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Act on compensation to victims of violent crime (Crime Victims Compensation Act – OEG)

Crime victims Compensation Act as promulgated on 7 January 1985 (Federal Law Gazette IS. 1), last amended by Article 1 of the Act of 25 June 2009 (Federal Law Gazette I p. 1580)

Section 1

Right to compensation

(1) Any person who, within the territory of validity of this Act or on board a German vessel or aircraft, has sustained a personal injury as a result of wilful, unlawful physical assault against himself or any other person or as a result of the lawful defence against such an assault, shall be entitled, upon application, to compensation on account of the resulting health damage and economic damage, as provided for by the Federal War Victims Compensation Act, which shall be applied mutatis mutandis. The application of this provision shall not be excluded on the grounds that the assailant has acted in the mistaken belief that his action was justified.

(2) The following shall be equated with physical assault within the meaning of paragraph 1

1. intentional administration of poison;
2. the at least negligent creation of a danger to the life and limb of another person by commission of a crime by means causing a common danger.

(3) Injuries caused by an accident under the conditions set out in Section 1 (2) (e) or (f) of the Federal War Victims Compensation Act shall be equated to injuries within the meaning of paragraph 1 of this Article; Section 1 (2) (e) of the Federal War Victims Compensation Act shall also apply to accidents sustained by a crime victim while filing criminal charges without delay.

(4) Foreign nationals shall be entitled to compensation,

1. if they are nationals of a member state of the European Communities;
2. if legislation of the European Communities requiring equal treatment with German nationals is applicable to them; or
3. if reciprocity is guaranteed.

(5) Other foreign nationals lawfully residing in Germany, whose residence is not only temporary residence of not more than six months, shall be entitled to compensation in accordance with the following provisions:

1. Foreign nationals with at least three years of uninterrupted legal residence in Germany shall be entitled to benefits in the same way as German nationals;
2. Foreign nationals with less than three years of uninterrupted legal residence in Germany shall only be entitled to non-income-related benefits;

Legal residence within the meaning of this Act also exists when deportation has been suspended for legal or factual reasons or for reasons of important public interests. The provisions set out in Annex I, Chapter VIII, Subject Area k, Section III, No. 18 of the German

Unification Treaty of 31 August 1990 (Federal Law Gazette 1990 II pp. 885, 1069) shall be applied *mutatis mutandis* to foreign nationals who have suffered an injury in the acceding territory, unless they have had their domicile, ordinary residence or permanent residence in the territory of validity of this Act before German unification.

(6) Foreign crime victims who are legally residing in Germany for a temporary period of not more than 6 months shall be entitled to compensation in the same way as foreign nationals referred to in paragraph 5, No. 2,

1. if they are related up to the third degree of relationship to a German national or a foreign national belonging to the groups of persons referred to in paragraphs 4 or 5, or have a relationship with that person as specified in paragraph 8.

2. if they are nationals of a Contracting State of the European Convention on the Compensation of Crime victims of Violent Crimes of 24 November 1983, in so far as that Contracting State has not raised any objection concerning the Convention.

(7) If a foreign national who is entitled to compensation under paragraphs 5 and 6

1. is expelled or deported; or

2. has left Germany and his residence title has expired; or

3. has left Germany and has not legally re-entered the country within six months,

he shall be granted for each started year of uninterrupted legal residence in Germany a lump-sum payment equal to three times the amount of the monthly basic pension, totalling not less than ten times the amount of the monthly basic pension and not more than thirty times that amount. This shall not apply if the foreign national is expelled for one of the reasons set out in Sections 53, 54 or 55(2) No. 1 to 4 of the Residence Act. In the case of existence of a claim to a lump-sum settlement in accordance with the first sentence of this paragraph, or in the case of expulsion in accordance with the second sentence, any further claims arising under paragraphs 5 and 6 shall expire; the same shall apply, *mutatis mutandis*, to foreign nationals whose injury has not resulted in a degree of damage entitling to a pension. The first and third sentence of this paragraph shall also be applied to displaced foreigners and foreigners in Germany who enjoy a legal status governed by the Convention Relating to the Status of Refugees of 28 July 1951 (Federal Law Gazette 1953 II p. 559), or by the Convention Relating to the Status of Stateless Persons, of 28 September 1954 (Federal Law Gazette 1976 II p. 473), provided that the criminal offence was committed after 27 July 1993. Sentences 1 to 4 shall be applied, *mutatis mutandis*, to surviving dependants who do not reside in the territory of validity of this Act.

(8) Surviving dependants of a crime victim shall be granted, on application, compensation as provided for by the Federal War Victims Compensation Act, which shall be applied *mutatis mutandis*. The provisions of paragraphs 5 to 7 and the third sentence of Section 10 shall be applicable. Insofar as it is more favourable, the surviving dependants' residence shall be taken into consideration in calculating the lump-sum in accordance with paragraph 7.

Cohabiting partners shall be entitled to compensation in application *mutatis mutandis* of Sections 40, 40a and 41 of the Federal War Victims Compensation Act, if a partner died as a consequence of the injury and the other partner, foregoing paid employment, is taking care of their child; this entitlement shall be limited to the child's first three years of life.

(9) Injuries sustained by a claimant or beneficiary within the meaning of paragraph 1 or 8 together with Section 10 (4) or (5) of the Federal War Victims Compensation Act, or injuries as a result of an accident within the meaning of Section 8a of the Federal War Victims Compensation Act, sustained by a caregiver or an accompanying person while providing necessary attendance to the crime victim, shall be equated to injuries in accordance with paragraph 1.

(10) Damage to a body-worn aid, glasses, contact lenses or dentures shall be equated to a physical injury within the meaning of paragraph 1.

(11) This Act shall not apply to damage caused by an assault with a motor vehicle or a trailer.

(12) Section 64e of the Federal War Victims Compensation Act shall not be applicable. Section 1 (3), Sections 64 to 64d, 64f and 89 of the Federal War Victims Compensation Act shall be applied with the proviso that in cases where a German Land is the cost-bearer, the consent of the Federal Ministry of Labour and Social Affairs shall be replaced by the consent of the highest Land authority responsible for compensation to Federal War Victims (Section 4). The provisions applicable to German nationals shall also be applied to foreign nationals covered by this Act.

(13) Section 20 of the Federal War Victims Compensation Act shall be applied with the proviso that the figure used for comparison with the previous year as provided for in the third sentence of paragraph 1, shall be replaced by the number of crime victims and surviving dependents who are eligible for a pension in accordance with this Act; that in the fourth sentence of paragraph 1 the reference to health fund expenditure per pensioner shall be replaced by a reference to the national health fund expenditure per health fund member; that the first sentence of paragraph 2 shall be applied to the highest Land authority responsible for compensation to Federal War Victims or the body designated by that authority; that the figure referred to in the first sentence of paragraph 3 shall be replaced by the figure 1.3; and that the second and fourth sentence shall not be applicable.

(14) Medico-pedagogical treatment, physiotherapy and physical-exercise therapy shall be granted as part of curative treatment, if necessary.

Section 2

Grounds for refusal of compensation

(1) Compensation shall be refused if the crime victim was the cause of his own injury or if an award of compensation would be contrary to a sense of justice for other reasons, in particular reasons attributable to the behaviour of the crime victim. Compensation shall also be refused if the crime victim or claimant

1. is or was actively involved in political conflicts in his home state and his involvement is the cause of the injury; or
2. is or was actively involved in armed conflicts in his home state and if there is evidence that the injury is linked to this involvement, unless he can furnish proof to the contrary; or
3. is or was involved in organised crime or is a member of an organisation which engages in crimes of violence, unless he can furnish proof that a link to the injury does not exist.

(2) Compensation may be refused if the crime victim has failed to contribute to the best of his abilities to the clarification of the facts and the prosecution of the perpetrator, in particular by reporting the crime without delay to an authority responsible for criminal prosecution.

Section 3

Cumulation of entitlements

(1) In the event of cumulation of entitlement to compensation under this Act and entitlement under Section 1 of the Federal War Victims Compensation Act or other Acts stipulating the application mutatis mutandis of the Federal War Victims Compensation Act, a single pension shall be calculated taking into account the degree of damage resulting from the totality of damage caused by the injury.

(2) Entitlement to compensation under this Act shall not arise in the case where the injury entitles the crime victim to compensation under the Federal War Victims Compensation Act or any other Act stipulating that the Federal War Victims Compensation Act shall be applied mutatis mutandis.

(3) In the event of accumulation of entitlement to compensation under this Act and entitlement to compensation on the grounds of negligent breach of official duty, claims under

Section 839(1) of the Civil Code shall not be excluded on the grounds that the claimant fulfils the conditions set out in Section 1.

(4) In the case of damage pursuant to this Act, Section 4(1), No.2 of the Social Code, Book Seven shall not be applicable.

Section 3a

Compensation in the case of crimes of violence abroad

(1) German nationals or foreign nationals pursuant to Section 1(4) or (5) No.1 who have sustained a personal injury within the meaning of Section 1(1) as a result of a violent crime pursuant to Section 1(1) or (2) shall be entitled, upon application, to compensation on account of the resulting health and economic damage as provided for in paragraph 2, if

1. they have their ordinary and legal residence in the territory of validity of this Act, and
2. at the time of the crime, had been temporarily resident for a period of not more than six months at the place where the crime was committed.

(2) Crime victims shall be entitled to curative treatment and medical rehabilitation including psychotherapeutic measures necessary on account of the injuries suffered. In addition, crime victims shall be entitled to a single payment of

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| 714 € | in the case of a degree of damage between 10 to 20; |
| 1,428 € | in the case of a degree of damage between 30 and 40; |
| 5,256 € | in the case of a degree of damage between 50 and 60; |
| 9,192 € | in the case of a degree of damage between 70 and 90; |
| 14,976 € | in the case of a degree of damage of 100; |

In the case of loss of several limbs in combination with damage to sense organs or in combination with cerebral damage, or in the case of severe burns or complete loss of function of more than two limbs, the single payment shall amount to 25,632 Euro.

(3) If a person fulfilling the conditions set out in paragraph 1 is killed as a result of a violent crime abroad, surviving dependents pursuant to Section 38 of the Federal War Victims Compensation Act, with the exception of ascending relatives and persons entitled to child care alimony, shall be eligible for a single payment. It shall amount to 2,364 Euro in the case of orphans, 1,272 Euro in the case of half-orphans and 4,488 Euro in all other cases. In addition, surviving dependents, including parents whose minor child died as a consequence of a violent crime committed abroad, shall be entitled to necessary psychotherapeutic treatment. An allowance of up to 1,506 Euro for repatriation and funeral expenses shall be payable, unless the costs are borne by third parties.

(4) Benefit entitlements under other public or private social protection or pension schemes shall be set off against the benefits payable in accordance with paragraphs 2 and 3. The set-off may also include benefit entitlements under social protection or pension schemes of the state in which the violent crime was committed. If the benefit to be set off consists of recurrent pension payments, the set-off shall be calculated on the basis of the amount of lump-sum settlement to which the claimant is entitled in accordance with Section 1 at the time when the application is filed.

(5) Crime victims who, through gross negligence, failed to arrange for adequate insurance cover adapted to their individual circumstances, shall be excluded from compensation pursuant to paragraph 2. Claims pursuant to paragraph 2 shall also be excluded if any of the grounds for refusal set out in Section 2(1) sentence 1 or paragraph 2 is applicable in the case of the crime victim.

(6) Surviving dependents shall be excluded from claims pursuant to paragraph 3 if a reason for exclusion according to paragraph 5 is applicable to their case or the case of the deceased crime victim.

Section 4

Cost assumption

- (1) The Land in which the injury occurred shall be obliged to bear the cost of compensation. If that Land cannot be ascertained the costs shall be borne by the Land in which the crime victim was domiciled or ordinarily resident at the time when the crime was committed.
- (2) If the crime victim was not domiciled or resident in the territory of validity of this Act at the time when the crime was committed, the costs shall be borne by the federal government. The same shall apply if the injury occurred on a German vessel, a German aircraft or at a place abroad.
- (3) The federal government shall bear forty per cent of the expenditure incurred by a Land on account of the payment of cash benefits under this Act. Cash benefits shall not include amounts paid as lump-sum settlement for or in lieu of benefits in kind. For simplification of accounting, expenditure incurred by the Lander pursuant to paragraphs 1 and 2 shall be refunded by the federal government at a flat-rate of 22 per cent. The conditions for application of the rate specified in the first sentence shall be reviewed by the federal government at five-year intervals, starting in 2014.
- (4) In the cases referred to in Section 3(1) the costs caused by the additional injury shall be borne by the benefit provider responsible for compensation on account of that injury.

Section 5

Transfer of statutory entitlements to compensation

Where the costs are borne by a Land (Section 4), Section 81a of the Federal War Victims Compensation Act shall be applied with the proviso that the existing claim to compensation against third parties shall be transferred to the Land which is obliged to provide benefits in accordance with this Act.

Section 6

Responsibilities and Procedures

(1) The authorities responsible for the implementation of the Federal War Victims Compensation Act shall also be responsible for the provision of compensation under this Act. If the Federal Government bears the costs

1. and if the crime victim is domiciled or ordinarily resident in a German Land, the responsibility shall lie with the authorities of that Land;
2. if the crime victim is domiciled or ordinarily resident outside the territory of validity of this Act, the responsibility shall lie with the authorities of the German Land which administers compensation to war victims in the respective country of domicile or residence.

If the injury was sustained on board a German vessel or aircraft, responsibility shall lie with the authorities of the Land where the vessel is registered or where the owner of the aircraft is headquartered or domiciled notwithstanding the provision of the second sentence.

- (2) The geographical responsibility of the authorities shall be determined by the Land government through subordinate legislation.
- (3) The Act on Administrative Procedures in War Victims' Compensation, with the exception of sections 3 to 5, and the Social Court Act provisions on preliminary proceedings shall apply.
- (4) Paragraph 3 shall not apply insofar as the compensation to be provided corresponds to welfare benefits for war victims according to sections 25 to 27h of the Federal War Victims Compensation Act.

Section 6a

Responsibilities of the Federal Ministry of Labour and Social Affairs

(1) The Federal Ministry of Labour and Social Affairs shall act as the central authority within the meaning of the second sentence of Article 12 of the European Convention of 24 November 1983 on the Compensation of Victims of Violent Crime (Federal Law Gazette 1996 II, p. 1120).

(2) The Federal Ministry of Labour and Social Affairs shall also act as assisting authority within the meaning of Article 3 (1) and as central contact point within the meaning of Article 16 of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (Official Journal of the European Union, L 261, p.15).

Section 7
Legal remedies

(1) In public law disputes over matters relating to this Act, with the exception of cases covered by paragraph 2, recourse to the social courts shall be open to the aggrieved party. Insofar as the Social Court Act contains special provisions for war victims compensation, these shall also apply to disputes within the meaning of the first sentence.

(2) Insofar as the compensation to be provided corresponds to welfare benefits for war victims according to sections 25 to 27h of the Federal War Victims Compensation Act, recourse to the administrative courts shall be open to the aggrieved party.

Section 8
(Amendments of the Reich Insurance Code)

Section 9
(Amendments of the Act on Compulsory Coverage)

Section 10
Transitional provisions

This Act shall apply to entitlements arising from acts committed after its entry into force. Beyond this, sections 1 to 7 shall apply to entitlements arising from acts committed in the period from 23 May 1949 to 15 May 1976 subject to the provisions of sections 10a and 10c. In the cases covered by section 1 (5) and (6), this Act shall only apply to acts committed after 30 June 1990; in the case of acts committed before 1 July 1990, section 10a shall be applied taking section 1 (7) into account mutatis mutandis.

Section 10a
Hardship provisions

(1) Persons who sustained an injury in the period from 23 May 1949 to 15 May 1976 shall be entitled to compensation upon application if they

1. are severely disabled solely as a result of the injury sustained, and
2. are in need, and
3. have their domicile or ordinary residence in the territory of validity of this Act.

The second sentence of section 31 (4) of the Federal War Victims Compensation Act shall apply.

(2) A claimant is deemed to be in need when his income within the meaning of section 33 of the Federal War Victims Compensation Act is not higher than the amount which caps benefits in accordance with the Capping Ordinance (section 33 (6) of the Federal War Victims Compensation Act) plus the amounts of his basic pension, his allowance for very severe disability and his long-term care allowance.

(3) If the income exceeds the amount which disqualifies claimants from income-related compensation benefits, the compensation benefits paid shall be reduced by the exceeding amount in the following order: basic pension, allowance for very severe disability and long-term care allowance. When determining the exceeding amount, currently earned income shall be taken into account before any other income. Sections 33 (4), 33a (2) and 33b (6) of the Federal War Victims Compensation Act shall not apply.

(4) The surviving dependants of a crime victim shall, upon application, receive compensation in analogous application of sections 38 to 52 of the Federal War Victims Compensation Act provided they are in need and are domiciled or ordinarily resident within the territory of validity of this Act. Paragraphs 2 and 3 shall apply accordingly. Irrespective of the time of

death of the crime victim, the eligibility criteria for a widow's allowance shall be those specified in the first sentence of section 48 (1) and in section 48 (5) and (6) of the Federal War Victims Compensation Act as applicable at the date when the application is filed.
(5) Compensation shall comprise all benefits provided for in the Federal War Victims Compensation Act with the exception of compensation for loss of career and compensation for damage.

**Section 10b
Hardship allowance**

Where the application of section 1 (5) and (6) entails special hardship for individuals, a hardship allowance may be granted subject to the approval of the highest Land authority in consultation with the Federal Ministry of Labour and Social Affairs; the hardship allowance shall be a non-recurrent benefit at a rate of up to twenty times the monthly amount of the basic pension corresponding to a degree of damage of 70; in the case of surviving dependants the rate shall be ten times the basic pension payable to a widow. This shall apply to a crime victim only if the injury sustained caused severe disability.

**Section 10c
Transitional arrangement**

New claims arising from an amendment of this Act shall be determined upon application only. If the application is filed within one year after promulgation of the amending legislation, payments shall start from the date of its entry into force, but not earlier than from the month in which the eligibility criteria are met.

**Section 10d
Transitional provision**

(1) In the case of expenditure for benefits paid prior to 1 January 1998 that was not refunded by 1 January 1998, the refunds shall be governed by the reimbursement rules applicable before that date.

(2) The lump-sum amount for the year 1998 shall be determined as follows: An annual average is calculated from the sum total of the Land's reimbursements to the health insurance funds according to this Act in the years 1995 to 1997 minus the reimbursements for long-term care benefits under sections 11 (4) and 12 (5) of the Federal War Victims Compensation Act in the version applicable until 31 March 1995 and minus the reimbursements made under section 19 (4) of the Federal War Victims Compensation Act in the version applicable up until 31 December 1993.

**Section 11
(Entry into force)**