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# Medico-Legal Aspects of Tinnitus in Switzerland and the Federal Republic of Germany

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**Abstract:** Issues of impairment, hand and eye disabilities have worldwide significance. This paper presents the issues from a medical-legal perspective in Switzerland and the Federal Republic of Germany.

## I. MEDICO-LEGAL ASPECTS OF TINNITUS IN SWITZERLAND

The historical roots of social security in Switzerland have evolved into a rather complicated current system. In tinnitus treatment and compensation, different insurances are involved in various ways. The coverage is better in cases of tinnitus due to accidents or professional noise exposure than in cases due to other causes. The following summary tries to explain some of those Swiss peculiarities.

### ISSUES

#### Medico-Legal Terminology in Switzerland

Compensation of tinnitus may be obtained in two ways: Firstly, as an impairment of the somatic integrity - comparable to the loss of an eye, an ear, a limb or the loss of the sense of smell (Integritätsschaden).

For the evaluation of such a tinnitus compensation, the individual situation of the sufferer does not matter. The degree of tinnitus severity, however, influences the compensation amount. Thus compensation is equal for all professions and all social classes.

Usually it results in a single compensation sum, under some circumstances a small monthly pension is paid. Tinnitus-induced impairment of the personal integrity is compensated for tinnitus due to accidents or professional damages only. All other causes are not liable to integrity impairment compensation.

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Secondly, the consequences of tinnitus (inability to work) are liable to compensation under the term "Invalidity". The cause of tinnitus does not matter. Every case is judged individually. Severe debilitating tinnitus can result in a full invalidity annuity. Its amount depends on the insurance involved. The National Disability Insurance (Invalidenversicherung, IV) pays much less than the SUVA or the military insurance (MV) - a fact that has led to a number of legal suits.

On the other hand, the IV is offering an excellent counseling service in order to maintain the working ability of several tinnitus sufferers. For younger individuals, free professional schooling is provided for a new job, which might be better suited for their tinnitus-related handicaps.

#### Insurances Involved in Tinnitus Problems

Insurances against illness and accidents (Krankenkasse) is mandatory for everybody. Non-profit private insurance organizations and the Swiss National Accident Insurance Organization (SUVA) compete to a certain extent in the coverage of accidents.

Damages acquired during military service are covered by a separate National Military Insurance (MV). These insurances also cover tinnitus treatment except for therapeutic modalities strictly outside of scientific medicine. Tinnitus maskers, however, are not regarded as part of the tinnitus treatment. They can be obtained in individual cases after extensive lobbying and a medical expertise in SUVA and MV cases.

For tinnitus due to sudden deafness or illness, no free maskers are available. Hearing aids, in contrast, are easily obtained by the IV even in tinnitus cases with minor hearing problems.

Loss of job is covered for a limited time period by a national unemployment insurance. Up to the age of pension,

longstanding (more than one year) inability to work due to health problems or handicaps is covered by the national disability insurance (IV). Partial coverage is provided, if the percentage of inability exceeds 40%. The IV also provides free hearing aids and therapeutic measures, if they improve the working capacity. At 65 years-of-age (men) or 62-64 years-of-age (women), the nationwide old-age people and survival insurance (AHV) supersedes the payments of the IV.

It has to be stressed, that even a 100% inability to work is compensated by a very limited pension which by no means guarantees the previous living standard. IV and AHV are financed by percentual wage (employees) or income (self-employed persons) deductions.

### Degrees of Tinnitus Severity

The degree of tinnitus severity determines the amount of compensation for impairment of the personal integrity, but the definitions are also used in substantiating the inability to work in tinnitus cases.

Tinnitus is judged irrelevant, if every day activities are not impaired, no sleeping problems arise, and the subjective suffering is low.

Tinnitus is defined as "severe", if it is masked by environmental noise most of the time, if mental activities such as reading, writing, listening are impaired to a certain degree, if intermittent sleeping problems are caused, and if the suffering is moderately compensated.

"Very severe" tinnitus implies permanent annoyance, permanent intrusion in activities that require mental alertness, important sleeping problems every night and overall decompensation of the suffering.

Severe tinnitus corresponds to a 5% loss of personal integrity, very severe tinnitus to 10%.

### Legal Problems

The compensation being different according to the insurance involved, legal battles are fought mainly on the problem, which insurance might be responsible for payments. Full or partial inability to work because of tinnitus alone is accepted even without psychiatric expertise.

The main inequality concerns the fact, that the amount of compensation often relies on the tinnitus cause. Furthermore, employees and self-employed individuals do not get the same degree of coverage. In most cases, insurances accept medical judgement without arguing, although it is the administrative staff that decides. Law suits against national insurances can be fought at two to three court levels at low costs or even free.

Another problem to be solved concerns the fitting of maskers in cases with minimal or lacking hearing deficit.

### CONCLUSIONS

Tinnitus patients suing their physicians for malpractice are extremely rare, whereas claims against insurances increase in numbers. Tinnitus and its related complaints like vertigo, hyperacusis or hearing loss now-a-days frequently are presented as causing inability to work. These complaints often coincide with impending unemployment or other social factors not attributable to medical handicaps.

This fact will considerably stress the financial sources of our social insurances.

## II. MEDICO-LEGAL ASPECTS OF TINNITUS IN THE FEDERAL REPUBLIC OF GERMANY

In Germany, the legal classification and assessment of physical impairment is regulated differently in various legal sectors. I shall attempt below to single out the sectors that in my opinion appear to be the most important and to explain the classification of tinnitus within German jurisdiction.<sup>1</sup>

### ISSUES

#### Social Welfare Legislation; Statutory Accident Insurance

The purpose of the statutory accident insurance (regulated in the Reichsversicherungsordnung, RVO) is to prevent accidents at work and to protect the insured person and/or the bereaved from health and financial consequences arising from accidents both at work and from occupational diseases, Erlenkämper.<sup>3</sup>

Tinnitus is considered here both as a result of an occupational disease, (e.g., noise, trauma, deafness) and of accidents at work (e.g., blast syndrome, spinal impact injury, craniocerebral trauma, etc.).

Within the scope of the statutory accident insurance, the injured person may, under certain circumstances, be granted a personal injury benefit from the employment liability insurance. This requires an assessment of the capability to perform gainful employment. The abstract impairment dealt with here and measured in percent, describes the ability to perform in every day working life resulting from a prevailing health debilitation, and is defined as 'Reduced capability of gainful employment' (MdE) in the sector of statutory accident insurance. The term MdE is not defined more closely in the relevant statutes. Capability of gainful employment means the ability of the concerned to obtain an income by making use of all possibilities to work that are at his/her disposal, in the entire sector of commercial and industrial life, taking his/her special abilities and both bodily and mental abilities into account, Erlenkämper.<sup>3</sup>

The estimate of the MdE coverage, in terms of percentage, is generally determined by means of the "Criteria for Medical Evidence" (abbr. Criteria) in accordance with Izbicki et al.<sup>6</sup>

In neither of the two books, which for example give most

conclusive particulars regarding deafness or equilibrium disturbance, is there a rating for tinnitus.

The *Königsteiner Merkblatt*, the governing body of the industrial trade associations, has provided recommendations for the appraisal of professional noise, trauma, deafness and under Fig. 4 simply stated about tinnitus:

"Tinnitus is not one of the dominant symptoms of noise, trauma, deafness. High frequency noises can be given an MdE rating of 5% in proven cases."

The conclusion found in literature is that an MdE of more than 10% for tinnitus in addition to the MdE rate for loss of hearing may be very hard to prove, Feldmann.<sup>4,5</sup>

The consequent implementation of the *Königsteiner Merkblatt* would mean that the rate for MdE pension entitlement cannot be attained by an isolated tinnitus, as an MdE of at least 20% is necessary for the entitlement. Although there is obviously no judgement saying that an MdE, and be it only 10% had been determined for tinnitus alone, the Regional Social Courts adopt the view that a MdE entitled pension (i.e., 20%) need not be entirely due to loss of hearing. The existence of a hearing loss, possibly of 10%, is sufficient.

The dispensation of the Regional Social Courts and the Federal Social Courts implements the MdE assessment for tinnitus in accordance with the *Königsteiner Merkblatt* with different reasoning, without considering divergence from the rigid 5% limit in individual cases.

The Federal Social Court explicitly explained in a decision dated November 30, 1989, with reference to a previous decision dated December 15, 1982, that a court was allowed to refer to the *Königsteiner Merkblatt* concerning the assessment of tinnitus and did not have to make further investigations. In a decision dated June 29, 1989, the Regional Social Court of North Rhine-Westphalia takes the view that an increase of MdE of more than 5% based on a hearing impairment due to tinnitus is not to be considered.

However, the Regional Social Court for the Rhineland Palatinate explained in a judgement dated February 22, 1995, that it would not follow the view that tinnitus only justified an increase of the MdE by 5% subject to hearing loss.

What is very striking in the above cited passage of the *Königsteiner Merkblatt*, apart from the extreme limitation, is the fact that in addition to the noise trauma deafness only high frequency noises might be considered, if at all.

The Regional Social Court of Saarland with its decision dated October 25, 1990, does not feel bound to the above mentioned, allowing an MdE of 5% for low frequency noises.

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## Rights of the Severely Disabled

The rights of the severely disabled are to 'Safeguard the integration of severely disabled in work, occupation and society' (Erlenkämper).<sup>3</sup>

Within the scope of the law for severely disabled it is also important to evaluate the disability, i.e., the effects of a permanent functional impairment. It is performed (differently from the statutory accident insurance) by means of the degree of the disability in increments of ten (20-100 %).

Assistance for the assessment is also provided by the 'Criteria' and Isbicki.<sup>5</sup> However, in this context tinnitus is not found.

## Tinnitus

This has led to an inquiry from the German Tinnitus Liga to the Federal Minister for Labour and Social Welfare (responsible for the criteria), asking how to evaluate tinnitus in accordance with the rights of severely disabled.

The answer of the Federal Minister for Labour and Social Welfare dated September 20, 1989, is below:

'Tinnitus not only occurs in connection with hearing disturbances but with different systemic diseases, or in isolation. The classification of tinnitus causes various problems, as a rule neither the causes nor the quality or quantity of the tinnitus can be qualified satisfactorily. Permanent tinnitus dependent stress might lead to a psychological destabilization and thus increase the degree of impairment caused by tinnitus; the effects might become apparent in muscular aching, difficulties in falling asleep and sleeping through the night or decreased concentration, but they can also be very serious and in some cases lead to suicide'.

The actual effects of tinnitus, especially in the psychological field, remain decisive for the expert's opinion.

Should such disturbances be proved, a judgement isolated or in connection with number 26.5 on page 55 of the 'Criteria' analogous to number 26.3 on page 48 of the 'Criteria' (neurosis) is to be considered. Hence it follows that a tinnitus without basic disease might lead to the recognition of a severe disability.

Figure 26.3 of the criteria which the Federal Minister for Labour and Social Welfare refers to, says:

'Neurosis and abnormal personality developments' (GdB degree of handicap).

### a. Minor neurotic disturbances

(often connected with vegetative symptoms, so-called 'psychovegetative syndrome') 0-10%.

### b. Strongly disabling disturbances

(with essential restrictions of ability to live a normal life (e.g., some phobia, pathologic developments) 20-40%.

### c. Severe neurosis

(with considerable social adaptation difficulty e.g., severe compulsion neurosis) 50-100%.

Thus the Federal Ministry, author of the 'Criteria', determines, that within the scope of the dispensation for severe disability, tinnitus can be evaluated with a disability degree of 0-100% (in the most extreme case). However, it has to be explicitly stated that this tinnitus classification only applies to the sector of the severe disability dispensation; literature and dispensation do not apply to the statutory accident insurance.

## National Health Insurance

In the national health insurance (regulated in book 5 of the social statute book, SGB V) tinnitus might be of importance if the insured person - on account of the disease - is unfit for work, i.e., as a result of this disease cannot continue his/her previous employment or only at the risk of deterioration of his/her condition (Erlenkämper).<sup>3</sup>

Feldmann<sup>4,5</sup> is convinced that mental work with severe tinnitus represents a considerable strain and influences the ability to concentrate to the brink of exhaustion. This may well result in the inability to work.

Within the scope of the national health insurance it is also of importance whether certain therapeutic measures are paid by the health insurer.

This becomes especially relevant for so-called 'outsider methods'. The costs for the treatment are only paid if success is promising. From the legal point of view such promise of success of the so-called outsider methods is to be expected if well-known representatives of the school of medicine, based on initial experience gained the opinion that the effects of the method should be researched intensively. Based on this reasoning the Social Court Hamburg, e.g., determined in a decision dated May 21, 1993, that the application of combination therapy with low-power-laser and ginkgo-extracts can be appropriate and thus must be paid by the statutory health insurance. In the meantime the health insurance also bears the costs for hyperbaric oxygenation.

## National Pension Fund

In addition to old age pension, the national pension fund provides for pension services in cases of inability to work in own profession and inability to be gainfully employed.

Inability to work in own profession: The insured person whose ability to work has been reduced by more than 50% compared to a physically and mentally fit insured person with similar professional education and equal knowledge and expertise (Erlenkämper).<sup>3</sup>

Inability to be gainfully employed: An insured person who as a result of an illness can no longer carry out the employment with a certain regularity within the foreseeable future or if the same can only obtain low income from his/her employment.

In both the general medicine and ear/nose and throat literature, including items on expert opinions and the dispensation, I could not find that either of the above categories of inability to work due to tinnitus had been recognized.

In my opinion, however, the decision should not diverge from the question of general sickness. If someone suffers so severely from a disease - like the tinnitus afflicted person, who is driven to suicide, it is absolutely conceivable that the person afflicted cannot be gainfully employed.

## Liability

Tinnitus is also of importance if a victim of an accident claims damages for tinnitus caused by a traffic accident from which the person suffered a spinal impact injury. In this case the amount of the compensation would have to be assessed.

There are hardly any useful court decisions on this question which exist in the Federal Republic of Germany.

In a judgement dated October 25, 1991, the County Court Brunswick awarded compensation in the amount of 6,000.00 DM (4,000 US \$) for multiple abrasions and cuts to the head and tinnitus. The few judgements concerning this matter known to me are all around this level.

## SUMMARY

In the field of the rights governing the severely disabled there is some reason for reservation towards the regulations in accordance with the Königsteiner Merkblatt for the sector of the statutory accident insurance and according to the opinion of the Federal Minister for Work and Social Welfare.

1. If according to the Königsteiner Merkblatt an MdE increase of 5% for tinnitus with noise trauma deafness (high frequency noises) is possible, if according to Feldmann<sup>4,5</sup> an increase by more than 10% is 'hardly to be justified', this classification within very narrow limits does not do justice to the problem of tinnitus.

Feldmann as well as the author of the criteria admit that tinnitus can become so severe as to lead the person suffering from the disease to committing suicide.

In such a case, and if all the existing literature is accepted as such, it is not convincing that the earning capacity of the person severely affected by tinnitus is limited at a rate of 5-10%, whereby it has to be mentioned again that an isolated tinnitus does not have a claim to MdE at all, according to the Königsteiner Merkblatt.

2. The letter dated September 20, 1989, from the Federal Minister for Work and Social Welfare, referencing the assessment allows for the extent of the impairment (up to suicide). It is doubtful whether the assessment analogous to the 'neurosis' is still appropriate. Of course, the decision is beyond the competence of the legal person. But it may be pointed out that the 'term neurosis' has meanwhile been removed from the classification DSM III-R (Egle et. al).<sup>2</sup>

## CONCLUSION

The grading of disability recommended by the German Tinnitus Liga seems reasonable. It is the following:  
Tinnitus without remarkable psychological associated diseases - **0-10%**

Tinnitus with low-degree reactive depressive or anxiety conditions with slight limitation of the ability to experience and develop, possibly with psychosomatic associated symptoms - **10-20%**

Tinnitus with medium-degree depressive disturbances or anxiety disturbances, possibly with long-term sleep and concentration disturbances and considerable limitation of the ability to experience and develop - **20-50%**

Tinnitus with symptoms in accordance with a major depression, possibly with severe sleep/concentration disturbances and/or with suicidal phases - **50-100%**

This grading system appears advantageous because it evaluates the complete problem i.e., tinnitus and psychological effects.

In my opinion it would also be very sensible to include Shulman's<sup>7</sup> classification of the subjective idiopathic tinnitus (SIT) including vertigo in the assessment.

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