

Victim-offender mediation
as a victim-supporting instrument

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Berlin 2013



Funded by the Criminal Justice Programme of the European Union.

Imprint

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Preface

Extrajudicial settlement as a way of solving various types of conflicts in the context of criminal proceedings is a common practice in Europe. So far, its impact on the involved victims has hardly been studied. Therefore, victims of serious offences, their coping strategies and mediators' options of supporting them in the course of an extrajudicial mediation procedure constituted the main subject of a two-year research project realized in Germany and Austria with funding from the Criminal Justice Support Programme of the European Union.

The research project was coordinated by Camino – Werkstatt für Fortbildung, Praxisbegleitung und Forschung im sozialen Bereich gGmbH and implemented in cooperation with the Austrian Institute for the Sociology of Law and Criminology (Institut für Rechts- und Kriminalsoziologie, IRKS).

On the one hand, the focus on coping processes takes up criminological traditions from the field of fear research, on the other hand, it allows researchers to introduce unusual new perspectives on how to support functional coping strategies on the part of victims in the context of victim-offender mediation (VOM) in Germany (Täter-Opfer-Ausgleich, TOA) and Austria (Tatausgleich, TA). This approach also provides valuable clues on the form a VOM procedure should take in order to best support victims.

Apart from providing a contribution to the further development of the procedure, the project also advances the state of research in both countries, both concerning victim-related research and the impact of VOM. For the first time in this field, a large number of victims of serious offences is reached and describes the impact of VOM from their perspective. The additional observation of mediation meetings and interviews with the "corresponding" mediators ensure a high degree of reliability regarding the results. They demonstrate that undertaking a VOM procedure offers chances of furthering functional coping strategies, even in victims of serious crime, as long as certain aspects are taken into account.

Ultimately, the study also sends a positive signal to the cooperation partners in the judicial system, the police and politics, calling upon them to consider and support a more extensive use of VOM as a victim-supporting instrument in the future.

At this point, we would like to express our gratitude towards those who enabled us to realize the research project: the European Union with its funding, the numerous agencies and facilities who gave us insights into their practical work, the mediators, who put in a lot of work when it came to choosing and informing victims and who were so kind as to supply their data for the compilation of a VOM statistic and last, but not least, the victims who were prepared to discuss their victimization and the impact of the VOM.

Introduction

The response to crime as a public responsibility

Before entering into details on the methods used and the results obtained, the following chapter will describe the legal policy context, in which mediation in criminal cases has to be seen.

Before a debate on criminal mediation was launched in several states now forming part of the European Union in the 1980s, the reactions to any attempts to break with the norms of criminal justice were dominated by the public institutions. The police, the prosecution, the courts and, if necessary, the penal system formed the chain of public institutions (potentially) activated once a charge was brought.

Under this system, persons damaged by an offence cede the conflict to the authorities, which will take all further steps to prosecute the crime and conclude the proceedings on their behalf. These proceedings necessarily result in an abstraction, stripping the individual case of its singularity with the aim of being able to discern the general circumstances of the legal issue. As a consequence, the perspective the whole incident is examined from is quite removed from the way the parties experienced the situation. Objectifying and transforming a specific sequence of events into a legal case means it is "de-subjectified".

Introducing the option of solving criminally relevant conflicts by way of mediation means that a conflict can be given back to the parties, so to speak. With the help of an impartial third party, they are given the opportunity to understand and come to terms with the sequence of events (the offence) on a cognitive as well as on an emotional level.

In both Germany and Austria, the VOM setting is supposed to enable the parties to resolve conflicts referred to mediation as self-determined as possible and to come up with their own solutions. The only aspect the parties have to agree upon before a mediation procedure can be initiated in Germany or Austria is who is the victim and who the offender. In contrast to criminal proceedings, the parties are free to describe the way the offence situation unfolded the way they experienced it. Pertaining to the sphere of their individual everyday understanding, this description does not have to exclude any topics "that do not belong here", since the case is not subsumed under legal terms and categories.

Accomplishing that victim and offender discuss the incident among themselves, exchanging their different perspectives – even if it happens under the guidance of mediators –, paves the way for normalizing their relationship, at least up to a point. It is on the basis of having understood and settled the conflict that a monetary or symbolic compensation is demanded and agreed upon towards the end of the process.

Allowing the parties to resolve criminally relevant conflicts by themselves is not only a measure implemented in addition to the formal criminal proceedings, but constitutes one of the most crucial innovations regarding matters of legal and democratic policy to be introduced in the field of criminal justice within the last few decades. Only the protection of the victims of criminal offences, which has been included in the criminal codes and supplementary regulations of both countries, can be regarded as similarly significant.

Recovering the ability to act by way of mediation

From the victims' perspective, a criminally relevant conflict is characterized by the fact that they do not manage to escape the damaging interaction with the offender(s) (Boers 1991, 46) nor to influence it in a way that would allow them to avoid the damage. Assuming that the inability to avoid or change a situation leaves traces in the victims' biography, we can infer, at least theoretically, that they can be "overwritten" by new experiences. Undertaking a VOM procedure offers a good chance to provide these, as it does not only consider legal aspects, but analyses the conflict as such, enabling the parties to deal with it in a different way. The measure aims to change the victims' perspective on the initial situation, their opponent and themselves. This is achieved by enabling them to overcome the conflict on a social and on an emotional level and by assisting them to become active and not only describe their injury, but also voice and enforce the demands resulting from it. Ideally, a new situation is created, resulting in a new assessment and a new experience that will be memorized and become relevant for the assessment of future situations.

Some comments on the state of research

In both countries, the introduction of extrajudicial mediation sparked debate and research concerning both legal and social science aspects. A selection of the corresponding studies is mentioned below.

In Germany, one of the matters of debate concerned the issue of whether a compensation agreed upon by the parties could really constitute an alternative to criminal law and of whether and how extrajudicial settlement procedures could be integrated into the logic of the latter (analyzed critically by Dencker/Hamm 1988, for instance, and favourably by Rössner 1989; Frühauf 1988; Frehsee 1987, among others). Another question that arose was how the formalized procedures for dealing with conflicts characteristic of the criminal law could be opened up to allow for a stronger involvement of the parties themselves in handling matters (cf. Grave 1988, for instance).

For Austria, we can observe that the introduction of victim-offender mediation was welcomed by most scholars of jurisprudence, which is reflected a large number of publications (an overview over the corresponding literature can be found in Stangl 2007; Schwaighofer 2008). In Austria, the juristic literature often speaks of a paradigm shift in criminal law in an affirmative sense (Eder-Rieder 2005; Miklau 2004, 300; Burgstaller 1999, 17), referring to the fact that the modern, victim-oriented criminal law does not only know the traditional objectives of prevention theory (general and individual), but now also the objective of the victim's restoration, "taking into account all of the individual victim's legitimate needs and interests resulting from an offence" (Hilf 2006, 13). Apart from the juristic literature, which mostly endorses extrajudicial conflict settlement within the context of the criminal law, there are also a number of social science publications dealing with theoretical aspects of VOM in Austria (for instance, Pelikan/Stangl 1994).

In Germany, empirical social science research on VOM began in the late 1990s, taking the form of accompanying studies that documented the implementation of the measure, first within the context of several model projects (for instance, Rössner 1993; Bannenberg 1993; Dölling 1994; Hartmann 1995), later also by way of systematic surveys in different federal states (Gutsche/Rössner 2000). Attempts to evaluate the practice of VOM on a nationwide level have been undertaken with varying success since 1993 (for the last one, see Kerner/Eikens/Hartmann 2012). Apart from providing an overview over case numbers and case scenarios, the main issues many German studies have covered include the referral practice of the prosecution, the parties' motivations for participating in a VOM procedure and the impact of successful mediation on offenders. These topics remain relevant in empirical research on VOM. Regarding legal practice, it is still a matter of interest which use the law enforcement institutions really make of VOM, whether there are differences due to agencies'

institutional ties and which advantages or disadvantages the measure entails for the different types of professionals involved in criminal proceedings (for instance, Dölling/Hartmann 2000; Schmitz-Garde 2005; Janke 2005; Hilgartner 2008; Taubner 2008; Bals/Hilgartner/Bannenberg 2005; Zapf 2012). With regard to the involved parties, it is usually the offenders who are the main focus of the research. Studies always emphasize that VOM constitutes an instrument that supports the victim as an individual subject, thus preventing secondary victimization; however, empirical findings on this topic are rare, at least for Germany (Bals 2006, 132; last observed by Kunz 2007, 466). Often, only statements regarding the victims' motivation for participating in a VOM procedure and their satisfaction with the measure and its results are made. The fact that victims and their interests play a more important role in VOM than they do in "regular" criminal proceedings is duly noted; how exactly they benefit from this – apart from obtaining financial compensation rather easily – remains unclear, though. Correspondingly, the question of how a VOM should be structured in order to meet victims' interests remains unanswered. Although victimization can, among other things, result in psychological injuries and damages affecting a victim's social life (Schneider 2001b, 45; Schroth 2005, 14), the issue of whether and how VOM contributes to avoiding secondary as well as tertiary victimization and/or overcoming traumatization has not been studied so far. This is rather surprising, since there are findings hinting at positive effects that seem worth investigating (Bals, Hilgartner and Bannenberg 2005; Jansen/Karliczek 2000).

What also seems problematic is the methodological approach to be used in order to understand the victims' perspective: The few qualitative surveys that exist tend to focus on the procedure (Jansen/Karliczek 2000, for instance) or include only very few cases due to difficulties when it comes to gaining access to the field of study (Bals et al. 2005, 326ff., for instance). This is why there are hardly any established, empirically developed indicators that standardized surveys involving victims participating in VOM could rely on in order to operationalize their questions. In addition, these studies have access problems as well, so that due to their scope, they cannot rely on analytical methods to reveal correlations between case scenarios, procedures and the impact on the victims (Bals et al. 2005, 327 and 382; Kunz 2007, 469); they are hardly representative.

In Austria, empirical social science research on VOM began around the same time as it did in Germany. The pilot project, begun in 1985 to accompany the implementation of VOM within the context of youth court proceedings in selected locations, already demonstrated the high level of acceptance the measure met with on the part of all parties involved (Haidar et al. 1988). More than 90% of the victims of juvenile delinquents participated in VOM (Pelikan/Pilgram 1988).

As a next step, the use of VOM was also tested as a way of dealing with cases involving adults. This was again accompanied by way of empirical research. Although the measure, an experiment at the time, was greeted in a more reserved way by adult victims and offenders

than had been the case within the context of the juvenile criminal law, 84% of the adult victims still agreed to participate in the unusual new procedure.

At this point, we would like to underscore the fact that there are also empirical findings regarding the effects of VOM procedures when it comes to dealing with conflicts among couples. With the help of a sensitive approach, it has been possible to demonstrate that VOM can be regarded as an instrument that is quite suitable for settling conflicts in these very special criminal cases (Hönisch/Pelikan 1999). Another study on the topic of the use of VOM to solve violent conflicts among couples has shown that mediation has a positive impact, particularly on female victims: Two thirds of the interviewed women reported that the VOM procedure had reassured them and made them feel less insecure. Of those who remained in the relationship, two thirds reported no further violence on the part of their partners – however, this means that in one third of these cases, violent incidents still occurred (Pelikan 2010, 21).

Ultimately, we would like to mention a study dealing with the matter of recidivism after the conclusion of a VOM procedure: Hofinger and Neumann (2008) found that 84% of the offenders did not relapse within the next two and a half to three years.¹ In almost three quarters of all cases, the prosecution and the courts quash the criminal proceedings after the conclusion of a VOM procedure.

At 10%, the data regarding recidivism and sentences passed in cases of recidivism look particularly positive for adult, female and better-educated offenders. For conflicts among couples, the rate of offenders who did not relapse amounts to 89%, better than the average.

A replication study confirmed these positive empirical findings in 2013 (Hofinger 2013).

¹ On the definition of "relapse", see page 36, footnote 45 of the study in question.

Subject and theoretical approach

Said process of gaining back one's ability to act with the help of mediation is the subject of the international research project "Extrajudicial Settlement as a Victim-Supporting Instrument". The main question is in how far mediation in the form of an extrajudicial settlement procedure can support a victim's re-assessment of the experienced offence situation(s) and the offender's person as well as the development of possible future strategies of how to act in a similar situation.

In victimology, the process of developing one's own, individual assessment of a situation and one's own possible courses of action and intervention, based on one's experiences and the options to act derived from them, is known as Coping. The concept relies on the cognitive emotion theory developed by Lazarus and his research team: A situation regarded as uncomfortable – the offence situation, in this case – is remembered by the person who experienced it in terms of its evident characteristics, but also with regard to the options they had to control and influence the situation. These memories form one of the criteria applied to assess similar situations in the future.

This approach based on Coping Theory offers the advantage of facilitating a focus on how the experience of victimization changes and how this affects victims' ability to act if faced with another incident. An offence situation constitutes a stress situation the victim was unable to turn in their own favour. This way of perceiving the situation becomes an experience that influences the victim's future behaviour. A VOM procedure enables them to experience a new situation that counterbalances the negative experiences with positive ones. This, in turn, allows victims to re-assess their own strategies of how to act and to correct certain behaviour patterns, if necessary.

It can also be taken into account that the way victimization is experienced does not depend on the extent of the damage done, but is rather influenced by a person's individual perceptions and subject to a certain development process (Kilching 1995, 129; Richter 1995, 233; Strobl/Lobermeier/Böttger 2003, 32) – which is, in turn, influenced by different individual and environmental circumstances (Sautner 2010, 186f.). "Even a harmless slap in the face can be experienced as humiliating, embarrassing or debasing on the part of the victim" (Mansel 2001, 48). On the other hand, there are also victims who sustain serious physical injuries as a result of an offence, but feel hardly affected.

Generally, we can differentiate between primary, secondary and tertiary victimization. *Primary victimization* refers to becoming the victim of a criminal offence, i.e. it is caused by the

offence itself, by the interaction between victim and offender and the way the victim experiences the situation.

Where *secondary victimization* is concerned, it is often the judicial authorities that can deepen or avoid victimization processes, depending on their actions. The formal nature of the criminal proceedings, the requirements imposed by the need for efficient execution and an often excessive caseload straining the prosecution entail the risk of effectively reducing victims to objects in the interest of imposing norms. The inclusion of VOM (TOA and TA, respectively) in the criminal justice system was, among other things, justified with the argument that the measure places a stronger focus on victims' interests, so that cases of secondary victimization could be avoided. But even if the setting offers beneficial structural conditions for achieving this, the procedure cannot guarantee protection against secondary victimization; it also entails a certain risk of causing it.

Tertiary victimization describes the incorporation of victimhood into a person's self-perception (cf. Sautner 2010, 27), meaning that an offence begins to have a long-term impact on the victim's self-perception, mental states and the way they interpret their environment. Tertiary victimization results from intra-personal processes that are influenced by primary and/or secondary victimization. It can make victims underestimate their ability to react to threats and avoid what they perceive to be dangerous situations. Apart from social reclusion, they might also sustain psychological damage or even develop a clinical picture involving anxiety disorders, depression or post-traumatic stress disorder (Lamnek 2008, 259).² Such disorders are found particularly often in the victims of violent crime, followed by the victims of burglary (Sautner 2010, 187). Both kinds of crime suppose a violation of individual boundaries: the physical boundary in the case of violent offences, the boundary of privacy and what is regarded to be a safe space in the case of burglary.

On the one hand, tertiary victimization is always a consequence of primary (and, possibly, secondary) victimization and thus, in the case of violent crime, the consequence of an interaction between victim and offender; on the other hand, it is the result of individual coping and definition processes (Sautner 2010, 187; Mansel 2001, 48). What influences the degree of tertiary victimization apart from the victim's individual traits and socially influenced characteristics, is, among other things, the significance of the imbalance in power between victim and offender and the options the victim had (and was able to make use of) to become active and influence the offence situation and the imbalance in power in their own favour. The direct contact established in an accompanied situation during a VOM procedure could offer the chance of correcting the victim's perception of said imbalance in power and thus their assessment of their own future ability to act.

² In the literature, tertiary victimization is sometimes referred to as "individual victimization" (cf. Schneider 2001, 67; Schneider 2007, 409ff.).

A mediation procedure provides new information for this assessment process: New conclusions resulting from the interaction during the mediation meeting complement the ones stemming from the interaction between victim and offender in the offence situation. Ideally, an impartial mediator achieves a balance in power between both parties, offering the victim options to act and take decisions. This allows the victim to regain their sovereignty and experiencing the latter allows them to recover their ability to assess future situations differently and to act differently.

If these processes VOM aims to initiate are analyzed from a cognitive emotion theory perspective, coping processes can be observed on different levels: There is *emotional coping*, i.e. regaining control over one's emotions, and *instrumental coping*, i.e. changing one's behaviour. Both are influenced by the cognitive processes involved in assessing a problem, meaning that *cognitive coping* provides the key access when it comes to influencing coping processes.

In contrast to Lazarus, who examines coping strategies regarding their consequences *in a specific situation* (Pollich 2010, 54, with further references), the present study aims for a broader approach. It is the complexity of coping processes that leads us to believe that changes affecting a specific coping strategy do not only have an impact on situations replicating the initial situation, but on a far larger range of possible situations. One also has to bear in mind that coping strategies always have to be seen in relation to individual characteristics and specific situations: A particular coping strategy might make sense and be functional in one situation, whereas its application to other areas of life might result in restraints and be rather dysfunctional.

Methodological approach

Qualitative survey

The study is mostly based on cases of serious or moderately serious violent offences referred to extrajudicial settlement by the prosecution or, in some cases, by the courts. It can be assumed that it is these crimes in particular that cause a certain degree of victimization, whereas property damage or property offences would rather be taken as "one of life's adversities" (as long as they do not include an intrusion into the victim's home).³

"Violence" is understood to mean interpersonal violence, i.e. "the specific, targeted and deliberate physical and/or emotional injury of one or several persons by one or several other persons who are physically and/or socially stronger (cf. Scheithauer/Rosenbach/Niebank 2008, 7)". In criminal justice terms, this means that the study is mostly based on cases involving bodily harm (§§ 223, 224 and 226 of the German Criminal Code (dStGB); §§ 83, 85 and 87 of the Austrian Criminal Code (öStGB)), robbery (§§ 249, 250 dStGB; §§ 142, 143 öStGB), threatening the commission of a felony (§ 241 dStGB; § 107 öStGB) or using threats or force to cause a person to do, suffer or omit an act (§ 240 dStGB; § 105 öStGB), but also blackmail (§§ 253, 255 dStGB; §§ 144, 145 öStGB). In addition, other cases were included, if their specific constellation implied a victimization of the damaged party, even though none of the offences mentioned above had been committed. The crucial criterion was that the offence constituted "an *interaction* between victim and offender that damaged the victim and that the victim was unable to escape in terms of space and time" (cf. Boers 1991, 46).

Many of the victims sustained serious physical injuries resulting in hospitalization, in some cases in permanent damage, even including the inability to exercise their profession, due to the offence.

Any analysis intended to ascertain whether VOM can accomplish any changes in victims' assessment of the offence situation and thus trigger any changes in their coping strategies must take two aspects into account and requires a qualitative approach involving several steps: First of all, coping processes that are not always perceived as such in everyday life have to be recognized. In order to reveal any changes induced by the VOM process, it is then necessary to compare the coping strategies a victim applied during the offence situation

³ Cf. Kilching 1995, 155ff. and 626: Three quarters of the victims of offences involving physical contact or burglary feel highly or quite affected, whereas less than half of those of offences that do not involve any physical contact do. On the topic of victimization in cases of violent crime, cf. Mohr 2003, 55f.

(*acute coping*) and those developed after the offence (*continual coping*) with those discernible during and after a VOM procedure (*mediation-induced coping*).

The study involves three research levels: First and most important, the victims speak for themselves as experts regarding their own victimization: They recount the offence situation, describing the way they experienced it and the role they played in this situation. They are also asked to explain how they felt after the offence, whether they received any assistance and in which form, which steps they undertook and which consequences the offence had for them, particularly regarding the way they lead their everyday lives. Moreover, the interviews deal with the mediation procedure, the way the victim experienced it and the impact it had on them. If the interview is held directly after the mediation meeting, it will reflect the corresponding "fresh" expectations and perceptions. Repeating the interviews six to nine months later enables the researchers to probe the reliability of the statements. Other cases are examined by way of "retrospective interviews", held three to six months after the mediation meeting, at a stage when the victims have already undergone a process of self-reflexion and are able to tell whether the expectations they had directly after the mediation meeting remain the same.

Secondly, the observations made by the mediators in their role as professionals and experts for conducting mediation procedures in criminal cases are taken into account. When establishing contact with the victim, they observe them at a stage involving continual coping. Their professional competence and the atmosphere of closeness and confidentiality they can establish in most cases allow them describe and analyse the victim's coping strategies – as applied when contact is established as well as any changes occurring in the course of the procedure.

A third level is provided by the researchers themselves: Apart from the knowledge gained by way of participant observation during some of the mediation meetings, it is the interpretation of the interview material in particular that enables them to explain coping strategies that may otherwise not be easy to spot. This means that coping strategies not mentioned by the victims are also included. For this purpose, the content analysis procedure usually applied in qualitative social research (cf. Mayring 2000, for instance) is combined with the interpretative ethnographic research method of "Thick Description" (cf. Geertz 1994). Expressions, expectations and ways of behaviour are analyzed with regard to their underlying significance. A "Thick Description" is a form of analysis that serves to discover correlations between empirically observable facts, their significance for a specific context and interpretations based on superordinate values and structures of meaning. In this sense, the victims' statements constitute a first order interpretation, the mediators' statements a second order interpretation and the researchers' assessment a third order interpretation (cf. Geertz 1994, 23). The combination of all three levels allows for a validation based on the individual case itself. In the

context of the specific case in question, the findings obtained in this way reach a high degree of reliability despite their interpretative nature.

Comparing and contrasting individual cases, typical case scenarios are developed that differ regarding the form of and changes in the coping strategies involved. If cases are categorized in this way, conclusions can be drawn as to which conditions should be ensured during the mediation procedure so as to further a positive change regarding the coping strategies a victim applies and which conditions would rather preclude such a change.

In order to further validate these conclusions (apart from the validation based on the individual cases themselves), further interviews are conducted with mediators without complementing them by way of participant observation or interviews with the damaged parties. On the basis of a description of the case, the mediators' approach and their perception of the victim are recorded. Specific characteristics resulting from the structural conditions of the approach and the specific case scenario are revealed and can be attributed to the different types of offence situation, which can then be compared in this regard. The knowledge that mediators have due to their practical working experience is thus generated on an abstract level. Both the specific and the general characteristics help to either validate the assumptions made while comparing cases on a superordinate level or to reveal that they are just the particulars of one specific case.

On the basis of the knowledge gained and confirmed in this way, certain aspects relevant for changing victims' coping strategies after an offence, within the context of a mediation procedure, can be inferred and corresponding advice for the practical work in the field can be given.

It is the aspects affecting the setting of procedure that have proved to be particularly relevant in practice. These include the legal regulations governing the procedure and the accepted (quality) standards formulated by interest groups that constitute the formal framework for the extrajudicial procedure as well as the basic reference for mediators. However, individual values, attitudes and competences that guide their actions and influence their way of establishing contact and conducting the preliminary as well as the mediation meeting also play a role.

Mediators' working conditions can be regarded as another significant structural aspect. These include their individual tasks, their caseload and the structures for cooperating with other institutions (particularly the prosecution, which is the authority that refers most cases to mediation). The fact that in Germany, these working conditions closely depend upon the institutional ties of a mediators' office and on regulations on the federal state level (cf. Bals/Hilgartner/Bannenberg 2005, 199ff.; Karliczek 2000, 52ff., for instance) makes it necessary to differentiate between private agencies and those belonging to the judicial social ser-

vices or youth welfare offices as well as between federal states.⁴ For Austria, such a differentiation is not necessary, as Neustart is the only agency authorized to undertake VOM procedures and formal regulations apply nationwide.

In order to discover possible gender-specific or age-related differences regarding victims' ability to cope with an offence, cases involving male and female victims belonging to different age groups (between eleven and 78 years old) were included. In more than half of the cases, the victim and the offender knew each other or belonged to the same social environment.

In total, 41 cases were analysed in Germany and Austria and 91 interviews conducted, 43 of them with victims. The following table provides details on which exact group the interview partners belong to. In addition, 34 mediation meetings with victims and offenders were monitored by way of participant observation; 11 of these were held in Germany and 23 in Austria.

	Victim – interview directly after VOM	Victim – repeated interview	Victim – retrospective interview	Mediator – in the context of a case analysis	Mediator – without referring to any specific case	Victim – VOM initiated upon victim's request (i.e. not by a mediator)
Germany	11	8	13	24	15	2
Austria	7	2	–	6	3	–
Total	18	10	13	30	18	2

Based on this study sample, the research project can present scientific advances in the field of victimology as well as regarding the impact of VOM. It includes a large number of victims of serious crime who describe the corresponding effects from their own perspective. The additional monitoring of some of the mediation meetings and the interviews with the "corresponding" mediators ensure that the results reach a high degree of reliability.

Complementary quantitative survey in Germany

So far, a permanent and reliable statistical record of all VOM cases in Germany does not exist. The "nationwide VOM statistic (bundesweite TOA-Statistik)" kept by the Ministry of Justice can reveal long-term developments since 1993, but is not representative. Involving a

⁴ Requests for information were submitted in all federal states; surveys were conducted in nine of them.

varying number of agencies, this statistic is based on data from 51 facilities in 1993, from 63 in 1999 and from 33 in its latest report for 2010 (cf. Kerner/Hartmann/Eikens 2008, 1ff.; Kerner/Eikens/Hartmann 2012, 6). We are left in the dark as to whether the use of VOM as a way of dealing with legal cases is increasing or decreasing in Germany in recent years. In the interviews with the mediators, diverging statements were made. For Austria, nationwide records are available; these show an almost uninterrupted decline in the number of VOM procedures involving adolescents since 1997 and the same tendency for those involving adults since 2005.

Towards the end of the research project, this situation gave rise to the idea of launching an additional quantitative study in order to figure out whether the use of VOM is increasing in Germany or whether there is a tendency towards a return to formal legal proceedings. Such a tendency can only be revealed, if the facilities involved in the collection of the statistical data remain the same over several years, if they can be considered a representative sample of the total number and if they all count either VOM cases or offenders, i.e. if the basic unit is the same.

The secondary statistical analysis our study provides cannot be regarded as representative either, since the total number of German facilities offering VOM remains vague and we only have a rough estimate of 368 "and more" (cf. Rössner 1999). For a stratified sample, one would also have to know how many of them are publicly run and how many privately managed; however, these details are also unknown.

What the study provides is an overview over recent developments, based on the case numbers collected by 83 facilities in 12 federal states in the last three years (2010 – 2012). In addition, it offers relevant information as to who initiated the procedures, the corresponding charges or offences and the success or failure of the VOM.

These results are possible, because the contact established with more than 100 facilities was used to ask them to supply the statistical data they and their agencies had collected in the last three years. These data were evaluated by way of secondary statistical analysis, i.e. coarsely gridded and analyzed with the help of the statistical analysis software SPSS (Statistical Product and Service Solutions). Since cases were defined differently in the more than 100 statistical records supplied, unfortunately, only 83 of them could be included in our analysis.

Some further explanations are necessary to ensure that the results of the present study are interpreted correctly: A "case" is understood to mean a VOM procedure that has been undertaken and concluded, usually involving only one victim and one offender, but possibly more. Thus, it becomes possible to compare cases.

Regarding the presentation of the results, we differentiate (where necessary) between the number of cases referred to mediation in a given year and the number of cases settled in the same year, i.e. an "adjusted total", which all further case-specific data, such as the ones concerning the instigation of the measure, the nature of the offence and the conclusion of the VOM procedure, relate to.

The results of the secondary statistical analysis included towards the end of the report provide very recent data for the corresponding areas in Germany, which can also be seen in relation to the nationwide statistical report on VOM (cf. Kerner/Eikens/Hartmann 2012), which presents data until 2010.

The results of the study

The results of the study comprise, first of all, the categorization of offence situations, differentiating between five different types, each of them implying special coping strategies and motivations regarding VOM. A second focus lies on the settings and approaches mediators should use at the different stages of a mediation procedure, in the light of the specific requirements associated with the typical offence situations and the corresponding motivations. With regard to supporting the development of functional coping strategies, a new perspective for the assessment of mediators' approaches is developed as well as a possibility to discern favourable and unfavourable factors.

Offence situations and their categorization

Assuming that victims of violent crime experience the offence in a very direct way affecting their personality and that they experience victimization in a special way as a consequence (cf. Mohr 2003, 55, for instance), it seems sensible to examine the offence situation first of all. Here, the imbalance in power between victim and offender is evident – as are the options the victim had or was able to make use of to become active and influence the offence situation and the imbalance in power in their own favour. The larger the gap between the options to act that a victim perceived they had during the offence situation and those they would have considered necessary, the higher the probability that the victim will regard their ability to deal with future situations they find uncomfortable or dangerous to be insufficient. As a consequence, they will avoid certain situations, stop visiting places they consider dangerous and change certain forms of behaviour, resulting in increasing limitations in everyday life and, ultimately, a reduced quality of life.

The studied cases can be categorized into five different types:

Provoked offence situation

These are offence situations in which a conflict escalates until things "get out of hand", resulting in victimization. The later victim plays a more or less active role during the sequence of events. Such case scenarios tend to cause little victimization, even if the victim sustains serious injuries, and their coping strategies are hardly affected. If they decide to undergo extrajudicial mediation, victims are usually aware of the role they played in the conflict and tend to be driven by pragmatic motivations.

Most victims of this type of offence situation don't feel a particularly strong need to see the offender punished; they participate in a VOM procedure, because they wish to receive a compensation for the actual damage sustained and to normalize the relationship with the offender in order to be able to deal with them in everyday life again, if necessary.

Example case: The later victim takes the train home, slightly drunk after a party. On the train, he begins to argue with a fellow passenger, becoming increasingly aggressive. The victim describes the further course of events as follows: *"Well, he roughed me up a bit, he broke my nose."* (12 – 17)

The rather serious injuries (fractured nose, two lacerations, a black eye) are shrugged off: *"Those punches were well thrown... didn't look too good in the Christmas pictures."* (49 – 54)

The victim gives the following reasons for participating in a VOM procedure: *"I mean, these things happen, my God, and I wasn't really innocent, was I? So I thought that [mediation procedure] is not such a bad thing, you see? Because this way, he doesn't end up having a criminal record."* (75 – 78) This and the fact that the victim recognizes himself in the offender – *"I used to be no different, that's the point"* (75 – 81) – is why he wants to avoid that the offender is punished in any way that might have a negative impact on their later life. Nevertheless, he wants to receive a compensation for the loss of earnings suffered.

Advocacy situation

In this type of offence situation, the later victim intervenes in a conflict they are not party to, attempting to settle a dispute, and is damaged as a consequence. The victim's intention is to influence a situation in a way that benefits all parties. This is why they are highly surprised and bewildered when they suddenly become a victim themselves. As a consequence of such a situation, expectations the victim had developed by way of cognitive processes are disappointed: The offender ignores their good intentions and a situation they thought they could handle runs out of control. The interviewed victims have a strong sense of justice (or need for harmony) and their way of thinking is based on normative standards. Therefore, they find it crucial that the violation of a norm is revealed.

Victims of this type of offence situation feel a high degree of indignation regarding the offender and – in all cases studied – a corresponding need to see them punished. This need for punishment makes them doubtful with respect to a mediation procedure. It is often accompanied by a feeling of resignation regarding the criminal proceedings. The material compensation they are usually led to anticipate is regarded as a "minimal punishment" ("better than nothing").

One cause for the victims' strong need to see the offender punished could lie in the fact that the offence occurred in a (partly) public place, i.e. the situation constituted, among other things, a seeming embarrassment for the victim. If the offender is punished, this means that a normative interpretation of the incident is officially established, again publicly, and despite the "defeat" of the offence situation, the victim would experience this as a "success" that counterbalances the perceived loss of face.

Apart from their need for punishment, victims describe a permanent feeling of fear. The offender's perceived unpredictability and the failure of their own strategy cause a high degree of insecurity and anxiety in some victims. This gives rise to another motivation to participate in VOM: Victims voice a need to overcome their fears.

Example case: The later victim witnesses an argument between neighbours regarding the removal of snow in front of a property, during which the parties become increasingly aggressive. When he attempts to mediate, he is knocked down with a snow shovel.

After being contacted by the mediators' office, the victim is afraid that the offender would get away unpunished, which is why he is at first unwilling to participate in a VOM procedure. His lawyer, however, thinks that the proceedings would be quashed if he refused: *"And my lawyer said, this is the only chance, if the prosecution has proposed this... then, there would possibly, there would probably be no hearing at all, the charge would be dropped and then I could only bring a civil action."* (185 – 186)

As he will continue to pass the place where the incident happened, he finds it important to normalize the relationship with the offender: *"So I don't need to be afraid any longer when I pass that place."* (286) *"I was also afraid when I saw him; I've seen him several times after the deed."* (326)

Surprise attack

Just as in advocacy situations, the victims of this kind of offence situation do not expect any attack, but they play no role in creating the situation. They become victims by chance (having been at the wrong place at the wrong time) or because they have certain resources (such as money) or characteristics (such as a dark skin colour). This group includes victims of spontaneous violence as well as victims of assault or robbery.

For the victim of a surprise attack, everyday actions that did not seem to entail any special danger become associated with insecurity. As there is no previous conflict and the victim usually does not know the offender, they are unable to develop any strategies and can only react spontaneously, if at all, when faced with the situation. Their experience of having been unable to act – and much less able to act in any way that would have made a difference – in

a dangerous situation makes them question the coping strategies used so far; the victims feel highly insecure.

Whereas the fears of the victims of an *advocacy situation* are usually directly associated with the offender, the victims of a *surprise attack* are often plagued by additional vague anxieties. Many of these victims are interested in being able to assess the offender, whom they perceived as an overwhelming force during the offence situation.

Indignation with the offender is one of the victims' dominant feelings. It is usually accompanied by a need to see them punished, as described for the victims of offences that arose from *advocacy situations*. All those who can be classified as "random victims" are interested in receiving a material compensation. In contrast to the victims of offences resulting from *advocacy situations*, however, the latter is not regarded as a form of punishment, but as a recompense for the actual material damage sustained and the pain suffered.

The accidental nature of this kind of offence situation can, on the other hand, also have an emotionally relieving effect on victims, if they focus on it and are thus able to realize that the attack wasn't aimed at their person in particular.

Example case: The later victim is an employee at a betting office. When she is about to lock the office, she is attacked from behind: Two men pull her into the open room, tie her up and threaten her with a weapon, while they take the money from the cash register. Since then, the victim is suffering from massive fear, which she also feels at home: *"There is a terrace outside, behind our place – and I stand there and think, someone is going to come and grab me."* (273 – 283)

From the victim's perspective, the offenders appear to be monstrous, an overwhelming force. She has seen them wearing black masks and remembers them as *"evil black figures"*, whose picture keeps haunting her. *"When the two approached me so close and so fast, they were only white holes (135 – 144)... No coloured iris, nothing... and that was so incredible to me, that's incredibly cruel for me."* (391 – 394) The victim hopes that a meeting with the offenders will improve her situation: *"For my visual [perception], that I can see them the way they are or who they are after all."* (391 – 403) *"Yes, what they look like, that was my first priority, because I wanted to get rid of those masks. To see their faces... I had imagined things. Monsters, really. And like those identikit pictures you sometimes see."* (739 – 764)

On the one hand, the victim hopes to be able to better protect herself, if she knows what the offenders look like. On the other hand, she hopes to gain a certain degree of protection by making a concession to the offenders, especially the main culprit, who is meanwhile serving a prison sentence: *"Because somehow, I have also created a chance for myself to survive a similar situation again... who knows what makes him tick later, I hope he'll be OK and see*

things positively, but who knows, if I had made matters worse for him, he would probably have a negative impression of me. And I didn't want that." (561 – 570)

Offence situation without direct contact

Another type of case scenario we were able to distinguish is characterized by the fact that during the offence situation, victims have no direct contact with the offender, meaning that as there is no opponent, they have no chance to adapt their reactions accordingly (e.g. cyber-bullying, manipulations of vehicles). They only realize there was an incident after the damage has been done and the offence situation is all but over.

As a result of this special kind of scenario, victims are often unsure as to whether the situation actually was an offence, even if it had grave consequences. Their apprehension that their environment would not take the incident seriously was confirmed in all of the studied cases. Accordingly, victims receive little support from their environment.

In cases in which victim and offender did not know each other, victims were afraid of the offender, whom they were unable to assess as a person, just as the "accidental" victims.

In cases in which victim and offender knew each other, the victims did not feel anger as much as a deep disappointment. They avoided the offenders, not because they were afraid of them, but rather because they were unsure how to deal with the situation and feared that further escalations might follow.

A crucial motivation for their participation in a VOM procedure is the victims' need to re-establish boundaries. Due to their insecurity regarding the assessment of the offence situation, they consider it crucial that they and the offender come to clearly understand the violation of personal boundaries the offence constitutes.

A particularly conspicuous aspect is the victims' need to influence the offender. Occasionally, this can also be observed in victims of other types of incident, but it is particularly striking in the victims of offence situations without any direct contact.

Example case: After a conflict broke out at work, the offenders manipulate the victim's bicycle, causing an accident in which the victim is hurt so badly that she is no longer able to practice her profession.

At first, the victim is unsure as to whether she should report the incident at all; although she guesses who is responsible for the manipulation, she then decides to bring a charge against persons unknown: *"[...] I cannot just accuse somebody. At first, I thought, I might be slightly off my head. I thought, maybe I just imagine things. [...] The next day, I reported the incident*

and I said, they probably thought I was mad or something, I mean I couldn't prove anything." (66 – 73)

Therefore, she feels relieved after the offenders have been identified: *"Because then I was really relieved and thought, well, the police could have thought I made this up. [...] So in this respect, I was glad they found out who did it, that [...] they saw I said the truth, that I hadn't just imagined things." (66 – 73)*

The victim is, however, very much affected by the incident, all the more since she believed she had a good working relationship with the offenders. Her insecurity affects several areas of life. She does not know how to face the offenders and tries to avoid situations in which she might encounter them: *"I mean, I was so incredibly disappointed by the two of them and I refused practically everything, I didn't answer any phone calls from my employer's office, I didn't go to work any longer." (21 – 23/l)*

"I wasn't even angry, I thought, what if I run into them at some point... I don't even go to the café [where she might encounter one of the offenders, note of the authors] any longer, because I don't know how to react." (79 – 83)

Despite the serious consequences, at first, she does not feel any need to see the offenders punished. She is rather interested in making them see the consequences of their actions and act differently in the future. *"But I want them to find their way. [...] That's what I would wish for. That they say to themselves: 'Stop, I've really messed things up, to put it clearly, I should try to right this wrong somehow.' And that when a similar situation arises, she would learn to deal with it and react differently. That's what I would wish for. That she has learned from this mistake." (71)*

Offence situation within the family

Cases of violent conflicts that break out among family members or partners and in which the offence is usually the result of unresolved conflicts due to separations, love triangles, arguments regarding joint children, addiction and the corresponding forms of behaviour etc. are subsumed under this category.

This type of offence situation differs from the ones described above with regard to the family ties between the parties, the close emotional contact that existed for a longer period of time and – in many, although far from all cases – the existence of a common household, entailing shared everyday lives and in most a cases, certain economic ties.

This is why these cases have special characteristics in comparison with the other types of offence situation, including different interests on the part of the damaged parties. They are not about solving a conflict with a stranger or an opponent who is rather removed emotion-

ally. The background that has to be taken into account is often more complex than in other case scenarios and thus requires a different approach on the part of the mediators.

As a consequence of the incident, a successful separation can be the victim's key motivation to participate in a VOM procedure. However, it may also be necessary to identify the parties' roles and to explain out the violation of norms and personal boundaries the offence constituted, if domestic violence is used as a means of rule.

Expectations with regard to a victim-offender mediation

The analysis of the studied cases demonstrates that the expectations victims have with regard to undergoing a VOM procedure often depend on the type of offence situation. Although most victims have more than one motivation, it can be assumed that certain types of offence situation imply certain typical expectations regarding a subsequent (VOM) procedure. As the type of offence situation can usually be gleaned from the case file, the correlation between offence scenario and possible expectations provides mediators with fairly reliable clues on which needs and motivations victims (might) bring along.

Therefore, the following paragraphs briefly resume the typical motivations that tend to drive victims after a (violent) offence:

Firstly, we find **pragmatic motivations**: Victims emphasize the advantages they hope a mediation procedure might offer them on a factual, pragmatic level. These include the possibility of receiving financial compensation and settling the conflict with the help of a procedure that does not involve a lot of red tape.

Secondly, we observe **offence-related and offender-focused motivations**, such as solving the underlying conflict that caused the offence, which is particularly significant, if the parties have social contact. The wish to be able to see the offender is closely related to the expectation of being able to overcome one's fears.

Altruistic motivations can be assumed, if the offender's future development plays a role when it comes to deciding in favour of a VOM procedure. The offender is perceived as "pitiable", the victim wants to help them, increase their future chances or at least not contribute to placing obstacles in their way. What stands behind this motivation is often the need for (self-)protection.

Relatively often, we find **motivations related to the need to establish norms**. Here, the point is to make the offender understand that they have crossed a boundary. Bringing a charge is meant as a signal in this sense and the victim hopes to underscore the message during the mediation meeting. The *need to be recognized as a victim* plays a role, just as

much as the *need to see the offender punished*. Regarding the latter, victims are not usually focused on legal sanctions.

Some victims do not follow any motivation of their own, but participate in a mediation procedure for **reasons grounded in resignation and/or pessimism**. On the one hand, this group includes those victims who fear that a refusal on their part would result in a quashing of the proceedings, so that the offence would have no consequences for the offender. On the other hand, there are also victims who agree to participate, because they are pushed by their environment (their parents, for instance). These can be regarded as cases with an extrinsic motivation.

The impact of VOM on victims' coping processes: favourable and unfavourable settings und approaches on the part of the mediators

On the basis of the theoretic assumptions made so far, we presume that victimization constitutes an experience that has an impact on future coping strategies. In this light, the VOM procedure can be regarded as another experience that takes up the victimizing event and causes further changes with regard to the person's coping strategies. The following chapters will deal with the questions of whether this is really the case and which approaches can further or preclude the development of functional coping strategies.

When a **case is referred to mediation (1st step of the VOM procedure)**, the question whether a victim-offender mediation makes sense in that individual case is reviewed on the basis of the case file provided by the prosecution or the court. Whereas in Austria, the use of VOM is limited by law to certain kinds of offence, in Germany it is – at least theoretically – possible to settle any kind of criminal case by way of VOM. As a result, mediators are quite open when it comes to deciding whether a specific case is suitable for mediation. One has to bear in mind, however, that it is for a good reason that the VOM standards draw the line for undertaking a mediation procedure where victims are traumatized (cf. Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung et al. 2009, 4). German mediators generally find crimes such as rape, sexual abuse, sexual assault by use of force or threats, mobbing and stalking unsuitable for a classical VOM, whereas in Austria this settlement option – and diversion measures in general – are not explicitly excluded when dealing with cases of stalking.

When it comes to deciding whether a case is suitable, apart from the gravity of the crime, mediators will ponder the current state of the legal proceedings, the legal situation in which the judicial authorities request a VOM procedure and the corresponding goals they want to reach in that specific case. In most cases, the proceedings can be quashed or – in case a sentence is passed – the sentence can be mitigated, if the offender demonstrates their good will and honours the agreement signed upon the conclusion of the VOM.

Among the German cases included in the study, there were not many instances of a case being referred to mediation after the main hearing had already been scheduled. In Austria, this way of proceeding is excluded. It creates pressure of time, which in turn limits the victims' scope of action and precludes the development of functional coping strategies.

Another way of proceeding that is rarely seen in Germany and excluded in Austria consists in undertaking a VOM procedure *after* a court hearing on the orders of a judge (§ 10 of the German Youth Courts Law, JGG). It is a matter of controversy whether a voluntary participation of the parties can actually be presumed in such cases. In practice, however, these cases are not automatically dismissed as unsuitable; instead, the offender's intentions are more closely examined in a personal meeting. Only after such a meeting is the question decided whether the case can be regarded as suitable or not.

Although from a structural point of view, the decision regarding the suitability of a case depends on the cooperation with the referring prosecution or the organization of the different agencies, it is initially based on the information available in the case file. The latter can have a further relevance when it comes to undertaking a mediation procedure, as it contains clues on the victim's specific needs or on the relationship between victim and offender, for instance. Mediators take note of such clues before establishing contact, but tend to verify their assumptions during the preliminary meeting, also because of the lack of details.

The decision regarding the suitability of a case is often postponed until both parties have been contacted so as to let them have their say in the matter. This can generally be regarded as beneficial with respect to encouraging the parties to become active and proceed in a self-determined way; it is, however, necessary to mention possible negative aspects when establishing contact. These might include the pressures of time and expectations in case court hearings are imminent, a possible quashing of the criminal proceedings or other circumstances that might limit the voluntary nature of the parties' willingness to participate in a VOM procedure.

Among mediators, the case file is generally considered to be a rather imprecise and unreliable source of information for a planned VOM. So far, a conscious effort to extract the type of offence situation as described above from the file cannot be observed in practice. It could, however, provide orientation on how to deal with and harness the victims' specific expectations in order to support the development of functional coping strategies.

In order to **establish contact with the parties (2nd step of the VOM procedure)**, a letter is usually written, in Germany as well as in Austria. This is normally a standard letter, certain parts of which may be elaborated to fit the circumstances of the case in question (cf. Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung et al. 2009, 6/23). The aim of establishing contact with victims consists in making them a written offer that motivates them to participate in a VOM procedure. In Germany, the letters usually underscore the voluntary nature of the measure, explain the advantages a VOM procedure can offer the parties and ask the victim to contact the mediators' office. Only rarely are specific appointments pro-

posed at this stage. Generally, the fact that an informational or preliminary meeting always takes place without the accused is mentioned. By way of information material, the letters often contain a flyer explaining the procedure and the different options victims have to defend their interests.

In practice, Austrian mediators usually proceed in a very similar way as do their German counterparts when it comes to establishing contact. A standardized flyer that explains the procedure and is sent together with the invitation has been translated into several languages. It is a matter of debate among mediators how the invitation should be formulated in order to motivate the parties to participate in a VOM procedure, to inform them about the procedure in a matter-of-fact way and to ensure that the text remains easily understandable for the target group, all at the same time. One of the points often criticized is the *"the pointed legalese phrasing"* used in the invitation, which takes up the assignment of the roles as defined by the criminal law, inviting the parties either as "the accused" or as "the victim". Some mediators would consider it more favourable to invite them as "parties", since the victim also forms part of the conflict. In Germany, this would not be possible, since the offender's admission of their guilt and, as a result, a clear assignment of roles is a prerequisite for undertaking a VOM procedure.

From the perspective of the interviewed victims, the letters and flyers constitute an impulse to become active, to recover their own ability to act, and thus a first step on their way towards re-assessing and changing their own coping strategies. This is particularly true, as the victims had never heard of the option of undergoing a VOM procedure before, so that after learning about the corresponding options, they began to develop very specific ideas – even those who at first harboured doubts regarding VOM.

The situation in which victims encounter themselves when receiving the invitation heavily influences their reaction. If a VOM procedure is offered at a stage when secondary victimization processes are setting in, the offer will often be regarded as a change for the better. Some victims state that the fact that an authorized public institution eventually tried to establish contact came as a huge relief to them, in the sense of *"finally someone takes care of this"*, *"finally something is done about this"*. The fact that the judicial system, which deals with cases in an offender-oriented way, adhering to the rules of procedure, often keeps silent for months is experienced as a state of lingering indifference.

With an eye towards the goal of supporting coping processes, victims should be invited to participate in a VOM procedure as early as possible, since any lingering or any waiting state imposed by the state of the legal proceedings precludes the development of beneficial coping processes. Dysfunctional coping strategies can take root and become ingrained. Some mediators believe that invitations might be sent out too early in some cases, because at a very early stage, they could still trigger too many emotions, which could make victims rather unwilling to participate; this aspect, however, seems to be less relevant when it comes to supporting coping strategies: If they are not informed about the option of undergoing a VOM

procedure, victims cannot position themselves. If, after being informed at an early stage, a victim needs time to consider their options, a VOM procedure can easily be postponed. In this regard, most mediators have proven to be flexible; they try to act in a way that is best for the victim.

The usual order of establishing contact, i.e. securing the offender's readiness to assume responsibility for their actions before the victim is contacted, helps avoid further damage on the part of the victim. In VOM, this order of establishing contact constitutes a crucial practice standard. With very few exceptions, the interviewed mediators establish contact with the accused first in order to probe their willingness to assume responsibility for the offence as well as their readiness to participate in a VOM procedure. With the exception of domestic violence, this practice complies with the stipulations of the relevant standards of both countries, meant to protect victims against further victimization. If contact were established with the victim first and they were prepared to participate in a VOM procedure, but the accused declared afterwards that they were not, this would mean another severe blow for the victim, as one mediator puts it, particularly if the offender did not admit their guilt, trivialized the offence or described the sequence of events in a totally different way and the victim were to learn this. This is why after reaching a conclusion on the basis of the information contained in the file, most mediators consider contacting the parties another necessary step when it comes to finding out whether a case is suitable for VOM. In this regard, they take a very clear stance: If the accused is prepared to "*participate somehow*", "*hoping to get off the hook cheaply*" (2_V_1017), mediators will decide against a VOM procedure; many cite their responsibility for the protection of the victims as the reason.

It is not unusual that mediators dismiss a case as unsuitable for these reasons. In that case, the victim is not asked regarding their willingness to participate in a VOM procedure and the case is handed back to the prosecution. This has to be regarded as good practice.

Other variants exist when it comes to approaching the parties to the conflict; with an eye to supporting functional coping strategies, we rate them as follows: If an offender does not seem to be entirely ready to assume responsibility, some mediators take the decision for or against a VOM procedure together with the victim, emphasizing their self-determination. In some cases, a mediation procedure is undertaken upon a victim's request, although the offender is not prepared to assume their responsibility. Undergoing a VOM procedure under these conditions entails a certain risk for the victim, whose perception of the incident and its consequences is put into doubt during the mediation. Supposing that victims should be enabled to develop functional coping strategies, such a procedure would hardly make any sense, as they would easily lose control again during the discussion with the offender. Victims are hardly able to see the risk of sustaining new injuries, which this type of discussion with the offender would entail.

If the victim has already been informed about the possibility of undertaking a VOM procedure, either by the police or by their lawyer, and given their consent, the letter should mention the possibility to reconsider the decision.

The impact of the invitation on a victim can be described as follows: A process of weighing up options and more or less ambivalent feelings is initiated and ultimately a decision is reached, i.e. the victim becomes active. Together with the first reactions and depending on the specific case scenario, certain motivations begin to surface. They can be rather pragmatic, offence-related and offender-focused, altruistic, related to the need to establish norms or grounded in resignation and/or pessimism and become more differentiated through the contact with the mediator. It can be observed that the victims of provoked offence situations tend to decide in favour of a VOM procedure rather fast and pragmatically, often before a first meeting with the mediators takes place. The victims of other types of offence situation tend to react in a rather hesitant and ambivalent way. It is only in the course of the informational and preliminary meetings and with the corresponding support on the part of the mediators that they eventually decide to participate in a VOM procedure.

The aim of the **informational and preliminary meetings (3rd step of the VOM procedure)** is to inform the parties about the course of the VOM procedure, the conditions and possible alternatives. In the cases studied, the informational meeting often turned into a preliminary discussion aimed at preparing the parties for the mediation meeting. Sometimes, further meetings or telephone conversations are necessary before a victim decides for a mediation meeting with the offender, for another form of mediated settlement (such as a shuttle mediation) or against any kind of extrajudicial solution.

The setting of the personal encounter between victim and mediator provides further and better opportunities to strengthen the coping strategies activated when contact was established. This affects several levels.

On a *cognitive level*, victims are informed about all the different possibilities a VOM procedure can offer with regard to defending their own interests against the offender. Ideally, this leads them to develop their own, increasingly specific ideas as to what they can expect of the mediation meeting and of the offender and which goals they could possibly reach.

Apart from the possibility to obtain compensation without having to clear a lot of red tape, mediators often emphasize the fact that VOM can help the parties to settle the conflict and to properly understand the offence situation, that it can serve to answer the question why the offender harmed the victim, which reasons they had. Many mediators believe that in order to rid themselves of their fears, victims want to see the offender, get to know them and understand them. They report that when it comes to understanding and settling the conflict, recovering a sense of security is often the first priority, but also "*re-establishing some peace*" (7_V_167-173) or reaching a "*lasting peace*" and reconciliation, particularly if there is a chance of running into the offender in everyday life again. According to the mediators, they hardly ever come across victims with a real need to see the offender punished or victims

who are not really prepared to forgive and, most of all, just want to vent their anger. Sometimes, victims also want to try and influence the offender and their development.

These observations made by the mediators do not always coincide exactly with the victims' motivations. Often, the issue of understanding the offence situation, i.e. why it was them who became the victim of the offence, for instance, plays only a small role for the interviewed victims and only with regard to the question of how to better protect themselves in the future. Moreover, the need to see the offender punished is more common than perceived by the mediators.

Victims' coping processes are also supported on an *emotional level*: Due to the negative experience of the incident, it is particularly important that victims learn to trust the mediator in order to be able to face the offender in person. If a mediator set to accompany the victim in the face-to-face situation offers their support and if the victim realizes and understands this on a cognitive level, it can give them an emotional sense of security for the meeting with the offender. The victim understands that further victimization is out of the question and that moral support is available, if necessary, when they face the offender.

Knowing in detail which course the mediation meeting will take, knowing about the external conditions and bringing friends or relatives are factors that can further help to overcome fears, anticipating the victim's *instrumental coping* during the mediation meeting.

The victims involved in the study reported that for them, going to the mediators' office for a preliminary meeting was a difficult step to take; the open and unconditional offer to speak about the issue, however, meant a great relief to them. Most of them felt they were taken good care of and well accompanied.

*"Everything was discussed again, [...] what I imagined and how the whole thing could be settled to my satisfaction, from my point of view. They really addressed this well."
(4_G_88-94)*

Some examples of negative effects of the informational and preliminary meetings could be observed as well, however, particularly where mediators overlooked unrealistic expectations or confused victims' expectations with perceived ones (such as reaching a reconciliation), blocking out the victims' real expectations.

Although all mediators strongly work towards motivating victims to participate in a VOM procedure, they keep repeating that they aim to avoid any pressure, *"never put pressure on them, but motivate"* (13_V_182-185). In some cases, this can resemble walking a tightrope, if, for instance, mediators point out that a VOM procedure would be the only way to receive compensation or if the negative consequences of the court proceedings are emphasized.

"Most victims think, it's going to the court and I'll see justice done. [...] None of them are aware that the whole thing might only take a quarter of an hour or [...] that it's not about them at all. I always have problems to explain that clearly, too, to strike that

balance, I mean, of motivating and convincing someone, yes, but without painting the other option in too bad a light, so that they would end up thinking, oh, I could be trying to advertise that." (12_V_82)

There is the risk that the damaged party primarily agrees to participate in a VOM procedure, because they believe they have no other option or because there are other aspects they are afraid of:

"What also made me want that: I hate being in a court room, there, I don't know, I feel very uncomfortable there. I don't know, it's crap." (4_G_201-206)

In such a case, an important aspect that should be borne in mind in order to allow victims to reach a decision of their own is to give them enough time to ponder the matter, explaining that they do not have to decide on the spot, that they can take their time to think about it. Whereas the initial contact should be established as early as possible, victims must be given sufficient time to reach a decision at this stage. This seems to be accomplished in most cases. Many victims emphasize the fact that they arrived at their decision to participate in a VOM procedure without any pressure and mention the time they were given to think things over.

Victims' specific motivations, which vary depending on the type of incident, as described in the case analysis (above), can provide clues for an appropriate way of approaching the preliminary meetings and allow an assessment of the mediators' way of proceeding at this stage:

Victims of **provoked offence situations** are usually aware of the fact that they played a part in the conflict. Often, this alone provides them with a motivation to participate in an extrajudicial settlement procedure. Moreover, victims of this type of incident tend to favour a pragmatic solution. They want to receive compensation fast. In case victim and offender form part of the same social environment, they are interested in finding a normal way of dealing with each other in the future. This is why it comes as a huge relief to them, if they are able to meet again without any feelings of anger or revenge.

In these cases, it hardly makes any sense, if mediators try to take up assumed motivations based on possible fears or an interest to get to know the offender as a person. Here, the focus must lie on settling the conflict and establishing peace among the parties.

Victims of an **advocacy situation**, who were damaged, because they tried to intervene in a conflict they were not party to, have a great interest in seeing the violation of the norm emphasized during the mediation meeting. They want to make clear who played which role and be recognized as victims. For instance, a young man who sustained serious injuries as a result of an advocacy situation agrees to participate in a VOM procedure, because he thinks the offender would get away without receiving any punishment in the criminal proceedings. He finds it highly significant that the offender is warned off, though, *"to take him down a peg or two"*.

Apart from the need to see the offender punished, the victim might also feel insecure regarding the offender's future behaviour. Victims describe a fear of offenders they perceive to be unpredictable, which they want to get rid of by way of VOM.

Whereas the need to see the offender punished is offender-oriented and thus an extrinsic motivation, the motivation of overcoming fears is directly linked to a victim's emotions, i.e. it can be influenced by way of cognitive processing, if the victim faces the offender. The question of what would enable a victim to overcome their fear of the offender can be discussed during the preliminary meeting. Later, certain forms of behaviour, such as avoiding any encounter with the accused, can also be modified or substituted with appropriate coping strategies.

Punishing the accused is not what a VOM procedure is for. This is why it is particularly in these specific cases that mediators should use the preliminary meeting to point out that mediation is hardly suited to meet a victim's need for punishment and to re-direct victims' expectations towards the chances a VOM procedure can offer them.

The motivations victims of a **surprise attack** have for participating in a VOM procedure are closely linked to their very specific fear of the offender, but also to other vague anxieties they often suffer from. In addition, receiving compensation is quite important to them, often because they see it as an offender's symbolic recognition of the pain they suffered. Often, they mention the motivation of wanting to see the offender, because they were unable to recognize a face during the incident. The fact that they do not know what the offender looks like contributes greatly to their vague feeling of insecurity – after all, almost any person they come across could be the offender.

It is quite remarkable that mediators often misinterpret a victim's rational interest in an offender's appearance to mean they are interested in the offender as a person, which is not usually the case. The victim of a case of robbery, for instance, says about the offenders, who offered to help in everyday life: *"Then, they offered that they could help us out here. I don't want that. I don't want to see them again."* (20_G_121)

What looks like an interest in the accused at first sight can also be a serious fear of becoming a victim again a later stage, if one does not find a good footing with the offender.

It is crucial to use the preliminary meeting to point out the actual possibilities and limitations of VOM. It is true that a VOM procedure can help victims find closure or overcome their fears. Ultimately, they still have to live with the experience of victimization and learn to deal with it in everyday life.

Victims of an **offence situation without direct contact** are particularly insecure, as during the incident, they were unable to identify any direct opponent and unable to defend themselves for this reason alone. They develop diverse anxieties, often vague in nature, often also concerning their own perception or possible encounters with the accused. On the other

hand, they are highly interested in seeing the case solved and in having their own perception confirmed. These victims fear the offender might not take their suffering seriously.

"Yes, such an insecurity somehow, in the sense of 'Oh well, don't make such a fuss!' [...] that I wouldn't be taken seriously with the fear the [offender's, note of the authors] behaviour caused." (13_G_128-130)

In these cases, the preliminary meeting should primarily be used to take up the victim's needs of having the injustice suffered and the insecurity developed as a result recognized and their perception confirmed. Further important motivations can include being able to see the offender, to speak one's mind and to ask them for the reasons for their behaviour.

The mediation meeting (4th step of the VOM procedure) is the culmination of a VOM procedure. Ideally, the victim's needs and interests, identified during the preliminary meeting, are taken up in a sensitive way.

The basic aim of a VOM procedure, and thus of the mediation meeting, is to hand back responsibility for the settlement of criminally relevant incidents to the parties involved, giving them the chance to reach a mutual agreement. This determines the way mediators see themselves. The idea of establishing peace also defines their goals and their assumptions regarding the impact of a VOM procedure.

"And that they can basically – I observe that – that they can actively become involved in this, so that some peace is re-established between them. That nobody else does it, but that they have the competence and basically everything they need to become active and contribute to re-establishing some peace between them." (7_ED_S167-173)

Moreover, mediators are interested in ensuring a permanent impact:

"The mediation meetings, well, in my experience, they are quite substantial and in most cases they reach the goal of establishing a permanent peace." (2_G_412-419)

A specific effect mediators describe is that normal encounters between the parties become possible again after the victimization.

"That victims leave us saying 'Okay, I cannot make this, the offence, undone'. People [...] have to live with it, but they don't need to cross the street, if they see the person who harmed them. And it is this self-confidence that I try to give them [...]." (8_V_191-192)

In view of this, victims' needs to see the offender punished are regarded to be less relevant and mediators acknowledge that certain problems can arise in case victims seem to have little interest in reconciliation. Consciously keeping an eye out for possible needs for punishment that might surface during the mediation meeting can help mediators when it comes to explaining the chances and limitations inherent in VOM in a realistic way. Such needs have to be addressed in order to affect coping processes in a positive way.

The way the mediators understand their task is based on the parties' self-determination. More specifically, they structure the mediation meeting in a way that allows victims to voice their expectations, already discussed in the preliminary meeting, and their interests, substantiated in the run-up to the mediation meeting, such as solving the conflict or receiving compensation. It is regarded as particularly significant to prompt direct, independent communication between victim and offender.

Mediators describe their tasks during the mediation meeting accordingly: They guide the parties through the discussion, providing orientation as to its course. They initiate a conversation and try to withdraw themselves as early as possible in order to allow victim and offender to discuss matters among themselves.

They see their role as neutral; in this context, many emphasize that their perspective is "multipartial" rather than impartial, since they try to respect and consider both parties' interests in a balanced and unbiased way – an approach they describe as "*walking a tightrope*".

"At certain points [...], you have to take sides during a mediation meeting [...] and you have to manage to do it and at the same time avoid that the other party thinks or feels that you essentially favour their opponent." (2_V_1047-1049)

Victims are informed about this approach and realize that the mediators' office is meant to accompany both sides.

In view of this definition of their task, if one party does not really participate in the discussion, mediators will react and ask them to express themselves, using targeted questions. If a victim seems to be less able to defend their interests, mediators provide moral support.

Most of the interviewed victims felt mediators supported them very well when it came to enabling them to voice their own concerns during the mediation meeting. They regard the VOM procedure as a personal success, state their satisfaction and underscore that they would also recommend the procedure.

Mediators face special challenges during a mediation meeting.

If at the beginning, victims have mostly extrinsic motivations for the participation in a VOM procedure, it is the mediators' task to steer them in another direction, if possible, while still at the stage of establishing contact or conducting preliminary meetings: Victims should increasingly focus on their own interests with the aim of overcoming victimization. Special care should be taken, if a victim enters a mediation meeting with the feeling that there was no alternative to VOM. In this case, it is even more crucial to enable the victim to become active and proceed in a self-determined way during the meeting. For this reason, mediators should always emphasize that there can be no fixed expectations regarding the results.

At the beginning of the meeting, mediators often underline the parties' willingness to participate in a VOM procedure, beginning the meeting on a positive note, which is supposed to encourage the parties to express their concerns independently. At the same time, mediators

consider it crucial to point out that it is the parties who are responsible for determining the course of the discussion and its results.

"I think, the conflict is between the two of them, they have started it and they usually know best how they want to see it solved." (2_V_250-251)

If in contrast, mediators emphasize their pleasure about the settlement of the conflict or underscore the positive outcome to be reached when the meeting has hardly begun, they question the necessary notion that there can be no fixed expectations regarding the results.

"I try to create a positive atmosphere first. [...] it is a place, where peace is established. [...] We want to find a way of making peace, whichever way, but the meeting should have a positive outcome." (15_V_192-195)

Mediators aim for a discussion on the sequence of events during the offence situation and its impact in which victim and offender interact as equals. Although both parties are thoroughly prepared for this during the preliminary meetings, mediators also mention certain conditions that can complicate matters: For instance, a large gap regarding the parties' age or educational level can cause problems. A successful communication is by no means guaranteed either, raising expectations with respect to mediators' ability to "translate".

Apart from these challenges, there can also be unexpected developments. If victim and offender expressed themselves actively during the preliminary meetings, but suddenly "clam up" and refuse to communicate during the mediation meeting, mediators experience the latter as an exhausting tug of war. Mediation meetings can also become complicated, if the damaged party behaves in an angry and dominant way most of the time. One mediator recounts a case in which the victim lashed out at the offender, throwing all her horror and resentment "right into his face" (32_V_83-86). However, she considers it every victim's right to do so. Some of her colleagues, on the other hand, state that they find very dominant forms of behaviour on the part of a victim problematic.

"Well, there are cases where the roles seem to be exchanged. [...] There are victims who become so fierce that I think, this is not the way [...] and this has nothing to do with a reconciliatory stance, either. [...] that's when I find it hard to remain neutral." (6_V_173-190)

In contrast, victims who rather try to lecture the offender during the mediation meeting are usually seen in a positive light.

"And then we explained these things to them, especially to the 17-year-old, the youngest, who only guarded the door. He didn't have any idea what he had actually done. Well, we certainly spelled that out." (3_V_53-53)

Such offender-oriented strategies are unsuitable when it comes to furthering victims' coping processes. Although the victim trades the role of the victimized person for that of the

stronger one who "is right", they have only little to gain from making the accused reflect on their own development.

On the basis of the different types of offence situation resulting from the case analysis, typical patterns of interaction between victims and offenders can be identified, just as well as beneficial forms of behaviour on the part of mediators.

It is characteristic of mediation meetings dealing with a **provoked offence situation** that direct communication between victim and offender can be established very fast. Correspondingly, mediators withdraw early, leaving the activity to the parties to the conflict. In these cases, victims underscore that they experience the restraint on the part of the mediators as positive. They report that the mediators gave them a feeling of security, because they make sure that no further dispute arises.

It is also characteristic of mediation meetings involving victims of a **provoked offence situation** that the accused will soon come to mention the role the victim played during the sequence of events that lead to the escalation of the conflict. Establishing which share the victim had in the provocation that gave rise to the offence can enable the parties to find common ground rather fast after a short discussion. It is, however, crucial to make sure that the difference between a verbal exchange and a physical attack remains clear. At this point, the victim might need the mediator's support, if their perspective on the incident and the injustice done to them are not sufficiently recognized.

In cases of provoked offence situations, mediators see the impact of a VOM procedure mainly in the field of conflict resolution and in the fact that the parties are enabled to deal with each other again without beginning any further arguments.

In cases that arose from an **advocacy situation**, offenders will typically begin the mediation meeting by pointing out that they were provoked by "a third party" in order to justify their behaviour. This can irritate and disappoint the victim, who wants to explain the role they played during the incident. Mediators must support these victims when it comes to identifying the injustice done, questioning the reasoning of the accused, where necessary. Effects that mediators see in these cases, too, are the dissipation of victims' fears and the establishment of social peace.

In cases involving a **surprise attack**, communication typically runs via the mediator at the beginning. Both parties tend to shy away from establishing direct contact and to be rather distanced. Since it is clear who is responsible for the incident, offenders are rather reserved, encountering themselves in a weak position. There are, however, also those offenders who try to justify the offence, painting themselves as victims of their circumstances. Some victims react with irritation, some with understanding or even offering comfort. There is the risk that too much attention might be given to the offender's explanations, distracting the victim from their own needs and interests. It is the mediators' task to curb such forms of behaviour on

the part of the offender and to steer the discussion back to the issues of assuming responsibility and the victim's interests.

Regarding the impact of VOM on these victims, mediators keep pointing out that the direct contact enables them to overcome their fears, since they can get to know the offender in another context and from another angle. They can establish a normal relationship with him. Special value is attached to the goal of enabling both parties to manage future encounters in their everyday lives without any fears or further arguments. According to the mediators, permanent social peace can be established, if the offender apologizes and if the victim is compensated for the damage.

An **offence situation without direct contact** leaves victims feeling particularly insecure, since there was no direct opponent. They feel the need to see the accused or to settle an underlying or assumed conflict. When it comes to explaining the injustice done to them, some of them develop the intention to appeal to the offender's conscience or to "*educate*" or to influence them in such a way that this kind of behaviour is excluded in the future. Regarding their self-perception, this allows them to leave the victim's role behind and makes them superior in the discussion with the offender. On the other hand, focusing too much on the offender's development is hardly a suitable way of developing functional coping strategies, as changes in their behaviour cannot be ensured, so that "educational measures" cannot be regarded as a safe way towards ensuring one's future protection. What counts for victims is whether they get to know the offender as a "normal person" whose behaviour is predictable and who represents no further danger.

Many mediators regard it as a positive tendency, if victims want to influence the offender, as – particularly in cases involving minors – learning processes on the part of the (adolescent) offenders form part of the concept. In addition, such intentions on the part of victims can constitute a contribution to the process of establishing social peace, which is the main objective of the VOM procedure that largely determines mediators' understanding of their own role.

During the mediation meeting, some offenders tend to trivialize, doubt or question the consequences of the offence. It is beneficial, if mediators support the concerns of the victims, who are insecure regarding their way of experiencing and assessing the incident due to the vague nature of the offence situation.

Regarding the communication between the parties during the mediation meeting, we can generally observe that if an offender is unable or unwilling to contribute to the conversation, victims will hardly be able to make any progress with regard to functional coping strategies. The offender remains "without personality", i.e. unpredictable. Neither is a normalization of the relationship possible, nor can the victim develop a proper understanding of the offence situation or really discuss it. Some mediators try to step in and counterbalance this, becoming active themselves, which is hardly helpful for victims.

If a victim is put on the defensive during the mediation meeting or if the offender is given any opportunity to put pressure on them again, this has to be regarded as a highly unfavourable condition for the development of functional coping strategies. If this kind of situation arises, the meeting should be interrupted and the question of whether it still makes sense to undertake a VOM procedure should be discussed separately with both parties. The risk that a mediation meeting can have a negative impact on the victim is particularly high, if the offender is not sufficiently prepared to assume responsibility for the offence. Even if a victim insists on undergoing a VOM procedure under these circumstances, the measure should be refused in order to protect them.

The presence of lawyers during a mediation meeting can also be regarded as an unfavourable factor with regard to the development of functional coping strategies, as it gives the discussion among the parties a formal character, i.e. they do not express their own, personal perceptions and feelings regarding the offence, but tend to discuss criminally relevant issues. This should be done in court, not during a victim-offender mediation, which would fall short of its target as a result. If the parties want their lawyers to be present, these should only become involved when it comes to negotiating an agreement. It is not recommendable to leave them alone with victims, as they could use the opportunity to obtain arguments in favour of their client for the subsequent civil or criminal proceedings, which they could then use against the victim.

Mediators tend to consider the presence of parents during a mediation meeting, often given in the case of adolescent victims, another unfavourable factor. It entails the risk that they might begin to intervene on behalf of the victim, expressing feelings, such as anger and fear, that the victim does not have at all, which can cause further insecurity in them. If the parents are too affected emotionally, they will be seated a little way back from the beginning and asked to speak only if the victim invites them to do so or if the mediator asks them a question, if possible.

In the following, those conditions concerning the mediation meeting that favour the development of functional coping strategies on the part of victims shall be summarized by way of conclusion.

It is beneficial, if victims are able to perceive themselves as persons with protected rights. If the offender assumes responsibility and apologizes, the victim feels recognized as a legal subject and that the injustice done to them is acknowledged. Victims regard the fact that they are asked whether they want to accept the apology or not as positive. They describe this as a special experience and, in a certain way, as a kind of satisfaction or compensation.

"So he really had to say: 'Please, forgive me.' He didn't use these words and so Ms A really had to tell him explicitly he should [...] that those were the words that had to be used here." (13_G_166-166)

This also serves to reveal the damage done and to counterbalance the experienced defeat by re-establishing the victim's dignity. The offender's apology is perceived with satisfaction, sometimes as a "gesture of submission". Receiving financial compensation often reinforces this.

The future threat the offender poses becomes more predictable once the victim can assess them. As a result of being able to see them and to speak with them, the fear and insecurity associated with possible future encounters subsides. The way is paved for a re-assessment and a normalization of the relationship. This, in turn, facilitates the establishment of social peace, because after solving the issues in question it is possible to deal with each other in a normal way again.

Since vague fears can be overcome (if given), coping strategies can become more refined as a result of a mediation meeting. On the one hand, it is no longer necessary to avoid certain situations; on the other hand, conclusions of how one could protect oneself in the future – if never completely – result in a higher level of inner calm.

Once all obligations included in the agreement have been met, "the chapter is really closed": Many victims report that after receiving financial compensation, the issue is "off the cards" for them, which enables them to take up their normal lives again. It is crucial for them that the payment agreed upon is made soon after the VOM procedure. This is why almost all of the mediators' offices involved in the study work with victims' funds from which the whole amount can be made available immediately – to be paid back in instalments by the offender. Mediators describe this as an important measure when it comes to supporting victims. In order to unburden victims and make sure that they do not have to make another effort to ensure that their rights, often regarding monetary compensation, are honoured, it is also crucial that mediators check whether the obligations of the agreement are really met.

Apart from the victim and the offender, further persons may be present during a mediation meeting. Mediators invite particularly those participants who seem to be less able to defend themselves to have family members, friends or acquaintances accompany them to the mediation meeting. At the same time, they ensure that both parties are represented by an equal number of persons for reasons of balance.

After the conflict has been resolved and the offender has assumed responsibility for the incident, the parties' ideas regarding a compensation for the damage done are negotiated. The results are specified in a written agreement.

Many victims have prepared for this together with the mediators in the run-up to the mediation meeting and have already developed certain ideas as to the financial or symbolic compensation they wish to receive. Offenders are also prepared in the run-up to the meeting and asked what compensation they could imagine to offer the victim. If necessary, mediators give them a rough idea of what the victim imagines.

Apart from stipulations regarding financial compensation, the agreement can also include arrangements on how both parties should behave in case they come across each other in their daily lives again. These are regarded as another crucial result of the mediation meeting and sometimes also set down in writing. The aim consists in *"being able to look each other in the eye again"* (2_V_388).

From the victims' perspective, receiving compensation means that the injustice they have suffered is acknowledged. The options to exercise control that victims gain by negotiating an agreement are crucial for them, as they allow them to experience their own ability to act in a positive way, compared with the offence situation.

Information on the permanent impact of VOM can be retrieved from the repeated interviews and from the retrospective interviews held a few months after the mediation meeting: It is quite evident that the VOM procedure makes a serious impression on victims, even if it is a rather short intervention. Even several months later, they remember in detail what the situation was like during the mediation meeting, often better than the mediators, who have to rely on the files for help.

Undergoing a VOM procedure can influence and correct dysfunctional coping strategies on the part of the victims. Months later, researchers were still able to detect a lasting impact on the development and perpetuation of functional coping strategies, as such strategies reinforce themselves, if applied successfully. Mediation meetings that take a negative turn the mediator cannot correct can, however, increase victimization. This kind of experience also causes long-term effects. In view of this, mediators working in victim-offender mediation bear a significant responsibility for the protection of the victims.

The idea of approaching the topic in the light of the typical offence situations as identified in the course of the analysis of the interview material and presented by way of examples as pertaining to the different stages of a VOM procedure allows us to introduce a new perspective on victims' expectations, motivations and coping strategies. This approach also reveals a potential for optimizing VOM as an instrument for the support of victims and their coping processes, namely by making those offence scenarios an integral part of the concept, so that mediators would systematically take them into account in future procedures.

Thus, the study also constitutes a relevant contribution for the further development of the practice of VOM in Germany and Austria.

The quantitative development of VOM in Germany

So far, keeping a reliable statistical record of all cases – like the one that exists for Austria – is not common practice in Germany. The Federal Statistical Office (statistisches Bundesamt) provides a statistic with the numbers of all cases closed by the prosecution per year, but it does not provide information as to whether the proceedings were quashed as a consequence of a VOM procedure.

The nationwide VOM statistic kept by the Ministry of Justice can reveal long-term developments, but is not representative either. Even estimating the number of facilities offering VOM in Germany is difficult, since the procedures are offered by different public and private agencies. The latest nationwide survey, documented by Dieter Rössner in the *Marburger Uni-Journal* (1999), stems from the early 90s, when there were 368 facilities. Today, their number has probably increased.

In the preface of their 2012 report, Kerner, Hartmann and Eikens state that the share of VOM in the number of all *cases concluded* by way of criminal proceedings and sentences in Germany was "modest" and that VOM were not properly established on a nationwide level (2012, III). To give an example for the limited use of VOM in the context of criminal cases: For the federal state of Schleswig-Holstein and the year 2009, Stibbe arrives at the conclusion that it was only in approximately 1% of all cases involving a known offender that a VOM procedure was proposed during the preliminary proceedings (i.e. the investigation by the prosecution), far from what is legally possible. Even considering the fact that a large proportion of all cases is unsuitable for undertaking a VOM procedure, because the offence did not involve any victim who could be approached in person, for instance, the proportion of 1% remains far below the share of cases in which VOM could be used. Stibbe notes: "A discrepancy can be identified when referring to relevant literature, which says that about 20% of all criminal procedures are suitable for VOM..." (2011, 69)

In order to obtain a more detailed picture of current developments, an increasing number of statistical reports compiled by the working groups of the federal states (Landesarbeitsgemeinschaften) can be used⁵; however, it remains difficult to summarize all VOM cases of the federal state in question, since the different private agencies and the facilities pertaining to the judicial system or the youth welfare services have different ways of counting them.

⁵ A particularly detailed report is the one provided by the Landesverband für Straffälligen- und Bewährungshilfe des Landes Sachsen-Anhalt e.V. (the association of delinquents' welfare and probation services of Saxony-Anhalt) in 2012.

It is the latter in particular who often keep a statistic documenting their own work based on the number of offenders, whereas other agencies only count the number of cases concluded in a year, whose number does not necessarily coincide with the number of cases referred to mediation during the same period, as it often takes months to conclude the procedure, which may continue into the new year in some cases. Such "overlapping" cases from the previous year are typical for these statistics and have to be taken into account when compiling an overall statistical report.

As mentioned above, the following results are based on the secondary analysis of the numbers provided by 83 facilities from 12 federal states for the years 2010 – 2012. 62 of these facilities belong to private agencies involved in youth and delinquents' welfare services, 19 to judicial social services and two are special facilities pertaining to youth welfare offices. Due to the way they work, youth welfare offices tend to keep count of offenders; as a result, they are unfortunately under-represented in the secondary analysis of the statistical data. In the following, a "case" is understood to mean a VOM procedure that has been undertaken and concluded, usually involving only one victim and one offender, but possibly more.

The target groups of the 83 facilities comprise minor, adult and "young adult" offenders (the latter being up to 21 years old). Accordingly, the JGG (German Youth Courts Law), the dStGB (German Criminal Code) or both form the basis of the proceedings.

Table1: Public or private management, target groups and legal basis of the proceedings for 2012 (N=83)

	Adults (under the dStGB)	"Young adults" (under the JGG and the dStGB)	Minors (under the JGG)	Total
Private agencies	15 (24.2%)	39 (62.9%)	8 (12.9%)	62 (100%)
Youth welfare offices			2 (100%)	2 (100%)
Judicial social services	17 (89.5%)	2 (10.5%)		19 (100%)
Total	32 (38.5%)	41 (49.4%)	10 (12%)	83 (100%) ⁶

⁶ Numbers may not add up exactly due to rounding.

The development of the number of VOM cases

As the question of how case numbers are developing is one of the key issues of the secondary statistical analysis, the following table provides a first overview over the years 2010 – 2012, intended to reveal the general trend regarding an increase or decrease in the number of VOM cases. Since 19 facilities could not yet provide numbers for 2012, it is based on the data compiled by the 64 remaining facilities from 11 federal states.

Table 2: Number of cases (referred or proposed by judicial authorities/initiated upon victim's request)

	2010 – 2012 (N=64)		
Year	2010	2011	2012
Number of cases	8,443	8,812	8,980

If the development of the case numbers compiled by the 19 facilities that could only provide numbers for the years 2010 and 2011 is included, the total for 2010 amounts to 1,028 cases and that for 2011 to 1,085 cases, revealing a slight increase as well.

The interviews conducted with mediators show that case numbers develop quite differently in different regions. This observation is confirmed, if the nationwide total with its slight upward trend is broken down and regarded at the level of the 11 federal states the 64 facilities are based in:

Table 3: Development of the number of cases in the individual federal states (N=64)			
	2010	2011	2012
Bavaria	492	452	453
Berlin	439	382	436
Baden-Württemberg	1,356	1,689	1,872
Lower Saxony	3,067	3,080	2,997
Mecklenburg-Western Pomerania	245	248	246
Hesse	322	311	365
Saxony-Anhalt	986	1,018	1,081
Saxony	424	410	374
North Rhine-Westphalia	307	319	312
Rhineland-Palatinate	682	784	714
Schleswig-Holstein	123	119	130
Total	8,443	8,812	8,980

In the last three years, there have been hardly any dramatic drops of the kind observed in Austria, but apart from Baden-Württemberg and Saxony-Anhalt, there has been no notable increase either. It would be easier to assess the general trend, if we had data reflecting the development of the last ten years (cf. Landesverband für Straffälligen- und Bewährungshilfe Sachsen-Anhalt 2013, 16, for instance). In the regional context of Saxony-Anhalt, for instance, the numbers for the last three years show an upward trend. Regarded in the context of the data of the last ten years, however, a downward trend is revealed. We would strongly recommend further research.

If we compare the "old" federal states with the "new" ones (including Berlin), it is evident (despite the fact that some federal states could not be included) that in the last few years, a

clear increase can only be observed in the "old" federal states, whereas case numbers either dwindle or remain stagnant at more or less the same level in the "new" ones.

Apart from the number of cases referred to mediation, it is crucial to study which persons or institutions initiate these procedures, which offences VOM is used for in Germany and if the measures, once concluded, are regarded as a success or not. To examine these issues, we use an "adjusted total", which all further case-specific data relate to. This is either the number of cases worked on and concluded in a given year or those initiated and still open, depending on how the agency in question counted.

The instigation of VOM procedures

The vast majority of VOM procedures are initiated by the prosecution, revealing that VOM an option considered, most of all, during the preliminary proceedings (cf. Kerner/Eikens/Hartmann 2012, 13).

Courts, by contrast, make little use of VOM and we can only observe a slight increase in the last few years, although in Germany, undertaking a VOM procedure should be considered "at every stage of the proceedings" (§ 155a StPO) and in this light, higher case numbers should be expected.

Table 4: Instigation of VOM procedures in 3 years (N=46)			
(multiple answers possible)			
	2010 4,995 cases Total (proportion)	2011 5,379 cases Total (proportion)	2012 5,645 cases Total (proportion)
Prosecution	3,841 (76.9%)	4,139 (76.9%)	4,527 (80.2%)
Police	110 (2.2%)	145 (2.7%)	177 (3.1%)
Youth court assistance services	369 (7.4%)	334 (6.2%)	397 (7.0%)
Courts	266 (5.3%)	254 (4.7%)	296 (5.2%)
Victim requested VOM	128 (2.6%)	100 (1.9%)	78 (1.4%)
Other	203 (4.1%)	209 (3.9%)	166 (2.9%)

Charges dealt with by way of VOM

In the last three years, it was increasingly offences involving bodily harm and offences against the person that were dealt with by way of VOM, constituting more than half of all cases. In 2012, these offences accounted for 56% of all VOM procedures, a clear increase, if

compared to the data compiled by Kerner/Eikens/Hartmann (2012, 22), who give a proportion of 47.3% for 2010. If cases of robbery, blackmail and using threats or force to cause a person to do, suffer or omit an act are also taken into account, the present study and its results cover a very large proportion of the VOM cases the involved facilities are faced with in everyday practice.

Table 5: Charges dealt with by way of VOM in 3 years (N=42)			
(multiple answers possible)			
	2010	2011	2012
	4,540 cases	4,854 cases	5,166 cases
	Total (proportion)	Total (proportion)	Total (proportion)
Offences against the person §§ 223 – 231 dStGB	2,320 (51.1%)	2,692 (55.5%)	2,870 (55.6%)
Offences against personal freedom § 232ff. dStGB ⁷	469 (10.3%)	481 (9.9%)	561 (10.9%)
Insult/defamation/intentional defamation § 185ff. dStGB	374 (8.2%)	398 (8.2%)	409 (7.9%)
Criminal damage § 303ff. dStGB	399 (8.8%)	379 (7.8%)	362 (7.0%)
Theft § 242ff. dStGB	298 (6.6%)	292 (6.0%)	297 (5.7%)
Fraud and embezzlement § 263ff. dStGB	207 (4.6%)	199 (4.1%)	248 (4.8%)
Robbery and blackmail § 249ff. dStGB	118 (2.6%)	121 (2.5%)	120 (2.3%)
Offences against sexual self- determination § 174ff. dStGB	4 (0.1%)	13 (0.3%)	12 (0.2%)
Offences against life § 211ff. dStGB	5 (0.1%)	11 (0.2%)	0 (0.0 %)
Offences causing a common danger § 306ff. dStGB ⁸	6 (0.1%)	14 (0.3%)	21 (0.4%)
Other criminal offences	380 (8.4%)	407 (8.4%)	583 (5.5%)

⁷ Particularly using threats or force to cause a person to do, suffer or omit an act.

⁸ Particularly endangering road traffic, dangerous disruption of road traffic and arson.

VOM cases involving domestic violence or conflicts between couples or family members are included in the statistical records of 45 of the 83 facilities reached, where they account for an average of 24% of all VOM procedures undertaken; however, this relatively large proportion is due to the fact that 32 of the 45 facilities specialize in this field and report particularly high numbers in their statistical records.

The conclusion of the VOM procedure

The statistical records provided by 35 facilities from seven federal states contain information as to whether a VOM procedure was concluded successfully or unsuccessfully in the years 2010 – 2012. A case is considered to have been concluded successfully, if a complete or partial consensus could be reached. A procedure is regarded as "neutral", if the VOM could not be undertaken due to the refusal of one or both parties, due to the fact that the parties could not be reached or similar circumstances. A VOM procedure is considered unsuccessful, if the measure was undertaken, but had to be cancelled or if no agreement could be reached. Open cases are not included in the following table.

Table 6: Evaluation of the success of VOM procedures for 3 years (N=35)			
	2010 4,771 cases	2011 4,798 cases	2012 4,713 cases
Neutral, i.e. not undertaken	1,955	2,099	1,935
Number of VOM undertaken	2,816	2,699	2,778
Successful, i.e. complete or partial consensus reached	2,751 (97.7%)	2,647 (98.1%)	2,719 (97.9%)
Unsuccessful	65 (2.3%)	52 (2%)	59 (2.1%)

The numbers highlight that most VOM procedures undertaken are concluded successfully. The data provided in the nationwide statistical records on VOM, based on long-term data collection, also underscore this fact (Kerner/Eikens/Hartmann 2012, 36). The reasons for this

success rate include the practice of preparing the mediation meeting by way of preliminary meetings with both victims and offenders.

Similar to what the data of the nationwide survey have shown for years (Kerner/Eikens/Hartmann 2012, 27ff.), our data on the parties' readiness to participate in a VOM procedure reveal that offenders tend to be more willing to do so than victims. The latter do not seem to realize which chances VOM can offer them. The qualitative survey shows that all victims of offences involving bodily harm – with the exception of those of provoked attacks – tend to feel rather unsure or ambivalent regarding the benefits of undergoing a VOM procedure and that mediators have to put in a lot of work during the preliminary meetings in order to motivate them.

Table 7: Number of VOM procedures refused by the parties in 3 years (N=35)			
	2010	2011	2012
Victims	672	722	700
Accused	373	482	397

Conclusion

In Germany, the use of VOM by the judicial authorities remains far below its potential. As most of the victims have never heard of VOM and are completely unaware of the chances it can offer them, the idea that victims could request and thus initiate VOM procedures of their own accord, which is, particularly in Germany, an alternative or additional option that exists beside the referral initiated by the judicial system, remains a theory rather than a reality (cf. Kerner/Eikens/Hartmann 2012, 13).

In the last three years, the use of VOM within the context of criminal proceedings seems to have stalled or at least hardly increased as far the 83 facilities from 12 federal states involved in the study are concerned, with the exception of Baden-Württemberg and Hesse. In the "new" federal states, we can rather observe a trend towards a decrease, although there have been no dramatic drops of the kind observed in Austria.

Despite the legal options of considering the use of VOM at any stage of the proceedings (§ 155a StPO), courts make little use of it and we can only observe a slight increase. So far, VOM remains a means used during the preliminary proceedings.

The question of whether the current trend as described for the last three years constitutes an increase or a decrease within the context of the development during the last few decades must remain open. Due to the uniform structures, it is easy to make out a long-term development for Austria, i.e. a continual decrease in the number of VOM cases since 1985, whereas for Germany, this would require a significant systematic effort.

The types of offence VOM is used for comprise mostly offences involving bodily harm and offences against the person. Over the last three years, the proportion of these offences has increased in Germany, amounting to more than half of all VOM cases. If cases of robbery, blackmail and using threats or force to cause a person to do, suffer or omit an act are also taken into account, the present study and its results cover a very large proportion of the VOM cases the involved facilities are faced with in everyday practice.

The fact that in the vast majority of all these cases, the VOM procedure can be concluded successfully underscores the chances it can offer even to victims of serious violent offences. Attaining its objective, the present study details how this potential can be used and which broad range of options mediators have to support the victim's subjectification in the course of a VOM procedure and to further the development of functional coping strategies.

Quantitative survey in Austria

In contrast to Germany, in Austria, the use of VOM is governed exclusively by laws that apply on a nationwide level and VOM procedures within the context of criminal cases are only undertaken by one agency, the Neustart association. All quantitative data on VOM are collected and analyzed centrally by Statistik Austria (the Austrian statistical office). For this reason, it is much easier than in Germany to gain an overview over the development of VOM since its introduction, for minors in 1985 and for adults in 1992.

Victim-offender mediation is one of six diversion measures included in the Austrian Code of Criminal Procedure (österreichische Strafprozessordnung, öStPO). These measures provide alternative options of how to deal with an offence, instead of filing an action and instituting legal proceedings – or instead of quashing the proceedings. A common feature of all diversion measures is that it is the prosecution who is responsible for initiating them, offering them to the accused and, in the case of VOM, also to the victims.

Table 1 presents all diversion measures offered in Austria in 2010 and 2011.

Diversion measure	2011	2010	Increase/decrease
§§ 35/37 öSMG ⁹ – total	12,990	12,973	None
Fine § 198 (1) 1 öStPO	13,696	18,560	-26%
Community service § 198 (1) 2 öStPO	2,763	3,063	-10%
Probation period (without duties) § 198 (1) 3 öStPO	7,175	9,491	-24%
Probation period (with duties) § 198 (1) 3 öStPO	1,724	1,943	-11%
Victim-offender mediation § 198 (1) 4 öStPO	7,347	8,009	-8%
Total	45,695	54,039	-15%

Source: Österreichischer Sicherheitsbericht 2011 (Austrian safety report 2011).

⁹ This refers to the Austrian Narcotic Substances Act.

For the years 2010 and 2011, table 1 reveals a partially marked decrease in the use of all diversion measures, averaging -15% (the use of diversion measures in the area of narcotic substances has not been taken into account). This decrease in the number of measures offered also affects the number of VOM procedures, which shrank from about 8,000 to 7,300, or -8%.

In order to provide a more detailed picture regarding the decrease of VOM, table 2 presents numbers for the years 2002 – 2011. The corresponding numbers of identified suspects are given as well, so as to ascertain whether and in how far the total number of suspects has changed during the period in question.

The relation of VOM procedures and identified suspects reflects any increase or decrease in the total number of persons VOM procedures can be offered to.

Table 2							
Number of identified suspects 2002 – 2011							
Proportion of diversion measures and sentences							
	Identified suspects	Diversion	%	Share of VOM*	%*	Convicted persons	%
2002	210,713	53,860	26	8,800	16	41,078	19
2003	229,143	51,926	23	8,396	16	41,749	18
2004	247,425	58,239	23	8,962	15	45,185	18
2005	243,493	55,318	23	8,973	16	45,691	19
2006	238,111	51,801	22	8,502	16	43,414	18
2007	247,021	45,317	18	8,396	18	43,158	17
2008	240,554	44,175	18	8,098	18	38,226	16
2009	246,378	42,488	17	7,839	18	37,868	15
2010	239,954	41,066	17	7,467	18	38,394	16
2011	259,028	32,705	13	6,850	21	**	

* The share of VOM procedures relates to the total number of diversion measures.

** No data have yet been published.

Source: The data given in tables 2 and 3 are based on calculations by Statistik Austria and Neustart.

The period included in table 2 begins with the year 2002, since it was on 1 July 2002 that the definition of "minor" in the juvenile criminal law was changed due to the change in the age of majority from 19 to 18 years; as a result, the age-related data became incomparable with the ones collected in previous years.

As can be seen in the column "identified suspects", the number of the latter amounted to 210,713 persons in 2002 and rose to 259,028 in 2011. During this period, the proportion of diversion measures, measured against the number of identified suspects, fell from 26% (53,860 diversion measures) to 13% (32,705 diversion measures).

The absolute numbers concerning VOM procedures also show a decrease, having fallen from 8,800 procedures in 2002 to 6,850 in 2011. The share of VOM in the total number of diversion measures remained more or less the same, however (which is due to their decline in absolute numbers). If we look at the whole period, it averages 16%, but rose to 21% in 2011 despite a decrease in the absolute number of VOM procedures (because the number of diversion measures sank by more than 8,000 in the same year).

We can also observe a slight decrease in the proportion of criminal convictions (mostly fines and prison sentences), which fell from 19% to 16% during the period in question, always measured against the number of identified suspects.

For minors, the decrease in VOM procedures during the same period amounts to 32% (from 1,536 measures in 2002 to 1,052 in 2011). The share of VOM procedures measured against the number of identified suspects sank from 7% to 4%.

During the same period, the decrease in measures involving adults amounts to 20% (from 7,264 VOM procedures in 2002 to 5,798 in 2011). The share of VOM procedures measured against the number of identified suspects fell from 4% to 2%.

Regarding the success of the diversion measures, the latest Austrian safety report (Österreichischer Sicherheitsbericht) presents the following findings: About 80% of all diversion measures were concluded successfully in 2010 and 2011, meaning that the prosecution decided to drop the charges in 8 of 10 cases. If the individual measures are compared regarding their success, the data show that the probation period without duties is the most successful diversion measure (with a success rate of approximately 90%). The success rate of VOM amounts to 73% for both years. A comparison of these rates is, however, problematic, since we can assume that the accused involved in the different diversion measures are not necessarily comparable (cf. Österreichischer Sicherheitsbericht 2011, 60).

The following table provides an overview over the offences most often dealt with by way of VOM.

Offence	Number	Proportion
Bodily harm § 83 öStGB	5,368	68%
Criminal damage § 125 öStGB	577	7%
Criminal dangerous threat § 107 öStGB	452	6%
Affray § 91 öStGB	368	5%
Grievous bodily harm § 84 öStGB	240	3%
Using threats or force to cause a person to do, suffer or omit an act § 105 öStGB	225	3%
Theft § 127 öStGB	99	1%
Other offences	529	7%
Total	7,858	100%

According to the study by Hofinger and Neumann (2008), the success rate concerning the avoidance of relapses among offenders who participated a VOM procedure amounts to 84%. The replication study, realized in 2013 on the basis of cases concluded in 2010 (Hofinger 2013), presents even better results regarding recidivism, as can be seen from the following table.¹⁰

¹⁰ The first study, realized in 2008, is based on data from all over Austria, involving all kinds of conflicts and cases concluded successfully as well as procedures concluded unsuccessfully. The later study includes only cases from Lower Austria, Upper Austria, Tyrol and Vienna, only violence among couples (400) and situational conflicts (400) and only cases that social workers considered successfully concluded. The research period of both studies is comparable, amounting to 2.5 – 3.5 years (depending on the month in which the cases of the first year were concluded by Neustart).

	No relapse	Relapse	Total
Conflicts among couples	346	33	379
	91.3%	8.7%	100%
Situational conflicts	331	51	382
	86.6%	13.4%	100%
Total	677	84	761
	89.0%	11.0%	100%

For conflicts among couples involving violent incidents, the share of offenders without relapse amounts to approximately 90%, for situational conflicts to approximately 87%.

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