Victim/Offender Mediation and Victim Compensation in Austria and Germany – Stocktaking and Perspectives for Future Research

1. INTRODUCTION

Victim/offender mediation (VOM) became a highly popular issue both in Austrian and German criminal policy and criminology. Recently it has been introduced in both countries as an alternative for settling offences committed by adults. Thus, VOM has reached a new quality as it can no longer be labelled as an ‘exceptional measure’ suitable for juvenile offenders at best. Now it has been established as a regular part of legal reactions available to the Criminal Justice System in general. Together with victim compensation and victim participation, VOM reflects various criminological and legal issues. The composition of this triad may demonstrate that VOM has its roots in the growing victim movement that followed earlier rehabilitative approaches which have been characterized by the focus on the offender. That had been the leading issue in criminal policy and criminology throughout the 1970s.

Referring to criminological theory, VOM lends new meaning to interactive approaches. Schneider3 once spoke of victim and offender as ‘partners in crime’. Going even further, Sessar advocates a ‘criminology without offender’ which means a principal shift away from the focus on the individual guilt of the offender and towards a contextual appraisal.4 Accounting for the interests of all parties involved in criminal events challenges present criminal justice systems in a fundamental way. In particular, participation of crime victims disrupts the historic procedural structure of criminal justice which is characterized by a bipolar system – pro-

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2. Revised and shortened version of two joint papers presented at the Council of Europe Seminar on Mediation, Tirana, Albania, December 11-12 1996.
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4. Sessar, Zu einer Kriminologie ohne Täter ['towards a criminology without offender', italics not in original], 80 *MSchrKrim* (1997), pp. 1 et seq.
secution authorities, representing the State, v. offender. In contrast, strategies that are more victim oriented, such as victim/offender mediation, are based on a tripolar model which combines the private victim-offender relation as the horizontal dimension and the intervening offender-State relation as a vertical link which is connected to both the victim’s and the offender’s spheres. The most difficult aspect of this interaction is that ‘... victim’s interests and system’s interests may differ.’\(^5\) Until now, in the case of conflict, the interests of the victim were sacrificed to serve the interests of the system.\(^6\) This is the chance for mediation.

The first part of this article will present an overall view on the legal background and give an introduction to the different restorative elements in Criminal Law. Part two reports statistical data on the practical relevance of these statutes. The third part will present some findings from project evaluation. The last part will summarize the weakness of present research knowledge and give a preview on a new comparative evaluation project.

2. RESTORATIVE ELEMENTS IN CRIMINAL LAW

2.1. Austria

The term victim/offender mediation according to the Austrian doctrine does not only mean compensation for damage in Criminal Law, which, incidentally, has a long tradition in Austria (see below). What is meant, however, is restitution in a more comprehensive sense: a method of settling a conflict in an active way that is socially constructive and more directly related to the victim; its goal – as an additional instrument of the penal system – is restoration of public peace after an offence.\(^7\)

Therefore mediation is considered to be the generic term for different ways of active compensation, such as

- compensation for any personal injury, loss or damage caused, whether directly or indirectly, by an offence,
- reconciliation talks, apologies, help for the victim etc. and, in exceptional cases,
- community service or payments to public welfare institutions (so-called ‘symbolic restitution’ (which actually has more punitive than restorative elements.)

To summarize, VOM should be seen in a wider sense – different from classical, conventional understanding – for it is independent from the willingness or even from the existence of an individual victim (see below). This is symbolized by the generic term ‘Tat-Ausgleich’ instead of ‘Täter-Opfer-Ausgleich’ as it is used, e.g., in Germany.

Compensation for damage very often provides the basis of a mediation; in a concrete case victim/offender reconciliation will be achieved as a combination of some of the above mentioned measures.

7. See e.g., AE-WGM (so-called alternative draft on restoration, developed by a group of leading scholars from Germany, Austria and Switzerland), ed. by Baumann et al. (München 1992).