

EXCERPT FROM THE LEGAL PROVISIONS ON TA (§ 204 STPO)

(1) Unter den Voraussetzungen des § 198 kann die Staatsanwaltschaft von Verfolgung einer Straftat zurücktreten, wenn durch die Tat Rechtsgüter einer Person unmittelbar beeinträchtigt sein könnten und der Beschuldigte bereit ist, für die Tat einzustehen und sich mit deren Ursachen auseinander zu setzen, wenn er allfällige Folgen der Tat auf eine den Umständen nach geeignete Weise ausgleicht, insbesondere dadurch, dass er aus der Tat entstandenen Schaden gutmacht oder sonst zum Ausgleich der Folgen der Tat beiträgt, und wenn er erforderlichenfalls Verpflichtungen eingeht, die seine Bereitschaft bekunden, Verhaltensweisen, die zur Tat geführt haben, künftig zu unterlassen.

(2) Das Opfer ist in Bemühungen um einen Tausgleich einzubeziehen, soweit er dazu bereit ist. Das Zustandekommen eines Ausgleichs ist von seiner Zustimmung abhängig, es sei denn, dass es diese aus Gründen nicht erteilt, die im Strafverfahren nicht berücksichtigungswürdig sind. Seine berechtigten Interessen sind jedenfalls zu berücksichtigen (§ 206).

(3) Die Staatsanwaltschaft kann einen Konfliktregler ersuchen, das Opfer und den Beschuldigten über die Möglichkeit eines Tausgleichs sowie im Sinne der §§ 206 und 207 zu informieren und bei ihren Bemühungen um einen solchen Ausgleich anzuleiten und zu unterstützen (§ 29a des Bewährungshilfegesetzes).

(4) Der Konfliktregler hat der Staatsanwaltschaft über Ausgleichsvereinbarungen zu berichten und deren Erfüllung zu überprüfen. Einen abschließenden Bericht hat er zu erstatten, wenn der Beschuldigte seinen Verpflichtungen zumindest soweit nachgekommen ist, dass unter Berücksichtigung seines übrigen Verhaltens angenommen werden kann, er werde die Vereinbarungen weiter einhalten, oder wenn nicht mehr zu erwarten ist, dass ein Ausgleich zustande kommt.

PLEASE NOTE

With this information leaflet please find enclosed an invitation to an interview with a mediator. In this interview you will receive comprehensive information.

Please read this text carefully. If you have any questions, or if anything is unclear to you please do not hesitate to bring it up during the interview. For a TA to succeed it is essential that you are well-informed on all points.



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... **MEDIATION
IN PENAL MATTERS**

Spenden: P.S.K. 90.101.500



Impressum

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Juli 2008

MEDIATION IN PENAL MATTERS

- ... Mediation in Penal Matters (Tatausgleich, in short: TA) is a service of **NEU**START**** (Association for probation services and social work). As soon as the Public Prosecutor or the Courts have informed **NEU**START**** that penal proceedings for a misdemeanour or a minor crime have been instituted, **NEU**START****'s social workers will propose a TA to the parties involved.
- ... The objective of a TA is to reach conciliation between the victim and the defendant through mediation (the mediator being neutral).
- ... With the help from a neutral mediator a fair solution should be found out of court that is acceptable to all parties concerned.
- ... Mediators will confer with all parties concerned (with the defendant and with the crime victim).
- ... In talks between the parties concerned there will be a chance to discuss the relevant issues. Usually these issues comprise questions of compensation and the future relationship between the parties.
- ... An agreement will be laid down in writing.
- ... The mediator will report to the Public Prosecutor or to the Judge on the agreement and its fulfilment. Apart from that mediators are under a duty of secrecy.
- ... When an agreement is reached between the parties involved, there is a good chance that proceedings will be discontinued.
- ... If no agreement is reached, proceedings will in all probability be resumed.

ADVICE FOR DEFENDANTS

TA gives the defendant a chance to settle the offence he is being charged with, out of court and without a conviction and sentencing.

Preconditions for TA are:

- ... the defendant's willingness to deal with the incident, its background and its consequences and to assume the responsibility for it
- ... his willingness to talk with the victim, to pay damages and to accept other obligations
- ... to pay fixed costs in an amount up to 250,- Euro (insofar thereby her/his subsistence is not impaired)

When proceedings are discontinued no entry will be made in criminal records although an internal note for the judicial system will be made and kept for ten years.

A TA requires the consent of the defendant. As long as the proceedings have not been discontinued, the defendant has the right to demand continuation of the regular proceedings.

The defendant can at any time retain an attorney or seek legal advice in other ways.

With juvenile defendants their legal representative has the right to comment on the TA. Transactions that go beyond the legal capacity of minors require the consent of their legal representative and must be approved by the family court.

LEGAL ADVICE FOR CRIME VICTIMS

TA offers crime victims the following advantages:

- ... A chance to talk in a secure environment about their concerns, needs and expectations
- ... Their just interests will be safeguarded
- ... Payment of damages and the assumption of other obligations by the defendant can be reached without a lengthy and costly lawsuit
- ... They will have a chance to talk with the defendant in a safe environment and under the guidance of social workers

Crime victims have the right to demand at any time the presence of a person of their confidence or a legal counsel. They will also be advised of services for the protection of crime victims.

In the case of adult defendants, a TA is conditional on the victims's consent, provided such consent is not being refused for reasons that would not be acceptable in court.

To discontinue proceedings lies within the discretion of the Public Prosecutor or the Court.

In the case of minors, transactions that go beyond their legal capacity require the consent of their legal representative and must be approved by the family court.