

Perspectives



Perspectives

after a Right-Wing or Racial Attack
Your Rights and Options as a Victim, Relative or Witness

B.U.D.

BERATUNG
UNTERSTÜTZUNG
DOKUMENTATION



Für Opfer rechtsextremer Gewalt

PERSPECTIVES AFTER A RIGHT-WING OR RACIAL ATTACK

YOUR RIGHTS AND OPTIONS AS A VICTIM, RELATIVE OR WITNESS

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B.U.D.

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PREFACE

This brochure is a version of the brochure »The outlook after a right-wing attack«, revised by the B.U.D. e. V., which was originally issued by Opferperspektive e. V. Since 2009, the employees of the B.U.D. have advised and supported those attacked for right-wing, racist, homophobic or anti-Semitic motives, their friends and relatives, as well as the witnesses of such attacks. B.U.D. is part of the Bavarian Advisory Network against Right-wing Violence and is supported within the scope of the Federal programme Demokratie leben! (Live Democracy!).

We work exclusively on behalf of – and in the interest of – those affected. This partisan approach precludes any simultaneous engagement with (former) perpetrators. We work independently of the police and other government agencies. Our counseling services are voluntary, confidential, free of charge, multilingual, mobile and don't require that charges are filed.

In this pamphlet we use »right-wing« (and »right-wing attacks« and »right-wing violence«) as an umbrella term. Here it stands for acts of violence motivated by racism, homophobia, social Darwinism or anti-Semitism, as well as extreme right-wing ideology.

INTRODUCTION

This guidebook aims to help victims of right-wing or racist violence, as well as their friends, relatives and witnesses to the attack. People who are the targets of such attacks suddenly find their world turned upside down; often they're injured and afraid. Suddenly they have to deal with the police, make unexpected decisions and seek answers to questions they've never needed to ask before: What happens after a police report has been filed? What is a request for prosecution? Do I need a lawyer? What is the difference between a criminal case and a civil suit?

Few victims are familiar with the German legal system they now find themselves confronted with. So this guidebook is designed to help you come to grips with this unfamiliar situation. It gives you a general overview of what happens during the preliminary investigation and ensuing trial. It shows you where the pitfalls lie and at which points in the proceedings you, as the victim, run the risk of being charged yourself.

This pamphlet isn't meant to replace a personal consultation. The B.U.D. team works throughout Bavaria. Its employees will come to you to advise you free of charge and in confidence on site. Our staff comes to you and advises you – free of charge and confidentially. As well as providing legal advice, our team can counsel you on issues including: your basic safety, how you can make a full recovery health-wise or how to deal with the psychological stress.

The reactions of those around them can put victims of far-right and racial attacks under even more stress. Sometimes victims are made to believe they're partly to blame for the assault. Or perhaps the press has taken an interest in your case and you feel overwhelmed by their queries. The B.U.D. team can also advise and support you in these cases. We can help you present your side of the story to the public, put you in contact with other initiatives and organizations, and advise you on how to deal with the media.

Right-wing violence is directed towards certain societal groups. Many of those targeted are refugees with a precarious residence status, who are subject to a series of restrictive, special regulations. In addition to significant restrictions on their freedom of movement, their entitlement to medical treatment and access to legal advice are limited. This means that an assault can often have particularly severe consequences.

The B.U.D. team will advise you in such difficult situations. One of the basic principles of B.U.D. is to point out structural discrimination, its causes and effects, and to campaign for policies of equal rights and equal treatment.

THINGS TO BE AWARE OF FOLLOWING AN ATTACK

Before we begin the section on legal advice, we would like to give you a few basic tips about what to be aware of following an assault.

GENERAL TIPS

After an attack has occurred, assisting the victim should be the immediate and top priority. Friends and relatives should ensure that the victim is not left alone. They should offer to accompany him or her to places, care for the victim's well-being and help the injured party re-

SEEK SUPPORT

gain his or her mental stability. If you yourself are the victim, try not to withdraw. Instead, ask for assistance from people you know and trust.

DOCUMENT INJURIES If you have been physically assaulted, seek medical attention even if your injuries initially appear to be minor. Ask for a doctor's certificate listing all of your injuries. Visible injuries should be photographed. Carefully documenting such injuries is important should your case go to trial or to eventually claim damages for pain and suffering.

DOCUMENT DAMAGES This applies to all traces of violence and its effects. Damaged or dirtied clothing and other items should be retained as evidence. The more precisely you document the damages incurred, the better your case can be presented and substantiated in court, to health care providers, and to the public.

MEMORY MINUTES (GEDÄCHTNIS-PROTOKOLL) Whether you were directly affected by the assault or a witness to it, you should write down your recollections as quickly as possible and independently from others. Take the time to document everything you can remember about the incident. Describe precisely how it happened. Record the time, the weather and lighting conditions, the offender's outer appearance and what he or she said. Pay particular attention to the little details which might at first seem unimportant. These 'memory minutes' will help you be able to recollect the events in detail should you have to testify about them months later. Your memory minutes can be written in colloquial language and in your mother tongue, as they serve only as a personal memory aid for you.

SHOULD YOU FILE A COMPLAINT?

REASONS NOT TO FILE A POLICE REPORT Are you uncertain as to whether you should report the crime to the police? Many people feel the same way. There are various reasons why victims and witnesses choose not to file a complaint:

- the fear of further threats or possible retaliation by the assailants or their supporters.
- a skeptical attitude towards the authorities, and being of the view that the investigating authorities don't take such incidents seriously.
- feelings of resignation and indifference.
- having little desire to see the perpetrators punished or not being prepared to invest the time and effort such a complaint entails (i.e. giving statements to the police or testifying in court).

There are specific reasons why people choose not to report a crime to the police. Bad experiences in previous, similar incidents often play a role. If victims of racially-motivated violence have already had the experience of being treated as suspects by officers called to the crime scene, they're likely to want to avoid contacting the police. And if left-wing activists, who have been attacked by right-wing extremists, have been grilled about the activities of the left-wing scene during previous questioning, this is only likely to confirm their mistrust of the police.

There are many reasons to report right-wing violence:

- Perpetrators need to be shown that there are boundaries they cannot cross. It's unacceptable for people to be viewed as »inferior« and as a consequence, are treated as »human punching bags«.
- As a general rule, foregoing a police report is not a successful way to prevent further violence. If violent neo-Nazis have found a victim who doesn't defend him or herself, and doesn't report the crime to the police, this could encourage them to commit further acts of violence.
- Filing a complaint sends a clear message to the assailants and those around them. It shows them that victims and witnesses won't be intimidated. A court conviction is another sign, which proves most effective when the crime is condemned not only by the justice system, but also by society at large.
- Reporting a crime to the police won't solve a victim's personal problems, nor will it remedy the societal reasons for right-wing violence. However, filing a complaint is the first step towards leaving behind the role of victim behind and actively dealing with the incident.
- Filing a police report is a prerequisite to qualify for financial compensation and, possibly, claim damages for pain and suffering.
- Only when a complaint is filed does an assault appear in the police's crime statistics. It's important that such acts of violence be documented. Only then will the public be able to take notice of these crimes and take them seriously. Many in Germany still underestimate the scale of extreme right-wing violence.

REASONS TO REPORT
THE CRIME TO THE
POLICE

FILING A COMPLAINT OR POLICE REPORT (STRAFANZEIGE)

Anyone can file a complaint. Initially this is just a report informing law enforcement authorities that, in the complainant's view, a crime has taken place. This report can be filed at any police station or public

FILING A POLICE
REPORT

prosecutor's office, either orally or in writing. As a rule, it is advisable to go to the nearest police station in person.

Note: *There are no legal formalities when it comes to filing a complaint. Simply state in a clear and factual manner what happened to you and provide any supporting evidence. As a rule of thumb, restrict yourself to answering the questions: Who? What? Where? Why? How?*

ADDRESS FOR SERVICE

When you file a complaint you will normally be asked to provide your personal data: name, date of birth, birthplace, current address and occupation. If you are afraid that the accused will then know your home address, you have the opportunity to provide another address, known as an address for service. This could, for example, be the address of your lawyer or your workplace. However you must ensure that the police and the judiciary can summon you at any time using this address.

OBLIGATION TO INVESTIGATE

After a police report has been filed, the police and the public prosecutor are required to begin investigating the complaint, unless there is clearly no real evidence that a crime has been committed. From this point onwards, the course of the preliminary investigation is out of the complainant's hands. The police and the public prosecutor are now responsible for the investigation. The complaint can no longer be withdrawn.

REQUEST TO PROSECUTE (STRAFANTRAG)

OFFENCES REQUIRING A COMPLAINT TO BE FILED IN ORDER TO INITIATE PROSECUTION

In general there is no deadline for filing a complaint. However it is usually in your interest to report the crime to the police soon after the incident. You should be aware that certain offences – such as trespassing, defamation or stalking – will only be prosecuted if the aggrieved party specifically files a Request to Prosecute. Instead of simply reporting the facts to the police, in such cases you must state in writing that the police should prosecute the perpetrator(s).

THREE MONTH TIME LIMIT

The Request to Prosecute can be filed together with the police report. When filling out the complaint form from the police, you simply have to tick the box marked: »I file a Request to Prosecute«. You can also submit a Request to Prosecute in writing at a later date, but only up to

three months after the incident occurred. This time limit is stipulated by Section 77b of the German Criminal Code.

When you file a police report the criminal offense has usually not yet been determined. Often it is unclear which offense(s) will come into question and whether a Request for Prosecution will be required in order for the crime to be prosecuted. So you should file a Request for Prosecution with each police report. There are no disadvantages for you in doing so.

FILING A REQUEST
FOR PROSECUTION

UNCERTAINTY WHEN DEALING WITH THE POLICE

If you don't feel confident dealing with the police on your own, you should have a trusted person or an employee from B.U.D. accompany you when you file a police report. However the investigating officers will decide whether or not the person accompanying you is allowed to be present during questioning. If you don't feel completely comfortable speaking German, you have the right to an interpreter at no cost to you (according to the principle of official investigation inferred from Section 244, Subsection 2 of the German Code of Criminal Procedure). This right to an interpreter applies not just while filing your complaint, but also to all subsequent questioning by the police and in court. Insist on it!

RIGHT TO AN
INTERPRETER

Make sure to ask for a written confirmation of your police report which lists the case number (Tagebuchnummer). This is the file number used by the relevant police station to identify your case. Knowing this number will make it easier for you to make inquiries about your police report or the status of the investigation at a later date.

CASE NUMBER
(TAGEBUCHNUMMER)

In any case, the police are obligated to register your complaint. However, it still happens that officers advise victims to forego filing a police report. If you feel the police have treated you inappropriately, have sent you away, or not provided you with written confirmation of your complaint, you needn't simply accept this. You can, for example, demand to speak to a supervisor to try and clear up the matter.

DUTY TO RECORD A
COMPLAINT

If the discussion with a superior proves unsatisfactory and the behavior of the officers involved is clearly inappropriate, it may make sense to file a disciplinary complaint.

MAKING A FORMAL
COMPLAINT AGAINST
THE POLICE

THE ROLE OF THE POLICE AND THE PUBLIC PROSECUTOR IN THE PRELIMINARY PROCEEDINGS

THE PUBLIC PROSECUTOR HEADS THE INVESTIGATION

As soon as the police or the public prosecutor have reason to suspect that a crime has been committed – either through the filing of a police report or a Request to Prosecute, or through some investigative method – they are obliged to objectively investigate the facts. The investigation is headed by the public prosecutor, who will instigate what is known as preliminary proceedings.

REASONABLE GROUNDS FOR SUSPICION

However, to initiate preliminary proceedings requires »sufficient factual indications« that a prosecutable criminal offence has been committed. This means that unfounded suspicions or purely subjective speculation don't warrant a state-sponsored investigation. It also rules out an investigation if the acts or behaviors involved aren't offences punishable by law. So, after looking into a complaint, the public prosecutor may decide not to launch preliminary proceedings at all.

IMPARTIAL INVESTIGATION

»Provided there are sufficient factual indications,« the public prosecutor is fundamentally obliged to investigate »all prosecutable criminal offences«. To do this, the public prosecutor must gather sufficient evidence – incriminating as well as exonerating. So, unlike a lawyer, you cannot expect the public prosecutor to be wholeheartedly on your side. Even during the preliminary proceedings your testimony must be carefully reviewed and verified. However, you can expect: to be treated fairly; that your special situation as the crime victim will be taken into consideration; and that your assessment that the crime was politically or racially motivated will be met with sufficient response.

GIVING TESTIMONY TO THE POLICE OR THE PUBLIC PROSECUTOR

IF YOU ARE SUMMONED BY THE POLICE

Normally your role in the preliminary proceedings and trial will be as a witness. Usually the first questioning will be done by the police – as explained above. You are not obliged to give a statement to the police. But consider this: As the injured party, you play a particularly

important role as a witness in a court case. Even if you didn't witness the crime directly yourself, you're likely to be the person best able to provide information about the damages caused by the perpetrators. So, even during the preliminary proceedings, the police and the public prosecutor are especially reliant on your assistance. A transcript will be made of the interrogation, which has to be presented to and signed by you. Read through it carefully and correct any mistakes.

Should you receive a summons from the public prosecutor, you must appear. During each interrogation you may bring a trusted person along. However, if you're of legal age, the officer or officers conducting the questioning must give their consent, so it's best to inquire ahead of time. Of course you can also be accompanied by a lawyer. Bring all of the documents pertaining to the case with you (for example, damage assessments, medical certificates etc.)

IF YOU ARE
SUMMONED BY
THE PUBLIC
PROSECUTOR

WHAT SHOULD I DO IF THE PERPETRATORS FILE A COMPLAINT AGAINST ME?

If you're attacked you have the legal right to use as much force as is necessary to fend off your attackers (»self-defence«). This can't be used against you in court. So you shouldn't be afraid to tell the truth when being questioned by the police. However, if you're uncertain whether your self-defence will be deemed »reasonable«, contact B.U.D. or a lawyer.

RIGHT OF SELF-
DEFENCE

Should the perpetrators file a claim against you – if only to divert attention away from their own guilt – the police may summon you as a suspect. In this case, as a general rule, you don't have to report to the police station for questioning. It's usually best to wait and see if the public prosecutor will serve you with a summons or drop the case against you entirely. However, if you are summoned by the public prosecutor, you must appear. By this stage, at the latest, you should hire a lawyer to represent you.

BEING SUMMONED
AS A SUSPECT

In principle: The police are required to make it clear to you whether you're being questioned as a crime victim or as a suspect. If you've been the target of an act of violence and decide to give the police

CLARIFYING YOUR
STATUS IN THE
PROCEEDINGS

details about it, you have the status of a victim/witness («Opferzeuge») and are obliged to provide truthful statements. As the accused, you have the right to remain silent and refuse to make a statement. If, during questioning, you're unclear as to what your role is, you should make this known to the investigating officer and have it put on record.

HOW LONG WILL THE POLICE INVESTIGATION TAKE?

PRELIMINARY PROCEEDINGS

The police are instructed to investigate until they have a comprehensive of the case and feel that further investigation would not lead to any new findings. Once the police have completed their investigation, they pass the files on to the public prosecutor who reviews the results. The public prosecutor can ask the police to resume their investigations. But if the public prosecutor's office deems that the findings are sufficient, it will make a note in the files that the investigation has been closed. After that, the public prosecutor will decide whether there is sufficient evidence to press charges.

INQUIRING ABOUT THE STATUS OF THE PROCEEDINGS (SACHSTANDSANFRAGE)

It can take a lot of time for a case to go to trial at a local or regional court – sometimes as much as two years. In cases in which the accused is in pre-trial custody, the court is obligated to open proceedings no later than six months after the crime took place. If you get the impression that little has happened since you filed your police report, you can – at any time – inquire about the status of the investigation or the proceedings.

WHAT ARE »SUMMARY PROCEEDINGS« (»BESCHLEUNIGTES VERFAHREN«)?

In certain cases offenders can be convicted within 14 days of the crime taking place if the public prosecutor requests a summary proceeding. However this accelerated procedure is only possible if the accused has been charged under adult criminal law and is at least 21 years of age. The maximum penalty in a »summary proceeding« is a one year prison sentence.

THE TRIAL TAKES PLACE WITHIN TWO WEEKS

Having your case go to trial in a timely manner is generally desirable. But this type of accelerated procedure can have significant drawbacks for crime victims. Normally it gives them no chance to influence the course of the proceedings.

LIMITED PARTICIPATION

STAY OF PROCEEDINGS

When the preliminary proceedings are concluded, the public prosecutor will decide whether to bring the case to court or to halt it. If you clearly stated your interest in seeing the perpetrator punished when you filed your complaint, then the public prosecutor's office must explain to you why it has stayed the proceedings in a termination notice (Einstellungsbescheid).

TERMINATION NOTICE

There are numerous reasons why a case can be stayed. Proceedings are to be terminated if there is insufficient evidence to prefer charges (»for lack of evidence« Section 170, Subsection 2 of the German Code of Criminal Procedure) or if the »perpetrator's guilt is considered to be of a minor nature« (Section 153 of the German Code of Criminal Procedure). The termination of proceedings can also be dependent on the payment of a fine or the outcome of a Victim-Offender Mediation (see below).

GROUND FOR TERMINATING THE PROCEEDINGS

If you believe that the public prosecutor has overlooked or misevaluated certain factors, you can file a written appeal against the decision to terminate the proceedings. In a factual manner, state why you do not agree with the public prosecutor's decision. If you have or know of additional facts or evidence you should make specific mention of

OPPORTUNITY TO APPEAL

these in your notice of appeal. You can do this on your own or with the assistance of a lawyer.

Note: There is no prescribed format for lodging a complaint against a termination of proceedings. Normally you must appeal the decision within two weeks of receiving notification. As the public prosecutor has already conducted preliminary investigations, there is no need to restate the known facts of your case. You should, however, put forward any new facts and/or evidence.

TESTIFYING IN COURT

BILL OF INDICTMENT If, at the end of the preliminary proceedings, the public prosecutor's office decides to take the case to court it draws up a bill of indictment. In it, the public prosecutor summarizes all of the important findings from the preliminary investigation and establishes under which sections of the German Criminal Code the suspect is to be charged. Then the court having jurisdiction will decide whether or not to allow the indictment. Assuming it is allowed, the main proceedings – to which you will be summoned – can begin.

HEARING OF WITNESSES The hearing of witnesses in a trial is usually more formal than questioning previously conducted by the police or the public prosecutor. While at the police station you may have dealt with just one officer, during the main proceedings in criminal court usually all of those involved in the case are in attendance. Aside from the court officials, this means the accused, the public prosecutor and the private accessory prosecutor. If you feel uncomfortable in your role as a witness, it can help to take a look around the courtroom beforehand. This will make you feel more secure. To prepare for your testimony you should also re-read your »Memory Minutes«.

PARTICIPANTS IN THE TRIAL The defendants and their lawyers sit on one side of the courtroom. On the opposite side is the public prosecutor is seated. If you have chosen to become a private accessory prosecutor then your lawyer will take his or her place next to the public prosecutor. The judge or judges sit at the front. Depending on the severity of the crime, there will be anywhere from one to three professional judges and two lay judges (known as Schöffen or Schöffinnen). There is also a court reporter, responsible for transcribing the testimony. Spectators can follow the proceedings from the back of the courtroom.

If the accused are between 14 and 18 years of age juvenile law applies. The public is basically shut out of the proceedings as – in contrast to adult criminal law – the correctional function, not the punishment of the accused is the primary focus. In the case of young adults between the ages of 18 and 21, the public is generally allowed in. In individual cases, though, the court can deviate from this. Depending on how »mature« it deems the accused to be, the court can employ juvenile law and bar the public from the proceedings.

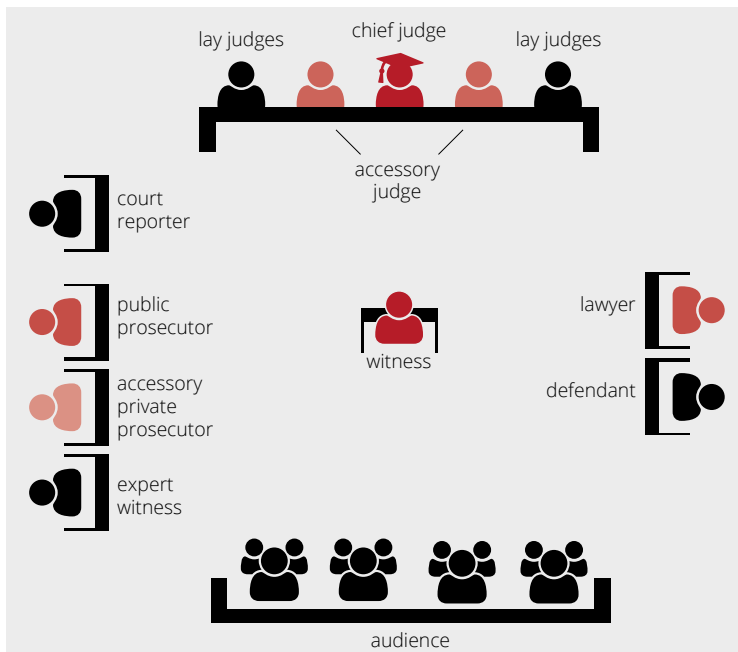
AN EXCEPTIONAL
CASE: JUVENILE
OFFENDERS

If the accused are over 18, the trial is open to the public. You can bring along people you know to the proceedings. This can make the atmosphere more pleasant for you and give you a sense of security.

TRIALS ARE USUALLY
OPEN TO THE PUBLIC

You're not permitted to listen to the proceedings before giving testimony, to ensure that your recollections are as unbiased as possible. If you've been summoned as a witness you'll therefore be asked to wait outside the courtroom until your name is called. Then you'll take your seat at a small table located in the middle of the courtroom. Try not to be upset or irritated by the presence of the accused, who will be seated nearby. Try to focus your attention on the judge. Should you feel extremely insecure, your lawyer (or a trusted person) can sit next to you.

GIVING TESTIMONY



INSTRUCTIONS AS TO YOUR RIGHTS AND OBLIGATIONS

Before the judge begins questioning you, he or she will inform you of your rights and obligations. This is standard procedure. You'll be alerted to the fact that you must tell the truth, the whole truth and nothing but the truth – and that making false statements in court is a punishable offense. After that, the judge will ask you questions about yourself, such as your name, age, profession, place of residence and your relationship to the accused.

THE HEARING

Then the judge will ask you to relate what you know about the incident. You should once again recount everything you can remember, to give the court an impression of your perception of what really happened. If you can no longer remember something precisely, you should say so. Afterwards you will be asked more questions.

READING OF STATEMENTS

It's possible that, in court, you will be confronted with passages from previous testimonies you gave to the police. This simply means that written statements will be read out to you. This is done to refresh your memory or to clarify specific details.

THE PRINCIPLE OF ORALITY

During questioning in court, you may be asked to repeat yourself or to answer the same questions over again. This is normal and doesn't mean people haven't been listening or don't believe you. Little details often play a big role in legal judgments: Which hand was the accused holding the bottle in? How many seconds passed between the rattling sound and the impact? This is because the court must be able to visualize how the attack happened. There is another reason, too: in principle, the court can only take into account the things which are said in the main hearing.

WHO CAN ASK QUESTIONS?

In addition to the court itself, all participants in the trial have the right to pose questions. This includes the public prosecutor, the defence lawyers, as well as your attorney.

ASSISTANCE OF THE COURT

You might find all of this questioning unpleasant, especially if the defence tries to get you tangled up in contradictions. Try to remain calm. If you feel you're being treated badly by the defence, you can turn to the judge. And if you need to take a break don't be afraid to say so. The court is also there to protect you. If you've opted to become a private accessory prosecutor your lawyer will be present and can also intervene on your behalf.

TAKING AN OATH IS AN EXCEPTION

On the whole, a courtroom trial operates differently than those you might have seen on television. There is no witness stand and only

after giving your testimony will it be decided if you are to take an oath or not. Crime victims are usually not required to swear an oath. After you have testified you can sit in the visitors' gallery or next to your lawyer. You can also leave the courtroom and have your attorney inform you afterwards how the trial proceeded.

WHAT IS PRIVATE ACCESSORY PROSECUTION? (NEBENKLAGE)

As the victim of an act of violence, you can assume an active role by choosing to become a private accessory prosecutor and getting a lawyer to represent you.

PLAY AN ACTIVE ROLE

Becoming a private accessory prosecutor means that you are party to the proceedings and enjoy special rights. In theory, you can appear as an accessory prosecutor on your own, but it is advisable to hire a lawyer to represent you. In Germany, these counsel for accessory prosecution are known as »Nebenklagevertreter«.

CAN BE DONE WITHOUT A LAWYER

Your petition to become a private accessory prosecutor in a criminal case can be filed at any time at the appropriate court. But your petition can only be granted after it has been decided whether to open main proceedings or not.

THE COURT MAKES THE DECISION

If your petition is granted, your lawyer can gain access to court records and file motions pertaining to the proceedings. This gives you more options when it comes to learning about the police investigation or the motivations of the perpetrators – even if you take advantage of your legal right to refuse to testify.

ADDITIONAL RIGHT TO INFORMATION

During the trial, your attorney represents your interests as a private accessory prosecutor. During the proceedings your lawyer sits next to the public prosecutor. Your attorney has the right to: question the accused, witnesses and expert witnesses; make motions to hear evidence, and reject expert witnesses or even judges. Your lawyer is there to support you during your testimony and to protect you from objectionable or offensive questioning from the defendant's lawyer(s).

RIGHT FOR YOUR ATTORNEY TO BE PRESENT

Normally witnesses are only allowed to enter the courtroom after the accused has testified. As a private accessory prosecutor you have

RIGHT TO BE PRESENT IN COURT

the right to follow the proceedings from the start. Still, victims often choose to remain outside the courtroom until they are called to testify. This can make your own testimony more believable, as it is given without prior knowledge of the statements made by the accused. You should discuss this matter with your lawyer prior to the trial.

RIGHT OF APPEAL At the end of the proceedings, your lawyer can make a closing argument and – if deemed appropriate – ask for a certain sentence to be handed down. If the accused is acquitted of an offense for which private accessory prosecution is possible (see below), you can appeal the verdict. It is also possible to appeal if the court decides to dismiss the charges brought by the public prosecutor.

PRECONDITIONS FOR PRIVATE ACCESSORY PROSECUTION

OFFENCES FOR WHICH PRIVATE ACCESSORY PROSECUTION IS PERMITTED Private accessory prosecution is possible for offences including, but not limited to, causing bodily harm, homicide, and »offences against sexual self-determination« (such as sexual assault and sexual abuse). For defamation (libel or slander), robbery or blackmail which did not lead to serious injuries, private accessory prosecution is possible »if, for particular reasons, especially because of the serious consequences of the act, this appears to be necessary to safeguard his [the victim's] interest« (Section 395 Subsection 3 of the German Code of Criminal Procedure). Private accessory prosecution is not permitted for offences like coercion and threats.

PRIVATE ACCESSORY PROSECUTION IN CASES INVOLVING JUVENILES If the accused were not yet 18 years of age at the time the offense was committed juvenile law applies. Here private accessory prosecution is only possible in cases in which a particularly serious criminal offence has occurred (Section 80, Subsection 3 of the Youth Courts Law). In proceedings against young adults, namely those between the ages of 18 and 21, accessory prosecution is permitted – even in cases where juvenile law applies. Basically, the same holds true for proceedings in which minors as well as young adults are charged. However the private accessory prosecution is, in this case, generally limited to the part of the proceedings involving the young adults.

SEEK LEGAL REPRESENTATION To get the most out of your role as a private accessory prosecutor, you should hire a lawyer with experience in proceedings involving ac-

cessory prosecution and knowledge of right-wing motivated crimes. A lawyer is not only there to look out for your interests during the trial. Already during the preliminary proceedings your lawyer can, for example, accompany you when giving evidence to the police.

WHO PAYS MY LEGAL FEES?

In a trial, if the accused are convicted they must, as a rule, cover all of the legal fees and court costs. However, if the accused are acquitted, you – as a private accessory prosecutor – may have to cover your own lawyer's fees. Costs can be incurred during consultations and whenever the lawyer represents you prior to and during a trial.

COSTS ARE INCURRED ONLY IF THE ACCUSED ARE ACQUITTED

For crimes with a mandatory minimum sentence of a year or more, which resulted in serious injuries, or in which the injured party was under 18 years of age and the effects of the attack were serious, the court must provide you with an attorney for accessory prosecution upon request. In such a case, there will be no cost to you.

NO COSTS IF YOU ARE ASSIGNED LEGAL COUNSEL

In all other cases, as a private accessory prosecutor you should choose a lawyer who is professionally competent, as well as able to predetermine the financial risk involved in a way that is clear and comprehensible to you. Here, too, B.U.D. can help you make the right choice.

COMPETENCE IS THE DETERMINING FACTOR

In a criminal case, you generally qualify for financial assistance in the form of legal aid if:

LEGAL AID

- due to your personal or financial circumstances, you can't afford to pay all or part of the costs, or can only pay them in installments;
- the factual and legal position is considered difficult;
- you are unable to sufficiently look out for your own interests or this cannot reasonably be expected of you.

The question of whether you are eligible to claim legal aid will be assessed ahead of time. To do this you must fill out a form that you can get from B.U.D. or a lawyer's office. It is important to note that – for up to four years after the handing down of the final and binding verdict – the court can review your case to see whether your personal and/or financial status has changed. If so you may be ordered to reimburse any legal aid received.

THE AID CAN BE RECLAIMED

LEGAL CONSULTATION

To claim a free, initial legal consultation you can turn to the Weisser Ring (White Ring), an organization which assists victims of crime across Germany. It issues legal consultation cheques to victims of crime and violence. With one of these cheques, you are able to consult a lawyer of your choice, who then settles the accruing costs directly with Weisser Ring. To qualify for this free initial consultation you need to contact your local chapter of the Weisser Ring. You can find the address on their Internet site (see the Contact Information at the back of this brochure). If your income is low, you can also apply to the relevant court for a »Beratungshilfeschein«, a legal aid voucher. You can use it to seek advice from a lawyer of your choice who can then charge you a maximum of 15 euros for the consultation.

FUNDING FROM THE GERMAN BAR ASSOCIATION (DAV)

You should also inform your lawyer that the German Bar Association (Deutscher Anwaltverein) supports a foundation which combats right-wing extremism and violence: the »DAV Stiftung contra Rechtsextremismus und Gewalt«. It accepts applications to assume victim's lawyer's fees, though your application must be made through the law practice representing you. Refer to the Appendix for the address of the German Bar Association.

WE'RE HERE TO HELP

If you have questions about private accessory prosecution, the financial risks involved or the various ways of receiving support, you can also approach the staff at B.U.D..

COMPENSATION AND DAMAGES FOR PAIN AND SUFFERING

CIVIL SUITS VS CRIMINAL PROCEEDINGS

It is important to understand the difference between a criminal proceeding and a civil suit. In a criminal case, the public prosecutor – on behalf of the state – accuses the perpetrator of having broken the law. In a civil suit, the aim is for citizens to settle their differences amongst themselves and potentially enforce a claim for damages or compensation for pain and suffering. Criminal and civil lawsuits fall under the jurisdiction of different courts. The proceedings are governed by different laws with varying rules of procedure and evidence.

LAUNCHING A CIVIL SUIT

We strongly recommend that you wait for a criminal conviction before launching any civil suit against the perpetrators. That's because the conclusions contained in the criminal court verdict as to how the

crime happened can help you substantiate your claims before a civil court.

Victims of criminal offences or acts of violence also have the opportunity to assert civil claims (for compensation for damages, or for pain and suffering) during criminal proceedings – provided that the accused were at least 18 years of age at the time the crime was committed. This damage claim linked with criminal proceedings is called an adhesive procedure (in German: Adhäsionsverfahren or Anhangsverfahren).

ADHESIVE
PROCEDURE

You must petition the court for an adhesive procedure, which is theoretically something you could do on your own. But, in practice, you should discuss the pros and cons of an adhesive procedure with your attorney. If you decide to pursue an adhesive procedure, you should have your lawyer enumerate the reasons why.

AN APPLICATION IS
NECESSARY

The question of whether to follow up the criminal proceedings with a civil suit against the perpetrators is one that you should discuss and decide with your lawyer. The considerable financial risks involved are something you particularly need to bear in mind.

BE AWARE OF THE
FINANCIAL RISKS

Basically, a civil suit is about asserting your claims for damages in the form of a lawsuit against the perpetrators. Should your suit prove successful, you then acquire a legal title which must be enforced if the offenders do not pay of their own accord. In such cases the perpetrators must pay the costs of the proceedings as well as your lawyer's fees. However, it often proves impossible to enforce payment as the offender is insolvent. So, in a civil suit, even if you get legal title you could wind up paying for not only your own attorney's fees but also part of the costs of the proceedings (for instance, the fees for expert opinions).

MAKING CLAIMS FOR
DAMAGES

In civil suits it is also possible to make an application for legal aid. The prerequisites are that your lawsuit against the perpetrators has »a good chance of success« and that you lack sufficient financial resources to file the suit without legal aid.

LIMITED LEGAL AID

Generally, it is advisable to consult a lawyer with experience in civil law and conduct a cost-benefit-analysis before launching a civil suit.

COST-BENEFIT-
ANALYSIS

VICTIM-OFFENDER MEDIATION

OUT-OF-COURT SETTLEMENT A Victim-Offender Mediation aims to reach an out-of-court settlement between the offender(s) and the victim(s). This is achieved through mediation by a neutral party. Usually this involves negotiating compensation for damages caused – for instance, financial compensation for pain and suffering. In the case of offences such as defamation, coercion, property damage or causing bodily harm, the public prosecutor can temporarily stay proceedings and refer the matter to an arbitration board.

COMPENSATION AGREEMENT In less serious cases, if the mediation between the offender(s) and the victim(s) proves successful in the eyes of the public prosecutor, preliminary proceedings will be terminated for good. Otherwise, the compensation agreement will be a mitigating factor. Should the victim-offender-mediation fail, preliminary proceedings against the perpetrator(s) will be resumed.

THE PROCESS Usually the mediator will first hold separate talks with the aggrieved party and with the accused in order to clarify their expectations and goals, as well as to prepare them for the mediation. You are also able to bring along a confidant. This can also be an employee from B.U.D.. So you don't have to worry about being alone and without support when you are confronted with the offender(s) at the mediation. A victim-offender mediation cannot be carried out against your will.

ADVANTAGES Of course, the other side also has to be prepared and willing to resolve the conflict. You should first examine in detail whether you want to go through such a proceeding at all. In general, a victim-offender mediation can be a positive experience, because it opens up the possibility of engaging with the perpetrator in a way other than in a trial. Compensation can also be determined quickly and with a minimum of bureaucracy.

DISADVANTAGES In practice, however, victim-offender mediation has often proven unsuitable when it comes to acts of right-wing violence. This is especially true when offenders show no remorse for their crimes because their attitude is grounded in their ideology and backed up by their far right environment.

As a victim of a racially or politically motivated criminal offense or act of violence, you shouldn't be too quick to agree to an offer of victim-offender mediation. You should first examine the special preconditions closely. Here, too, the staff at the B.U.D. can advise you.

CHECK THE PREREQUISITES CAREFULLY

FINANCIAL COMPENSATION THROUGH THE FEDERAL OFFICE OF JUSTICE

There is another route you can take to receive financial compensation. Since January 1, 2007 the Federal Office of Justice has at its disposal a fund created by the German parliament to provide quick and non-bureaucratic compensation to victims of right-wing, racist and anti-Semitic violence.

FUND FOR VICTIMS OF RIGHT-WING VIOLENCE

Claims can be submitted by people who have suffered injuries or health problems due to anti-Semitic, racial, or right-wing motivated violence, as well as by surviving dependents of people killed in such attacks. Also eligible to claim are persons that stepped in to fend off such attacks on third parties, and have sustained injuries as a result. Here an 'attack' is deemed to be not only an assault or other incident causing bodily harm; it also includes cases where threats and insults were made. The Federal Office of Justice is unable to provide compensation for material damages.

WHO IS ENTITLED TO MAKE A CLAIM?

For your claim to be approved, you must show that the crime was in all likelihood motivated by anti-Semitism, racism or neo-Nazism. The culprit or culprits' identity does not necessarily need to have been established. However, the attack must have been reported to the police.

PREREQUISITES

Your claim must contain a precise description of the incident – including information about the scene of the crime, the time it occurred and indications that the attack was motivated by right-wing ideology. Any injuries suffered should be clearly documented. We recommend that you also add doctor's notes and – if applicable – medical bills, as well as photos of visible injuries.

CONTENT OF THE CLAIM

CEDING YOUR RIGHT TO CLAIM DAMAGES FOR PAIN AND SUFFERING

With your claim you, as the aggrieved party, give your consent for the Federal Office of Justice to access records held by the police, the public prosecutor or the courts. In addition, as the claimant, you transfer your rights to claim damages for pain and suffering from the perpetrator – in the approved amount – to the Office of Justice. In other words, if your claim is successful and you receive a certain sum from the Federal Office of Justice in compensation, the Office of Justice will, in turn, try to sue the perpetrator for that amount.

POSSIBILITY OF A CIVIL SUIT

In principle, it is possible for you to make a claim for damages for pain and suffering in a civil suit even after being awarded financial compensation through the Federal Office of Justice. However, such a course of action only makes sense if you are reasonably convinced of receiving a higher sum and are prepared to take the financial risk.

THE RIGHT TIME TO MAKE YOUR CLAIM

An application can be filed at the Federal Office of Justice right after the crime takes place. However, under certain circumstances it is advisable to wait for the trial. This is especially true in cases where it is to be expected that the motive for the crime will be established more clearly in court. You should discuss the right time to make your claim with members of the B.U.D. team. They can also help you file it. The address for the Federal Office of Justice can be found in the Appendix.

CURA – VICTIMS SUPPORT FUND

DIRECT AND BUREAUCRACY-FREE ASSISTANCE

The CURA Victims Support Fund, set up by the Amadeu Antonio Foundation, provides quick and unbureaucratic financial assistance to victims of neo-Nazi and right-wing violence. Here victims can apply for assistance to cover remaining legal fees, necessary medical treatment or financial emergencies that have arisen as result of an attack. The fund's financial resources are limited, however.

CRIME VICTIMS COMPENSATION ACT (OEG)

ASSUMPTION OF MEDICAL FEES

If the injuries sustained during the attack mean that you will also be in need of medical treatment in the future, you can file a claim in accordance with the Crime Victims Compensation Act (OEG). This is a good

idea if, for example, your teeth or your glasses were damaged, or you have suffered from physical constraints ever since the attack and are likely to remain physically impaired in the coming years.

If your claim is approved, the Department of Social Affairs and Welfare will assume all the costs for medical treatment, such as a new pair of glasses or a stay in a rehabilitation clinic. A claim made under the Crime Victims Compensation Act, however, is no substitute for a claim for damages for pain and suffering. Neither do the benefits paid by the Crime Victims Compensation Act include compensation for material damages.

Claims can be made by anyone who has suffered bodily harm, been the victim of arson or a bomb attack, or been deliberately poisoned. Those who have been injured trying to fend off an attack are also eligible for benefits. German citizens, citizens of other EU member states, as well as people »legally« residing in Germany are eligible to receive benefits.

In some cases refugees are not entitled to claim benefits due to their residency status. However the claims processors have a certain amount of administrative discretion, so you should always submit an application. The staff at B.U.D. can assist you in making the application.

NO COMPENSATION FOR MATERIAL DAMAGES OR FOR PAIN AND SUFFERING

WHO'S ELIGIBLE TO MAKE A CLAIM?

SPECIAL CONDITIONS FOR REFUGEES

POSSIBLE CONSEQUENCES OF AN ATTACK

The physical injuries resulting from an assault are usually highly visible, so they're recognized and treated. But even if no bodily harm has been done, the experience of violence frequently has further consequences. Most assaults are completely unexpected. So even when the assailant has let go off you or run off that doesn't mean it is all over. For many, an attack has after-effects; they have suffered bodily harm and sometimes their mental health suffers as well.

The psychological traces left by an act of violence vary from person to person. Some people have trouble sleeping; others become extremely irritable and suffer from nightmares, anxiety or exhaustion. Some consciously avoid the scene of the crime and no longer feel secure on the streets of their own city. Many can't get the incident out of their heads or live in constant fear. Often the experience of being attacked radically changes the lives of the victims and those close to them.

PSYCHOLOGICAL EFFECTS

A RADICAL CHANGE IN YOUR LIFE

LOSING YOUR SENSE OF SECURITY

Following an attack, you might feel as if you're going crazy or barely recognize yourself anymore. These are normal reactions to the trauma you've been through. They are part of the process of working through and dealing with the experience. Being attacked severely undermines your subjective sense of security. The assailants want to deliver a clear message to their victims: you're not wanted here, so you should leave. At the worst, they deny their victims the right to life. As a rule, these messages are clearly understood by the victims and those around them, as well as by potential victims.

IT'S JUST THE »TIP OF THE ICEBERG«

Many victims of right-wing violence have already had to deal with discrimination – whether as a punk in a village dominated by neo-Nazis or as an asylum seeker in an unwelcoming city. So the assault is often just the »tip of the iceberg« in terms of their everyday experience with racism and exclusion. This makes it even more difficult for victims to come to terms with the attack. It can bring back memories of previous encounters with violence or traumatic experiences encountered when fleeing their homelands. This makes it all the harder for victims to go on with their daily lives.

TALK ABOUT YOUR FEELINGS

Even if you'd prefer to put the whole incident behind you as quickly as possible it can still be important to talk about it. Many people find it helpful to have someone they can discuss their situation with. This could be a friend or relative. However, sometimes it's easier to speak openly about your feelings with people who aren't so close to you. At times like these, the staff at B.U.D. is there to help.

GIVE YOURSELF TIME

It is important to take the time to really work through the experience of being assaulted. At the same time, you should consciously return to doing activities which played a role in your life prior to the attack and which you enjoy. Usually, after a few weeks, the memories of the attack will fade into the background. Increasingly, your focus will be on your daily routine and your fears will subside.

SEEK PROFESSIONAL HELP

If, weeks after the attack, you still feel as if it just happened, if you can't get the images out of your head or have noticed worrying changes in yourself, you should seek professional help to prevent the development of lasting disorders. The physical injuries resulting from an assault are there for all to see. Psychological trauma is less visible, but also needs to be treated and healed. We can refer you to experienced professionals who can talk to you about ways to deal with anxiety and other mental health issues.

GOING PUBLIC

Filing a complaint against the perpetrators won't solve the problem of right-wing violence on its own. In cities and villages, in schools or at the workplace, many people refuse to see that right-wing violence is a social problem in Germany. Going public can help to educate people, sensitize them to the issue and provoke discussion.

STIMULATING
DISCUSSION

The means used to inform the public and the point in time at which to do so should be consciously chosen by all those involved. There are many different ways and means of reaching out to the public: from press releases and letters to the editor to information sessions, info booths, rallies and demonstrations.

PUBLIC RELATIONS

Should you opt to inform the media and reports of your experiences appear in the press, you are helping to counter the widely-held view that there is no problem with right-wing motivated violence in your city or town.

You must decide what is suitable. To do so, ask yourself the following questions: What do I want to achieve? Whom do I want to address? Do I wish to speak with journalists? With whom do I want to work with: a union, a refugee organization, a left-wing group, the church, political parties or a local alliance against neo-Nazis?

WHAT DO YOU HOPE
TO ACHIEVE?

You can turn to the staff at B.U.D. for support and advice regarding public relations. Where appropriate, you should also consult a lawyer to determine when and in which manner it makes sense to provide the press with details of the attack - and what difficulties could arise from doing so.

WE CAN ADVISE YOU

CONTACT INFORMATION

COUNSELING SERVICES

B.U.D. – Beratung. Unterstützung. Dokumentation. Für Opfer rechtsextremer Gewalt e.V.

- 🏠 Postfach 440153, 90206 Nürnberg
- 📞 0151 216 53 187
- ✉ info@bud-bayern.de
- 🌐 www.bud-bayern.de

BEFORE e.V. – Beratung und Unterstützung bei Diskriminierung, Rassismus und rechter Gewalt (in München)

- 🏠 Mathildenstr. 3c, 80336 München
- 📞 089 462 246 70
- ✉ kontakt@before-muenchen.de
- 🌐 www.before-muenchen.de

LKS – Landeskoordinierungsstelle Bayern gegen Rechtsextremismus

- 🏠 c/o Bayerischer Jugendring Körperschaft des öffentlichen Rechts (K.d.ö.R.)
Herzog-Heinrich-Str. 7, 80336 München
- 📞 089 6933 444 24
- ✉ info@lks-bayern.de
- 🌐 www.lks-bayern.de

Mobile Beratung gegen Rechtsextremismus Nordost

- 🏠 Regensburg
- 📞 0941 465 281 40
- ✉ mb-nordost@lks-bayern.de

Mobile Beratung gegen Rechtsextremismus Nordwest

- 🏠 Nürnberg
- 📞 0911 923 004 54
- ✉ mb-nordwest@lks-bayern.de

Mobile Beratung gegen Rechtsextremismus Süd

- 🏠 Ebersberg
- 📞 08092 25 09 955
- ✉ mb-sued@lks-bayern.de

USEFUL INFORMATION

a.i.d.a. Antifaschistische Informations-, Dokumentations- und Archivstelle München e.V.

 Postfach 400 123, 80701 München

 info@aida-archiv.de

 www.aida-archiv.de

 facebook.com/aida.archiv

 twitter.com/aida_archiv

München-Chronik

Auflistung rechter und diskriminierender Vorfälle und Aktivitäten

 www.muenchen-chronik.de

Allgäu ⇌ rechtsaußen

Dokumentation rechter Umtriebe

 c/o react!OR

Frühlingstr. 17, 87439 Kempten

 www.allgaeu-rechtsaussen.de

 facebook.com/allgaeurechtsaussen

 twitter.com/AllgaeuRechtsA

RIGHT-WING VIOLENCE

Almost every week in the state of Bavaria, people are attacked and humiliated by right-wing persons or racists. These attacks generally target certain groups of people. As an example, these include: people from countries of origin or other than Germany, but also the disabled, the homeless, Black and Minority Ethnic persons, Jews, homosexuals, transsexuals, political opponents of the far-right, and youths belonging to alternative subcultures.

Such attacks are intended to deliver a message: You're not wanted here. You don't belong here. You're not one of us.

These acts of violence usually target people who belong to minority groups, and thus already suffer from discrimination. This discrimination is prevalent in mainstream society and is often reflected in rude remarks and condescending looks.

When the talk in the papers and the pubs is about the alleged threat immigration poses to internal security or the damaging effects the homeless and punks have on tourism, it's little wonder that right-wing persons feel they are simply carrying out the will of the people.

For the victims, being violently assaulted is often just one of many demeaning and demoralizing experiences they endure. Far right or racist violence is usually not directed at the victims personally. They weren't attacked because they acted in a certain way, but rather because they were seen as being part of a certain group. So the assault doesn't just affect the individual involved. Those belonging to the same group as the victim know that the attack was directed at them as well. Often this causes widespread fear. In the worst case, the actual victims as well as potential ones withdraw themselves from public life and avoid public places like parks and train stations.

Far too often victims are left to fend for themselves. Instead of receiving support, they are met with skepticism, and the more or less latent accusation that they provoked the incident. Sometimes victims are even branded as perpetrators. Even close friends and family members try to pacify them by saying it wasn't all that bad. Victims get the impression they're not being taken seriously, making them feel degraded yet again.

For organized right-wing persons this is a convenient development. When passersby, social workers, parents and other citizens remain passive, look away and leave the victim on their own following an attack, this only increases the power of racists and neo-Nazis. Instead, we should openly be showing our solidarity with victims of right-wing violence, supporting them and strengthening their position.

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Extrême droite
BERATUNGSANGEBOT
GEWALT
RACISME
ANONYM
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UNABHÄNGIG
OPFER
HASS
BAYERN
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ISLAMFEINDLICHKEIT
GEWALTVERBRECHEN
EXTREME
DROIT
HATTECRIME
HASS
RECHTSEXTREMISMUS
RECHTE
RECHTSEXTREMISMUS
RACISME
EXTREMISME
HASSVERBRECHEN
HASS
ANONYM
RECHTSEXTREMISMUS
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Für Opfer rechtsextremer Gewalt

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