

Solution Exercise “Decision-making process”

Fact pattern 1

Since the lighter, which generates thermal heat, was capable of causing significant harm to health, it could qualify as a “substance harmful to health” within the meaning of No. 1. One could also focus on the lighter itself and classify it, in its concrete manner of use, as a dangerous implement. The Federal Court of Justice (BGH) affirmed No. 1, holding that the external mode of action was sufficient. At the same time, No. 2 is technically fulfilled as well, but it is displaced under the doctrine of statutory concurrence.

Fact pattern 2

Criminal liability of C: C is liable for simple bodily harm. Objective element: satisfied. Health impairment: satisfied. Qualification: No. 4 — acting jointly with another participant: not satisfied, because A did not participate. No. 5 — method posing a danger to life: not satisfied, as a shoulder contusion does not create an abstract danger to life.

Fact pattern 3

Criminal liability of O: Simple bodily harm: satisfied. Section 224 (1) No. 2 — dangerous implement: satisfied.

Fact pattern 4

Criminal liability of M: Simple bodily harm: satisfied. No qualifying circumstance, because a fist does not constitute a dangerous implement.

Fact pattern 5

Where lips are enlarged or nasal corrections are performed by injecting hyaluronic acid without the license required to perform such treatments, the bodily harm, according to a decision of the BGH dated October 28, 2020, is committed using a dangerous implement, but not by means of a method posing a danger to life.

With respect to the use of the syringe, the BGH affirmed the presence of a dangerous implement under Section 224 (1) No. 2 StGB and upheld the conviction for dangerous bodily harm. This conclusion is fundamentally persuasive, although the result is not as clear-cut as it may initially appear. A syringe, by its objective nature and the specific manner in which it was used (injecting hyaluronic acid into the nose, nasolabial folds, or lips), is certainly capable of causing injuries that are more than trivial. However, because the syringe was used in its original function as a medical instrument, one could argue that it should be considered an unsuitable instrument of attack and therefore fall outside the scope of Section 224 (1) No. 2 StGB (see also BGH NJW 1978, 1206). But: Because the influencer lacked the required official authorization, she clearly could not use the syringe *de lege artis* as a medical device.

Situations of this type inherently involve an elevated risk of injury — as the nodules that developed in the present case demonstrate — so that the syringe does assume the character of an instrument of attack, thereby qualifying as a dangerous implement within the meaning of Section 224 (1) No. 2 StGB (see MüKo-StGB/Hardtung, § 224 para. 50).