

3 - My rights after trial

Can I appeal against the ruling?

A civil claimant (1), subsidiary prosecutor (2) or private prosecutor (3) is generally entitled to appeal against the ruling.

Two types of appeal are available: An appeal for nullity (*Nichtigkeitsbeschwerde*) is concerned with the legality of the proceedings and the ruling, while an appeal (*Berufung*) contests the decision made on civil law claims. As a private prosecutor you may also appeal against the level of the penalty. In the event of an acquittal, civil claimants and subsidiary prosecutors will be referred to the civil courts to pursue their compensation claims.

As a civil claimant, subsidiary prosecutor or private prosecutor you have the right to lodge an appeal for nullity against a ruling in the following case:

- if your civil claim has been forwarded to a civil court on account of the defendant's acquittal and it is evident that the denial of a motion you put forward during the trial negatively affected the court's decision on your civil claim.

As a civil claimant or subsidiary prosecutor you are entitled to lodge an appeal if:

- in the event of a conviction the court forwards your claims to a civil court, even though they could have been ruled on by the criminal court, as your claims were well founded and justified.

In proceedings before a district court (*Bezirksgericht*) and before a single judge at a regional court (*Landesgericht*), civil claimants and subsidiary prosecutors can appeal against the ruling on civil claims not only if these claims are forwarded entirely to the civil courts, but also if they wish to contest the level of any award.

If you have the status of a private prosecutor in the proceedings, you can rely on the same rights of appeal as the public prosecutor. If the defendant is acquitted, you may file an appeal for nullity. In proceedings before a district court and before a single judge at a regional court, you may also contest the facts established in the ruling by lodging an appeal on the question of the defendant's guilt. If the defendant is convicted, you can appeal if you do not agree with the penalty or if your civil claims are forwarded to the civil courts. If you were not present at the hearing when the court announced its decision, you will need to examine the file to find out if the defendant was found guilty or not. The ruling must contain reasons and be signed by the judge within 4 weeks. If you have participated in the trial as a civil claimant, subsidiary prosecutor or private prosecutor and you lodge an appeal or an appeal for nullity within 3 days of the pronouncement of the ruling, you must receive a copy of the ruling. You can apply for legal aid to file your appeal or appeal for nullity. If necessary, this can include free translation support. Legal aid will be granted by the court if legal representation is necessary, and if your income is insufficient to pay for the legal representation without endangering your subsistence.

What are my rights after sentencing?

All victims can ask to be informed about the first occasion when the offender is permitted to leave detention without supervision, if the offender escapes and is reapprehended, if the offender is due to be or has been released and of any conditions imposed in the event of a conditional release.

Victims of sexual offences and sexually motivated violence must be heard before electronic tagging is approved if they have asked to be informed about the offender leaving or being released from prison. Such victims must also be notified that electronic tagging has been approved. They are entitled to victim assistance services to support

them in asserting these rights.

Otherwise you do not receive any other information from the authorities after the ruling has entered into force. However, you continue to have the right to examine the court file if your interests are affected.

Am I entitled to support or protection after the trial? For how long?

After the trial you are entitled to a concluding discussion with the organisation that has provided you with victim assistance.

Victims of crime who have received psychosocial support during the criminal proceedings are also entitled to such support during subsequent civil proceedings. This is conditional on the subject matter of the civil proceedings being related to that of the criminal proceedings and on such support being necessary to safeguard the victim's procedural rights. The victim support organisation providing the assistance will assess whether these conditions are met. The victim may seek legal aid so that he/she can be represented by a lawyer in the civil proceedings. This support will be granted until the end of the civil proceedings at the latest.

What information will I be given if the offender is sentenced?

You can find out the outcome of the proceedings and the penalty imposed either by remaining in the courtroom until the oral ruling is pronounced or by examining the court file later.

Will I be told if the offender is released (including early or conditional release) or escapes from prison?

On request, you will be informed immediately if the offender escapes or is released from prison, as well as of the first occasion when the offender is permitted to leave detention without supervision. You will also be notified when an offender who has escaped is apprehended. If conditions intended to protect the victim have been imposed on the offender at the time of release, you will be informed of these too.

Will I be involved in release or parole decisions? For example, can I make a statement or lodge an appeal?

The victim will be involved in release or parole decisions only in exceptional cases. Only victims of a sexual offence or sexually motivated violence who have asked to be informed about the offender's escape or release will be heard before a decision is made on electronic tagging.

1. Civil claimant

To become a civil claimant, you need to submit a declaration. The declaration must include a specific quantification of the claim being filed for compensation of the loss caused by the crime or the harm suffered. During the investigation the declaration has to be addressed to the police or the public prosecutor. It can be submitted in written form or made orally. During the trial the declaration has to be submitted before all the evidence has been compiled. This is also the latest point by which the claim must be quantified.

As a civil claimant you will have the following rights in addition to those of a victim:

- the right to request the collection of evidence that may serve to convict the offender or to justify the claim for compensation; the right to be summoned to the trial; the right to appeal against the court's decision to close the case; the right to lodge an appeal on the basis of your civil claims.

2. Subsidiary prosecutor

To become a subsidiary prosecutor, you have to be or become a civil claimant and declare the subsidiary prosecution. If the offender is a minor, subsidiary prosecution is excluded.

You can become a subsidiary prosecutor by submitting a declaration. If the public prosecutor drops the charge during the trial, you must submit this declaration immediately if you were summoned in due form. If you have not complied with the summons or do not declare the subsidiary prosecution, the offender will be acquitted.

If the public prosecutor drops the charge outside the court hearing or if you have not been summoned in due form as a civil claimant, the court has to inform you of this development. You will then have 1 month to declare the subsidiary prosecution.

If you continue the prosecution instead of the public prosecutor, the latter can access the information regarding the court proceedings at any time and may decide to take over the prosecution again. In this case you will continue to be involved in the trial as a civil claimant.

3. Private prosecutor

Some less serious crimes are prosecuted not by the public prosecutor but by the victim himself or herself. If you are a victim of such a crime, criminal proceedings will be launched only if you bring charges privately before the court. You then acquire the status of a private prosecutor.

In this case there is, in principle, no investigation procedure, but victims of certain online hate offences (defamation, accusation of a judicially punishable criminal act or insult which has been dismissed, if these offences were committed by means of telecommunications or use of a computer system) may apply to the court for investigative measures to investigate the offender. The application must meet the requirements of a request for evidence.

As a private prosecutor, you must prove all the facts which are essential for a conviction yourself. If the accused is acquitted, you must bear the costs of the proceedings. There is an exception for victims of online hate crimes: in criminal proceedings for defamation, accusation of a judicially punishable criminal act or insult which has been dismissed, if these offences were committed by means of telecommunications or use of a computer system and the proceedings do not end in a conviction, private prosecutors or victims who make an application to investigate the offender are liable to pay compensation only if they made the accusation falsely and did so knowingly. However, this exemption from the obligation to reimburse costs concerns only the procedural costs. If the proceedings do not end in a conviction, the private prosecutor is obliged to reimburse the defendant's defence costs in main and appeal proceedings.

The cost arrangements for victims of online hate crimes are valid until 31 December 2023 and will be subject to an evaluation.

4. Victim assistance services

Certain persons are entitled to psychosocial and legal victim assistance services. Such a right exists:

- for persons who may have been exposed to violence or a dangerous threat as a result of a deliberate criminal act, whose sexual integrity and self-determination may have been violated or whose personal dependence may have been exploited in the commission of such a crime;
- if the death of a person may have been caused by a criminal offence and you are a close relative of that person, or if you are a relative of that person and you were a witness to the act;
- for victims of terrorist offences;
- for victims of a typical 'online hate' offence. These include persistent persecution, continued harassment by means of telecommunications or a computer system (cybermobbing) and incitement. Also included are offences such as defamation, accusation of a judicially punishable criminal act, insult or defamation which has been dismissed, if there are indications that the offence was committed by means of telecommunications or use of a computer system;
- for minors who have witnessed violence in their social circle (violence in the family, violence against children).

Victim support must be necessary in order to safeguard victims' rights and must be ensured by the victim support institution. Psychosocial victim assistance services must always be granted without the need for an application to victims whose sexual integrity may have been violated and who are under 14 years of age.

Psychosocial procedure assistance includes the preparation for the procedure of those concerned and the emotional stress related to the procedure and the assistance to hearings with the police and in court; legal assistance includes legal advice and representation by a lawyer. Providers of legal assistance are also entitled to claim compensation in criminal proceedings (the rights of the civil party).

Victim assistance services are provided by specific victim support organisations (such as child protection centres, counselling centres or intervention centres). They instruct lawyers to provide legal assistance and/or provide the psychosocial assistance by their staff. Their members of staff are social workers, psychologists or comparable professionals with additional – obligatory – legal training in the area of criminal proceedings.

The Federal Ministry of Justice funds the victim assistance services.

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