



**WEISSER RING**

Wir helfen Kriminalitätsopfern.

# *Compensation for victims of crime in Germany*

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## All we have

Under applicable law, the Crime Victims Compensation Act (OEG) provides very good benefits in conjunction with the Federal War Victims Compensation Act (BVG).

The right to compensation according to legal provisions of OEG/BVG is a claim to compensation of its own which is directed against the state. It is a claim for compensation of loss suffered in the public interest, so victims receive the same compensation as soldiers in World War II. The aim of this claim is to recover losses, even though complete compensation for damages is not provided. The extent of the claim is set down in the Social Code, Vol. One. In the case of health damage, there is a right to necessary measures to preserve, improve and reinstate health and performance capability, as well as a right to reasonable economic support.

The right to curative treatment according to OEG/BVG clearly exceeds the right of statutory health insurance.

The social compensation authority can assume responsibility for the curative treatment and is then not bound to the limits of the statutory health insurance. Amongst other things, not only the kind of psychotherapeutic treatment, but also the numbers of hours, special treatment methods or special benefits for curative treatment are then possible, for example.

The travel expenses incurred for a treatment are also assumed.

These curative treatment benefits are not listed. The benefits are determined according to the actual needs in every single case.

For more than ten years, there have been walk-in clinics for traumatized persons; in the meantime there are 160 such clinics and they almost exist in almost every federal state of Germany. There, those who have suffered injury will receive quick initial psychological stabilisation.

The pension benefits according to OEG/BVG provide social security. This makes it possible for victims to recover and overcome the consequences of the crime. The basic pension is not dependent on income, i.e. it is not to be offset at the cost of other social benefits.

The basic pension may be increased if persons suffering damage have been particularly affected in terms of their jobs. The allowance for persons suffering particularly serious damage ensures that such persons are not dependent on social welfare benefits. Avoiding this dependency is precisely the goal of OEG/BVG and was already provided for in the legislative materials pertaining to OEG in 1976.

The care allowance ensures that those suffering damage (also serious damage to their health) and their relatives receive the necessary help to overcome the consequences of the crime and to relieve the situation.

Income-dependent benefits equalise losses of income resulting from crime. They also take into account a further development which might have existed without the crime, which will no longer occur due to the consequences of the crime. This is particularly important for victims affected by a violent crime in young years.

A corresponding system is also in place for surviving dependants.

These benefits prevent victims from drifting into social welfare due to the criminal act they have experienced.

Persons suffering damage are entitled to these benefits as long as they suffer from the physical and psychological consequences of the crime. There are no limits to the amount and duration of the benefits.

The German Parliament provides benefits in cases of hardship for victims of extremist violence and terrorist crimes. These benefits, which have been voluntary up to now, constitute an act of solidarity with those concerned. The benefit for the hardship is paid out in the form of one-off support.

In the draft of WEISSER RING, the time-proven provisions of BVG und OEG have been maintained and further developed. As a result, the validity of the jurisdiction is preserved upon which the interpretation of legal standards has been based for decades; this guarantees legal certainty to persons who have suffered damage.

## What is missing

Victims of violent crimes only receive benefits according to OEG, if they have sustained damage through physical assault.

No benefits are thus granted if psychological violence has been exercised to commit the crime.

For this reason, victims of stalking are not covered by the OEG. Stalking that goes on for years can cause significant health issues and psychological illnesses. Such victims currently have no further claim to curative treatment. If they are no longer able to do their jobs (or do them at the previous level) due to the psychological burdens, they lack the social security of the OEG/BVG.

The inclusion of psychological violence as an offence is a longstanding claim of WEISSER RING.

Victims of domestic violence are faced with considerable financial burdens in many cases. Apart from the loss of the family income, the rent for the old apartment has to be paid; other costs arise through the changed living situation. It is important in this situation to reduce such additional burdens wherever possible.

Up to now, the costs for accommodation in a place of refuge have not been assumed.

For persons who have suffered damage, it is often difficult to find the right social service provider for the necessary measure. Entitlement to an initial consultation with a lawyer under social law aspects is missing.

## ***What we need to improve***

Apart from a few exceptions, it is not the provisions of OEG and BVG, in particular the catalogue of benefits of BVG that prevent the victims from receiving the urgently needed help they are entitled to. The problems encountered in practice arise in the course of administrative procedures, in meeting the requirements to provide evidence of the crime and the causal link between the crime and the psychological damage suffered.

## ***Proposal of WEISSER RING for a Social Security Code, Vol. Thirteen***

### ***Draft law***

The existing regulations of OEG/BVG will be integrated into a new Social Code, Vol. Thirteen based on the model of integrating the laws of the statutory accident insurance into Social Security Code, Vol. Seven. The gaps appearing are closed, regulations improving the procedures are incorporated and victim compensation has been further developed.

### ***The most important regulations***

- In future, anybody who has suffered damage to health through psychological violence is entitled to benefits.
- The exclusion of benefits if the crime has been committed with a vehicle or a trailer is cancelled. Internal adjustment of granted benefits will take place with the association assisting accident victims (Verkehrsofferhilfe).
- Those who witness a serious act of violence or find out about such also receive benefits under certain conditions. They are incorporated in the law as entitled parties.


- It is made clear that repeated offences and longlasting crimes are regarded as crimes within the context of the law.
- Foreign nationals receive benefits if they are entitled to stay in Germany. The existing limitations of the OEG were criticised after the attack on the Christmas market in Berlin.
- In cases of temporary stay in another country compensation for crimes committed abroad is improved: In future, full benefits are granted for compensating these crimes. The intended period of these stays is extended to twelve months, in order to compensate students who are studying abroad for a whole year.
- It is also established in the law that the report of a crime to the police is no requirement for receiving benefits.
- Withholding benefits due to causation and inequity is possible under certain circumstances. However, causation is not assumed if the victim has not separated from the offender.
- The assumption of costs for accommodation in a place of refuge for three months is incorporated in the law with a onetime possibility of extending the stay.
- The costs of an initial consultation with a lawyer under social law aspects is assumed so that the victim receives comprehensive information at an early date about the rights to which it is entitled.
- Early psychological intervention is standardised under the law. In addition, it will be ensured that further therapeutic treatment is carried out if necessary. In this way, the necessary early psychological intervention is extended.
- The psychotherapy includes the necessary costs for an interpreter.



- The possibilities are broadened to have the basic pension capitalized if the extent of the damage is permanent. The model of the statutory accident insurance is applied. If there is a prospect of the consequences of the crime improving, compensation payments limited in time may be applied for. Since income-related benefits serve to secure one's livelihood, the provisions only apply to the basic pension.
- The provision for hardship cases pursuant to section 10a OEG lapses. In particular, victims of early sexual child abuse then have easier access to the benefits.
- The social compensation authority is obliged to reclaim potential compensation from the offender. But it can refrain if this constitutes a particular burden for the victim. The provision from a circular letter of the Federal Ministry of Labour and Social Affairs (BMAS) and the information sheet of the national application is adopted in the law.
- The draft includes provisions to improve the administrative procedures. They are to ensure a respectful way in dealing with victims, recognizing their needs and granting benefits swiftly. An internal case manager is envisaged for this purpose, as is already being practiced to a degree. If the need is not otherwise coverable, the costs for an interpreter are assumed in the administrative procedure.
- Victims are to have easier access to information about their rights.
- In addition, the draft provides for an accelerated administrative procedure. For example, applications for curative treatment or rehabilitation are to be decided upon after three and no later than five weeks. If this is not possible, the applicant must be informed about the reasons. This follows a provision in the law governing statutory health insurance.
- Curative treatment and rehabilitation will be provided in future over the statutory accident insurance. Victims thus have access to immediate treatment by medical specialists and clinics.

- It is often problematic to furnish evidence of the crime suffered. The time-proven facilitation of providing proof found in section 15 on the administrative procedure of benefits for victims of war (KOVVfG) are adopted in the law. Furthermore, an advisory board is in charge of further clarification and recommendation using its specialist knowledge (Clearingstelle).
- In many cases, benefits are refused because it is difficult to prove the causal link between crime and psychological illness. The draft provides for easing the burden of proof based on a decision of the Federal Social Court and a circular letter of the BMAS.
- Victims are involved in choosing the experts in future. They also have the right to make proposals. When choosing the expert, attention is to be paid to the expert's eligibility in terms of expertise.
- The hardship compensation by the German Parliament for victims of terrorist crimes and extremist attacks is included in the law. As opposed to the legal situation up to present, they have a legal right to these benefits, which, in the form of a onetime payment, essentially constitute compensation for personal suffering. The other provisions remain unchanged.





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