Fighting Domestic Violence - Germany

1. Legal provisions

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# 1.1 What are the relevant statutes and codes?

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

German Constitution (*Grundgesetz der Bundesrepublik Deutschland* — GG) ([English version](https://www.gesetze-im-internet.de/englisch_gg/); [German version](https://www.gesetze-im-internet.de/gg/index.html))

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](https://www.bmfsfj.de/blob/121760/b227b8b02448a576045c444efe81b792/mehr-schutz-bei-haeuslicher-gewalt-englisch-data.pdf) (see page 28 ff.);[German version](https://www.gesetze-im-internet.de/gewschg/))

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](http://gesetze.berlin.de/jportal/portal/t/1e6t/page/bsbeprod.psml?pid=Dokumentanzeige&amp;showdoccase=1&amp;js_peid=Trefferliste&amp;fromdoctodoc=yes&amp;doc.id=jlr-ASOGBE2006rahmen&amp;doc.part=X&amp;doc.price=0.0&amp;doc.hl=0) available)

Bavaria: Law on the tasks and powers of the Bavarian State Police (only [German version](https://www.gesetze-bayern.de/Content/Document/BayPAG) available)

North Rhine-Westphalia: Police Law of the State of North Rhine-Westphalia (only [German version](https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=3120071121100036031) 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.

German Criminal Code ([English version](https://www.gesetze-im-internet.de/englisch_stgb/); [German version](https://www.gesetze-im-internet.de/stgb/index.html))

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](https://www.gesetze-im-internet.de/englisch_stpo/); [German version](https://www.gesetze-im-internet.de/stpo/index.html))

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](https://www.gesetze-im-internet.de/englisch_bgb/); [German version](https://www.gesetze-im-internet.de/bgb/index.html))

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 Section823. 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 (Section253 (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.

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