

Chapter 12

Methods of Ascertainment of Personal Damage in Germany

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Abstract The chapter illustrates the historical, judicial and juridical framework of personal injury assessment and compensation in Germany, describing the expert's qualification and competences and detailing the ascertainment methodology and criteria of evaluation utilised for identifying, describing and estimating any personal injury, its temporary and permanent consequences and the causal value/link between the event and the injury and between the injury and the impairment/disability.

12.1 Historical, Judicial and Juridical Overview

Regarding the different forms of violence, there are three that it is necessary to distinguish: physical violence, sexual violence and emotional violence. In German legal medicine, physical and sexual violence are surveyed. Classifying emotional violence is the purpose of the forensic psychiatrist.

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In Germany, forensic medicine experts mainly work on behalf of the public prosecution department or on behalf of the criminal investigation department. This implies that a victim has to have contact with the police first. However, victims frequently decide to contact the police only weeks or months after the assault. But when injuries are healed completely, the evaluation becomes difficult. For that reason the Institutes of Legal Medicine started opening up more and more walk-in departments, where victims of physical and sexual violence can be surveyed without having to pass by the police first. Offering a low-threshold assessment of the victim's injuries, the aim is to enable more victims to have their injuries recorded shortly after the assault. The walk-in departments were established in order to prevent such difficulties, especially for victims of interpersonal violence in social proximity. Some walk-in departments have been around for years already, but only recently has political support been noticeable due to the increased interest of the media.

Including the examination of a living victim, clinical forensic medicine has always existed. However, during the last 10 years, something has changed fundamentally. Nowadays, the examination of a living victim has established as a more significant role within forensic medicine. It is regarded as an interface between clinical and forensic medicine. Examinations of victims now appertain to the core competences of forensic medicine. For the examination and assessment of a victim, an interdisciplinary network is important.

The definition of criminal acts and how to proceed juristically is determined in the German Criminal Code (StGB), which is based on legal codes dating back to the 1870s. It contains the chapters "Offences against sexual self-determination" (§§ 174–184g) and "Offences against the person" (§§ 223–231). Until 1997 rape between married people (married with each other) was juridically not classified as a criminal act. If anything, it was categorised as bodily injury. Only in 1997 was it admitted to § 177 StGB and thereby became a criminal act. Generally, "sexualized violence" means violence including the genital area. The main reason for sexualized violence is to humiliate the victim rather than to attain sexual enjoyment. § 177 StGB defines the meaning of the terms "Sexual assault by use of force or threats" and "rape". Since 1997, a forced penetration into the body (oral, vaginal or anal) is characteristically called "rape", while other sexual actions without penetration are called "sexual assault".

In § 223 StGB "bodily harm" is defined as "Whosoever physically assaults or damages the health of another person...", whereas it becomes "bodily harm by dangerous means" (§ 224 StGB) when the perpetrator causes bodily harm by:

- Administering poison or other noxious substances
- Using a weapon or other dangerous instrument
- Acting by stealth
- Acting jointly with another
- Methods that pose danger to life

A victim can also, for instance, be injured without intent in a traffic accident or by negligence.

12.2 Identification and Description of Medicolegal Expert's Qualifications

The basic education for becoming a doctor of medicine proceeds according to the EU Directive 2005/36/EG of the European Parliament and Council. Afterwards, a time of further education and training follows for those who want to become an expert in medicolegal medicine. For this period of time, the medical chambers as public corporations bear responsibility. The period lasts at least 60 months and includes 6 months of pathology and 6 months of (forensic) psychiatry and psychotherapy. Furthermore, another 6 months of the following professions can be accepted: pathology, anatomy, public health system, pharmacology and toxicology, psychiatry and psychotherapy, as well as forensic psychiatry. During this period, the following examinations, activities and methods are to be completed:

- 400 inspections of the corpse
- 25 crime scenes
- 300 autopsies
- 2000 histological studies
- 10 evaluations of DNA traces and their storage
- 200 expert opinions for the court (written and verbally communicated)
- 25 forensic osteological and odontological studies

This data is required by the medical chamber of Bavaria, for example. The data required by the medical chambers of other German federal states can differ slightly.

Furthermore, the doctor has to acquire experiences and skills concerning forensic traumatology, biomechanics and forensic anthropology. He also has to study the basics of forensic molecular biology and toxicology. Finally, the examination of living persons is part of the education, including cases of child maltreatment and sexual abuse. When all the skills have been acquired, an oral examination has to be passed.

During the time of education and after some experiences, the trainee can examine a victim for himself. But at the first few times, the examination takes place in the presence of a professional doctor. The trainee is authorised to perform examinations after demonstrating his competences.

12.3 Ascertainment Methodology

There are four different ways to initiate an ascertainment method:

- Appraisal by order of the investigation authority
- Consultative examination by order of the hospital
- Examination and documentation by order of private persons

- Examination by an accident insurance consultant (automatically initiated in case of a commuting accident or an accident at work)

If victims want to complain to the police, they have to report to the criminal police and the public prosecutor. Depending on the interval between the time of the crime and criminal complaint as well as the kind of violence, an investigation in an institute of legal medicine is possible. In case of an appraisal in the order of the investigation authority, the order includes both the physical examination with securing of evidence and a written expert opinion including explanation of the causal links. Injuries should be documented in two ways: by description in words and by photography. Evidence should be secured. Both victims and offenders should be examined after physical violence and/or rape. Some German institutes cooperate with gynaecologists, especially in cases of rape. The investigation, documentation and interpretation of the injuries occur impartially, objectively and with precision.

Consultative examinations in the order of hospitals include standardised injury documentation as well as a verbal discussion concerning the initiation of the injuries. If, in a particular case, a criminal investigation proceeding results, the documentation permits a complete examination report to be written.

Furthermore, private persons can consult a medicolegal expert for the documentation of their injuries without involving the police. Some forensic departments offer this proceeding in the context of officially supported walk-in departments for victims of violence, adults and children. Other forensic departments offer this proceeding without being supported, too, as long as the department can afford this “service” in terms of personnel and finance. In the same way as for the consultative examination, the standardised documentation of the injuries in words and photography is included as well as a verbal discussion. A written examination report is not included, which can be caught up on in case of a criminal investigation proceeding. The aim is to document injuries and save evidence close to the event. If a victim decides to involve the police only long after the event, injuries can be completely healed. Thereby, it can be impossible to come to a diagnosis. By contrast, the walk-in departments guarantee documentation within a narrow time frame. They also serve as a contact point in cases of child abuse—for private persons as well as for other doctors (especially paediatricians) with questions on obscure cases.

If it comes to an examination of a person or to an assessment of medical reports for any reason, the procedure is always the same. There is no difference between a later civil liability and a criminal trial. In general, civil liabilities without criminal trials are rare in Germany (except whiplash claims). In cases of seriously harmed persons, there is a criminal trial first and after that it comes to civil liability. The latter often takes place without a forensic expert, as the forensic expert has already given his report during the criminal trial.

12.3.1 Collection of Circumstantial and Clinical Data

Forensic and clinical examinations should compile a complete record of injuries and all available evidence while being cognizant of the victim's physical and emotional needs. When interviewing or examining the victim, the examiner should be patient and open but also objective and neutral. Especially with regard to victims of sexual violence, the top priority of an examination should be to protect the victim from further trauma. In case of traffic injury, the physical aspects of the accident are analysed by specialised companies. The medicolegal experts pay attention to these results when reconstructing the event and cause of injuries.

12.3.2 Medical Case History

Before examining the victim's body, the examiner must know the victim's account of the crime in detail. The account, injuries and the result of the evidence should offer a single coherent image. The victim can also be asked questions by the examiner. If an offender is examined, it is important to point out that none of the examiner's questions have to be answered. Questions could, for example, relate to when, how and where the incident occurred. Generally, obtaining a report of the crime is important, but the younger a child, the more difficult is the questioning. A toddler can be suggestively influenced through questions. Therefore, it is often best to allow specially trained persons to conduct the questioning.

In 1953, Mueller reported on the assessment of examinations of living persons [1]. He emphasised that the otherwise important anamnesis is to be included only with caution, if at all. He stated that it was frequently the aim of an assessment to determine the anamnesis based on the detected injuries. The structure of a medical report was recommended to be the following:

- Repetition of the question to be answered
- Rendition of the documents important for answering the question
- Own investigations
- Diagnosis and detailed reply to the question asked at the beginning

The evaluation must be plain and objective. The questions are to be answered without legal connotations. Subjective health problems are also to be documented. It is important, however, to particularly denote those as subjective statements of the person examined. To enforce a demand, symptoms are frequently aggravated or simulated.

12.3.3 Systematic Clinical and Medicolegal Visit

In Germany a systematic medicolegal visit includes an examination of the complete and undressed body and the outer genitals. The well-being and health of a victim is the main priority during an examination. The examination should be conducted in a gentle manner and with patience. A victim should never be forced to undergo an examination. When examining a child or adolescent, the presence of a parent or guardian is necessary. The younger the child, the more important the attendance of a parent or guardian becomes. However, the examiner should be aware that the person accompanying the child could be involved in the maltreatment.

Generally, the physical examination should involve all parts of the body. In order to make the victim feel as comfortable as possible, the examination should be done by a person of the same sex [2]. If this is not possible, the examiner should have an assistant of the same sex nearby. Care must be taken that the victim does not undress completely, but only partially, to enable examination of one naked part of the body at a time. The injuries are to be documented in words and pictures.

In case of sexual violence, after the extra-genital examination, a genital examination should occur [3]. Ideally, the genital examination should be performed by a medicolegal expert in cooperation with a gynaecologist. The investigative technique depends on the age of the patient and also on the hormonal influence of girls [4]. A toddler (who is free of hormones) can be examined while sitting on the lap of a parent or guardian, who can hold and spread the legs of the toddler. In this position, the labia majora and minora, the introitus, the hymen and the anus can be inspected. The examination of an older girl in the hormone-free period can take place on the examination table, first in the supine position and after that in the so-called frog-leg position. A girl in the prepubertal or pubertal period as well as a woman can be examined in the gynaecological chair. A boy is to be examined on the examination bed, in a lateral position while bending the hip joint and knee joint. In this position, the buttocks can be spread and the anus inspected. The buttocks should be spread as long as possible to cause a reflexive dilatation of the anal sphincter. The penis is to be examined with regard to bleeding or other injuries. The preputium should preferably be withdrawn by the boy himself.

For inspection of the external genitalia, the labia majora and minora will be spread and then pulled forward and down with the fingers (separation and traction). The inspection of the hymen occurs in this position. Normally, the hymen can be brushed from the inside to the outside with a cotton swab. An investigation with a speculum is necessary only if there is a haemorrhage of the vaginal canal [5] or if there are foreign objects inside. Use of a speculum may create difficulties, because the speculum blocks the view of the hymen, preventing an existing injury from being seen. The speculum itself may injure the hymen, making it impossible to distinguish between an injury caused by sexual intercourse and an injury caused by the speculum.

Independent of a report to the police, the anamnesis and all injuries should be documented in a standardised way. Generally, a documentation form can be used to

simplify the process. This can also serve as an aid to memory at a legal proceeding later. The following points are guidelines for filling out a documentation form:

- Descriptions of all injuries are to be written down exactly. That is, characterise the colour, form, margin, dimension and exact localization of the injuries. All injuries must be included.
- The injuries should also be photographed. One overview picture should be taken and a second one showing the injury in detail with a scale. The photo should be taken at a right angle to the injury. If the photo is taken in an oblique projection to the injury, the injury itself may not be sufficiently visible.
- The report of the victim is to be documented exactly and in depth. Sometimes it is important to quote verbatim the words or sentences of the victim. Some victims do not understand technical words. The examiner should speak clearly and should explain these words when necessary.
- Securing traces requires the correct procedure. The examiner may find an explanation of how to secure the traces in the documentation form. Generally, the traces should be dry and clean.
- The injuries and the result of the traces should be interpreted carefully.

12.3.4 Additional Investigations

The medicolegal expert is allowed to collect all information needed for evaluation of the present injuries. He/she is not allowed to ask questions that are not necessarily important for the present issue.

If necessary, blood and urine should be collected both from the victim and, when possible, the perpetrator and tested for alcohol and drugs. DNA swabs should be collected. In case of a sexual assault, vaginal, oral and/or anal swabs should be taken as well as swabs of the penis of the perpetrator. For securing sperm and seminal fluid, several sterile cotton swabs (ideally three or four) should be used at once.

An additional tool is infrared photography. It can be used to visualise bloodstains on dark surfaces, especially clothes. In the infrared wavelength, many dark materials reflect the light so that they seem pale. Blood, however, absorbs the infrared light by which it appears dark-coloured. Using this difference in contrast, bloodstains become visible and interpretable.

There is also the possibility of taking MR/CT pictures and X-rays of the victim. Especially in cases of strangulation, hematomas of the throat can be visualised very well using the MR. When it comes to tests with radiation exposure, risk and benefit have to be weighed carefully. Sometimes, tests are important despite radiation exposure (e.g. in some cases of child maltreatment). But the use of tests with radiation exposure has to be a decision made on a case-by-case basis. The victim must agree to make a radiological investigation.

12.4 Evaluation Criteria

12.4.1 Psychiatric and Somatic State Prior to the Event/Injury

As a basis, the victim should be interviewed about diseases and intake of drugs or alcohol. To evaluate the somatic state prior to the event, the victim and the family physician can be interviewed. The victim has to be in agreement with the latter. To assess the psychiatric state before, during or after the event is not part of legal medicine in Germany. Instead, this lies within the competence of the forensic psychiatrist. Nevertheless, it has to be clarified whether the victim has psychiatric problems, was in psychiatric counselling or needs psychiatric help (e.g. victims with borderline personality disorder).

12.4.2 Detailed Reconstruction of the Event/Injury

The reconstruction of a whole event does not fall within the remit of German legal medicine. Instead, the task of legal medicine is to collect information necessary for the police. Therefore, it is also important to concentrate on the statements of the persons involved. For example, do the story and the injuries fit together? If so, what is the amount of violence necessary to cause their injuries? To reconstruct the mechanism of an injury sometimes requires an interdisciplinary collaboration. Specialists of biomechanics, physics, ballistics or scientific computing can assist in answering questions. In some cases experiments (under similar conditions) are indispensable to ascertain whether a story and an injury fit together or not. Especially when it concerns answering questions about velocity, force, inertia and so on, an interdisciplinary collaboration can be enlightening. Some German forensic departments employ interdisciplinary specialists; others do not. Besides, there is always the possibility to collaborate with the State Office of Criminal Investigations.

12.4.3 Personal Injury

The injury is to be described in words and photographed. In doing so, there are several points of supreme importance:

- Overview picture (making sure to visualise the localisation of the injury)
- Detailed picture
- Usage of a scale
- Standardised illumination and colour management

In order to achieve a faithful colour rendition of the picture, the use of a standardised illumination, e.g. with a daylight lamp, is recommended. The knowledge of the colour temperature is a prerequisite for the correct adjustment of the white balance. The colour management should include the calibration and profiling of the monitor and the profiling of the printer. It is also recommended to shoot the detailed photograph out of a position rectangular to the injury. This way, perspective distortion can be prevented. Describing an injury, it is important to document precisely the localisation, size and appearance of the injury. A person reading the description of an injury should be able to visualise a picture without having seen the photograph of the injury.

Questions about outcome and success of clinical treatments should preferably be answered by a doctor of the appropriate discipline.

12.4.4 Permanent and Temporary Impairment

In Germany, evaluating temporary or permanent impairment is not the task of a legal medicine expert. These topics are evaluated by doctors of medico-actuarial science, community medicine or labour and occupational health. Additionally, a doctor of the appropriate discipline can also be interviewed.

The duration of an impairment due to violence is relevant in various fields of law. According to the seventh volume of the German Social Code (SGB VII), the statutory accident insurance provides services in case of a commuting accident or a work-related accident. Services such as medical care, rehabilitation, injury benefit (“Verletztengeld”) and transitional allowance (“Übergangsgeld”) are provided independently from the prognosis of an injury. From the viewpoint of statutory accident insurance, permanent impairment means a duration exceeding 26 weeks. This time period is a necessary prerequisite for a pension claim.

The Federal War Victims Relief Act (“Bundesversorgungsgesetz”, BVG), which was originally enacted to provide for World War II victims and their surviving dependents, has also been applied for several decades to other groups of people who are entitled to claim under certain secondary legislation (e.g. victims of violent crime, people with vaccine damage, people injured during military or civilian service, people who were imprisoned on the basis of an unlawful sentence under the regime of the Socialist Unity Party of the former German Democratic Republic) [6]. According to § 18a BVG, an impairment becomes “permanent” if the incapacity to work is to be expected to last for at least 78 weeks. The Federal War Victims Relief Act is completed by a particular regulation (“Versorgungsmedizinverordnung”). The annex to this regulation (“Versorgungsmedizinische Grundsätze”) specifies the degree of injury consequences (“Grad der Schädigungsfolgen”, GdS). In this regulation, “chronic” is defined as a relevant functional impairment exceeding a period of 6 months with a high degree of probability [7].

The accident insurance covering for civil servants is regulated by the Civil Service Benefits Act (Beamtenversorgungsgesetz). A special compensation after an accident (“Unfallausgleich”) can be claimed if a relevant impairment lasts longer than 26 weeks.

Impairment due to violence can be recognised according to the Disabilities Act (Social Code IX, SGB IX), if a relevant functional impairment exceeds a period of 6 months with a high degree of probability [7].

However, there is no uniform definition of “chronic” in the various areas of law. The statutory accident insurance and the authorities, respectively, have to decide whether the criterion of chronicity is fulfilled. Their decisions are often based on medical reports. Physicians of various fields may be assigned to render an expert opinion, depending on the particular question.

12.4.5 Causal Value of the Event and Causal Link

“Conditio sine qua non” in German criminal law means “every event or action that is causal for an issue”. The issue would not occur if the event had never happened. So it is up to the legal medicine expert to clarify whether an accused action is indeed the causal reason for the injury. In some cases this might be less complicated. In other cases some interdisciplinary reconstructive investigations might be necessary. Special guidelines about when to affirm or deny causation do not exist.

Once causation between event and injury is affirmed by a legal medicine expert, the relation between injury and impairment has to be considered, too. If this does not fit together, a doctor of the appropriate discipline has to be consulted.

The criteria for evaluating the causal link are different in the statutory accident insurance. The impact and the impairment of health must be ensured, and the causal relationship must be “probable”. If there are different causes, the occupational impact must be a relevant causal factor [8]. In such cases, the medical expert has to consider the pathogenesis of the disease in detail with regard to all single causes. According to the particular regulation (“Versorgungsmedizinische Grundsätze”), the examination of the causal relationship is analogous to the principles of the statutory accident insurance [7]. In contrast, the recognition of impairment according to the Disabilities Act does not depend on a particular cause. Rather, the extent of the functional impairment is to be assessed [7].

12.4.6 Personal Damage Quantification

12.4.6.1 Quantum for Temporary Impairment

As stated above, German social legislation lays down that a disability can be recognised in case of a chronic impairment.

12.4.6.2 Quantum for Permanent Impairment

There are differences between the various areas of law. According to the seventh volume of the German Social Code (SGB VII), the reduction in earning capacity (Minderung der Erwerbsfähigkeit, MdE) depends on the reduction of the percentage of job opportunities due to the impairment. This is to be evaluated in relation to the individual job opportunities before the injury in the entire labour market [9]. In case of a permanent total disability, the reduction in earning capacity is 100 %. If the impairment is less, i.e. the person is not able to work at a certain number of workplaces to a lesser or greater degree, expert opinion may be difficult. In this case, it is impossible to quantify the number of the respective workplaces, which would be the prerequisite for calculating the degree of the reduction of earning capacity. Therefore, textbooks on expert opinion and court decisions are usually the basis for the estimation of the degree of impairment. An impairment of at least 20 % is a prerequisite for a pension. Different insurance cases for the same individual (including recognised occupational diseases) can be considered cumulatively, provided that the reduction in earning capacity is at least 10 % in each case. For example, if a work-related accident and an occupational disease result in a reduction in earning capacity of 10 % each, the total reduction in earning capacity is 20 %. In this case, the person would receive a pension. The seventh volume of the German Social Code § 56 provides that insurance cases under the Civil Service Benefits Act and other laws have to be dealt with accordingly.

The annex to the particular regulation provides that the degree of injury consequences (GdS, according to the social compensation law) and the degree of disability (GdB, according to the Disabilities Act) are related to possible impairments in all areas of life [7], but not to the general labour market. The degree of injury consequences and the degree of disability are expressed as mere numbers and outlined in the annex. The administrations choose experts from the appropriate medical specialities for an expert opinion.

The different fields of law may seem confusing. The application of the various legal provisions shall be explained in an example. A professional violinist has lost one hand due to a violent act. In case of a work-related accident, the seventh volume of the German Social Code applies. However, the experts disagree, whether a possible prosthetic restoration has to be considered or not. The reduction in earning capacity (MdE) may vary between 50 and 80 % depending on the condition of the amputation stump and on the legal position with regard to a possibly successful prosthetic restoration [10]. As the violinist cannot practise his profession any longer, the statutory accident insurance provides an increment, which is usually 10 % [11]. If the violinist is a professional musician employed by the army, the annex to the BVG [7] has to be applied. The degree of injury consequences (GdS) is 50. The competent authority fixes an increment, too. However, the level of the increment is not specified in the annex. A degree of disability can be recognised in addition to the recognition of a work-related accident according to seventh volume

of the German Social Code or the Federal War Victims Relief Act, respectively. The degree of disability amounts to 50, there being no increment [7].

To determine a disability rate is not the purpose of forensic medicine.

12.4.6.3 Other Non-pecuniary Losses

Of course, the medicolegal expert can give an overview of losses concerning, for example, daily activities, sports and sexual function. To give a detailed description of how affected a person is based on his or her injuries should be done by a doctor of the appropriate discipline. To investigate how far these influences lead to an existential damage is a task of the court.

When assessing the value of pain and suffering, (civil) courts have to award an adequate compensation to the injured person. Key aspects for determining the compensation are the extent, severity and duration of pain, suffering and disfigurement. However, the victim's personal situation, such as age, sex, occupation and personal inclinations, also has to be taken into account. Within the scope of compensation, the injuring party is also liable for any emotional distress directly caused by and related to the damaging incident. In this respect, a potential uncertainty as to the future healing process or a potentially increased risk of injury or death can also be of importance for the assessment. The same applies to social burdens such as reduced career chances in the present occupation or prevention of career ambitions and objectives. As experience shows, it is often difficult for the victim to demonstrate and prove such emotional consequences of the injuring incident in a plausible way.

Another important aspect is that the victim is entitled to receive just and fair compensation from the injuring party for the wrong suffered. In this context, the degree of guilt plays an important role, although it is not decisive if the competent criminal courts have instituted criminal proceedings against the injuring party. Consequently, damages for pain and suffering are always determined on a case-by-case basis. Accordingly, the number of individual decisions is immense. Certain guidelines are given by Beck's Schmerzensgeldtabelle (Table of compensation for pain and suffering, 2013) [12] or the ADAC Table, published by Hacks/Wellner/Häcker (Amounts of damages for pain and suffering, "Schmerzensgeldbeträge", 2012).

Traditionally, German judges have always been rather cautious when assessing concrete amounts of damages for pain and suffering. For example, 40,000–60,000 € were awarded in the past for the amputation of an arm required after medical malpractice. In most cases, a single payment is awarded, whereas a pension for pain and suffering is to be considered where an important limb was lost or in cases where the victim may suffer detrimental effects in the future. In such cases—i.e. if recovery is uncertain and the long-term medical effects cannot be predicted—the victim can also sue for a declaratory judgement, which would enable him or her to claim damages also in the future.

12.4.6.4 Pecuniary Losses

The costs of medical treatment are an important part of the rehabilitation costs to be compensated to an injured person. If these costs are paid by a social insurance carrier or an insurance company, statutory subrogation is carried out, which means that the insurer is entitled to recover the amount of the claim paid to the victim from the injuring party.

As a general principle, the expenses to be compensated by the injuring party have to be reasonable. Again, this has led to a multitude of judicial case-by-case decisions. For example, the costs for an unconventional medical treatment method have been recognised if it offers a realistic chance of therapeutic success or relief of pain under scientific aspects. Thus, the injured statutory health insurance patient can also claim compensation for therapeutic treatment costs normally not paid by the statutory health insurance as far as these are not disproportionately high. In specific cases, the costs for a rented TV were recognised as reimbursable, whereas the costs for additional reading material were not. Travel costs of close relatives or a domestic partner for visits to the hospital are generally regarded as part of the treatment costs and are thus reimbursable as far as they cannot be avoided. On the other hand, lost leisure time of the family cannot be compensated.

Material damage also includes indirect damage, such as lost profit or lost earnings. The assessment of the amount of the damage caused is subject to the simplified burden of proof as defined in Section 287 of the German Code of Civil Procedure. Generally, damage that may occur in the future is not taken into account. Thus, a musician who lost a hand and can no longer practise his profession cannot make a claim for a concrete amount of money for the presumable loss of earnings in the future, although he has the option to bring an action to establish the liability of the injuring party for any future damage, in addition to the action for compensation of the damage suffered up to the court hearing.

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