

**Baker
McKenzie.**

Fighting Domestic Violence

Pro Bono Initiative

Europe

In association with



Germany

Domestic Violence Legislation



“...the national civil and criminal laws offering protection against domestic violence are heavily informed by specific human rights...”

Germany

1 Legal provisions

1.1 What are the relevant statutes and codes?

The relevant legal provisions and legislation on domestic violence in Germany are as follows:

General rules

German Constitution
(*Grundgesetz der Bundesrepublik Deutschland* — GG)
([English version](#); [German version](#))

- Article 1 (1) states that human dignity is inviolable.
- Article 2 (2) guarantees the right to life, to physical integrity and to freedom of the person.
- The GG only grants claims for protection against the German state, but not direct claims against the offender.

Act on Civil Law Protection
Against Violence
([English version](#) (see page 28 ff.);
[German version](#))

The "stay-away order" (Section 1) enables the civil court, upon application by the person that has been injured, threatened or harassed, to prohibit the offender from entering the victim's home, from approaching the victim or from initiating contact with the victim. The order may be issued for an unlimited period.

- Section 2 provides that the victim may apply for the exclusive use of the common home. This applies even if the rental lease is not in the victim's name. In this case, however, the order must be limited in time.
- Section 4 provides for imprisonment of up to one year or a fine for violations of protective orders issued by the court according to Section 1 above.

Police laws of the federal states
e.g.,

- Berlin: General law for the protection of public safety and order in Berlin (only [German version](#) available)

Police laws of the federal states contain regulations that enable the police to issue a prohibition of contact against the offender for a few days or until the court decided on a "stay-away order" under the Act on Civil Law Protection Against Violence. Violations of the ban on contact are not subject to criminal sanctions, but the offender can be taken into police custody.

General rules

- Bavaria: Law on the tasks and powers of the Bavarian State Police (only German version available)
- North Rhine-Westphalia: Police Law of the State of North Rhine-Westphalia (only German version available)

German Criminal Code
(English version; German version)

- The German Criminal Code criminalizes several forms of domestic violence. For example, anyone who commits a dangerous bodily injury (e.g., by using a dangerous tool) is punished with a prison sentence for a term of between six months and 10 years (Sections 223 and 224). Insults are also punishable (Section 185).
- Sexual violence is a criminal offense, regardless of whether the victim and offender are married or in a relationship (Section 177). It is sufficient for criminal liability that the offender, against a person's discernible will, performs sexual acts on that person or has that person perform sexual acts on them. The use of force or threats is not a prerequisite for criminal liability, but it increases the penalty.
- Stalking a person in a manner that is sufficient to seriously restrict that person's lifestyle is a criminal offense (Section 238). "Stalking" includes behavior such as persistently seeking the other person's physical proximity, trying to contact the other person or persistently threatening the other person or someone close to them with injury to their life or physical integrity, health or liberty.

German Code of Criminal Procedure
(English version; German version)

The perpetrator of a repeated assault or of stalking that places the victim in danger of death or at risk of serious damage to their health may be remanded in custody ("de-escalation custody") according to Section 112a. However, the practical relevance is low.

German Civil Code
(English version; German version)

- Section 823 grants a claim for damages in case of injury to life, body, health, freedom and other rights.
- According to Section 1004 analogously, claims for injunctive relief can be asserted in the case of the repeated infringement of legal interests under Section 823. In the event of infringements, the court may impose a coercive fine or a coercive detention (Section 890 of the German Code of Civil Procedure).

- Victims of domestic violence can claim financial losses from the offender, such as medical expenses (Section 249). It is also possible to claim damages for pain and suffering in the event of injury to the body, health, freedom or sexual self-determination (Section 253 (2)).
- Section 1666 requires the family court to take necessary measures where the best interests of a child are endangered and the parents do not wish or are not able to avert the danger.

1.2 What is the controlling case law?

Germany has a civil law — as opposed to a common law — legal system. Therefore, generally, court decisions in individual cases are not legally binding. However, decisions of the higher regional courts (*Oberlandesgerichte*) and the Federal Court of Justice (*Bundesgerichtshof*) are granted a high authority and court decisions usually build on such authoritative decisions. Some court decisions have shaped the law on domestic violence in Germany. In this context, the decision of the Federal Court of Justice on the "house tyrant murder" (Decision of 25 March 2003 – 1 StR 483/02 (BGHSt 48, 255 ff.)) is noteworthy. In principle, a conviction for murder necessarily leads to the imposition of a life sentence under German law. In this decision, the court held that, despite the act of killing, which legally qualified as murder, a life sentence was not appropriate where the person killed was the partner of the accused that had mistreated the accused over many years.

1.3 What are the specific parts of the court system that address domestic violence?

The civil courts issue orders under the Act on Civil Law Protection Against Violence and under Section 1666 of the Civil Code. The family court, a judicial body within the civil courts, is usually competent (and has jurisdiction). Crimes related to domestic violence are brought to trial before the ordinary criminal courts like any other criminal misconduct.

1.4 What are potential causes of action?

- Section 823 of the German Civil Code entitles the victim to claim for damages in case of injury to life, body, health, freedom and other rights perpetrated by another person.
- It is possible to take legal action for injunctive relief in accordance with Section 1004 of the German Civil Code in the event of repeated infringements of legal interests under Section 823 of the German Civil Code. In the event of infringements, the court may impose a coercive fine or a coercive detention (Section 890 of German Code of Civil Procedure).
- Victims of domestic violence can claim financial losses from the offender, such as medical expenses (Section 249 of the German Civil Code). It is also possible to claim damages for pain and suffering in the event of injury to the body, health, freedom or sexual self-determination (Section 253 (2) of the German Civil Code).

- The Act on Civil Law Protection Against Violence allows the victim to claim for the following: (i) the exclusive use of the common home for at least six months (Section 2); and (ii) the issuance of a "stay-away order" (Section 1). In addition, it provides for imprisonment of up to one year or a fine for violations of protective orders issued by the court according to Section 1 above. This makes clear that the measures ordered by the court not only exist on paper, but also that they indeed have a real effect.

2 Introduction: framework guiding domestic violence law

2.1 Are there civil and criminal legal remedies for domestic violence victims?

Yes. Civil remedies include protective orders (including fines and the imprisonment of the aggressor for violations of such orders) and claims for damages. Criminal remedies include fines and imprisonment. See Section 4 entitled "Protection for domestic violence victims and relief granted" and Section 5 entitled "Prosecutorial considerations."

2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

Freedom from domestic violence as such is not explicitly identified as a separately codified human right. However, the national civil and criminal laws offering protection against domestic violence are heavily informed by specific human rights such as the right to life and to physically remain unharmed, as well as the most fundamental human right under the German constitution — human dignity.

2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210)?

Yes, the Istanbul Convention entered into force on 1 February 2018.

2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?

A nationwide "violence against women" helpline was introduced in 18 different languages and the law governing sexual offenses was reformed. All levels of government (the federal government, the federal states and the local authorities) are responsible for ensuring the implementation of the Istanbul Convention.

2.5 If it has not ratified or signed the Istanbul Convention, is it envisaged that your country will do so?

Not applicable. The Istanbul Convention entered into force on 1 February 2018.

2.6 If it has ratified the 1979 Convention, how has the recommendation part of General Comment No. 35 been implemented into national law?

The implementation includes, in particular, systematic help to support and counsel women affected by violence, as well as cooperation between governmental institutions and nongovernmental support offers. This also includes support facilities such as women's shelters (*Frauenhäuser*). To date, the essential legal implementation is the Act of Civil Law Protection Against Violence (*Gewaltschutzgesetz*). Most states have an action plan or other projects to implement the targets that are in line with the recommendations.

2.7 If the 1979 Convention has not ratified or signed, is it envisaged that your country will do so?

Germany has ratified the 1979 Convention, which has been in force since 9 August 1985.

3 Similarities and differences in terminology

Set out below are various terms and their definitions:

Term	Definition
Domestic violence (<i>häusliche Gewalt</i>)	Refers to all forms of physical, sexual and/or psychological violence between persons in a social relationship, mostly in a domestic setting.
Stalking	Section 238 of the German Criminal Code refers to acting in a manner that is suitable to seriously restrict another person's lifestyle by persistently: <ul style="list-style-type: none">▪ seeking the other person's physical proximity▪ trying to establish contact with the other person by means of telecommunications, or another means of communication, or through third parties▪ improperly using the other person's personal data to:<ul style="list-style-type: none">(a) order goods or services for that person(b) induce third parties to make contact with that person▪ threatening the other person, one of their relatives, or someone close to them with injury to their life or physical integrity, health or liberty▪ committing other comparable acts
Harassment	Involves constant attacks or torment (<i>die Schikanierung; die Belästigung</i>).
Victim	Is one who suffers loss, is killed or injured, etc. (<i>das Opfer</i>).
Abuser	Is someone who commits sexual violence and, in a wider context, forms of physical or psychological violence (<i>der Missbrauchstäter; der Täter</i>).
Civil protection order	Is a judicial protection option for civil courts that is provided by the Act on Civil Law Protection Against Violence (<i>die Schutzanordnung</i>).
Causes of action	Refer to the right to demand another to do, to tolerate or to refrain from doing something (<i>der Anspruch; der Klagegrund</i>).
Marital rape	Is sexual coercion, in a particularly serious case, in which the perpetrator — who is the victim's spouse — has sexual intercourse with the victim or commits such similar sexual acts on the victim that are particularly degrading, especially if they involve the penetration of the body (<i>Vergewaltigung in der Ehe</i>).

3.1 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

Generally, most terms are not defined in the relevant statutes and codes. Rather, these terms have been and are successively defined in the courts' case law.

Term	Definition
Sexual harassment	Section 184i of the German Criminal Code refers to touching another person in a sexual manner and thereby harassing that person (<i>die sexuelle Belästigung</i>).
Sexual acts	Section 184h of the German Criminal Code refers only to acts that are of some relevance to the protected legal interest in question (<i>die sexuellen Handlungen</i>).
Sexual abuse	Refers to performing sexual acts on minors or on an adult, particularly vulnerable persons entrusted to the perpetrator (e.g., sick or vulnerable institutionalized persons or prisoners) (<i>der sexuelle Missbrauch</i>).

4 Protection for domestic violence victims and relief granted

4.1 Civil protection orders

4.1.1 Are there civil protection orders available to victims of domestic abuse?

Yes, the victim may apply for civil protection orders — "stay-away orders" — under the Act on Civil Law Protection Against Violence, which include ordering that the abuser:

- not enter the home (barring order)
- not come within a certain distance of the home
- stay away from other specified places that the victim often visits, such as the workplace or school
- not contact the victim, including by telecommunications (e.g., via a telephone, text message or the internet)
- not try to meet the victim

In certain cases, the victim may stay in the home for at least six months. In addition, if immediate action is required, a victim may apply for a temporary "interlocutory" order, pending the outcome of the above main application.

The Act on Civil Law Protection Against Violence does not apply if the aggrieved or threatened person was subject to parental custody, guardianship or curatorship of the perpetrator at the time of the act. Instead, the protective standards of the laws on children apply. The family court is required to take the necessary protection measures to avert a danger to the child's best interests pursuant to Sections 1666 and 1666a of the Civil Code. These include the above-mentioned measures.

Orders under Sections 1666 and 1666a of the Civil Code are not limited to perpetrators with parental custody but also apply to third-party aggressors (e.g., the mother's boyfriend).

4.1.2 Who can petition for civil protection orders?

The "aggrieved or threatened person," meaning the victim, may apply for the protective order under the Act on Civil Law Protection Against Violence. Their parents or legal representatives must represent children under the age of 18.

A formal request for a civil protection order based on Section 1666 of the Civil Code is not necessary; the court may enact a civil protection order at its discretion if the legal prerequisites are met. The (other) parent, the Youth Welfare Office, the child or third parties such as teachers or neighbors may informally encourage the court to intervene by informing it about the circumstances of the case.

4.1.3 Are there temporary custody of a child or child support orders?

Yes. Pursuant to Sections 1666 and 1666a of the Civil Code, the family court is required to take the measures necessary to avert danger from the child. These measures include partial or complete removal from a parent's custody; instructions to seek public assistance (such as child welfare benefits and healthcare); and ordering a parent to stay away from the family home

temporarily or for an indefinite period, and to stay away from the child and certain other places the child regularly frequents. In the case of minor children (under the age of 18), the court appoints a special advocate/guardian to speak on the child's behalf.

4.1.4 Is there a provision to order the abuser to move out or stay away from places the victims frequent?

Yes. Under Section 1 of the Act on Civil Law Protection Against Violence, upon application by the person that has been injured, threatened or harassed, the court may order the abuser to stay away from the home and the specified places that are frequented by the victim (stay-away orders). The same applies under Section 1666 of the Civil Code as far as children are the victims.

4.1.5 Are there any other types of emergency, preventive and civil protection orders?

The victim may ask for emergency interim relief (see "Are there civil protection orders available to victims of domestic abuse?") for the type of orders available above. If the abuser violates the protective order under the Act of Civil Law Protection Against Violence, the court may impose a fine or imprisonment of up to one year.

4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

Direct victims can request the orders under the Act on Civil Law Protection Against Violence. The victim has to file a request in a separate civil procedure to extend the order to children if the children are direct victims themselves. A legal representative must request the orders for a child victim (under the age of 18).

A formal request for a civil protection order based on Section 1666 of the Civil Code is not necessary; the court acts *ex officio*. The court may be informally encouraged to intervene by direct or indirect victims, as well as by third parties such as the (other) parent, the Youth Welfare Office, teachers or neighbors.

4.1.7 Are there different types of civil protection orders, e.g., for a short-term period?

Depending on the circumstances, the court imposes protective orders for a limited period (e.g., six months) but the period may be extended. However, there are limits if the victim does not solely own the home. For example, if the aggressor is ordered not to enter the home of the victim that is rented by the aggressor solely or jointly with another person, the order will not exceed six months, but it can be extended up to another six months if the victim cannot find another home (see also "Are there civil protection orders available to victims of domestic abuse?" above).

4.1.8 Are *ex parte* orders permitted without the aggressor being present?

Civil (not criminal) protection orders can be issued without hearing the aggressor during the interim injunction (until the final decision is made). If the aggressor opposes this, they must be heard and the judge has to make a new decision considering the aggressor's arguments. If the judge has substantial doubts, the judge also orders oral proceedings.

4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

Not directly. Each family member has to apply for a (emergency) protection order under the Act on Civil Law Protection Against Violence. Therefore, as the legal representatives of their children, parents have to request a protection order for children against third parties separately. Parent and child matters concerning the place of residence or the surrender of the child, as well as proceedings based upon the endangerment of the best interests of the child, will have priority and the proceedings will be handled in an expedited manner. Barring orders (removal from the home) assist in protecting family members.

4.1.10 How long do the orders last?

Depending on the circumstances, the protection orders should be issued for a limited term (e.g., six months) but the term may be extended or the orders may not be limited at all. However, there are limits if the home is not solely owned or rented by the victim. For example, if the aggressor is ordered not to enter the home of the victim that is rented by the aggressor solely or jointly with another person, the order will not exceed six months, but it can be extended up to another six months if the victim cannot find another home.

4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any relevant demographic information, e.g., police reports, convictions, etc.

There is no empirical information on the number of civil protection orders since there is no formal police, state or judicial registration system. However, there are some sample studies and data regarding violence against women, as set out below:

- (German) Marina Rupp, Rechtstatsächliche Untersuchung zum Gewaltschutzgesetz. Im Auftrag des Bundesministeriums der Justiz, Bundesanzeiger. 10 August 2005. (Google translated excerpt here: [Rupp, Marina: Legal investigation into the Violence Protection Act. On behalf of the Federal Ministry of Justice, Federal Gazette 10 August 2005 — especially paragraph 7.](#))
- "Violence against women continues to rise in Germany." 25 November 2019. (This refers to a 2018 Federal Criminal Police Office (BKA) study written in German.)
- "Combating violence against women - Germany." European Institute for Gender Equality, 2017.
- UN WOMEN. Global Database on Violence Against Women — Germany: <https://evaw-global-database.unwomen.org/fr/countries/europe/germany>; includes Study: Health, Well-Being and Personal Safety of Women in Germany — a summary of central research results published in 2004.

4.2 Steps for receiving a protective order

4.2.1 What documentation is needed to obtain a civil protection order?

In temporary injunction proceedings, the victim has to provide evidence of the unlawful behavior by a statutory declaration and, if possible, a medical certificate. In the main proceedings, it is helpful to provide witness statements, police documentation, photos of injuries or damage to the home, text messages and personal records of the details of the incidents.

4.2.2 Does the victim need to attend a hearing?

Usually, the judge makes a decision in an interlocutory proceeding without hearing the victim or the abuser. In "doubtful" cases, the judge may want an oral hearing. In the main proceedings, the victim and perpetrator may be heard in separate hearings if this appears necessary to protect the victim (Section 33 (1) (2) of the Act on Proceedings in Family Matters). A hearing of the victim may also be omitted altogether if there is reason to fear significant harm to the victim's health (Section 34 (2) of the Act on Proceedings in Family Matters).

4.2.3 Can you request remedies?

Yes. The victim can file their claim for remedy with the court, including the request type, scope and duration of the remedy. However, the court retains discretionary powers to determine and impose the protective order it deems appropriate and proportionate in light of the circumstances.

The victim or the offender may appeal against the decision of the court.

4.2.4 Are there time limits?

If an interlocutory order has been issued, the court commences the main action after an application is filed. Upon the issuance of the interlocutory order, the court may set a deadline not exceeding three months, prior to which the application may not be made.

Upon an application, the court will order that the victim who obtained the interlocutory order apply to the court for the commencement of the main action within a certain deadline not exceeding three months or file an application for approval of legal aid for the main action. The interlocutory order will be rescinded if the victim does not comply with this order.

Claims for damages based on intentional injury to life, limb, health, sexual self-determination or liberty cannot be made after 30 years.

4.2.5 Are there different rules in emergencies?

The court acknowledges that there is an urgent need for immediate action when an offense under Section 1 of the Act on Civil Law Protection Against Violence was committed or, when based upon specific circumstances, there is a fear that such an offense will be committed. Civil protection orders are usually imposed in interlocutory proceedings in one to five days without hearing the victim and the offender, and usually in one to two weeks in the case of oral proceedings. The actual trial takes approximately 30-60 minutes. In both cases, they take up less time than normal civil proceedings. The order has immediate effect.

4.3 Judicial discretion

4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

The judge has discretionary power to gather evidence and arrange the protective order. The civil judge can make a different order from the type, scope or duration requested by the victim, but only if the order is less extensive or long.

4.3.2 Are there age limits on who can obtain orders?

No; however, legal representatives will request orders relating to children under 18.

4.4 Restitution and remedies available to victims

4.4.1 Can victims obtain reimbursement for costs and restitution paid?

A victim can claim damages for injury to their life, body, health, freedom, property and other rights. The victim can claim financial losses, such as medical expenses. For injury to their body, health, freedom or sexual self-determination, the victim may claim damages for pain and suffering.

4.4.2 Can they recover wages and profits lost?

When a person is injured, the aggressor may have to compensate for the livelihood or advancement of the victim. Damages also include lost profits.

4.4.3 Is a separate civil process required?

If the family court is competent to issue a protection order — relevant to cases in Sections 1 and 2 of the Act on Civil Law Protection Against Violence — then a separate civil process is required for restitution and remedy because, for those issues, the civil courts have the judicial competence and not the family courts.

5 Prosecutorial considerations

5.1 Police procedures

5.1.1 When do the police get involved in domestic disputes or legal actions?

The police get involved in cases where the affected person or other persons (such as relatives, friends or neighbors) have called the police by dialing 110 or by reporting the crime/criminal complaint to any police station.

5.1.2 What circumstances affect law firm involvement?

A law firm is involved if the affected person turns to a law firm to receive full legal advice on their rights. In the further course, the affected person might want their rights to be asserted in court by the law firm.

German associations like Weisser Ring offer victims of violence counseling and an assistance check for the first consultation with a lawyer.

In some cases, the victim can apply to have their own lawyer appointed by the court. The lawyer will then represent the victim's interests in criminal proceedings and in the court.

5.2 Standard of proof

5.2.1 Is proof required by any legal means?

To prove domestic violence, documentation of injuries or threats is necessary.

5.2.2 Are there any requirements regarding evidence and documents?

Evidence in criminal proceedings is limited to certain types of evidence, as well as experts, witnesses, documents/certificates and examination. In proceedings before the family court (e.g., applications for orders under the Act on Civil Law Protection Against Violence), there is no general limitation to certain types of evidence but the court may order that the types of evidence be limited as in criminal proceedings.

5.2.3 Is proof "beyond a reasonable doubt" required?

Yes, reasonable doubts must be eliminated for a court decision.

5.2.4 Is the standard of proof different for *ex parte* orders?

In case of *ex parte* orders, it is sufficient to present the facts credibly.

5.3 Affirmative defenses

5.3.1 Are affirmative defenses available to the accused?

The accused can deliver affirmative defenses but the judge will evaluate these statements.

5.3.2 Is willful intent required?

In case of criminal convictions, willful intent is required. It is also required for orders based on the Act on Civil Law Protection against Violence. Orders based on section 1666 of the Civil Code do not require willful intent; it is sufficient that the best interests of the child are endangered.

5.3.3 Are false accusations punishable for the victim?

Section 164 of the German Criminal Code (Strafgesetzbuch) states that false accusations are punishable if the alleged perpetrator is innocent. The mere exaggeration of facts is not necessarily punishable.

Under certain circumstances, criminal liability may arise from Sections 185 (insult), 187 (defamation) and 153 (false testimony as a witness) of the German Criminal Code.

5.3.4 How is consent discussed in the law?

As legal justification, consent usually removes (criminal) liability. However, the scope of legally effective consent by the victim is limited; for example, it is not legally effective to consent to serious physical injury. The same applies to enforced consent.

5.3.5 Is self-defense or insanity a defense?

Self-defense can justify a criminal action, as stated in Section 32 of the German Criminal Code.

Section 20 of the German Criminal Code states that in case of mental disorder, such as insanity, there is no criminal guilt.

Section 1 (3) of the Act on Civil Law Protection Against Violence states that the court may order protection measures if a person has committed the offense in a state of mental disturbance rendering them completely incapable of the free exercise of will as a result of the consumption of alcoholic beverages or similar substances. In all other cases of self-defense or complete insanity, such an order is not possible.

5.4 Witness status

5.4.1 What is a witness's duty to testify honestly and completely?

The witness's duty is to testify honestly and completely, and not to give false unsworn testimony or to commit perjury.

5.4.2 Who may abstain from testifying in certain situations?

Sections 52-55 of the German Code of Criminal Procedure provide for proceedings before the criminal court, among other things, that a relative, fiancée/fiance or spouse of the accused has the right to refuse to testify, as well as a witness who would incriminate himself or herself or their relatives. The same principles apply in proceedings before the family court (Section 29 of the Act of Proceedings in Family Matters in conjunction with Sections 383 and 384 of the Code of Civil Procedure).

5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

As described above, a witness can refuse to testify in case of a relative/fiance(e)/spouse relationship or in case the witness would incriminate his or her relatives.

The criminal court can decide that a witness may testify in a separate room via video transmission if there is an imminent risk of serious detriment to the well-being of the witness (Section 247a of the German Code of Criminal Procedure).

5.4.4 What is the impact of domestic violence on witnesses who are children?

There is no particular legal impact, but there are some regulations that provide protection, such as testifying in a separate room or via video, the exclusion of the public, the attendance of parents and the participation of a youth protection organization or victim protection organization.

5.4.5 Can children be called upon to testify?

Children can be witnesses if an understandable statement can be expected. There is no fixed age limitation. Parents may not testify for their children.

5.4.6 What is the effect of a child victim on the charges against the offender?

In general, the law does not make a distinction between child and adult victims concerning charges. The consequences for the victim caused by the offense can be taken into consideration by the court. The sexual abuse of children may lead to higher penalties than the sexual assault of adults as the Criminal Code makes a distinction between offenses in this respect. Parents may file a criminal complaint for their child.

Children can access support from the following organizations:

- children and youth telephone (*Kinder- und Jugendtelefon*) +49 800 111 0333
- online advice www.youth-life-line.de
- youth welfare office
- the child protection services and child protection agencies of all states

5.5 Penalties and sentencing; penalty enhancements

5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

German law provides for a range of penalties for each offense, within which a penalty is determined by the criminal court. When fixing the penalty, the court weighs the circumstances that speak in favor of and those that speak against the offender. A punishment-free past life may be taken into consideration by the court when fixing the penalty. Low prison sentences for first-time offenders are usually suspended on probation.

Section 4 of the Act on Civil Law Protection Against Violence states that anyone who violates a protection order will be punished by a fine or imprisonment of up to one year.

Section 223 of the German Criminal Code punishes a person who causes bodily injury with a fine or prison sentence. Sections 224 and 226 regulate dangerous and serious bodily injuries with minimum prison sentence penalties.

Section 177 of the German Criminal Code states that anyone who commits sexual crimes will be punished with a prison sentence.

Section 238 of the German Criminal Code states that anyone who commits stalking will be punished with a fine or a prison sentence of up to three years.

5.5.2 Are there criminal penalties?

Both fines and imprisonment act as criminal penalties. The judge imposes these if protection orders are violated or if criminal offenses have been committed, such as assault and battery offenses, sexual offenses and stalking.

5.5.3 What is the result of a violation of an existing order for protection?

Pursuant to Section 4 of the Act on Civil Law Protection Against Violence, the violation of an existing order for protection is a criminal offense and it is punishable by a prison sentence of up to one year or by a fine.

5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

As a long-term protective measure, a judge can determine that offenders must comply with protection orders, such as orders to leave the common home for a longer period or permanently, to maintain a certain distance or to avoid all contact.

In case of the violation of those protection orders, the judge will impose a fine or liberty restriction.

5.6 Post-release restrictions

5.6.1 Does the law notify the victim of the offender's release from custody?

A victim is entitled to various rights in criminal proceedings. As particularly vulnerable victims, victims of domestic violence are notified of the offender's release from custody upon request.

6 Special issues

6.1 Battered woman syndrome

6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered woman syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

Yes. Under the German Criminal Code, a person should not be punished if they exceeded the limits of self-defense because of confusion, fear or fright. In addition, the defense of necessity is available when a person commits an unlawful act to avert a present danger that cannot otherwise be averted. A noteworthy case is the 2003 "house tyrant murder" decision of the Federal Court of Justice in which a woman was sentenced to four years in prison, rather than a life sentence, for killing her sleeping husband who had severely physically abused her over a 15-year period even though the act was not justified by self-defense or necessity.

6.2 Domestic violence in the workplace

6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

An employer has to comply with some duties of care with regard to employees. In this context, employees can sue for compliance with the duties of care. However, this primarily relates to safety and equipment in the workplace.

In relation to domestic violence, a workplace policy is a self-commitment by companies to take a stand against domestic violence internally and externally.

6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

Injured employees may take sick leave and they will continue to be paid. This also applies to psychological injuries. Incapacity to work must be analyzed in each individual case and, depending on the duration, confirmed by a physician. A blanket statement without regard to further aggravating circumstances would be difficult to enforce.

6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

The taking of leave linked to certain events or occasions may be agreed with the employer.

Section 616 of the German Civil Code provides for continued remuneration if the employee is prevented from performing services through no fault of their own. This includes, in particular, participation in a family event involving close family members, such as a wedding or funeral, but it can also include the need to care for other close family members if there are no alternative care arrangements and the care is necessary according to medical evidence.

6.3 Immigration

6.3.1 Does the law include provisions, which are intended to prevent abusers who are citizens or permanent residents of your country from using immigration laws to perpetrate domestic violence against their spouse?

In general, an individual's opportunity to be granted citizenship, residence or asylum in Germany is not negatively affected by approaching or seeking help from the national authorities in Germany to receive protection from domestic violence. This is the case regardless of whether the spouse is German, a permanent resident in Germany or neither.

However, problems may arise where a victim only has a derivative right of residence in Germany. In this case, a divorce from the violent spouse may lead to a loss of the right to residence in Germany. Under specific conditions, the right to residence may continue to exist for a limited period despite a divorce. The victim will have an independent right of residence in Germany for one year after the divorce, where the spouses have lived in marital cohabitation lawfully for at least three years (in accordance with Section 31, paragraph 1, No. 1 of the German Residence Act — *Aufenthaltsgesetz*). However, the requirement of having lived together in marriage for three years is waived where necessary to avoid a particular hardship. Such hardship is explicitly considered to exist in the case of domestic violence.

6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

There are no specific legal immigration remedies for immigrants for having cooperated with national law enforcement on domestic violence. However, typically, the national authorities and courts have a margin of appreciation in decisions on a right to residence or asylum. Cooperation with law enforcement on a domestic violence case may be taken into account as a positive factor. Cooperation with law enforcement authorities will not have a negative impact on the battered immigrant's perspective to be granted a right of residence or asylum.

6.3.3 Does domestic violence law discuss asylum accessibility?

German domestic violence law does not directly discuss asylum accessibility.

Domestic violence suffered by the asylum seeker in their state of origin is only an exceptional ground for asylum. Generally, individuals in Germany are granted at least the same rights as provided for under the UN Convention Relating to the Status of Refugees as a minimal standard (Section 2 of the German Asylum Act — *Asylgesetz*). Systematic, gender-based violence in the state of origin may constitute a well-founded fear of persecution because of "a particular social group" and, therefore, a ground for asylum, only if committed by state officials. Therefore, domestic violence committed only by the victim's spouse or family without the systematic involvement of the state is usually not a sufficient ground for asylum in accordance with German jurisprudence.

Asylum seekers subject to domestic violence in Germany do not benefit from specific asylum rights for the fact of being victims of domestic violence. The occurrence of domestic violence in Germany does not lead to an asylum right or a ban to deport the victim. However, depending on the concrete circumstances of the case, it may lead to a ban on deportation where the asylum seeker will presumably be a victim of domestic violence in their state of origin by the offender's family.

However, the offender, despite having been granted a right to asylum, may be expelled if the offender is for grave reasons considered a threat to the security of Germany. In individual cases, this may apply to domestic violence offenders as well.

6.4 Armed forces

6.4.1 Can a victim seek a military protective order if the abuser is in active military?

The victim would have to seek a civil protection order since the civil courts are responsible for issuing a protective order when a member of the military is the abuser. There are no military courts in Germany.

6.5 Child custody and child/spousal support

6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

The child's best interest must always be taken into account with any court measures affecting a child. The court will apply two tests:

1. Is it in the best interest of the child to end the shared custody of both parents?
2. Which parent's custody is in the better interest of the child?

The court may proceed to take action to remove children from a dangerous situation. In accordance with Sections 1666 and 1666a of the German Civil Code, the court may ban the offender from using the home, prohibit contact, take away physical custody, etc. The court can issue warnings, orders and prohibitions, such as prohibition on contact and the removal of the right to determine the child's place of residence or of parental custody to avert danger to the child. A decision that restricts or excludes the right of contact for a long period or permanently may only be made if the best interests of the child are likely to be endangered (Section 1684 (4) of the German Civil Code). The court can order supervised access, which entails visitation in the presence of a familiar person or an employee of the Youth Welfare Office or another organization. For example, for the child's protection, the court can order that contact may only be provided under the presence of a third party (Section 1684 (4) of the German Civil Code). This is referred to as "accompanies contact" and it allows the family court to ensure that contact with the child is in a neutral place and in the presence of a specialist. One can also apply to the relevant family court for temporary sole custody/parental care of the children to avoid putting them at risk. Irrespective of a custody order, a parent has the right to access their children. However, if the victim or the children are at risk or the children witness violence, the victim can apply to the family court for temporary or permanent suspension of this right of access.

6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

A competent youth welfare office is heard by the court in protection against violence proceedings. In addition, the court can appoint a guardian to act as the child's attorney who will represent the child's best interests and bring them into the proceedings. In accordance with Section 1666 of the German Civil Code, when the physical, mental or psychological best interests of the children or their property are endangered and the parents are not sufficiently willing or able to avert the danger, the child will be officially protected by the competent family court. Lastly, without hearing the parties' concerns, the court may consider issuing a temporary injunction immediately in case of danger to a child's well-being.

6.6 Housing rights of domestic violence victims

6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

The Civil Code requires certain conditions to be satisfied before a landlord can terminate a rental agreement. The fact that a tenant has become a victim of domestic violence does not legally justify eviction from the home but there are no laws that explicitly prevent such a situation.

6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

In Germany, housing contracts are usually not limited in time and can be terminated by the tenant at any time with a three-month notice period. An extraordinary termination without notice is usually not possible in case of domestic violence because the reasons for an extraordinary termination must lie within the sphere of influence of the contractual partner, i.e., the landlord.

6.6.3 Can an order exclude the abuser from the residence?

By an order, the police can exclude the abuser from the residence immediately. If there is a risk of further violent acts, the police can issue an order preventing return. In some states, police can also issue a temporary ban on contacting and approaching the victim.

Section 2 (1) of the Act on Civil Law Protection Against Violence states that the injured person may request to leave the jointly used residence for sole use.

6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

There are some restrictions in the German Civil Code on the ability of the spouse to sell the joint house, even if one of the spouses owns it. The application of those restrictions depends on the legal matrimonial property regime.

Furthermore, Section 2 (4) of the Act on Civil Law Protection Against Violence states that if the victim has been given the residence for sole use, the abuser must refrain from doing anything that is likely to make it difficult or impossible for the victim to exercise the right of use.

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