

## **Information by the Republic of Austria concerning Mechanisms for Prevention of Violence against Women**

### Legal basis

The "Protection Against Violence Act" Federal Act on the Protection against Domestic Violence (Bundesgesetz zum Schutz vor Gewalt in der Familie) BGBl. No. 759/1996 took effect on 1 May 1997. This act created the statutory prerequisites for fast and efficient protection of victims of domestic violence.

Further improvements followed with the amendment of the Security Police Act (Sicherheitspolizeigesetz), BGBl. I No. 146/1999, effective since 1 January 2000, and the Enforcement Code (Exekutionsordnung / EO), BGBl. I No. 31/2003, effective since 1 January 2004.

A comprehensive revision of the legal prerequisites took place with the Second Protection Against Violence Act (Zweites Gewaltschutzgesetz), BGBl. I No. 40/2009, in force since 1 June 2009, and was taken further with an amendment of the Security Police Act, BGBl. I No. 152/2013, effective since 1 September 2013.

The Protection Against Violence Act authorises the police to impose a barring order against an endangering person and to evict him from the domicile of the endangered person in case of refusal to leave. The underlying principle, "Whoever hits must leave", allows the endangered individual to remain in her/his familiar surroundings.

If prolonged protection against the endangering person is required, the endangered person can apply for a court injunction. Depending on the violent or endangering situation, this application can request that the endangering person:

- be banned for a defined period from entering the apartment and its immediate neighbourhood - "Protection against violence in apartments (Schutz vor Gewalt in Wohnungen)", section 382b of the Enforcement Code), and/or
- be banned for a defined period from staying in certain places and from contacting the endangered person - "General protection against violence (Allgemeiner Schutz vor Gewalt)", section 382e of the Enforcement Code), and/or
- refrain from any encroachments on the endangered person's privacy - "Protection against invasion of privacy (Schutz vor Eingriffen in die Privatsphäre)", section 382g of the Enforcement Code).

An interim injunction can also be issued irrespective of a barring order imposed by the police and vice versa.

To ensure comprehensive support of endangered persons, so-called Violence Protection Centres (Intervention Centres against domestic violence) were set up in all federal states - partly with regional offices.

Barring and eviction order imposed by the police

Barring and eviction order regulations are laid down in section 38a of the Security Police Act (SPG).

The police are authorised to forbid an endangering person to enter the domicile of the endangered person and its immediate neighbourhood as well as to evict him if he refuses to leave. If the endangering person doesn't comply, (police) force can be used. Such measures are contingent on the foreseeable risk (e.g. based on previous violent acts) of his committing a dangerous assault on the life, health or freedom of a person who lives in this apartment.

The protection extends to all persons living in the apartment (house) irrespective of kinship and the ownership situation (wife, live-in partner, children, relatives, but also subtenant, co-inhabitants etc.).

It is possible to impose a barring order on any person who is potentially dangerous and evict him in case of refusal to leave, if necessary by police force - i.e. the owner of the apartment as well as an ex-boyfriend who "appears" in the apartment.

In such cases, the police will confiscate the endangering person's keys to the apartment and request him to give an address for the delivery of judicial writs.

The barring order extends to the apartment (house) and its immediate surroundings (e.g. stairway, drive, garden, underground car park). The police will define the protection zone in such a way as to ensure effective protection, and will inform the endangering person about the details.

The barring order is issued for a period of two weeks, with the police supervising compliance with the order within the first three days. If within these two weeks an application for an interim injunction is filed according to section 382b, the validity of the barring order is extended to four weeks. This gives the court time to decide on the application and ensures constant protection for the endangered person.

For the validity period of the barring order, the endangering person is prohibited from entering the apartment (house) and the defined protection zone, not even with the permission of the endangered person. In the event of non-compliance, the endangering person will be fined up to 500 euro for committing a regulatory offence and can be arrested if non-compliance continues. If he threatens or even injures the endangered person, he will be prosecuted under criminal law.

Further protection measures for persons under 14 years

If (also) a person under the age of 14 is endangered, the endangering person is also to be banned from entering an institutional child care facility, the school or school day care center visited by this child and an area of 50 meters around the relevant building.

Violence Protection Centres/Intervention Centres against Domestic Violence

"Violence Protection Centres and Intervention Centres against Domestic Violence" (in German: "Gewaltschutzzentren / Interventionsstellen gegen Gewalt in der Familie") are facilities – provided

by law and publicly financed – that specialise in comprehensive support for victims of domestic violence and stalking.

When the police have imposed a barring order, they will forthwith notify the local Violence Protection Centre/Intervention Centre. The Violence Protection Centre/ Intervention Centre will then contact the endangered person, offering active help. Offers include preparing a safety plan, providing legal advice (e.g. with regard to applying for an interim injunction), as well as psychosocial support.

Also in cases of stalking the police can notify the Violence Protection Centre/Intervention Centre, which will actively contact the endangered person. Naturally, persons affected by domestic violence or stalking can also directly contact a Violence Protection Centre/Intervention Centre, i.e. without prior police intervention.

Prolonged protection by means of a court injunction

The relevant regulations are laid down in section 382b, section 382e and section 382g of the Enforcement Code (EO).

If the endangered person needs prolonged protection against the endangering person, she can apply for an interim injunction pursuant to section 382b and/or section 382e EO with the District Court (Bezirksgericht) of the place of residence of the endangered person. Such applications can be submitted without a lawyer.

However, legal advice is important for preparing all documents required by the court to make a decision. Documents include "attestations" (Bescheinigungsmittel) to prove the use of violence, such as medical evidence or photos. Further attestations are testimonies made by the affected woman or by witnesses. Legal advice is also provided by workers at the

- Violence Protection Centres/Intervention Centres (in German: "Gewaltschutzzentren / Interventionsstellen gegen Gewalt in der Familie")
- women's shelters ("Frauenhäuser") or
- women's advice centres ("Frauenservicestellen und weitere Frauen- und Mädchenberatungseinrichtungen").

The endangered person is entitled to attend the questioning in court with a trusted third party.

Interim injunction "Protection against violence in apartments"

If the endangered person cannot be expected to tolerate any further cohabitation with the endangering person because the latter has physically assaulted the endangered person or threatened her with such assault, or subjects her to considerable psychological strain, she can apply for an interim injunction pursuant to section 382b EO for the "Protection against violence in apartments (Schutz vor Gewalt in Wohnungen)". A further requirement is that the apartment must be urgently needed by the endangered person.

In such cases, the court can:

- order the endangering person to leave the apartment and its immediate neighbourhood, and
  - ban the endangering person from returning to the apartment and its immediate neighbourhood.
- Such injunctions can be issued for a maximum of six months. However, in the event of any of the proceedings listed in the Act being instituted within this period, for example divorce proceedings, it is possible to apply for an injunction to cover the period up to the termination of the proceedings.

#### Interim injunction "General protection against violence"

If the endangered person cannot be expected to tolerate any contact with the endangering person because the latter has physically assaulted the endangered person or threatened her with such assault, or seriously harms her psychological health, she can apply for an interim injunction pursuant to section 382e EO for the "General protection against violence (Allgemeiner Schutz vor Gewalt)". A further requirement is that this application does not conflict with any significant interests of the endangering person. It is not a requirement for the endangered person ever to have lived with the endangering person.

In such cases, the court can:

- ban the endangering person from being in precisely defined places (e.g. workplace of the endangered person, school or kindergarten of the children), and
- order the endangering person to refrain from meeting or contacting the endangered person.

Such injunctions can be issued for a maximum of one year; in the event of non-compliance by the endangering person, their validity can be extended for up to one more year. In the event of a concurrent application for an interim injunction "Protection against violence in apartments" and the opening of any of the related proceedings provided by law (such as divorce proceedings), the interim injunction for the "General protection against violence" can also cover the period up to the termination of the proceedings.

Regardless of the above, it is possible to bring an action to restrain the endangering person from meeting the plaintiff (the endangered person); this action can also extend the validity of the interim injunction until the court has taken its decision.

#### Interim injunction "Protection against invasion of privacy" (stalking injunction)

Another option that may be used under certain conditions is an interim injunction pursuant to section 382g EO for the Protection against invasion of privacy (Schutz vor Eingriffen in die Privatsphäre), the so-called stalking injunction. However, a barring order cannot be extended to four weeks if it was followed only by an application for a stalking injunction.

#### Violation of an Interim Injunction

If the endangering person violates an interim injunction "Protection against violence in apartments" he will be fined up to 500 euro for committing a regulatory offence. The same regulations apply if the endangering person violates an order to keep away from specified areas, to avoid an encounter with the endangered person and/or violates an order to refrain from getting into personal contact with that person or to stalk it. In case of persistent violation he can also be arrested.

The criminal offence "Persistent perpetration of violence"

Along with the Second Protection Against Violence Act, the criminal offence "persistent perpetration of violence" ("fortgesetzte Gewaltausübung", section 107b StGB) was introduced. It allows to examine acts of violence (e.g. serious threats, maltreatments, physical violence) that took place over a longer period - as they regularly do in cases of domestic abuse - in their entirety and provide for more severe punishment. The law stipulates imprisonment for up to three years. Cases of aggravating circumstances are subject to (much) higher penalties, e.g. sexual violence, persistent violence against children (up to 14 years), frail persons or handicapped persons and/or especially long duration or severe consequences of the violent acts.

Please also note the following requested data:

**Administrative data on gender-related killings of women for 2016-2018**

- Killed women 2016 (28); 2017 (36); First half of 2018 (24)

The number of women killed by their partners (intimidate partner killings) or by family members or other killings by unrelated persons but gender-related

- Women killed by family members 2016 (23); 2017 (28); First half of 2018 (21)

Number of killings of children, disaggregated by sex, in the context of gender-related violence against women

- Killed children 2016 (4); 2017 (7); First half of 2018 (1)