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27th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Yerevan (12-13 October 2006)

**VICTIMS:
PLACE, RIGHTS AND ASSISTANCE**

Report presented by the Ministry of Justice of

GERMANY

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A. Executive Summary

In recent years the German system for the protection of the interests of victims of violent crime has been significantly amended. While the rights of **victims to compensation under civil law** as well as their **position in criminal proceedings** have been part of the respective legal codes for some time, and a fairly comprehensive system of victims' compensation by the State has been in place since the passing of the **Crime Victims' Compensation Act** (*Opferentschädigungsgesetz - OEG*) in 1976, other issues have come to the front of the agenda in recent years.

This concerns, for example, the **approach to domestic violence**, which has been significantly modified. Developed as a system of social compensation, its main features (in particular orders of restraint and interim measures barring a violent spouse from access to the joint place of residence) were codified and expanded through the **Act for the Protection against Violence** (*Gewaltschutzgesetz*) in 2002. In recent years, the phenomenon commonly referred to as "stalking" has come under scrutiny, and an **Anti-Stalking Act** is currently under deliberation.

Furthermore, through the heightened focus on terrorist violence, in particular through the terrorist attack in Dyerba/Tunisia on April 11, 2002, which affected a number of German tourists, **compensation of victims of terrorism** has become an issue, making them eligible for hardship compensation under certain circumstances, albeit on a case-by-case basis and without giving victims a legal claim to such compensation. Similar principles also apply for **victims of extremist (in particular racist) violence**.

A comprehensive state policy on prevention supports this legal framework, building on and relying heavily on the activities of non-state actors. Germany counts about 2000 bodies focusing on crime prevention, which frequently co-operate with the justice system, the police, local authorities, schools and non-governmental organisations of various kinds. A recent development is the establishment of so-called prevention councils on the municipal, regional, state and federal levels. The strengthening of a networking structure to ensure better cooperation and coordination between the various actors is considered a priority by the government.

B. Specific Measures

1. Compensation for victims of crime by the State

The Federal Crime Victims' Compensation Act is guided by the principle that if the state, despite its best attempts, proves unable to prevent acts of violence, it must at least comply with its responsibility by compensating the victims of such acts. The Act forms part of the system of social compensation legislation, which is placed in the remit of the Federal Ministry of Labour and Social Affairs. Victims of violent crime receive compensation commensurate with that provided for victims of war in the Federal War Victims Relief Act (*Bundesversorgungsgesetz*).

The Act foresees the provision of the following benefits by the State:

- the costs for medical treatment and rehabilitation, including reintegration into the work force and compensation disadvantages caused by lasting physical damage, e.g. in the workplace
- disability pensions or survivors' pensions
- social benefits to ensure reasonable maintenance.

There is no compensation for damage to property or purely financial loss. This is based on the philosophy that the government does not take the place of the perpetrator and is not actually subject to moral reproach.

Benefits are granted to German citizens as well as to citizens of EU Member States as well as to all other foreigners having been legally resident in Germany for a minimum of three years prior to the incident. Foreigners resident in Germany between six months and three years prior to the incident can receive compensation, but are excluded from compensation for lost income. The same applies for foreigners residing in Germany for less than six months if they are married to a German or EU citizen or directly related to such a person.

Tourists and visitors who become victims of violent crimes in Germany can benefit from a lump-sum payment if the incident leaves them severely disabled. The maximum amount of such compensation is limited to 7,260 € for victims and 3,720 € for survivors.

The granting of benefits requires a prior application, which must be submitted to the competent pension office (*Versorgungsamt*) at the victim's place of residence.

Funding for the Act for financial transfers to victims is ensured through a 3/5 – 2/5 split between the federal authorities and the state authorities; however, the state authorities are fully in charge of funding any in-kind transfers.

2. Compensation for victims of terrorist and radical violence

The Federal budget includes a line item for hardship compensation for victims of terrorist crime, and a similar one for victims of radical (in particular racist) violence. Benefits are granted by the State voluntarily and on a case-by-case basis where humanitarian principles require swift assistance by the state for reasons of equity. The authority in charge of granting such benefits following an application by the victim is the Attorney General of the Federal Republic of Germany. Benefits are granted in the form of lump-sum payments in case of physical injuries. In case of extremist violence, compensation can also be granted for certain kinds of moral prejudice.

3. Protection of victims by law

The introduction of the Federal Act for the Protection against Violence (*Gewaltschutzgesetz*) in 2002 can be considered a significant step for the recognition of problems specific to domestic violence.

It enables courts to pass orders of restraint, in particular barring the perpetrator from access to the victim's place of abode, from trespassing beyond a certain diameter around the victim's place of abode, and/or from coming near the victim or from contacting the victim in any way.

Such orders of restraint are not limited to cases of domestic violence; rather, the law may also be invoked to prevent a perpetrator from "stalking" another person.

Beyond orders of restraint there is the possibility of assigning the victim exclusive use of the hitherto existing joint place of residence, so that the victim is not obliged to flee the perpetrator, thus being exposed to the dangers and inconveniences of having to find a new – possibly costly – place to live, leaving the perpetrator comfortably in possession of all rights. This is considered a major step forward in particular by women's organisations and child protection agencies.

Most German states have followed up with a change in police laws, authorising police officers to order persons suspected of committing domestic violence off the premises in question.

Despite the fact that the Act for the Protection against Violence offers some measures to combat the fairly recent phenomenon of stalking, there are currently considerations to punish the act of stalking as a criminal offence. Despite the fact that, depending on the way it manifests itself, stalking can come within the range of a number of criminal offences such as trespassing, breach of domestic peace, malicious damage of property, coercion, harassment or bodily harm, some feel that the preventive effect against such behaviour could be enhanced by singling it out as a separate criminal offence. Due to the extreme variety of manifestations, however, the formulation of the elements of such a crime has proved extremely difficult on account of the principle of legal certainty applicable to criminal law.

4. Prevention and assistance by the State and non-state actors

Prevention is considered a key aspect of victim protection, coming into play first and foremost in the attempt to keep in particular violent crime from occurring, but also keeping a crime from being aggravated by subsequent assaults.

Germany counts about 2000 bodies focusing on crime prevention, which frequently cooperate with the justice system, the police, local authorities, schools and non-governmental organisations of various kinds. A recent development is the establishment of so-called prevention councils on the municipal, regional, state and federal levels. Civil society is taking on an ever-increasing role in the process of crime prevention and victim protection, focusing its activities on advocating for victims' rights on a political level and supporting victims on an individual level through counselling as well as financial aid.

One example for such concerted action against violence is the existence of 376 Women's Shelters (*Frauenhäuser*) in Germany, which are frequented by approximately 40,000 women each year following conjugal disputes. Those institutions are typically private initiatives, and receive support from municipal or state funds on a case-by-case basis.

Although it was hoped that, following the implementation of the Federal Act for the Protection against Violence, demand would fall because in particular women and children would no longer be forced to leave their place of residence, this has so far not been the case, which may possibly be due to a change in clientele reported by some of the institutions, which claim that their support is increasingly sought by members of the immigrant community.

Victim assistance in the sense of caring for and counselling victims is within the purview of the German *Länder*. Accessible virtually throughout Germany, institutions that provide victim assistance are committed to meeting the concerns of the victims of criminal acts. In the states of Lower Saxony, Baden-Württemberg and Rhineland-Palatinate, victims'

foundations have been created especially for that purpose. There are also numerous institutions at the local and regional levels in the *Länder* which provide assistance to victims of criminal acts and also run various aid programs, some of which are interconnected. Commissioners for victim protection, victim witness counsellors, etc. also work with the police. Another good example for civil society intervention is Germany's biggest victim protection association, "*Weißer Ring*", which offers a nationwide system of support and counselling to crime victims, including a 24-hour-hotline.

On the level of government, the *Länder* are in charge of the establishment of support and counselling agencies for crime victims. However, in order to better coordinate activities on all levels, both federal and state governments cooperate e.g. in the context of the German Forum for Criminal Prevention (*Deutsches Forum für Kriminalprävention*), where they are joined by private entrepreneurs and associations as well as municipal associations and religious groups. It gives recommendations, engages in PR and outreach activities, participates in the exchange of experiences and initiates and supports actions and projects in the field of criminal prevention, in particular in the area of training and research. One of its main concerns is the establishment and maintenance of cooperation networks.

5. Insurance

To the extent that victims of violent crime require medical treatment, costs for both in- and out-patient treatment are in principle covered by private or statutory health insurance plans. In case of an insured event (illness or accident), private medical insurers will reimburse the costs for medically necessary treatment and provide any other contractually agreed benefits, such as for example hospital daily benefits.

In principle, there is no obligation to pay for illness (including long-term effects) or for consequences of accidents that have been caused by acts of war.

In the case of temporary inability to work, injured persons either continue to receive their salary from their employer, from the statutory health insurer (sick pay), or private health insurers (daily benefits). Statutory health insurance is in principle mandatory for residents of Germany. Private health insurance is concluded on a voluntary basis.

Injuries or damage caused by terrorism, domestic violence or crimes of sexual assault are considered accidents for purposes of the General Terms and Conditions for Accident Insurance. The opportunity thus exists to take out private insurance, primarily to cover the risk of invalidity. Here again, accidents caused directly or indirectly by acts of war or civil war are excluded from insurance coverage. Various types of disability insurance may be purchased voluntarily as well.

Special policies insuring against risks of terrorism are conceivable; however, in Germany these have thus far been known only in the area of property damage.

