

4 - Compensation

What is the process for claiming damages from the offender? (e.g. court case, civil claim, adhesion procedure)

To assert financial claims (e.g. for damages for pain and suffering, treatment costs), victims can

- bring a civil action against the offender or
- join the criminal proceedings against the accused as a civil claimant.

To assert a claim as a civil claimant in criminal proceedings, you need to submit a declaration, in which you must quantify your claim for compensation for the damage caused by the crime or the harm suffered and demonstrate your entitlement to it (the grounds for and level of the damages/compensation). A further condition is that the defendant is convicted for the damage caused.

You should join the criminal proceedings as a civil claimant as early as possible (ideally when the crime is reported to the police). After the charges have been brought before the competent court, the declaration can also be placed on record with the competent public prosecutor or submitted in writing without any formal requirements. During the trial, the declaration has to be submitted at the latest before all the evidence has been compiled. This is also the latest point by which the claim must be quantified.

The court ordered the offender to pay me damages/compensation. How do I make sure the offender pays?

If the convicted party fails to comply with their obligation to pay the sum awarded, the creditor, i.e. the victim to whom compensation has been awarded, can institute enforcement measures with the help of the court. To this end, a written or oral application (application for enforcement (*Exekutionsantrag*)) must be filed with the competent district court. You have 30 years to assert a claim for compensation awarded in a legally binding court ruling. At the end of this period, the claim becomes time-barred.

If assets of the convicted party are declared to have been forfeited, victims have the right to request settlement of the compensation awarded to them from the assets seized by the State.

If the offender does not pay, can the State pay me an advance? Under what conditions?

An advance payment can be granted only if payment has been prevented by the serving of a sentence. This is the case, for example, if the offender is unable to earn any income as a result of serving a custodial sentence or has no funds as a result of paying a fine. A condition for receiving this advance is that the civil claimant has been awarded compensation in a legally binding court ruling as a result of death, physical injury, harm to health or financial loss. In certain cases the possibility of an advance payment is ruled out (e.g. if other entitlements to state payments exist or if the injury resulted from involvement in affray or in the event of gross negligence).

The request for an advance payment must be filed with the competent criminal court.

Am I entitled to compensation from the State?

Victims of crime can receive financial compensation from the State if

- they have been unable to pursue their profession owing to illness or a follow-up treatment, etc. and consequently have suffered loss of earnings
- they have had to undergo psychotherapy, crisis intervention or another treatment to improve their health
- orthopaedic treatments are necessary
- spectacles or dentures have been damaged
- rehabilitation is necessary
- they require care (in this case a care allowance can be paid)
- they are blind (in this case a blind person's allowance can be paid).

Since 31 May 2009, victims who have suffered serious physical injury can receive lump-sum damages for pain and suffering.

Surviving dependants of victims of crime receive

- compensation for loss of maintenance (if the victim has died and their spouse and/or children have lost financial support needed to cover their living expenses)
- therapeutic care (e.g. psychotherapy) and orthopaedic care
- funeral expenses up to a specified maximum amount.

Am I entitled to compensation if the offender is not convicted?

If the offender is not convicted, the victim is referred to the civil courts and can bring a claim for compensation there.

Am I entitled to an emergency payment while I wait for the decision on my compensation claim?

No.

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