

***Report for the 18th German Congress on Crime Prevention***

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**Report for the 18th German Congress on Crime Prevention  
Bielefeld, 22-23 April 2013  
“More Prevention, Fewer Victims”**

**Victim orientation in society, research, criminal justice and  
crime prevention: Status, problems and perspectives**

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## Preface

From around the late 1970s, German society, research, criminal justice and crime prevention began to show an increasing orientation towards victims of crime, “to the point of a renaissance of the victim, a renaissance that is now also underway in the public perception of victims ... [because it] ... not only affects specific sectors, but cuts right across society” (Barton/Kölbel 2012, 11, 14).<sup>1</sup>

To cite just a few milestones and sectors involved: WEISSER RING e.V., a not-for-profit association for victim support and crime prevention, was founded in 1976. Child welfare organisations and the feminist movement began lobbying for better treatment of women and children who had become victims of sexual offences. In the academic domain, victimology became established during the last 25 years as a separate sub-discipline of criminology.<sup>2</sup> An important year in lawmaking was 1984, when the 55th Congress of German Jurists elected as its principal topic “The legal position of the injured party in criminal proceedings.” Germany’s first Victim Protection Act (Opferschutzgesetz) came into force at the end of 1986. For over 40 years now, the German Police Crime Prevention Programme has issued advice for the public on how to protect against crime. Increasingly, other governmental and non-governmental organisations, too, have acknowledged their responsibility to help people avoid becoming victims of crime as part of the overall societal task of crime prevention.

In recognition of these developments, the 18th German Congress on Crime Prevention took as its principle topic “More Prevention, Fewer Victims.” This report, “Victim orientation in society, research, criminal justice and crime prevention: Status, problems and perspectives”, takes stock after a quarter century of victim orientation. It begins by reviewing current empirical knowledge about victimisation and what victims need and want – the basis for victim-oriented responses by society and the criminal justice system. It then enquires into the current status, problems and perspectives of victim orientation in criminal justice and society, before finally discussing consequences for crime prevention.

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<sup>1</sup> The increased victim orientation is thus by no means restricted to criminal law and the law of criminal procedure, even if the debate about the status of the injured party in criminal proceedings is carried on in a more heated, controversial way in that discipline than in other social domains, and not without sceptical voices. See, for example, the proceedings of the 4th Bielefelder Verfahrenstage (Bielefeld Congress on Procedural Law) under the heading of “Zwischenbilanz nach einem Vierteljahrhundert opferorientierter Strafrechtspolitik in Deutschland” (“Taking stock after a quarter century of victim-oriented criminal law policy in Germany”).

The ‘rediscovery of the victim’ is also by no means specific to Germany; similar changes are to be seen in many Western legal orders (Barton/Kölbel 2012, 11 ff; Weigend 2012).

<sup>2</sup> For example with the publication in 1986 of “Soziologie des Opfers. Theorie, Methoden und Empirie der Viktimologie” (“Sociology of the victim: Theory, methods and empirical methods of victimology”) by Kiehl and Lamnek.

## 0

### Summary and conclusions

From about the late 1970s, German society, research, criminal justice and crime prevention began to show an increasing orientation towards victims of crime. Today, in all of these areas, the victim has long ceased to be what prior to this ‘renaissance’ of the crime victim could still be fittingly referred to the “forgotten man.” There is even talk of an “era of the victim.”

The time is therefore ripe for an **interim assessment** of the status, problems and perspectives of victimisation. What is the current status of empirical research on victimisation, victims’ needs and victims’ wishes? Which victims are in the focus of attention and which are overlooked? What has changed for victims in society and in criminal justice over the last 25 years? What are the perspectives – is it not true that the best way to protect victims is to prevent crime?

A note on terminology: Labelling the **injured party in a crime** a ‘victim’ is not entirely without problems. Firstly, in society at large, the word ‘victim’ makes people both want to help and to turn away. Secondly, it is at odds with the criminal law presumption of innocence. It is nonetheless used in the following because it is the established term, notably in legislation, and is in universal use both nationally and internationally.

### **Between perceptions and empirical knowledge: Which victims are in the focus of attention and which are overlooked?**

The increased orientation towards victims mostly relates to victims of violent crime, but by no means all. The focus of attention is on ‘ideal’ victims: Children, women (but only if they do not ‘have themselves to blame’), old people, and people in nursing care. This does not include men – especially not young men.

Yet this focus does not fit the facts of victimisation in society, as reflected by analysis of reported crime statistics and findings from victimological self-report surveys. Sexual offences excepted, men are far more frequently victims of violent crime than women, and young people are more frequently victims of violence than older people.

There is **insufficient data**, however. Reported crime statistics still centre on offenders, suspects and institutional responses and either take no account of victims at all (German criminal prosecution statistics) or only give limited account to victims of specific (violent) crimes along with a small range of victim and offender data (German Police Crime Statistics). The field of view must be widened to take in all victims of crime and at least the same set of variables as are collated for offenders; this is best done in the Police Crime Statistics.

**Knowledge about unreported crime is even less satisfactory**, with a particularly large share of sexual and violent offences staying below the surface because of

victims' unwillingness to report. **Victim surveys** have been done to close this knowledge gap, but mostly restricted to specific regions or victim groups. The latest nationwide victim surveys date from 1997 (a representative national victim survey by the Federal Criminal Police Office (BKA) is currently in analysis).

More victim surveys are urgently needed, both quantitative and qualitative – not just on victimisation and willingness to report crimes, but also on the effects of victimisation and what victims want and expect from support systems and the criminal justice system.

### **One thing is clear: There is no such thing as the typical victim**

There are few empirical findings, and scarcely any recent findings, on victimisation, the effects of victimisation, and what victims want and need. Most surveys were carried out around 1990/1991 and international findings do not readily transfer across national borders. Despite this, one thing is clear: There is no such thing as the typical victim, and victimisation, victim behaviour and victims' wishes are very individual indeed.

Not all victims suffer, yet some suffer their whole life long. And the effects cover a broad range: Psychological, physical and financial impacts, fear of crime, revictimisation, personal risk of delinquency – all of these can apply. Yet knowledge about how frequently and in what circumstances they apply is very limited.

The same goes for victims' **wants and needs** after a crime. Here, too, there are scarcely any recent findings, and victims' wishes are highly individual. Victims can be generally assumed to want social support, information and advice, and acknowledgement of the wrong done to them. Relative to these needs, victims' wishes in terms of punitiveness and retribution play more of a minor role, and certainly a lesser one than is often assumed. The need for retribution can be reduced to victims' interest in acknowledgement of the wrong done to them and in that wrong being suitably responded to. Many victims desire restitution of the harm done and are also prepared to take part in conflict mediation arrangements such as victim-offender mediation.

Victim wants and needs are also another area where there is urgent need for empirical victimological research. This is the only way to avoid deciding over victims' heads and to give them (or give them back) their self-determination and autonomy.

### **The criminal justice system is inherently unable to serve the interests of victims**

The German Code of Criminal Procedure has seen several victim-oriented reforms since 1986 with the aim of improving victim protection, but it is hard to make out a clear, systematic concept behind them. It has also been disputed from the outset whether victims can be subjects of criminal proceedings with rights of their own.

Whether victims of crime actually wanted the new rights and protection in criminal proceedings and whether the German victim protection acts actually achieved their express aim of preventing **secondary victimisation** cannot be determined: The reforms have not undergone any evaluation and there are no findings on whether they are what victims want and need.

Going by what we know so far, most victims are less interested in having an active part in a trial than in three relatively simple things:

- Being kept informed about the course of the proceedings
- Compensation for the harm done
- To be treated respectfully as witnesses.

In a criminal justice system based on the rule of law and oriented to victim needs, all of that should be a matter of course without any need to create additional rights and powers for victims.

In any case, the criminal justice system is inherently unable to serve the needs and wishes of victims. Firstly, it is and remains offender-oriented; secondly, giving testimony always places a burden on the victim; and thirdly, only a very small percentage of victims make it to court. Most criminal investigations are dropped by the prosecution service and only about 12 percent lead to charges being brought.

All involved should keep in mind that certain pressures on victims are unavoidable in proceedings under the rule of law, and for that very reason, burdensome aspects not necessary to the conduct of a fair trial should be changed.

**Social support, help and recognition for victims must come from outside the criminal justice system – from family and friends and from victim support organisations**

When victims speak about what they have experienced – and they by no means always do – then the first and most important people they turn to are close family and friends. That is often enough to stabilise the victim and give them a sense of safety and security.

Otherwise, victims can turn not just to psychotherapists, crime victim lawyers and similar providers of psychosocial and legal help and advice, but most of all to victim support organisations. Such organisations embody the increasing victim orientation of society, and they presided over a ‘renaissance’ of the crime victim long before the victim was ‘discovered’ by the criminal justice system. They provide help both in material form and in kind, but first and foremost they provide care and support after a crime.

There are now a wide range of publicly and privately organised and funded victim support organisations in Germany. The oldest and best known, which operates nationwide and with an entirely volunteer staff, is WEISSER RING e.V. ('White Ring').

A victim's help and support needs can be met in a day, but it can also take years. The goal is to help victims rebuild their lives as quickly as possible after the traumatic event, always with the aim of maximum autonomy for the victim. This is because any act of support for someone who has been victim to a crime also labels that person a victim. Help for victims is only helpful if it helps them move beyond the state of needing help.

The increased orientation towards victims in society has taken victim support and assistance quite some way. The **Parallel Justice** framework, developed by Susan Herman in the USA and in part already implemented, could bring further improvements. Parallel Justice is rooted in the conviction that society has an obligation to exercise justice for victims, and aims to create a new framework for responding to crime: Two separate, parallel paths to justice – one for victims, one for offenders.

### **More prevention, fewer victims**

However efficient and effective the criminal justice, victim protection and victim support systems are made, it is always better to stop crimes and consequently victimisation from happening in the first place. No criminal justice system, however victim-oriented, and no victim support system, however well-established and capable, can hope to make good, let alone undo, the physical and material harm to victims and the often severe psychological impacts of a crime. The best way to protect victims is thus to prevent crime.

**Victim-oriented crime prevention** is concerned on the one hand with the implications of findings on the effects of victimisation. On the other hand, it is concerned quite conventionally with preventing and reducing victimisation. While victim-oriented crime prevention, as the name suggests, places the emphasis on the victim, it does not mean the kind of prevention that has to be or can be put into practice by victims themselves, but crime prevention in the usual comprehensive sense taking in victims, offenders and situations.

Victim-oriented crime prevention must take special care on two counts, however: To avoid raising (unnecessary) fears of victimisation or revictimisation, and to avoid giving victims any part of the blame for their victimisation.

## 1

### Between perceptions and empirical knowledge of crime victims

*“Public (i.e., media) discourse increasingly revolves around victims of crime.<sup>3</sup> The press, radio and television report on the fates of victims; victims and their relatives appear in talk shows. It does not seem too much to speak of an era of the victim ... Solidarity with the victim unites the community; society is becoming the ‘victim society’” (Barton/Kölbl 2012, 14).<sup>4</sup>*

While in the ‘victim’ society attention and interest are said to have switched from accused to victim (thus Barton 2012, 112), and while victimology is now an established sub-discipline of criminology<sup>5</sup> – with key research topics including “questions of the phenomenology of victimisation events and processes and of the prevalence and incidence of reported and unreported victimisation” (Görge 2012, 91) – this is not to say that the people who society perceives as victims actually are victims of crime. There is a distinct discrepancy between the ‘ideal’ victim<sup>6</sup> and ‘real’ victims. But before going on to explore the territory “between perceptions and empirical knowledge of crime victims,” first a few necessary remarks about the concept of victim.

### 1.1

#### Notes on problems with the concept of victim

There are a number of problems with the concept of victim.<sup>7</sup> Firstly at both individual and societal level because of inherent ambivalence, and secondly at the level of criminal law and the law of criminal procedure because of the provisional nature of role attribution in criminal proceedings (Schöch 2003, 19).<sup>8</sup>

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<sup>3</sup> Weigend had already noted the ‘high status’ accorded to the problems of the victim some years previously, saying, “A number of years ago when the idea for this present paper was born, any exploration into the role of the injured party in criminal proceedings, if not exactly a venture into unknown territory, at least represented a journey to a largely neglected tract bearing little fruit of academic research and attracting little interest in its cultivation. The scene has changed fundamentally in a short space of time. The field of victim studies is well tilled and even in the narrower bounds of criminal procedure research, the victim long ceased to be what only a few years ago could still be fittingly termed the ‘forgotten man’” (1989, 13 f.).

<sup>4</sup> On the term and concept of the victim society see also Kunz: “Society becomes the ‘victim’ society by regarding potential victimhood as a point of reference for individual attributes and thus electing not the superior victor, but the weak, suffering victim as the basic model for the classification of individuals” (2011 a, § 31, at 59). For an in-depth discussion of the victim society see Barton 2012.

<sup>5</sup> For Barton, criminology has “more or less become a victimology. Not of course the old victimology, in which the victim is primarily seen in terms of partial blame for the committing of crimes, but a victimology that is not about blame but about victimisation” (2012, 119).

<sup>6</sup> Term coined by Nils Christie, cited by Barton 2012, 116.

<sup>7</sup> See also Steffen 2012 a, 142 f.

<sup>8</sup> Sessar (2012, 264) notes a very basic problem, writing, “The use of the term ‘victim’ is, however, highly problematic as it grafts an abstract criminal law definition onto an individual experience, so to speak ‘without asking’. Criminologically, it would be better to distinguish self-declared and extraneously declared victims, thus respecting the freedom of the individual affected by a crime to regard themselves or not to regard themselves as a victim.”

### *Ambivalence in the concept of victim*

“Victim status is always something attributed – by the individual themselves or by people around them and by society – ... [and this attribution] is not free of ambivalence. At individual level the associated attitudes oscillate between sympathy and the urge to help on the one hand and disparagement and rejection on the other” (Görgen 2012, 90).

Becoming the victim of a crime does not necessarily enhance an individual’s social status. On the contrary,<sup>9</sup> connotations that go with the concept of victim – ‘weak’, ‘dependent’, ‘vulnerable’ and ‘in need of protection’<sup>10</sup> – not only communicate empathy and support, for example in connection with victim support services, but also denigration and disparagement, and not just in youth-speak.<sup>11</sup>

“People who become victim of a violent crime experience powerlessness, helplessness, vulnerability, and weakness. But it is wrong to reduce them to this experience; it does not necessarily make them powerless, helpless and weak in themselves ... The goal of working with victims must therefore be to strengthen their autonomy and self-esteem” (Ladenburger 2012, 290).<sup>12</sup>

The interests of crime victims “tend to be dilemmatic,” writes Reemtsma (2006, 18): “People who become victims of crimes want those around them to take that into account – yet do not want to be cast in the role of victim.”

This finding is directed especially at victim support organisations, whose – well-meaning – efforts to help and protect victims can reduce them to their victimhood rather than enabling them to say goodbye to the victim role, regain their autonomy and ability to act, and develop their own resistance and resilience (Steffen 2012 a, 143).

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<sup>9</sup> “Victims are embarrassing, they remind us of our own weakness and downfall” (Margarete Mitscherlich, cited by Maercker 2006, 53).

Anders Barton (2012, 117): “Victimhood is associated in the victim society with prestige, recognition, attention, rights and privileges ... Slightly exaggerating, the victim society can even be said to be a society in which ‘everyone wants to be a victim.’”

<sup>10</sup> See also Baumann 2000, 3; Seilaff 2010, 264. Further connotations, of a kind rarely helpful to the victim, follow from the sacred, religious origin of the victim concept.

<sup>11</sup> It is common among boys and young men to use the word ‘victim’ as an insult (‘You victim!’). “The term ‘victim’ ... is used to gain assurance of the individual’s own identity and to push away all that is associated with victimhood: weakness, loss, fears, failure – everything to do with being or becoming a ‘loser’” (Voss 2003, 58).

For Barton (2012, 117), “‘You victim!’ as an insult from the mouth of a young outlaw means ... ‘I don’t abide by your rules.’ Thus, from an outsider position, the youth deliberately derides the basic social consensus and the victim society.

<sup>12</sup> On the “problematic gains of victimisation” see also Barton, who with reference to Nils Christie notes that the attribution of victim status can amplify suffering and delay healing processes; there is also the risk that victim protection measures can cause victims to cease believing in their own ability to cope with the situation. This could lead to acquired helplessness – a disastrous outcome. Further, a victim could find the gains of victimisation so enriching that they prefer being a lifelong victim over other roles (2012, 134).

***Problems of the victim concept in criminal law and the law of criminal procedure***

“As the accused in a trial is presumed innocent, it is not established that the accused has done harm until the court establishes guilt ... In criminal proceedings, therefore, the accused as potential offender has a logical complement in the form of ‘potential victimhood’ (Kunz 2011 b, 2).

It is doubtless hard to dismiss the argument that designating someone the victim<sup>13</sup> of a crime implies that there is also an offender and hence is at odds with the presumption of innocence<sup>14</sup>, a central pillar of criminal procedure. It is necessary to agree with Weigend, however, when he writes that most legal systems uphold a fiction that the individual identified in a trial as the injured party is indeed and not merely apparently the victim of a crime.<sup>15</sup> “Yet this means the rights granted to victims in criminal procedure are explicitly also granted to individuals who will later prove to be non-victims. This cannot be seen – as is sometimes claimed – as a breach of the presumption of innocence, for the guilt or innocence of the accused is unrelated in principal to whether he or she has harmed the specific individual who appears in the trial as the victim<sup>16</sup> ... The experience, too, that it is fairly rare for someone wrongfully to usurp the role of victim speaks in favour of a certain generosity in according victims’ rights in criminal proceedings” (2012, 31 f).

Besides, the very frequency with which criminal proceedings are dropped shows that labelling one person ‘victim’ and the other ‘offender’<sup>17</sup> has minimal or zero prejudicial effect. In any case it is the established term, most of all in the law.<sup>18</sup>

<sup>13</sup> Using the term ‘injured party’ (‘Verletzter’, as predominates in German law of criminal procedure) instead of victim poses the same problems; the two terms are therefore often used synonymously (see Weigend 2012, 31 and Weigend 1989, 13).

<sup>14</sup> The presumption of innocence is enshrined in Article 6 (2) of the European Convention on Human Rights, which stipulates that anyone charged with a criminal offence must be presumed innocent until proved guilty according to law. In German law, the presumption of innocence also follows from the rule of law under Article 20 (3) and the first sentence of Article 28 (1) of the German Basic Law. The presumption of innocence also applies in Germany for the press (Section 13 of the Press Code).

<sup>15</sup> It is thus consistent that a ‘victim’ is defined in Article 65 (1) of the Austrian Code of Criminal Procedure as “a person who may have been exposed to violence or dangerous threat or whose sexual integrity may have been compromised through an intentional criminal offence” (Weigand 2012, 31). The term ‘victim’ is also used without any qualification in Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. Under the Directive, ‘victim’ means “(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death.” The OpferFibel – a guide for victims of crime – published by the German Federal Ministry of Justice likewise speaks throughout of ‘victims of crime’ without questioning the term in any way.

<sup>16</sup> For Schünemann, ‘victim’ in the context of criminal proceedings is “an expression that implicitly negates the presumption of innocence” (cited in Pollähne 2012, 8, fn. 17).

<sup>17</sup> Or in police investigation proceedings ‘suspect’ or ‘accused’.

<sup>18</sup> ‘Opfer’, the German word for victim, is found for example in ‘Opferschutzgesetz’ (Victims Protection Act), ‘Opferrechtsreformgesetz’ (Victim Law Reform Act), ‘Opferanwalt’ (a lawyer representing victim

### *Actual and potential victims*

When therefore the phrase ‘victims of crime’ – rather than ‘putative victims’<sup>19</sup> – is used in the following, then it is used in the sense of actual rather than potential victims. That is, “Persons who have reason to assert of themselves that they have been harmed by a criminal act. They are ‘actual’ victims of a crime ... Besides ‘actual’ victims, however, there are also ‘potential’ victims ... Anyone who is not the victim of a crime but fears becoming a victim of crime is in a wholly different position to an ‘actual’ victim ... they do not demand rights in specific criminal proceedings, but may demand a specific type of crime policy<sup>20</sup> designed to meet their rights as potential crime victims. They also have no victim experience; instead they have victim fantasy” (Hassemer/Reemtsma 2002, 100 f.).<sup>21</sup> That is, a **narrow definition of the term ‘victim’** is used, based on the standards applied in criminal law:<sup>22</sup> Victims are individuals who are registered as victims of crime in the reported crime statistics or have stated in victim surveys that they have been victims of crime (‘self-declared’ victims). In either case, only direct victims are included – individuals targeted in or directly harmed as a result of a prosecutable act.<sup>23</sup>

## 1.2

### **Perceptions of crime victims: The ‘ideal victim’**

When we speak of an increased victim orientation in society, research, criminal justice and crime prevention, while that orientation is seen to be broadly and publicly welcomed (Barton/Kölbel 2012, 14) and “acknowledgement of victim status” is seen to confer “attention, rights and privileges” (Kunz 2011 a, 367), this by no means applies to all victims of crime. Those who are perceived and recognised as victims in the described sense are mostly, if not almost always ‘ideal’ victims who in fact make up only a (small) fraction of people who become victims of crime.

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interests), the *OpferFibel* (guide for victims) published by the Justice Ministry, and so on (see also Steffen 2012 a, 142). The German term ‘Opfer’ is thus the established term nationally and across all government departments, just as ‘victim’ is the established English term internationally.

<sup>19</sup> Or ‘potential victims’ as advocated by Kunz (2011 b, 2).

<sup>20</sup> This ‘specific type of crime policy’ relates to policy in which actual or alleged fears of victims are ‘abused’ to advocate repressive criminal law policy. See also Barton/Kölbel 2012, 15; Steffen 2012 b.

<sup>21</sup> “Virtual crime victims do exist and they have real influence on the criminal justice system and its policies. The current phenomenon of victim orientation uses not so much a concept of actual as of virtual victims. A basic right to safety, for example, is conceived most of all as a guarantee to potential victims of crime” (Hassemer/Reemtsma 2002, 101).

<sup>22</sup> Feldmann-Hahn notes criticisms of this narrow definition and calls for a criminological/victimological definition of the victim that places the focus of victim-related research on the subjective perspective and bases the classification as victim on the victim’s sensibilities alone: A victim is whoever feels they are a victim (2011, 11). Likewise Sessar 2012 (Fn. 8).

<sup>23</sup> And not indirect victims, individuals affected by another’s experience of victimisation by virtue of being in some way especially close to them (on terminology see Sautner 2010, 164). On the impacts on indirect victims such as family see also Sielaff 2010.

As so frequently happens, perceptions and empirical findings diverge<sup>24</sup>, raising the question of which victims are in mind when asserting, describing and observing an increase in victim orientation, and which victims are overlooked.

Nils Christie aptly coined the term ‘ideal victim’: The ideal victim, says Christie, is weak – that the concept of victim connotes ‘weak’, ‘dependent’, ‘vulnerable’ and ‘in need of protection’ has already been mentioned; it is someone going about their morally or socially respectable business; they are somewhere they cannot reasonably be blamed for being; the offender was big and bad; the offender was unknown and there is nothing to connect them personally with the victim.<sup>25</sup>

Anyone who does not match this ‘ideal’ will not, or at least not readily, be recognised as a victim. The focus when it comes to victims of crime is therefore on children, women (but only if they do not ‘have themselves to blame’), old people, and people in nursing care. This does not include men – especially not young men.<sup>26</sup>

That this selective focus does not fit the facts of victimisation in society is shown by criminological and victimological findings on the prevalence and incidence of reported and unreported victimisation.

### 1.3

#### **Empirical findings on the prevalence and incidence of reported and unreported victimisation**

First, a **preliminary remark**: Considering the ‘renaissance’ of the victim in the last quarter of a century, the recognition given to victim support services, the improved position of the victim in criminal proceedings, the marked shift in attitudes towards more sensitivity for the concerns of victims and – of particular relevance for the present section of this report – the establishment of victimology as a sub-discipline of criminology, it is remarkable **how little empirical knowledge there is about victims of crime**. For Germany at least, there are few findings – and none from the recent past – on key aspects of victimisation, including:

- Prevalence and incidence of (primary) victimisation
- Impacts/effects of victimisation experiences, including the nature and extent of

<sup>24</sup> See, for example, the findings under the heading “Jugendkriminalität zwischen Wahrnehmung und empirischen Befunden” (“Juvenile Crime: Between Perceptions and Empirical Findings”) in Steffen 2008.

<sup>25</sup> Cited in Barton 2012, 116.

<sup>26</sup> Accordingly, the increased victim orientation, the special attention paid to victims in the last 25 years, has primarily focused on specific *victim groups* and their protection: Maltreated children were ‘discovered’ first, later came women who were victims of violence and rape, and finally children who had been subject to sexual exploitation. The numerically largest group of victims of crime, on the other hand, continue to be overlooked and not regarded as victims: Men and boys (likewise, Baumann 2000, 3).

secondary victimisation<sup>27</sup> through criminal proceedings and from family, friends and acquaintances

- Victim needs, expectations and wishes.

There is a distinct lack of data and empirical research is urgently needed.

One thing is clear, however: There is no such thing as the typical victim, and victimisation, victim behaviour and victims' wishes are very individual indeed.<sup>28</sup>

The findings on both reported and unreported victimisation presented in the following mostly relate to victims of violent or 'contact' crimes: Crimes involving contact between offender and victim and emotional, physical or sexual violence.<sup>29</sup> In the German Police Crime Statistics on reported crime, these are in any case the only crimes for which information on victims is recorded. Most victim surveys additionally take in other types of crime, notably crimes against property.<sup>30</sup>

### 1.3.1

#### Victims of police-reported crime in the German Police Crime Statistics

In the German Police Crime Statistics, victims – “the natural persons against whom the punishable act was specifically directed”<sup>31</sup> – are only included for specific offences or groups of offences.<sup>32</sup> This reflects the fact that the police statistics and other official crime statistics are focused to this day on offenders, suspects and the institutional response to offences (Görgen 2012, 100).<sup>33</sup>

In total, the **number of victims** – like the number of crimes<sup>34</sup> – has fallen continuously for some years. For violent crime<sup>35</sup>, 257,257 victims were recorded in 2007 and

<sup>27</sup> 'Secondary' victimisation refers to victimisation subsequent to that experienced through the crime itself in the form of responses from agencies of the criminal justice system and from friends and acquaintances.

<sup>28</sup> See, for example, the study findings in Kilchling 1995, 621 ff.

<sup>29</sup> Baurmann/Schädler rightly note that the situation of victims of violence is often wrongly generalised to include all crime victims. In fact, about 94 percent of victims of reported crime are not victims of violence.

<sup>30</sup> Kilchling surveyed victims of contact offences comprising robbery and attempted robbery, sexual offences, assault and threat, victims of non-contact offences comprising car offences, motorcycle/bicycle theft, theft of personal property, and as an in-between category, victims of burglary. This matches the categories used in the International Crime Victim Surveys (see below).

<sup>31</sup> On limits as to the offences able to be included in surveys and the resulting lopsided selectivity of research on unreported crime, see Feldmann-Hahn 2011, 33 ff.

<sup>32</sup> This is the definition given in the Definitions section of the Police Crime Statistics for the Federal Republic of Germany.

<sup>33</sup> Presented in Table 91 (Victim classification by age and sex) and Table 92 (Victim-suspect relationship); the crimes involved are primarily violent, sexual and robbery offences.

<sup>34</sup> The bias is even stronger in criminal prosecution statistics, which do not include any information on victims at all.

<sup>35</sup> Except a small increase of one percent between 2010 and 2011.

<sup>36</sup> The category-level classification key 89200 'Violent crime' encompasses murder; manslaughter and killing another at his or her own request; rape and sexual coercion; robbery, extortion accompanied by vio-

233,950 in 2011. The number of victims per 100,000 population went down from 312.5 to 286.2, meaning that approximately 0.3 percent of the German population were recorded in the Police Crime Statistics as victims of violent crime in 2011 as in 2007.

As to **gender**, just over a quarter (27.4 percent) of all victims of violent crime were female in 2007, compared with 29.2 percent in 2011 (although here again the absolute figures have gone down). The number of victims per 100,000 population was significantly higher for men, at 412.9, than for women, at 164.1 (2007: 463.2 versus 168.0).

Looking at specific violent offences, two-thirds of all police-recorded victims of murder and manslaughter, robbery and bodily injury are male; for dangerous and serious bodily injury the figure is no less than three-quarters.

Only in offenses against sexual self-determination are female victims in the majority, at over 90 percent.

For offenses against personal freedom, the ratio is roughly 50:50.<sup>36</sup>

Comparing **age groups**, adolescents and young adults are registered with disproportionate frequency as victims of bodily injury, robbery, offences against personal freedom and offences against sexual self-determination<sup>37</sup> – categories in which the same young age groups also account for the largest number of offences.

The German Police Crime Statistics data confirm findings from victimisation research that **victimisation risk is linked to key demographic attributes** – in this instance age and gender<sup>38</sup> – and that at least for reported crime as presented in that data, the reality of victimisation is at odds with ‘ideal victim’ of popular perception: With the exception of sexual crimes, women are far less frequently victims than men<sup>39</sup>; similarly, it is relatively rare for children and older people aged 60 upwards to be recorded as victims.

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lence, and assault on motorists with intent to rob; bodily injury resulting in death; dangerous and serious bodily injury; hostage taking; and attacks on air and sea traffic.

<sup>36</sup> Victim-suspect relationships can incidentally likewise be said to be gender-specific, with victims mostly being male in cases of violence by offenders having no previous relations with the victim and cases of violence in public places; victims of violence by relations and acquaintances close to the victim are predominantly female.

<sup>37</sup> For example, the number of victims of bodily injury per 100,000 in each group was recorded in 2011 as 2,822 for young adults and 2,014 for adolescents, versus only 894 for adults aged between 21 and 60 and as few as 133 for adults aged 60 and above.

<sup>38</sup> Other demographic factors are economic and social status in society (Görgen 2012, 93), on which no information is recorded in the Police Crime Statistics.

<sup>39</sup> For Treibel et al., it is not possible to say from the available data whether women are more frequently and more severely affected by violence than men: The reported crime data in the German Police Crime Statistics show that men overall are more frequently victims of crime than women; however, women are more frequently affected by offences with low reporting rates, such as domestic and sexual violence (2008, 459).

Those at risk, on the other hand, are male adolescents and young male adults: Violence by (young) men is most of all violence against other (young) men – and offender-victim role reversal is not the exception, but the rule (Steffen 2008, 241).

### 1.3.2

#### **Willingness to report crimes and motives for reporting**

The central problem in any assessment of victimisation risk based on police-reported crime statistics is that it depends on victims' willingness to report a crime and make it public. Over 90 percent of the offences officially recorded in the German Police Crime Statistics come to the notice of the police and so make it into the statistics through crimes being reported by private individuals, mostly victims and injured parties. Yet far from being the 'normal' response of victims and injured parties to an inherently prosecutable wrongdoing, reporting to the police is in fact very much an 'exclusive' response.<sup>40</sup>

Findings from research on unreported crime show that only a certain proportion (variable by type of offence<sup>41</sup>) of criminal offences are reported by victims to and registered by the police. In terms of overall crime, it can be assumed that by far the majority of inherently prosecutable wrongdoings stay unreported – and with them their victims (Steffen 1993, 33).

There are no recent nationwide findings on reporting rates for specific offences in Germany.<sup>42</sup> The following figures were determined for contact and non-contact offences in the two most recent (1997) nationwide victim surveys:<sup>43</sup>

- Burglary and attempted burglary: 88.3 and 80.5 percent (at victim prevalence rates of 1.8 and 1.7)
- Robbery: 57.1 percent and 59.9 percent (at victim prevalence rates of 1.1 and 0.8)
- Physical assault: 37.9 percent and 32.7 percent (at victim prevalence rates of 2.0 and 1.5)
- Sexual assault: 44.4 percent and 61.4 percent (at victim prevalence rates of 0.3 and 0.2)
- Sexual harassment: 20.6 percent and 19.2 percent (at victim prevalence rates of 2.1 and 1.5).

<sup>40</sup> Steffen 1976 and 1982, cited in Steffen 1993, 33.

<sup>41</sup> In a victim survey, Kilchling determines a reporting rate of 76.9 percent for victims of burglary; the figure for victims of non-contact offences was 62.6 percent and that for victims of contact offences was 31.8 percent (1995, 211 f).

<sup>42</sup> Van Dijk 2012, 31 gives a reporting rate of 62 percent for burglary in Germany for 2009/2010.

<sup>43</sup> PSB 2006, 19. The first set of figures relate to reporting rates among respondents age 18 and above, the second set to respondents age 16 and above. Likewise for the victim prevalence rates. Reporting rates for shoplifting and damage to property are far higher, not least due to insurance requirements.

In 2004, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) conducted a representative survey on the prevalence of violence from age 16 among over 10,000 women aged 16 to 85 and determined reporting rates ('police brought in') of 14 percent for all situations of physical violence and 21 percent for serious forms of such violence (Müller/Schröttle 2004, 189). The police were brought in for 11 percent of all cases of sexual violence and for 15 percent where the offender was a partner, ex-partner or lover of the victim (Müller/Schröttle 2004, 208 f).

For sexual abuse, a representative survey by the Criminal Research Institute of Lower Saxony in 2011 (with some 11,000 respondents) arrived at reporting rates ranging from 11.9 percent to 18.4 percent for the various forms of abuse, with female victims reporting somewhat more frequently than male victims with one exception ('anal/vaginal penetration') (Standler et al. 2012, 42).<sup>44</sup>

For adolescents of an average age of 15, in a representative survey (with close to 45,000 respondents) conducted in 2007 and 2008, the Criminological Research Institute of Lower Saxony measured reporting rates of 24 percent for all violent offences; respondents reported robberies in 40.2 percent of cases, severe bodily injury in 36.8 percent of cases, and other violent offences (extortion, sexual violence, and slight bodily injury) in about 18 percent of cases (Baier et al. 2009, 42).<sup>45</sup>

The most frequently cited **reasons for not reporting** a crime:<sup>46</sup>

- Offence not very severe/not so serious
- Not appropriate to bring in the police/police would not have been able to do anything
- Informal conflict resolution
- Wanted peace and quiet
- Shame – offence too intimate
- Scared/fear of vengeance
- (Presumed) police ineffectiveness/inactivity; did not want anything to do with the police

If a victim does bring **charges**, it marks the "final step in what is often a conscious decision process. Especially in the interpersonal domain, victims use the bringing of

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<sup>44</sup> Schöch (2012, 247) notes in connection with sexual abuse in institutions "that it was partly fear of criminal proceedings that contributed to the wall of silence."

<sup>45</sup> The victimisation rate (victimisation in the last 12 months) for violent offences as a whole is 16.8 percent; male respondents: 20.2 percent; female respondents: 13.0 percent; sexual harassment is the only offence for which female respondents (11.9 percent) state a higher victimisation rate than male respondents (1.9 percent) (Baier et al. 2009, 39).

<sup>46</sup> See PSB 2006, 19; Müller/Schröttle 2004, 190, 210.

charges instrumentally, not infrequently after a failed attempt at resolution. It is thus the victims themselves who in almost all instances “determine the process of prosecution and hence select (or at least preselect) the offences to be prosecuted” (Kilchling 1995, 25 f).<sup>47</sup> Kilchling assumes that “in a very broad sense, criminal prosecution has the character of a service for victims, or can take on or reassume that character” (1995, 24).

Whether **charges are brought** also depends on other factors (aside from insurance terms and conditions). Such other factors include:

- Nature and severity of the crime or injury
- Offender characteristics
- Victim characteristics
- Offender-victim relationship
- Third-party influence
- Social tolerance (Schwind 2011, § 20, at 9).

When it comes to **motives for bringing charges**, a key factor is the type of crime: “What victims want most is to get help and avoid a repeat occurrence. With property-related crime and robbery, the hope of recovering the property dominates along with the fact that charges often have to be brought so as to claim on insurance. Across all offence types, a part is played by hopes that the offender will be caught and punished, by the perceived severity of the crime, and by the extent to which the victim feels obliged to bring a committed crime to official notice” (Görgen 2012, 98).

Whether such an obligation is ‘felt’ can also depend on the – estimated or perceived – effectiveness of the criminal justice system and on victims’ prior experience with the system if they have brought charges in the past.<sup>48</sup>

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<sup>47</sup> Schwind speaks in this connection of the “victim’s power of selection” (2011, § 20, at 2).

<sup>48</sup> See also Schwind 2011, § 20, at 10a; Feldmann-Hahn 2011, 6.

### 1.3.3

#### Victims of unreported crime<sup>49</sup>

##### 1.3.3.1

#### Victims of unreported crime: Methods and limitations of victim surveys

Studies on the prevalence, nature and incidence of victimisation in relation to unreported crime are a central research topic in victimology. Most such studies take the form of surveys (Schwind 2011, § 2, at 44).<sup>50</sup>

Whereas the first systematic surveys of unreported crime were offender surveys<sup>51</sup>, “the rise of victimology and the ‘rediscovery’ of the victim in the sense of increased focus on neglected victim interests” brought a shift in emphasis towards victim surveys (Feldmann-Hahn 2011, 17).

Kilchling distinguishes two basic types of victim survey: Crime surveys to measure crime levels and victim surveys enquiring into broader issues of victimology (1995, 55 f.; the same definitions are taken up in Sautner 2010 and Feldmann-Hahn 2011).

Research on the victim side began with **crime surveys**, “whose main aim was, or is, to record the nature and extent of victimisation in the population ... although the main focus of such studies (remains) criminal behaviour per se. Victim aspects come second” (Sautner 2010, 146). The focus of such surveys, which that parallel the official crime statistics,<sup>52</sup> is on crime rates and crime rate measurement and on precisely measuring prevalence and incidence rates (Feldmann-Hahn 2011, 4).

**Victim surveys** are studies “that set out from a victimological standpoint to investigate the underlying circumstances of victimisation and the multifaceted victim perspective” (Sautner 2010, 146). They make up the majority of present-day surveys; their focus is on victims themselves and victim-related issues such as reporting rates, regard for the police, and fear of crime (Feldmann-Hahn 2011, 4).<sup>53</sup>

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<sup>49</sup> ‘Unreported crime’ is taken to mean all offences for which charges are not brought and therefore neither come to the notice of the criminal investigation authorities nor feature in the Police Crime Statistics (Schwind 2011, § 2, at 34). A further factor is police recording practices: It may be assumed that some reported crimes are not included in the Police Crime Statistics as a result of selectivity in recording (Feldmann-Hahn 2011, 14).

For a fundamental treatment of the status of research on unreported crime, see Heinz 2006; for an overview of the status and perspectives of research on unreported crime in Germany and internationally, see Stock 2012.

<sup>50</sup> On other methods of research into unreported crime, such as participant observation and experiments, see Schwind 2011, § 2, at 37-43.

<sup>51</sup> See the figures in Schwind 2011, § 2, at 46-52.

<sup>52</sup> On the status of debate about periodic victim surveys in Germany and the benefits of ongoing unreported crime research of this kind, see Feldmann-Hahn 2011, 158 ff. See also Stock 2012.

<sup>53</sup> An intermediate form between crime surveys and victim surveys consists of **victimisation surveys** – effectively crime surveys from the victim perspective that also incorporate the consequences of victimisation into the research programme (Kilchling 1995, 56).

Victim surveys are generally implemented as population surveys, with the effect that they cover non-victims as well as victims. This creates the problem of how to distinguish the two, or means that respondents must identify themselves as victims (**self-declaration**).<sup>54</sup>

Sautner (2010, 165 ff) points to the problems in connection with self-declaration as victims. A degree of misclassification is to be expected. Non-victims might declare themselves as victims, although according to Sautner this is quite rare. Far more common, in Sautner's analysis, is non-assertion of victim status by failing to report experiences of victimisation in the survey. A range of causes are identified:

- Forgetting
- Suppression of experienced victimisation
- Deliberate withholding, e.g. out of shame
- Considering it a private matter
- Conscious rejection of the victim role, e.g. because the incident involved is thought too minor
- What is in fact a crime is not thought of as one by the person affected.

In summary, "non-victims are individuals who have either not experienced a crime or have forgotten or do not wish to remember."<sup>55</sup>

Most victim surveys relate to victimisation experiences in a given **reference period**, usually 'in the last 12 months' before the survey but sometimes during a period of several years or in the victim's lifetime ('at any time in your life'). With longer reference periods, there appears to be a bias towards reporting offences of greater severity. Responses involving such offences, and particularly violent offences, also appear to display a telescoping effect, i.e. that respondents falsely attribute the timing of the victimisation. Victimisation can be falsely attributed into the reference period (forward telescoping) or out of it (backward telescoping) (Feldmann-Hahn 2011, 44 f; Sautner 2010, 167 f).

Another methodological problem with victim surveys<sup>56</sup> relates to their limits in terms of **offences capable of being surveyed**. It is not possible to ask about offences that

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<sup>54</sup> In population surveys, the need for such self-declaration is obvious. But even with 'victim-only' surveys, i.e. surveys of people already recorded as victims in police or court files, there is a need for self-declaration, because the known (on file) victimisation incident may be overlaid by earlier or later experiences of victimisation, whereas responses are wanted on a specific type of incident (Sautner 2010, 165). Such 'victim-only' surveys include the studies by Baurmann/Schädler (1991) and Richter (1997).

<sup>55</sup> On the information value of responses and the willingness of respondents to provide information, see also Feldmann-Hahn (2011, 44).

<sup>56</sup> For a comprehensive discussion of this and other methodological problems and limitations to the usefulness of victim surveys, see e.g. Feldmann-Hahn 2011, Schwind 2011, § 2, at 44 ff, and Steffen 1993.

are not directed against private individuals or that go unnoticed by the victim. Offences in the context of interpersonal relationships, such as intrafamilial violence, child maltreatment and child sexual abuse, are capable of being surveyed “only with major limitations” (Feldmann-Hahn 2011, 34).<sup>57</sup> Offences for which victim surveys are well suited include theft, burglary, robbery and bodily injury (outside of the family context) (Schwind 2011, § 2, at 54b). For Feldmann-Hahn (2011, 33) this leads to a “lopsided selectivity of research on unreported crime.”<sup>58</sup>

Victim surveys are therefore subject to non-trivial methodological problems that limit their usefulness. Görgen (2012, 100) is nonetheless right in saying that “empirical victimological research ... [is] an indispensable corrective for police-reported crime statistics.” But it is also no more than that: Surveys of unreported victimisation are not better or more useful by definition than official crime statistics. The two are merely different ways of obtaining data on crime and victimisation, “neither of which is more ‘accurate’ or ‘precise’ than the other, but each of which leads to specific findings and conclusions” (Steffen 1993, 46).<sup>59</sup>

Another reason victim surveys are ‘indispensable’ in victimology is because the Police Crime Statistics contain little information on victimisation (see above) and none on reporting rates and reporting motives or on victims’ needs and wishes. The “shift in emphasis from crime surveys to victim surveys in modern victimology” (Feldmann-Hahn 2011, 27) is therefore to be welcomed. It means the focus of research is no longer on finding out the extent of unreported crime (which is impossible anyway) but on victims and the consequences of victimisation (Steffen 1993, 46; Feldmann-Hahn 2011, 27).<sup>60</sup>

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<sup>57</sup> According to Schwind, “Research into unreported crime is inherently incapable of capturing offences committed within the family or in the immediate social environment (such as offences in the context of an interpersonal relationship) (2011, § 2, at 53a). However, this assertion can be considered to have been refuted by studies on violence (by partners) against women (Müllser/Schrötle 2004) and on child sexual abuse (Standler et al. 2012).

<sup>58</sup> Limitations are also necessary for cost reasons; only ‘basic’ data can be surveyed (Heinz 2006, 251). It is not possible either on a qualitative or on a quantitative basis to survey all crimes included in the German Police Crime Statistics.

<sup>59</sup> Or as Kiefl and Lamnek noted as early as 1986: “Official crime statistics, offender surveys, unreported crime surveys and victim surveys each have their pros and cons, and none of these methods captures all occurrences of victimisation. The best approach is a combination of offender and victim studies in a specific geographical area” (1986, 53).

Kunz is likewise critical of the ability of unreported crime surveys to map reality, notably in pointing out that population surveys on offences suffered (victim surveys) or committed (offender surveys) reflect how respondents answer surveys, “which is not the same as criminal acts suffered or committed. Such surveys are not about self-reported criminal behaviour and victimisation, but about **self-reports** concerning criminal behaviour and victimisation.” They are about “a narrative that does not simply report facts but presents experience in a form rendered suitable for the survey setting” (2011, § 21, at 23).

<sup>60</sup> “The knowledge gain from modern research into unreported victimisation therefore lies not only in contrasting the findings against those from reported crime data (something that can only be taken so far), but in obtaining information that is not and cannot be gleaned from official crime and criminal justice statistics” (Heinz 2006, 245).

### 1.3.3.2

#### Victims of unreported crime: Victim survey findings

Although many victim surveys have now been carried out in Germany<sup>61</sup>, there is still far from enough data, and most of all there is a glaring lack of recent empirical findings from victimological research. This is mostly because there are scarcely any representative nationwide surveys for Germany – representative, that is, for the entire population and all offences capable of being surveyed, not just for specific population groups or groups of offences,<sup>62</sup> and at least in principle allowing comparison with the nationwide police-reported data from the Police Crime Statistics.

There have long been calls for nationally representative victim surveys of this kind, and notably for **studies of unreported crime paralleling official crime statistics**.<sup>63</sup> This is not just to learn more about victimisation experiences, but also serves crime policy purposes. An ongoing need is felt – mainly from experience in other countries<sup>64</sup> but also based on findings from mostly urban self-report surveys in Germany<sup>65</sup> – for the ability to contrast official crime statistics with data on unreported crime. Official crime statistics are very hard to interpret without information on unreported crime. Most of all, rational crime and criminal justice policy needs a sound empirical footing. Evidence-based crime policy requires regular nationally representative population surveys (Heinz 2006, 251), otherwise the result could well be crime policy “flying blind.”<sup>66</sup>

<sup>61</sup> Feldmann-Hahn most recently brought together the victim surveys carried out in the Germany or the former West Germany that are representative of the resident population age 14 and above and at least include questions on how the victimisation came about (2011, 78). The analysis took in 30 “general, regionally restricted victim surveys” carried out between 1973 and 2010, 13 “nationwide, internationally comparative victim surveys” carried out between 1981/1982 and 2004/2005, and 22 “victim surveys in the context of criminological regional analyses” carried out between 1987 and 2007 (listed in Feldmann-Hahn 2011, 185 ff).

<sup>62</sup> For example surveys of 15-year-old school students (Baier et al. 2009), on partner-inflicted violent victimisation of women (Müller/Schröttle 2004), on victimisation in the 40-to-80 age group (Görgen et al. 2010), on sexual abuse (Standler et al. 2012) and on violence against police officers (Ellrich et al. 2011).

<sup>63</sup> See, e.g., Schwind 2011, § 2, at 76-79b; Heinz 2006.

<sup>64</sup> In the USA, for example, comparing data from the Uniform Crime Report with data from the annual National Crime Victimization Surveys shows an increase in severe violent crime in the crime statistics but a marked decrease according to the survey data (Feldmann-Hahn 2011, 159).

<sup>65</sup> In repeat surveys in Bochum (in 1975, 1986 and 1998), two-thirds of the increase in police-reported bodily injury offences merely related to a change in the willingness of victims to report offences (Feldmann-Hahn 2011, 159).

Similarly, in a representative survey of 15-year-old school students by the Criminological Research Institute of Lower Saxony (KFN), findings on the willingness of victims to report violent offences “put the information value of the Police Crime Statistics in a different perspective on several counts ... reporting rates among victims of violence ... increased for bodily injury offences by 20 to 50 percent ... This increasing shift of cases from the domain of unreported to reported crime suggests that the recorded increase in juvenile violence since 1998 ... is substantially due to a change in victims’ reporting behaviour” (Baier et al. 2009, 11).

<sup>66</sup> Heinz, cited in Feldmann-Hahn 2011, 160; Schwind 2011, § 2, at 76: “Statistikbegleitende Dunkelfeldforschung als Postulat” (“Necessity of unreported crime surveys paralleling official crime statistics”).

Few studies of unreported crime in the form of nationally representative population surveys have been carried out at all in Germany<sup>67</sup>, none in recent years and certainly none on a ‘parallel’, i.e. periodic basis in step with the official crime statistics. This means it is impossible to say if the prevalence and incidence of victimisation is the same for unreported crime as it is for reported crime. And it is also impossible to say in respect of offences not brought to the notice of and not recorded by the police whether victims of violent and contact offences (other than sexual offences) are indeed predominantly young and male (see section 1.3.1).<sup>68</sup>

An insight into this latter point is expected from a joint study of **victimisation experiences** carried out by the Bundeskriminalamt and the Max Planck Institute for Foreign and International Criminal Law as part of a consortium project, *Barometer of Security in Germany (BaSiD)*, from June to October 2012.<sup>69</sup> In a computer-aided telephone interview (CATI) survey, close to 35,000 respondents were asked about their victimisation experiences, sense of security/fear of crime, and willingness to report crime. The interviews averaged 20 minutes. The questionnaire was based for comparability on the items used in the International Crime Victim Surveys (ICVS) (see below). Data analysis is currently in progress and initial findings are expected beginning in May 2013.<sup>70</sup>

For the recent past, nationally representative data on victimisation in relation to unreported crime in Germany is only available in connection with surveys carried out as part of the International Crime Victim Survey (ICVS)<sup>71</sup> – perhaps the best known international comparative study. The ICVS has gone through five iterations so far. Germany took part in the first ICVS (in 1989, albeit for the territory of former West Germany only) and in the most recent ICVS (2005)<sup>72</sup>; it also took part in the ICVS

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<sup>67</sup> For an overview, see Feldmann-Hahn 2011, 98 ff.

The most recent national **victim surveys** in Germany were carried out in 1997 with two samples of different sizes (and a 12-month reference period) in research commissioned by the Federal Ministry of Justice. For the range of crimes they surveyed, the two studies arrived at overall prevalence rates of, respectively, 15.9 and 19.5 percent of respondents. The prevalence rates for victims of simple theft ranged from 9.2 and 11.5 percent; for burglary and attempted burglary between 1.5 and 1.6 percent; and for violent crime between 2.2 and 2.9 percent (PSB 2006, 17 f and Heinz 2006, 254).

<sup>68</sup> A survey carried out in early 2005 under the leadership of the Criminological Research Institute of Lower Saxony (KFN), in which individuals in the 40 to 85 age group were asked about victimisation involving crimes against property, violent crime and sexual offences, found that, as with the Police Crime Statistics, “the findings of this nationwide survey, too, do not paint a very dramatic picture with regard to risk in old age” (Görge et al. 2010).

<sup>69</sup> See Haverkamp 2012/www.basid.mpicc.de and Steffen 2012 b.

<sup>70</sup> Christoph Kinkel and Nathalie Guzy from the Bundeskriminalamt reported on the study design and pre-test findings at the European Society for Criminology conference in Bilbao on 14 September 2012.

<sup>71</sup> See van Dijk 2012 und Feldmann-Hahn 2011, 115 ff.

<sup>72</sup> Van Dijk et al. 2007. The European Crime and Safety Survey (EU ICS 2005) was co-financed by the European Commission and is methodologically integrated into the ICVS, i.e. it is essentially part of the fifth iteration of the ICVS (Feldmann-Hahn 2011, 116 f).

The 2005 survey wave covered 18 countries and focused on household crimes (such as vehicle theft and

2010 pilot in 2010.<sup>73</sup>

Findings of the ICVS 2010 pilot compared with ICVS 2005:<sup>74</sup>

- In the last twelve months, 16.7 percent of respondents in Germany were victims of twelve offences<sup>75</sup> asked about in the survey; compared with other participating countries<sup>76</sup>, this is the second lowest figure for both survey years. Respondents in 2010 were least frequently victims of vehicle theft in the last twelve months, at 0.3 percent, and most frequently victim of bicycle theft, at 4.8 percent.
- In the last five years, 44.5 percent of respondents in Germany were victims of the offences asked about in the survey – once again the second lowest figure compared with other participating countries. In 2005 the figure had been 43.1 percent, the lowest for that year. Respondents in 2010 were again least frequently victims of vehicle theft in the last five years, at 1.5 percent, and most frequently victims of bicycle theft, at 18.7 percent.
- In contrast, fear of crime, with 17.5 percent of respondents “feeling unsafe or very unsafe walking alone in the dark” in the area where they lived, was second highest compared with the other countries, after the United Kingdom. However, this compared with a figure of 30.6 percent in 2005, which was likewise second highest after the United Kingdom.
- Germany scores a low figure of 13.4 percent on the other hand for the number of respondents who worried about becoming a victim of burglary in the next twelve months (with only Canada and the Netherlands scoring lower at 12 percent). This was down from 22.8 percent in 2005, when only Canada and the United Kingdom recorded a higher figure.

Overall, therefore, the findings for Germany do not give cause for alarm – least of all in light of the findings of the EU ICS 2005 on reporting to and satisfaction with the police. Germany is fourth out of 18 countries for the frequency with which burglaries are reported (there is no analysis by country for other offences on this point) and sixth for satisfaction with the police.

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burglary) and personal crimes (such as robbery, theft of personal property, physical assault, threat and sexual assault). Approximately 1,200 individuals across the country were surveyed (by telephone), plus another 800 in Berlin (Goergen 2012, 96).

<sup>73</sup> [www.crimevictimsurvey.eu](http://www.crimevictimsurvey.eu) and [www.int-cvs.org](http://www.int-cvs.org)

<sup>74</sup> See also van Dijk 2012; findings from the EU ICS 2005 are also to be found in Görgen 2012, 97 ff.

<sup>75</sup> Theft of a car, theft from a car, theft of a motorcycle/moped, bicycle theft, burglary, attempted burglary, robbery, theft of personal property, sexual offences against women, sexual offences against men, assault and threat.

<sup>76</sup> The ICVC 2010 pilot was carried out in Canada, Denmark, Germany, the Netherlands, Sweden, and the United Kingdom.

Scope for analysis by variables other than those mentioned – such as by victim age and gender – is evidently limited, or at least the relevant data is not available.

### 1.3.4

#### Effects of victimisation

Another focus of victimological research is on the effects of victimisation. This line of research confirms a conclusion stated at the beginning: There is no such thing as the typical victim, and the same also goes for the effects of victimisation experiences. Not every victim suffers – yet some suffer their whole life long. Not every victim of a crime experiences “deeper or lasting injury beyond the immediate impacts of the crime ... But there are many, many thousand cases every year here in Germany where a crime victim suffers severe emotional harm as a result of the crime” (Böttcher 2012, 122).<sup>77</sup>

So the effects of victimisation are a very subjective thing: Objective criteria – such as offence severity in terms of physical harm, financial loss or counselling needs – are by no means enough “when it comes to probing the nature and impact of harm to victims, because this significantly depends on the victim’s subjective perception,<sup>78</sup> which is affected by a wide range of factors” (Sautner 2010, 179).<sup>79</sup>

#### 1.3.4.1

##### Psychological, physical and financial impacts

Görge (2012, 95) points to a “wide range of possible effects.” These include:

- Health impacts
- Psychological impacts
- Behavioural impacts
- Financial impacts both for the victim and for society.<sup>80</sup>

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<sup>77</sup> Barton 2012, 115 estimates, however, that people do not argue so finely: “A final piece of received wisdom in the victim society is the idea that crime always leads to trauma, criminal proceedings lead to renewed trauma, crime victims suffer their whole life long, and violent and sexual crime is on the rise in Germany.”

<sup>78</sup> Likewise Baurmann/Schädler (1991, 299): “The study showed generally that there is no such thing as ‘the’ victim. Different crime victims with similar experiences have very different ways of dealing with their victimisation.”

<sup>79</sup> Kilchling quite rightly not only criticises the use in victimology of attempts to fit offender characteristics on a severity scale (e.g. the Sellin-Wolfgang scale), but also notes a general weakness in much victimological research to date, in that questions are mostly asked in relation to fictional cases and not to personal experiences of victimisation (1995, 129 f).

<sup>80</sup> At personal level loss and devaluation of property, at societal level healthcare and nursing costs, productivity loss, institutional costs and expenditure on victim support and victim compensation.

Psychological impacts are likely to be more common than physical impacts,<sup>81</sup> “something that public perceptions of crime probably do not get right. The proportion of victims who suffer no harm from criminal victimisation is probably under 10 percent.” Also, violent and contact offences are not the only ones that can have psychological and physical impacts; non-contact offences and burglaries can too (Sautner 2010, 180 f).<sup>82</sup> By the same token, it is necessary to agree with Kilchling that from the victim’s standpoint, it makes a crucial difference whether or not the victimisation involved an encounter with the offender (1995, 106).

While men suffer physical harm from criminal victimisation significantly more frequently than women, women experience psychological impacts somewhat more frequently than men.<sup>83</sup> Psychological impacts, due to “the many different forms they take and because they are sometimes not recognised at all as (serious) impacts, are [likely to be] far harder to detect than physical or material harm to victims. On top of this, it ... heavily depends on the individual whether criminal victimisation has any psychological impacts at all and if so what kind ... However, a common cause of such impacts can be sought in the fact that for those affected, victimisation experiences mark a violation of their own identity ... [and] severely challenge their personal integrity ... In some crime victims, the experience of victimisation causes them to lose their ‘belief in a just world’ ... Overall, however, how people deal with victimisation is a very individual process” (Sautner 2010, 186 f).<sup>84</sup>

<sup>81</sup> Baurmann/Schädler (1991, 299): “When there is express talk of victims of violence, then the especially debilitating emotional injuries tend to be neglected and it is pretended that physical injuries and damaged clothing matter most.” According to Kilchling’s findings, subjectively perceived severity is most pronounced in victims of sexual offences (1995, 158, table: “Persönliche Beeinträchtigung nach Einzeldelikten” (“Personal harm by type of offence”).

<sup>82</sup> The psychological impacts of burglary in particular have long been underestimated: “For many people, burglary, an intrusion into their own four walls, is a big shock. Victims often have a harder time dealing with the violation of their private sphere, lost sense of security and attendant psychological problems than with the purely material loss” (WEISSER RING: Thema Wohnungs-Einbruch. 11/2010). See also Deegener 1996 and the K-Einbruch publicity campaign launched by the German police in October 2012 ([www.k-einbruch.de](http://www.k-einbruch.de)).

Sautner (2010, 174) similarly notes that because it is a violation of the victim’s private sphere, burglary also has features of violent crime, putting it halfway between crimes against property and violent crimes.

<sup>83</sup> According to Kilchling, physical impacts are suffered by men in 62.5 percent and by women only in 37.5 percent of cases, whereas psychological impacts are suffered by men in 44.9 percent and by women in 55.1 percent of cases (1995, 134). This probably also relates to the fact that men are the predominant victims of physical violence, while women are also victims of sexual violence.

<sup>84</sup> Fewer than half of victims, incidentally, are compensated for the harm inflicted on them. With victims of violent and contact offences this figure is even smaller, with only 10 percent and 30 percent of victims respectively receiving **compensation** (Sautner 2010, 182 f).

Victims relatively rarely turn to **institutional assistance**. In a 2004 survey of women who had experienced physical/sexual violence since age 16, only 16 percent accepted medical and as few as 11 percent psycho-social care (Müller/Schrötle 2004, 159).

In a study on **stalking** by Voß/Hoffmann/Wondrak – an online survey in which 543 victims took part in 2002 – 43 percent of victims obtained professional treatment: Two-thirds took psychotherapeutic treatment, one in two turned to a physician, only one in five sought victim counselling and no more than six percent went to a self-help group (2006, 145). Yet as the study made clear, “stalking victims suffer massive physical, psychological and social effects with a negative impact on all areas of their lives” (2006, 149).

A distinction must be made here between immediate and short-term effects of victimisation experience (such as shock or shame) and potential longer-term effects (Görge 2012, 95).<sup>85</sup> In particular, there may be symptoms of post-traumatic stress disorder (PTSD).<sup>86</sup>

The likelihood of PTSD increases with the severity of the traumatic experience. Victims of violent crime are at greater risk with about a 20 percent prevalence rate, and victims of rape at greatest risk with a 50 percent prevalence of PTSD (Sautner 2010, 189).<sup>87</sup>

Maercker (2006) points to social conditions for long-term psychological effects of this kind, to “social components of coping,” and picks out “lack of social support” as the key risk factor for PTSD.<sup>88</sup> Maercker distinguishes two aspects of social support following victimisation: The response of family members and being recognised and acknowledged by other people and institutions as “someone who has gone through something bad” (2006, 53). Also, social handling of victimisation trauma “today often has to deal with **media** reporting”, it being “not right from a psychological point of view ... for severely traumatised victims to be given media exposure, as severely traumatised victims tend to perceive the impact of the media on themselves as negative” (2006, 56 f).<sup>89</sup>

### 1.3.4.2

#### **Fear of crime**<sup>90</sup>

That fear of crime is partly or even primarily driven by personal experience of victimisation has long been assumed in research. Studies in this connection, however,

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<sup>85</sup> On the long-term effects of sexual abuse of minors, for example, see Görge et al. 2011 and Bergmann 2012, 41.

<sup>86</sup> See, for example, a leaflet published by WEISSER RING in 2007 with the title “Gewalt erleben – was nun? Informationen und Hilfen zu psychischen Belastungen” (on information and assistance with the emotional impacts of violent victimisation): “After a violent crime, besides physical injury, victims and also witnesses and family members may sooner or later also develop **emotional trauma**. This is a common stress response to extreme events.” In the same connection, the 22nd WEISSER RING Victim Forum called for the establishment of a nationwide network of outpatient trauma units.

<sup>87</sup> On the symptoms, see Sautner 2010, 188 f and Maercker 2006.

<sup>88</sup> Other risk factors: General stress level in ordinary life, trauma severity, low socioeconomic status, female gender (2006, 52).

<sup>89</sup> Also see Böttcher: “Media reporting on proceedings can add to victims’ fear ... There are victims who are not afraid of media reporting and there are victims who, despite their fears, want the media to report about their fate as victims so that what was done to them is made public. There are victims who voluntarily seek media publicity” (2012 a 187 ff).

Reemtsma (2006, 18) notes the general inability of victims to cope with the added stress of dealing with the media – and to one of the key challenges for victim support in the future: “Media training for lawyers in the interests of victims – generally meaning media abstinence.”

<sup>90</sup> For findings and further references on fear of crime in Germany and possible influencing factors, notably with regard to the connection between generally increased insecurity and loss of sense of security, see Steffen 2012 b.

have produced contrasting results. This probably depends on the aspect or dimension of personal fear of crime selected in a study:<sup>91</sup>

- The cognitive aspect, expressing the individual's personal assessment of their risk of becoming the victim of a crime in the near future ("How likely do you think it is that – in a specific period – you will become the victim of a crime?").
- The affective or emotional aspect, reflecting emotional worry about crime risk in the individual's home surroundings ("How safe do you feel when you are out alone at night in the area where you live?").
- The conative aspect, relating to behavioural responses in the form of avoidance behaviours and protective measures ("How often have you – in a specific period – taken action to protect yourself from crime?").

Studies show that in the cognitive dimension, there are links between past experience of victimisation and fear of (once again) becoming the victim of a crime.<sup>92</sup> However, according to Sautner (2010, 192), the differences are not big enough to support a presumption of psychological harm to the victim.

In the affective dimension, the differences between victims and non-victims tend to be small. Someone who counts victimisation among the risks they face need not develop a fear of crime if they believe they have the resources to cope<sup>93</sup> (Ziegleder u.a. 2011, 35).

As PSB 2006 found in this regard, "In sum, explanations of fear of crime based on experience of victimisation do not prove universal and adequate either at individual or at aggregate level" (2006, 514).

### 1.3.4.3

#### Re-victimisation

According to Schneider (2010, 628), victims have a high risk of re-victimisation, i.e. the risk of becoming victims of crime for a second time: "Past victimisation is the best predictor of future victimisation. Repeat victimisation substantially depends on the psychological harm, the trauma of victimisation. Victimisation can alter the psychological processes of thinking, feeling and behaviour ... Victimisation can operate to result in acquired helplessness, vulnerability, insecurity, loss of control and self-accusation in victims." Victimisation confirms a belief in personal helplessness that

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<sup>91</sup> See Sautner 2010, 190 ff and Ziegleder et al. 2011, 28 ff.

<sup>92</sup> This matches the experience of victim support organisations that many victims are anxious, at least in temporal proximity to the crime. "Suddenly, a lot of things are fear-ridden. Confined by fear, victims lose their basic sense of inner security" (WEISSER RING 22 a, 38).

<sup>93</sup> The individual's own resources for coping with victimisation.

grows with each further victimisation (Sautner 2010, 193).<sup>94</sup>

According to international victimisation studies, 4.3 percent of victims who have been victimised five or more times in one year experience 43.5 percent of reported crime.<sup>95</sup> There is an especially high risk of re-victimisation with crimes against the person, such as intrafamilial violence, sexual victimisation, maltreatment of children and old people, racial attacks and bullying. In particular, all forms of childhood victimisation go with a higher risk of lifetime victimisation (Schneider 2010, 630).

Just as with offenders, where a small number of repeat offenders account for the majority of crime, so with victims, with a small number of repeat victims experiencing a large proportion of all victimisation that occurs.

#### 1.3.4.4

##### **Enhanced delinquency risk (the ‘cycle of violence’)**

Among the possible consequences of victimisation, the question also presents itself of “whether victimisation experiences increase the risk of victims becoming delinquent themselves” (Sautner 2010, 192).

This role reversal from victim to offender – which is by no means automatic – is empirically confirmed at least for children and adolescents subjected to violence and abuse (Sautner 2010, 193). For Schneider (2010, 633) victimisation in childhood or adolescence can be pivotal to the child’s or adolescent’s subsequent biography. It may become the start of a career as victim or offender. Dudeck, too, notes that experience of sex and violence-related victimisation in childhood marks a serious risk to the developmental psychology process and could set off a ‘cycle of abuse’, “i.e. be a risk factor for later sexual offences ... Childhood sexual abuse increases the risk of becoming a sex offender in later life by almost five times relative to other early traumas” (2012, 122 f).

The Criminological Research Institute of Lower Saxony accordingly sees the fact that adolescents are less exposed to violence-fostering factors – and notably the decrease in parental violence<sup>96</sup> – as a key explanation for the decline in youth violence (Baier et al. 2009, 10).

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<sup>94</sup> Based on findings of the studies she draws upon, Sautner likewise estimates the rate of multiple victimisation “as relatively high” (2010, 170).

<sup>95</sup> Herman (1010, 13 f) presents National Crime Victimization Survey data on re-victimisation or repeat victimisation in the USA: 4 percent of victims experience 44 percent of all crimes. Repeat victimisation accounts for 49 percent of all sexual offences, 43 percent of all cases of assault and threat, 33 percent of all burglaries, and 15 percent of all theft of personal property.

<sup>96</sup> Risk factors for later violent delinquency not only include the experience of parental violence, but also of being confronted with violence between parents.

Preventing victimisation is thus a vital part of preventing crime – in this instance of avoiding or reducing the risk of victims becoming offenders.

## 2

### Needs and wishes of victims

The foregoing findings on the consequences of victimisation for victims and society mean that as well as preventing crime and victimisation wherever possible, it is also essential to lessen the impacts of crime on victims by fostering greater victim orientation in society and criminal justice.

#### 2.1

##### No such thing as the typical victim

If the aim is to avoid deciding over victims' heads – assuming helplessness and vulnerability at the risk of amplifying the helplessness and weakness experienced particularly by victims of violent crime – and instead to promote victims' self-determination and autonomy<sup>97</sup>, then it is important to know what victims want, need and expect from support systems and to the criminal justice system.<sup>98</sup> This applies even if there is “no such thing as the typical victim,” but a “diversity of personal experiences” resulting in a “many-layered pattern of victim interests and attitudes” (Kilchling 1995, 621 f).

Or as Reemtsma asked in an address on the 25th anniversary of WEISSER RING in Hamburg, “What actually are the interests of a crime victim? Let's start by asking, what are their wishes? Their wishes are many and varied, as human wishes always are. One victim wants things one way, the next another way. One has revenge fantasies, another has none, one wants material compensation for the harm done, another finds that thought uncomfortable ..., one wants publicity, another wants to withdraw, one is strongly interested in the case's prosecution, another is uninterested, one wants a prominent appearance in court, another wants to avoid appearing if at all possible, and so on” (2006, 17).

But even if we bow to the law of averages when it comes to victim needs and allow that individual cases can vary widely, even our knowledge of the ‘average’ is not much better now than Schädler et al. described in their report to an April 1989 congress on assistance for crime victims: In Germany, on an international comparison, knowledge “about victims’ needs has so far remained patchy and is limited to only a small number of studies” (1990, 3).

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<sup>97</sup> Enhancing victim autonomy must accord with Kilchling's basic call for a victim-oriented reform of the law of criminal procedure.

<sup>98</sup> Empirical victimology has heightened awareness not only of what an upheaval victimisation represents in many people's lives, but also of the direction taken by what victims want from the state in dealing with the crime (Weigend 2010 a, 40).

Little has changed since, and there is still insufficient data. Most of all there is a lack of new findings for Germany. Most studies on victim interests and victim needs, and on their assistance and support requirements, were carried out in 1990/1991, nearly a quarter of a century ago.<sup>99</sup> With regard to violence experienced by women there are findings for the years 2004 and 2011,<sup>100</sup> concerning sexual abuse there are the findings of the Independent Commissioner on Sexual Abuse (Bergmann 2012) and the findings of a 2011 study by the Criminological Research Institute of Lower Saxony (Stadler et al. 2012).<sup>101</sup>

One thing is clear: The victim's intrinsic interest in making the crime undone cannot be fulfilled. "Nothing in the world can reverse or make good the fact that someone has become the victim of a crime" (Reemtsma 2006, 17).

But attempts can be made to lessen, or at least not to compound, the impacts of victimisation by taking into account "victims' wishes after the event."<sup>102</sup>

## 2.2

### Victims' willingness to tell

Taking into account victims' wishes requires victimisation to become known – that victims speak about what has happened.<sup>103</sup> Yet victims of crime by no means always speak out, least of all victims of sexual or indeed physical violence: Almost half of all women who have been victims of sexual violence (47 percent) and over a third of victims of physical violence (37 percent) do not talk to anyone about the violence inflicted on them (Müller/Schrötle 2004, 162 f); for victims of sexual abuse with physical contact the figure is still one in four (Stadler et al. 2012, 51).<sup>104</sup>

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<sup>99</sup> Baurmann/Schädler's findings were published in 1991 (survey of 203 crime victims, mostly immediately after charges were brought; 29.1 percent were victims of violent crime); Kilchling's in 1995 (1990 written survey of victimisation experiences – both contact and non-contact offences – with 3,213 respondents who had previously taken part in the ICVS 1989 international telephone survey on victimisation mentioned earlier; Deegener's findings were published in 1996 (written survey of 716 robbery and burglary victims recorded by the police between March 1990 and February 1991) and Richter's findings came out in 1997 (1991 written survey of a sample of 342 victims of violent crime from WEISSER RING records); these and other findings are discussed in Sautner (2010).

<sup>100</sup> A 2004 representative survey by Müller/Schrötle of over 10,000 women between 16 and 85 on experiences of violence and recourse to support; and a 2001 representative survey (as part of a multi-topic survey) of 1,138 women from 16 to 65 on knowledge of and recourse to counselling and on experience of violence (Helfferich et al. 2012).

<sup>101</sup> A 2011 representative survey of 11,428 individuals aged 16 to 40 on exposure in particular to sexual abuse within the family.

<sup>102</sup> With regard to victims' needs, a basic distinction must be made according to the type of crime and the type of **harm suffered**: In the immediate aftermath of victimisation, victims of non-contact offences and burglaries mainly seek restitution (60.8 and 36.8 percent respectively), whereas victims of contact offences predominantly want to forget (31.8 percent); the wish to see the offender punished is also most prevalent in these victims (28.4 percent), particularly after assault or threat (Sautner 2010, 203; detailed figures in Kilchling 1995).

<sup>103</sup> It has already been seen that bringing charges is the exception rather than the rule, especially for victims of violence.

<sup>104</sup> Yet according to the Independent Commissioner on Sexual Abuse, "being able to speak about it ... was

When victims do speak to someone, then the first and the most important points of contact are individuals from their immediate social environment – friends, acquaintances, neighbours and family – with professional sources of help some way behind (Müller/Schröttle 2004, 159, 163).<sup>105</sup> These findings are confirmed in the 2011 survey: If counselling is not sought despite an experience of violence, then it is because the victim has confided in someone in their private surroundings and is trying to deal with the questions and problems in that way, to cope without counselling – for “The private nature of experiences of violence is a high barrier to divulgence” (Helfferich et al. 2012, 203). Victims of sexual abuse, too, if they speak to anyone at all, tend most of all to speak to family and friends (Standler et al. 2012, 51).<sup>106</sup>

Not just the private nature of many experiences of violence, but also the fear of not being believed means victims are not likely to speak about violence inflicted on them (Bergmann 2012, 40)<sup>107</sup> – not to family or friends and certainly not to the police or the judiciary: The willingness to report is exceptionally low, most notably when the offender and the victim knew each other before the offence.<sup>108</sup>

The findings of the 2011 representative survey on child sexual abuse are therefore remarkable in showing a significant increase in the willingness to report child sexual abuse within the family: “Whereas ... in the 1980s on average only one in twelve offenders could expect criminal prosecution, today that applies to about one in three. This circumstance may have curbed the proclivities of potential offenders and contributed to the decline in the forms of sexual abuse surveyed here” (Standler et al. 2012, 54).

### 2.3

#### **Desire for social support, information and advice**

When victims of crime – and especially violent crime – speak about their experiences, in most cases they are driven to do so by the desire for social support, in the form of

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hugely important for all” (Bergmann 2012, 42).

<sup>105</sup> See also the findings on recourse to institutional support related in footnote 86.

<sup>106</sup> Baumann/Schädler have if anything a negative appraisal of the ‘benefit’ to victims of speaking to family and friends: “In most cases, experienced victimisation (was) first spoken about with close family members ... In few instances, however, did victims find in such conversations the support and stabilisation they needed. Victims [overcame] the consequent isolation ... partly through ‘cries for help’ to institutions such as the police and victim support organisations. This may also be related to the finding from our study that victims, and particularly victims of violence, desired assistance from the state far more frequently than private support” (Baumann/Schädler 1991, 291).

Bergmann notes that it was helpful for dealing with what had happened if victims found support in the family or in their social surroundings (2012, 42).

<sup>107</sup> On the relationship between doubts about victims’ credibility and their secondary victimisation primarily in investigation and prosecution proceedings, see below, section 3.

<sup>108</sup> According to the findings of Müller/Schröttle, 13 percent of women victims of violence from past/current partners brought in the police and eight percent pressed charges. These figures increase to 19 percent for police involvement and 11 percent for the bringing of charges if the sample is restricted to women who have experienced violence resulting in injury or are in fear of serious/life-threatening injury (2004, 237).

corresponding responses from family, friends and acquaintances, and from the criminal justice system.<sup>109</sup>

A key facet of this desire for social support is acknowledgement of the wrong done, that the offence and the offender be called by name, to be accorded recognition and respect as someone who has gone through something bad, to receive clear acknowledgement of victim status, including in particular by the criminal prosecution authorities.<sup>110</sup> Or as Reemtsma put it: “Acknowledging criminal liability means acknowledging that wrong has been done. The victim has not just had back luck – the victim has been attacked, not struck by a falling branch. What the offender did was not allowed. The victim not only suffered injury but was wronged” (2006, 17).<sup>111</sup>

Social support also includes information and counselling, and these are important for victims: Information and advice can impart a sense of security and of being able to do something – and this is an area where there are glaring deficits.<sup>112</sup> “Crime victims who come to the police or have to appear in court are mostly poorly informed. Victims generally know little about how an investigation and prosecution proceed” (Baumann 2000, 3; Frederking 2007) – but they do want more information, for example on the rights and duties attached to the role of the victim (Richter 1997, 94).

Providing such information is a task largely undertaken by victim support and counselling organisations. In preparations for a trial, for example, staff from WEISSER RING work closely with lawyers to inform victims about their rights in criminal proceedings, to turn victims into witnesses – because being a victim is a passive role, a powerless role, whereas being a witness in a trial is an active role (Hartwig 2012, 57).

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<sup>109</sup> Richter’s study from as early as 1997 thus came to the conclusion that what the surveyed victims of violence needed most of all (63.4 percent) in the aftermath of the offence was concrete assistance in the form of psychological and social support and that this desire was primarily directed at the “agencies and servants of the official criminal prosecution system.” Because fulfilling this role “is not, however, first priority in the performance of [the latter’s] work ... the mismatch between victims’ expectations and the actual official response ... may be experienced by victims as a problem” (Richter 1997, 86 ff).

<sup>110</sup> See also Baumann/Schädler 1991; Baumann 2000, 4; Richter 1997, 86 ff.; Kilchling 1995, 222; Bergmann 2012, 42.

Sautner (2010, 218), too, notes the need of victims for acknowledgement of their own victim status right through the criminal prosecution system and the courts (more on this point in section 3).

For Maercker, social support is “absolutely pivotal” in coping with the trauma of victimisation and avoiding long-term psychological effects (2006, 52 f).

<sup>111</sup> Likewise Hassemer/Reemtsma (2002, 130 f) regarding the great importance of the offence being recognised as a wrong and not an unlucky accident. “Nobody is responsible for an accident, nobody is to blame. Wrongdoing should not have been allowed to happen ... The suffering inflicted on me is an outcome of the other’s freedom to injure me. The offender could have refrained from doing it. That the offender could have refrained from doing it is given expression in the court judgement, which labels it a wrong.”

<sup>112</sup> Richter 1997, 92 ff; see also the papers on awareness of victims’ rights in “Opferschutz – unbekannt,” Mainzer Schriften zur Situation von Kriminalitätsopfern, Vol. 44 (WEISSER RING (Eds.), 2007); Seidler 2006.

## 2.4

### Victims' wishes in terms of punitiveness and retribution

Relative to the needs referred to so far, victims' wishes in terms of punitiveness and retribution play a **comparatively minor** role, and certainly a lesser one than is often assumed: "When people think about the role of the injured party in a trial, they usually assume that the crime victim's main interest will be to see the offender punished ... This premise is the only way to explain the widespread calls for the injured party to be given a greater say (i.e. to better assert their interest in redress), as also assumed by the powers that be in the Victim Protection Act (Opferschutzgesetz). Oddly, these considerations lack any empirical support that crime victims indeed seek retribution ... The British and German empirical studies that exist on this topic show victims to have strikingly relaxed and moderate attitudes towards offenders and their punishment ... There is much to indicate that victims typically leave the nature and extent of the state response to the discretion of the criminal prosecution system on the basis of prevailing law, and are in agreement with the outcome if they are involved in the proceedings to a subjectively and emotionally satisfactory extent – primarily through information and consultation" (Weigend 1989, 408 ff).<sup>113</sup>

This assessment corresponds with that of Sautner in light of empirical research since carried out into victims' wishes in terms of punitiveness and retribution: "If victims are asked what they think should be the response to the criminal conduct in question, it becomes clear that a majority prefer state criminal justice intervention – and also that this does not always mean punishment of the offender in the sense of a criminal sentence" (Sautner 2010, 235).

As Weigend goes on to explain, retribution could be reduced to the victim's interest in acknowledgement that they have been done wrong, that this wrong is recognised and appropriately reacted to, thus giving the victim (symbolic) assurance that nothing of the kind will happen again. The victim's legitimate wish that the crime should not be let go without an official reaction must not be equated with a thirst for revenge. The formal reprobation inherent in a sentence also has the function of saying to the victim that they have been done wrong and are not obliged to accept the offender's conduct (Weigend 2010 a, 43).

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<sup>113</sup> See also Gelbert/Walter 2013, 75.

<sup>1</sup>The injured party – any injured party, not just those who have suffered especially serious injury – can demand that their fate not be marginalised, and that it be acknowledged that they have been done wrong. But that is not necessarily to say such acknowledgement much come in the form of a penal sentence" (Weigend 2010 b).

<sup>1</sup>ikewise Reemtsma: "The victim's interest in hearing confirmation that they have been done wrong and the public interest in it being established that a norm has been breached but continues to apply despite the breach – as confirmed by the handing down of a sentence ("You should not have done that!") – those interests converge ... Yet the injured party does not have a right to see the court accept their view of things, they only have a right for the court to consider their view and to do so competently ... Justice cannot heal anything, but where justice is not done, new, irreparable harm occurs" (2006, 17).

## 2.5

### Restitution

Many victims desire restitution of the harm done to them and view restitution as a suitable condition to be imposed for the termination of proceedings, although they also tend to regard the imposition of such conditions as a form of criminal sanction (Sautner 2010, 239).

It is important to victims, however, to see that restitution comes from ‘their’ offender. For many victims, it matters that the offenders themselves fulfil their debt to them (Weigend 1989, 404; Baurmann 2000, 4). The way victims view restitution as having a sanction aspect is through the offender having to face up to the crime and its consequences. In such circumstances, victims can also envisage taking part in conflict **mediation** arrangements such as victim-offender mediation (Sautner 2010, 240, 261).

**Victim-offender mediation (VOM)** gives victims and offenders an opportunity to reach a satisfactory resolution of conflicts out of court in the presence of a neutral facilitator. It generally comprises counselling and/or mediation, an agreement on restitution, and incorporation of the outcomes as input into the criminal justice process.<sup>114</sup> VOM is an important tool for autonomous conflict resolution between victim and offender. Its merits are considered first and foremost to be “that it is better suited to serving victim interests than normal criminal proceedings<sup>115</sup> while also improving offenders’ prospects for positively influencing the future ... That victim interests are adequately served in practice here can be seen from the high victim participation rates and the large number of mutual agreements that come out of such mediation. This encourages greater use of victim-offender mediation in future, including in cases of severe crime that are suited to mediation of this kind (in this context naturally only as a means of conflict resolution alongside a sentence to be imposed in criminal proceedings).”<sup>116</sup>

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<sup>114</sup> Bundesverband Mediation e.V. (Federal Mediation Association, [www.mbmev.de](http://www.mbmev.de)).

<sup>115</sup> Although empirical proof of this is largely lacking. Whether and to what extent victims – and not just of offenders – benefit from out-of-court mediation is currently being investigated for Germany and Austria in a European Commission-funded project on out-of-court mediation as a victim support tool. Using qualitative methods and focusing on violent crime in the individual’s immediate social surroundings, the study asks how out-of-court mediation influences or is capable of influencing both adolescent and adult victims in the process of dealing with a crime, and what factors are important in helping this process take a positive course in a way that prevents long-term traumatisation in the direction of tertiary victimisation ([www.mediation-im-straftverfahren.de](http://www.mediation-im-straftverfahren.de)).

<sup>116</sup> Federal Ministry of Justice: “Täter-Opfer-Ausgleich” (Victim-Offender Mediation”) ([www.bmj.de](http://www.bmj.de); viewed 17 February 2013).

Given the very low reporting rates for physical and sexual abuse of women and children by family or close acquaintances, Schneider suggests that thought should be given to whether reparation and mediation proceedings along restorative justice lines are not a better solution than criminal proceedings (2010, 633 f).

Victim-offender mediation was first incorporated into German juvenile criminal law (1990) and later into adult criminal law.<sup>117</sup> “In contrast to the more ‘lightweight’ sanctions under the heading of diversion in the Juvenile Justice Act (*Jugendgerichtsgesetz*), this legislative provision also made it possible to apply victim-offender mediation without restriction in severe offences, as a ‘mitigating category’” (Schädler 2012, 54). “Since then, victim-offender mediation and restitution are recognised as two forms of reparation that can lead to a discharge or a mitigated sentence. The legislature aimed in this way to promote recognition of guilt, restitution and the peace-making effect of mediation, including with severe crimes” (Schöch 2012, 250).<sup>118</sup>

Schädler doubts that this has succeeded, however: “In the minds of practitioners, victim-offender mediation has made the transition from juvenile to adult criminal law, if at all, at best in mangled form: Courts and the prosecution service tend to apply victim-offender mediation as before with less serious crimes, sometimes with severe bodily injury. Victims of sexual offences in particular, however, are troubled by the fact that victim-offender mediation with the aid of a neutral facilitator was not made mandatory by law yet can be launched into at any stage of the proceedings. One upshot of this is that conflict resolution is often sought very late, after the evidence-taking part of the proceedings has failed, is then gone at hastily in the corridor or sometimes even in court, and in most cases resolution is only sought on a financial basis. This is almost always to the detriment of victims” (2012, 54).<sup>119</sup>

Other problems connected with the offender’s ‘apology’ are noted by Schöch: An apology is a key part of the peace-making effect of almost all reconciliation agree-

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<sup>117</sup> And inserted into section 46a of the German Criminal Code. In juvenile criminal law, victim-offender mediation or ‘restitution’ was added to the list of conditions and directions available to be imposed on an offender by a court (Schädler 2012, 53).

According to national **VOM statistics** collated by Kerner et al. since 1993 (most recently for 2010), the type of injury suffered was bodily injury in 36 percent (slight bodily injury 75 percent) of cases, psychological harm in 19 percent and material harm in 21 percent. The type of conflict was relationship conflict in 57 percent of cases, neighbourhood conflict in 21 percent, domestic violence in 16 percent and stalking in 6 percent of cases.

<sup>118</sup> WEISSER RING, the victim support organisation, advocated restitution as early as 1996 as part of both criminal investigation proceedings and court sentencing. Article 2 of its Articles of Association was amended to include support of restitution and victim-offender mediation projects as an object and purpose of the organisation.

On victim-offender mediation, see also the position papers in ‘Spektrum der Mediation’, the professional journal of the German Federal Mediation Association ([www.bmev.de](http://www.bmev.de)); ‘TOA-Infodienste’ published by the VOM and mediation service bureau of the Association for Social Work, Criminal Law and Criminal Policy (DBH) ([www.toa-servicebuero.de](http://www.toa-servicebuero.de)). The Federal Ministry of Justice also publishes an annual report on victim-offender mediation statistics ([www.bmj.de](http://www.bmj.de); Kerner et al. 2012).

<sup>119</sup> Kerner et al. note that VOM is not truly established nationwide and there are still both guarded and outspoken reservations among some parts of the public, and also among members of the judiciary and (defence) lawyers. This goes with the fact that quantitatively, VOM cases still, or so far, only account for a modest share of all cases dealt with in prosecution and sentencing in any one year. Austria is far ahead in this regard, VOM having become established there as a valid alternative to conventional responses (2012, Vorwort).

ments.<sup>120</sup> Many victims, according to Schöch, are willing to accept such an apology but not to ‘forgive’ the offender, least of all with severe crimes. Many understand ‘forgiving’ as rendering the crime undone as if nothing had happened. That goes too far for them, Schöch writes, because they do not generally want to view the crime as not having happened. But on the other hand restitution does not require that (2012, 250).

### 3

#### **The criminal justice system and victims’ wishes**

*“In conflict resolution through criminal justice today ... the position of the individual victim rightly appears to be that of a quantity independent of the legal community and of the state entrusted by the latter with criminal prosecution. The call for the state right of punishment to be exercised across the board in a more victim-friendly way is now uncontested” (Kunz 2011 a, Ch. 5, at 49).*

#### 3.1

##### **Victim orientation in criminal justice**

‘Today’ – in other words, criminal justice has by no means always been exercised in a ‘victim-friendly’ way and that was not always ‘uncontested’ and self-evident. Indeed, the increasing orientation towards victims in criminal justice only took hold some 25 years ago.<sup>121</sup>

“Historically,<sup>122</sup> the injured party in a crime had a strong status in trials up to the Middle Ages ... That status was lost with the emergence of the state monopoly on violence and the rise of modern criminal justice under the rule of law ... To the same extent as the state took over conflict resolution, the injured party gave up their role as an autonomous actor in criminal proceedings, and for the most part only featured in the practical exercise of the law as a source of evidence, namely as a witness. The victim thus became an object of the trial. Outside of criminal process, too, little attention was given to the injured party (Barton/Kölbl 2012, 11).

The criminal law and the law of criminal procedure focus on the offender: “Only a few years ago, for many people who had to do with issues of guilt and sentencing, the real victim in the guilt and sentencing complex was the offender, namely as the victim of state retribution measures. The protective guarantees of criminal justice based on the rule of law were directed at the offender alone, and the victim of the crime did not feature in the argument ... Things are very different today. When the word ‘protection’ is mentioned in a criminal justice context, we associate it not with the offender

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<sup>120</sup> According to the TOA statistics for 2010, an apology is by far the most frequent form of agreement reached, at 43 percent (Kerner et al. 2012).

<sup>121</sup> This is regarding – with others such as Kilchling (1995, 4) – the 1986 Victim Protection Act (Opferschutzgesetz) as the point where the legal position of victims in criminal proceedings began to be strengthened. Weigend, too, considers this act the “key step towards the victim” (2012, 52).

<sup>122</sup> On historical aspects of victim protection and victim participation, see e.g. Weigend 1989 or Rössner 1990.

but with the victim, and what we are concerned about today is protecting from the offender rather from the state” (Hassemer/Reemtsma 2002, 14 f). A crime is no longer seen foremost as a rebellion against state precepts or a violation of an abstract legal construct, but as a violation of the legally protected interests of a specific individual – real harm to a real person (Weigend 2010 a, 41; Böttcher 2012, 123).

In any event, both in criminology and in criminal justice, the injured party is no longer the ‘forgotten man’, as the victim was still able to be termed in the 1970s (Weigend 1989, 13; Barton/Kölbel 2012, 11).<sup>123</sup> According to Weigend, however, the wind has turned in recent years; today, the tendency is more to warn of a change in the public character of criminal proceedings by the injured party being granted all-too autonomous status with far-reaching active rights (Weigend 2010 a, 53).

### 3.1.1

#### Reasons for the increased victim orientation in criminal justice

The reasons for the increased victim orientation in criminal justice partly have to do with fundamental arguments relating to the rule of law and partly with practical considerations.

The ‘**rule of law**’ argument draws on the state monopoly on violence,<sup>124</sup> the renunciation of violence by the individual, and the resultant guarantee by the state under the rule of law to look after the safety of its subjects.<sup>125</sup> If the state cannot deliver on that guarantee – and given the large numbers of crime victims it evidently cannot – then it should at least protect victims from suffering harm in investigation and criminal proceedings (see also Baurmann 2000, 2).<sup>126</sup>

Reemtsma, too, advocates a “measure of fair play” while also stressing the negative consequences of construing the “reciprocal obligation” that goes with the state mo-

<sup>123</sup> “These days, the crime victim drives criminal policy ... The victim has stepped out of the shadows that an offender-focused criminal justice system kept them in for decades, indeed for centuries. We are witnessing a shift ... Our attention, our interest and also our sympathies are moving from offender to victim” (Hassemer/Reemtsma 2002, 13).

<sup>124</sup> “The state monopoly on violence means the sole legitimacy of the state to exercise and threaten physical violence under the framework of prevailing law to the extent that the law does not grant such legitimacy to the individual by way of exception ... [the monopoly on violence corresponds to] a reciprocal obligation to enable subjects to live without fear of threat, actual or presumed (including threat of crime) (Schwind 2011, § 18, at 33; § 20, at 13). This ‘reciprocal obligation’, however, is not uncontested as it can lead directly to the preventive state (see Steffen 2012 b).

<sup>125</sup> Weigend (2010 a, 45), however, only finds this inference persuasive at first sight: The state authorisation to punish, he says, can no longer be understood as the outcome of an imaginary transference of responsibilities by potential crime victims; instead, that authorisation is legitimised by lawmakers in the democratic decision making process. This means the injured party does not have any entitlement in compensation for the loss of some archaic right of self-‘justice’.

<sup>126</sup> The CDU/CSU party’s draft of the Victim Compensation Act (Opferentschädigungsgesetz) passed in 1976 refers to a duty of the state, reciprocal to its assumed monopoly on violence, to stand by the victim of a crime in the event that crime fighting fails (cited in Schädler 2012, 53).

nopoly on violence as meaning that the state must enable subjects to live without fear of actual or presumed threat: “A victim does not have a claim against the community – the state – merely because they have become the victim of a crime. They have not become a victim because the state has not given adequate protection – except where that is the case in a specific instance ... Anyone who thinks the state has failed whenever a crime is committed must want a state that is actually capable of preventing crime everywhere – and that would have to be a state that not only watches everywhere but is omnipresent with the means of immediate intervention. That would not just be impossible: Anything approaching such a condition would be unbearable.

“Crime-free conditions are in the interest of almost everyone – but we cannot bring such conditions about, nor would we like what it takes to achieve them. But it is in the general *interest of all citizens* – and this interest can indeed be met – to have assurance that if they find themselves in the role of victim (or aggrieved party), then their fate will be governed by a certain degree of fair play” (2006, 17).

This call for investigation and criminal proceedings in which the victim does not suffer additional harm (the ‘secondary victimisation’ already mentioned) is one of the most important **practical arguments** for a professional way of dealing with the victims of crime that avoids (unnecessary) distress.<sup>127</sup>

“The state, a security coalition comprising all individuals, has a duty to safeguard individuals from violations of their legitimate spheres of interests. If this fails in a given instance, the affected party can at least expect that the damage done will not be made bigger or worse by the state” (Weigend 1989, 19).<sup>128</sup>

Victim orientation is also “correlative with the fact that the state makes victims serve duty as witnesses and exposes them to considerable stress in doing so” (Weigend 2010 a, 55). Special rights can be inferred for victims not only because suffering the crime itself and the (consequent) intensive demands of the criminal justice process imposes a special sacrifice compared with other citizens. The state has cause to minimise or make good this special sacrifice by providing an appropriate framework and compensation (Weigend 1989, 379). Because victims have to fulfil their witness duty – sometimes against their own sensibilities and against their own needs (Baumann 2000, 2). “The victim must bring a special sacrifice for the community. That virtually cries out for support and help” (Böttcher 2012, 123).

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<sup>127</sup> A further line of argument follows from the fact that by bringing charges, crime victims are the initiators of police investigations, and through their readiness to provide information and the quality of that information they also influence the success of those investigations – whether crimes are cleared up and whether offenders are arrested and put on trial.

<sup>128</sup> Likewise the German government in the 2009 draft version of the second Victim Law Reform Act (Opferrechtsreformgesetz): “The constitutional order under the German Basic Law obliges the organs of the state not only to clear up crimes and determine the guilt or innocence of the accused in fair proceedings under the rule of law, but also to place themselves protectively in front of victims and respect victims’ concerns” (cited in Sielaff 2010, 213).

When victims opt to press charges in cases where the proceedings are likely to put a great strain on them – say out of a wish for justice to be done, so the crime does not go unpunished or to save other people the same fate – then “they are doing a service for the state under the rule of law, a service that deserves recognition. That service makes it all the more urgent to minimise the distress to victims and to give them the opportunity to be party to the process of discovering the truth and arriving at a fair judgement“ (Böttcher 2012, 123).

### 3.2

#### **Victim orientation in the police**

Because in most cases charges are first brought before the police, the increased victim orientation in the criminal justice system starts with the police service and not just at the point where a case passes on to the judiciary.<sup>129</sup> Efforts to meet the call for professional treatment of victims parallel a general heightened sensitivity to victims of crime and to their needs and expectations.<sup>130</sup>

For the police, victim protection – looking after victims of crime and of road accidents with the aim of minimising the consequences of an incident for those affected – is a part of police crime prevention. Under the police approach to prevention, “this task falls first of all to every police officer in the course of their everyday duty” (Programm Polizeiliche Kriminalprävention).

Promoting “professional information practices”<sup>131</sup> – and helping to satisfy the above-mentioned information needs and requirements of crime victims – is an aim of VIKTIM, an interactive training tool on police conduct towards victims. A module on what victim protection means for the police thus gives in-depth information on the need for and aims of victim protection. The many other topics include victim expectations,<sup>132</sup> rights, and sources of support: “Looking after the victims of crime is ... today part and parcel of police work.” And: “Professional victim protection is fundamentally important to the entire criminal justice process. Going by the maxim that people only put trust in a professional, the quality of victim statements can be decisively improved.”<sup>133</sup>

<sup>129</sup> With regard to the following, see also Steffen 2012 a.

<sup>130</sup> The call for professional treatment of victims and for increased victim orientation in the police service was also furthered by the 2002 Protection Against Violence Act (Gewaltschutzgesetz), which effectively gave the police victim protection responsibilities in relation to domestic violence and violence in the victim’s immediate social environment (Sielaff 2010, 217).

<sup>131</sup> As called for by Baumann 2000, 3.

<sup>132</sup> According to a victim survey by the Technical University of Darmstadt Institute of Psychology, what victims want and expect of police officers is a quick response, a good manner, continuity (the point of contact and interviewing officer stay the same), provision of an appropriate situation for interview, acceptance, information, and consideration (source: VIKTIM).

<sup>133</sup> The application of “professional information practices” by the police is also visible in the public information the police provide for (potential) crime victims: On the German Police Crime Prevention Programme

Speaking generally, victim protection has now become an integral part of police work and part of the duties of every police officer throughout Germany. Almost everywhere, victims' commissioners have been established – specially trained police officers who not only serve as a point of contact and provide help for victims, but also champion victim protection within the service (Steffen 2012 a, 146).<sup>134</sup>

This increased victim orientation in the police seems to have paid off. In the study cited earlier on violence against women in Germany (Müller/Schrötte 2004), satisfaction with the work of the police was found to have increased in the preceding 15 years: “In summary, it is possible to say that positive changes with regard to police handling of violence against women have become visible in the present study, most notably in victim protection and victim support, and in the communication of information. In investigation proceedings, too, there are indications of cases being investigated more diligently” (2004, 197).

In an assessment of support provision for female victims of violence (Helfferich et al. 2012) in which women were also asked about their knowledge and use of counselling on experienced violence,<sup>135</sup> there were few who did not know somewhere they could turn to. Of the named sources of help, the police came first (74 percent would recommend going to the police in cases of sexual violence and 63 percent in cases of maltreatment). The police thus enjoy considerable trust, followed by medical practitioners (recommended by 45 percent for cases of sexual violence and 36 percent for cases of maltreatment). Counselling services were recommended far less frequently in comparison. Evidently, with acute violence, the priority is more on protection and medical treatment than on psychosocial counselling (2012, 188 ff).

### 3.3

#### **Victim protection in criminal proceedings**

Victim protection in criminal proceedings relates to two things:

- Firstly, safeguarding victims from further harm as a result of the proceedings
- Secondly, supporting victims so that they can assert themselves in the proceedings (Böttcher 2012, 122).<sup>136</sup>

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website ([www.polizei-beratung.de](http://www.polizei-beratung.de)), general information –how a crime is prosecuted and tried, victim support organisations, how to record injuries, etc. – is supplemented with detailed information and tips relating to specific offences.

<sup>134</sup> Outside of the police service, Berlin appointed Germany's first state victims' commissioner at the beginning of October 2012 ([www.zeit.de/gesellschaft/zeitgeschehen/2012-11/Interview-Opferbeauftragter-Berlin/komplettansicht](http://www.zeit.de/gesellschaft/zeitgeschehen/2012-11/Interview-Opferbeauftragter-Berlin/komplettansicht); viewed 13 December 2012).

<sup>135</sup> 2011 representative survey of 1,138 between 18 and 85.

<sup>136</sup> For Barton, many of the reforms passed by the legislature with the rationale of improved victim protection clearly illustrate the ‘victimisation’ of German criminal policy (2012, 127). Those reforms mainly related to the law of criminal procedure, but “the legislature [also] repeatedly went into action” in substantive criminal law and in related policy areas. See the list in Barton 2012, 127 ff. Weigand notes that effectively

These goals have been served by several victim-related reforms of the German Code of Criminal Procedure since 1986. Key such reforms include the 1986 Victim Protection Act (Opferschutzgesetz), the 1998 Witness Protection Act (Zeugenschutzgesetz), the first Victim Law Reform Act (Opferrechtsreformgesetz) in 2004 and the second such act in 2009. At the time of writing, the German Bundestag has just (13 March 2013) approved a bill to strengthen the rights of victims of sexual abuse (Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs/StORMG).<sup>137</sup>

Indeed, after such a long time where victims stood in the shadows, relegated to a “residual procedural role,”<sup>138</sup> all of a sudden “it all went very quickly” (Böttcher 2012, 123). A striking feature has been “the serial nature of the legislation: Even before one victim protection act is implemented in practice, work is generally already underway on the next. One could almost speak of a cascade of victim protection acts” (Barton 2012, 130). However, “no clear systematic approach can really be made out behind these piecemeal changes” (Weigend 2010 a, 55).

Looking at this victim protection legislation, it is hard to dispel the impression of a positive feedback loop between policymaking and the media<sup>139</sup> – or with victim lobbies so influential (Barton 2012, 130)<sup>140</sup>, between policymaking and lobbying. This mechanism was most recently seen in action in the debate surrounding child sexual abuse in institutions and the family. In 2010, victims spoke out on events which in most cases lay decades in the past and which were by no means fresh news. Right back in the 1970s, the women’s refuge and child protection movement had already brought attention to child sexual abuse, including in institutions. But “now the issue was on the table” (Bergmann 2012, 36). The German government set up a roundtable, whose deliberations and proposals brought forth the government draft of the above-mentioned bill to strengthen the rights of victims of sexual abuse (StORMG). Anyone who thought the second victim law reform act in 2009 had taken victim protection in criminal proceedings as far as it could go had failed to anticipate the “wave of outrage about child sexual abuse.” It is consequently to be expected that the current government draft will soon become law (Schöch 2012, 247).<sup>141</sup>

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safeguarding victims from harm as a result of criminal proceedings requires effort and expense, but does not alter procedure. In contrast, moves to give victims greater participation and perhaps even a say in criminal proceedings would have a more far-reaching impact.

<sup>137</sup> Barton 2012, 128 with information on the substance of the act; see also Schöch 2012; Kölbl 2012.

<sup>138</sup> Thus Kilchling 2002, cited in Böttcher 2012, 123.

<sup>139</sup> On the policymaking-media feedback loop, see Steffen 2008, 233 f.

<sup>140</sup> Barton rates the way that the interim report of the roundtable on sexual abuse was turned at once into a ministry draft bill as “an example of the close links between lobbying and politics” (2012, 130).

<sup>141</sup> The government draft bill as amended by the Committee on Legal Affairs was approved by the Bundestag on 14 March 2013. The Federal Ministry of Justice has fulfilled a remit issued in the final report of the roundtable and published guidelines for the involvement of law enforcement agencies (Leitlinien zur Einschaltung der Strafverfolgungsbehörden) in November 2012 ([www.bmj.de](http://www.bmj.de)).

There has been no success so far, however, in setting up a support fund for people inflicted with sexual

**Criticisms of the German victim protection legislation** not only relate to the lack of an identifiable “systematic approach” coupled with a connectedness to current events and the activities of victim lobbies: The very approach was controversial from the outset. Criminologists and criminal defence lawyers hold the opinion that victims should not be subjects of criminal proceedings with rights of their own, because criminal procedure is only about convicting and sentencing the offender. By this view, any strengthening of victim rights is a threat to the establishment of the truth and the effectiveness of criminal defence (Schöch 2012, 246).<sup>142</sup>

Hassemer’s critique is likewise fundamental: “Offenders’ and victims’ rights to respect and attention are now set one against the other. Their apportionment has turned into a zero sum game: What is given to the victim must be taken away from the offender, what was formerly given to the offender is now taken from the latter in its entirety and allocated to the victim ... Victim orientation in this climate is an orientation away from offenders” (2002, 62 f).

Whatever the case may be, victim protection has evidently not yet gone as far as it can go. This is not only assured by demands from victim lobbies,<sup>143</sup> but also by Europe. Victim protection is also an issue for the European Union. Following on from the 2001 Council Framework Decision on the standing of victims in criminal proceedings, from which Germany took up a number of ideas for its 2004 and 2009 victim law reform acts, there is now (dating from 25 October 2012) Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. The directive is binding on member states as to the results to be achieved – “Provision of information and support,” “Participation in criminal proceedings” and “Protection of victims and recognition of victims with specific protection needs” – and legislation to comply with it must be brought into force by 16 November 2015. It is therefore thought likely that it will provide legislative impetus for Germany (Böttcher 2012, 125).<sup>144</sup>

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violence in childhood. “Three years ago, politics were full of shock and outrage. Grand promises were made ... But once the roundtable had brought out its final report, interest quickly tailed off” (www.dradio.de/dlf/sendungen/kommentar/2017234/; viewed 24 February 2013).

<sup>142</sup> For Schöch himself, the charge that victim protection legislation has brought a paradigm shift or obstructs the rational treatment of conflict in criminal procedure is unwarranted. Experience so far has shown that the practice of criminal procedure by and large succeeds “in striking the necessary practical balance between the conflicting interests of the accused and the victim” (2012, 248).

<sup>143</sup> WEISSER RING, for example, has drawn up a “long wish list”; see Böttcher 2012, 125.

<sup>144</sup> On victims’ rights in the light of European law, see Bock 2012.

For Weigend it is an ‘open question’ whether restrictions to victims’ active participation rights – for example, German law allows only victims of specific types of offence to join proceedings as a civil claimant – are compatible with the EU directives (2012, 45).

### 3.4

#### The problem of secondary victimisation

An express aim of Germany's victim protection acts is to shield victims from harm in investigation and criminal proceedings – i.e. to prevent secondary victimisation (see above). Whether they succeed at this is impossible to say, since as for other aims of the same legislation, as far as is known no **evaluation** of any kind has been done to date.

There is not even firm knowledge about whether and to what extent secondary victimisation occurs in investigation and criminal proceedings in the first place.<sup>145</sup> At least there is scarcely any empirical proof that conducting a trial against an offender generally inflicts unacceptable distress (even if only subjectively) on the victim – “with one single but important exception: In the domain of sexual offences, the dictum ‘the process is the punishment’ appears to hold true, with the ‘punishment’ not infrequently befalling the victim of the crime” (Weigend 1989, 385 f).<sup>146</sup> It is well known that many victims of sexual offences say they would “never again bring charges.”<sup>147</sup> Where victims are asked to evaluate criminal proceedings, “retrospective surveys of adult witnesses underscore how the experience of distress depends on the type of offence: The prosecution procedure appears to place a burden on victims of sexual offences in particular” (Volbert 2012 b, 201).

According to Volbert (2012 a, 149 ff; 2012 b, 198), most studies relate to this victim group, and most of all to underage victims of sexual offences. In light of recent research findings, Volbert also confirms Weigend's conclusion – already close to 25 years old – that empirical evidence on secondary victimisation is largely lacking,<sup>148</sup> and points to many weaknesses in the debate surrounding alleged or actual cases of ill-judged responses<sup>149</sup> by criminal prosecution agencies:

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<sup>145</sup> According to Kölbl, it is unsurprising that the legal policy debate surrounding the “risk of secondary victimisation” does without any empirical frame of reference, as “suitable” findings simply do not yet exist. Overall, the current state of research yields no more than very weak evidence for the prevalence of secondary victimisation. This is not to say the phenomenon of secondary victimisation does not exist, but it does mean legal policy considerations and assumptions relating to it so far lack a reliable systematic and empirical basis. Fears that victims are affected by criminal proceedings are at best supported by individual observations (2012, 224).

On fundamental criticisms of criminological victimology and in particular the lack of (prospective long-term) studies on the psychosocial effects of victimisation, see Greve et al. 2012.

<sup>146</sup> On the victims of rape and sexual coercion and calls for professional treatment of such victims, see Steffen 2012. On the credibility issue see Kreuzer 2012.

<sup>147</sup> Even an “old-school jurist beyond suspicion of female emancipatory leanings” such as the former Berlin chief prosecutor Hansjürgen Karge would “advise a daughter ... in case of doubt from reporting a rape” (Steffen 2012, 155).

<sup>148</sup> Internationally, too, according to Volbert, there are few studies on the question of any secondary victimisation and their findings do not readily transfer across national boundaries.

<sup>149</sup> Applying Schneider's definition of secondary victimisation as the “compounding of primary victimisation by ill-judged responses from the victim's family, friends and acquaintances and from instances of formal social control” (cited in Volbert 2012 a, 150).

- Volbert finds little agreement on what type of harm is meant and argues that a distinction must be made between temporary burdens and long-term harm.
- Passing distress, according to Volbert, does not automatically have long-term effects. Giving testimony, for example, can be highly burdensome at the time, but in the long term it can help enhance self-efficacy and regain control, thus reducing the harm caused by the offence.
- Volbert identifies one of the major difficulties as being how to distinguish symptoms caused by the crime (or other stress factors) from those triggered by court proceedings.

The findings suggest that the factors listed in the following can have an adverse impact in terms of distress during criminal proceedings or the subsequent appraisal of such proceedings (Volbert 2012 a, 155; 2012 b, 206):<sup>150</sup>

- Lack of information about the trial
- Lack of involvement in the trial
- Length of the trial
- Not knowing quite how questioning will take place
- Poor handling by the judge
- Encounter with the accused
- Repeated confrontational questioning
- Unwanted trial outcome

While the changes made in Germany so far indeed target a number of potential stress factors (e.g. the use of video testimony to avoid repeat questioning), "... whether the adopted measures have led to an actual reduction in the strain on victims has been subject to scarcely any evaluation so far. In some instances it is even unclear how far measures have been implemented" (2012 a, 155; 2012 b, 203).<sup>151</sup> Findings are also inconsistent regarding the effects of witness/victim support during court proceedings: Such support evidently improves people's knowledge about court procedure and conditions but does not always lead to less anxiety when giving testimony in main hearings (2012 a, 160).

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<sup>150</sup> According to the survey of women by Müller/Schrötle (2004, 201 f), respondents were far less happy with court proceedings than with police responses (see above). Encountering the offender in court caused the greatest distress, followed by psychological effects, insufficiently severe sentences or acquittals, and the feeling of being wronged yet again. Other problems resulted from lawyers, judges and prosecutors holding victims directly or indirectly responsible for the crime or believing the accused more readily than the victim. The duration of trials was another problem: "As these findings on court intervention make clear, further action would be helpful in particular in the area of protecting victims in the context of court proceedings."

<sup>151</sup> This not only applies to the frequency of use and the impact of video testimony, but also to other areas such as widening the scope for the victim to **join criminal proceedings as a civil claimant**: How joining the prosecution as a civil claimant impacts the victim's condition is so far unstudied (Volbert 2012 b, 204).

Additionally, Volbert points out, a distinction must be made between potential stress factors that can nonetheless change, such as trial duration, lack of information, or poor handling by those involved, and factors inherent to a trial, such as the need to give a detailed presentation of the crime or critical appraisal of testimony given by parties to the proceedings: The latter set of stress factors are ultimately part and parcel of a fair, impartial trial under the rule of law (Volbert 2012 b, 206).

Volbert concludes in summary: “The opening question of how to explain the discrepancy between the large number of reforms and the virtually unabated lamentations about victims coming under severe strain cannot be answered conclusively, there being hardly any studies on how specific ways of doing things affect victims’ emotional constitution ... If the aim is to reduce the distress to victims as effectively as possible, then without doubt it would be desirable for greater account to be given to empirical findings on the strain induced by criminal proceedings and means of countering that strain” (2012 a, 160).

Furthermore, it would be desirable “for all involved to consider that certain distress to victims is unavoidable in proceedings under the rule of law, and that precisely because this is the case, it is expedient to change stress factors not necessary to the conduct of a fair trial” (Volbert 2012 b, 210).

### 3.5

#### **Criminal justice and victims’ wishes: Irreconcilable opposites?**

It is striking how often German law has been changed in recent years to improve victim rights and safeguards, the fundamental debate and doubts invoking the rule of law that those changes have triggered – and how little empirical knowledge there actually is about the implementation and impact of the changes made, and about whether they match victims’ needs and wishes.<sup>152</sup>

Yet those wishes do not appear to be so very big or hard to meet, and least of all do they appear to require major changes to the law of criminal procedure – if indeed any were ever needed. Weigend, for example, points to the empirical finding that “most victims are less interested in having an active part in the proceedings than in three relatively simple things: Being kept informed about the course of the trial, being compensated for their loss or injury, and being treated respectfully as witnesses. Some victims would also like to be heard as part of the main hearings and to be able to say

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<sup>152</sup> As early as 1995, Kilchling thought it “time to ask what the very lively professional debate has brought in terms of tangible improvements in Germany for the individual victim, in whose name and interests so many purport to speak and act ... Because the rediscovery of the victim holds just as little promise of automatic progress as the fact of the problem having been so substantially and extensively described” (1995, 3).

Further, “The basic aim of a victim-oriented reform of procedural law has to be to enhance victim autonomy ... As it is not possible to generalise about victim interests ... the task at hand is to make available a choice of – where appropriate very varied – options for participation” (1995, 704).

how they think and feel. In a criminal justice system based on the rule of law and the needs of citizens, all this should really be a matter of course” (2010 a, 55).

In particular, victims’ **need for information** is evidently severely neglected.<sup>153</sup> This is true of advance information about what awaits them in criminal proceedings, and it is especially true of information about the course of the proceedings: In all studies, lack of information about the course of proceedings was faulted most of all. Because of this, many victims feel that they are passed over and given too little notice, and this is seen to impact negatively on the perceived fairness of the proceedings (Volbert 2012 a, 153; 2012 b, 201).<sup>154</sup>

This information need among victims would be easy to meet – like the other victim interests just mentioned – without any call for new victim rights or powers.

But even if these fairly modest wishes that victims have of the criminal justice system were to be met, it would only benefit a small fraction of crime victims. That is the fraction who come into any contact at all with parts of the criminal justice system and make it as far as criminal proceedings:

- As seen above, most victims – especially victims of violent crime – do not report crimes and do not come into any contact with the police and/or the judiciary.
- When a crime is reported and registered, the police will mostly investigate but by no means will this lead to criminal proceedings.
- This is because most investigations are dropped by the prosecution service: Of the 4.6 million investigation cases against known suspects handled by German prosecution services in 2010, only **11.9 percent led to the bringing of criminal charges**; a further 11.6 percent led to an application for a penal order (Strafbefehl) (Heinz 2012, 53).<sup>155</sup>

<sup>153</sup> As far back as 1989, Weigend noted: “Of all complaints about the justice system, the most frequent among crime victims is this: That after reporting the crime to the police and maybe the police collecting initial evidence, nothing more is heard, except perhaps many months later when a court summons to appear as a witness comes through the letterbox” (1989, 405).

<sup>154</sup> A 2011 study by Victim Support in the UK found that victims expect most of all from the criminal justice system to be kept informed and regularly updated about the progress of their case – and the information must be understandable, comprehensive and accurate. This need still goes unmet too often, yet is crucial to victims’ satisfaction with the criminal justice system (Left in the dark: Why victims of crime need to be kept informed; [www.victimsupport.org.uk](http://www.victimsupport.org.uk)).

<sup>155</sup> These figures relate to all investigation proceedings. In the everyday reality of legal procedure, the German prosecution services are said to give the impression of being there to drop cases more than to prosecute them (Heinz 2012, 52).

See also Jehle 2009, 19: In 2006, out of 4.8 million cases handled with a total of 5.8 million investigated individuals, 11.5 percent ended with the bringing of criminal charges (560,427 cases with 661,913 individuals charged); 11.9 percent with an application for a penal order (Strafbefehl); 4.9 percent of cases were dropped subject to conditions; 21.9 percent were dropped unconditionally; 26.5 percent were dropped under section 170 (2) of the German Code of Criminal Procedure; 0.2 percent were dropped on account of diminished responsibility; and 23.3% were closed otherwise.

In relation to **rape**, of the 262 rapes and attempted rapes recorded in the Bavarian Police Crime Statistics

Only a fraction of victims thus have the ‘pleasure’ of their case coming to trial – though that is not to say proceedings should not be made victim-friendly. However, “What many victims want most is emotional and direct personal support in the crisis precipitated by the crime. The agencies of the criminal justice system, because their dealings with victims are mostly of an official nature, are not generally suited to satisfying the basic need for human warmth” (Weigend 1989, 403).

For all victims, including the few who come into contact with the courts, emotional encouragement, help, social support, acknowledgement that they have been wronged, and recognition must primarily come from outside the criminal justice system – from their immediate social environment and from victim support organisations.

#### 4

##### **Victim support organisations and victims’ wishes**

When victims speak about what they have experienced – and no means all do – then the first and most important people they turn to are close family and friends (see section 2). That is often enough to stabilise a victim and restore a sense of safety and security.

Otherwise,<sup>156</sup> victims can seek help not only from “new professions who specifically dedicate themselves to crime victims”, such as providers of psychotherapeutic treatment and lawyers specialised in representing victims’ interests (Barton/Kölbl 2012, 13 f), but most of all from victim support organisations.

#### 4.1

##### **Victim support organisations**

Victim support organisations are a reflection of the increased victim orientation in society – and the ‘renaissance of the crime victim’ came somewhat earlier for them than the ‘discovery’ of the victim by the criminal justice system. Social movements such as the child welfare and women’s refuge movements had a large part in this, both by setting up counselling and support services from the mid-1970s onwards and

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in 2000, in 58 percent of cases the case was dropped under section 170 (2) of the German Criminal Code, mostly (38 percent) because it was one person’s word against the other; criminal charges were brought in a little more than one-third of cases (36 percent).

According to the analysis by Seith et al. (2009), of some 8,118 rapes registered in Germany in 2006, criminal charges were brought in 17 percent of cases and a sentence was imposed in 13 percent of cases. That victims have no means of contesting the **dropping of cases on discretionary grounds** under section 153 and 153a of the German Code of Criminal Procedure, and in most cases need not even be informed, was already criticised by Kilchling (1995, 701). See also the changes advocated in this regard by WEISS-RING (Böttcher 2012, 125)

On the problems resulting from the (increasing) use of plea deals, see Niemz 2011.

<sup>156</sup> Baumann/Schädler note that such people do not provide victims with as much support as they want, meaning that victims fail to find the support and stabilisation they need. Victims, especially of violent crime, therefore desire state assistance far more frequently than they desire private support: “In our study, ... a majority spoke out on favour of professional and institutionalised victim support,” although only about half of the surveyed victims of violence had more specific ideas about how they wanted to be helped (1991, 291 ff).

by engaging in advocacy for the interests of ‘their’ victims in society and politics.<sup>157</sup>

There are now a wide range of publicly and privately organised and financed victim support organisations<sup>158</sup> and Barton/Kölbel speak of a dedicated service market growing up around the needs of victims and the representation of their interests (2012, 13). Victim support, support services and support facilities for crime victims nonetheless remain relatively neglected career areas. It is only in the last few years that victim support has begun to take shape as a profession with a demanding and highly developed occupational profile of its own, although ‘victim support worker’ is not yet a defined occupation (Steffen 2009, 50, with further references).<sup>159</sup>

Victim support and counselling is consequently mainly a field for volunteer organisations.<sup>160</sup> A prime example is WEISSER RING e.V., the oldest victim support organisation in Germany and the only one to operate nationwide and with an entirely volunteer staff.<sup>161</sup> WEISSER RING has incidentally been a permanent congress partner to the German Congress on Crime Prevention since the beginnings of the Congress.

#### 4.1.1

##### **Example: WEISSER RING**

WEISSER RING e.V., a non-profit association for the support of crime victims and the prevention of crime, was founded in Mainz in September 1976. The seventeen founding members presented the association’s founding objects to the public in June 1977. The first branch office was opened in Berlin in December 1977. This marked the beginning of victim support work in practice.

<sup>157</sup> After initial focus on physical and sexual violence against children, violence against women became an issue of social work, intervention and prevention from the mid-1970s. The first women’s refuges were opened in 1976, the first ‘Notrufe’ professional counselling services for women rape victims in 1977 and the first ‘Wildwasser’ professional counselling service for sexually abused girls in 1986 (Helfferich et al. 2012, 8).

Görgen notes the links between victimology and social movements and says it would be desirable “for victimology to continue in its function of giving and picking up social impetus.”

<sup>158</sup> For victims of violence against women alone, there are 400 women’s refuges, 612 professional counselling service points and 130 intervention service points (Helfferich et al. 2012), and there are counselling services for victims of right-wing violence in almost all German Länder – to mention only a few victim groups. See also the figures in the OpferFibel guide for crime victims published by the Federal Ministry of Justice.

<sup>159</sup> The Alice Salomon University of Applied Sciences in Berlin, for example, offers a one-year part-time certification course leading to a qualification as professional counsellor for victim support. Institut für Opferschutz im Strafverfahren e.V. offers a training course in psychosocial support advocacy for victims in criminal proceedings ([www.rwh-institut.de](http://www.rwh-institut.de)).

In the area of counselling victims of hate crimes and extreme right-wing violence, a modular training course in professional counselling for victims of extreme right-wing violence has been offered since 2011 by the Crime Prevention Council of Lower Saxony (LPR) in cooperation with proVal-Institut, Arbeitsstelle Rechtsextremismus und Gewalt (ARUG), and Lidice-Haus Bremen.

<sup>160</sup> “Various voluntary victim support organisations come in here, the most prominent in Germany being Weisser Ring. The huge potential of this organisation is not only seen in the voluntary commitment of numerous helpers, but also in its impressive total income of some €15 million a year” (Barton/Kölbel 2012, 13).

<sup>161</sup> Only the national office in Mainz and the Länder offices have fulltime staff.

Today, over 3,000 unpaid helpers look after crime victims, their families and surviving dependants at some 420 branches across the country. The organisation's funding objects not only include direct tangible and intangible support for crime victims, but lobbying<sup>162</sup> to advocate victims' interests and crime prevention.

“People who have to put up with psychological and physical harm and in many cases financial loss as a result of crime and violence must not be left alone with their often diverse problems. They deserve the same attentiveness and support as has always been accorded to the suspect, the accused and the sentenced offender.”<sup>163</sup>

10,702 victims' cases were handled in 2011 and help for victims provided in 18,139 cases with an outlay of €4.7 million.<sup>164</sup> By far the majority of those helped were victims of violent or contact crime: sexual offences 31 percent, bodily injury 21 percent, domestic violence 11 percent, robbery 7 percent, homicide 5 percent, and deprivation of liberty 1 percent; additionally stalking and telephone harassment 4 percent, theft 10 percent and other crimes 8 percent (Jahresbericht 2011/2012, 7).

WEISSER RING offers both compassion and practical assistance:

- Help and support after a crime
- Accompaniment in dealings with police, prosecution services and courts
- Arrangement of assistance from other organisations
- Vouchers for initial consultations with a lawyer/psychotrauma specialist and for a forensic examination, at the victim's free choice
- Payment of lawyers' fees, primarily to assert victims' rights in criminal proceedings and under the Victim Compensation Act

<sup>162</sup> Especially in the early days of its activities, this lobbying aspect of WEISSER RING's activities attracted some criticism for its law-and-order tendencies (see, e.g., Weigend 1989, footnote 210).

Böttcher notes the high regard accorded to WEISSER RING, writing: “We must make use of this high regard in the interests of victims of crime and we must maintain it with blameless, committed work in our core task of victim support and with equally committed, soundly based public relations and lobbying in which outrage at prevailing circumstances or specific incidents is professionally presented” (2007, 25).

<sup>163</sup> From the foreword by Roswitha Müller-Piepenkötter, national Chairperson of WEISSER RING, in the association's annual report 2011/2012.

<sup>164</sup> This help for victims is an important supplement to the state compensation available to victims of violent crime on application since the 1976 Victim Compensation Act (Opferentschädigungsgesetz/OEG); prior filing of criminal charges is not required. Processing is the responsibility of Länder pension offices. The fact that entitlement has to be demonstrated, documented and verified causes delays: “The victim in acute distress from a crime will draw little consolation from the prospect even of substantial compensation in a year's time” (Kiefl/Lamnek 1986, 317). Apart from that, few victims apply: In 2010, there were applications for 10.8 percent of all cases of violent crime, and by no means all applications are granted (see the data on this on the WEISSER RING website, “Staatliche Opferentschädigung in Deutschland im Jahr 2010” – “State compensation for victims in Germany, 2010” – [www.weisser-ring.de](http://www.weisser-ring.de); and Villmow/Savinsky 2013). Reform of the Victim Compensation Act is needed, and not just in the view of WEISSER RING, but such reform must not lead to cuts in victim compensation (see also the documentation of the 21st Victim Forum, 2010: *Moderne Opferentschädigung. Betrachtungen aus interdisziplinärer Perspektive*. Baden-Baden 2012).

- Financial support in a crisis precipitated by a crime
- National help line for victims.

WEISSER RING does not provide legal advice or therapy. Alongside personal, human support, a key element is arranging medical, psychological, legal and other professional assistance. In this regard, the victim support workers act in a guiding capacity (Sielaff 2010, 215).

Victim support workers are thoroughly trained before they start. Mandatory basic training<sup>165</sup> and an equally mandatory first advanced course are supplemented with numerous further training modules.<sup>166</sup> Initial and further training has been externally evaluated. To reduce the burden on staff, WEISSER RING provides case supervision, peer counselling and team supervision.<sup>167</sup>

Implemented in this way, the delivery of victim support through a volunteer-based service makes sense and is an appropriate approach. Indeed, as in many other areas, it is not just necessary: It plays a vital role in upholding democratic society. This holds all the more as it is not a case of the state ‘retreating’ from its social responsibilities in the area of victim support and ‘transferring’ them to the civil sphere – it is not about volunteering and unpaid work being exploited.<sup>168</sup>

WEISSER RING also takes a notable part in professional congresses. A two-day victims’ forum (Opferforum) is held each year. Topics vary; the 24th Victims’ Forum in 2013 is themed “The Victim Perspective in Crime Prevention.” WEISSER RING has also initiated and funded numerous academic studies, most recently a study on plea bargaining and victims’ interests in proceedings joined by victims as civil claimants (Niemz 2011).<sup>169</sup>

Finally, WEISSER RING has inspired similar organisations across Europe and is also a (founding) member of Victim Support Europe, an alliance of now 21 organisations from 18 countries. Over and above its work with non-governmental organisations,

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<sup>165</sup> Staff can only work independently with victims once they have completed the basic training course and worked alongside a mentor on at least three cases.

<sup>166</sup> The organisation is currently considering the introduction of certificate courses compiled and provided in collaboration with a tertiary social work college or a university teaching faculty.

<sup>167</sup> This addresses legitimate reservations about the work of WEISSER RING, as raised for example by Baurmann/Schädler: “In the sensitive field of victim support – especially when it comes to severely traumatised victims – it is irresponsible for counselling to be provided through laypeople lacking initial and further training and lacking (team) supervision” (1991, 301).

<sup>168</sup> A number of the German Länder have victim support trusts, and witness support is generally provided as a state (court) service. On civil engagement, see also Steffen 2009.

<sup>169</sup> The Mainzer Schriften zur Situation von Kriminalitätsoffern publication series “provides a platform for all forms of academic research into the situation of crime victims from a legal, medical and social perspective.” Volume 1 in 1989 focused on risk allocation between citizens and the state, Volume 50 in 2012 on victims’ fears after a crime.

WEISSER RING has long communicated directly with EU representatives for targeted advocacy of victim interests.

## 4.2

### The limits of victim support

A victim's help and support needs can be met in a day, but it can also take years. WEISSER RING aims in its work "to motivate victims to use available support facilities and rebuild their lives as quickly as possible after the traumatic event."<sup>170</sup>

The aims of other victim support organisations will be similar. If they succeed in attaining them, then they can help alleviate at least one **problem inherent in helping victims** of crime underscored by Reemtsma: "Anyone who has become the victim of a crime wants to return to normal life as soon as possible and not be constantly reminded of the experience ... any act of support for someone who has been victim to a crime ... [also] labels that person a victim ... it is in the victim's interest both to be recognised as a victim and not to be regarded as a victim ... Any aid must basically have this dual nature: Acknowledging that status to help surmount it ... Because to be a victim is to be passive. To accept help is also to be passive. Help for victims that does not aim at the same time to extend the victim's own activity radius is problematic and mostly counterproductive ... Help for victims is only helpful if it helps them move beyond the state of needing help ... Not every injury can be healed. Accepting this fact is part of minimising suffering ... There is always a certain amount of help, but it is finite. An inherent feature of finite help is that it makes its limits plain. Help for victims always means – not least – making plain where one cannot help. This is required knowledge for all support workers, because anyone who is ignorant of it does more harm than good" (2006, 18, 17).

## 4.3

### Perspectives of victim support: The Parallel Justice framework

Although the criminal justice system is inherently unable to serve the interests of victims – for one thing only a very small percentage of victims come into contact with the agencies of formal social control, and for another criminal proceedings are and remain offender-oriented and the role of the victim as a witness always places a burden on the victim – the increased orientation towards victims in society has indeed advanced the cause of victim assistance and support in various ways.

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<sup>170</sup> In line with this, the WEISSER RING Victims' Forum and annual campaign in 2012 had the slogan "Sei stark – Hol Dir Hilfe" ("Be Strong: Get Help"), appealing to victims of crime and violence not to be passive, but to report the crime and seek support so as to put the difficult situation behind them or make it more bearable as soon as possible (2012 a, 32).

Yet there is always scope for improvement. One interesting approach in this regard is the Parallel Justice framework<sup>171</sup>, which has been proposed by Susan Herman<sup>172</sup> as a framework for work involving victims in the USA<sup>173</sup> and which has already been adopted in a number of localities.

The Parallel Justice framework presented in the following on the basis of publications by Susan Herman is rooted in the conviction that society has an obligation to exercise justice for victims. Parallel Justice is not an alternative to criminal proceedings, but provides an additional, often contemporaneous set of responses geared to victims.

Parallel Justice aims to create a new framework for responding to crime: Two separate, parallel paths to justice – one for victims, and one for offenders:

- Whenever a crime is reported, society responds with efforts to identify, prosecute, sentence and ultimately reintegrate the offender.
- Criminal proceedings offer the offender, so to speak, a forum: If a trial is fair, if the punishment fits the crime and if the trial outcome is in the interests of society, then justice has been done.
- For **victims** of crime there is no comparable response on the part of the community, no forum, and no obligation to do justice for the victim as for the offender.
- There should therefore be a separate societal response for victims, geared to acknowledging that they have been wronged, to ensuring their safety, to helping them cope with the trauma of victimisation, and to restoring their sense of being in control of their lives.
- Those responses do not depend on whether the offender is ever identified or sentenced. The wrong done to the victim is acknowledged come what may, and is addressed separately from criminal proceedings – because the societal obligation to provide justice for victims of crime goes beyond due process.

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<sup>171</sup> Susan Herman: Parallel Justice for Victims of Crime. 2010; [www.paralleljustice.org](http://www.paralleljustice.org).

<sup>172</sup> **Susan Herman** is an internationally regarded advocate for victims of crime. She was Executive Director of the National Center for Victims of Crime from 1997 to 2004. Prior to that she worked to promote the cause of victims in various ways, for example in the support of abused women in New York City and as consultant to New York Police. She is now Associate Professor in the Department of Criminal Justice at Pace University in New York.

<sup>173</sup> In the USA, as in other countries with an adversarial legal system, victim participation in criminal proceedings is inherently harder to implement than under an inquisitorial system on the continental European model. In an adversarial system, the victim is mostly the prime witness for the prosecution. This role entails considerable psychological stress and is also hard to reconcile with a simultaneous role as civil claimant. According to Weigend, this may explain why much lip service is paid in English-speaking countries to victim rights in line with the political wish for victim-friendly procedure, while in fact victims in such countries have comparatively little influence and comparatively few safeguards against harm as a result of criminal proceedings.

On the other hand, the USA has well-developed – in some cases non-governmental – practical support provision for crime victims, including support during criminal proceedings (Weigend 2012, 33).

Criminal proceedings are in any case unsuited to providing justice for victims. Only few victims make it to court; the proceedings themselves ‘use’ victims as witnesses and attend neither to their security nor their wellbeing. Improvements have indeed been made but they are still not enough: Criminal proceedings remain offender-focused.

For the agencies comprising the criminal justice system – the police, prosecution services, courts and penal institutions – the new vision of justice for victims of crime as well as for offenders means that they must respond more effectively than before to victims and their safety and give greater priority to preventing further victimisation. Social and healthcare services, too, should realign their practices so as to help victims rebuild their lives. Every part of civil society can make a key contribution to Parallel Justice.

Parallel Justice calls for a targeted, communal response that is fair, just and tailored to the needs of each victim. Such a response not only helps crime victims but delivers major benefits for society as a whole: Given the links between victimisation and alcohol abuse, drug abuse, depression, suicide, teenage pregnancy, poor school and education outcomes, difficulties at work, repeat victimisation and delinquency, justice for victims can not only have a positive impact on such negative factors but can also help reduce crime.

Parallel Justice decouples the pursuit of justice for victims from the administration of justice for offenders. Justice for victims is an end in itself and no longer an occasional byproduct of a system focused elsewhere (i.e., on the offender). In this way, justice can be attained by two separate pathways with scope for interaction and linkage between the two.

When it comes to communal **implementation** of Parallel Justice, there is no formula recommending a specific approach for policy and practice. Instead, the framework is based on principles that can help guide communities in implementation (Herman 2010, 131 ff):

- Building strong public understanding of victims’ needs
- Creating broad-based support for reform
- Basing the argument for reform on solid research (crime analysis; victim surveys on victimisation experiences, needs, etc.)
- Conducting an inventory of current help and support for victims
- On this basis, a Parallel Justice task force develops priorities and communicates the idea through forums, workshops, the media, holders of office and other opinion leaders.

“We must meet our obligation to victims, not just because we are a compassionate society, but because helping victims rebuild their lives is an essential component of justice” (Herman 2010, 140).

### **Appraisal:**

An approach such as Parallel Justice is likely to improve the position for victims more than has already been achieved by victim support and victim protection. In the Parallel Justice framework, victims no longer define themselves through the victim but as someone who has been wronged and who is entitled in their own right to social support and restitution.

The framework calls for the victim’s perspective to be brought into all areas of society and hence for integration, cooperation and coordination. It is reminiscent in its formulation and implementation of the idea of Community Crime Prevention, except that in this instance the focus of efforts to establish the appropriate cross-cutting task forces is not on crime as a whole but on the victims of crime.

Instead of setting up new task forces for Parallel Justice, thought should be given to using the existing Community Crime Prevention task forces in Germany as a locus for implementing the Parallel Justice framework.

## **5**

### **More prevention, fewer victims**

No matter how efficient and effective the criminal justice, victim protection and victim support systems, it is always better to stop crimes and consequently victimisation from happening in the first place. No criminal justice system, however victim-oriented, and no victim support system, however well-established and capable, can hope to make good, let alone undo, the physical and material harm to victims and the often severe psychological impacts of a crime.

Hence the best way to protect victims is to prevent crime: No crime means no victim and no harm done. People want to live in safety and to be shielded from crime. Nobody wants to become the victim of a crime – and certainly not a second or a third time (Sielaff 2010, 216).<sup>174</sup>

Victim-oriented crime prevention is concerned on the one hand with the implications of findings on and problems relating to the effects of victimisation.

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<sup>174</sup> Herman notes in this connection the lack of readiness to become involved on behalf of victims and that this could have to do with a fear of being confronted with the same sort of thing (‘What did she do to deserve it’) or with thinking it may be unpleasant for victims to speak about what has happened (2010, 117). Anders Barton 2012, 117: “Victimhood is associated in the victim society with prestige, recognition, attention, rights and privileges ... Slightly exaggerating, the victim society can even be said to be a society in which ‘everyone wants to be a victim.’”

- Avoiding or alleviating the psychological, physical and material harm
- Preventing or reducing fear of crime with its potential impacts on behaviour and wellbeing
- Preventing or reducing revictimisation by providing protection and support for victims
- Avoiding the ‘cycle of violence’
- Taking into account victims’ wishes for social support, information and counselling, for confirmation that they have been wronged, for retribution and restitution.

On the other hand, **victim-oriented crime prevention** is concerned quite conventionally with preventing and reducing victimisation. In this victim-oriented form of crime prevention – as with other forms, such as offender-oriented crime prevention – it is useful to draw a distinction between universal, selective and indicated prevention (Steffen 2011, 103). After all, victimisation and delinquency, victim and offender, represent two faces of the same coin – the two faces of crime – and successful offender-oriented crime prevention is always also successful in preventing victimisation. While ‘victim-oriented crime prevention’ places the emphasis on the victim, it does not mean the kind of prevention that has to be or can be put into practice by victims themselves, but crime prevention in the usual comprehensive sense taking in victims, offenders and situations.

## 5.1

### **Victim-oriented prevention as universal, selective and indicated prevention**

#### *Universal prevention*

Universal prevention targets the population and/or communities as a whole with generally beneficial programmes and measures. Rather than focusing on specific grounds for suspicion, the aim is to apply consistent social, labour, youth, family, business, transport and education policies in such a way that crime and victimisation do not arise in the first place.

Because of its very unspecific – as the name says, universal – scope, universal prevention should not be referred to and thought of as a form of crime prevention. While factors such as socialisation, upbringing and individual and social circumstances doubtless have a strong influence on crime trends, no direct link can be shown between such global factors and crime. The definitions of crime and prevention should also be prevented from becoming watered down. Crime is therefore not the right frame of reference for universal prevention strategies, and falls short of their full significance.

In any case, if everyone is a potential victim,<sup>175</sup> the outcome could be crime policy that plays on the public's fear of crime. Fear of crime is governed by laws of its own and thus "supports and feeds the demand for stringent policy, even if the extraneous factors that might justify this greater stringency have long ceased to exist" (Hassemer/Reemtsma 2002, 109).<sup>176</sup>

Strategies, measures and projects should therefore only be considered part of crime prevention if preventing or reducing crime and victimisation is their direct or indirect aim. Such strategies, measures and projects come under the headings of selective or indicative crime prevention (Steffen 2011, 102).<sup>177</sup>

### *Selective prevention*

Selective prevention targets specific subgroups, individuals and situations with heightened risk factors and hence greater risk of victimisation and delinquency ('potential victims and potential offenders') and situations where there is a risk of crime ('opportunities for crime').

Selective crime prevention is directly or indirectly geared to preventing or reducing crime or improving safety and people's sense of safety.

Measures include help and support for people with specific problems, information,<sup>178</sup> and education for potential victims.

### *Indicated prevention*

Indicated prevention targets victims and offenders with the aim of preventing repeat victimisation or delinquency. Victim protection and victim support come under indicated prevention and aim to prevent revictimisation and secondary victimisation. Resocialisation measures are indicated prevention measures for offenders.

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<sup>175</sup> According to Kilchling's findings, if personal experience, indirect victimisation in the close social environment and witnessed victimisation are aggregated over a lifelong perspective, then victimisation is "almost a ubiquitous phenomenon", but the many victimisation-related experiences differ considerably in intensity and directness (1995, 622 f).

<sup>176</sup> To cite a recent example, a commission was appointed in late January 2013 to review the entire "security architecture and security legislation in Germany after 11 September 2001," but according to a report in *Die Welt*, a national newspaper, on 30 January 2013, the Federal Ministry of the Interior had "no interest in a 'critical general review.'"

<sup>177</sup> Dissenting, Kahl (2012, 26) calls for the action radius of crime prevention not to be further delimited, but to be widened and its limits removed both in practice and hence also conceptually.

<sup>178</sup> A case in point is the German **Police Crime Prevention Programme**, which followed these aims from the outset. A police crime prevention education campaign was launched in Bavaria as early as 1964, using the media to disseminate tips on how to avoid burglary, theft and other crimes. The idea was then taken up by the Criminal Police Prevention Programme (KPVP), which included all German Länder from 1970. A slogan was adopted, 'Die Kriminalpolizei rät' ('The police advise'). From 1997, in a reorientation and restructuring of police crime prevention, the tasks were taken over by the Programm Polizeiliche Kriminalprävention der Länder und des Bundes (ProPK – Federal/Länder Police Crime Prevention Programme).

Indicated prevention also includes programmes and measures for crime hotspots.

## 5.2

### Problems of victim-oriented prevention

Aside from the problem mentioned above about victims being instrumentalised for legislative ends,<sup>179</sup> victim-oriented prevention has two main problem areas: The fact that crime prevention cannot be separated from fear of crime, and the demand that victims should not be allotted any or all of the blame for their victimisation.

#### *Crime prevention must avoid raising fears*

When the German Police Crime Prevention Programme, for example, gives recommendations and advice on how to protect against crime with the slogan “Wir wollen, dass Sie sicher leben” (“We want you to live safely”), or urges people to intervene and help victims of crime in campaigns like “Aktion-Tu-was” (“Do something!”), it is impossible to avoid appealing to people’s fear of becoming victims of crime themselves.

This may not be too much of a problem when it comes to potential victims.<sup>180</sup> For people who have already become the victim of a crime it can amplify post-victimisation fears. There is no way out of this dilemma. At best, an attempt can be made to alleviate fears by providing recommendations and where appropriate help that are as specific as possible and relate to the individual’s own case – preferably in personal consultation with victim support and victim counselling workers.

#### *Victims have no part of the blame for their victimisation*

Victim-oriented crime prevention always runs the risk of apportioning victims part or even all of the blame for their victimisation, or of them taking part of the blame upon themselves.<sup>181</sup>

It is not just burglary and theft victims who tend to be given part of the blame (“Why didn’t you lock the door?”, “Why did you leave the window open?”), but most of all victims of violent and contact offences. For people who know the victim, ascribing the victim some of the blame helps combat their own fears: “I don’t act like that, so it won’t happen to me.”

The idea of the victim being partly responsible and to blame for a crime was also prev-

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<sup>179</sup> Kölbel concludes in his analysis that there is so far no evidence that victims are ‘instrumentalised’ to make criminal law more punitive: “This is of course a preliminary impression and requires scrutiny. Ultimately, the choice between the instrumentalisation hypothesis and the conventional reading of the ongoing proliferation of victim rights in criminal procedure as a welfare state project can only be made through closer analysis of how the legislation came about” (2012, 228).

<sup>180</sup> Schwind notes the phenomenon of ‘forting up’, the booming security industry and people retreating into their own four walls out of fear of crime (2011, § 16, at 13a; § 20, at 14).

<sup>181</sup> This has been studied and shown in particular for victims of sexual offences; see Steffen 2012 a.

alent in the early days of victimology: “The beginning of the ... history of victimology was marked not by the thought that the victim of crime warranted special care, but by the consideration that the offence was to be understood not solely as an emanation of the personality of the offender but as the outcome of an interaction between offender and victim ... [it was] believed that an important approach for explaining how crime came about while enabling a de-demonisation of the offender had been found in the idea that the victim was co-responsible for ‘their’ offender” (Weigend 1989, 299 f).<sup>182</sup>

Whatever the victim’s conduct, whether ‘careless’, ‘provocative’ or ‘reckless’, provided it is within the scope of what is socially appropriate and allowed by law, it must not be held up in reproach against the victim and it must most certainly not lead to legal consequences: “As ... there is no legal duty of self-protection, disregard of precautions, however much the precautions are recommended by the police, can do nothing to change the status of the affected party as a ‘legitimate’ victim warranting protection” (Weigend 1989, 395).<sup>183</sup>

That applies without restriction to this day – even if it is not always easy to put it into practice in victim-oriented crime prevention.

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<sup>182</sup> This notion of victims being partly to blame not only prevailed in the early days of victimology but still causes problems today, as highlighted by Görgen, who notes that it is often hard to make people understand the distinction between analysing the victim’s role in how a crime came about and being perceived as pointing the finger at the victim (2012, 92).

<sup>183</sup> On victim precipitation, see Weigend 1989, 396 ff.

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