"Victim Protection in Criminal Proceedings Legislation: A pan-European Comparison"

Country Report: Germany

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We report on the legal situation in Germany:

Does your country’s legal structure differentiate between the civil and criminal legal consequences of an offence?

If so:

What consequences are laid down by civil law (e.g. damages, compensation for pain and suffering)?

The German Civil Code (BGB) obligates any person who has committed a "civil offence" to pay damages and compensation for pain and suffering.

According to § 823 Para. 1 BGB, any person who has wilfully or through negligence caused unlawful damage to a person’s life, body, health, freedom, property or other right must pay the injured party damages. § 823 Para. 2 BGB establishes the same obligation for any person who has wilfully or through negligence infringed a protective law. These protective laws comprise all penal laws in particular. Payment of damages must provide that the injured party is returned to such a state that he would have been in without the damaging event having occurred. In the case of the unlawful killing of a relative, the dependants may demand a regular payment from the offender that corresponds to the level of the victim’s maintenance obligation for the estimated length of his life (§ 844 BGB).

Compensation for pain and suffering can be claimed according to § 253 Para. 2 BGB (earlier, according to § 847 BGB) if damages must also be paid because of injury to the body, health, freedom or the sexual self-determination of a person. The payment of damages should balance out the immaterial damages. In this way, payment of damages serves two functions: first, the injured party should receive equivalent compensation for pain and suffering caused. In addition, damages should also constitute a reasonable amount to compensate for what the offender did to him. The only legal criteria for estimating the amount of compensation here is the criteria of fairness. The punishment the offender receives does not lessen the amount of damages to be claimed. Contributory negligence on the part of the injured party – as with estimation of the damages – must also be taken into consideration here.

Furthermore, the administration of justice safeguards negligence and settlement rights, if absolute rights such as life, health, freedom and honour are unlawfully (and also, but not necessarily culpably) impaired and the impairment is ongoing or if further impairments may be expected.

What consequences are laid down by criminal law (e.g. fine, custodial punishment)?
General criminal law primarily comprises fines and prison sentences as consequences of a crime. In addition, steps regarding rehabilitation and security, e.g. admission into a psychiatric hospital, a treatment centre for addicts or preventive detention can also be taken if necessary because of a certain illness or addiction related danger posed by the offender (§§ 61 ff StGB [Criminal Code of Germany]).

Fines are imposed as a daily sum, the amount of which is based on the personal and financial circumstances of the offender and may be up to 5000 Euro. At the most, 720 daily sums may be imposed (§§ 40, 54 StGB). The fine is paid to the national Treasury. If the offender does not pay the fine, a day’s imprisonment may be imposed per daily fine (§ 43 StGB), which, under Lower Saxony law, may be exchanged for free labour. A fine of up to 180 daily sums may be held for a probationary period of one to three years (§§ 59 ff StGB). For the duration of the probationary period, the offender may be subject to special (preventative) conditions.

Prison sentences may be from 1 month to 15 years at the most (§ 38 StGB) in which certain guidelines apply depending on the type of offence (e.g. for grievous bodily harm, from 6 months to 10 years’ sentence). A life sentence may only be imposed for exceptional circumstances, e.g. murder. A prison sentence of no more than two years may be suspended for a minimum of two years and a maximum of five years (§§ 56 ff StGB). As well as preventative conditions, repressive conditions may also be imposed upon the offender here for the duration of the probationary period.

In contrast, juvenile criminal law, which applies to juveniles (14 to 17 years) and also – for late maturity – to adolescent (18 to 20 years) offenders, is primarily educational. Fines, therefore, do not apply at all and prison sentences in the form of detention in a young offenders’ institute applies only if this is unavoidable on educational grounds or because of the severity of guilt (§ 17 JGG [Juvenile Justice Act]). The main points are educational conditions and stipulations and short detentions of up to a maximum of four weeks. A possible condition here is endeavouring to reach a settlement with the injured party (Offender-Victim-Settlement; § 10 JGG). As a stipulation, the offender may be required to do everything possible to make good the damages caused by the offence and to personally apologise to the injured party (§ 15 JGG).

Are there mixed forms (e.g. higher damages, compensation ordered as a sanction, symbolic compensation)?

Mixed forms, which have both settlement and sanctioning characteristics, are recognised by German law with the measures mentioned in juvenile criminal law and in addition only in cases where a probation period has been granted with conditions and stipulations to endeavour to reach a settlement with the injured
party and to compensate the damages (§§ 56 b and 59 a StGB, 23 JGG). For details, see B. IV. 2.

What form do the procedural means of enforcing civil and criminal legal consequences take?

What are the decisive differences for instance in the procedural position of the victim or in the courts duty to discover the facts?

German law provides for independent procedural systems for both the civil process and the criminal process. Both procedures are independent of one another and lead to different courts. In both processes, therefore, the offender’s liability must also be established independently. It is possible, then, for both processes to lead to different outcomes.

In the civil process, the victim claiming for damages and compensation for pain and suffering is seen as biased and stands in evidence only under strict conditions. Principles of consideration and negotiation characterise the civil process. That means that it only comes to the civil process if one party institutes proceedings and that in the proceedings, only those facts are heard that the parties introduce into the hearing themselves. The initiation of civil proceedings and official resolution of the facts of the case do not occur. If the victim as plaintiff is unsuccessful in proving his claims, the action remains unsuccessful and is dismissed.

In contrast, the victim in the criminal process is the main witness and thus regarded as evidence. Under certain conditions, the code of criminal procedure provides him with certain rights, in particular the provision of a joint plaintiff (see C). Contrary to the civil process, the criminal process is characterised by principles of legality and investigation. This means that the prosecuting attorney’s office must initiate criminal proceedings if there is suspicion of a criminal act. The prosecuting attorney’s office and also, after the institution of a criminal charge, the court must then officially resolve the facts of the case and gather all the necessary evidence themselves.

Are there mixed forms? If so: what procedural model do they have?

In §§ 403 to 406 c, the code of criminal procedure provides for an adhesion process. In this process, the injured party or his heir (only) may assert proprietary claims for damages and compensation for pain and suffering caused through a criminal act, for which legal proceedings have not yet been started in a civil process.

The petition necessary for the assertion of the claim corresponds largely in its content to the action under civil law and has the same legal effects as this. It is subject to the consideration of the
petitioner. For the rest of the proceedings, however, the code of criminal procedural law is used. That means that the court must officially resolve the facts of the case strictly based on evidence. So far as the petition is based on the outcome of the main trial, the (criminal) court hears it. If the court cannot prove that the defendant is guilty, it still does not dismiss the case, but only refrains from making a ruling without legal effect. The court also proceeds in exactly the same manner if the case is not suitable to be resolved in the criminal process because proving it would delay the proceedings or because the case is inadmissible. The victim may then follow up his rights in the code of civil procedure.

So long as the court hears the claim for damages and compensation for pain and suffering in the adhesion process, the execution of the ruling is again based on civil process guidelines.

**Does your country’s legal order take efforts by the perpetrator which aim to provide personal conciliation with the victim (mediation) or compensation for the material or immaterial damage done to the victim into account? Will it acknowledge symbolic acts of compensation?**

**If so:**

**General Questions**

**Which perpetrator efforts to mediate or compensate will be considered (please give an overview in key-words)?**

One the one hand, German criminal law takes a personal settlement on the part of the offender with the victim into consideration. This means a communicative process between offender and victim which may also be conducted via a third party and is aimed at resolving the general conflict at the heart of the action. The outcome of such a settlement may be, for example, that the offender apologises to the victim, enters into reconciliation and pays him an agreed compensation for pain and suffering caused. In addition, the serious efforts of the offender to reach a settlement are also taken into consideration if these only fail because the victim is not prepared to enter into the necessary communicative process in order for it to be effective.

Furthermore, compensation of material and immaterial damage is taken into consideration. By this, it is primarily meant that payment of damages in money and payment of damages for pain and suffering occurs. In suitable cases, however, restitution in kind, e.g. through personal care for the injured party or through labour on the part of the offender to the benefit of the victim is taken into consideration. Finally, it is sometimes regarded as symbolic compensation if the offender pays for equipment for public use or provides labour to the benefit of the public in cases in which there is no individual victim.
Does it make a difference whether the legal rights of a natural person or those of another holder of legal rights (e.g. a company, the general public, the state) are concerned?

The laws do not expressly require that the opportunity for settlement or compensation is dependent on whether a natural person, a legal entity or the general public or the state is affected. They often speak, however, of a "settlement with the injured party" (§§ 46 a StGB; 10 JGG; 153 a StPO [code of criminal procedural law]) or that "the victim" was compensated (§ 46 a StGB). In practice, a personal settlement in the form of a communicative process between offender and victim may often only be realised if there is an actual personal victim that may be recognised. In contrast, the jurisdiction of the Supreme Court does not on principle rule out a mitigating consideration of compensation that exists primarily in payment, even in "victimless" cases for criminal acts against the general public or the state.

In detail:

Does your country’s legal system support a perpetrators efforts which are aimed at providing conciliation with the victim (mediation) or compensation for the damage caused,

before formal criminal investigation is initiated (e.g. in mediation or restitution proceedings initiated or accompanied by the state),

before the formal criminal court procedure begins

as part of the formal criminal court procedure

as part of the execution of punishment stage?

If so:

By which means does your legal system support these efforts?

Which factual conditions (e.g. seriousness of the offence, confession by the perpetrator) are associated with these means?

What rights and obligations do the victim and perpetrator have in these proceedings?

Can these proceedings be forced against the victim and/or perpetrator's will?

Outside the formal criminal proceedings:

The German code of criminal procedural law is mainly characterised by the principle of legality. It basically therefore leaves no room for settlement and compensation proceedings
initiated by or entered into with the state outside of the formal criminal proceedings. An exception applies to cases of minor misdemeanours such as, for example, actual bodily harm, threats and damage to property, in which prosecution by the prosecuting attorney’s office is not in the public interest and the injured party can therefore personally bring the criminal act before the court by instituting **private proceedings**, §§ 374 ff StPO.

Before instituting private proceedings, an **attempt at expiation** before settlement authority must have been undertaken, § 380 StPO. In Lower Saxony, this task is overseen by honorary regional arbitrators, who carry out the so-called settlement agreement in criminal matters in an oral and non-public hearing. The injured party as petitioner and the accused (offender) as defendant are fundamentally bound to appear in person at the oral hearing. Both may appear with a legal adviser. In the hearing, witnesses and expert witnesses may also appear voluntarily and be heard.

**Run-up to the legal civil proceedings and legal criminal proceedings:**

( 1 )

As soon as the criminal act comes to the attention of the criminal prosecution authorities, § 155 a StPO, which was added to the code of criminal proceedings in 1999, is employed. According to this, the prosecuting attorney’s office and the court should look for, and in suitable cases even work towards finding an opportunity to arrive at a **settlement between the accused and the injured party** at every stage of the proceedings. Cases deemed suitable for an offender-victim-settlement (TOA [Täter-Opfer-Ausgleich]) are not determined by the law. It demands neither a confession from the offender nor does it restrict the TOA to certain types of criminal offence. Suitability, however, must not be accepted if contrary to the express wishes of the injured party.

Establishing the authorities that carry out the settlement and the form of the proceedings to be adhered to has been transferred to the German Federal States by the Federal Legislature. In Lower Saxony, in accordance with the "**Guidelines for the Offender-Victim-Settlement in general Criminal Law**", it is the social workers and social pedagogues of the legal aid boards above all who are available to act as mediators with the prosecuting attorney’s office. Further, the guidelines determine that in suitable cases, even the police should be informed at the first opportunity about the possibility of an offender-victim-settlement and take statements from them for their files. The guidelines also stress once again the legal obligation on the part of the prosecuting attorneys to look for any suitable opportunity for an offender-victim-settlement.
The actual requirements for the form of the proceedings of the settlements themselves on the other hand are only met by the guidelines on the basis of the general information regarding the "generally recognised standards for the offender-victim-settlement" and the obligation of the settlement bodies to impartiality. In practice, employees of the settlement bodies as a rule carry out separate talks with the victim and accused (offender) in order to establish their expectations and goals and to prepare for the settlement discussions. It is only in the second stage that the actual settlement discussions between victim and offender take place.

(2)

No ruling comparable to § 155 a StPO for the compensation for damages is recognised by the German criminal procedural law. It does, however, allow for the execution of an adhesion process (see above A. 2).

(3)

Furthermore, the laws of the criminal procedural law indirectly support efforts for settlement and compensation on the part of the offender with the possibility that proceedings might be ended or punishment reduced because of this or that such efforts are to be demanded as an instruction or condition within the framework a guaranteed chance of probation in a ruling and, in juvenile criminal law, is even the sole sanction. For details, see below, III.

In no way does criminal and civil procedural law provide for the right of an offender to be entitled to cooperation on the part of the victim or for the victim to be able to demand the offender’s participation in a settlement process or for compensation of damages. Also, in none of the listed regulations is the consent of the injured party demanded. Although § 155 a StPO must still be observed (see above (1)).

Stage of sentence execution:

For the execution of a prison sentence to be served, § 73 of the penal execution law in the general form rules that the prisoner is to be supported by the employees of the penal institution and in suitable cases also by external helpers in his efforts settle damages caused by his criminal offence.

In addition, the courts responsible for the execution of the sentence may issue the convict the same instructions and conditions as for the initial suspended probationary sentence, if they suspend the rest of a prison sentence on probation after partial completion of the sentence, §§ 57, 56 b StGB, 88, 23 JGG.
What consequences do the perpetrator’s efforts to provide for personal conciliation with the victim (mediation) or compensation for the damage caused have in relation to criminal proceedings in general and in particular to the criminal sanction?

Do mediation or compensation efforts negate criminal culpability (always or only as long as other conditions are fulfilled)?

No.

Is it possible for the investigative authorities to (finally) drop criminal proceedings after successful mediation or compensation efforts?

Yes. According to § 153 a StPO, investigative proceedings for a misdemeanour (minimum sentence less than one year) can be temporarily suspended for up to six months with the consent of the accused and certain conditions and instructions be issued to the accused for this period. The conditions and instructions in particular include that the accused should pay a certain sum as compensation for damages caused through the crime or that he makes serious efforts to reach a settlement with the injured party (offender-victim-settlement) and by doing so fully or to a large extent compensate for his crime or strive towards this end. Should the accused fulfil the instructions and conditions within the required period, the proceedings are conclusively ended.

According to § 153 b StPO, the prosecuting attorney’s office can also disregard a bringing of charges if the conditions exist under which the court may disregard punishment despite the proven guilt of the offender. This is particularly taken into consideration in cases of § 46 a StGB. According to this, a sentence may be disregarded in a concrete situation and regardless of the nature of the offence if no higher punishment than one year’s prison sentence or 360 daily fines would have been passed and the offender has endeavoured to make certain efforts towards a settlement or compensation (for more detail see 3.).

With the ruling in § 45 Para. 2 JGG, in juvenile criminal law, the law provides the opportunity, regardless of the nature of the offence, for the prosecution to be dismissed if the accused takes it upon himself to try to reach a settlement with the injured party. According to § 45 Para. 3 JGG, the opportunity also exists to temporarily end the proceedings against a juvenile or adolescent, who has confessed, under condition of settlement (§ 10 JGG) or under condition of compensation (§ 15 JGG) and for proceedings to be conclusively ended after completion of the instruction or condition.
Does the failure of such efforts act as an impediment to proceedings being dropped by the investigative authorities?

Not necessarily. A serious attempt by the accused may at any rate be enough in those cases where a offender-victim-settlement is required if the failure of the settlement is not deemed his fault. On the other hand, it depends on the success of the attempt so far as compensation for damages was issued as a condition or was a requirement for punishment being disregarded.

After successful mediation or compensation efforts can the courts drop proceedings without a judgement, can it refrain from punishment within a judgement or give a milder sentence?

The courts also are able to temporarily or conclusively abandon proceedings under the above mentioned requirements according to §§ 153 a and b – now both Para. 2 – StPO. In juvenile criminal law, there are equivalent options from § 47 in conjunction with § 45 JGG.

Under the further requirements of § 46 a StGB, even though the courts may prove the guilt of the offender by passing judgement, they may still disregard punishment if in a concrete case and regardless of the nature of the offence, a punishment no worse than one year’s imprisonment or 360 daily fines would have been passed.

Finally, efforts on the part of the offender towards settlement or compensation can represent a considerable reduction in punishment:

According to § 46 StGB, punishment assessment also always depends on the behaviour of the offender after the offence. Of particular importance are his attempts to compensate for damages and reach a settlement with the injured party.

In addition, § 46 a StGB, even allows for a reduced punishment in all cases if

- either the offender has fully or to a large extent compensated for or made serious efforts at compensation for his crime in his attempt to reach a settlement with the injured party (offender-victim-settlement)

- or, in a case in which compensation for damages demands considerable personal expense or personal sacrifice from him, he has fully or to a large extent compensated the victim.

Does, on the other hand, a failure of such efforts act as an impediment to the procedural possibilities described or can it even lead to the perpetrator being punished more severely?
Not necessarily. The answer to question 2 applies accordingly here. However, the offender may be liable for more severe punishment if it was his fault that the settlement or compensation failed.

**Can successful mediation and compensation efforts by the perpetrator have an effect on the actual form of punishment (e.g. priority given to restitution rather than a fine, early release from penal custody, more relaxed or „open“ execution of a custodial sentence e.g. the prisoner is permitted to leave the prison during daytime to go to work)?**

Up until now, compensation for damages taking priority over a fine exists only insofar as the convicted person can be granted deferment or payment in instalments for payment of the fine if compensation for damages caused by the offence would be considerably jeopardized without such an easing of payment (§ 459 a StPO).

Incidentally, a successful settlement or compensation can form a favourable step to fulfilling a requirement for an early release from imprisonment (§ 57 StGB). Therefore, the convict should be supported during his imprisonment in his efforts to resolve the damages caused by his offence (§ 73 StVollzG [Law of Criminal Punishment]).

**Can, alternatively, the failure of such efforts lead to more severe sentencing or execution of punishment (e.g. refusal to accept instalment payments for fines, the refusal to grant early-release from prison, the refusal of privileges in prison)?**

An express, legal ruling only exists for the special case where the convicted offender provides insufficient or false information regarding the whereabouts of certain items, for example the stolen goods. In this instance, an early release from prison on probation can be ruled out (§ 57 Para. 5 StGB). In addition, failure of the settlement and compensation can also, however, have negative consequences for the convict if he was responsible for the failure and this suggests an unfavourable social and legal prognosis.

**Can the investigative authorities or the criminal courts require personal conciliation between victim and perpetrator (mediation) or compensation for the material and immaterial damage done?**

**Is it possible to (preliminarily) drop proceedings on condition that the perpetrator attempts to achieve personal conciliation with the victim or that he (completely or in part or symbolically or excessively) compensates for the damage caused?**

Yes, see above, answers B. III. 2. and B. III. 3.

**Can suspension of the sentence to probation be linked to the condition that the offender makes the effort to reach a**
personal settlement with the victim or compensates for damages caused (fully or partially or symbolically or excessively)?

Yes, in the following ways:

If a fine imposed for no more than 180 daily amounts is suspended, the offender can be instructed to try to reach a settlement with the injured party or to compensate for damages caused by the criminal act (§ 59 a StGB).

If a prison sentence of no more than two years is suspended on probation, the convict can be instructed to do everything in his power to compensate for damages caused by the criminal offence. Other money or labour stipulations should only be imposed if they do not impede the compensation for damages (§ 56 b StGB).

If a juvenile punishment of no more than two years is suspended on probation, a (preventative) instruction can be imposed on the juvenile or adolescent offender to make efforts to reach an offender-victim-settlement as well as being subject to conditions (in juvenile criminal law, both educational and repressive) in which the offender must do everything in his power to compensate damages caused and to personally apologise to the injured party (§ 23 in conjunction with §§ 10, 15 JGG).

The extent of these instructions and conditions is, however, generally that they must not pose any unreasonable demands on the everyday life of the offender and not be disproportionate to the significance of the offence.

Can personal conciliation between the perpetrator and victim or (complete, partial, symbolic, excessive) compensation for damage caused be ordered as part of a criminal court’s judgement?

This option only exists within juvenile criminal law:

According to § 10 JGG, the juvenile or adolescent can be ordered to make efforts to reach a settlement with the injured party.

According to 15 JGG, he may be placed under condition to do all in his power to compensate for damages caused by the offence and to personally apologise to the injured party.

How do these orders affect the type and severity of the punishment?

Are they an addition to the real punishment or do they replace it?
As a rule, these orders replace a formal juvenile sentence or other sanctions under juvenile criminal law.

**Can the victim require the investigative authorities or the courts to make an order as described in questions 1-3?**

No. There is no such right.

**What consequences does a failure on the perpetrators part to fulfill the conditions and orders described in questions 1-3 lead to?**

Not fulfilling the conditions and instructions with a temporary abandonment of proceedings leads to the re-opening of investigations or to renewed main proceedings, which as a rule end with a judgement being passed.

Gross and continuous infringement of conditions and instructions in connection with a probationary suspended sentence can lead to an extension of the probationary period and / or the imposition of other conditions and instructions. If this does not prove sufficient, the offender will be ordered to pay the reserved fine in the case of having been warned with a delayed punishment. (§§ 59 b in conjunction with 56 f StGB). In cases where a sentence to imprisonment or a juvenile sentence has been suspended on probation, the suspension will be revoked. In this case, the convict must at least partially serve the sentence (§§ 56 f StGB, 26 JGG). Because of the especially preventative nature of instructions, however, it follows that even their gross and continuous infringement only justifies consequences if there are concerns that the convict may enter into new criminal acts. Not fulfilling the instruction to make efforts to reach a settlement with the injured party will therefore in many cases not have any consequences.

The culpable non-compliance with independent instructions and conditions under juvenile criminal law can lead to the imposition of coercive detention for up to four weeks (§§ 11 Para. 3, 15 Para. 3 JGG).

**Can criminal legal or criminal procedural mechanisms be used to secure a claim against the perpetrator’s assets for the victim’s benefit?**

**If so:** does the victim have a right to such mechanisms?

The code of criminal procedural law allows for compensation aid for the benefit of the injured party under §§ 111 b ff StPO. According to these regulations, the judge and also, if there is a possibility of delay, the prosecuting attorney’s office may securely access, amongst other things, the items required from the offender and his funds if the injured party has a right to demand return of goods or compensation for damages. The stolen goods and any
advantages and profits gained through their use or sale may be confiscated. If the goods as such cannot be returned, for example because of wear or processing, a replacement in value in money from the personal funds and debts of the offender may be seized and a security mortgage imposed on real estate.

Orders for confiscation or arrest may be given even at the slightest suspicion of guilt, meaning an early stage of investigation. (Only after six months have elapsed is it necessary to have a qualified "urgent" suspicion.) In addition, the ordered confiscation may also be delayed for up to three months after the conclusion of the criminal proceedings if a lapse to the benefit of the state because of the existing demands of the injured was not ordered and the immediate execution of confiscation would be unjust for the injured party.

The injured party, however, has no right to these measures under the code of criminal procedural law. The measures decided upon, however, must be relayed to him immediately.

What consequences do the conciliatory or compensatory efforts a perpetrator makes have on the rights of the victim under civil law (e.g. on damages or compensation for pain and suffering) or on potential civil law litigation?

Do successful conciliatory or compensatory efforts on the perpetrators part nullify the victim’s rights under civil law (automatically or under particular conditions, completely or in part)?

The victim’s rights under civil law to damages and compensation for pain and suffering are disregarded only if they are balanced out by the settlement and compensation payments made by the offender.

Do unsuccessful conciliatory or compensatory efforts on the perpetrators part have consequences for the victim’s rights under civil law?

Rights to damages remain. However, it can have an increasing or lessening effect on rights to compensation for pain and suffering depending on whether the offender or the victim was mainly to blame for the failure of the settlement or compensation.

Do successful conciliatory or compensatory efforts on the perpetrators part settle (i.e. end) civil law litigation?

If so: Does this require a special declaration by the victim or the perpetrator?

Does a court decision follow?
Settlement and compensation end the civil process if victim and offender agree upon the damages to be paid and the amount of compensation for pain and suffering, the victim rescind his civil action or both parties declare concurrently that the case has been resolved in the main point. Withdrawal of the action and resolution of the case in the main point must be declared to the civil court. In both of these cases, the court then decides on the costs of the process.

**Do unsuccessful conciliatory or compensatory efforts on the perpetrators part have consequences for civil law proceedings?**

No.

**Do successful conciliatory or compensatory efforts on the perpetrators part have consequences for the execution of judgements already made under civil law or for the execution of other declarations (e.g. documents providing for immediate rights, in-court agreements)?**

There are no direct procedural effects. The offender must prove that he has already met the decreed demands in order to wholly or partially avert execution of the sentence.

**Do unsuccessful conciliatory or compensatory efforts on the perpetrators part have consequences for the execution?**

No.

**Which position does the legal system in your country grant victims?**

What informational rights do they have?

**Every injured party** may demand information on the outcome of the proceedings as far as it relates to him (§ 406 d StPO). In addition, he may view the files through a lawyer (§ 406 e StPO). The criminal prosecuting authorities may also grant him direct access to individual information from the files if he shows he has a legal interest in it (§ 406 e StPO). According to Lower Saxony practice, this also includes information regarding lessening of punishment and the offender’s early release from prison. **The injured party entitled to incidental action** (for more details see 2.) may in addition personally take part in the main hearing and also call on the help of a lawyer. This lawyer also has the right to be present at judicial examination of the evidence outside the main hearing (§ 406 g StPO).

**What opportunities do they have to influence the development of criminal proceedings or to actively participate in them?**
The code of criminal procedural law only grants the victim opportunities to influence the criminal process for certain criminal offences, which are listed individually in § 395 StPO (in particular, sexual offences, crimes against honour, crimes causing bodily harm, unlawful killing). In these cases, the injured parties may add themselves to the case filed by the prosecuting attorney’s office as an incidental prosecuting party. In this way they are entitled to be present at the main hearing and may themselves pose questions there, query others’ questions, call for certain evidence to be brought forward and give statements (§ 397 StPO). In addition, they are entitled to appeal if the court dismisses the case or abandons proceedings because of obstacle to proceedings (§ 400 StPO). And they may also lodge an appeal or revision against the judgement so far as it concerns the verdict of guilt (§ 400 StPO).

Do crime victims have the opportunity to use the assistance of a lawyer and to be represented by one? Do they have a right to have a lawyer paid for by the state?

All injured parties may call on the services of a lawyer (§ 406 f StPO). Incidental prosecuting parties and private prosecuting parties may also be represented by one (§§ 397, 378 StPO).

All victims of serious crime, sexual offences and organised crime, who are to be heard by the prosecuting attorney’s office or a judge as witnesses and who are probably not sufficiently able to recognise their legal rights during the hearing, are entitled to be assigned a lawyer at the cost of the state (§ 68 b StPO). In addition, all injured parties entitled to be act as an incidental prosecuting party have a right to a state lawyer if the offence is a serious crime or they are not yet 16 years old or if they are financially in need and the state of affairs and legal position is difficult (§§ 397 a, 406 g StPO).

In how far is the position of the „victimised witness“ different to that of other witnesses?

Only in the right to be legally represented and to act as an incidental prosecuting party as discussed above.

What further legal and practical mechanisms are used to help protect the victim or reduce the stress caused to him/her by criminal proceedings?

The public can officially and, for a motion, must be excluded if the injured party must (also) be heard on matters from his private life and the interest in public discussion of these matters is not (exceptionally) predominant (§ 171 b GVG).

The accused may be excluded from the main hearing for the duration of the testimony of the witness if it is deemed that the
witness, while in the presence of the accused will not tell the truth or if considerable disadvantages otherwise threaten the well-being and health of the witness. The accused must, however, be informed of the content of the hearing afterwards (§ 247 StPO). If the grave danger of a serious disadvantage to the well-being of the witness can not be avoided merely through the exclusion of the accused and the public, an audio-visual witness hearing may finally be considered (§ 247 a StPO). Finally, hearing witnesses under 16 years of age may be replaced by the presentation of an audio-sound-recording of an earlier legal hearing if the object of the proceedings is a sexual offence, an unlawful killing or the mistreatment of children under the offender’s guardianship and the accused and his defence lawyer had the opportunity to be involved in the earlier hearing (§ 255 a StPO).

Special **exemptions for witness appearances** for victims are not provided for by the code for criminal procedural law. They may, however, just as with any witness, decline to give evidence if the accused is a close relative (§ 52 StPO). **Bodily examination** in order to find evidence of the crime and blood samples may fundamentally be carried without the consent of the injured party. However, the injured party is not obliged to participate in extensive bodily or psychological-psychiatric investigations (§ 81 c StPO).

**On the other hand: what obligations are placed on crime victims?**

Victims are obliged to give evidence before the prosecuting attorney’s office and the court. If they were a witness to the crime, they have no right of witness exemption.

**Are there state or private institutions in your country that grant crime victims compensation for damage caused and support independent of efforts on the perpetrators part?**

According to the **victim compensation law**, (OEG [Opferentschädigungsgesetz]), benefit payments are paid out of public funds (from the Federation and the Federal States) for victims, who have suffered damages to their health through willful and unlawful criminal acts – including the sexual mistreatment of children. Such things as, for example, the costs of treatment, help to find work, compensation for lost revenue, payments and benefit payments and widow’s, orphan’s and parent allowances are paid. Material and property damages, on the other hand are not reimbursed. Compensation for pain and suffering is also not paid according to the OEG.

In Lower Saxony, there also exists the **Lower Saxony Trust for Victim Support (Stiftung Opferhilfe Niedersachsen)**, financed by public funds and fines paid to the courts. In its 11 victim support offices in the 11 district court regions, full-time social workers are ready to offer counselling, for example for therapeutic help and accompanying them to official offices, when visiting a doctor or lawyer or to court appearances. In addition, concrete support measures from the trust’s funds
are available, such as trauma therapy, just replacement of damages caused by the criminal act and in exceptional circumstances payments for pain and suffering.

As well as this, there are numerous private victim support institutions, which are differently organised and also have different priorities (e.g. personal care, therapeutic help, material support). One of the institutions that must be highlighted is the nationally operating Weisse Ring e. V., that has been offering personal support from voluntary workers and financial support for 25 years.

**What is the current factual situation regarding the use, acceptance and success of the possibilities your country’s legal system offers for personal conciliation between victim and perpetrator (mediation), compensation of the damage caused to the victim and symbolic compensatory acts on the perpetrator’s part?**

Even representative surveys carried out as early as the beginning of the 90s showed that almost three quarters of those asked were in favour of the creation of settlement authorities for the overseeing of offender-victim-settlements and approximately 60% were for compensation for damages taking precedence over the imposition and execution of fines. Those who had already been victims of a criminal offence were especially in favour of compensation for damages and pain and suffering taking precedence (Pfeiffer et. al. 1992).

A further survey revealed, however, that in 1995 out of more than 3 million resolved criminal offences in Germany, an **offender-victim-settlement** was attempted with only approx. 9,000 offenders and approx 8,000 victims. An analysis of 1813 individual cases further showed that it was clearly more likely to be attempted in cases of crimes causing bodily harm (63.6%) or in violent crimes (bodily harm, sexual offences, theft: 73.3%). Moreover, it was shown that in 85% or 78% of cases (juvenile or adult criminal law) a consensual ruling was able to be agreed. Whenever damages or payment for pain and suffering was agreed upon in these cases, these were also overwhelmingly (more than 79%) fulfilled (Dölling et. al. 1998).

Finally, a current investigation into juvenile criminal law shows that the average number of repeat offences out of the 85 investigated cases of successful settlements was 1.4, whereas the number in the comparative spot survey of 140 cases without an offender-victim-settlement on the other hand was 2.1, which even the most cautious interpretation indicates a positive relationship between offender-victim-settlements and legal probation (Dölling, Hartmann, Traulsen 2002).

There are, however, no conclusive, representative surveys on the different possibilities for the ordering or consideration of compensation for damages and payment for pain and suffering.

**On adhesion proceedings** finally, all reports show that it practically never occurs.
Which particular aims are part of the legal political debate in your country to improve and increase victim protection?

Particularly:

Is there a desire to provide for simpler and faster means of satisfying crime victims’ interest in mediation or compensation?

Is there a desire to provide for or to further develop a unitary process which simultaneously satisfies the states interest in punishment as well as the victim’s conciliatory and compensatory interest?

The political discussions regarding the laws of victim protection work in two directions. On the one hand they are about changes in sanction laws. Here, a government paper from December 2000 that has so far not been implemented provides for the obligation of courts to give a portion of the fines to victim support organisations. In addition, the precedence of victim’s rights over the imposition of fines are to be better secured. Other suggestions include an increase in opportunities to abandon proceedings after compensation has been paid and to create opportunities of substituting fines with compensation payments. Important voices from the academic world have already been pleading for a long time for compensation and damages to be firmly established as the "third path" (alongside fines and prison sentences on the one hand and conditional measures improvement and security on the other) within the sanctions system and for it to therefore be seen as a sanction surrogate or – if this is not sufficient for serious crimes – at least for it to constitute a component of the sanction. In this context, the model of the English ‘compensation order’ is often used as a reference.

On the other hand, they are about improving victim protection in criminal procedural law. A paper from the government coalition from April 2003 indicated the urgent need for a quicker conclusion of proceedings, a stronger use of the offender-victim-settlement, the introduction of compensation settlement under criminal law in which a definite, consensual agreement for the settlement of damages is agreed on in the main hearing, and improved possibilities for rights under civil law to be asserted in close connection with the time of the investigative and criminal proceedings. The Federal Government has, however, not yet proposed any concrete suggestions to this extent.