- ▶ Victims have the right for compensation of damages from the perpetrator
- ▶ If the perpetrator is unknown or not able to pay victims have the right for compensation of damages from the state – only upon application
- ▶ Victim have the right on restorative justice in safe and competent restorative justice processes from special restorative justice services, based on their free and informed consent, which may be withdrawn at any time
- ▶ Member States are responsible for referral of cases to such restorative justice services

# Special needs of targeted victim groups 1

- ▶ Victims of domestic violence or violence in partnership, see definition in the Istanbul-Convention of the CoE:  
right to counselling, in some Federal Statesausgestalten developed in proactive way, right to medical care, right to reservation of evidence without making a complaint, right to special protection e.g. in dwelling and daily life – not by Federal Law but in regulations in the Federal States
- ▶ Victims of gender-based crimes and Victims of cross-border crimes e.g. trafficking in human beings:  
right on protection of privacy and identity, right on special assistance, right on free legal assistance

# Special needs of targeted victim groups 2

- ▶ Child victims of trafficking in human beings:  
right on protection of privacy and identity, right on legal assistance, right on professional guardianship due to the specific protection needs they have, caused to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation – see the „Handbook: Guardianship for children deprived of parental care. A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking“  
[fra.europa.eu](http://fra.europa.eu) – isbn 978-92-9239-973-3
- ▶ Victims of terrorism: see the special information tomorrow

# Helpline and online information

- ▶ [www.odabs.de](http://www.odabs.de)
- ▶ [www.hilfetelefon.de/](http://www.hilfetelefon.de/)
- ▶ [www.opferschutz-niedersachsen.de](http://www.opferschutz-niedersachsen.de)



Thank you for listening!

Any questions and remarks?