

# ACCIDENTS CAUSED BY ILLEGAL CAR RACES - IS THERE A CLAIM?

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**Wolfgang Frese**  
Rechtsanwalt und Fachanwalt  
für Verkehrsrecht

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# Hier trafen die Raser auf den Jeep

Der Weg von Marvin N. und Hamdi H. (rot) und ihrem Opfer Michael W. (grün)





## Immediate Consequences

Michael Warshitsky deceased

Olesya K. severely injured

Marvin N. severely injured

Hamdi H. severely injured

Cars demolished

Signpost etc. broken

## Secondary Consequences

Conviction for murder with sentence to life imprisonment

Loss of driving licence for lifetime

And any claims for compensation ???



**§ 7 Abs. 1 Straßenverkehrsgesetz**  
**§ 7 sec. 1 Road Traffic Act**

If a person is killed, injured, or property is damaged during the operation of a motor vehicle, the owner is obliged to compensate the injured party for the resulting damage.



**§ 1 Pflichtversicherungsgesetz**  
**§ 1 Compulsory Insurance Act**

The keeper of a vehicle ... which has its regular location ... in the country is obliged to take out and maintain liability insurance for himself, the owner and the driver as well as other persons ... to cover personal injury, property damage or other financial losses ... caused by the use of the vehicle ... .

**§ 116 Abs. 1 Nr. 1 Versicherungsvertragsgesetz**  
**§ 116 sec. 1 No. 1 Insurance Contract Act**

The third party can also assert their claim for damages against the insurer,

1. if it concerns liability insurance to fulfill an insurance obligation existing under § 1 of the Compulsory Insurance Act or under § 3 of the Foreign Vehicle Compulsory Insurance Act.

## Claims of Michael Warshitsky

against Hamdi H., Marvin N. as drivers and holders, further  
against their motor vehicle liability insurances

concerning pain and suffering, vehicle damage, costs  
and fees of police, emergency services, paramedics,  
towing costs etc.

to be asserted by the heirs

## Claims of Michael Warshitsky's two sons

against Hamdi H., Marvin N. as drivers and holders, further  
against their motor vehicle liability insurances

Bereavement damages

Funeral costs



## **Claims of Michael Warshitsky's long time girl friend**

against Hamdi H., Marvin N. as drivers and holders,  
further against their motor vehicle liability insurances

Bereavement damages

## Claims of Olesya K.

against Hamdi H., Marvin N. as drivers and holders,  
further against their motor vehicle liability insurances

for pain and suffering, medical costs, loss of  
income, loss of amenities, increased needs etc.

unless Defendants can prove contributory negligence  
of up to 100 % because of inciting and/or encouraging  
the driver and therefore being part of the race.

## Claims of City of Berlin

against Hamdi H., Marvin N. as drivers and holders, further  
against their motor vehicle liability insurances

for reimbursement of repair costs concerning traffic lights etc.

## **Claims of Hamdi H. against Marvin N. and vice versa**

Any claims are excluded, because the drivers accepted the high risk of damages caused by their racing, especially being aware of violation of traffic rules.

## **Claims of third party owner (Car Rental, Leasing Bank et al.)**

Third-party owners are limited with regard to their claims for damages to claims against the drivers, because the comprehensive insurance will not cover damages caused purposely or due to a illegal car race.

## **Reimbursement Claims of Insurers against Hamdi H. and Marvin N.**

Limited by § 5 Abs. 1 Nr. 2, Abs. 3 KfzPfIVV/§ 5 sec. 1 No. 2, sec. 3 Motor Vehicle Insurance Ordinance to 5,000 € for any breach of obligations under the insurance contract



## Illegal Car Races in Germany

Originally – at the time of the Berlin accident in 2016 –  
only an administrative offense

Punishable by a fine of 400 € and a driving ban for one  
month, further two (penalty) points in the Driving Fitness  
Register

Despite this increasing numbers of offenses and by about  
60 % increasing numbers of mostly fatal accidents

## Illegal Car Races in Germany

Since October 13, 2017 punished as a crime based on § 315d StGB (Penal Code of Germany)

Fine or imprisonment and loss of driver's license as a secondary consequence; criminal record entry

Suspension period before reissuance, order for a medical-psychological examination to clarify character-related driving aptitude, new driving school test

## § 315d Penal Code

(1) Anyone who, in road traffic,

1. organizes or conducts an unauthorized motor vehicle race,
  2. participates as a driver in an unauthorized motor vehicle race, or
  3. drives a motor vehicle at an inappropriate speed and in a grossly negligent and reckless manner in order to achieve the highest possible speed,
- is liable to imprisonment for up to two years or a fine.

(2) Anyone who, in the cases referred to in paragraph 1, number 2 or 3, endangers the life or limb of another person or property of significant value belonging to another person, is liable to imprisonment for up to five years or a fine.

(3) Attempted commission of the offenses referred to in paragraph 1, number 1, is punishable.

(4) Anyone who, in the cases referred to in paragraph 2, negligently causes the danger is liable to imprisonment for up to three years or a fine.

(5) If, in the cases referred to in paragraph 2, the offender causes the death or serious injury of another person or injury to a large number of people, the penalty shall be imprisonment for a term of one to ten years, or, in less serious cases, imprisonment for a term of six months to five years.



The act can also be punished much more severely for negligent homicide or even murder.

Furthermore, the state is entitled to confiscate and auction off the vehicle involved in the crime. (§ 315f Penal Code)

Nevertheless still increasing case numbers of fatal accidents because of illegal car races.

## Number of race participants

In the original understanding of race as a competition you need at least two participants (§ 315d sec. 1 No. 2 Penal Code)

But the law reduces the minimum of participants to one (so-called Racing alone or „Alleinrennen“)  
(§ 315d sec. 1 No. 3 Penal Code)

## § 315d sec. 1 No. 3 Penal Code

Anyone who, in road traffic,

...

**3. drives a motor vehicle at an inappropriate speed and in a grossly negligent and reckless manner in order to achieve the highest possible speed,**

is liable to imprisonment for up to two years or a fine.

Punishment requires more than just exceeding the speed limit





Further a mixture of both alternatives:

Driving due to fleeing from the police



## Borderline Cases

About 55 % of German Autobahn has no speed limit, but only a recommended maximum speed of 130 km/h.

The fact of no binding speed limit on the German Autobahn unfortunately creates a specific touristic attraction, especially for rich people, who rent a highly powered car to race the Autobahn with up to 400 km/h.

In case of an accident while driving excessive speed of more than 130 km/h the driver of the high speed vehicle is far more dangerous than a driver with up to 130 km/h. Therefore German courts in case of accidents consider speeders to be 80% partially liable.

Thank you for listening patiently !

Muțumesc că ai ascultat cu răbdare!



**Wolfgang Frese**

Rechtsanwalt und  
Fachanwalt für Arbeitsrecht  
Fachanwalt für Verkehrsrecht  
AvD-Vertrauensanwalt

Dreiecksplatz 7

24105 Kiel

GERMANY

Tel.: +49 (0) 431 799 6440

Fax: +49 (0) 431 799 6430

E-Mail: [ra.frese@anwalt-in-kiel.de](mailto:ra.frese@anwalt-in-kiel.de)

Webseite: [www.anwalt-in-kiel.de](http://www.anwalt-in-kiel.de)