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**MAKE
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INTRODUCTION

Anyone can be a victim of crime.

Becoming a victim of a crime is a particularly unpleasant and sometimes disturbing experience for any person. Physical, psychological, economic and social consequences of the crime aside, it is quite normal for anybody involved in court proceedings to experience doubts, anxiety or worry.

If you yourself have become the victim of a crime or know someone who has, this brochure may offer you help and assistance. Here you can find information on your rights, on how criminal proceedings in Germany work and where to find help and support.

We have tried our best to explain everything you need to know in simple and clear terms, while still providing you with as complete and comprehensive information as possible.

CRIMINAL PROCEEDINGS

Being involved in criminal proceedings comes with a certain amount of stress, and feeling anxious and insecure is perfectly normal. As a victim or witness of a crime, you want to know what to expect and how to behave. In the following chapters, we will provide an overview of the German criminal proceedings and the parties involved. You will learn about the work of the public prosecutors, the investigative procedure and the court trial.

“SHOULD YOU REQUIRE FURTHER INFORMATION ON CRIMINAL PROCEEDINGS, PLEASE CALL WEISSER RING HELPLINE FOR VICTIMS OF CRIME AT 116 006 (TOLL-FREE FROM WITHIN GERMANY).”

Should you require further information on criminal proceedings, please call WEISSER RING helpline for victims of crime at 116 006 (toll-free from within Germany).

Please be aware that some special provisions apply for juvenile offenders, which are not presented here.

THE CRIMINAL OFFENCE



The German Criminal Code (Strafgesetzbuch – StGB) sets out what constitutes criminal behaviour under German law. The offender must fulfil the legal elements of an offence, and have acted unlawfully and culpably in doing so. The offender acts unlawfully in the absence of legally recognized reasons of justification, such as self-defense (Notwehr). The offender must have acted culpably, which requires criminal responsibility. For example, an offender might not be criminally responsible in cases of serious mental illness or due to heavy alcoholization or drug influence.

CRIME – OFFENSE?

Not every criminal act is a crime in the legal sense. It is only a crime if the statutory minimum sentence is one year or more. Otherwise, German criminal law refers to it as a misdemeanor.

NEGLIGENCE OR INTENT?

The legal definition of any crime requires that certain elements (acts and events) are fulfilled. These are called the objective elements (objektiver Tatbestand). The offence of bodily injury (Körperverletzung) requires that one person causes injury to another. The offence also requires a certain inner attitude of the offender towards the criminal act, this is called the subjective element (subjektiver Tatbestand). In general, criminal law requires that the offender fulfils the objective elements intentionally, that means knowingly and willingly. For the offence of bodily injury, this means: The offender must know that his actions could cause injury to another person and he must also want that. It is sufficient that the offender knows that his action could reasonably cause a certain result and that he approvingly accepts that. There are also some offences can be accomplished by only negligence. The offender acts negligently and not carefully and in doing so fulfils the legal definition of an offence. Personal injury can be accomplished through negligence (fahrlässige Körperverletzung).

ATTEMPT OR COMPLETION?

An offence is completed as soon as the offender fulfilled all elements of it. However, a person starting with the offence may also be punished if he wants to fulfil it. This means for example: If you want to injure a person and begin doing so, you have accomplished an attempt, even if in the end the victim escapes and is not harmed. The attempt of an offence may be punishable. Crimes with a statutory minimum 1-year prison sentence are always punishable when attempted. But there are also some offences where the law punishes the attempt always (without regard to the sentence). This applies, for example, in the case of bodily injury, sexual abuse, coercion, theft and fraud.

FILING A COMPLAINT



IF I BECOME A VICTIM OF CRIME, WHO DO I CONTACT?



Anyone who learns about a criminal offence can file a complaint with the police, the prosecutor's office or the local court (Amtsgericht). To file a complaint you do not have to be a victim. Relatives and friends of crime victims as well as witnesses can file complaints. The complaint can be filed in writing or orally. In order to support the investigation, your statement should be as comprehensive and complete as possible when you file a complaint – you should, for example, name possible other witnesses, and present any possible evidence. It is also possible to file a complaint if the offender is unknown. In general, private individuals do not necessarily have to file complaints – there is no obligation.

The only exception are cases where someone learns of plans for certain particularly serious offences (e.g. murder, robbery). Victims may be accompanied by

“VOLUNTEER SUPPORT WORKERS OF WEISSER RING, ANOTHER VICTIM SUPPORT ORGANISATION OR OTHER PERSONS OF TRUST CAN ACCOMPANY AND SUPPORT THE VICTIM IN FILING THE COMPLAINT.”

a person of trust when it files a complaint.

Anyone who became a victim in another European country can file a complaint in Germany.

WHAT DOES A COMPLAINT LOOK LIKE?

A complaint must be truthful and should describe the criminal events in as much detail as possible. You can file a complaint even if you can't provide information on all points. You can file a complaint against an unknown offender. The answers to the following questions are helpful:

- » What happened?
- » How did it happen?
- » Where did it happen?
- » When did it happen?
- » Whom did it happen to?
- » Who committed the offence?
- » Who witnessed something?
- » What has been done already?

A complaint can be filed orally or in writing (sometimes even online). Victims who do not speak German are entitled to file the complaint in their own language or a language they understand. When a complaint is filed, a case number will be assigned. This case number is used during the criminal proceedings, for example, for further correspondence, when providing itemised damage reports, when filing insurance claims (to prove

that you filed a criminal complaint) or if you want to call the police to inquire about the case. That is why you should always note down the case number or ask for it. If you file a complaint as a victim you can request a written acknowledgement of receipt in a language you understand providing information about the time and place of the crime and the crime itself.

CAN I REMAIN ANONYMOUS WHILE FILING A COMPLAINT?

The victim may refuse to give their residential address and instead give a different address (to which documents may be sent) in order to protect themselves or other people. This could be the address of a lawyer, for example. In this case, the residential address will not appear in the files.

In particularly serious cases, if the witness is at risk of their life, limb or liberty, it is possible to take special measures to protect the victim's identity. The public prosecutor will then keep the personal information separate from the criminal files.

It is also possible to provide the police with anonymous information. The police are obligated to investigate the tip.

DO I HAVE TO FILE THE COMPLAINT IMMEDIATELY AFTER THE OFFENCE IS COMMITTED?

In general, you can file a complaint at any time. There is no deadline for filing a criminal complaint. (Anzeigeerstattung). In some cases, the prosecution must be requested depending on the seriousness of the crime.

However, all offences (except for murder) are subject to a statutory period of limitation, which ranges from 3 years to 30 years. The limitation period varies depending on the offence and sometimes also according to the age of the victim. For example, the limitation period for sexual child abuse only begins once the victim turns 30. After the limitation period expires, offences cannot be prosecuted anymore. Legal advice may be required in individual cases.

“IF YOU ARE UNSURE WHETHER YOU WANT TO FILE A COMPLAINT, YOU SHOULD INFORM YOURSELF OR CONTACT A VICTIM SUPPORT CENTRE (E. G. WEISSER RING) FOR SUPPORT.”

If you are unsure whether you want to file a complaint, you should inform yourself or contact a victim support centre (e. g. WEISSER RING) for support.

If you decide to file a complaint, it is best to file it as soon as possible after the crime, so that the investigation and the collection of evidence can begin quickly. In particular for physical attacks, it is important to start collecting evidence immediately. It is therefore a good idea to go to a doctor, a hospital or a police station to have any injuries documented.

WHAT IS A FORMAL REQUEST FOR PROSECUTION (STRAFANTRAG) AND HOW LONG CAN I WAIT UNTIL I FILE IT?

There are certain offences which are only prosecuted if the victim files a formal request for prosecution, stating explicitly the desire for the criminal prosecution of this case. These offences are called “Antragsdelikte”. The law governs which offences require such a formal request for prosecution and which don’t. Crimes requiring a formal request are for example property damage (Sachbeschädigung), insult (Beleidigung) and unlawful entry (Hausfriedensbruch). The formal request can usually be filed only by the victim or in some cases also by their relatives. There are procedural requirements for the formal request of prosecution. The request can be filed right after the crime or later. Please note that this formal request is subject to a **three-month time limit**. This time limit starts as soon as you are aware of the crime itself or aware of the offender. It is possible to withdraw the request. In this case, the prosecution will stop investigating and terminate the proceedings. However, in cases where the victim has a legal right to demand prosecution, the proceedings will continue if a prosecution is deemed to be in the public interest. Once a request is withdrawn, it cannot be re-submitted.

Formal request for prosecution:

- to be filed within three months
- once withdrawn, it cannot be re-submitted

CAN THE POLICE OR THE PUBLIC PROSECUTOR REFUSE TO PURSUE MY COMPLAINT?



“THE FOLLOWING GENERAL RULE APPLIES: THE MORE SERIOUS THE OFFENCE, THE MORE LIKELY THAT IT IS SUBJECT TO PUBLIC PROSECUTION.”

It depends on the type of the offence, how the authorities are obliged to react to the suspicion of an offence.

Most offences are so-called “Offizialdelikte”, which require public prosecution. This means: If the authorities be-

come aware of the suspicion that such an offence has been committed, they have to open an investigation and investigate the facts of the case. As a consequence, the investigation will continue even if the complaint is withdrawn.

It is different for the “Antragsdelikte” where investigation and prosecution require a formal request, as explained above. If the request is withdrawn, the proceedings will be terminated. This, however, applies only for the “Antragsdelikt”; if the case includes crimes which are subject to public prosecution, the investigation will continue.

IMPORTANT: If you withdraw a formal request for prosecution, you might be forced to pay the costs of the proceedings.

WHEN FILING A COMPLAINT YOU ARE INFORMED ABOUT YOUR RIGHTS DURING AND BEYOND THE CRIMINAL PROCEEDING:

For example you have to be informed about your right to file a complaint, to engage a lawyer, to be accompanied by a psychosocial criminal case counsellor or in special cases to file for private accessory prosecution.

INVESTIGATIVE PROCEEDINGS



WHAT HAPPENS AFTER I FILE A COMPLAINT?

Once the law enforcement authorities learn of the suspicion of a crime, they launch an investigation. The public prosecutor is in charge of the investigation; it is supported by the police. It is bound to be objective and neutral in carrying out its investigation. At the end of the preliminary proceedings, charges are brought before the court, a penalty order is issued (equivalent to a conviction) or the proceedings are terminated.

An important part of the investigation is the gathering and securing of evidence. The public prosecutor has certain investigative tools at its disposal to establish the facts of the case, including:

“THE PRELIMINARY INVESTIGATION IS CONDUCTED BY THE PUBLIC PROSECUTION OFFICE WITH THE ASSISTANCE OF THE POLICE”

- » Questioning the accused, the victim and the witnesses
- » Examination of pieces of evidence (e. g. letters, photos, SMS)
- » Inspection and forensic examination of the crime scene
- » Impounding and seizure of personal property
- » Searches of buildings and persons
- » Surveillance

ROLE OF THE VICTIM DURING INVESTIGATIONS



The victim is an important witness in the proceedings and will therefore be questioned already during the investigation in order to obtain the required evidence. The questioning may be carried out either by the police, the public prosecutor or the investigating judge. If you are called as a witness you are

obligated to appear, otherwise there is a risk of a fine or you might be picked up and personally escorted by the police. You are bound to tell the truth. In some cases you may have a right to refuse testimony completely or to withhold certain information.

Attention:

“IN SOME CASES YOU MAY HAVE A RIGHT TO REFUSE TESTIMONY COMPLETELY OR TO WITHHOLD CERTAIN INFORMATION.”

You are entitled to **refuse testimony** (Zeugnisverweigerungsrecht) if you are married or engaged to the accused or related (closely enough) by blood or marriage. A right to refuse testimony also applies for anyone subject to a duty of professional secrecy, such as medical doctors, priests or psychologists.

A witness has a right to **withhold information** (Auskunftsverweigerungsrecht), if this testimony would put the witness or one of his relatives at risk of prosecution for a criminal offense or misdemeanor. The witness has to be informed about his rights and duties prior to each questioning.

YOUR RIGHTS AS A VICTIM DURING THE INVESTIGATION



- » Right to be informed at an early stage in writing in an understandable language about your rights in the criminal proceedings:
 - » upon request, notification of the termination of the proceedings
 - » upon request, information about time and place of the trial as well as the accusations against the accused
 - » upon request, notification about the result of the criminal proceedings
 - » to file a complaint or file a formal request for prosecuting
 - » to file for private accessory prosecution
 - » to apply for a victim representative for accessory prosecution or legal aid
 - » to file for the assignment of an interpreter and translation within the criminal proceedings
 - » to file a claim for pain and suffering or damages within the criminal proceedings
 - » to apply for reimbursement of outlays for witnesses

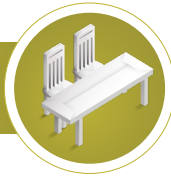
- › to participate in a victim-offender-mediation
 - › only to be asked personal questions if it is inevitable
 - › that the offender can be removed from the courtroom or about a possible video-hearing
 - › to exclude the public from while your hearing
 - › the possibility to record the hearing when a minor victim is involved. This video will be replayed in the trial.
 - › that minor victims may only be questioned by the judge
 - › upon request, notification about the existence of a restraining order
 - › upon request, information about current or ending custodial measures against the offender
 - › upon request, information about granted prison leave or granted privileges
 - › upon request, information if the offender fled from prison and what measures are performed for your protection
- » **Right to be informed if possible in writing, in an understandable language about your rights outside of the criminal proceedings:**
- › to file a claim for pain and suffering or damages compensation in civil court and apply for legal aid if applicable
 - › filing for a restraining order
 - › filing for compensation under social compensation legislation
 - › filing for claims arising from federal or state administrative regulations
 - › receive support by victim organisations
- » **Right to be informed in writing in an understandable language about your rights as a private accessory prosecutor:**
- › to hire a lawyer already in the preliminary proceedings
 - › to be present in trial.
 - › for your lawyer to be present in trial
 - › to apply for a victim representative for accessory prosecution or legal aid
- » **Rights during a police questioning as a witness:**
- › Right to be informed of rights and duties in an understandable language
 - › Right to be accompanied by a person of trust
 - › Right to legal counsel
 - › The right to refuse testimony or to withhold information under certain conditions

THE RIGHT TO INSPECT THE FILES:

With the help of a lawyer, a victim can request access to the files or information contained in the files, if a legitimate interest can be proven. Certain victims may inspect the files without having to demonstrate a legitimate interest. More detailed information can be found under the heading **private accessory prosecution**. Access to files will be declined if the legitimate interests of the accused or of other persons speak against doing so. Access to files may be denied if this would put the criminal investigation (or the investigation of another case) at risk, or substantially delay the proceedings. The denial to inspect the files must be notified through issuance of an order.

At the victim's request, both the public prosecution as well as the judge may provide the victim with copies of the files or information even if the victim does not retain a lawyer, as long as the victim demonstrates a legitimate interest. It is always important that the information gained this way is only used for the purpose for which access to the files was granted.

PRIVATE ACCESSORY PROSECUTION



Private accessory prosecution (Nebenklage) enables the injured party to participate in the investigation and criminal proceedings with special rights. This requires entitlement to such a right of action (Nebenklagebefugnisgesetz).

The law provides for such a right of action to victims of certain offences. These include, for example, crimes against sexual self-determination (e. g. sexual abuse of children, rape and sexual assaults), murder, intentional manslaughter, intentional infliction of bodily harm (vorsätzliche Körperverletzung), human trafficking and stalking. In addition, the victim of another offence may have a right to private accessory prosecution in other special situations, for example, if the crime had particularly serious consequences. If the crime victim is deceased, the right to private accessory prosecution passes to the parents, children, siblings, spouse, or civil partner.

Having the right to private accessory prosecution already entitles the victim to inspect the file. In that case a legitimate interest is not necessary.

An accessory prosecutor joins the action lodged by the public prosecution office. The private accessory prosecution may be lodged right at the beginning of the investigative proceedings. It can also be lodged after the verdict is pronounced, which provides the accessory prosecutor the right of appeal.

In order to file for private accessory prosecution, you have to submit a written joinder declaration to the court. The joinder declaration can also be submitted orally to the record of the court registrar (Geschäftsstelle) of the court. The accessory prosecutor is not required to give a reason when filing the joinder declaration. If your application is dismissed, you are entitled to file a complaint.

Attention:

“IF THE OFFENDER IS YOUNGER THAN 18, PRIVATE ACCESSORY PROSECUTION IS ONLY PERMITTED IN EXCEPTIONAL CASES.”

The private accessory prosecution serves to improve the rights of the injured party during the criminal proceedings. It enables the injured person to actively pursue their own rights and not to remain in a passive role vis-à-vis the offender. This active role can be very helpful in dealing with the consequences of a crime.

If the offender is younger than 18, private accessory prosecution is only permitted in exceptional cases. In particular, these exceptions include crimes against life, body and the right of sexual self-determination. This crime must have caused serious emotional or bodily harm to the victim. The risk to cause that kind of harm is sufficient.

“THE PRIVATE ACCESSORY PROSECUTION SERVES TO IMPROVE THE RIGHTS OF THE INJURED PARTY DURING THE CRIMINAL PROCEEDINGS. IT ENABLES THE INJURED PERSON TO ACTIVELY PURSUE ITS OWN RIGHTS AND NOT TO REMAIN IN A PASSIVE ROLE VIS-À-VIS THE OFFENDER. THIS ACTIVE ROLE CAN BE VERY HELPFUL IN DEALING WITH THE CRIME.”

ADDITIONAL RIGHTS OF THE ACCESSORY PROSECUTOR:

- » Right to inspect the files without having to demonstrate a legitimate interest
- » Translation of written documents that are necessary to exercise certain rights if the victim is not fluid in German
- » Summons to the trial in an understandable Language
- » Right to be present during the entire trial, even if the victim is scheduled to be questioned as a witness (witnesses are generally excluded from attending the trial prior to testifying, in order to avoid prejudicing their testimony). Your lawyer may also be present during the entire trial, even if the public is excluded.
- » Right to put questions
- » Right to move for the admission of evidence and to apply e. g. for the exclusion of the public or the defendant
- » Right to file complaints
- » Right to make statements, for example, relating to the result of a hearing of evidence



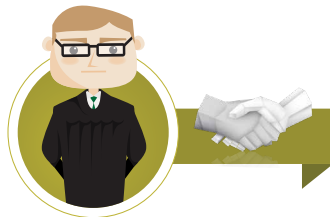
- » Right to challenge a judge or expert on grounds of bias
- » Right to participate in the final arguments
- » Right of appeal: against a verdict of not guilty, against the verdict (to a limited extent) and against a decision not to proceed with the main trial
- » Victims of certain crimes also have a right to be provided a legal counsel, all other parties entitled to file for accessory prosecution can at least apply for legal aid to retain a lawyer, subject to certain legal conditions.
- » Every victim entitled to file for private accessory prosecution may upon request be provided with an interpreter, if they do not speak the German language.

COST RISKS



If the offender is convicted, they will have to bear the costs for private accessory prosecution. However, the victim may have to bear the costs for his own lawyer if the offender is unable to pay. There is a cost risk for the private accessory prosecutor if the verdict is not guilty or the proceedings are terminated. The public purse will always pay the statutory legal fees of an assigned victim representative for accessory prosecution.

VICTIM REPRESENTATIVE FOR PRIVATE ACCESSORY PROSECUTION



For certain offences, the victim must be assigned a lawyer (victim representative) for the entire proceedings, regardless of the victim's financial situation. The victim's lawyer will already assist the victim during the questioning by the police. In these cases, the state will pay the statutory legal fees. Such a legal representative for accessory prosecutors may be assigned for example in cases of

- » murder and manslaughter
- » serious sexual offences
- » human trafficking

- » certain crimes such as grievous bodily harm, robbery and extortion which have caused serious emotional or bodily harm to the victim, or are expected to do so
- » minors who have fallen victim to certain serious crimes
- » persons who have fallen victim to certain serious crimes and who are unable to enforce their own interests adequately
- » If on the death of the victim, close relatives shall also have this right.

LEGAL AID



If no legal representative is assigned, the injured party can apply for legal aid. Legal aid is available, if

- » the injured party is entitled to private accessory prosecution
- » and the injured party is unable to adequately enforce its own interests
- » or if the injured party cannot reasonably be expected to do so

“LEGAL AID CAN ALSO BE GRANTED FOR THE PRELIMINARY PROCEEDINGS. SINCE THE COSTS CAN ONLY BE COVERED FROM THE TIME THE APPLICATION IS FILED, IT IS IMPORTANT TO FILE THE APPLICATION AS EARLY AS POSSIBLE.”

It is also a mandatory requirement is that the injured party is unable to fund the costs for personal or financial reasons. This is also the case if the injured is only able to finance part of the costs or pay in instalments.

The application for legal aid must be filed with the competent court. It requires disclosing your personal and financial situation. If the court grants legal aid, the public purse will fund the fees of the lawyer either completely, or they have to be repaid by the accessory prosecutor in monthly instalments.

INVESTIGATION COMPLETED: WHAT DOES THE PUBLIC PROSECUTOR DO NOW?



WHAT HAPPENS AFTER THE INVESTIGATION PROCEEDING HAS BEEN COMPLETED?

The public prosecution office has different options once the investigation is completed. It can decide to bring charges or terminate the proceedings.

INDICTMENT

The public prosecutor will generally bring charges if a guilty verdict is more likely than not. How the proceedings will continue, if charges were filed, is explained under “What happens, if charges are filed”.

TERMINATION OF THE PROCEEDINGS

The proceedings can be terminated in various ways:

- » **Termination for lack of sufficient evidence for a charge:** The proceedings are terminated if the suspicions are not confirmed. This is the case if the investigation has either shown that the suspect did not commit the alleged offence or that the suspicion could not be confirmed due to a lack of evidence. Another possibility is that a prosecution is excluded for legal reasons (limitation, no formal request for prosecution).
- » **Termination of proceedings involving multiple offences:** The proceedings can also be terminated if the offender has already been sentenced to a punishment or subjected to a measure of rehabilitation and security (e.g. committed to a psychiatric institution) and if the punishment expected from the current proceedings would be relatively insignificant in comparison. This could for example be the case where someone commits several aggravated robberies and, in this context, also causes some property damage at the scene of the crime
- » **Unconditional termination:** Proceedings may be terminated unconditionally if the offender’s guilt is considered to be minor. This is the case if the offender showed less criminal energy or caused less harm than is typical for this kind of

“THE PROSECUTOR WILL
GENERALLY FILE CHARGES
IF A GUILTY VERDICT IS
PREDOMINANTLY PROBABLE”

offence. An additional requirement is that there is no public interest in further prosecution. Both the public prosecutor as well as the court can terminate proceedings unconditionally. After charges are brought, the court can terminate the proceedings unconditionally at any stage of the trial.

- » **Conditional termination:** The proceedings can be suspended preliminarily subject to conditions and directives, the offender must follow (e. g. anger management training or payment of a certain amount of money). Typical cases are minor property or traffic offences. If the accused fails to comply with the conditions or directives, charges are brought or the proceedings are resumed, as the case may be. If all conditions and instructions are fully complied with, the proceedings are finally terminated.

WHAT ARE THE CONSEQUENCES OF A TERMINATION?

If the public prosecutor’s office terminates the proceedings unconditionally, it can reopen the case later. If the court terminates the proceedings, it can only be reopened if new evidence or new facts emerge. If the proceedings were terminated subject to conditions or directives, and these are not fulfilled, the prosecution will resume. The proceedings are terminated by order.

CAN THE PROCEEDINGS BE TERMINATED AFTER THE INDICTMENT?

The court can terminate the proceedings at any time, even after the main trial has begun.

MOTION FOR RESUMPTION IF THE CASE IS DROPPED

IF THE PROCEEDINGS ARE TERMINATED, WILL I (AS THE VICTIM) BE ASKED FOR MY APPROVAL OR WHAT ACTIONS CAN I TAKE AGAINST IT?

The termination of proceedings as described before does not require the victim’s consent. However, the interests of the victim should be taken into account.

WHAT CAN I AS A VICTIM DO AGAINST THE TERMINATION OF THE PROCEEDINGS?

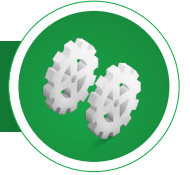
If the case is dropped because the suspicions against the defendant were not confirmed, the reasoning for this decision must be spelled out and presented to the defendant as well as to the party who filed the complaint. If the victim themselves filed the application, they must be informed that the decision to drop the case can be challenged by filing a complaint.

This complaint against the termination (Einstellungsbeschwerde) must be filed no later than 14 days after receipt of the notification that the case has been dropped. The applicant must file a written complaint with the public prosecutor, detailing why the decision to drop the case was in error. The complaint can be filed directly by the victim or via a lawyer. The prosecutor will review the complaint. If the prosecutor decides that it is not justified, he forwards it to the chief public prosecutor (Generalstaatsanwalt). He can revoke the decision to terminate the proceedings or even file charges. If the public prosecution office and the chief public prosecutor reject the complaint, it is sometimes possible to initiate proceedings to **force the public prosecution's office to press criminal charges**, subject to special deadlines and formal requirements.

"THIS COMPLAINT AGAINST THE TERMINATION (EINSTELLUNGS-BESCHWERDE) MUST BE FILED NO LATER THAN 14 DAYS AFTER RECEIPT OF THE NOTIFICATION THAT THE CASE HAS BEEN DROPPED."

Another way to open the main criminal proceedings after the public prosecution office dropped the case is to file a **private prosecution**. However, this is only possible for certain types of offences, such as unlawful entry, insult, intentional or negligent personal injury or property damage. These possibilities are explained in detail on the following pages.

SPECIAL TYPES OF PROCEEDINGS



PROCEEDINGS TO COMPEL PUBLIC CHARGES

For certain offences, if the prosecution terminates the investigation and a complaint to resume is unsuccessful, it is possible to file an action (Klageerzwinungsverfahren) to obtain criminal prosecution with the competent Higher Regional Court (Oberlandesgericht) **within a time period of one month** after the complaint is rejected. The application must be signed by a lawyer and set out facts as well as evidence justifying the public prosecution office. If the action is unsuccessful, the victim has to bear the costs. A successful proceeding to compel public charges entitles to private accessory prosecution.



PRIVATE PROSECUTION

A private prosecution is possible for certain minor offences, where the public prosecution office terminates the investigation for lack of public interest in the prosecution, referring the victim to the option of a private prosecution. In some cases, the private prosecution requires an attempt at reconciliation before an arbitrator. In order to file a private prosecution, the victim must submit an application (in the form of a bill of indictment) either in writing or to the record of the court registrar. In addition, the court costs must be paid in advance. A lawyer is not required, but helpful to help with drafting the application and for exercising the rights of the private prosecutor. In a private prosecution, the plaintiff takes the role otherwise occupied by the public prosecutor. Please note that access to the files requires the help of a lawyer. A private prosecution is adjudged by a criminal judge and the court has only a limited obligation to explore the facts of the case. However, the court may terminate the proceedings at any time on the grounds of minor guilt. The private prosecutor can also withdraw the private prosecution at any time until the trial is complete. Once the defendant gives evidence during the main trial, the prosecution can only be withdrawn with their consent. In addition, the private prosecutor is **entitled to appeal**.

NOTE: Filing a private prosecution can lead to costs. If the private prosecution is not successful the victim has even to bear the costs of the accused!

PENALTY ORDER PROCEEDINGS

The penalty order proceedings are a simplified procedure which results in a final conviction without the need for a main trial. This procedure is only applicable in cases at the local court where the expected punishment is minor. The prosecutor initiates these proceedings by applying for a penalty order after the investigation is concluded. The accused is served with the penalty order. If the accused objects to the penalty order, the case goes to **trial**.

WHAT HAPPENS IF CHARGES ARE FILED?



If the public prosecution office files charges, the proceedings move to the court. The court with which the charges are filed examines the following questions: Were the charges filed with the competent court? Does the bill of indictment meet the formal requirements? Is the defendant likely to be convicted? This phase is called the intermediary proceedings (Zwischenverfahren). Afterwards, the main proceedings begin.

“WHICH COURT IS THE COURT OF FIRST INSTANCE DEPENDS ON THE PLACE WHERE THE CRIMES WERE COMMITTED AND THEIR TYPE AND SEVERITY.”

LOCAL COURT

The local court can have three different compositions:

- » **Criminal judge (Strafrichter):** the criminal judge decides alone in cases where the expected sentence is no more than two years, as well as in cases of private prosecution.
- » **Schöffengericht:** criminal court, for cases with an expected sentence of between two and four years.

- » **Erweitertes Schöffengericht:** It rules on cases which fall into the purview of the regular Schöffengericht, but where the prosecution requests an additional judge.

REGIONAL COURT (LANDGERICHT)

The regional court can have two different compositions:

- » **Major criminal court (große Strafkammer):** The major criminal court adjudges serious cases where the sentence is expected to exceed four years or where the defendant will likely be committed to a psychiatric institution or to long-term preventive detention. The prosecution can also choose to file an indictment with the major criminal division even if the case would generally fall under the purview of the local court. Such a step can be taken for various reasons, such as a particular need to protect victims of a crime who are potential witnesses, the exceptional complexity of the case or its special significance.
- » **Schwurgericht:** a criminal court responsible for certain crimes set out in a special enumeration in the Judicature Act (Gerichtsverfassungsgesetz). These are so-called capital crimes such as murder, manslaughter, robbery followed by death, personal injury followed by death or sexual abuse followed by death.

HIGHER REGIONAL COURT (OBERLANDESGERICHT)

The higher regional court deals with certain enumerated crimes, in particular crimes against national security.

HOW CAN I (AS A VICTIM) PARTICIPATE IN THE PROCEEDINGS?



Initially, the victim participates in the proceedings as a witness. However, under certain conditions, the victim also has the option to file for private accessory prosecution (Nebenklage) and to take an active role. Filing for private accessory prosecution and joining the proceedings as an accessory prosecutor is possible at any time, however, it is advisable to join as early as possible.

An accessory prosecutor is party to the proceedings and has more rights than a normal witness. This does not require hiring a lawyer, however a lawyer can be very helpful in enforcing your rights within the context of private accessory prosecution.

THE TRIAL



WHAT HAPPENS AFTER INDICTMENT?



If the court decides after reviewing the bill of indictment that the case should go to trial, it sets a trial date. The defendant and the defence lawyer, the prosecution, the accessory prosecutor, and their lawyer are informed of the trial date. Witnesses are informed of the trial date in their notice of summons. A victim not being private accessory prosecutor or witness in the trial is entitled to be notified upon request about the place and date of the trial and the accusations against the accused in an understandable language.

WHAT IS THE PURPOSE OF THE TRIAL?



Even though the police and the public prosecution office have already collected evidence and questioned witnesses, it is ultimately the responsibility of the judge to seek out the truth and take all the necessary evidence. That is why during the trial, all the evidence is taken again and all witnesses are questioned.

HOW MANY JUDGES PARTICIPATE IN THE TRIAL?



The number of judges depends on which offences are adjudged in which court.

AT THE LOCAL COURT

- » **Criminal judge (Strafrichter):** one judge
- » **Schöffengericht:** criminal court with a professional judge and two lay judges
- » **Erweitertes Schöffengericht:** the enlarged version of the Schöffengericht, with two professional judges and two lay judges

AT THE REGIONAL COURT

- » **Major criminal court (große Strafkammer):** two or three judges and two lay judges
- » **Schwurgericht:** three judges and two lay judges

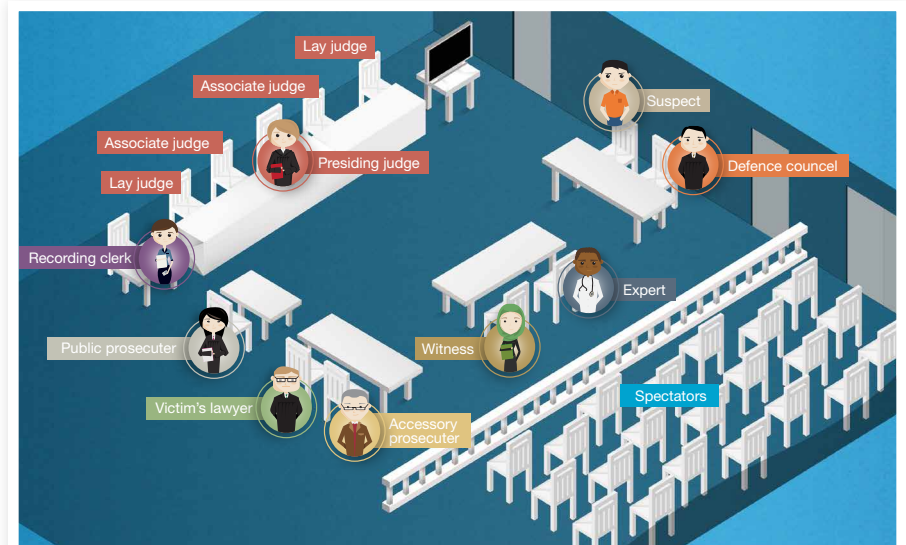
AT THE HIGHER REGIONAL COURT

- » **Senate:** three or five judges

AT THE GERMAN FEDERAL COURT OF JUSTICE BUNDESGERICHTSHOF

- » **Senate:** five judges

IN THE COURTROOM



The judges (and, if applicable, the lay judges) sit on the bench in the courtroom. There is also a secretary who records the proceedings. In addition, a public prosecutor is present at all times. The defendant and their lawyer (and, if applicable, an interpreter) sit across from the prosecution. If the victim is involved in the proceeding as an accessory prosecutor, they (and their lawyer) may be present during the trial and sit on the side of the public prosecutor.

“IF THE VICTIM FILES FOR PRIVATE ACCESSORY PROSECUTION, THEY (AND THEIR LAWYER) ARE PERMITTED TO BE PRESENT THROUGHOUT THE ENTIRE TRIAL.”

If the accessory prosecutor requires an interpreter, the interpreter will sit next to them. If the trial is open to the public, spectators may sit in the back of the courtroom.

The witnesses are kept outside the courtroom while they wait to testify; during their testimony, they are in the centre of the courtroom. Afterwards, they can sit in the spectator area.

WHAT ARE MY DUTIES IF I AM CALLED AS A WITNESS IN COURT?



If you are summoned as a witness in court, you have to appear. A witness who fails to appear may be ordered to pay the costs caused by their absence. In addition, they may be fined, and failure to pay may result in their detention. The court may also order the police to bring a missing witness before the court.

When testifying at court, a witness is generally obligated to provide their personal details (name, address etc.), but exceptions apply in some cases.

“MAKING A FALSE STATEMENT MAKES YOU LIABLE TO PROSECUTION.”

The witness has to make true and complete statements, unless they have a **right to refuse testimony** or to **withhold information**. If the witness decides to testify despite having a right to refuse testimony or withhold information, they are required to tell the truth.

CLAIMS FOR COMPENSATION FOR PAIN AND SUFFERING AND DAMAGES IN CRIMINAL PROCEEDINGS



As a crime victim, you can pursue your claims for compensation pain and suffering and damages within the criminal proceedings. There are different ways to obtain compensation from the offender:

THE ADHESIVE PROCEDURE (ADHÄSIONSVERFAHREN)



Victims would normally have to pursue claims for compensation pain and suffering and damages at the civil courts with a separate lawsuit. In this case, the victim would first have to bear the cost of the lawsuit themselves, unless the victim has purchased legal expense insurance. However, claims can also be pursued within the criminal proceedings, through a so-called adhesive procedure (Adhäsionsverfahren), which enables the victim to pursue their compensation claims within the criminal proceedings. This requires:

- » a written application to the public prosecutor or the court,
- » a verbal application to the court,
- » or a verbal application during the trial.

The plaintiff of the adhesive action must also state what they want to receive from the defendant and why. However, in contrast to a civil court, the criminal court is obligated to find out all facts and circumstances relevant to the claim, so that the plaintiff does not have to name all required evidence. Adhesive procedures are not admissible if the offender was a minor at the time of the offence.

“AS A VICTIM OF A CRIME, YOU CAN PURSUE YOUR CLAIMS FOR PAIN AND SUFFERING AND DAMAGES WITHIN THE CRIMINAL PROCEEDINGS.”

The adhesive procedure has the following advantages:

- » no stress through an additional civil trial,
- » no lawyer required,
- » no advance payment of court costs.

In contrast to a civil trial, the plaintiff of the adhesive action can testify as a witness on their own behalf. If the plaintiff claims only damages, allowing the adhesive action is subject to the discretion of the court. The court may reject the adhesive procedure, if it believes, that this would delay the criminal proceedings. However, the court always has to rule on a claim compensation, unless the filing of such claim was impermissible (e.g. too late) or the claim itself was unsubstantiated. It is possible to file a claim for compensation for pain and suffering without specifying an amount.

Plaintiffs in adhesive actions may participate in the trial and they can be represented by a lawyer, though this is not mandatory for pursuing an adhesive action. The plaintiff in an adhesive action has the right to be heard by the court, and can file the questions and motions necessary for the proceedings. Depending on the results, the court can grant the victim the damages in whole or in part.

In addition, the court may issue judgment on the substance of the claim (Grundurteil), deciding only that the plaintiff has suffered damage and that the offender is required to pay damages. The amount of the damages is then determined in separate proceedings at the civil court. Only the defendant is entitled to appeal against the civil law part of the judgment. Such appeals are also heard by the criminal courts.

Costs may arise by the adhesive procedure. The plaintiff can apply for legal aid or ask their legal expense insurer (if applicable) whether it will cover the costs. Depending on the outcome, the plaintiff may have to pay the costs of the offender. Adhesive procedures also pose a general cost risk if the offender is unable to pay.

In the adhesive procedure, victim and offender may also settle on a certain amount.

RESTITUTION:

The judge can also order the offender to make amends for the damage caused to the victim. This is in particular possible for juvenile offenders, who may be subject to an order or directive to provide compensation for the damages caused.

The court will usually propose a settlement on the request of the victim and the offender. The settlement is an enforceable civil title (vollstreckbar).

"A VICTIM MAY ALSO CONCLUDE A SETTLEMENT (WIEDERGUT-MACHUNGSVERGLEICH) DIRECTLY WITH THE OFFENDER DURING THE CRIMINAL PROCEEDINGS."

VICTIM-OFFENDER MEDIATION (TÄTER-OPFER-AUSGLEICH):

Another possibility is the so-called "Täter-Opfer-Ausgleich" (TOA) which doesn't necessarily require a payment to settle civil law claims. The TOA does not take place in court, but in front of an independent arbitration body. At the centre of these proceedings is a mediated talk between the victim and the offender, during which the two parties can agree on various compensation measures. It is possible to agree on a monetary payment, but an apology or another gesture by the offender to make up for their deed is also possible. This mediation procedure is voluntary for both the victim as well as the offender. The mediation cannot be undertaken against the will of the victim. If the victim does not want it, no TOA will take place. If a victim decides to agree to the mediation procedure, they can bring someone to accompany them. The prosecution and the court should always try to initiate a TOA during the entire proceedings. For the victim, the TOA may enable them to get compensation for personal suffering faster and often much easier than via the civil courts. At the same time, meeting the offender outside of court can provide a much better basis for talks. Victims can show the offender the wrong they committed and the consequences of their actions. For the offender, participation may result in a lower sentence or even no sentence at all. For minor offences, it is possible to terminate the proceedings subject to the condition that the offender pays a certain amount to the victim.

"THE VICTIM-OFFENDER MEDIATION (TOA) DOES NOT TAKE PLACE IN COURT, BUT IN FRONT OF AN INDEPENDENT ARBITRATION BODY. THIS MEDIATION PROCEDURE IS VOLUNTARY FOR BOTH THE VICTIM AS WELL AS THE OFFENDER."

The victim's compensation claims against the offender have priority over state claims against the offender such as for fines and court costs. Only after the victim's claims against the offender have been paid by the offender state claims against the offender can be enforced. Only after the offender has compensated the claims of the victim, they will start paying any fines and court costs.

BASIC PRINCIPLES OF THE TRIAL



Several basic principles apply for the criminal trial. These govern the structure and the manner of the trial. They ensure that the trial meets the requirements of a constitutional state.

PRINCIPLE OF IMMEDIACY:

The court must examine the evidence itself in order to arrive at a basis for its decision. This means: The judge must be present during the entire trial. The most immediate means of evidence must be used. This means, for example, that the witness should be questioned directly by the court, instead of just reading the record of a previous testimony.

PRINCIPLE OF PUBLIC TRIAL:

In general, the trial must be public and accessible to everyone, including interested citizens and the press. However, access to the trial can be limited to protect the participants, including the witnesses.

PRINCIPLE OF ORAL PROCEEDINGS:

In order to make the criminal trial transparent and understandable, the entire trial must be carried out in an oral format. This means, for example, that all witnesses have to testify orally before the court, and all documents have to be read out.

IN DUBIO PRO REO:

The Latin phrase “in dubio pro reo” means that the court has to give the defendant the benefit of the doubt. The accused is assumed to be innocent until their guilt has been established beyond reasonable doubt.

FAIR TRIAL:

The trial must be fair and in line with the requirements of a constitutional state.

RIGHT TO THE STATUTORY JUDGE:

This principle states that the government must establish in advance the rules stipulating which judge deals with which case, without regard to any specific individual case.

RIGHT TO BE HEARD:

The accused has the right to respond to the accusations and to file motions during the proceedings.

DATE OF TRIAL



Victims of a crime are generally summoned to the trial as witnesses and thus informed of the trial date. In those exceptional cases where the victim is not summoned as a witness, they will be informed about the trial date upon request. The victim can submit this request already when filing the initial complaint, but also during questioning or with a letter to the public prosecution office. The reason is: Someone who is not a witness may nevertheless attend the trial as a member of the public, just like everyone else. For the crime victim, this applies even in trials against juvenile offenders, despite the fact that these are usually non-public. Victims who are entitled to file for private accessory prosecution have additional rights.

YOUR SUMMONS OF TRIAL

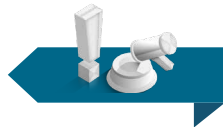


Read the summons you receive thoroughly. Here are a few tips:

- » It is a good idea to arrive a bit early at court, as you may be delayed by security checks.
- » Do not bring sharp objects or liquids, as you will have to surrender these at the security checkpoint. The rules are similar as in airports.

- » The trial proceedings commence with the calling of the case. The judge determines if all summoned persons are present. Afterwards, all witnesses have to leave the courtroom. You will wait in front of the courtroom until you are called by the judge. If you are afraid of meeting the defendant, you should contact a victim support organisation such as WEISSER RING in a timely fashion before the trial. A member of the victim support organisation can accompany the victim and wait with them at a place where they won't meet the defendant.
- » Trials often open with some delay. You should take such delays into account. You should bring a person you trust to support you while you wait.

VICTIMS' RIGHTS DURING TRIAL



- » **Right to protection and consideration**
 - › The court must take your rights and interests appropriately into account.
 - › Your personal circumstances must be taken into consideration during each questioning, insofar as the search for the truth allows.
- » **Right to assistance**
 - › As a victim, you can bring a lawyer or a person you trust to your questioning during the trial.
- » **Right to protection of privacy**
 - › A direct confrontation with the defendant in the courtroom can only be avoided in exceptional cases. Where such exceptions apply, the questioning can be carried out by video conferencing, by taking your testimony before the trial or by removing the defendant from the courtroom.
 - › In very serious exceptional cases, a testimony before the court can be replaced by video questioning or by reading out an earlier record of testimony.
 - › In some cases, you may be able to testify without giving your personal information.
 - › Once the trial begins, video and photo recording as well as TV and radio recording and transmissions are prohibited in order to protect the privacy of the participants.

- › If the testimony touches on your personal life, the court may exclude the public, either on its own initiative or upon request. Questions regarding your personal life are only asked if they are essential to enlighten the facts.
- › In cases where minors are victims of crimes against the right of sexual self-determination, life, personal freedom or of the maltreatment of charges, the public will be excluded from the trial upon request.
- › The public can also be excluded where the physical safety of witnesses or other persons might be put at risk.

- » **Right to retain distance from the accused**

- › Exclusion of the defendant from the trial:

The defendant is generally obligated to be present during the entire trial. The court may exclude the defendant in some cases during the questioning of the witness,

- › if a testifying victim is of minor age and there are concrete indications that the presence of the defendant will cause significant harm to the physical and emotional well-being of the child.
- › if an adult witness is exposed to a significant health risk.

After the defendant returns to the courtroom, they will be informed of the substance of what has occurred and what was said.

- › Video questioning:

It is possible to carry out a video questioning/recording in order to avoid having to question the crime victim repeatedly or in order to protect the victim from being confronted with the offender.

Testimony can be recorded by video already during the investigation phase of the proceedings. It can sometimes be used in place of questioning during the trial. Victims under 18 or witnesses who are sick or live abroad should already be questioned and their evidence recorded during the investigation. It is even obligatory for victims of sexual offences.

“IT IS POSSIBLE TO CARRY OUT A VIDEO QUESTIONING/ RECORDING IN ORDER TO AVOID HAVING TO QUESTION THE CRIME VICTIM REPEATEDLY OR IN ORDER TO PROTECT THE VICTIM FROM BEING CONFRONTED WITH THE OFFENDER.”

In addition, the questioning during the trial can be carried out via video conference, with the participants in the proceedings present in the courtroom, while the witness is at a different location. The witness is questioned via video and audio transmission, ensuring that the special question rights of the participants are maintained. A video conference is an option if a normal questioning would expose the witness to serious imminent risk. This applies in particular for the questioning of children, for whom the situation in the courtroom can be intimidating and who may suffer physical or emotional harm. However, adults may be similarly affected, in particular if they are the victims of serious violence.

» **Right to be heard**

During the questioning in the trial, every victim must be given the opportunity to make a statement on the consequences the crime had for them.

- › The victim has a right to fair treatment while being questioned as a witness. In particular, questions regarding the victim's personal life or that of their relatives should only be posed if this is absolutely unavoidable in the search for the truth. The same applies for questions which might be insulting for the victim or their relatives.
- › Witnesses under the age of 18 will generally only be questioned by the judge.
- › If the victim applies to join the proceedings as an accessory prosecutor, the victim will gain additional rights once the application is granted. Upon request the victim can receive a translation of written documents necessary to execute their rights. However, not all documents in the file will be translated.
- › All witnesses who don't speak the German language must be provided with an interpreter.

“DURING THE QUESTIONING IN THE TRIAL, EVERY VICTIM MUST BE GIVEN THE OPPORTUNITY TO MAKE A STATEMENT ON THE CONSEQUENCES THE CRIME HAD FOR THEM.”

STEPS OF THE TRIAL

WHAT HAPPENS IN A COURT TRIAL?

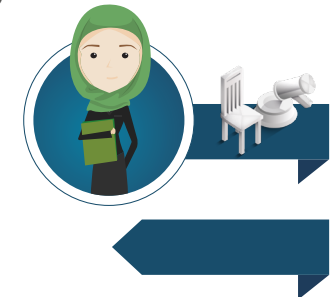
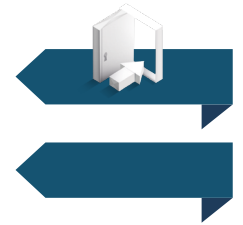
The trial begins when the judge calls the case against the defendant. Afterwards, all participants enter the courtroom and the judge confirms their presence. Afterwards, all witnesses have to leave the courtroom, in order to avoid prejudicing their testimony. The defendant is then questioned about their personal details. The prosecutor will then read out the indictment, which states which offences the defendant is alleged to have committed. The defendant can then respond to the allegations. Afterwards, the taking of evidence begins. To this end, the witness is called, informed about their rights and duties and questioned. Other evidence – such as certificates or documents – is presented before the court. Sometimes an expert witness will be questioned. After the taking of evidence, the prosecution, the accessory prosecutor (or their lawyer) and the defence lawyer can make their final pleadings. The defendant has the last word. After secret consultation the court pronounces the verdict. A trial may span several days. The duration of the trial is largely determined by the extent of the evidence phase.

YOUR WITNESS TESTIMONY

WHAT HAPPENS WHEN A WITNESS IS QUESTIONED?

The witness will wait outside the courtroom until called to testify. If you are called, you will enter the courtroom and sit at a table directly in front of the judge.

The judge then checks the identity of the witness. This requires stating name, age, occupation, place of residence and the relationship with the defendant or victim. The judge will inform the witness about rights and duties. A victim has to tell the truth and can be put under oath. A false testimony is an offence. The judge informs about the right to refuse to give evidence and the right to withhold information. If the witness has one of these rights it can refuse to give evidence. If the witness nevertheless decides to give evidence they have to tell the truth.



Then, the questioning begins. The questioning has two parts. First, the witness is asked to report what they have seen or experienced themselves. It is important to state only the truth and not to leave out anything. The judge may confront a witness with the testimony provided by other witnesses, or show them documents or pictures. After the testimony has been completed, the judge, the public prosecutor, the defendant and their lawyer as well as the accessory prosecutor and the expert witness may ask additional questions. If children and juveniles are asked to testify, the questioning will generally be carried out by the presiding judge. However, the judge may allow the other participants to ask direct questions.

“IT IS IMPORTANT TO GIVE TRUTHFUL TESTIMONY AND TO NOT WITHHOLD ANY INFORMATION”

DO I HAVE TO APPEAR IN COURT IF I AM PHYSICALLY FRAIL OR LIVE FAR AWAY?

In general, the witness is obligated to appear before the court. Exceptions can apply in rare cases, subject to a decision by a judge. If age, illness or other important reasons (e. g. foreign place of residence) make it impossible to appear before court, the court can order that the questioning be conducted via video conference. This eliminates the need to appear in person before the court. In addition, under certain circumstances, the record of a witness' earlier testimony may be read during the trial instead of personally questioning the witness at court.

WHAT CAN I (AS A VICTIM) DO IF I AM AFRAID OF THE TRIAL?

Every victim can be accompanied to the trial by a person of trust, a lawyer or a psychosocial counsellor. In certain serious exceptional cases, the judge can order testimony by video, in order to avoid forcing the victim to testify in the courtroom.

IS IT POSSIBLE TO EXCLUDE THE PUBLIC?

Court trials are generally open to the public. This is, in fact, a basic principle of German procedural law. However, the public can be excluded from the trial upon request, if legitimate protected interests are at risk because the personal life of the victim or another participant in the trial is discussed. This would be the case, for example, where details of the victim's intimate privacy or their family life are discussed, but also where the life, limb or personal freedom of a person is at risk.

In addition, the special stress caused by a public trial for minors may give rise to exclusion of the public, in particular for serious crimes. The public can also be excluded if for example important business secrets are discussed.

In certain cases it is even possible to remove the accused from the courtroom while the victim is being heard.

REIMBURSEMENT OF EXPENSES

If the victim is summoned to the trial as a witness, they have a right to be reimbursed for their expenses, for example:

- » necessary actual travel costs,
- » loss of income,
- » an expense allowance (if the trial is held neither at the place of residence nor workplace of the witness),
- » accommodation costs, if required, and
- » other necessary expenses.

To get reimbursed, the witness has to submit a **written application** to the authority that summoned them as a witness **within three months** after their questioning.

The application should include a confirmation signed by the employer regarding lost income (if applicable), the summons letter, and other documentation such as tickets. If the costs are high, an advance can be granted upon request.

Reimbursement of expenses:

- written application
- within three months

"IF THE VICTIM IS SUMMONED TO THE TRIAL AS A WITNESS, IT HAS A RIGHT TO BE REIMBURSED FOR ITS EXPENSES."

IF YOU HAVE ANY FURTHER QUESTIONS...

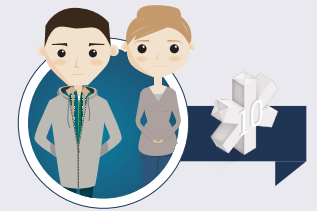


Contact the helpline for victims of crime at **116 006** or go the homepage of **WEISSER RING: www.weisser-ring.de**.

Crime victims and persons who are interested in the issue can call 116 006 toll free within Germany (from abroad: +49 116 006, charges apply).

You will be provided with information on how to get help, as well as the contact details of specialised counselling centres and of local contact persons at WEISSER RING.

10 USEFUL TIPS FOR WITNESSES AND VICTIMS



- 1 Don't be afraid of the questioning. You are not in the position of the defendant. Your job as a witness is to report on what you have seen or heard yourself.
- 2 Listen carefully to the question.
- 3 Take your time before answering.
- 4 Answer the questions calmly and clearly.
- 5 Only report what you have seen or heard yourself.
- 6 Don't be afraid to admit if you cannot remember something. It is normal to forget some details – don't make anything up.
- 7 Don't be afraid of the questions of the defence lawyer. Some of the questions may be part of the defence strategy. After all, it is the lawyer's job to represent his client.
- 8 After the questioning you may leave the courtroom or sit in the audience area if the trial is public. As a private accessory prosecutor you are allowed to stay in the courtroom even if the trial is not public.
- 9 The fact that the defendant is found not guilty does not mean that the court didn't believe you. Sometimes the evidence is insufficient overall.
- 10 Notify the judge or the police immediately, if you are threatened or attacked before or after your testimony.

THE VERDICT



WHEN WILL THE COURT PASS THE VERDICT AND WHAT DOES IT CONSIST OF?



The court will pass its verdict at the end of the trial. In the verdict, the defendant is either found guilty or not guilty.

If the defendant is found guilty, the verdict will state which offences they have committed. The verdict also gives the reasons why the court came to this decision. In addition, it determines the punishment and gives the reasons for the type of punishment and its duration. The verdict also specifies who has to bear the costs of the proceedings. Upon request, the victim will be informed of the outcome of the proceedings.

WHAT KINDS OF PUNISHMENT ARE AVAILABLE?

Under German criminal law, the two main types of punishment are **prison** and **fines**.

A prison sentence is executed in prison. The minimum **prison sentence** is one month. The maximum prison sentence under German law is life. If the offender is judged to have favourable social prognosis, they can be released early on parole after completing at least 2/3 of their sentence, but no less than two months (Strafrestaussetzung zur Bewährung).

A defendant can also be given a suspended sentence. In these cases, the court can impose conditions and restrictions on the convict during the probation period. The court may, for example, require the convict to compensate for the damage they have caused. After the convict successfully completes the probation period, the rest of the sentence is waived.

If the convict fails to comply with the conditions of the probation or if they commit another offence during their probation period, the probation can be revoked, and the convict sent to prison.

Fines are imposed at daily rates. That means that the convict will have to pay a certain amount of money (depending on their income and their personal circumstances) for a certain number of days (between 5 and 360). The fine is paid to the state and does not serve to compensate the victim. If the convict fails to comply with this payment obligation, they are imprisoned as a sanction (Ersatzfreiheitsstrafe).

WHAT ARE THE CRITERIA FOR THE AMOUNT OF THE FINE OR THE LENGTH OF THE PRISON SENTENCE?

The law provides a minimum and maximum penalty for each offence. The judge decides the appropriate sentence for the offender, based on the extent of the crime and the guilt of the offender. In some cases, the law provides for special aggravating or mitigating circumstances. Their decision takes into account the personal and economic circumstances of the offender, their past, their future life, their conduct during the trial (also toward the victim), their remorse or their efforts to repair the damage.

APPEALING A VERDICT



HOW CAN A VERDICT BE APPEALED?

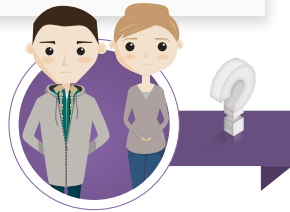
There are several ways of appealing a verdict:

APPEAL ON POINTS OF FACT AND LAW (BERUFUNG):

An appeal claims that the verdict is erroneous. Verdicts passed by the local court as the court of first instance can be appealed on points of fact and law (Berufung). The error in this case can either be mistakes or insufficient efforts in determining the actual facts of the case, or an erroneous legal assessment of the case. It is therefore possible to introduce new evidence. This appeal may be lodged by the defendant, the public prosecutor, the private prosecutor and in some cases also the accessory prosecutor. The regional court is the court of appeal. Appeals on points of fact and law must be filed within one week with the court which issued the verdict. If the appeal is successful, the verdict is set aside and the appellate court passes its own verdict.

APPEAL ON POINTS OF LAW (REVISION):

An appeal on points of law (Revision) can be filed against verdicts of the local court, regional court, higher regional court, but only where they acted as the court of first instance. In addition, a decision by the appellate court on an appeal on points of fact and law (Berufung) can also be appealed a second time on points of law. An appeal on points of law claims that the legal assessment of the court was erroneous and that the verdict was thus based on a legal error. This could be the case, for example, if a witness was not appropriately informed of his rights or if prohibited evidence was used. Appeals on points of law must also be filed within one week with the court which issued the verdict. However, the reasons for the appeal on points of law may be declared, within a period of one month. The appeal on points of law, too, is open to the defendant, the prosecution, the accessory prosecutor and the private prosecutor. The higher regional court and the German Federal Court of Justice (BGH) are the appellate courts for the appeal on points of law.



HOW CAN I AS A VICTIM APPEAL A VERDICT?

The victim can only appeal a verdict if it participated in the trial as an **accessory prosecutor or a private prosecutor**. The accessory prosecutor cannot appeal the verdict with the aim of altering the punishment of the defendant, but they are **entitled to appeal an acquittal**.

WHEN CAN A SENTENCE BE CARRIED OUT?



A sentence can only be carried out after the verdict becomes unappealable. If a verdict was appealed, the appeal on points of fact and law and (possibly) the appeal on points of law have to be completed before the sentence is carried out. Otherwise, the verdict can be carried out after the deadline for appeals has expired and the verdict has thus become final. If all parties waive their right to an appeal after the verdict, the verdict will become final immediately and can be carried out.

If the offender has been sentenced to prison (without probation), they are informed when and where they have to serve their sentence. There may be some time between the sentencing and the beginning of the imprisonment. If the convict fails to submit voluntarily to imprisonment, they can be arrested.

If the convict was already in detention prior to the trial, they will usually be transferred directly to prison.

CUSTODIAL MEASURES:

- » A victim can request to be notified, if custodial measures against the offender are ordered or ended.
- » The victim can also request to be informed when the offender is granted leave from detention for the first time. However, the victim must have a legitimate interest in this information. Victims of certain serious crimes are not required to prove such a legitimate interest. This includes victims of crimes against sexual self-determination, human trafficking and stalking. The information is only provided if the convict's legitimate interest in withholding is not violated. Upon request the victim has to be notified if the offender fled from prison and which measure had been taken for the protection of the victim.
- » The victim can also request to be informed if the offender is subsequently granted leave from detention, if the victim can demonstrate a legitimate interest. In this case, as well, the information is not provided if the convict's legitimate interests are violated.
- » In addition, the victim can ask the prison about the financial situation and the address of the offender after their release, if this information is necessary to enforce claims relating to the crime.

BAN ON CONTACT:

The victim can request to be informed whether the convict was ordered to do not contact the victim.

RETURN OF PROPERTY AFTER CONFISCATION OR SEIZURE



If property belonging to the victim is confiscated or seized during the criminal proceedings (e.g. as evidence) it will be returned to the victim once the verdict becomes final, possibly earlier.

It may be possible to get back confiscated or seized property earlier, if the property is not required anymore as evidence for the proceedings.

JUVENILE COURTS ACT (JUGENDGERICHTSGESETZ – JGG)



The proceedings for juvenile offenders are governed by the Juvenile Courts Act (Jugendgerichtsgesetz – JGG), which can also apply if an 18–21-year-old commits an offence. The JGG applies for this age group if the character of the offence shows a lack of maturity or the offender, in the development of their personality, is still at the level of an adolescent.

Juvenile criminal law differs from general criminal law in various points. The reason is that for most juveniles, criminal behaviour is just a passing phase of their development, which needs to be addressed primarily with an educational approach. However, the criminal code is still the basis for dealing with juvenile delinquency. The types of behaviour punishable under law are the same for everyone.

The difference is in the legal consequences. Under the JGG, the court can order educational measures, disciplinary measures and youth custody sentences. The court trial is also different. The trials are carried out by a juvenile court judge, a Jugendschöffengericht (one presiding judge and two lay assessors) or by a division of the juvenile court. The trial is generally non-public. Representatives of the judicial protection office participate in every trial.

“IF A JUVENILE HAS COMMITTED AN OFFENCE, THE PROCEEDINGS ARE GOVERNED BY THE JUVENILE COURTS ACT (JUGENDGERICHTSGESETZ - JGG).”

VICTIMS' RIGHTS

In the past, the crime victim played a very minor role in criminal proceedings – and was only supposed to contribute to the establishment of the truth in the hearing of evidence.

“TODAY, VICTIMS' RIGHTS ARE CONSIDERED HUMAN RIGHTS.”

This has changed markedly during the last decades. The change was driven in large part by the lobbying of many victim support organisations, but also by the research (victimology), which investigated demands and needs of crime victims. The German Code of Criminal Procedure (StPO) now provides for a range of **victims' rights** and enables victims to play a larger role in **criminal proceedings**. Today, victims' rights are considered human rights. Many international and European organisations are taking care of the implementation of victims' rights.

The European Union has enacted the Directive 2012/29/EU establishing **minimum standards on the rights, support and protection of victims of a crime**. The Directive, which applies to all 27 EU Member States, provides for the following:

- » Victims must be treated with respect.
- » Victims must be informed of their rights so that they understand them and are informed about their case. All Member States must ensure that victims have cost-free access to victim support services.
- » Victims must be allowed to participate in the proceedings if they wish so. If they choose to get involved, they have to be assisted. Especially vulnerable victims such as children, victims of sexual assault or persons with disabilities must be appropriately protected.
- » Victims also have the right to be protected during the police investigation and the trial.

Victims of crime have special rights during the criminal proceedings. These rights are mostly contained in the Code of Criminal Procedure. For more information, please refer to our explanation of **criminal proceedings**.

“VICTIMS OF CRIME HAVE SPECIAL RIGHTS DURING THE CRIMINAL PROCEEDINGS.”

RIGHT OF BEING ACKNOWLEDGED AND RESPECTED



The authorities which victims' come into contact with during the criminal proceedings have to ensure that the victim is treated with respect, empathy and professionalism and is without discrimination. The involved parties should also take particular account of the rights and interests of the victim and ensure that victims' rights are respected.

RIGHT OF INFORMATION



It is very important for the crime victim to receive information about the procedure and the content of the criminal proceedings against the offender.

This information provides guidance to the victim and makes handling the proceedings easier. Informed victims are in a stronger position and will be able to better find their way through the ongoing proceedings. In Germany, the rights to information were introduced into the Code of Criminal Procedure (StPO) with the 3rd Victims' Rights Reform Act. You will find a detailed description under “**Your rights as a victim during Investigation**”.

ACCESS TO VICTIM SUPPORT ORGANISATIONS



The states are obliged by the EU-directive to grant access to victim support organisations free of charge. This has to be ensured for the time before, during and after the criminal proceedings.

The victim support organisations have to act in the interest of the victim and are bound to confidentiality. A crime victim will be informed in an understandable language about victim support organisations in the vicinity of their place of residence. The information will often be provided in the form of a brochure. Victim support organisations offer cost-free information and provide psychological, social and legal support services. Victims will in particular receive emotional support. Many organisations focus on particular victim groups (e.g. children, women, men or victims of sexual abuse) in order to address the special needs of the victims. Also of importance is the assistance in dealing with the authorities. Victim support organisations such as **WEISSER RING** will also provide short-term financial support in emergencies.

“VICTIM SUPPORT ORGANISATIONS OFFER COST-FREE INFORMATION AND PROVIDE PSYCHOLOGICAL, SOCIAL AND LEGAL SUPPORT SERVICES.”

TRANSLATION ASSISTANCE



The right to translation and interpretation was significantly expanded with the 3. Victims' Rights Reform Act. You will find detailed information under the headlines filing a complaint, investigative proceedings, private accessory prosecution and the trial.

RIGHT TO PROTECTION AND SAFETY



Victims have the right to protection and safety in the **criminal proceedings**. In particular, victims of crime must be protected from further threats or victimisation by the offender or third parties. The **victim's privacy** must also be protected. The EU-directive also demands the victim to be interrogated promptly following the report of the offence. The number of the interrogations has to be reduced to a minimum.

SPECIAL PROTECTION NEEDS



It has to be determined in the proceedings whether a victim has special protection needs. This is done by assessing personal characteristics of the victim and the kind and facts of the offence. In particular victims of terrorist acts, human trafficking, sexual crimes or violent relationships have to be taken into account. Children are always rated as having special protection needs. Victims with special protection needs are for example entitled to appropriate rooms provided for the hearing or a video hearing.

PROTECTION AGAINST VIOLENCE



The Protection against Violence Act protects persons who have become victims of violence or stalking. The court can prohibit the offender from contacting and approaching the victim or from entering or staying at certain locations.

These restraining orders are intended to protect the victim from further violence. The court can, for example, prohibit the following:

- » to enter the home of the victim,
- » to remain within a certain distance (determined by the court) from the victim's home,
- » being present at locations where the victim spends time on a regular basis,
- » to contact the victim,
- » to bring about a meeting.

PROTECTIVE ORDERS MAY BE ISSUED IF THE OFFENDER:

- » has wilfully caused personal injury or violated upon the victim's freedom
- » has threatened to do so
- » has intentionally and unlawfully entered the home or the property of the victim, or
- » has intentionally subjected the victim to intolerable harassment.

The restraining orders must be requested at the competent family court. The request can be filed at the court registrar of the local court by filling a form, but also informally in writing or verbally. The court can order that the protective order takes immediate effect. If the court does not do so, the protective order will have to be served to the offender by the bailiff (Gerichtsvollzieher).

Should the offender violate such an order, they may be fined or imprisoned up to one year. For further information, please refer to www.bmfsfj.de or www.gewaltschutz.info.

ASSIGNMENT OF THE HOME

Offenders who commit violence against their partner can – regardless of whether they are married or not – be ordered to leave the common home. In order for the home to be assigned to the victim, the following requirements have to be met:

- » Victim and offender maintain a joint household on a permanent basis at the time of the offence.
- » The offender has intentionally caused personal injury to the victim or violated the victim's freedom.

The injured or threatened party has to demand the allocation of the home in writing within 3 months after the offence. After this deadline the claim of the allocation of the home is excluded.

Stricter requirements apply if violence has only been threatened and not committed. In serious cases the victim will be granted the shared home if, for example, the wellbeing of children living in the household is threatened. In this case, the assignment of the home is also time-limited.

“OFFENDERS WHO COMMIT VIOLENCE AGAINST THEIR PARTNER – REGARDLESS OF WHETHER THEY ARE MARRIED OR NOT – CAN BE ORDERED TO LEAVE THE COMMON HOME.”

assignment of the home is also time-limited.

If the abuser is the owner or sole tenant of the home, the victim may be granted use of the home for only six

months. If the victim fails to find an alternative place of residence in this period, in certain cases the court may (upon request) extend the period by up to a maximum of six more months.

The victim can apply for a court order for assignment of the home either itself or through a lawyer. It is also possible to seek help from counselling centres for domestic violence or **WEISSER RING**.

DAMAGES AND COMPENSATION



COMPENSATION FROM THE OFFENDER



VARIOUS CLAIMS:

The offender is generally obligated to **compensate the victim for damages** and may also have to pay **compensation for pain and suffering**. A claim for damages means that the offender must restore the situation which would have existed had the crime not been committed. This can, for example, include the expenses to repair a damaged item, but also compensation for lost wages or the cost of hospital

treatment. The victim may also be entitled to financial compensation for pain and suffering, if the victim has suffered physical or psychological injury, loss of freedom or the right of sexual self-determination. If the victim and the offender are unable to agree on the amount of compensation for pain and suffering, the court will decide.

Foreign victims of a crime can sue at German civil courts to obtain compensation

“THE OFFENDER IS GENERALLY OBLIGATED TO COMPENSATE THE VICTIM FOR DAMAGES AND MAY ALSO HAVE TO PAY COMPENSATION FOR PAIN AND SUFFERING.”

for damages caused by a crime. A claim can also be brought through a so-called **adhesive procedure** (Adhäsionsverfahren) before the criminal court.

SOCIAL COMPENSATION LEGISLATION



Social compensation legislation (SCL) grants comprehensive benefits to the victim of an intentional, unlawful act of violence, if it results in damage to the victim's health. The OEG also entitles victims who are injured in the lawful defence against such an attack or who are injured in the context of a crime directed against another person. The benefits are provided for under the German Social Code XIV and they are very extensive.

REQUIREMENTS FOR A CLAIM UNDER SCL

- » The intentional, unlawful act of violence must have been committed on the territory of the Federal Republic of Germany or on a German ship or aircraft. In case of psychological violence, compensation is only possible for acts committed after January 1, 2024.
- » There are special regulations for crimes committed abroad after 1 July 2009 which provide limited benefits.
- » To receive benefits starting with the day of the injury, the application for benefits must be filed within one year after the crime.
- » If this deadline is missed, benefits will thereafter only be granted beginning with the month in which the application is filed.

Social compensation legislation generally requires that the claimant is involved with the investigation, which usually means that a criminal complaint is filed. This requirement can be waived in cases where this would be particularly burdensome for the victim. For more information, please refer to the info sheet for the application.

ENTITLED TO BENEFITS ARE:

- » Injured Party
- » Dependants (spouse, children and parents)
- » Survivors (widows, widowers, orphans, parents, dependents)
- » Close relatives (siblings, consensual union)

In general, all injured parties are entitled to full benefits, regardless of their nationality or residence status.

BENEFITS UNDER SCL

The benefits are highly diverse and the requirements will be reviewed in detail by the public compensation office (Versorgungsamt) for each individual case. Depending on the injury, very different benefits may apply.

THE FOLLOWING BENEFITS MAY BE AVAILABLE:

- » Psychotherapeutic intervention in an emergency ambulance
- » Medical treatment
 - › Inpatient and outpatient medical, dental and psychotherapeutic treatment
 - › Provision of medication and dressings, and
 - › Provision of medicaments and medical aid
- » Sick pay where a victim is unable to work due to the injury
- » Participation benefits
- » Benefits for nursing care
- » Compensation payments
- » Compensation for loss of earnings (Berufsschadensausgleich)
- » Special benefits in individual cases
 - › Benefits for livelihood
 - › Benefits to support training and education
 - › Benefits for household budget
- » Funeral allowance

This list of benefits is incomplete and only intended to provide some examples.

The important point is that this law provides for many more comprehensive benefits than are available, e. g. through health insurers or pension insurance.

PLEASE NOTE:

If the intentional, unlawful and physical assault on the victim is somehow related to the victim's exercise of its occupation, the **employer's liability insurance association** (Berufsgenossenschaft) is primarily responsible. At the same time, an application should be filed under SCL, just in case. The application must be filed at the local compensation office.

RIGHTS OF VICTIMS WHO DO NOT LIVE IN GERMANY



» Rights during the criminal proceedings:

The victim protection provisions of the German Code of Criminal Procedure also apply for victims of crimes committed in Germany who are not German citizens.

» Entitlements to state compensation:

Foreign nationals are treated the same as Germans with retroactive effect from 01.07.2018

OTHER COMPENSATION OPTIONS



FOUNDATIONS AT THE STATE LEVEL (LANDESSTIFTUNGEN)

Social compensation legislation does not provide compensation for damage of property or financial losses. However, some states (e. g. Baden-Wuerttemberg, Bavaria, Rhineland-Palatinate and Lower Saxony) have state foundations which may provide financial assistance even for property damage or compensation for pain and suffering.

WEISSER RING can tell you whether your state has such a foundation.

VICTIMS OF EXTREMIST OR TERRORIST ATTACKS:

The German Bundestag has set aside funds to compensate victims of extremist attacks. These funds are to offer support; however, there is no legal entitlement to such benefits, as these benefits are provided by the government on a voluntary basis. Extremist attacks are in particular attacks with an extremist right-wing, left-wing, xenophobic, anti-Semitic, or Islamist motivation resulting in bodily injury, but they also include massive threats or violation of personal honour.

Surviving dependents or private individuals suffering damage to their health while defending third persons against extremist attacks may also apply for compensation payments. The application form is available at www.bundesjustizamt.de and can be submitted to the Federal Office of Justice (Bundesamt für Justiz).

Victims of terrorist acts may receive hardship benefits as well. You can also find more information on this at www.bundesjustizamt.de.

SUPPLEMENTARY ASSISTANCE SYSTEM (EHS)

The Supplementary Assistance System supports victims who, as children or adolescents, have suffered sexual violence in the family or in an institutional setting.

Victims can apply for non-cash benefits to the value of up to EUR 10,000. Benefits of this kind may be for example special therapies, medication and medical aids, service dogs, self-assertion courses as well as training and professional advancement or retraining.

VERKEHRSSOPFERHILFE

The Verkehrsofferhilfe e.V. is the association of the liability insurers, who provide coverage in the event of hit-and-run accidents, acts of violence committed with a motor vehicle and driving without insurance. The benefits are determined according to the provisions of the compulsory insurance law.

IF YOU HAVE ANY FURTHER QUESTIONS ...



Contact the victim helpline [116 006](tel:116006) or visit the WEISSER RING homepage: www.weisser-ring.de

Victims of crime and interested parties can call 116 006 free of charge from anywhere in Germany (from abroad there is a charge for dialling +49 116 006).

There you can find contact persons who can give you information on possibilities of help. There you can also get contact details of specialised counselling centres and of local contact persons of WEISSER RING.



With financial support from the
Criminal Justice Programme
of the European Union

 **WEISSER RING**

Wir helfen Kriminalitätsoffern.



Victim helpline:

116 006

Nationwide free of charge



**On-site
consultation
support**



**Online consultation
support:**

www.weisser-ring.de