

Victim-Offender Reconciliation with Adult Offenders in Germany

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The Idea of 'Restitution'

Conflict-mediation and victim-offender-reconciliation as alternative reactions to deviant behaviour are very much part of the international criminology discussion. Numerous programs have been developed, often associated with the notion of 'restitution', which are intended to relieve the sanctioning systems of the state (Schreckling 1991; Bannenberg 1993). On examination, however, these programs differ considerably due to the different national justice systems (Hammerschick et al. 1994; Trenzcek 1993).

Opinions differ as to whether victim-offender-reconciliation ought to be an integral part of the instruments of the criminal law or whether it should be established as a medium for 'private' justice. Since the early 1980s, the integration of conflict-mediation and restitution with the existing criminal justice system has been ardently discussed in Germany (Schoch 1987; Rossner & Wulf 1987; Roxin 1990; Albrecht 1993; Hirsch 1990). In the course of this discussion, victim-offender-reconciliation programs have evolved which target victimised natural persons. These programs provide the offender and the victim an opportunity to meet and talk about the offence, its causes as well as its consequences. Financial compensation is also able to be considered as part of a settlement (Pfeiffer 1992; Netzig & Petzold-Berger 1993).

Despite various opinions, criminologists and politicians in Germany agreed to accept victim-offender-reconciliation as a means of resolving crime and consequently determining sentence. The 'WAAGE Hannover' described in this paper is an example of a pilot victim-offender-reconciliation program for adult perpetrators which has been integrated into the criminal justice system. Although

there are few victim-offender-reconciliation programs like the 'WAAGE Hannover' program, there are more than 200 like programs within the juvenile justice system (Bannenberg 1993). These juvenile programs have been working successfully for many years.

Victim-Offender Reconciliation and Prosecutors

In German criminal law, the legal classification of the severity of the offence is quite different from the British or American justice system. Offences are categorised by distinguishing between crimes of minor or medium severity and severe crimes. Only offences of the first category can be resolved extra-judicially by the prosecutor. For such offences, once victim-offender-reconciliation has been carried out successfully the prosecutor takes no further action on his or her own discretion or the matter can be dismissed by a court. In the case of felonies, however, the prosecutor has to take legal proceedings but the outcome of victim-offender reconciliation can be introduced as mitigation against imprisonment or a fine.

The Pilot Project 'Waage Hannover'

In 1990, the 'WAAGE Hannover' was founded as a non-profit-organisation for conflict-mediation and restitution with the aim of reconciliation between victims and offenders within the criminal law for adults. The prosecutors of the local municipal court refer those cases to the project they consider to be suitable for a victim-offender-reconciliation. Due to the fact that the prosecutors decided on the suitability (and consequently on the number) of cases, they are able to influence the success or failure of such a project directly. Therefore, it was not only sensible, but also inevitable to include the prosecutor's office in the preparatory process of the project. Together with the prosecutors, the 'WAAGE' mediators developed and compiled a catalogue of criteria for the referral of cases suitable for victim-offender-reconciliation.

The most important criteria are: the quality of the victim; the case must be sufficiently solved and indictable; and participation must be voluntary. The catalogue also included a description of offences which are suited for victim-offender-reconciliation.

Quality of Victims

It was agreed that only natural person victims would be referred to the program. Other kinds of crime victims such as associations or companies were excluded from victim-offender-reconciliation. Principally this decision was based on the premise that communication and interaction between those persons who were personally affected by the crime is best suited for reconciliation, especially restitution (Schoch 1993).

Sufficiently Solved and Indictable Cases

Cases which are deemed 'sufficiently solved and indictable' must comply with three conditions:

- Firstly, before referral of cases to the project, the facts of the case must have been sufficiently investigated including acknowledgment of responsibilities for the offence and the attribution of the victim/offender role. Assessment of this criterion is made independent of the WAAGE mediators who seek to remain neutral.
- Secondly, petty offences are excluded from a mediation. Victim-offender-reconciliation is not meant to widen the net of social control or to legitimate interference of the state.
- Thirdly, only offenders who admitted or confessed to at least essential elements of the offence or who gave no statement at all, are considered. For constitutional reasons, the offender's protestation of innocence must be respected.

Voluntary Participation

The voluntary participation of both the victim and the offender is desirable, perhaps inevitable. It was agreed, however, that the threat of a more severe penalty would not be used to sway a refusal to participate by an offender.

Catalogue of Offences

In order to facilitate the selection of offences which are suited to reconciliation, the 'WAAGE' mediators promulgated an explicit list of individual delicts. In the main these offences are of minor and medium severity. But, there is scope for some 'capital felonies'.

Assault, breach of domicile, coercion/threat, and delicts of libel and slander are among those offences considered suited for victim-offender-reconciliation. In German criminal law there is a delict which does not exist in Australian law: verbal injury. Therefore, if two persons are quarrelling, calling each other names, are cursing and swearing under German criminal law a case could be stated.

Program Development

As of 1 July 1992 all prosecutors were required to refer cases suitable for conflict mediation to the 'WAAGE Hannover'. Within the first six months, 37 prosecutors referred only 43 cases, that is about 7 cases per month. In 1993 the number of cases increased to 191 cases, that is an average of 16 cases per month. In between January and June 1994, 94 cases were referred, that is an average of 15 to 16 cases per month. Despite the apparent increase in the number of cases being referred during the first months, it still seems to be insufficient.

Objectives and Research Questions

A research project was appointed to evaluate the prosecutors' conduct concerning the referral of cases; and to investigate the prosecutors' frequent criticism of victim-offender-reconciliation and their recurring reasons for the low referral rate of cases. For example, some prosecutors claimed that: 'adult offenders hardly ever confess'; 'victim offender reconciliation is too time-consuming'; and 'there are hardly suitable case constellations'.

The first task of the researchers was to establish how many of the cases before the prosecutor's office in Hannover were probably suited for victim-offender-reconciliation. For this purpose a register of the case capacity in a comparable period before the program was prepared. Then a register of the cases which have actually been referred to the program was compiled. Cases in the second register were tested for suitability against the criteria-catalogue mentioned above. Both surveys (registers) yielded the necessary data to compare the aspired referral rate of a representative year with the number of cases actually referred for victim-offender-reconciliation. An analysis of the case records was undertaken using a survey instrument devised based on the structure of the prosecutors' investigation records.

The first survey, which had been carried out to investigate the capacity of suitable cases of a representative year, was a random sample of 750 records of 1990. The random sample was drawn from a population of 27 920 cases held in the prosecutors' department in 1990. The second survey of the actual number of referred cases was carried out over 17 months from summer 1992 to November 1993. Whereas 230 records were located, only 201 were included because several records were not available.

Results

Capacity of eligible cases in 1990

From the 750 records collected and analysed in the first survey, 6 records were subtracted because they were mistakenly registered as criminal offences. Other records were subtracted because there was no natural person victim. As a result 335 cases with at least one personal victim were left. These cases were then separated in cases with offenders who confessed or made no statement at all, and those who did not confess. At the same time, records were divided into either petty offences or non-petty offences. This division was based on the prosecutors' final directions. In other words, if the prosecutor decided to dismiss without charges or referred to private prosecution, these cases were labelled petty offences. In some cases, however, the offender's denial contrasted the petty offence classification, hence some data had to be further tested.

A total of 187 suspects denied charges. Of these cases, 94 suspects merely denied and 93 denied petty offences.

After testing, 119 cases of the 1990 survey group were deemed suited for victim-offender-reconciliation. Projected to the population of 27 920 cases in 1990, it was determined that there are 4430 cases per year which the prosecutors could refer to the victim-offender-reconciliation program.

Prosecutors' coverage of case capacity during the project phase 1992-93

Next an assessment of the cases that the prosecutors actually referred was conducted. As mentioned, within the first 17 months, 201 out of 230 finalised records could be evaluated and analysed according to the program criteria.

Consistent with the criteria the 201 records related only to natural persons as victims but surprisingly, more than 50 per cent of the perpetrators denied the offence. Therefore, 103 records should not have been referred to the project and had to be excluded from the research project. Consequently, only 98 records remained.

When testing the remaining 98 'WAAGE' case records against the 'petty offence' criterion it became obvious that it would be dangerous to always proceed according to the prosecutors' closing directions. For instance, the reason a prosecutor had dismissed a case or offered mitigation was not always clearly stated. Nonetheless, 22 cases were identified as petty offences and excluded.

Only 76 cases within the 17-month sample period met the criteria for suitability, that is 54 per year. That number was far short of the several thousand cases identified as suited in the first survey (4430 in 1990). In other words, only 1.2 per cent were actually referred to victim-offender-reconciliation.

Quality of 'WAAGE' cases

Despite the fact that only 38 per cent of all referred cases met the agreed criteria, the 'WAAGE' mediators, perhaps for reasons of 'survival', tried to achieve a reconciliation also in cases which were formally not suitable. In 94 cases, of which only 76 cases were suited according to the criteria, a successful victim-offender-reconciliation was carried out and the success rate increased. Therefore, for the survey period, the 'WAAGE Hannover' case records showed 94 cases where victim-offender-reconciliation had been successful and 107 cases where mediation could not take place.

In most of the 107 cases without successful mediation, the offenders refused to participate. Reasons for non-participation included: the offenders refused to meet the victim, the offender's lawyer advised against participation, or the offender did not approve of the victim's damage claim.

On closer examination, most of the 94 so-called successful cases showed characteristics of petty offences, such as low financial damage. Rarely was physical injury involved. Whereas resultant injury in a few cases required outpatient treatment, only one case involved hospitalisation. In most cases involving physical injury, medical treatment was not necessary at all.

Survey results also showed that victim-offender-reconciliation was more likely to be successful when victim and offender were unknown to each other. Perhaps, victims and offenders who were unknown to each other are less likely to share circumstances of ongoing conflict. Moreover, in the case of conflict among people living together or in close proximity, the affected person's appeal to the criminal justice system was often the last attempt to settle the dispute (or resolve the crime).

The petty cases which the prosecutors referred to the program were more often successfully settled by a mediator than other cases, no matter whether the perpetrator confessed or denied the offence. Indeed, a comparison between

successful and failed mediations, confirmed the assumption that the offender's confession or denial was not a prerequisite for reconciling petty offences. It is unlikely that the same could be said in the case of more severe offences where the effect or consequences is likely to be considerable.

In summary, it is evident that prosecutors referred 'quantity' (although not nearly as many cases as were suited) instead of 'quality' to the program. In so doing, prosecutors widened the offence net in minor matters, and drew the offence-net in in medium and severe offences. It was a pity that the agreed criteria were not consistently applied.

Review

The research project results show that the practical realisation of the mediation concept was not as successful as expected. Despite the prosecutors' promised support, they were obviously not prepared to apply the criteria as predetermined. Perhaps this is indicative of the nature and scope of their education which seems to concentrate too much on punishing the offender and ensuring the performance of proceedings. Under such circumstance, it is unlikely that a communicative measure like victim-offender-reconciliation could be integrated into Germany's criminal justice system.

For future researchers there is also the dilemma that only the prosecutors are authorised to refer cases, hence there is an inherent bias in the case population which would carry over into any sampling. At present, other 'non-reconciled' cases have not been subject to any rigorous evaluation.

Fortunately, a few non-petty cases which were referred to 'WAAGE Hannover' fitted the prerequisite criteria and were successfully settled. Therefore there is cause for some hope. Reconciliation, however, will not become an integral component of a criminal justice system unless criminal justice practitioners themselves accept it as a worthwhile contribution for both the legal and social resolution of criminal victimisation.

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