

**INASC – Improving Needs Assessment and Victim’s Support in Domestic Violence Related Criminal Proceedings**

**National report:**

**Responses to cases of intimate partner violence: Legal framework, procedures in law enforcement and (criminal) justice, risk assessment and needs of victims**

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**Content**

- 0. Introduction..... 4
- 1. National Policy Context ..... 5
  - Implementation of the European Directive for victims’ rights** ..... 5
  - Discussion about Criminal Code of sexual offences and Istanbul Convention**..... 5
  - National policy measures in the field of domestic violence/ violence against women**..... 6
- 2. Law and regulations in Germany..... 6
  - 2.1 The legal framework on intimate partner violence..... 6
    - 2.1.1 General provisions..... 6
    - 2.1.2 Legal provisions related to intimate partner violence ..... 7
    - 2.1.3 Evaluation of the Act for Protection against Violence (Gewaltschutzgesetz)..... 8
  - 2.2 Investigation mechanisms implemented by the police, the public prosecution offices and the criminal courts related to intimate partner violence ..... 10
    - 2.2.1 Notification and grounds for investigation ..... 10
    - 2.2.2 Upon arriving at the scene of crime ..... 11
    - 2.2.3 Evidence ..... 11
      - Questioning**..... 11
      - Physical evidence**..... 12
    - 2.2.4 Immediate measures to avoid further danger ..... 12
      - Cautioning the offender** ..... 12
      - Banning order (Platzverweis / Wegweisung)** ..... 12
      - Children**..... 13
    - 2.2.5 Police investigation after the incident ..... 13
      - Children / other witnesses** ..... 14
    - 2.2.6 Court hearing..... 14
- 3. Victims’ protection mechanisms / practices ..... 14
  - 3.1 Risk assessment procedures available within the police and judicial system..... 14
  - 3.2 Protection and support measures related to the law enforcement ..... 16
    - 3.2.1 Existing formal referral procedures involving the criminal justice system and victim support services ..... 16
    - 3.2.2 Projects for the documentation of injuries caused by interpersonal violence ..... 17
    - 3.2.3 Support of victims in criminal proceedings ..... 18
    - 3.2.4 Psychosocial process support..... 19
    - 3.2.5 Court assistants ..... 20

3.2.6 Restorative Justice.....	21
3.2.7 Compensation of crime victims.....	22
4. State of the art regarding victims’ needs and victims’ rights in Germany .....	23
4.1 Existing research on victims’ needs.....	23
4.1.1 Who initiates research?.....	23
4.1.2 How is the topic of victims’ needs in general dealt with?.....	23
4.1.3 Data and research on victimisation and access to social support, intervention and justice system .....	24
4.1.4 Data on experiences and needs of victims of intimate partner violence / violence in social proximity in the (criminal) justice system .....	26
4.1.5 Victims protection rights and protective measures are limited for certain situations and target groups .....	27
<b>Women with disabilities/ older women</b> .....	27
<b>Migrants</b> .....	28
<b>Women with children</b> .....	29
4.2 Best practices regarding the protection and support measures for different groups of victims of intimate partner violence.....	30
4. Summary and main conclusions.....	31
References.....	34

## 0. Introduction

The project INASC, co-funded by the Directorate-General Justice of the European Commission, aims to improve existing understanding of victims' experiences of trajectories of DV cases in the course of criminal proceedings and how these experiences relate to individual assessment mechanisms and outcomes. The main objective of this project is to develop practice-oriented research aiming at identifying crucial aspects of supporting mechanisms available to DV victims within the criminal justice system and of elements that influence the way victims are being supported and protected at the entrance door (security forces receiving the complaints and follow up criminal procedures), at the enquiry stage (public prosecutors initiatives and decisions taken) and in court (courts procedures and final decisions).

The transnational team consists of six partners from five countries: Germany, Austria (IKF), Ireland (SAFE Ireland), the Netherlands (Verwey-Jonker Instituut) and Portugal (Cesis as project coordinator). In Germany with the German Police University (DHPol) and zoom – society for prospective developments two partners are involved. In all countries national analyses on the criminal justice response (risk assessment, victims' protection mechanisms, referral procedures) and on victims' experiences and perceptions of the way criminal justice is responding to their protection needs will be carried out.

As a first step all partners draw a baseline and describe the current knowledge on the issue in their countries. Based on an analysis of existing literature they describe the national legal frameworks on domestic violence and existing protection and support procedures and mechanisms. The report at hand compiles the results of this literature research in Germany.

The main issue at stake is intimate partner violence (IPV). As rarely any measures exist specifically on IPV, the report will mainly focus on specific regulations and measures for domestic violence (DV). Some of the research questions need an even wider perspective – e.g. no specific research or regulations were developed up to now –, and thus the report will in some parts describe general regulations and research on needs and support for victims of crime in general and victims of violence in social proximity.

The report will in the first chapter describe the law and regulations in Germany. Here is the focus on the current policy context and legal framework. As far as specific regulations for domestic violence exist, they are described in detail. Additionally general features of the German judicial system will be explained. Following that the investigation mechanisms that police and public prosecution employ in domestic violence cases will be described. Chapter two provides details on victims' protection and support mechanisms. This includes information on risk assessment procedures and protection and support measures related to the judicial system and the police. Referral procedures from criminal justice system to victims' support services are highlighted. In the third chapter the report details the current state of needs of victims of domestic violence. Existing research on needs and access to social support, intervention and the justice system is described as well as protective measures for different groups of victims of intimate partner violence. Best practices in this field are pointed out. In the last chapter results are summarized and conclusions drawn. This report is based on the analysis of printed material and online resources.

## 1. National Policy Context

The topic of intimate partner violence is a highly “political” one which had been the starting point for the feminist movement and womens’ rights organisations since the early seventies. Nationwide a huge and differentiated network of lobby initiatives and service support organisations has developed over the last four decades; many of them evolved from local civil society initiatives to professional organisations mainly funded by the local or federal states. At national level most activities and surveys on DV/IPV, violence against women and victim protection have been launched or have been supported by the Federal Ministry for Family, Senior citizens, Women and Youth (BMFSFJ). With new tasks assigned to the police during the last 12 years, the police also became a crucial actor in the field of intervention.

In this chapter the main policy strands affecting IPV-victims’ needs and rights are depicted.

### **Implementation of the European Directive for victims’ rights**

Given the German federal system the implementation requires changes and adaptations both at national level and the level of the federal states. At national level mainly the legislation in the field of criminal procedure is affected. Adaptations and changes in the field of victim protection measures and access to support services have to be dealt with by the federal states. Therefore the Federal Ministry of Justice and Consumer Protection (BMJV) has implemented a mixed level working-group (Bund-Länder-Arbeitsgruppe Umsetzung der EU-Opferschutzrichtlinie 2012/29/EU) including representatives of the federal states as well as national governmental representatives; this group is responsible for steering the process of implementation. According to the EU-Directive the BMJV recently has laid a draft law for strengthening victims’ rights, which now will be commented by the federal states and civil society organisations. (BMJV 2014)

Beside some necessary changes in existing regulations on criminal procedures the EU-Directive is estimated to require major alterations regarding the legal status of psychosocial process support (cf 3.2): this is meant to be integrated in the Code of Criminal Procedure and would require to build up and to provide institutional structures and organisational capabilities. Psychosocial process support as well as the required assessment of victim’s needs are seen to be the most relevant subjects of the EU-Directive for victims of IPV.

### **Discussion about Criminal Code of sexual offences and Istanbul Convention**

During the last years a debate about necessary changes of the Criminal Code in the field of sexual offences has been taking place among different policy actors. Since many years civil society organisations in the field of DV and womens’ rights have been criticising that in German legal practice the use of coercion is estimated a crucial criterion for adjudging a sexual offence as rape (bff 2010, p. 10), while coercion regularly has to be “proved” with resistance by the victim. Many cases have been picked up in the public where victims had not offered physical resistance and the perpetrator therefore had not been convicted.

The public debate have been aroused and the concern of women’s rights organisations have been strengthened during the last two years with reference to the Istanbul Convention and considerations by the German government to ratify it (which has not happened by now). At the same time different national and European surveys about outcomes of criminal cases and other jurisprudential contributions have indicated a systematic lack of legal protection for victims of sexual violence,

decreasing shares of cases that end with conviction as well as considerably different legal practices and outcomes in different federal states. (Deutsches Institut für Menschenrechte 2014; KFN 2014) This has shown to be particularly relevant in cases of intimate partner and domestic violence.

In 2014 a reform of the Criminal Code of sexual offences had been launched with reference to different European Conventions and Directives, which the Federal Parliament enacted in November 2014. But from the – hitherto - view of the Ministry of Justice there would be no need for adaptation in the German Criminal Code according to the Istanbul Convention. Therefore § 177 (rape) of the German Criminal Code was no subject of the recent reform. Civil society networks, NGOs and other political actors in the field of combating violence against women are continuing to claim for changing § 177 of the Criminal Code referring to the Istanbul Convention and CEDAW. They claim to classify each non-consensual sexual act as sexual violence and a crime - without any condition regarding the behavior of the victim (Frauenhauskoordination 2014; Terre des Femmes 2013) and to ratify and implement the Istanbul Convention in Germany. Recently the Ministry of Justice has announced an examination and reform also of § 177 for the next year.

### **National policy measures in the field of domestic violence/ violence against women**

In 2013 a new government was established by a coalition of the Christian Democratic Party and the Social Democratic Party. The coalition agreement also focuses on combating violence against women and children. The main strategy is focused on filling existing gaps of support for DV-victims (djb 2014).

The National Action Plan II to combat violence against women dates back to 2007 (BMFSFJ 2007); a mixed level working group (Bund-Länder-Arbeitsgruppe) consisting of representatives of the federal states as well as the national government is responsible for its implementation and evaluation. The main emphasis has been put on prevention of violence against women with disabilities and migration background as well as children. Another comprehensive approach is to make the access to help and support easier for all victims of violence.

As a consequence a nationwide survey on the existing infrastructure of help and support services in the field of DV was carried out on behalf of the Federal Ministry of Family affairs, Senior citizens, Women and Youth (Kavemann 2013b). The German government appreciates the implementation of a nationwide helpline for women in 2013 a milestone for help and support for DV-victims.

## **2. Law and regulations in Germany**

### **2.1 The legal framework on intimate partner violence**

#### **2.1.1 General provisions**

The German Criminal Code (*Strafgesetzbuch*) does not include specific regulations on intimate partner violence. However, victims of IPV are protected by general criminal law statutes regarding offences such as assault, coercion, rape, and murder / manslaughter. In 1997, Germany had passed a law considering acts of sexual violence not involving penetration as rape; at this point of time, sexual violence within marriage was also recognized as rape.

Regarding criminal prosecution, the victim can report the offence orally or in writing. Usually, this is done to the police; however, offences can also be reported immediately to the judiciary (public prosecution office or court). Police intervention and police investigations will be documented and passed on to the public prosecutor. The public prosecutor decides whether there are sufficient grounds for indicting the suspect. Whereas German police have no discretion regarding whether or not to investigate a case, the public prosecution office may terminate proceedings. Main reasons for dismissal are lack of sufficient evidence against the suspect, the suspect's guilt being regarded as of minor nature and additionally a lack of public interest in the prosecution. In cases of minor guilt, prosecution may be terminated conditionally (e.g. after paying a certain sum to a charity) or unconditionally. Certain offences (e.g. so called simple bodily assault, as opposed to aggravated assault) will only be prosecuted if the victim has filed an application for criminal prosecution or the public prosecutor regards prosecution of this specific injury as being of public interest. The victim can appeal a public prosecutor's decision to terminate proceedings on account of lack of sufficient evidence.

If the case continues to court, the victim usually is the main witness for providing testimony regarding the incident and the damage occurred. However, German procedural law recognizes circumstances that justify the refusal of a witness to give a statement, especially if the defendant is a close relative. The victim may also act as a prosecuting party. So-called private prosecution is possible for certain offences for which public interest in prosecution is denied because of their minor nature. For some offences (e.g. serious sexual offences; offences involving bodily injury) the victim has a right of participation in the public prosecution as a private accessory prosecutor. The judge again may dismiss the case (conditionally or unconditionally). Criminal sanctions in intimate partner violence cases include custodial and non-custodial measures.

### ***2.1.2 Legal provisions related to intimate partner violence***

A watershed change took place with the introduction of the Act for Protection against Violence (*Gewaltschutzgesetz*) in 2002. Germany thereby largely followed the Austrian example. This Act is part of German civil law and offers protection for victims of intimate partner violence. The most important change compared to the previous situation is the legal security and acceptance of the principle "whoever commits violent acts must leave". Accordingly, women (and men) who experience intimate partner violence no longer have to leave a common household or seek refuge in a (women's) shelter.

With the federal law victims can apply for protection orders and for allocation of the home. The offender may be banned from entering the shared home or even a larger zone surrounding it. He may also be banned from communicating with the victim and ordered to stay away from her and to avoid places the victim regularly visits. The home where offender and victim used to live together may be allocated to the victim only. Victims may also apply for compensation and damages, and for sole custody of the children.

Following the *Gewaltschutzgesetz*, the 16 German federal states have reformed their police laws and empowered the police with measures for crisis intervention. In cases of imminent danger, the police may ban the perpetrator from the residence and issue an order obliging the offender to keep away from it (emergency barring order). This order lasts for a limited period of time (usually 10-14 days) and is intended to give the victim the opportunity to file a civil law request at the family court and to think over the situation. In most German federal states, the police may take the perpetrator into

temporary custody to enforce his eviction from the home. The issue of acute lodging for both the victim and the aggressor remains unresolved particularly with respect to victims and offenders with functional limitations or who are responsible for providing support, causing application of the Act for Protection against Violence (*Gewaltschutzgesetz*) to run up against limits.

Additionally the police laws regulate the police cooperation with so-called intervention centres, which have been implemented in order to provide information for victims of intimate partner violence regarding their legal rights under the Act for Protection against Violence. (see 2.2.1)

While the 2002 *Gewaltschutzgesetz* also refers to stalking behavior at the level of civil law, Germany introduced criminal law sanctions against stalking in 2007.

### ***2.1.3 Evaluation of the Act for Protection against Violence (Gewaltschutzgesetz)***

Ten years after the enactment of the Act for Protection against Violence some inquiries of professional experiences of the law have been conducted. The German association of female legal practitioners (*Deutscher Juristinnenbund 2012*) had initiated a comprehensive survey among judges via the respective departments of the *Länder*. The questionnaire focused on certain judicial aspects of the court proceeding as well as on organisational und structural aspects (e.g. multiprofessional cooperation, resources). On the side of the social support agencies for DV victims an inquiry was carried out by the national umbrella organisation of counselling and intervention centres for DV victims (bff 2012) among its members. Furthermore, in order to assess and evaluate the relevance, practice and outcomes of the Act for Protection against Violence many expert's conferences took place at different levels (local, *Länder* and national) among lobby and umbrella organisations and other actors in the field of intimate partner violence.

In 2012 the umbrella organisation for women's counselling organisations (bff) invited their members to assess the effects of the law on the situation of abused women and on the daily support work. 61 organisations took part in the evaluation (bff 2012, 1). The results show that practitioners perceive a revaluation of intimate partner violence in society. They describe that a sensitisation of important actors has been achieved. The Act for Protection against Violence is seen as an important milestone for individual victims and for the society (BIG 2012, 13). With the *Gewaltschutzgesetz* victims receive more support and violent acts in the family are seen as injustice and no longer as "family arguments".

The Act for Protection against Violence opens ways out of violent relationships by giving victims legal instruments, more room and time for decision-making. The Act is seen as an effective instrument for empowering the affected persons. According to the policy of "whoever commits violent acts must leave" more women and children can stay in their homes than before and fewer of them are forced to escape. They find improved options for support in their communities by social support organisations. Especially intervention centres and counselling services for violent partners have been built up and extended since the enactment of the *Gewaltschutzgesetz*.

A better cooperation of the involved institutions (family courts, youth welfare offices, counselling centres) concerning communication and information is also regarded as a success of the *Gewaltschutzgesetz*. Women now get more and better support, although in the counselling centres necessary equipment and stable financial resources are still a problem.

It is seen as an important effect of the *Gewaltschutzgesetz* that the police is today better trained concerning intimate partner violence and its dynamics. The police also work closer together with the counselling and intervention centres specialised on intimate partner violence. Police officers now better understand why women remain in violent partnerships, and agencies report that a more respectful contact with victims of intimate partner violence has developed. A better understanding of problems and backgrounds of violent partnerships contributed to an improved intervention practice. Practitioners report higher levels of awareness on the issue not only in the police, but also with public prosecutors and judges.

Additionally with the enactment of the *Gewaltschutzgesetz* and the changes in the police regulations of the *Länder* new options for data collection and statistics on cases of domestic violence in general have been implemented.

In 2010 42.199 lawsuits following the Act for Protection against Violence were registered, mainly applications for protection orders. Applications for the allocation of the home are filed only rarely. A comparison between the *Bundesländer* shows that in 2010 lawsuits according to the Act for Protection against Violence were mainly filed in the western part of Germany and in the *Stadtstaaten* Hamburg, Berlin and Bremen (Kavemann 2013a). In 2009 the police registered 5.362 violations of the Act for Protection against Violence (e.g. failure to comply with protection orders), only 5% committed by women.

Some main problems are identified by practitioners:

- Some problems are related to the judicial procedure. For example the courts do not treat applications for protection orders with the necessary speed (BIG 2012, 16).
- Some courts also refuse to take decisions on applications for restraining order, if the offender fails to appear and thus cannot be heard to the accusations. Exceptions are only made in cases of severe violence (BIG 2012, 13).
- Additionally it is criticized that the Act for Protection against Violence requires a deliberate violent act of the offender. §1.3 would include the influence of substance abuse, but in many cases victims of offenders with mental illnesses would not be protected by the Act of Protection against Violence (BIG 2012, 15).
- The survey of the bff shows especially deficits in the implementation of the Act. The greatest problems arise if the offender and the victim have joint children. Here it comes to conflicts between protection needs of the victim and the visiting or contact rights of the offender. Evaluation shows that courts regard the contact right predominantly as a more important legal interest than the need of protection. (see below)
- Many experts from the field of victims protection criticize the tendency of family courts to promote a so called settlement (*Vergleich*) instead of a judicial protection order. Mutual agreement means in fact a self obligation by the offender to omit violent acts in the future. Settlements are often promoted in cases when women have children with the offender. These agreements are not imposed with sanctions and their violation cannot be criminally prosecuted. In cases of violation the victim has to apply again for a protection order and to undergo the hearing. A nationwide survey among the courts (via the *Länder*) by the German female lawyers network shows that the attitude to promote settlements and to avoid judicial orders is predominant among judges. (Deutscher Juristinnenbund 2012/ bff 2012)

- Violations of protection orders are criminal acts. In practice inquiry and criminal prosecution of those cases take too much time and again the proof for the violation depends mainly on the side of the victim as the most important witness. In fact the majority of these cases are being dismissed, which means that there is no effective tool to force the offender to follow the orders. Given the fact that violations of protection orders turned out to be an indicator for high-risk cases of DV, experts see the need that those cases are dealt with particular urgency . (Schweikert 2013) To protect persons affected by intimate partner violence, a consequent and effective prosecution of violations of the Act for Protection against Violence is utterly needed.
- In general experts see the necessity to include in the judicial proceedings a regular risk assessment for future incidents of intimate partner violence. Along with that further trainings for all institutions involved are seen as necessary, also in order to prevent an erosion of awareness.
- The analyses and evaluations related to the Act for Protection against Violence and its outcomes clearly show improved competences and procedures in dealing with DV-cases on the part of the police. But they also show that there still is a need of change on the part of courts and lawyers. As one consequence a women's shelter Network claims to integrate training on DV victims protections rights in the (further) qualification of judges. (ZiF 2013)

## 2.2 Investigation mechanisms implemented by the police, the public prosecution offices and the criminal courts related to intimate partner violence

All German police forces are tasked with enforcing both federal criminal law and *Laender* law regarding public order and public safety. Therefore, the practical measures in dealing with IPV cases are slightly different in every *Land*. All German *Laender* have published similar guidelines or other information/education material for the police that give detailed information on how to approach and handle IPV cases, how to deal with victims and offenders and how to use protective measures<sup>1</sup>.

Almost all German police forces impress upon their officers the severity of the nature of IPV. For example, in the Hesse Police's IPV guidelines, it is very clearly (and, in fact, in bold lettering) stated that IPV is by no means a private matter, but "*a very important area of violent crime*" ("*...ein sehr bedeutendes Feld der Gewaltkriminalität*", Hessische Polizei n.y., 3). These guidelines also point out that the police, who are usually the first officials to take notice of a violent incident, need to impress upon the victim and perpetrator that IPV is considered a criminal offence and will be sanctioned by the state.

### 2.2.1 Notification and grounds for investigation

Everyone, not only the victim, can report a crime, and the police are required to investigate. However, some minor offences, like simple or negligent bodily assault, defamation, property damage and stalking, are exempt from this rule and can only be prosecuted if the victim presses charges against the perpetrator. If the victim doesn't want a minor offence to be prosecuted, the police can only successfully investigate if the offence is classified as being of particular public interest by the

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<sup>1</sup> Detailed descriptions of all German *Laender's* police guidelines and measures can be found in Schröder & Pezolt [Eds.](2004).

public prosecutor. Although federal procedural guidelines (RiSTBV) state that IPV cases should usually be considered to be of special public interest (WiBIG 2004, 46f), this is often not the case. However, the police are advised to file a complaint in all IPV cases, even if the victim does not want to press charges (WiBIG 2004, 173).

### **2.2.2 Upon arriving at the scene of crime**

When called to the scene of an IPV (or any other) case, the police tasks are three-fold. The first task in an emergency response is to stop ongoing criminal acts from being committed. Furthermore, they are supposed to collect and secure evidence for criminal proceedings, and they also need to evaluate the situation and take measures to avoid further endangerment of safety and security.

German police officers will respond to an emergency call with at least two officers, more if the situation requires and/or resources allow it. Most guidelines recommend to dispatch at least one female officer to the scene of the incident (c.f. Niedersächsisches Innenministerium 2002, 27). In cases of imminent danger, the police can enter a private dwelling even if one or more of the inhabitants refuse them entrance (e.g. when called by a neighbour). They are supposed to secure the situation and separate victim and perpetrator to avoid further danger.

### **2.2.3 Evidence**

#### **Questioning**

German police procedures offer several possible ways of questioning victims and perpetrators. They can be questioned immediately at the incident site, be summoned to the police station to give evidence or, in a procedure called “simplified investigative procedure” (*vereinfachtes Ermittlungsverfahren*), be sent an inquiry form they are supposed to fill in and return. In recent years, most police guidelines have pointed out that questioning the victim immediately after the attack increases her/his willingness to give evidence, while expecting victims/perpetrators to fill in and return a complicated form increases nonresponse (WiBIG 2004, 139).

The officers are supposed to question both parties in separate rooms to keep the perpetrator from influencing the victim verbally or by looking/gesturing. Should separate questioning not be possible in a private dwelling (e.g. due to lack of rooms, children or other witnesses present), the victim should be questioned in her home, if possible by a female officer, and the perpetrator outside / in the police car. If possible, the victim should be questioned directly after the incident in order to receive detailed information that can be grounds for prosecution and first protective measures. Immediate questioning is also considered necessary to avoid any perpetrator attempts to influence the victim in the meantime (c.f. Karadag & Winkler 2007, Niedersächsisches Innenministerium 2002).

The police are advised to ask specifically about the history of violence (type and possible increase), (medical) documentation of previous abuse, abuse and/or endangerment of children and the use and/or presence of weapons / firearms. The victim should be informed about her rights, specifically the possibility to refuse to give evidence if the accused is a close relative, the possible measures of the Act for Protection against Violence (*Gewaltschutzgesetz*), and the necessity of seeing a medical professional for documentation purposes. Furthermore, she is to be made aware of the possibility to use a women’s shelter and/or victim support services. Most *Laender* have established routines for forwarding the victim’s information to local intervention centers, but some need the victim’s written

agreement. Several *Laender* have also compiled information for victims of DV/IPV to inform them about their rights and legal/judicial proceedings that are to be handed out by the police.

### **Questioning migrant/disabled victims**

If a migrant victim doesn't speak German, police officers are advised to find a trusted person to translate; this person should not be the perpetrator or a family member. If no trusted person is available, they should call upon a professional translator (for hearing impaired/deaf victims who can only communicate by sign language, equal procedures apply). Women of foreign nationality whose residence permit is dependent upon their husband's can legally obtain a separate residence permit if they are in an abusive relationship (unreasonable hardship), even if they do not fulfil the legal requirements usually necessary. Police officers investigating IPV cases are advised to inform foreign women of this regulation. (c.f. Niedersächsisches Innenministerium 2002, 47-49).

### **Physical evidence**

Apart from questioning the witnesses, the police shall investigate and secure physical evidence like injuries, weapons, finger prints, tool marks or documents to convict the perpetrator. The victim may have to hand over items that have been used during the attack, be subjected to ID-procedures (finger prints) for comparison, be medically examined and have her injuries photographed (even against her will if the court/prosecutor orders it). As many IPV injuries don't show until hours later, victims are advised to see a medical professional to document them. They are also asked to release medical personnel from confidentiality so their results can be used for prosecution.

Police officers are also advised to take pictures of all parties involved, the scene of crime and especially of injuries. Sensitive or potentially embarrassing pictures are to be taken by a female officer. Photographic evidence is admissible in court even if the victim refuses to give evidence.

### **2.2.4 Immediate measures to avoid further danger**

#### **Cautioning the offender**

Cautioning the offender and impressing the severity of the offence upon him (*Gefährderansprache*) is a popular police instrument for dealing with IPV perpetrators. The police shall make it clear that the state will not tolerate the assailant's behavior and detail consequences of the offences already committed and also offences likely to occur in the future, like failing to comply with a banning order. It should also be pointed out that positive behavior, like complying with police measures or seeking counselling, might improve the perpetrator's situation. The perpetrator's reaction to such an approach should be carefully watched as it can be used to evaluate the danger of violence escalation (Landespräventionsrat Niedersachsen n.d., 16f).

#### **Banning order (Platzverweis / Wegweisung)**

In case of persistent danger to the victim, the police can ban the offender from the joint home and also from places the victim regularly visits, like her place of work, the victim's children's school / day care for up to 10-14 days. This allows the victim time to think about her next steps and also serves to cover the time necessary to obtain a court protection order for allocation of the home. The perpetrator is given opportunity to take his personal belongings, and the police will secure his home keys. As most police guidelines explicitly state the repetitive nature of IPV, the aforementioned

“persistent danger” is almost always assumed and banning orders are therefore widely used. Additionally to the ban, the perpetrator will in most cases be forbidden to contact the victim by other means. Previous research indicates that banning orders were used in 30-70% of IPV cases depending on victim’s age; they were least often used when the victim was older than 60 years (Taefi, Nowak, Görger, Kraus & Naegele 2013, 34).

In some *Laender*, the police are explicitly advised to control if the banning order is complied with (e.g. Mecklenburg-Western Pomerania, c.f. Becker & Michelmann 2010). If the victim decides to let the perpetrator back in, the banning order is usually considered invalid by the police and will not be further enforced.

If the perpetrator refuses to comply with the banning order, he can be taken into custody until the end of the next day. The same applies if he can be expected to attack the victim again. Although this is considered a severe curtailment of freedom rights, previous research shows that this measure was taken in 5.5-23,7% of all analysed IPV cases (regional differences; WiBIG 2004, 124).

Should the perpetrator be in a challenged mental state that endangers himself and/or others, or if he committed the offence in a condition of diminished capacity, he can be committed to a psychiatric institution for a brief time. If he is or seems intoxicated, a blood sample should be taken to determine intoxication levels that may have an impact upon culpability.

## **Children**

In many IPV cases, children are witnesses to the abuse or are victims themselves. If children are present at the scene of the incident, police are advised to avoid using force against a parent in their presence. However, the police are supposed to protect children from further danger and make sure they are looked after, especially when a parent is banned or taken into custody. When in doubt, they should contact child services and check if the children need to be taken into care.

### **2.2.5 Police investigation after the incident**

Shortly after the incident, victim, perpetrator and other available witnesses will usually be summoned to the police station to provide evidence. Neither party is legally required to comply with the summons. However, if the victim or perpetrator do not present themselves, the police will assume they are invoking their right to refuse to give evidence. If the victim decides to give a statement at the police station, she can be accompanied by a relative, a lawyer or any other person she trusts. Only other witnesses in the same case should not be present during the victim’s statement.

At any time during the investigation, the victim can decide to invoke the right to refuse to give evidence and/or withdraw the charges. If she decides to do so, her previous statements to the police may not be used in a court of law. Only statements that are given to the police spontaneously, i. e. without being asked or formally advised (*Spontanäußerungen*) are admissible in court, even if the witness later decides to refuse to give evidence (WiBIG, 2004, 152).

To avoid invalidation of the evidence, the victim can be questioned by a judge instead of the police if the police/prosecutor request this. This course of action is opportune because even if the victim refuses to give evidence at a later time, the statement given to a judge can still be used as evidence in court. The accused party has the right to be present when the victim is heard by a judge; however, if it is likely the victim will not give evidence / give false evidence to the judge with the perpetrator

present, he can be excluded from the hearing. This questioning procedure is not being used very often because of time resources and a significant number of victims not showing up to the hearing (WiBIG, 2004, 144).

### **Children / other witnesses**

Children who have witnessed the offence can legally be questioned by the police. However, this is usually not done, even when the children are older (14-17 y). The police hesitate to encourage children to give evidence against their parents because this might endanger the children if the parents reconcile. This practice, while being considerate, gives children who want to help or who are themselves afraid of the perpetrator no opportunity to be heard (WiBIG 2004, 151). Other witnesses (e.g. neighbours) can and should be questioned by the police, particularly as non-relatives do not have the right to refuse to give evidence. However, this is often not done (WiBIG 2004, 151).

### **2.2.6 Court hearing**

If the case is brought to court, standard procedure is to hear witnesses in public. Many social as well as judicial support actors criticise that family courts mostly don't use the legal possibility of separated hearings. As many women do not have court assistance they have to face the offender in court alone. Many victims do not know about the possibility to apply for separated hearings and there are no legal obligations to inform the victim; most judges prefer common hearings (Deutscher Juristinnenbund 2012, bff 2012, Kiel 2013).

Another organisational problem can emerge from the local responsibility of courts depending on the crime scene, mostly the common residence. In case the victim changed her habitation it can lead to long journeys for the victims as well as their lawyers. Additional to this problem financial assistance for procedural costs only can be paid for lawyers in the area of the responsible court.

Lawyers point to the problem that neither IPV victims who want to take incidental action (private accessory prosecution) and to testify against the offender nor their lawyers often are being kept informed by the court about the ongoing proceedings (e.g. about the accusation). In many cases they are not invited to the trials. In case the trial ends with a dismissal, the victim witness will have had no possibility to influence the proceedings and to be heard in court, although this is her right and in many cases very important for the victim. If victims and witness rights are violated by the proceedings the feeling and experience of being helpless can be prolonged and increased (Ladenburger 2011).

## **3. Victims' protection mechanisms / practices**

### **3.1 Risk assessment procedures available within the police and judicial system**

In their daily work, police officers are being confronted with a very broad range of IPV cases. The cases they have to deal with differ in many aspects – they vary regarding severity of the case, the underlying motive, the spatial and situational context of the offence etc. IPV cases also differ with regard to their risk of repeated / continued violence, the danger of escalation in severity, and of lethal outcomes: Although most IPV offences are minor offences like simple bodily assault, homicides and homicide-suicides constitute a considerable part of all IPV cases. With such a wide range of outcomes, it is considered necessary to estimate not only the risk of recidivism, but also the potential for escalation and homicide implies prognoses regarding individual cases.

As with many inquiry methods, questions arise regarding the particular method of how to arrive at the best possible prediction / risk estimate, and also regarding the data to be used for this estimate. In the last decades, a number of instruments for estimating the risk of recidivism in domestic assault or of lethal outcomes in domestic violence have been developed. Most of these instruments were developed in North America and are fitted to that particular context, such as

- *Ontario Domestic Assault Risk Assessment (ODARA*; cf. Hilton, Harris, Rice, Lang, Cormier, & Lines 2004, Hilton, Harris, & Rice 2010),
- *Domestic Violence Risk Appraisal Guide (DVRAG*; cf. Hilton, Harris, Rice, Houghton, & Eke 2008),
- *Spousal Assault Risk Assessment Guide (SARA*; cf. Kropp, Hart, Webster, & Eaves 1995),
- *Danger Assessment (DA*; cf. Campbell, Webster, & Glass 2009; Snider, Webster, O'Sullivan, & Campbell 2009).

Only the instrument *DyRIAS-Intimpartner* (Dynamic Risk Analysis System – Intimate Partners; cf. Hoffmann & Glaz-Ocik 2012) has been entirely developed by German researchers.

These instruments for the assessment of IPV risks usually rely on two types of data sources: they require data available to the police that are documented in case files and also make use of victim interview data. All instruments are evidence-based; they use knowledge from research on intimate partner violence and intimate partner homicide. The instruments make use of a variety of risk indicators in different areas, involving offender characteristics (such as history of violence and criminal behavior, availability of weapons, substance abuse, controlling behavior, or extreme jealousy), victim characteristics (such as social isolation, barriers to support, or having a child from another partner), characteristics of the last known violent incident (such as threats, strangulations, or confinement of the victim), history of violence in the intimate partnership (such as escalation in frequency and severity, or violent assaults during pregnancy), or characteristics of the partnership (such as crises and times of separation).

At present, the *Ontario Domestic Assault Risk Assessment (ODARA*; cf. Hilton et al. 2004) is the instrument that has most extensively been evaluated with regard to its predictive validity. ODARA has been developed by Canadian researchers in close cooperation with the Ontario Provincial Police. As it is a tool intended for official procedure, it does not require psychiatric or psychological expertise but can be used by trained practitioners from different fields, including police. The instrument's aim is to predict recidivism, i.e. the risk of re-assault in intimate partnerships where an act of violence has occurred.

The short instrument uses 13 dichotomous items and is therefore comparatively easy and quick to use. The items included analyze the history of family violence, the offender's criminal history and the occurrence of threat and confinement during the most recent incident. Further questions focus on the existence of children in the relationship, the prevalence of substance abuse, on possible barriers that may keep the victim from support and on the victim's views on the risk of future violence. To each individual case, one of seven risk scores is allocated. The instrument's predictive ability has been widely and positively tested in numerous studies (e.g. Hilton & Harris, 2009; Hilton, Harris,

Popham, & Lang, 2010), and a German translation is available (Rettenberger, Gaunersdorfer, & Eher 2009; see also Rettenberger & Eher 2013).

Despite being widely available, none of the standardized risk assessment instruments are in common use by German Police up to now. However, the need to distinguish and differentiate between cases of differential risk does exist. As a consequence, some police forces have developed their own instruments such as the so-called *HG-Tool* (i.e. “DV tool”) applied by the police in the German city of Cologne (see Radke & Hömann 2011). These instruments certainly exceed an officer’s “professional intuition”; still, they lack scientific basis and evaluation. Increasingly, the police are starting to think about the possible benefits of using standardized instruments. In this spirit, police in the federal state of Rhineland-Palatinate has started a model project on high risk management in cases of intimate partner violence on October 1, 2014. They recently announced that instead of “gut feeling”, several instruments are going to be tried and tested by police officers at the crime scene during a one year period in selected police departments all over Rhineland-Palatinate (see Beister 2014).

### **3.2 Protection and support measures related to the law enforcement**

Before and in criminal proceedings a number of procedures and provisions which are aimed at ensuring the protection of crime victims in general, and specifically for victims of intimate partner violence were implemented. Basic victim’s rights in the criminal proceeding are described in chapter 1.1 and 1.2. The focus of the following chapter is on selected instruments aimed at supporting and protecting crime victims within criminal proceedings.

#### ***3.2.1 Existing formal referral procedures involving the criminal justice system and victim support services (shifted)***

Following the enactment of the Gewaltschutzgesetz in the police regulations of the Länder formal referral procedures between the police and the so-called intervention centres have been established. They vary between the Länder. After having knowledge of a case of intimate partner violence, the police submits to these intervention centres information about the victim, mainly contact data and some basic information about the case. This information is given in most of the Länder only with the consent of the victim, but in some Länder this consent is not necessary, the victims are only informed that an intervention center will reach out to them. Actually, former analyses of case files and interviews with intimate partner violence support organizations (IPVoW and Mind the Gap!<sup>2</sup>) showed that very often no documentation is found in files on cases of intimate partner violence about the police request for consent and about the referral to an intervention office.

After receiving contact details, the intervention office in charge contacts victims of IPV by telephone or letter and submits to them an offer for counselling. This may include the offer of acute counselling and investigation of the situation, the provision of legal information and referral to facilities with more long-term support services. With the reach-out approach, victims are also reached who on their own would not contact the support network in the case of intimate partner violence.

These provisions were accompanied by a change in the local cooperation structures. Close cooperation structures between the police, the judiciary and support facilities, most of which emanated from the feminist movement, have been created and supported by government

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<sup>2</sup> See [www.ipvow.org](http://www.ipvow.org)

campaigns on the topic of intimate partner violence. In many municipalities “round tables against intimate partner violence / family violence” were set up by equal opportunity commissioners.

In the context of the implementation of the 2002 Act for Protection against Violence (Gewaltschutzgesetz) in all Länder “intervention centres against domestic violence” have been established at the regional level more or less throughout Germany working with a pro-active, i.e. reach-out counselling approach in close cooperation with the police. At present approximately 160 intervention centres are working with this pro-active approach and are primarily funded by the German Länder. Many intervention centres have already been set up at existing support facilities.

At present there are 370 women’s shelters in Germany: Independently of the sponsorship of present-day women’s shelters, the women seeking protection there are assigned for the most part responsibility for the organisation of everyday life. In addition to lodging, however, they can also make use of professional support. This includes help to achieve social stabilisation, social and family-law information, child-care and support in structuring one’s life such as e.g. looking for accommodation. In addition to women’s shelters, out-patient counselling have been initiated in urban areas to which women can also turn by telephone.

### ***3.2.2 Projects for the documentation of injuries caused by interpersonal violence***

One problem related to criminal proceedings in all cases involving bodily harm is that victims often do not turn to the police immediately after a violent incident, but need more time to take a decision. This is especially true for violence in intimate relationships and sexual violence. Until a decision is taken, important evidence for criminal prosecution may be lost. For a potential criminal prosecution a medical examination by qualified experts has to be carried out as soon as possible after the violent incident. Properties that may serve as evidence in these cases have to be safed and stored adequately. General practitioners and specialists are not qualified for forensic examinations and their main focus is on treatment issues, they are not informed about the requirements of the judiciary as regards the preservation of evidence. Examinations by forensic institutes, which are specialized in documenting injuries and securing evidence, are only possible in cases of severe violence and when criminal charges had been brought. In order to improve this situation more and more medical institutions in Germany now offer examination, documentation and preservation of evidence for victims of violence in general, but especially for victims of interpersonal violence and sexual violence, irrespective whether criminal charges had been brought. Clinics for securing evidence (*Schutz- bzw. Opferambulanz*) are been opened; some are part of, others work independently from forensic institutes. In these clinics victims are also referred to counselling and support organisations for victims of violence.

A working group of feminist organisations for the support of victims of domestic and sexual violence in the *Land* North Rhine-Westphalia seeks to establish together with medical professions a tight net of services for the documentation and securing of evidence for victims of violence. In 2011 a survey was carried out in order to find out about the number of existing services and the different models. A total of 31 models were found in Germany. Some of these models are service networks consisting of several locations (e.g. 19 in the area of Bonn), which may be specialists or hospitals. The survey shows that models exist mainly in urban areas. Victims in rural areas have only limited access to services. The organisational background is often a network of institutions, in other cases forensic institutes, sometimes with emergency units for victims of violence. Basic features of all service are

the medical examination with a standardized documentation system and the so called anonymous storage of evidence. All such services make referrals to specialized counselling services for victims. Differences are found in respect to additional tasks. Some models also engage in training and awareness raising, counselling for victims is within the responsibility of specialized support organisations. (LAG autonomer Frauen-Notrufe in NRW, 2012)

In Lower Saxony a project started in 2012 called Netzwerk *ProBeweis* (Network Pro Evidence). The project aims at connecting support of victims and securing evidence. Goal is that victims in Lower Saxony may reach a specialized institute within 100 km distance from their homes. Partners in the network are hospitals with emergency and gynecologist units. All partners work with the same documentation standard, and medical staff is trained in documenting injuries and saving evidence for criminal proceedings. Evidence like blood or urine samples and documentation are stored up to 20 years. Within the first two years of this project, 181 women and 6 men made use of the services offered (Zorn, 2014).

A pilot project is the *Schutzambulanz Fulda* in the *Land Hesse*, which is part of the public health services of Fulda County and is funded by the State of Hesse and the Fulda County.

Evaluation of the first year activities showed that between May 17th 2010 and May 6th 2011 141 persons called for support, mainly female victims of intimate partner violence and victims of family violence against children resident in the urban areas of Fulda County. Most of the suspected perpetrators were male. In 55 cases a documentation of the injuries useable in court was made. Most of the injuries were located at the head and the upper extremities. Contact to police was arranged for 35 persons. (Blättner, Krüger & Grewe, 2012)

### ***3.2.3 Support of victims in criminal proceedings***

Victims of crimes need special support and there is a specific need for support of crime victims as witnesses in criminal proceedings even beyond legal advice by a lawyer and representation as private accessory prosecutor in the trial. Many organisations in Germany work on behalf of victims, some are specialized e.g. in sexual violence, intimate partner violence or violence against children, others offer their services to all crime victims or victims of violence. These services help victims in many respects and they developed specific services for the support of victims in criminal proceedings. Most of these organisations are not for profit non-governmental organisations. Additionally some court related institutions offer direct support to victims and witnesses. The support of victims and witnesses during police investigation and judicial proceedings therefore is multifold and has different aims. In this chapter only non-legal support services are of interest.

An overview of services provided by a working group of victims support organisations (Arbeitskreis der Opferhilfen 2012) lists eight different terms for these kinds of services and five different concepts for the support of crime victims in criminal proceedings. Victims support and counselling is not limited to, but always includes if necessary support in criminal proceedings. Psychosocial process support and social pedagogical support for children and adolescents as witnesses are closer linked to criminal proceedings and provided by non-governmental organisations. Support, help or service for witnesses are mostly instruments of the justice system (or closely linked to it), offered mainly in premises of the court and during the trial. Some are even limited to accompanying witnesses during their interrogation at court or providing information about the proceedings. Witness services are important especially in cases when women do not agree to hand over their contact details to

intervention centres for pro-active counselling approaches (s. 2.3) and do not seek help and support by themselves, but still have to face the difficulties of a criminal proceeding.

### **3.2.4 Psychosocial process support**

In German legislation the term psychosocial process support (*psychosoziale Prozessbegleitung*) was introduced in the second amendment of the Victim's Rights Act within the Code of Criminal Procedure (§406 paragraph 1, numeral 5). Crime victims accordingly have to be informed about their right to be accompanied at every stage of the criminal proceedings by a confidant or victim support person and to receive counselling from victims support organisations. Currently under debate in the context of the implementation of the European minimum standards on the rights, support and protection of victims of crime (Directive 2012/29/EU of the European Parliament and of the Council) is, if victims of severe physical and sexual violence should be entitled to this kind of service, which then had to be guaranteed and financed by the German state. Up to now it is only a right which is not substantiated by service provision. Whether victims are able to claim it depends on the availability of the service. While services are in some regions (especially in urban settings) easily available and some *Länder* and municipalities developed specific programmes, in others – and again in rural areas the situation is more difficult - no services are available up to now. In some regions (e.g. Mecklenburg-Vorpommern) services are available only for specific victims (e.g. children and adolescents as witnesses). No base line survey or overview on this kind of services for Germany exists up to now. Experts believe that the service will become more important in the years to come. (Arbeitskreis der Opferhilfen 2012)

The support service is not regulated and defined. It refers to the Austrian model of the psychosocial and judicial process support which is clearly defined and may be executed only by specific institutions. The explanation of the German law describes that this instrument should be available especially for victims of severe acts of violence and sexual violence in order to reduce the risks of secondary victimization. It should be provided by qualified persons and any influence on the witness testimony should be excluded by forbidding any discussion about the incident subject to the trial.

Quality standards have been developed by a couple of organisations (e.g. Arbeitskreis der Opferhilfen 2012), but only recently the ministers for justice of all 16 German *Länder* agreed upon a common set of standards for the work of psychosocial process supporters for victims of acts of severe physical and sexual violence. This is seen as an important step towards an entitlement to this kind of service, which will probably be established first for certain groups of victims (children and adolescents). (Ministerium für Justiz und Verbraucherschutz Rheinland-Pfalz 2014) Stakeholder organisations also argue for entitling at least very vulnerable victims groups like women with disabilities. („Frauen und Mädchen mit Behinderung besser vor Gewalt schützen“ 2012)

For the support of victims of intimate partner violence and violence against women up to now the quality standards of the association of women's counselling and support organisations bff is the main point of reference (bff n.d.).

Basic idea of the instrument is to reduce any strain and pressure connected to the law enforcement procedure and to support the victim. The following sources for strain were identified by women's support organisations

- long duration of the investigation phase (police and public prosecutor)

- repeated interrogation
- missing knowledge about the judicial procedures
- dismissal of the case
- long waiting periods in the court
- the atmosphere in the court
- interrogation by unknown persons
- the confrontation with the accused connected with fear of being attacked and the need to give testimony in his presence
- the fear not to be able to express oneself adequately, not to remember everything, to be accused of lying, to make a fool out of oneself, to be made responsible for the incident
- fear of having to face media interest
- missing information about the outcome of the process, its significance and consequences
- fear of revenge by the perpetrator

Psychosocial process support related to intimate partner violence incidents aims therefore at reducing fear on the part of the victim, at minimizing strain and pressure connected to the investigation phase and the trial and thereby at reducing the risk of secondary victimization. Psychosocial process supporters may not be involved in the criminal proceedings and strictly are not allowed to discuss any matters connected to the incidence subject of the proceedings. This is important in order not to become a witness or to arouse suspicion of influencing the witness. He or she is supportive to the victim in many respects; in German the term for it is companionship – which makes clear that it is not only about support and counselling, but also about the physical presence before, during and after trial and interrogation sessions. Main tasks are social support, education and information about the proceedings and about coping mechanisms for emotionally difficult situations. Psychosocial process support is for free and it is by choice.

### **3.2.5 Court assistants**

Court assistants (*Gerichtshelfer*) are impartial assistants for the judicial process and thus not specifically assigned to the support of victims. But in fact may their work play an important role in meeting victims needs in the criminal proceedings. The 16 *Länder* are responsible for the judiciary and therefore the work and organisation of court assistant differs widely throughout Germany. Court assistants are social workers and are in most of the German *Länder* public servants employed by the court (e.g. in the public prosecutor's office).<sup>3</sup> One of their tasks as court assistants is to investigate the personal social and economic background of the accused, victims and their relatives. The purpose is to add to the judicial process information not directly connected to the incident subject to the trial, which might be relevant for the decision of the judges and the public prosecutors. Court assistants play an important role for finding adequate judicial solutions in cases of intimate partner violence. (Hering 2010, Die Justiz des Landes Nordrhein-Westfalen 2014, Standards der Gerichtshilfe Rheinland-Pfalz 2009) Court assistants are assigned to find out, whether the victim is willing to give testimony on trial. Additionally their task is to find out about the current relation between victim and offender. Is there reconciliation with a positive prospective? Is there any indication that the situation will improve in the future? Would criminal prosecution be in the interest of the child? Is there any

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<sup>3</sup> In Baden Wuerttemberg court assistants and probation assistants have been privatized in 2007, but have assigned responsibilities of the public administration. (DBH – Fachverband für Soziale Arbeit, Strafrecht und Kriminalpolitik, 2009)

indication that the woman withdraws the application for criminal prosecution on the basis of threats by the offender? Thus public prosecutors and judges may obtain information on the current state of affairs as regards the family system and may better be able to assess possible consequences of any of their decisions on the victim. Here information is needed, which would otherwise not be subject of investigation.

Given the fact, that the main interest of many victims of intimate partner violence is to stop the violence, the model approach from the public prosecutor's office in Stuttgart seems interesting, to commission the court assistants during the prosecutor's investigation process to find feasible and adequate counselling services for the offender which may be imposed as conditions for the provisional termination of the investigation. The investigation is terminated finally in these cases only after the offender proves the participation in counselling / therapy. In another model approach in Tübingen, court assistants are included immediately after the first police intervention in order to offer counselling or training measures to the offender directly after a violent incident, thus giving him the opportunity to contribute to the termination of the investigation or to reduce charges. With low recidivism rates the approach is seen as successful. (Hering, 2010)

### **3.2.6 Restorative Justice**

Court assistants are also responsible for the organisation of restorative justice. In case that the court allows this option and victim and offender agree to a solution, the conditional or unconditional termination of the investigation by the public prosecutor may be the consequence. The goal of restorative justice (*Täter-Opfer-Ausgleich*) is to restore peace under the law (*Rechtsfrieden*), to motivate offenders to take over responsibility for their action, to give voluntary compensation and to empower victims. Basic requirement for restorative justice is voluntary participation and an equal provision of resources of both parties. With the help of the court assistant and external not-for-profit institutions as impartial mediators compensation for the victimization will be arranged. Mediators first discuss matters separately with victim and offenders and thereby prepare the compensation meeting.

The use of restorative justice in cases of intimate partner violence is a controversial issue. Opponents say that problems arise from the fact that intimate partner violence occurs in relationships of dependency which implies an unequal distribution of resources. They argue that the hierarchical relationship, which is fundamental to many cases of intimate partner violence cannot be overcome by restorative justice. The relative weakness of the victim may therefore be exploited, pressure against the victim may not be excluded. Hering (2010) states that this instrument (which is also called conflict regulation) shifts the perspective (victim and perpetrator to pretended conflicting parties) and is able to help victims only in few cases.

Supporters of restorative justice in intimate partner violence cases point out that it is necessary to know about the limits of restorative justice when it comes to intimate partner violence cases, but that it may well meet victims needs much more than an unconditional dismissal of the case or a dismissal under the condition of a fine. They argue that it opens options for reconciliation, that it gives victims influence on the kind of compensation and that it may be an instrument of power when it is connected to the conditional termination of investigations by the public prosecutor. Used correctly it may be an instrument to empower victims. Public prosecutors report about good experiences in cases with singular violent occurrences. Mediators report also about successful use in

cases with already separated couples and even in some cases with several occurrences of violence – the latter only in connection with a social training and under strict conditions.

The precondition for restorative justice is in general that the offender takes over responsibility for at least parts of his conduct. This is not likely in stable hierarchical relationships where the offender sees his violent acts as legitimate. Another precondition for the use of restorative justice is that the victim is in a stable position within the relationship. Restorative justice is excluded for all cases with a risk of secondary victimization and reactivation of traumatic experience.

Mediators experience, that it is necessary to adapt the procedures of restorative justice to the specific needs of intimate partner violence cases. This includes first to interview the victim about her willingness to engage in restorative justice – in other cases the first interview is usually carried out with the offender; if the interest is denied no further steps will be made. It also includes to work with a team consisting of a male and a female mediator. (Bermel & Hertel 2012)

In 2010 about 438 organisations were engaged in restorative justice in Germany. (Kerner & Weitekamp 2013, 14) Cases of intimate partner violence play a minor role in the work of these organisations. A recent survey shows that of 224 restorative justice organisations only 50% work with cases of intimate partner violence and that for 70% of those with case experience intimate partner violence cases constitute only up to 10% of their work load. (Kerner & Weitekamp 2013, 24) Restorative justice statistics which differentiate along conflict types state that 16.1% of cases of restorative justice (N=1.697) are intimate partner violence cases. (Kerner, Eiken & Hartmann 2012, 25)

### **3.2.7 Compensation of crime victims**

The crime victims compensation act (*Opferentschädigungsgesetz OEG*) from 1976 regulates compensation for persons who experience bodily harm as a consequence of a crime or an act of emergency assistance. Basic idea of this act is that the state has the exclusive right to fight against crime and therefore is responsible for the protection against violence. Victims of violence should therefore receive state funded compensation for economic damages resulting from bodily harm by victimization. For receiving compensation, formally a conviction of the offender is not necessary, an application has to be filed. Victims may obtain compensation in form of pensions, therapy and care. Compensation is open to all victims of violence and therefore also applies for intimate partner violence cases.

Recent research on the issue showed that only about 4% of all persons who make a criminal complaint on the grounds of experienced physical or sexual violence apply for crime victims compensation and only one in every three /to one in every four applications is granted. Thus about one or two victims of physical or sexual violence known to the police out of one hundred victims receive crime victims compensation. Compared to police statistics (*PKS*), where cases of intimate partner violence make up to 22% of all cases, only 13% of all applications for compensation of crime victims come from victims of intimate partner violence (for the year 2008). Grundel & Blättner (2010) suggest a structural discrimination of women as victims of intimate partner violence as regards their options to receive compensation of crime victims following the OEG.

## 4. State of the art regarding victims' needs and victims' rights in Germany

### 4.1 Existing research on victims' needs

#### 4.1.1 Who initiates research?

For Germany it can be stated that in general there is much more research on aspects and among actors of the social support systems than on aspects of the judicial system. This may have to do with the kind of actors who launch research and evaluation activities. In the field of intimate partner violence a huge and differentiated network of institutions and lobby organisations has developed over the last four decades and the topic of intimate partner violence is a highly "political" one which had been set on the agenda by the feminist movement. Also at the side of the public bodies intimate partner violence tends to be more a topic of actors dealing with social aspects than judicial aspects. While only few and small studies were issued by the Federal Ministry of Justice and Consumer Protection (*BMJV*), a couple of the large scale surveys on the issue have been launched and financed by the Federal Ministry for Family, Seniors, Women and Youth (*BMFSFJ*). With new tasks assigned to the police during the last 12 years, the police also became a crucial actor in the field of intervention. Therefore also the police and respective public bodies and departments responsible for the police collect data and evaluate intervention activities. On the side of scientific research we also find social sciences as the predominant discipline in the field of DV.

#### 4.1.2 How is the topic of victims' needs in general dealt with?

In Germany systematic empirical research on intimate partner violence, family violence and violence in social proximity mainly focuses on victimisation, but also encompasses information about access to social support, intervention and the justice system. The topic of victims' rights and needs within the justice systems and proceedings beyond "the entrance door" is covered – if at all - more by small scale research mostly based on surveys among experts in the field. Only few studies are based on interviews with victims. On occasion of ten years of the Act for Protection against Violence some inquiries on professional experiences and assessments of the Act have been conducted. Those evaluations have often been launched by umbrella organisations of support organisations. Victims' needs had not been the main objective of these surveys. But it is clear that the perspective of practitioners is to lobby for protection against violence and full access for all to victims' rights in law and justice.

In 2012 a survey on the victim protection und support system in Germany - financed by the Federal Ministry of Family, Seniors, Women and Youth (*BMFSFJ*) - has been published (Helfferich & Kavemann 2012). The authors point out that this kind of stock-taking of infrastructure is not directly a survey on victims needs but nevertheless gives hints whether needs are met and gaps in the provision of support exist (Kavemann 2013a). As central and guiding aims and criteria for the system of victims support the survey supposed:

- Availability of protection for each woman in acute danger of violence (women's shelters/ banning and protection orders),
- access to social and judicial support for ending violence (counselling/pro active approach),
- realising victims' rights (information, legal advice) and
- help for coping with the experiences of violence (counselling, therapy, victim compensation).

The authors point out that victims needs are heterogeneous and partly ambivalent. They depend on different factors: the time that has passed since the last violent event, the time pattern and intensity of violence, the level of risk and endangering, the grade of traumatisation, the destructive effects of violence, the individual life situation and future plans and the access to information about their rights. Of crucial importance is the quality of the first intervention which may lead to the emergence of further support needs and trust in the supporting system. All these aspects influence the needs and possible demands for protection, legal advice, medical help, psychosocial support and psychotherapy (Kavemann 2013b). The survey showed a serious gap in the provision of support: 90 % of women's shelters have experienced not to have enough space for matching the demand. This is a serious problem, as there is no alternative solution for women in need of shelter. The survey also reveals that a quarter of specialised counselling institutions for DV victims have a waiting time of two or more weeks. The provision with therapeutic support is not fitting the demand at all, there are very long waiting times reported. (Kavemann 2013 a)

A recently published interview based survey on victims' experiences with the social support, intervention and justice system in Switzerland found out that the needs of victims and the aims of the institutional intervention system match to a high degree. Victims needs and wishes can be allocated along three main strands: Aims are

- to stop violence,
- the protection against violence and support,
- to hold the offender accountable and receive support for changing the behaviour of the offender. (Gloor & Meier 2014, 335)

Experts in the field of intimate partner violence often point out that the majority of victims want to live safely and seek help and support for ending violence. Most victims want to change the offender's behaviour instead of punishing him. For many it seems therefore of no use to press charges, because they do not expect that this might help to end violence. This is particularly reported for elderly victims of intimate partner violence after a long relationship (Nägele et al. 2010, 261ff). But other victims perceive criminal prosecution as an option to change the offender's behaviour and to force him to reflect on it (Libuda-Köster 2002)

#### ***4.1.3 Data and research on victimisation and access to social support, intervention and justice system***

As mentioned above there are much more large scale surveys on victimisation than on judicial proceedings. Victimisation surveys however also contain information about access to the support, intervention and judicial systems and thus about the first step to and (quantitative) relevance of the protection system.

At the national level questions on family violence have been included in representative (dark field) victimisation surveys. Recently the Lower Saxony Research Institute for Criminology (*Kriminologisches Forschungsinstitut Niedersachsen, KFN*) has published the results of a national victimisation survey (financed by the Federal Ministry for Education and Research *BMBF*), which proved a decrease of the 5-years-prevalence-rates for family violence among men and women compared to 1992 (from 16% to 11,4 %) in Germany; this can be traced back to a decrease in 5-years-prevalence-rates for severe DV among women from 12,5 to 8,1 % (Hellmann 2014, 130f). 19 % of female victims of intimate partner violence reported to the police. (Hellmann 2014, 124)

As regards research at the level of federal states Lower Saxony is the only one where a representative victimisation survey (N=14.241) has been conducted, based on a questionnaire. Intimate partner violence against women and men was also an issue and analyses were made on access to support and the criminal justice system. It showed for domestic violence a one year prevalence rate of 9,4 % for 2012 among the female respondents. 11% of all cases (not differentiated between men/ women) of physical partner violence were reported to the police. By comparing these data with police crime statistics the authors derive a reporting rate of 1:9 in cases of physical partner violence. The number of cases with measures according to the Act for Protection against Violence is so small, that it is not even indicated in the report. Being asked which type of support was important to cope with the situation 72% of the victims of intimate partner violence mentioned friends as most important, 55% family, 16 % therapy and 11 % medical help, 10 % the clergy and less than 1 % mentioned victims support agencies. (LKA Niedersachsen 2014)

The first national representative dark field survey with 10.264 interviewees was initiated and financed by the Federal Ministry for Family, Seniors, Women and Youth (*BMFSFJ*). It focused on violence against women by known and unknown offenders. (Schröttle 2009) Although the survey took place already in 2003, it is still a very important source of information about intimate partner violence in Germany.

It contains data on different forms of victimisation and on knowledge and use of support systems. It identifies aspects of vulnerability / characteristics of different victim groups concerning age, migration, education, economic situation and kind of relationship. 13-20 % (differences between interview / drop-off questionnaire) of participants living in a partnership indicated to be affected by violence of their current intimate partners. About 60 % of women affected by intimate partner violence had information about support services for victims, but services were less known by older women, migrants, disabled and low educated women, many of those at the same time overrepresented among the victims of intimate partner violence. Only 11-17 % (differences between interview / drop-off questionnaire) of women affected by severe forms of partner violence had reached out for support.

The results of the recently published European wide survey on violence against women (FRA) confirm the results of the preceding German survey. (bff 2014)

In 2009-2011, a national quantitative survey on victimisation and discrimination of women with disabilities (N= 1500) living in private households or residential institutions was conducted. It was again launched and published by the Federal Ministry for Family, Seniors, Women and Youth (*BMFSFJ*) (Schröttle & Hornberg 2013). The need of systematic research on this group had emerged from discussions among civil society and umbrella organisations after the evidence of a high vulnerability of this group had been shown by smaller scale research projects on violence in residential institutions (Fegert et al 2006) as well as the above mentioned national victimisation survey on violence against women. The survey on women with disabilities showed that twice as much women with disabilities were affected by intimate partner violence as the average of all women. Even four times as much suffered from sexual violence by their partner. These alarmingly high rates of victimisation by a current partner seemed to be closely associated with experienced violence of the victim in her childhood as well as by staff/ cohabitants in specialised institutions. The access to support agencies and to the criminal justice system was hindered by a high dependency and isolation particularly in residential institutions („closed systems“), partly limited communication resources, a lack of knowledge and accessibility of support agencies as well as the pre-supposition of victims not to be

taken credible by the institutions. In the field of support agencies recently many activities have been launched to optimize the accessibility for women with disabilities. (see below)

In the area of registered cases of intimate partner violence the criminal departments of the federal states often publish data on cases to the police and numbers of proceedings according to the Protection against violence Act. Statistics on clients in social support organisations for victims of intimate partner violence which are published at the national level by umbrella and lobby organisations (of women's shelters, counselling institutions and intervention centres) also serve as an important source of information about access to the social support and the criminal justice system.

In order to reduce barriers of access to the yet existing local support system for victims in 2013 a national 24-hour-helpline for women affected by violence (*Hilfetelefon Gewalt gegen Frauen*) was established. It serves as a low-threshold offer of initial consultation and referral to the local support system. It is accessible in different languages and with different and barrier reduced ways and technical means of communication. Recently it has published the first clients' statistic and an analysis of calls and cases including information on police contact if reported. It showed that 9 % of the clients (at minimum) were women with a disability which is compared to other support agencies a high percentage (*Hilfetelefon Gewalt gegen Frauen* 2014). This number fits the share of disabled persons in Germany while the percentage of clients with disabilities reported by local victims' support agencies is with 6,5 % lower. (Schröttle & Hornberg 2013b, S. 116)

#### ***4.1.4 Data on experiences and needs of victims of intimate partner violence / violence in social proximity in the (criminal) justice system***

The existing research and data on judicial proceedings is of much smaller scale than the representative victimisation surveys. So far no systematic and regular evaluation of the Act for Protection against Violence has been undertaken aside from the evaluation of its implementation at national level (Rupp 2005).

Only few victims' surveys on intervention and judicial proceedings have been carried out yet that would allow a detailed assessment of victims' needs from their own perspective. These approaches often face problems in acquiring participants. These problems are due to emotional stress on the part of victims and low numbers of potential interviewees caused by a generally low number of reported cases and pressed charges. In the field of intimate partner violence there is far more research and evaluation on victims' views on police intervention than on court proceedings. Analyses of victims' interviews denote positive experiences with police forces specialised on intimate partner violence during inquiry, to a smaller degree also with the uniformed police. More negative experiences are reported related to court proceedings and the outcomes. (Libuda-Köster 2002, Greuel 2009, Schröttle & Hornberg 2012a)

Greuel (2009) who had interviewed 12 victims of intimate partner violence about their experiences with police intervention and partly with court proceedings depicted a polarisation of very positive and very negative experiences with uniformed police. Criteria for positive assessment from victims' perspective were to feel supported and effectively protected and to be treated with respect and empathy. Negative experiences with the police force were made by all victims of stalking in the sample, they felt partly blamed by the police and not taken seriously. (Greuel 2009, 174ff)

While the experiences with uniformed police were ambivalent, the experiences with the investigation officers were unanimously positive, which can be explained by the fact that these are mostly specialised and better qualified.

Concerning the outcomes of police intervention and measures according to the Protection against Violence Act, most victims estimate these as effective protection measures. Some victims experience a gap of protection in cases of violation of a protection order, because an effective sanction is not available. (Greuel 2009, 186) This confirms many experts' statements on this gap.

As it comes to the judicial system "the assessment by victims who had contact with courts turn out dramatically negative" due to the duration of proceedings as well as aspects of how the proceedings are managed. One example is a lack of information for victim witnesses about the trial. Furthermore, particularly victims of stalking had the impression judges would not take the acts of stalking and the menace by it seriously. (Greuel 2009, 188ff)

At the local level Libuda-Köster (2002) carried out a survey among victims of intimate partner violence after police intervention. The survey took place at an early stage of the establishment of a pro-active police intervention approach. 57 victims (about 9 % of all women addressed) answered the questionnaire and additionally 11 qualitative interviews were conducted. According to the results the main assessment criteria and needs of victims are to end the acute violent situation and at the same time to name the violence as wrong and the offender as responsible and on the other side to be confirmed in their experience of being a victim of violence. (Libuda-Köster 2002, 47ff)

#### ***4.1.5 Victims protection rights and protective measures are limited for certain situations and target groups***

Ten years after the enactment of the Act for the Protection of Violence a number of inquiries and assessments took place in order to better understand the effects of the law. Within these different research and evaluation activities data and information have been collected on experiences and problems with the implementation of the law. These data and information on victim protection needs enable to identify common problems and necessary changes in order to better meet victim protection needs. The identified problems for certain target groups and situations focused in this chapter mostly do not explicate victims needs in a positive sense. Instead they refer to the presupposed need of having full access to victims' rights and to the system of protection, support and justice which is estimated as not fully being realised for all.

#### **Women with disabilities/ older women**

There are many overlaps between women with disabilities and older women related to problems with the access to help and protection, particularly if elderly women (or their partners) are in need of care. (Nägele et al 2010, 286) In general, the discussion about violence against women with disabilities and their victims' rights in the criminal justice systems considerably increased in the context of the UN-Convention of rights of persons with disabilities.

Analyses of the outcomes of the Act for Protection against Violence come to the conclusion that protection measures aiming at separating victim and offender hardly can be imposed in cases when the victim is depending on support by the violent partner or the other way round. This is particularly the case when (older) women are responsible for the care of her partner or the other way round and alternative care solutions are not available on the short run. (Kotlenga & Nägele 2013. 34 f) Only 5 % of women's shelters indicate to be well prepared and equipped for women with disabilities and

special needs (among them also women with a high need of support due to psychic illnesses) (Grieger & Göpner 2013, Kavemann 2013b). It has also turned out that younger and older women with disabilities often need practical support in activities of daily living and in developing and realizing changes. This means the need to involve a variety of third parties. (Kotlenga & Nägele 2013, 28 f)

Already before the discussion about the implementation of the UN-Convention in Germany emerged, some small scale expertises about persons with disabilities as victims of violence of known and unknown offenders and their experiences in court proceedings were published. According to Zinsmeister (2008) persons with physical disabilities often face communicative barriers; persons with so called learning disabilities are often prejudged as non credible or not ready to make a statement. It is often the case that women with disabilities are in fact excluded from their right to take incidental action and from witnessing against the offender. Additionally often women with disabilities do not have a lawyer (Schröttle & Hornberg 2013b, 103)

Qualitative interviews with 30 victims were conducted in addition to the quantitative survey (Schröttle & Hornberg 2013a) on victimisation of women with disabilities. Experiences of victims of violence with the police and the justice system was one of the topics of this qualitative research. The results confirm that women with disabilities often face difficulties to undertake incidental action as a witness against the offender; in the majority the experiences with the police were assessed positive particularly since the Protection against Violence Act is in force; the women appreciated that the police came, helped and even supported them in solving organisational problems. Negative experiences were reported when women had felt not being taken seriously or credible by the police. Some also felt discouraged by their own lawyers who on the one hand wanted to keep away emotional stress from them and on the other hand assumed that women with disabilities might not appear credible and might be unable to testify properly before court. Women living in residential institutions faced sometimes the problem not to be able to turn to the police without consent and assistance of the management and staff. Also in the frame of the quantitative survey few victims reported their experiences with police and the justice system. The majority of victims covered in the quantitative part of the survey stated – different to the more positive results in the qualitative survey – that they had not been taken seriously by the professionals, though some made positive statements. One important result is that all women affected by sexual violence said that they had been very embarrassed and were not taken seriously. (Schröttle & Hornberg 2013 a, S. 226)

Lobby organisations claim that women with disabilities should generally be entitled to be provided with psychosocial process support (see above) in order to better be able to cope with the criminal proceeding; a demand is therefore to adapt the code of criminal proceedings. (Staatliche Koordinierungsstelle nach Art. 33 UN-BRK 2012)

Lobby organisations of women with disabilities criticize that sexual offenses against disabled women are in many cases not prosecuted as rape, but as sexual abuse of persons who are not able to defend themselves. Sentences for this crime are far less than for rape. Lobby organisations therefore call for an amendment of legislation on sexual crimes. They emphasize that disabled women are not in general non-resistant and even if so abuse should be sentenced the same way. (Weibernetz 2014)

## **Migrants**

Women who live in Germany as asylum seekers face severe obstacles when they seek for protection and want to make use of victims' protection rights. In many *Länder* they are not allowed to leave or change their place of residence (so called residence obligation) even if this is necessary to gain

protection e.g. due to a lack of safe accommodation or social support at their current place of residence. (Region Hannover 2013)

Another lack of protection emerges if migrant women do not have an own right of residence in Germany but are entitled to reside in Germany only due to marriage with the offender. Only after three years of marriage and cohabitation these women gain an independent residential right. The necessary duration of marriage and cohabitation has even been extended in the past. From this obligation the local administration can decide only in so called hardship-cases which is in many cases denied. Due to this regulation many women are forced to stay with their offender if they don't want to lose their residential right. (Terre des Femmes 2011)

In general many migrant women face communicative barriers. This reduces access to and use of social support agencies as many of them (especially in more rural areas) don't have possibilities to use and to finance interpreters. Against this background it is therefore reasonable that some local support agencies with no access to interpreters try to make use of the provision of foreign-language counsellors at the recently established national Helpline for victims of violence. Counsellors from the local agencies try to involve foreign language staff at the Helpline by telephone conferences or skype. (Hilfetelefon Gewalt gegen Frauen 2014)

For criminal proceedings the use of an interpreter is in general possible, but the availability during trial depends on the discretion by the judge. Practitioners report that judges often decide against an interpreter. At the local level there is often a lack of sworn interpreters accepted by the court and it is hard to find unsworn interpreters who do not have contact to the community of victim and offender. (bff 2012)

### **Women with children**

The protection against violence of women having children with the offender is still a great problem. This is stated by 70 percent of social support organisations (specialised counselling and intervention centres on DV) who answered to a questionnaire of the umbrella organisation bff (Bff 2012, 3). The conflict between the right of contact and the right for protection against violence is estimated as the biggest problem for the protection rights of women and their children. (Göpner & Grieger 2013, 57) Also many other experts in the field of social and judicial support for victims of intimate partner violence - mainly lawyers - state the tension between the fathers rights of contact on one side and the protection rights of the victimised mother on the other.

At a national Conference for balancing 10 years of the Act for Protection against Violence lawyer Christina Clemm summarised the situation to the point: "By rights of contact or joint custody all protection orders are being undermined. In lots of cases the protection against violence orders excludes restraining orders and the prohibition of contact and access in favour of contact with joint children. Offenders use this to justify the contact with the mothers" (Clemm 2012, 22).

Women hope to escape from the violent situation by breaking up with the offender. They want to be able to restore safety of themselves and their children, to calm down with the situation and re-establish normal everyday life. (Göpner & Grieger 2013, 57) On the other side a German federal representative study indeed concluded "that breakups and divorces are the most dangerous situations for women to become a victim of physical and/or sexual violence by their (former) partner" (Schrötte 2008, 103). The representative nationwide victimisation survey proved that 41 % of female victims of intimate partner violence and 15 % of their children experienced violence in situations of child contact. (Freie und Hansestadt Hamburg 2014, 49) Each contact offers new

opportunities of violent acts against children and women and at the same time may provoke violent aggressions (bff, 12).

As a reason for this lack of protection of mothers the experts state that family courts mostly judge the right of contact of the offender higher than the right of protection. At the same time many youth welfare offices do not estimate intimate partner violence as endangering the child's best interests (bff 2012, 3). The consequences for mothers and children are severe: Being witness of (repetitive) violent situations has a high impact on the involved children. Stress caused by fear and insecurity has a negative influence on the cognitive development and the immune system of children (Kavemann 2013a). Although these influences are proven, family courts and youth welfare offices do not recognize them sufficiently (Göpner & Grieger 2013, 57). If problems in the contact between offender and children arise, women often are estimated uncooperative and blamed for not being able to separate inter-marital matters from parental matters. Women thus face the danger to lose custody for the children. The legal opportunities of accompanied contact or the temporarily interruption of the contact are in general rarely applied by courts and other institutions. (Göpner & Grieger 2013, 58).

These results show that there is still a need for action. Lobby and umbrella organisations claim for a better cooperation between the youth welfare offices and the family courts as well as an intensified application of accompanied contacts in dangerous situations. Intimate partner violence should also be qualified as endangering the child's best interest, no matter if children experience or witness violence. (Göpner & Grieger 2013, 59)

#### **4.2 Best practices regarding the protection and support measures for different groups of victims of intimate partner violence**

Best practises regarding the protection and support of victims related to court proceedings were described in chapter 2.2. Some aspects are added in the following.

In order to implement the UN-Convention on rights of persons with disabilities many activities have been launched also in the field of protection against violence in social proximity by different bodies at the local, regional and national level. As one example one project of the umbrella organisation of counselling and intervention centres for DV-victims (bff e.V.) should be mentioned. The project *Zugang für alle* („access for all“) started in 2010. It aims to disseminate knowledge and methods among their member organisations how to create an easier access to social support and counselling for women with disabilities by lowering communication barriers. Within this project a lot of information material has been translated into easy language and was provided to the local support agencies. Availability of information in easy language is meanwhile quite common at the local level. The project also aims at strengthening counselling competences necessary to deal with special needs of victims with disabilities among the member agencies.

Also by some federal states activities have been started in the context of the implementation of the UN-Convention. As an example the *Land* Hesse has launched an action plan in 2011 in order to realize respective activities. This action plan integrates aspects of protection against violence in social proximity. As one measure further education to inform and sensitize police, public prosecutors and courts for special needs of victims with disabilities is planned. Another approach is the obligation of (residential) institutions for persons with disabilities (often financed by the federal states) to work out prevention guidelines and intervention procedures for cases of violence against residents by staff or other residents. Further on these institutions will be obliged to establish women's

representatives. Hesse will additionally undertake a survey among these institutions (financed by the *Land*) on staff, resources and supporting structures in cases of violence in social proximity.

As mentioned above competences to support victims in criminal proceedings particularly with respect to groups of highly vulnerable victims (e.g. traumatised women, women with disabilities, women in need of care) should be increased among judges and lawyers and social support agencies. During the last years many workshops and events have taken place on the topic of „trauma and justice“ and victims needs in judicial proceedings. In order to strengthen diversity competences of judges and lawyers recently a project has been launched by the German Institute for Human Rights, a public institution responsible for coordinating activities in the context of the UN-Convention of rights of persons with disabilities. The project *Anwaltschaft für Vielfalt und Menschenrechte* (advocacy for diversity and human rights) refers to the rights of persons with disabilities to have effective access to the legal and judicial system.

#### 4. Summary and main conclusions

In the German Criminal Code no specific regulation on IPV exists. Offences are treated under the Criminal Code. To ensure a better protection of victims, in 2002 the Act for Protection against Violence was enacted as part of the German Civil Law. Additionally police laws were adapted. Both legislations now follow the principle “whoever commits violent acts must leave”. In crises intervention now police is entitled to ban perpetrators from the home immediately and for a limited period of time and subsequently victims can apply at family courts for protection orders and for allocation of the home. Additionally a referral system from the police to victims’ support organisations has been implemented. For the support and protection of victims a system of nongovernmental support organisations exists including a national helpline, shelters and counselling and intervention centers.

After receiving a report about IPV, the police are required to investigate the case. Although IPV cases should usually be considered as being of special public interest, minor offences are often only prosecuted following the application of the victim. As regards investigation mechanisms for cases of IPV, all police forces impress upon their officers the severity of the nature of IPV. With specific training and guidelines police is advised to specifically handle these cases. Police guidelines and laws refer to questioning procedures, to information and referral duties (regulations, support, documentation), to cautioning the offender and impressing the severity of the offence upon him and to banning the offender. Here problems arise with persons with functional limitation dependent on the other partner. The assessment of risk for recidivism, escalation and homicide is seen as a crucial task of police officers dealing with IPV-cases. No standardized risk assessment instrument is in common use by German Police up to now. Some police forces have developed instruments, but these lack scientific basis and evaluation; a model project is about to start in one *Bundesland*.

The public prosecutor decides whether there are sufficient grounds for indicting the suspect. The majority of IPV cases are dismissed, reasons for that often being often lack of sufficient evidence, as victims in most cases are the only witnesses and many refuse to give evidence, lack of public interest

and minor guilt of the perpetrator. Prosecution may be terminated conditionally or unconditionally. In some *Länder* specific sections within the public prosecutor's office deal only with cases of IPV/DV.

The judge as well as the public prosecutor may also dismiss the case (conditionally or unconditionally) or impose criminal sanctions. Some problems in judicial proceedings are described. At court, the possibility of separate hearings is mostly not used and lawyers criticize scarce information for private accessory prosecution on the proceedings.

Related to investigation and criminal proceedings multifold procedures and measures exist which are aimed at supporting and protecting crime victims in general, a few are designed to support specifically victims of IPV. Some of the described procedures and measures are based on laws, others are (model) projects which are limited to specific regions. One approach is the free medical examination and storage of evidence by forensic specialists, it extends the victims' options for criminal prosecution. In general only a small number of victims make use of those services. Another important approach is the support of victims in criminal proceedings both by nongovernmental organisations and court related staff. Following the Austrian example psychosocial process support is now possible, but the service is not guaranteed up to now and not state funded, so it depends on the availability of services which is very different across the country and especially rural areas lack far behind. It is under debate to entitle very vulnerable victims (children, adolescents) to the service. Regarded as helpful for victims of violence are also court assistant, who have as impartial assistants for the judicial process the task to investigate the personal social and economic background of the involved persons and in this function can take over counselling and referral tasks and / or give important information on useful conditions for dismissals. Given the fact that the main interest of many victims of IPV is to stop the violence and not criminal prosecution of the perpetrator, all instruments which support women to reach these aims are potentially useful. Restorative justice is an instrument, which with clear limits and only under certain conditions has the potential to supporting victims' needs in that sense. But in fact it is used not very often in cases of IPV: only 10 to 16% of all restorative justice cases are cases of IPV. Financial compensation for crime victims is regulated in the Crime Victims Compensation Act; but victims of IPV constitute only 13% of all applicants.

As it comes to victims' needs, surveys indicate that for many cases access to police and any kind of support is not given yet. Representative dark field studies indicate that a high percentage of cases of IPV do not come to the knowledge of the police, and that 11-17% of women affected by severe forms of violence had never reached out for support. The studies also show that 40% of the victims are not informed about support organisations and thus cannot make use of them. More vulnerable victims like women with disabilities and migrant women experience even more problems in the access to services. As regards victims' needs this means that basic needs for information and access still exist.

Once within the criminal justice system, women's needs are heterogeneous and partly ambivalent. Women in the first part want to live safely and seek help and support for ending the violence. Many women want to change the offender's behaviour; some explicitly don't want criminal prosecution, because they expect only negative effects for themselves, others expect that criminal prosecution may lead the offender to reflect on his behaviour and may lead to a change of behaviour. Other interests of victims are to gain an official confirmation, that they had been the victim of non legitimate violence, and that the offender is responsible for his behaviour.

Evaluation of victims' experiences within the criminal justice system more often focus on police intervention and access to social support than on court proceedings. The main reason for only little research on victims needs and experiences in criminal proceedings may emerge from the actors and stakeholder structure in that field. At the site of the civil society mainly networks of social support organisations have been launching activities and studies, at the site of public bodies hitherto the Federal Ministry of Family affairs, Senior citizens, Women and Youth can be seen as the main policy actor and has initiated and/ or financed many studies and activities. While only few and small studies were issued by the Federal Ministry of Justice and Consumer Protection (*BMJV*), a couple of the large scale surveys on the issue have been launched and financed by the Federal Ministry for Family, Seniors, Women and Youth (*BMFSFJ*). Further, due to limited case numbers in conjunction with a high degree of emotional stress it is difficult to gain participants for studies on that issue.

As regards the police, positive experiences are reported in general. Positive feedback is given specifically in relation to police forces specialized on IPV; ambivalent experiences are reported from victims of stalking and from women with disabilities. Though protection measures are mainly seen as effective, a protection gap arises when the breaching of protection orders is not effectively sanctioned. Mainly negative experiences are reported from court proceedings. A role play here the duration and management of proceedings, e.g. the lack of information for victim witnesses.

Research on specific groups of victims – victims in specific situations – reveal specific needs also in relation to the criminal justice system. Relevant aspects are the non-applicability of crises intervention concepts by the police aiming at an immediate separation of victim and offender for persons with support needs, communicative barriers for migrant women and women with physical disabilities, the perception of women with learning disabilities as not willing to testify or not credible in court proceedings. Additionally difficulties are reported for victims with disabilities to undertake incidental action as a witness. Victims of sexual violence with disabilities report that they had been deeply embarrassed and were not taken seriously by police and court – which leads to claims that for this group of victims psychosocial process report should be guaranteed. A controversial issue is also the availability and funding of interpreters for migrant women and the reduction of communicative barriers also for women with learning disabilities.

Although the Act for Protection against Violence is seen as a milestone in policy on IPV and many improvements are seen, some problems related to the support and protection of victims of IPV still remain. Problems arise if the offender and the victim have joint custody for children and protection needs collide with contact rights, and when family courts promote settlements instead of orders. Victims' support organisations also report about problems reinforcing protection orders and proving violations, other problems relate to slow decisions. Risk assessment in judicial proceedings and further training of judicial staff is seen as necessary.

The literature review shows that access to the law enforcement system and to support services is in many cases not given. Responses to cases of intimate partner violence by the police and justice system have improved, but still can and should be improved. Better assessment of the needs of victims and risks and subsequently better support is possible and necessary. A special focus should be given to vulnerable groups of victims. There are some activities in the field of prevention and support for victims of criminal acts with disabilities but not only focusing on IPV and not specialised

on criminal proceedings. Nevertheless these activities are to be estimated as relevant practises and approaches also for IPV-victims.

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