

# STANDARDS for Victim-Offender Mediation

sixth revised edition

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## Servicebureau for Victim-Offender Mediation and Conflict Settlement –

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## Foreword (sixth revised edition)<sup>1</sup>

The starting point for this VOM standards edition was the so called 'Herbsteiner Declaration', in which the practitioners of victim-offender mediation first formulated mandatory best practice standards. In 1994 a working group of five colleagues developed a pioneer edition within a period of 15 months, which was revised in 2000 by another six colleagues, producing the 4th version. We would like to thank them for their intensive work which is very much appreciated.

One emphasis of the editorial work was to streamline the contents and to focus on the current status quo in the practice of victim-offender mediation. Due to this goal, the forewords of previous editions were therefore deleted. It is however suggested that everyone who is interested in the development of the standards should read previous editions. It makes visible that from the very beginning these standards were a tool derived from practice in order to serve practice.

We, the working group of this sixth revised edition, see ourselves as part of the same tradition and would like to provide this current edition for wider discussion. We are not seeking to provide a program imposing rules 'from above'. The goal is, as always, to gain the broadest approval of the basis.

We have realized that the current standards at some points do not correspond to a changing and improving practice any longer. In particular with regard to the victim's perspective, changes had to be made. Until now, it was not stated clearly enough, that the victim can, at any time of the procedure, withdraw his or her consent to take part in victim-offender mediation and that respecting the victim's 'No' is an essential part of mediation. Finally, the question of 'who to approach first' is not a question of belief, but must rather depend on the individual situation of the case. We have made some changes in these regards.

How can the field of 'domestic violence' be integrated into the standards? Our aim is for this field to be understood distinctively, but nonetheless as part of victim-offender mediation. Therefore, the aspects that are specific to 'domestic violence' and were developed by another working group have been fully integrated into this edition.

The readability of earlier editions has suffered from the inconsistent use of terms. We have for instance now agreed on the consistent use of the term 'victim-offender mediation' rather than the alternatives such as 'mediation in penal matters'. Furthermore, the term 'impartiality' was chosen over 'neutrality'. The terms

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<sup>1</sup> For reasons of readability, masculine terminology is generally used for persons, functions etc. It does however generally stand for both genders.

'offender' and 'accused', as well as 'victim' and 'injured party' or 'person harmed' are used interchangeably for the participating parties.

The law has not changed. Much has however changed in how it is being applied. Therefore it can be seen that within the main trial agreements are being made within a very short time, which are accepted as victim-offender mediation and thus being considered in relation to the sentence. In such cases, the offender often denies the offence until the latest stage and is only willing to 'play the victim-offender mediation card' as a result of being confronted with overwhelming evidence of his guilt. The victim in these circumstances has to make a decision in a very short time and under pressure and without knowing what he or she is getting involved in. With the standards, we strive for an appropriate time-frame within which the victim has access to the necessary information, the possibility to gain advice through third parties and time for decision making.

Victim-offender mediation is less and less perceived only as a measure of diversion. This leads to a slow shift to medium and more serious crimes. This development is taken into consideration under the premise that the traumatisation of victims is clearly set as a limit for carrying out victim-offender mediation.

We agree with the previous working groups 'that these revised VOM standards will contribute to the discussion on quality and framework conditions for serious work on mediation in victim-offender mediation'.

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## **Preamble**

The keynote in victim-offender mediation can be summarized shortly as follows: A crime is not only a violation of the law and state order, but also a violation of people and relationships. A crime does not only create guilt, but also responsibility and obligations on the part of the offender.

In the traditional criminal law, society requires the justice system to determine guilt and undertake punishment. In victim-offender mediation, victims, offenders and, if wanted, the community are integrated into peacemaking efforts.

In comparison to the traditional approach, which only aims for punishment, the central element of victim-offender mediation is to place needs of victims and the offender's responsibility to repair harm at the centre of its efforts.

Behind this stands the philosophy of citizen-oriented legal policy, which has confidence in the return of the conflict to those involved to find a suitable solution. Self-evidently victim-offender mediation is an offer that can be refused at any time.

At court the decision is usually imposed. This often results in one party becoming a loser, which can, under certain circumstances, further fuel the existing conflicts. Additionally – in criminal law the victim usually acts as a witness and its emotional situation and its requests for material compensation are little noticed.

Victim-offender mediation, in contrast, ensures maximum involvement of the participants; it aims for a stable and peacemaking conflict resolution. The interests of victims are also secured through the immediate consideration of civil law demands (compensation).

Victim-offender mediation stands for the promotion of humane justice that has its priority in restoring social peace – this is internationally known as restorative justice.

The aim of the following standards is to achieve quality practice and to provide service as professional as possible for those concerned.

## 1. Conceptual requirements

### 1.1. Description of the offer

Victim-offender mediation is an offer made to the accused and the injured party, in order to deal with the aftermath of a crime with help of an impartial facilitator. The participants are given the option to resolve the underlying and/or actual conflicts and regulate the damage through personal contact.

The basic concept of an organization that offers victim-offender mediation should include the clear description of the offer as well as how it is embedded in the given framework conditions, in order to avoid possible misunderstandings in advance.

A clear description of the offer adds to the transparency of work and increases the acceptance amongst those concerned and the cooperating partners.

The following aspects should be defined in the description of the offer:

- What does victim-offender mediation mean for this organization? A distinction should be made in regards to solely material compensation.
- What are the organizational goals regarding victim-offender mediation?
- Which cases/offences is victim-offender mediation relevant for?
- What is the procedure of victim-offender mediation?
- What is the role of the facilitator?
- How is victim-offender mediation embedded in the local practice of justice agencies?
- A display of the opportunities and possibilities, but also the boundaries and risks of victim-offender mediation.
- Highest possible transparency regarding the mediation offer, e.g. by preparing a leaflet giving brief information on victim-offender mediation, a website and the documentation of cases.

## 1.2 Requirements to carry out victim-offender mediation

The requirements for victim-offender mediation result from its underlying philosophy (see preamble) as well as from the given legal frameworks.

These must be integrated in the concept and agreed upon with the local justice services.

The following premises must be ensured:

- Voluntary participation: compulsory settlement is not possible. Conflict mediation is dependent on the willingness of all parties involved, in order to be at least partly able to become engaged in the arguments of the other party. Victim-offender mediation is an offer that can be refused at any time. The participants must be made aware of this at the start of the procedure.
- Especially the 'Yes' of the victim, which must be made without any social or psychological pressure, is a basic requirement, without which no further steps towards victim-offender mediation can be initiated.
- No conditions regarding VOM-results should be imposed by justice agencies (punishment equivalent). Victim-offender mediation should be an option for the harmed and the accused to participate in the regulation of the consequences of the crime in an empowered and self-determined way.
- Re-victimization of the victim must be prevented.

### 1.3 Case selection criteria

The basic requirement is that the offenders take responsibility for their behaviour and that the victims have the possibility to formulate their needs towards the offender with the help of the facilitator.

Furthermore, it is necessary to make sure:

- that where the victim is a company or organization, there must be a specific contact person who has authority to make decisions, since the existence of a contact person is crucial for victim-offender mediation or material/financial compensation for the purpose of negotiations;
- that a clear agreement to participate in VOM was made by both the injured person/party and the accused;
- that there is no refusal of 'self-referrals', so that persons who directly contact the VOM service asking for victim-offender mediation, receive a service;
- that victim-offender mediation still can be initiated at any time.

### **1.4 Primary Goals**

Crimes often occur within a conflict between two (or more) parties. In comparison to the traditional criminal justice process that focuses on the state and offender, it is the goal of victim-offender mediation to take up and, in the best case, to repair the consequences of the crime as well as the underlying conflict out of which the crime arose.

The quality of facilitation cannot only be measured by the achievement of an agreement as a result of carrying out a mediation procedure. Already the decision of victims and/or offenders that victim-offender mediation could be a suitable tool for the participants to deal with the conflict could be rated as a successful conflict consultation.

At the conclusion of a victim-offender mediation process the following outcomes should be achieved:

- mutual agreement between the accused and the person harmed;
- both parties see their needs as being recognized;
- the reduction of conflict consequences and follow-up conflicts (prevention);
- the guarantee of autonomy for the conflict parties;
- compliance with the agreement;
- the avoidance of injustices.

## 1.5 Monitoring and/or evaluation

Continuous control of goals and achievements is necessary, as well as transparency and openness in relation to these results.

Thereby it will be possible to **review**, if and how the planned measures and actions were implemented. It will also be possible to establish if the set goals were reached. It should moreover, through the documentation of all measures carried out, allow the **examination** and evaluation of experiences as well as to answer the question as to whether and how **continuation** takes place.

Monitoring and/or evaluation should include the following:

- the completion of annual reports including systematic documentation of cases;
- the completion and analysis of differentiated statistics, e.g. regarding referred/completed cases, types of crime, VOM-results, differentiation between VOM and material/financial compensation;
- the completion of separate statistics regarding the cases of **domestic violence**. Here it is advisable also to collect data on counselling and **case related** cooperation with other organizations, alongside the **mediation results**;
- the publication of these statistics, e.g. as part of an annual report and/or through participation in the national VOM-statistics;
- the monitoring of fulfilment of the agreements between the cooperating partners and the VOM service, e.g. regarding case referral criteria;
- the regular exchange of experiences with other VOM services.

The instruments of 'practice reflection' (see 4.2) also add to the monitoring and further development of practice.

## 2. Organizational requirements

### 2.1 Provider and organization

Victim-offender mediation can be carried out by various organisations, either by independent (usually by private charitable organizations ('Freie Träger')) or public (municipal or county-'Länder'<sup>2</sup>-organisations) and private (freelancers and companies) provider. Of particular importance are the guarantee of an independent and permanent field of activity and the consideration of special requirements in the organization of work.

The long-established VOM-practice so far has proven that specializing in this type of work is the most suitable form of organisation. Specialization means performance of victim-offender mediation through facilitators who are specially trained and exclusively employed in the field of conflict resolution.

It is necessary for the organization to ensure:

- a clear separation of mediation and partisan/ 'subjective' social work;
- an independent and impartial profile of the VOM service;
- a flexible work-structure, which adapts to the necessities of mediation practice;
- the organization enables and supports adequate working conditions, as suggested by the VOM standards, and makes funding agencies aware of these;
- interdisciplinary stakeholder cooperation with as many as possible of the local and regional criminal justice agencies, and organizations assisting victims and offenders.

<sup>2</sup> 'Länder' according to federal states in Germany

## 2.2 Infrastructure

Appropriate personnel and material facilities are essential requirements for the work of a VOM service.

These can be listed as follows:

- sufficient personnel capacity, which can provide specialized mediation;
- the possibility to free facilitators from administrative duties;
- own offices and rooms, which allow for undisturbed conversations between the parties;
- appropriate and up to date office equipment;
- appropriate storage, carriage or disposal of case files according to the regulations of data protection;
- the possibility to make use of a victim support fund (Opferfonds<sup>3</sup>) for financial assistance to victims;
- premises which can ensure that parties do not meet in the waiting room;
- access to an interpreter; family members of the parties are not suitable to do this;
- the possibility for those concerned to be accompanied by their lawyer or a person of trust.

<sup>3</sup> If it is the case that the offender is not able to make compensation due to his financial circumstances, a so-called 'victim support fund' is often available at the mediation organizations. The offender can be granted an interest-free loan from this fund. It is also possible for him to provide community service and 'to be paid' for it fictitiously. In both cases the money from the fund is given directly to the victim, so that immediate reparation can be made.

### 2.3 Accessibility

A victim-offender mediation service must be accessible and easy to find. Therefore, directions must be given, rooms must be clearly labelled and be accessible by public transport if possible.

Furthermore, the following aspects must be taken into consideration:

- In rural areas the possibility of on-site meetings in a neutral setting must be given (e.g. community hall).
- Flexible planning of appointments, which are adapted to the needs of the parties concerned, is desirable. Easy telephone access to the service is also desirable.
- The independence of the VOM-office from other organizations in the same building, must be clearly indicated (door signage).
- The service should be registered in the local address book/service directory by the local press.
- A record in a practitioners' list on the internet is desirable, in order to allow easy access to the available local services through online search.
- Requests for anonymity of clients must be respected.

### 3. Requirements regarding public image and cooperation

#### 3.1 Public relations

Victim-offender mediation as an out-of-court measure of conflict resolution and compensation is still largely unknown amongst the general public.

To establish this service, public relations work by existing VOM services is essential. With regard to this, however, some risks and rules must be considered. For instance, trust- and data protection must be guaranteed in any public promotion of VOM activity. The persons concerned shall not be misused for the promotion of the organization or of victim-offender mediation in general.

The following are important aspects in public relations:

- the development, preparation and regular updating of the leaflet/promotional material and a conception, which provide information to service users and can also be used for public relations;
- special promotional material to inform participants of domestic violence cases. Preferably creating a multilingual leaflet and, where appropriate, notes on the processing of domestic cases should be made;
- concrete concepts, arrangements and thoughts within the organization in relation to contacts with the press, radio and television;
- the preparation of press releases;
- the documentation of one's own appearances in the media (e.g. creating a press kit);
- organize information events, e.g. at schools, neighbourhood centres and youth clubs;
- presentations in the professional field;
- coordination of strategies with other VOM services;
- registration in a practitioners' list on the internet that facilitates searches for the media.

### 3.2 Cooperation

Clear agreements, transparency and regular exchange of experiences are required for the understanding of the work of colleagues and cooperating partners to promote cooperation.

#### **- in case work**

For the success and acceptance of the work of the VOM service, there is a need for appropriate and continuous cooperation with those organizations that are involved in the case.

The scope of victim-offender mediation requires cooperation with the respective referring agencies, namely law enforcement authorities, courts, youth welfare organisations, the judicial social services and lawyers of the conflicting parties.

Furthermore, case work, also in the field of 'domestic violence', requires cooperation with organizations such as victim support agencies, counselling services for males and females, women's safe houses, therapeutic organizations (alcohol, trauma), marriage counselling services, agencies for support of men (anti-violence training for violent men), counselling services for migrants, as well as for children. These cooperation partners accompany the process case-related.

Effective cooperation is dependent on mutual understanding of tasks and roles within the field of victim-offender mediation.

#### **- in the (local/regional) network**

Beyond the cooperation with direct participants of the proceedings, the cooperation with victim support agencies, organizations for offender work, other mediation services, pension offices (Versorgungsämter), youth welfare organisations, organizations of education, including adult education and others, is appropriate and useful.

The VOM service can sharpen their profile and others can similarly define and adapt the services they offer accordingly. Those, in search of support and counselling can be cross-referred to the appropriate organization. Regarding joint themes and issues the contacts will be used to form opinions and to bundle interests, possibly also in the political sphere.

### 3.3 Exchange of experiences

Continuous exchange of experience is conducive. The following key aspects are of importance:

- regular team-meetings within the organization and/or collegial consultation;
- creation of regional, county-('Länder')-specific and national working groups; with the goal of networking, e.g. for collective representation of interests, as well as lobbying at a political level;
- cooperation with other VOM services in the same county court district;
- creation of regional working relations, e.g. common supervision/case discussions (reviews), organization of regional further education and info-events, joint VOM-statistics, joint public relations and external representation;
- participation at symposia and conferences;
- making use of competences and helpful experiences of closely related professional fields, as for instance divorce mediation, professional pedagogy and family therapy;
- attentive observation of supra-regional developments.

## 4. Requirements of the facilitator

### 4.1 Qualification

Mediation, as in victim-offender mediation, is a demanding and responsible task; it requires a sensitive handling of the persons involved. Ability to handle conflicts of third parties, as well as the willingness to face one's own ability to deal with conflicts, is equally essential.

Regarding the methodology, the facilitator must know several forms of dialogue support, which match the individuals' capabilities for verbal expression and their subjective views, and which also enable appropriate negotiation.

They must also be able to inform the parties about the framework conditions of their civil and criminal legal rights, without violating the legal standards of the law on legal services. They must furthermore build up close cooperation to case-related organizations.

Facilitators must therefore acquire adequate professional knowledge in the fields of conflict theory, dialogue/conversation techniques, criminal and civil law, as well as criminology and victimology.

The following requirements must be taken into account:

- qualification as social worker/social pedagogue, psychologist, pedagogue or equivalent qualification;
- completion of the one year training 'mediation in penal matters', the advanced training 'mediation in penal matters' for already certified mediators or an equivalent mediation training;
- obligation to undertake regular practical work as a facilitator;
- keeping up with regular information on current developments in the field of VOM;
- undertaking further education, e.g. seminars on civil law, victim perspective, cooperation with justice agencies, workshops on methodology etc.

## 4.2 Reflection on practice

A facilitator must deal with controversial emotions and interests. It is important that they reflect on their own actions.

The reflection on practice should include the exchange of experiences with facilitators of other institutions. Especially discussions with other facilitators can help to question one's own behavioural routines and to broaden one's sphere of actions.

The reflection on practice comprises, besides possibilities for self-reflection, also forms of collegial consultation and supervision, coaching and intervision.

The following elements of practice reflection should be considered:

- make records and carry out regular analysis of sound case statistics; e.g. through participation in the national VOM-statistics and analysis by the VOM-research group;
- regular case supervision;
- study visits, observation and joint evaluation of mediation dialogues;
- use of further feedback possibilities, e.g. through subsequent interviews of the injured party and the accused regarding their satisfaction with the mediation results.

### 4.3 Methods

Conflict settlement – not only – in penal matters means to find a balance between different subjective experiences and everyday lives, to find a balance between conflicting positions, underlying fears, prejudices, hidden and open resistance on one hand and the wish for peace on the other.

Mediators not only facilitate the interpersonal dealings between the conflicting parties but also the intrapersonal 'dispute' between inner conflicting emotions, interests and needs.

Therefore it must be the goal to develop a self-concept as a mediator, in order to allow a qualified work method with offender and victim, to communicate and cooperate with parties to the proceedings in the complex field of victim-offender mediation.

The following competences belong to the essential methodological skills for mediators:

- the planned and adequate application of methods (e.g. co-mediation, non-violent dialogue, non-violence declaration, focus on the interests of the participants, reflecting team, duplicating (Doppeln<sup>4</sup>), mixed double (Gemischtes Doppel) and relay wheel (Staffelrad)<sup>5</sup> ;
- the use of co-mediation with a female and a male mediator, which has proved effective in cases of domestic violence;
- the focus of mediation on the interests of clients. Therefore detailed pre-mediation sessions are often necessary. Special attention has to be given to the personal backgrounds of the participants;
- the ability to promote a non-violent dialogue. The mediators promote a non-violent dialogue during all conversations. Apparent verbal violence is brought to the attention of the participants and mutual insults or threats will be prevented;
- the ability to present modes of communication for future non-violent interaction and to discuss them with the participants. A 'non-violence declaration' can be included within the written agreement;
- the ability to critically question the behaviour of the participants during VOM and to confront them with the dynamics of violence. Advice/counselling regarding the dynamics of violence is useful.

<sup>4</sup> 'Doppeln' is a special conversation technique.

<sup>5</sup> 'Gemischtes Doppel' and 'Staffelrad' are special techniques and settings for victim-offender mediation. They were developed by Ed Watzke, an Austrian mediator. They are described in his book: Äquilibristischer Tanz zwischen Welten – Auf dem Weg zu einer transgressiven Mediation, Forum Verlag (Broschiert – 14. April 2011).

#### 4.4 Understanding of one's role

Facilitators work in the field of tension between two or more conflicting parties. They support the conflicting parties to develop solutions independently. Facilitators are responsible for the mediation process. They strengthen the autonomy of the parties, enable constructive communication between them and they structure and supervise the mediation process.

Facilitators acknowledge the subjective views of the conflicting parties. Their starting point for the mediation is the conflict as defined by the affected parties. The goal is exclusively to develop a consensual, sustainable and fair agreement together with the conflicting parties. Facilitators know that victim-offender mediation is only possible on a voluntary basis and with the willingness to cooperate.

Facilitators recognize the personal responsibility of the participants towards the solutions they have worked out. They see the participants as experts in looking after their own interests. Mediators assist them in getting necessary information for this. The constructive conflict resolution can be a learning field for the conflicting partners. Facilitators therefore see the conflicting parties as agents of their own human development.

These aspects are defined as follows:

- **Impartiality:** The facilitator is impartial. He must, in the sum of his actions, be perceived as fair by the conflicting parties.
- **Separation of roles:** There should not be an overlap of mediation and partisan support of one party.
- **Transparency:** explaining the aims of the approach, the method and the understanding of the role of the mediator.
- **Recognition of human dignity:** The facilitator is responsible for respectful behaviour at all times and for ensuring that neither party is being treated unjustly.
- **Drawing of boundaries:** The facilitator must be aware of his personal and professional boundaries.

#### 4.5 Legal framework

The criminal law contains several approaches to compensation for the consequences of a crime, most often as a conditional order for the compensation of damages. Victim-offender mediation can be distinguished from that, being a form of mediation that attempts to resolve both material and non-material consequences of the offence.

Section 46a number 1 Criminal Code<sup>6</sup> promotes, by means of victim-offender mediation, the repair of the consequences of the offence through communication between victim and the offender and a resulting agreement. This is to be taken into consideration when deciding on the legal consequences of the offence committed (BGH NStZ 1995, 492): In a first step, victim and offender make an agreement on the compensation or damages, possibly assisted by a mediation service. On this basis the prosecution and/or court decides which sanctions to impose, in accordance with section 46a Criminal Code combined with section 153b Code of Criminal Procedure<sup>7</sup>. Depending on the appreciation of the process and the outcome of the victim-offender mediation, the consequences for sanctioning may range from discontinuance of the proceedings (according to section 153b Code of Criminal Procedure) to refraining from punishment (according to section 46a Criminal Code) or taking it into account in the sentence (according to section 49 Criminal Code especially with sanctions of over 1 year of imprisonment) as well as, in exceptional cases, not taking it into account.

In suitable cases it should be worked toward victim-offender mediation at any stage of the proceedings (according to section 155a Code of Criminal Procedure). VOM in the youth system is furthermore carried out as part of the provisions and requirements of Social Code, Book VIII<sup>8</sup> and the Juvenile Court Law<sup>9</sup> (Social Code, Book VIII, sections 1, 52 paragraph 1 and Juvenile Court Law sections 45, 47 und 10, 7.). Facilitators work within the outlined legal context. Knowledge of and compliance with the legal framework is therefore an essential basis of their work.

Of particular importance in this context are:

- basic knowledge regarding the age of criminal responsibility (Strafmündigkeit), legal capacity (Geschäftsfähigkeit), responsibility for civil wrongs (Deliktsfähigkeit), obligation to compensate for damage (Schadensersatzpflicht), joint and several liability (gesamtschuldnerische Haftung), dealing with consequential and long-term damages (Umgang mit Folge- und Spätschäden);

<sup>6</sup> Criminal Code = Strafgesetzbuch (StGB)

<sup>7</sup> Code of Criminal Procedure = Strafprozessordnung (StPO)

<sup>8</sup> Social Code , Book VIII – Law on Child and Youth Welfare = Sozialgesetzbuch (SGB) – Achtes Buch (VIII) – Kinder- und Jugendhilfegesetz

<sup>9</sup> Juvenile Court Law = Jugendgerichtsgesetz (JGG)

- the transparency towards those affected: What is the facilitator a specialist for – and what not for? That particularly includes the information regarding confidentiality, data protection and the lack of a right for a mediator to refuse to give evidence;
- the information to the participants about possibilities of legal advice and their representation by a lawyer;
- the provision of information material to those concerned: Where and how to receive legal advice (e.g. use leaflets and folders of justice agencies);
- if lawyers are involved: Inclusion and consultation during the whole process of victim-offender mediation, especially regarding claims and agreements;
- clarification to what extent claims have been made by third parties or transferred to them, e.g. insurances, health insurances;
- review of pre-printed forms for contracts etc. by lawyer;
- ensuring legal advice, e.g. by a contract with a legal expert.

## 5. Performance requirements for Victim-Offender Mediation

### 5.1 Referral

The incoming referral is the first step of the victim-offender mediation procedure. On one hand it serves to organize the internal process, on the other hand, the referring party has expectations of its own which should be fulfilled in a customer-oriented way to build up trust. Therefore it is in principle advisable to customize the processes according to the individual interests of the cooperating partners/ referring party and constantly check their practicability.

Referring parties can be amongst others:

- victim or offender
- police as part of a suggestion or recommendation
- lawyers
- prosecution
- local and district courts
- juvenile court assistance
- probation service
- other persons or organizations in the community

The following working steps are recommended:

- pre-mediation sessions with self-referrals (see 'contacting')
- registration of the case entry/statistical returns
- compile a VOM-case file
- study of case file and first conflict analysis
- if required, explanation of case allocation within the team
- response to the referring party with name of case worker, the internal case file number, as well as the processing time
- if necessary return of original case file

Depending on the circumstances the administrative activities are documented by the mediator or administrators. The approach to referrals that are, according to the standards, not suitable for victim-offender mediation, should be agreed upon with the cooperating partner on an individual basis.

## 5.2 Contacting the parties

Already during the first contact of the mediator to the participants, it is often decided, whether extra-judicial conflict resolution is possible.

Many aggrieved and accused persons do not know about the possibility of a victim-offender mediation or they have a wrong idea of it. The VOM service is in the position to describe the organization and to outline the offer as a voluntary option sufficiently, as well as to reduce possible barriers and facilitate an independent decision making process by supplying information (e.g. leaflet and/or reference to website).

- first contact in written form and generally intelligible language;
- allow time for reflection and an opportunity for questions;
- describe the organization, its aims and the service offered;
- emphasize that it is a voluntary offer;
- name a contact person;
- offer separate consultations;
- inform legal guardian in the case of minors

The main goal when contacting is that the accused will not have the possibility to put any further pressure on the injured party and that the latter does not become subject to secondary victimization. Therefore it can often be reasonable to undertake the first contact with the injured party rather than the offender.

The deciding factor for the decision of whom to contact first should always be the circumstances of the individual case.

### 5.3 Preliminary interviews

During pre-mediation-sessions the parties in conflict should receive information about the procedure and the conditions of victim-offender mediation and its alternatives.

The injured party and the accused party shall be given a possibility to express expectations and needs, as well as fears and reservations. Opportunities and limitations of victim-offender mediation must be clarified, in order to allow an independent decision on further participation.

If necessary the participants will be advised in separate interviews regarding other offers of cooperating partners (e.g. counselling for women, men, and couples).

If required, further separate interviews can be arranged, before any joint mediation takes place with all participants.

If it appears necessary, the parties in conflict and the mediator can decide that further talks shall take place.

In relation to the interviews, the following aspects should be taken into consideration:

- enable separate pre-mediation-sessions with victim and offender;
- explain the VOM-procedure: process, goals and embeddedness in criminal law;
- communicate concrete conditions for the participation in victim-offender mediation e.g. rules, termination criteria;
- give advice regarding the lack of a right to refuse to give evidence as a mediator;
- give information on alternatives to victim-offender mediation: Rights of those concerned and possible consequences in the framework of criminal and civil law procedures;
- clarify the role of the mediator (impartial) as distinct from the police and the justice agencies (investigation, finding the truth, judgement);
- enable subjective description of the offence and related emotions;
- clarify expectations, claims, as well as reservations and fears in relation to the mediation process;

- summarize the results and arrange binding agreements on the further process;
- facilitate the consultation with lawyers and ensure information of already involved lawyers;
- get approval of legal guardians in cases involving minors;
- avoid time and appointment pressure ( if necessary, allow time for reflection and give opportunity to attend another pre-mediation-session);
- write protocol
- clarify, whether the victim has been traumatized.

### **5.4 Phase of decision making**

The participants decide after the pre-mediation-sessions which route they want to take.

This process of decision making is supported by the facilitator by providing sufficient information, without seeking to influence the outcome.

Normally, the performance of the mediation dialogue is offered. If the participants refuse a face-to-face meeting, agreements may be made through indirect mediation.

## 5.5 Mediation dialogue

Central to victim-offender mediation is to deal with the offence and conflict settlement between the conflicting parties in a joint discussion. This gives the possibility to find a suitable and satisfying solution for the participants.

An extensive clarification of the conflict is only possible in a personal meeting of both parties.

- create a framework in which a fair discussion is possible, e.g. seating, rules, communication, and transparency;
- ensure voluntariness: Freedom for decision making, possibility for termination, consideration of alternatives;
- ensure self-responsibility: Sufficient information, possibility for legal advice by lawyers, definition of content and results by conflict parties;
- compensate imbalances in the relationship of the conflicting parties (number, power, abilities) e.g. with the help of co-mediation;
- avoid victimization and stigmatization;
- it is the facilitator's task to structure the mediation dialogue.

Conflict settlement runs through several phases. The following structure is helpful:

1. clarify the premises of the conversation,
2. outline the subjective viewpoints,
3. confrontation with the offence and working through the emotions associated with it,
4. collect and debate negotiate options for possible solutions,
5. write down results (agreement).

In conclusion, a response is given to the referral authority in form of a written final report.

## 5.6 Agreement

The mediation usually finishes with a written agreement, which describes the concrete points of arrangement.

- offer feedback talk;
- make concrete decisions and formulate unambiguously;
- clarify separation between disputed and undisputed contents (partial agreement, pending claims of third party);
- consider further demands, e.g. unforeseeable consequential damages;
- in cases of high financial damages, as well as foreseeable consequential damages, the participants should always be directed to get legal advice, record written contract.
- make legally sound written forms of contracts, choose agreement in writing;
- specify payment mode;
- ensure practicability, e.g. appropriate instalments, use of victim compensation fund;
- get approval of legal guardians in cases involving minors;
- allow time for reflection;
- do not approve agreements that are contrary to human rights or morality;
- monitor agreement and inform about consequences in case of non-compliance;
- clearance by instalments or through completion of community service.

## 5.7 Closure

A written report is to be sent to the prosecution once the case is closed and to the referring party if this was not the prosecutor.

This report must fulfil all legal regulations, especially in terms of data protection.

Files must also be destroyed in accordance with the relevant regulations of data protection.