

**Criteria for finding an ‘injury to the right to health’ in cases  
regarding ‘Nervous Shock (Schockschaden)’**

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**Abstract**

In Taiwan, with regard to issues concerning ‘Nervous Shock (Schockschaden)’, ‘Emotional Distress’, ‘Emotional/Psychiatric Harm Suffered by a Third Party’, it is recognized in most of the literature that a claimant can demand compensation for the pecuniary and non-pecuniary damage according to Article 184, Paragraph 1, the former part and Article 195, Paragraph 1 of the Civil Code, provided that the emotional/psychiatric distress or illness suffered by the claimant has constituted an ‘injury to his/her right to health’. However, when can the emotional/psychiatric distress or illness suffered by the claimant be deemed as an ‘injury to his/her right to health’, has not been elucidated in the literature or in court practice. Due to the lack of clear and consistent criteria for finding an ‘injury to the right to health’, the prospect of success for a claimant, who brought up a suit for his/her emotional/psychiatric distress or illness, would be very uncertain. In light of this, this article would start from comparing the literature and decisions (in particular the Supreme Court decisions) made in UK and in Germany, to explore how in this kind of cases ‘compensable damage/harm’ or ‘injury to the right to health’ could be established. On the basis of this analytical comparison, this article would further examine the following issues, including the criteria for finding an ‘injury to the right to health’, the very essence of them, the grounds for adopting the criteria, whether or not the existent criteria should be maintained, and other factors which may influence the criteria etc. After probing the rationale pertinent to the above-mentioned issues, this article would consider whether these

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analyses are of relevance in Taiwan, and propose comparatively clear and consistent criteria for finding an ‘injury to the right to health’, which may be applied in our future court practice where a ‘Nervous Shock (Schockschaden)’ case appears.

**Keywords: nervous shock, emotional distress, emotional harm/psychiatric harm/mental harm, compensable damage, injury to the right to health, compensation for non-pecuniary damage**