

Damages Compensation

Transfer the following verbal description into a BPMN:

- a) Upon realizing that Damages Compensation Entitlement is to be checked by the Ministry of Justice, the responsible lawyer has to determine the type of liability using §1311 ABGB and Damages Compensation Processing System. After determining liability of fault, he has to check the requirements using §1295 ABGB, which includes defining the type of damage, defining the type of causing (causality), checking illegality and checking fault.
- b) For defining the type of damage, either a financial loss (material damage) or an immaterial damage (ideal damage) is determined by the lawyer.
- c) In the case of financial loss (material damage) is determined, he has to further determine the type of financial loss. The lawyer may either detect positive damage or lost profit.
- d) If, on the other hand, immaterial damage (ideal damage) is determined, the lawyer has to determine again the type of immaterial damage. This type of damage can either be Pain compensation (bodily harm) or Value of special preference.
- e) For defining the type of causing (causality), the lawyer has first to check the equivalence. For checking the equivalence, following question is raised "Would the damage not have occurred without the behavior of the damaging party?"
- f) If the answer is yes, then then damages compensation remains intact. If the answer is no, then the damages compensation will not be granted.
- g) After checking the equivalence, the lawyer has to further check the adequacy, at which the following question is raised "Is the act suitable for causing the damage (according to General Life Experience)?" . If the answer is yes, then again the damages compensation remains intact. If the answer is no, then the damages compensation will not be granted.
- h) For checking illegality, the lawyer has to determine the illegality type, at which either a breach of the law's precepts/prohibitions or a violation of good morals is detected.
- i) For the last requirement in this point, which is checking fault, he has to check the accessibility of the damaging behavior.
- j) After that he has to further differentiate according to intensity. At this point either an Intent (intentional damage) or a Negligence is detected.
- k) If a Negligence is detected, he has to further determine the type of negligence, in which either a gross negligence or slight negligence is found.
- l) After differentiating according to the intensity of the negligence and checking the requirements for the liability of fault, the responsible judge has to decide on the extent of the compensation.
- m) If the damage is a financial loss, he has to determine the respective extent for it.
- n) Depending on the extent of negligence, if it is a slight negligence "partial satisfaction" , then a Replacement of the objective market value has to be considered. If a gross "full satisfaction" is detected, then a compensation for the damage incurred and the loss of profit have to be considered.
- o) If on the other hand, the damage is an immaterial damage, also the respective extent for it has to be determined. At this point, the judge can have of three possibilities, which are: "Pain compensation (bodily harm)" in case of slight/gross "full satisfaction", "Damages Compensation will not be granted" in case of slight "no satisfaction", and "Value of special preference compensation" in case of gross "full satisfaction" .
- p) After determining for both options (financial loss & immaterial damage) the compensation extent, the process ends with Entitlement to damages compensation successfully checked.



