



**VICTIMS' RIGHTS
TO SUPPORT AND
PROTECTION
FROM VIOLENCE**

September 2013

**LEGISLATION FOR THE
PROTECTION FROM
VIOLENCE IN AUSTRIA**

VICTIMS HAVE A RIGHT TO PROTECTION AND HELP!



LEGISLATION ON PROTECTION AGAINST VIOLENCE IN AUSTRIA

The Austrian Federal Act on Protection Against Domestic Violence entered into force on 1 May 1997. After several amendments, the Second Act on Protection Against Violence (2009) was adopted, with further improvements regarding the protection of and support for violence victims. The latest amendment dates back to autumn 2013 and expands the protection of children affected by violence. The corresponding acts include protection by the police and under civil law, measures under criminal law as well as victims' rights. Every person residing in Austria, regardless of their origin or nationality, is entitled to protection against violence.



ANTI-VIOLENCE PROTECTION BY THE POLICE

BARRING ORDER ACCORDING TO THE SECURITY POLICE ACT (SPG, § 38A)

If you or your children are subjected to physical, psychological or sexual violence in your social environment or are repeatedly persecuted and harassed (stalked), you should contact a support service (phone numbers on p. 12)

If violence is imminent, you should call the police immediately (emergency hotlines 133 or 112; these hotlines can be dialled even if there is no credit on the mobile phone).

The police are obliged to intervene promptly in cases of violence. It is the duty of officers to evict the endangering person from the dwelling immediately, so that the victim can stay there safely.

WHO IS PROTECTED BY A BARRING ORDER?

Every person has the right to live in surroundings without violence and is guaranteed protection by law.

HOW LONG IS A BARRING ORDER VALID?

A barring order is valid for 2 weeks. If you need protective measures after this period has expired, you can turn to the district court (Bezirksgericht) at your place of residence and apply for a civil court order in the form of a temporary

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injunction (einstweilige Verfügung). The police barring order will then be prolonged to 4 weeks. After that, you can obtain longer-term protection on the basis of the temporary injunction (see section on temporary injunctions, p. 4).

IS THE QUESTION OF OWNERSHIP RELEVANT FOR BARRING ORDERS?

No, it is irrelevant who owns the apartment or house. The police have the power to evict any person posing a threat to others, including the owner.

TO WHICH AREAS DOES A BARRING ORDER APPLY?

The barring order applies to the apartment or house itself and to its immediate surroundings. The police must define the safety area in each case and notify the perpetrator.

PROTECTION OF CHILDREN AND YOUNG PEOPLE

If children aged under 14 are affected by violence, the barring order may also include schools and other childcare institutions. The perpetrator must keep at a distance of at least 50 metres from the corresponding premises. The police will inform the school, kindergarten or childcare institution concerned.

REMOVAL OF KEYS

The police must immediately take away all keys to the dwelling from the person posing a threat. In the case of an application for a temporary injunction, the police will hand over the keys to the competent district court.

WHAT IS THE EVICTED PERSON ALLOWED TO TAKE WITH HIM?

He may only take essential articles of daily use with him (such as personal documents, personal articles and clothing).

WHAT HAPPENS IF THE PERPETRATOR REFUSES TO LEAVE THE DWELLING?

In this case the police are entitled to remove the perpetrator by force.

IF THE PERPETRATOR HAS CALMED DOWN, IS HE ALLOWED TO RETURN DESPITE A BARRING ORDER?

As long as a barring order is in effect, the evicted person may not return, otherwise he is breaking the law.

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WHAT HAPPENS IF THE PERPETRATOR VIOLATES A BARRING ORDER?

If the perpetrator returns to the home or its immediate vicinity in violation of a barring order, you should call the police at once. Violating a barring order is a criminal offence (fined with up to EUR 500 per violation). In the event of repeated violations, the perpetrator can be placed under arrest.

CAN A BARRING ORDER BY THE POLICE BE REVOKED BEFORE THE 2-WEEK TERM HAS EXPIRED?

A barring order can only be revoked by the law enforcement authorities. This is rarely done. If the barring order is revoked prematurely, the victims must be notified immediately.

IS COMPLIANCE WITH A BARRING ORDER MONITORED?

Yes. The police are obliged to check compliance with a barring order at least once.

IS THE BARRING ORDER SUBJECT TO A POLICE INTERVENTION AT THE VICTIM'S HOME?

No. Rather, this measure can also be imposed if, following an incident, victims go to the police because they fear further violence.

MANDATORY INFORMATION AND DOCUMENTATION

The police must give the victim an information sheet explaining the possibility of applying for a temporary injunction.

Also the endangering person is given an information sheet, in which he is notified of the fact that a violation of the barring order is a punishable act, and of accommodation facilities.

The police must also keep detailed documentation of every case of domestic violence to which they are summoned and make their records available to the court in case of an application for a temporary injunction.

INTERVENTION CENTRES OFFER FREE COUNSELLING AND ASSISTANCE

In the event of a barring order issued on your behalf, you will be contacted by the intervention centre in your province. These centres provide free counselling as well as free assistance during court proceedings.



LONGER-TERM PROTECTION BY MEANS OF A TEMPORARY INJUNCTION ACCORDING TO THE ACT ON ENFORCEMENT PROCEDURES (EO §§ 382B AND E)

IMPORTANT: The barring order has a term of 2 weeks. If you want protective measures prolonged beyond this term, you must apply for a temporary injunction (EV) under civil law against the perpetrator within these two weeks. A temporary injunction can be issued even if the police have not intervened.

It is essential that you get legal counselling before you apply for a temporary injunction. The intervention centres offer counselling and support with regard to your application and assist you in court, providing a person of your trust. Also women's shelters and women's counselling centres can help you with the application.

WHERE AND HOW TO APPLY FOR A TEMPORARY INJUNCTION (EV)

Applications must be filed with the district court (Bezirksgericht) of your place of residence. You can make your application in writing or verbally during office hours. In urgent cases the court is obliged to accept the application even outside regular office hours.

IN WHAT CIRCUMSTANCES CAN A TEMPORARY INJUNCTION BE APPLIED FOR?

A temporary injunction can be applied for if physical abuse or threats make life with a violent person intolerable. A temporary injunction can also be applied for in the event of psychological violence that seriously impairs the victims' psychological health.

WHO IS PROTECTED BY A TEMPORARY INJUNCTION?

A temporary injunction protects all persons who, in their sphere of living and/or their personal surroundings, are affected by violence inflicted, e.g., by their husbands, partners, ex-partners, companions or ex-companions, fathers or other persons. A family relationship with the perpetrator is not a prerequisite.

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PROTECTION FOR CHILDREN AND YOUNG PEOPLE

Children and young people are, of course, also protected by the laws, whether they experience abuse directly or indirectly, e.g., if they witness violence against their mothers (= psychological violence). In such cases the mother, as legal representative, can apply for a temporary injunction. The Youth Office is also entitled to apply for a temporary injunction for the protection of the children so that their right to stay in the home is guaranteed.

WHAT IS THE RANGE OF PROTECTION?

Protection comprises several areas:

1. Protection in the sphere of living (in accordance with the Act on Enforcement Procedures, EO § 382 b)

If violence is committed against you in your home by someone who lives in the same household (e.g., husband, live-in partner, father, flat-mate, etc.) you can apply to the district court at your place of residence so that the person who exerts violence is ordered to leave the dwelling and barred from returning to its surroundings.

Is the question of ownership or lease relevant?

No, it is irrelevant who is owner or tenant in the apartment or house. What is relevant for issuing a temporary injunction is the threat or incident of violence. The police are empowered to evict anybody, including the owner, who poses a violent threat to others.

How long is a temporary injunction for the sphere of living valid?

A temporary injunction for protection in the victim's own sphere of living can be issued by the court for the duration of 6 months. If divorce proceedings or other proceedings, e.g. for clarification of rights concerning the use of the dwelling, are filed in the course of this 6-month period, the temporary injunction is valid until these proceedings have been completed.

2. General protection against violence (in accordance with the Act on Enforcement Procedures, EO § 382 e)

Parallel to protection in the sphere of living, the victim can also apply for measures under which the perpetrator is ordered to stay away from certain places (e.g., place of work, school, kindergarten) and to refrain from any kind of contact (in person, via telephone or e-mail, etc.).

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A temporary injunction for protection in certain places and a prohibition of contact can be applied for independently of a temporary injunction in the sphere of living.

How long is this type of injunction valid?

A temporary injunction for protection against violence in several places can be issued for 1 year. Should the violence continue after this period, the injunction may be prolonged upon application.

WHAT EVIDENCE HAS TO BE PRODUCED TO PROVE THE VIOLENCE?

In order to prove acts of violence (physical violence, violent threats and psychological violence that seriously impairs the victim's health), evidence (Bescheinigungsmittel) must be presented to the court. Such evidence might include: statements by the victim, police reports, statements by eye-witnesses, hospital reports, doctors' reports, forensic findings, reports by psychologists, therapists and support organisations, photographs etc. The court applies for police reports directly.

HOW FAST DOES THE COURT ACT?

The court is required to reach a decision on a temporary injunction as fast as possible. If a barring order by the police has been issued, this order is valid for 4 weeks if a temporary injunction is applied for within the first two weeks. Within this 4-week period the court should decide, in order to guarantee the continuous protection of the victim.

DOES THE PERSON CAUSING DANGER HAVE TO BE QUESTIONED WHEN THE COURT CONSIDERS AN APPLICATION?

A temporary injunction can also be issued without questioning the endangering person, because it is a temporary protection measure. However, courts usually do give the perpetrator the opportunity to be heard.

IMPORTANT: To ensure that the temporary injunction takes effect and can be enforced immediately, you should request in your application that the measures applied for take immediate effect, that you are notified when the injunction comes into force and that the police are authorised to enforce the temporary injunction.

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WHEN IS THE TEMPORARY INJUNCTION ENFORCED, AND BY WHOM?

As soon as the court has made its decision, it must notify you as the applicant when the injunction will be enforced. If the injunction consists in evicting the perpetrator from the dwelling, you have the choice whether you wish to be present when it is enforced. The court bailiff is responsible for implementing the court's decision. In urgent or dangerous cases, the court may ask the police to enforce the injunction, upon which the police will implement the court order.

WHAT HAPPENS DURING THE ENFORCEMENT OF THE INJUNCTION?

In carrying out the injunction, the official concerned notifies the person causing danger of the court decision, hands over the court papers and instructs him to leave the dwelling immediately. He must hand in all keys to the dwelling, which are deposited with the court.

If the person causing danger has already been barred from the dwelling by the police, the injunction order is delivered to the postal address given by the perpetrator. In case no address of the perpetrator is available, the temporary injunction is deposited with the court, which counts as a delivery, whereupon the injunction has legal force.

WHAT IS THE PERSON CAUSING DANGER ALLOWED TO TAKE FROM THE DWELLING?

He is entitled to take or retrieve his personal belongings, but only in the company of the bailiff or the police. Personal belongings include, e.g., his personal documents, clothing and tools for work. Objects belonging to the household, savings and valuables may not be removed. The civil court will decide on the allotment of such property in case of a dispute.

WHAT CAN YOU DO IF THE PERSON CAUSING DANGER DOES NOT COMPLY WITH THE INJUNCTION?

You should notify the police immediately. The police are obliged to remove the person causing danger from all places that have been prohibited to him, also by force whenever necessary. Violation of an injunction is an administrative offence punishable with a fine of up to EUR 500. If the perpetrator is unable to pay the fine he may be imprisoned for up to two weeks. Following the intervention the police must also send a report on the violation of the temporary injunction to the court.

COSTS, LEGAL AID, INTERPRETERS

If you have a low income, you are entitled to apply for legal aid. When you apply, you need to fill out a printed form available at the court. Legal aid may include remission of court fees, the provision of a lawyer or the taking over the costs for an interpreter (the court should be asked to call a female interpreter in domestic violence cases). As of 1 June 2009, victims also have the right to psychosocial court assistance during civil proceedings (see section on court assistance p.10).



VIOLENT ACTS INCLUDED IN THE AUSTRIAN PENAL CODE

The Austrian Penal Code lists a number of violent acts as punishable offences. Among these are:

- bodily harm and grievous bodily harm (Austrian Penal Code, StGB §§ 83 and 84)
- maliciously inflicted grievous bodily harm (§ 87)
- deprivation of liberty (§ 99)
- human trafficking (§ 104 a)
- coercion and grievous coercion (§§ 105 and 106)
- dangerous threats (§ 107)
- insistent persecution (stalking) (§ 107 a)
- continued exercise of violence (§ 107 b)
- rape (§ 201)
- sexual coercion (§ 202)
- grievous sexual abuse and sexual abuse against minors (§§ 206 and 207).

All violent offences are offences liable to public prosecution, which means that charges are brought and they are prosecuted by the State as soon as they have become known to the authorities (police, courts). The approval of the victim is not required.

On 1 June 2009, repeated exercise of violence was added to the Austrian Penal Code as a punishable offence (Austrian Penal Code, § 107 b). Repeated exercise of violence against a person has since then been punishable with a higher range of punishment than in the case of several acts of violence that are treated as separate offences.



PROTECTION AGAINST STALKING

In Austria stalking has constituted a punishable act since 1 July 2006 under the term “insistent persecution” (Austrian Penal Code, StGB § 107 a).

WHAT IS STALKING?

If a person insistently persecutes another person for a longer period of time against their will and thus impairs the person concerned in their way of living in an intolerable way, this is called stalking. Stalking includes, e.g., repeated persecution, harassment through telephone calls, e-mails or other means of communication. Placing purchase orders by using the data of a person or inducing a third person to establish contact with the victim are also punishable offences.

WHAT YOU CAN DO IN CASES OF STALKING

In all cases of stalking you should go to the police and make a report. In acute cases of stalking you should immediately call the police, who can issue a barring order against the stalker (Security Police Act, SGP § 38 a).

TEMPORARY INJUNCTION AGAINST STALKING (ACCORDING TO THE ACT ON ENFORCEMENT PROCEDURES, EO § 382 G)

In order to receive immediate protection against stalking you can also apply for a temporary injunction at the district court (Bezirksgericht) of your place of residence. You can apply for the following measures:

- prohibition of personal contact and persecution
- prohibition of contact by mail, telephone or other means of communication
- prohibition to appear in certain places
- prohibition to circulate and publish personal data and photographs
- prohibition to order goods or services using personal data of the victim
- prohibition to induce a third person to establish contact with the victim.

The temporary injunction against stalking can be enforced by the police. However, enforcement by the police must expressly be applied for. If the temporary injunction is violated, you should immediately inform the police and turn to the court to apply for coercive penalty (see sections on enforcing a temporary injunction, p. 7).

VICTIMS' RIGHTS

In criminal proceedings, victims of punishable offences have certain rights, which are laid down in the Code of Criminal Procedure (StPO 4th main part, §§ 65–73).

These include the right to

- obtain information about the proceedings
- be notified of the release of the perpetrator from pre-trial imprisonment
- inspect files relating to the proceedings
- considerate questioning and respectful treatment
- participation and active involvement in the proceedings
- receive compensation and damages for pain and suffering
- assistance during court proceedings.

The right to considerate questioning implies that victims do not have to testify in the presence of the perpetrator. There is the option to question the victims in a separate room and show a video transmission of the questioning in the courtroom. Children must always be questioned in this considerate manner and by judges. Persons whose sexual integrity has been violated also have the right to this mode of questioning. All other victims of violence can apply for it as well. In order to spare the victims from testifying during trial, which is often very stressful, questioning may also take place in advance upon request (adversarial questioning).

As of 1 June 2009, victims have the right to considerate questioning also in civil proceedings that are related to criminal proceedings on account of violence. Furthermore they have the right that their address of residence be kept secret from the perpetrator.



THE RIGHT TO COURT ASSISTANCE

(IN ACCORDANCE WITH THE CODE OF CRIMINAL PROCEDURE, STRAFPROZESSORDNUNG § 66 AND THE CODE OF CIVIL PROCEDURE, ZIVILPROZESSORDNUNG § 73 B)

In order to ensure their rights, victims of violence are entitled to psychosocial and legal assistance in court during criminal proceedings, free of charge.

HOW CAN VICTIMS GET ACCESS TO COURT ASSISTANCE?

Court assistance is granted promptly and without bureaucratic formalities. On behalf of the Federal Ministry of Justice, victims' protection organisations in all the provinces organise court assistance. You can turn to them, and court assistance will be provided. Intervention centres and violence prevention centres in all provinces offer court assistance (see phone numbers on p. 12/13).

WHAT DOES COURT ASSISTANCE INCLUDE?

Psychosocial court assistance includes, e.g., accompanying the person concerned to the police when making a report, informing them about and preparing them for criminal proceedings, accompanying them to questioning at court and to the trial.

Legal court assistance consists in legal representation in criminal proceedings by a lawyer for the protection of all rights of the victim.

As of 1 June 2009, victims who are granted psychosocial court assistance in criminal proceedings can also get court assistance during civil proceedings, if these are factually related to the criminal proceedings (e.g., divorce proceedings, proceedings for issuing a temporary injunction, custody proceedings). In civil proceedings there is no right to be granted legal court assistance that is free of charge. However, as a part of legal aid, a lawyer may be provided upon application.



SUPPORT SERVICES IN AUSTRIA

WOMEN'S HELPLINE 0800/222 555

free of charge, round-the-clock service

INTERVENTION CENTRES AGAINST VIOLENCE (INTERVENTIONSSTELLEN UND GEWALTSCHUTZZENTREN)

BURGENLAND	0043(0)3352/314 20
CARINTHIA	0043 (0)463/590 290
LOWER AUSTRIA/St. Pölten	0043(0)2742/319 66
LOWER AUSTRIA/Wiener Neustadt	0043(0)2622/243 00
LOWER AUSTRIA/Zwettl	0043(0)2822/530 03
LOWER AUSTRIA /Amstetten	0043(0)2742/ 31 966
UPPER AUSTRIA	0043(0)732/607 760
SALZBURG	0043(0)662/870 100
STYRIA	0043(0)316/774 199
TYROL	0043(0)512/571 313
VORARLBERG	0043(0)517/555 35
VIENNA	0043(0)1/585 32 88

INTERVENTION CENTRE FOR WOMEN AFFECTED BY HUMAN TRAFFICKING

LEFÖ-IBF	0043(0)1/796 92 98
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WOMEN'S SHELTERS

AMSTETTEN	0043(0)7472/665 00
BURGENLAND	0043(0)2682/612 80
DORNBIRN	0043(0)517/555 77
GRAZ	0043(0)316/42 99 00
HALLEIN	0043(0)6245/80 261
INNSBRUCK	0043(0)512/ 580 977
INNVIERTEL	0043(0)7752/717 33

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SUPPORT SERVICES IN AUSTRIA

WOMEN'S SHELTERS

KAPFENBERG	0043(0)3862/279 99
KLAGENFURT	0043(0)463/449 66
KUFSTEIN	0043(0)5372/ 636 16
LIENZ	0043(0)4852/ 671 93
LINZ	0043(0)732/606 700
LAVANTTAL	0043(0)4352/369 29
MISTELBACH	0043(0)2572/50 88
MÖDLING	0043(0)2236/ 465 49
NEUNKIRCHEN	0043(0)2635/689 71
PINZGAU	0043(0)664/500 68 68
SALZBURG	0043(0)662/458 458
SPITTAL / DRAU	0043(0)4762/61 386
STEYR	0043(0)7252/877 00
ST. PÖLTEN	0043(0)2742/366 514
TYROL	0043(0)512/342 112
VILLACH	0043(0)4242/310 31
VÖCKLABRUCK	0043(0)7672/22 7 22
WELS	0043(0)7242/678 51
Vienna Women's Shelters Hotline	05 77 22
WIENER NEUSTADT	0043(0)2622/88066

COUNSELLING CENTRES FOCUSING ON DOMESTIC VIOLENCE

KAPFENBERG	0043(0)3862/279 99
ST. PÖLTEN	0043(0)2742/366 514
VÖCKLABRUCK	0043(0)7672/227 22
WELS	0043(0)7242/452 93
VIENNA	0043(0)1/512 38 39
WIENER NEUSTADT	0043(0)2622/825 96

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IMPORTANT: TAKE PRECAUTIONS TO ENSURE YOUR SAFETY

Barring orders and injunctions enable victims to stay in their familiar domestic surroundings. However, these measures cannot completely exclude the risk of violence. In dangerous situations it may still be essential for you and your children to leave your home and take refuge in a safe accommodation (e.g., a women's shelter), even if the perpetrator has been evicted.

Note that violence tends to increase during the process of separation and divorce. Other factors which indicate an increased risk that the perpetrator will use violence include repeated violent acts, possession of weapons, dangerous threats, alcohol and narcotic drug use, obsessive jealousy and possessiveness, strict views of honour, general violent tendencies, unemployment, violence also directed against the children, especially stepchildren.

Therefore it is **IMPORTANT** for you to take careful precautions for your safety, especially if you are planning to separate from the perpetrator. In any event you should organise help and build up a support network (phone numbers of support services see p. 12).

WOMEN'S HELPLINE 0800/222 555
FREE OF CHARGE
ROUND-THE-CLOCK SERVICE

POLICE EMERGENCY
HOTLINE 133 OR 112