On the Point of the Protection of the Crime Victim in the Criminal Procedure in Germany

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Abstract

In Germany has itself, a movement originating in many European countries following, since the 70er years of the 20. Century in the public debate and then also in the technical discussion as well as with the legislation organs more and more strongly the displeasure over it expressed, that the interests and right of the victim structurally too shortly come in the criminal right. As fruit of many demands and debates, that became in May 1976 in Germany a law about the compensation for victims of atrocities. The state took over the obligation to help such victims of force offenses with for example sick person welfare or a pension, that neither can still get help from a perpetrator from an insurance. It then lasted approximately 10 years after the law until also the position of victims was clearly strengthened in the German criminal process. This happened through this. First law about the improvement of the position of the injured person in the criminal procedure from December 1986. Since this shortly as victim protection law. The law marked the victim of the help of a victim lawyer can serve itself in the process. The possibility to exclude the public is widened in favor of the victim. The recompense the through the offense of suffered damage in favor of the victim becomes improves through the priority of the claims of the victim before the state claim to the fine at the criminal execution. Through the witness protection law of December 1998, further possibilities arrived arrived, according to the video interrogation, to spare the appearance about the victim in the main negotiation, or the Beiordnung of a lawyer at state cost, if protection-worthy interests of the victim cannot be guaranteed differently.

Second rail has developed the consideration of opera interests from the Victimology out. Among other things one found out with many victim examinations so that victims wish a real punishment of the perpetrator with a criminal penalty only with quite heavy offenses and especially reprehensibly dealing perpetrators. With middle-heavy or easy offenses, anyway in European countries, a quite different interest apparently stands in the foreground: The interest, to attain recompense of the damage and to get another balance for the pains and other unpleasant Tatfolgen if necessary. Besides damages and compensation for personal suffering, victims also often want to understand, however, why exactly they were involved themselves and not other people. Through a classic criminal procedure and of course really through the perpetrator's mere punishment is not managed from the way such a conflict. The idea, instead of a punishment or, if the action is so heavy that it from justice, expiation, or vengeance reasons for penalty doesn't go to get a conflict balance also beside a punishment, part of an internationally increasing movement is meanwhile. Central parts of this movement are harm recompense oder/und Taeter-Opfer-Ausgleich. It runs so named under the bigger concept of this today altogether. Mediation. (--which also in other fields of law as the area of the criminal right's growing meaning wins--) or the concept of this. Restorative justice., therefore the balancing or restoring criminal jurisprudence.

In Germany, the legislator has himself the thought property of this movement since the 90er years of the 20. century for the first time seriously. First, the youth court law was reformed in the year 1990. Since then, already the youth prosecuting attorney can give up the transaction of a Strafverfahrens against young perpetrators between 14 and 18 years, as an exception also against young perpetrators between 18 and 21 years, if the perpetrator gained a balance with the victim or took the trouble therefore after best own strengths anyway to gain such a balance (§45 paragraph 2 of the youth court law). JGG. In the later proceeding, the youth judge can discontinue the procedure (§47 JGG). If a main negotiation and a judgment occur, the judge can order the recompense of the damage (§15 JGG) instead of a penalty or can give the instruction at the perpetrator to try to obtain Taeter-Opfer-Ausgleich intensively (§10 JGG).

With the Verbrechensbekaempfungsgesetz of December 1994, the damage recompense and the Taeter-Opfer-Ausgleich were introduced also in the adult criminal right as special possibilities. These possibilities were

reinforced additionally by further law by 1999 for the criminal process. Now, it is in a way that public prosecutor's office and court should keep an eye §155 on it, whether doesn't come damage recompense or conflict balance in consideration between victims and perpetrators, in all stages of the criminal process a StPO. Public prosecutor's office and court can discontinue the criminal procedure for the time being and can give the perpetrator the edition to do the damage again well or itself serious, to trouble about peace-speaking. In the rule, this then should happen through the turning on of a conflict mediator. If the total succeeds successfully, the procedure can finally be discontinued against the perpetrator without penalty, §153 a StPO. If however, a main negotiation, because however, the offense was quite heavy, occurs, the court can be content in the case of prevailing damage recompense through the perpetrator or in the case of sufficing peace-speaking with speaking the perpetrator guiltily and then refraining from penalty. With penalties for one year, the court can apply at least a milder range of punishment, § 46 a StGB. Quite generally, there is the possibility for the criminal court, recompense efforts of the perpetrator at every punishment generally criminal-extenuating, to take into account, §46 sales 2 StGB.

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