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Claiming damages from the offender

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Austria



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How can I claim damages or other means of redress/satisfaction from an offender in a trial (criminal proceedings), and who should I address this claim to?

The victim of a crime has the right to seek damages for the suffering caused or compensation for impairment of his/her legal rights protected under criminal law. In order to make a claim, the victim may declare that he/she wishes to join the criminal proceedings as a civil party. This declaration (for joining the criminal proceedings as a civil party) joins the victim as a civil party to the criminal proceedings. If, at a later stage, the public prosecutor drops the charges, the civil party can continue proceedings via what is known as an 'associated prosecution' (*Subsidiaranklage*).

Depending of the status of the proceedings, the declaration to join proceedings as a civil party may be submitted to the criminal police (*Kriminalpolizei*), the public prosecutor or the court, either verbally or in writing. There are no requirements as to which form the declaration should take (Section 67(3) of the Code of Criminal Procedure (*Strafprozessordnung, StPO*)).

Alternatively, victims can make claims as part of a civil case.

At which point in the criminal proceedings should I present a claim?

The declaration to join the criminal proceedings as a civil party may be submitted up until the taking of evidence has been completed as part of the main hearing. As certain participation rights which go beyond the rights of the victim are linked to this under criminal proceedings (e.g. the right to apply to take evidence, summons to the main hearing), it may make sense to make the declaration to join the criminal proceedings as a civil party at an early stage in the proceedings.

What can I ask for in the claim and how should I present it (indicate a total amount and/or specify the individual losses, lost profits and interests)?

The claims must be justified in the declaration to join the criminal proceedings as a civil party. A concrete estimate for the claim must be provided by the end of the evidence-taking procedure in the main hearing. However, only a proportion of the damages can be claimed.

Is there a specific form for such claims?

There is no specific form for the declaration to join the criminal proceedings as a civil party. There are no requirements as to what form the declaration must take. Existing witness statement forms contain a question which asks whether the person wishes to join the criminal proceedings as a civil party. It is enough for the person to state yes and provide a brief explanation for them to be joined.

What evidence do I need to present to support my claim?

Evidence should preferably be presented or submitted when the crime is reported or during questioning by criminal police. At the very latest, it should be submitted by the hearing. Evidence includes:

- photos,
- medical diagnoses,
- bills or invoices,
- quotations, etc.

Are there courts fees or other costs linked to my claim?

Civil parties usually do not incur any costs as part of the criminal proceedings (apart from the cost of their selected representatives). Costs are only incurred if the civil party knowingly gives a false statement which initiates criminal proceedings or if the defendant is acquitted in the event of an 'associated prosecution'.

Can I get legal aid (help of a lawyer) before and/or during the proceedings? Can I get it if I'm not living in the country where the proceedings take place?

Civil parties do not have to use the services of a lawyer as part of the criminal proceedings. Some victims, especially those that may have been exposed to violence or dangerous threats or had their sexual integrity or ability to make decisions in relation to their sexuality undermined as a result of the crime, may request support during the legal proceedings (legal advice and representation by a lawyer) if this is necessary in order to safeguard their procedural rights, taking their personal involvement into account as far as possible (Section 66(2) StPO). This support is free of charge for victims.

Where there is a genuine financial need, other victims may also request assistance from a lawyer under the system of procedural support if this is necessary for the administration of justice, particularly for the enforcement of the right to avoid subsequent civil proceedings (Section 67(7) StPO).

In the context of criminal proceedings in Austria, this also applies to individuals living abroad and individuals who do not have Austrian citizenship.

When would the criminal court dismiss or refuse to adjudicate on my claim against the offender?

The declaration to join the proceedings as a civil party will be rejected if it is clearly unwarranted, submitted late or if an estimate of the compensation amount or damages is not given in time (Section 67(4) StPO). Up until the charges have been brought before the court, it is the public prosecutor that decides whether to reject the declaration. Once charges have been brought, it is the court that decides (Section 67(5) StPO).

If the main hearing leads to a judgment, the court must also make a decision on civil claims that have been filed. If the defendant is acquitted, the civil party must file his/her claims in a civil court, as in such instances the civil party cannot be awarded compensation or damages as part of criminal proceedings. If the defendant is found guilty, (i) the claim may be granted (either partially or in its entirety) or (ii) the claimant may be told to file his/her claims in a civil court. Civil action despite a guilty verdict is necessary if the civil claims are deemed unwarranted after the basis for the decision has been fully investigated or if the outcome of the criminal proceedings does not allow for even a partial assessment of the civil claim, unless an evidence-taking process

which does not significantly delay the decision in relation to the defendant's guilt and sentencing allows the basis for the decision to be investigated further.

Civil claims cannot be dismissed as part of the criminal proceedings, i.e. the civil party can still file his/her claims in a civil court.

Can I appeal against such a decision or seek other means of redress/satisfaction?

If the declaration is rejected by the public prosecutor, an appeal may be lodged on the grounds of infringement of rights (Section 106 StPO). If the declaration is rejected by the court, a complaint may be lodged (Section 87(1) StPO).

The civil party may (but only in certain cases) lodge an appeal for nullity or appeal against the referral to the civil court due to the acquittal of the defendant. If the party is referred to the civil court despite the defendant having been convicted, an appeal may be lodged on the basis of the civil claims.

Outside the criminal proceedings, civil claims can always be filed in the civil courts.

If I am awarded damages by the court, how do I ensure the judgment is enforced against the offender and what help can I get to ensure this?

In accordance with the first sentence of Section 1 of the Enforcement Order (*Exekutionsordnung*, EO), legally-binding conclusions of the criminal courts in relation to civil claims constitute writs of enforcement within the meaning of the EO. Each enforcement procedure requires a valid writ of enforcement. Enforcement must be requested via the competent district court (*Bezirksgericht*). If all the requirements for an enforcement are met, it will be granted. Enforcement action (e.g. the sale of movable property, the transfer of claims to the enforcing creditor or the forced sale of property) is taken upon the request of the claimant.

The forms for the enforcement procedure can be accessed via the following link on the website of the [Austrian Ministry of Justice](#).

Once the enforcement action has been approved, the enforcement procedure is generally managed by a judge or judicial officer. The enforcement action is carried out by bailiffs, who in Austria are court officers. The creditor will only be asked to submit further applications if the court or bailiff is unable to continue the procedure without these or if the action entails costs.

The enforcement action is carried out until it has been successfully concluded or terminated, i.e. because the debtor has paid his/her debt to the creditor during the procedure.

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