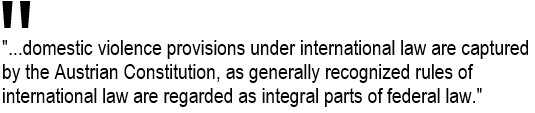
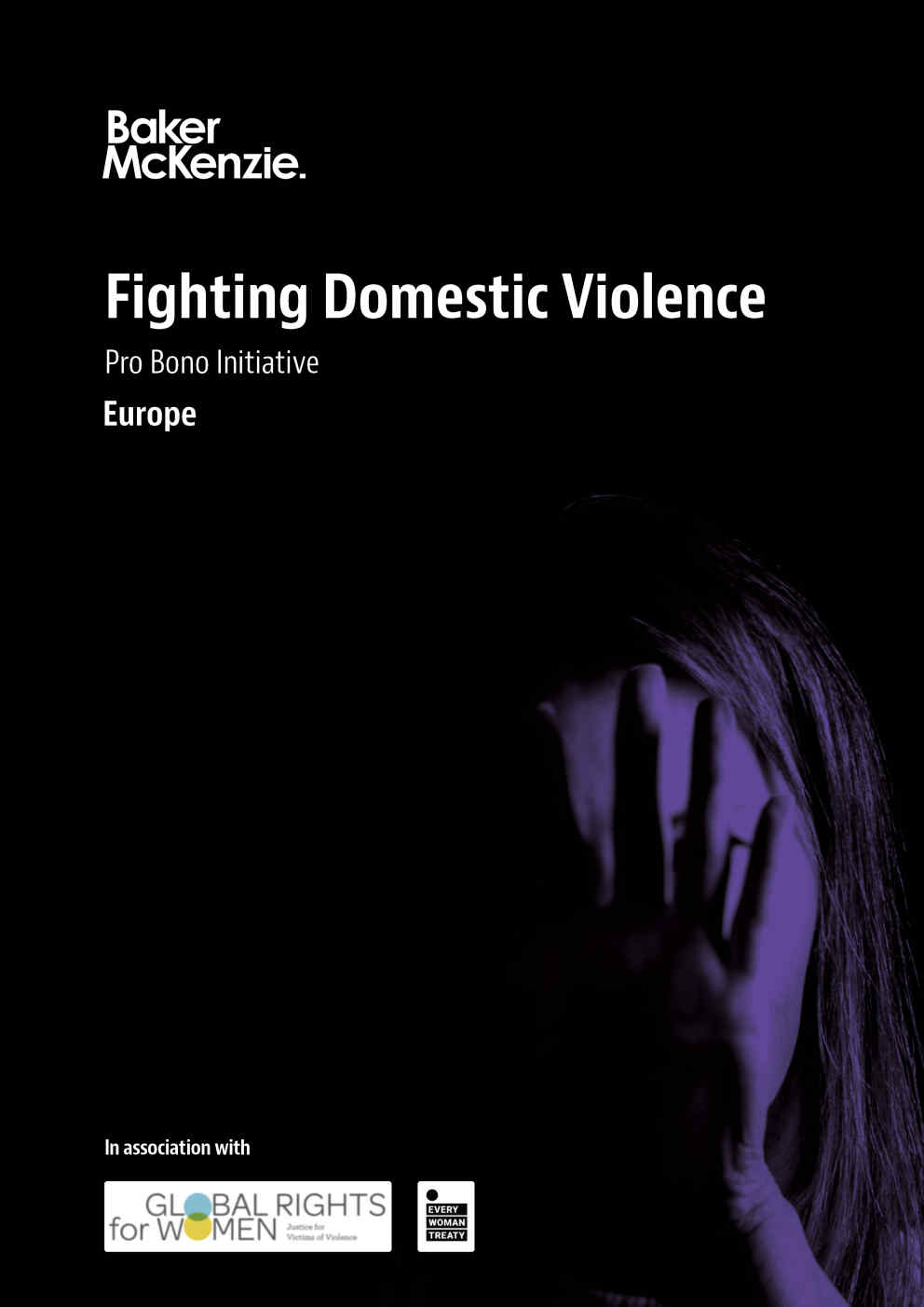
Fighting Domestic Violence - Austria

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |



[Austria Full Report](https://resourcehub.bakermckenzie.com/en/-/media/fighting-domestic-violence/reports/reports/2021_fdv_austria.pdf?sc_lang=en)

**How to use and navigate this report**

# 1. Legal provisions

## 1.1 What are the relevant statutes and codes?

The relevant statutes in Austria are as follows:

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

The amendment to the Security Police Act (*Sicherheitspolizeigesetz*, *SPG*) BGBl. I No. 146/1999[2] ("**Security Police Act**"), effective since 1 January 2000, brought further improvements together with the Enforcement Code listed under (c).

The Enforcement Code (*Exekutionsordnung*/*EO*) BGBl. I No. 31/2003[3] ("**Enforcement Code**") has been effective since 1 January 2004.

The Second Protection Against Violence Act (*Zweites Gewaltschutzgesetz*) BGBl. I No. 40/2009[4] ("**Second Protection Against Violence Act**") has been in force since 1 June 2009 and it was taken further with an amendment to the Security Police Act BGBl. I No. 152/2013,[5] effective since 1 September 2013.

## 1.2 What is the controlling case law?

Austria is a civil law country, so there is no case law. Court decisions do not have a binding force in Austria.

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

The police and the (criminal and respective civil) district court (*Bezirksgerichte*) address domestic violence.

In Austria, compensation can be sought from the perpetrator as part of the criminal proceedings or separately through civil law remedies.

**District courts**: Legal matters related to domestic violence and criminal cases involving sex offenses are assigned to the same division of the court.

**Courts of first instance**: Legal matters related to domestic violence are always referred to the same appellate court and sex offenses are always assigned to the same division of the court.

**Supreme Court**: There is an expert committee on matters pertaining to family law that is also responsible for legal matters dealing with domestic violence.

## 1.4 What are potential causes of action?

**(a) Barring order according to the Security Police Act**[6]

If you or your children are subjected to physical, psychological or sexual violence in your social environment or are repeatedly persecuted and harassed (stalked), a barring order can be issued by the police.

**(b) Long-term protection by means of a temporary injunction according to the Enforcement** **Code**[7]

These injunctions can take the following forms under the Enforcement Code.

Protection in the sphere of living[8] (*Schutz vor Gewalt in Wohnungen*): If violence is committed against you in your home by someone who lives in the same household (e.g., husband, live-in partner, father, flatmate, etc.).

A temporary injunction can be applied for if physical abuse or threats make life with a violent person intolerable.[9] A temporary injunction can also be applied for in the event of psychological violence that seriously impairs the victims' psychological health ("General protection against violence" (*Allgemeiner Schutz vor Gewalt*)).

Refrain from encroaching on the endangered person's privacy: "Protection against invasion of privacy" (*Schutz vor Eingriffen in die Privatsphäre*).[10]

**(c) Protection against stalking**

In Austria, stalking has constituted a punishable act since 1 July 2006 under the term "insistent persecution."[11]

**(d) Persistent perpetration of violence**

Along with the Second Protection Against Violence Act, the criminal offense "persistent perpetration of violence" (*fortgesetzte Gewaltausübung*) was introduced.[12] It allows the courts to examine acts of violence (e.g., serious threats, maltreatments and 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 old), frail persons or disabled persons and/or especially long durations or severe consequences of the violent acts.

**(e) Istanbul Convention**

Austrian criminal legislation contains a comprehensive list of aggravating circumstances,[13] which fully complies with the requirements under the Istanbul Convention. As a result, offenses against life or limb and sexual offenses committed against a current or former spouse or partner carry an aggravated sentence.

# 2. Introduction: framework guiding domestic violence law

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

Yes, the Protection Against Violence Act[14] created the statutory prerequisites for the fast and efficient protection of victims of domestic violence. Further enhancements were implemented with the amendment of the Security Police Act in 2000 and the Enforcement Code in 2004. A comprehensive revision of the legal prerequisites took place with the Second Protection Against Violence Act and it was taken further with an amendment to the Security Police Act.

In addition to the penalty that can be imposed on the offender under the Criminal Code, claims for compensation for **pain and suffering** usually arise on the part of the victim after an assault. The offender may therefore be subject to a fine, imprisonment and additional financial losses due to the assertion of claims for damages under civil law, which also includes compensation for pain and suffering for the victim.[15]

## 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)?

It does not seem that domestic violence is identified in national law as a human right. Based on information found, domestic violence has recently been identified as a major topic of human rights issues.[16] Although Austria is not a member of the UN Commission on the Status of Women (CSW), it actively participates as a member.

However, domestic violence provisions under international law are captured by the Austrian Constitution, as generally recognized rules of international law are regarded as integral parts of federal law.[17]

In addition, offenses such as serious assault and bodily harm with serious long-term consequences are legislated for under the Penal Code, indirectly covering domestic violence.[18]

## 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)?

The Istanbul Convention was signed on 11 May 2011, ratified on 14 November 2013 and came into force on 1 August 2014 in Austria. In accordance with the convention, when a claim of domestic violence is made, the police issue an emergency barring order, which guarantees the immediate protection of victims or persons at risk in their home in Austria. Administrative emergency barring orders can also be requested to provide protection to persons at risk preventively before they are victimized.[19] Emergency barring orders in Austria are completely separate from the criminal investigation and do not require sufficient evidence to be implemented — it is utilized as a protection mechanism for the victim.[20]

The 1979 Convention was signed on 17 July 1980 and ratified on 31 March 1982 in Austria. Under the 1979 Convention, Austria is obligated to protect individuals against domestic and sexual violence and harassment. This includes implementing adequate legal measures and systems, including appropriate remedies, the state's liability for acts/omissions committed by its agents and repealing all laws that directly or indirectly excuse or facilitate violence.

The Protection Against Violence Act authorizes the police to impose a barring order against an endangering person and to evict them from the domicile of the endangered person in case they refuse to leave. The underlying principle "whoever hits must leave" allows the endangered individual to remain in their familiar surroundings.

As discussed in Section 1, 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 neighborhood

be banned for a defined period from staying in certain places and from contacting the endangered person

refrain from encroaching on the endangered person's privacy

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, Violence Protection Centers (*Gewaltschutzzentren*) were set up in all federal states — partly with regional offices.[21] There are nine Violence Protection Centers across Austria, all offering free support and counseling services to victims of domestic violence and stalking.[22]

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

Please refer to Section 2.3.

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

Please refer to Section 2.3.

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

Please refer to Section 2.3.

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

The 1979 Convention was signed on 17 July 1980 and ratified on 31 March 1982 in Austria. In addition, Austria signed the [Convention on the Elimination of all Forms of Discrimination Against Women](http://www.un.org/womenwatch/daw/cedaw/) of 1979.

As mentioned above, Austria is currently not a member of the CSW, but it actively participates as an observer. An Austrian delegation attends the annual meeting of the CSW every year. The UN Entity for Gender Equality and the Empowerment of Women (also known as UN Women) and the UN Population Fund are important partner organizations for strengthening women's rights in Austria.[23]

# 3. Similarities and differences in terminology

## 3.1 Domestic violence

This refers to physical assault as well as acts such as insults, beatings, rape, imprisonment, threats, being devalued, being morbidly jealous, control, being deprived of money, destroying property, being terrorized by phone or harming pets.[24]

## 3.2 Stalking

This is where a person insistently persecutes another person against their will and impairs the victim in their way of life in an intolerable way, including repeated persecution, harassing phone calls, emails or other communication.

## 3.3 Harassment

Austrian law does not provide definitions for harassment.

## 3.4 Victim

Austrian law does not provide definitions for a victim.

## 3.5 Abuser

Austrian law does not provide definitions for an abuser.

## 3.6 Civil protection order

Please see the answer under "Are there civil protection orders available to victims of domestic abuse?" in Section 4.1 entitled "Civil protection orders."

## 3.7 Causes of action

Austrian law does not provide definitions for causes of action.

## 3.8 Marital rape

Austrian law does not provide definitions for marital rape.

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

**Suspect**

This refers to any person against whom an initial suspicion is established.[25]

**Accused**

This refers to a suspect as soon as he is specifically suspected, based on certain facts, to have committed a criminal act and investigative measures are being carried out.[26]

**Underage**

This refers to a person who has not yet reached 14 years old.[27]

**Minors**

This refers to a person who has not yet reached 18 years old.[28]

**Dangerous threat**

This refers to a threat of harm to the body, freedom, honor, property or the highly personal area of life by making accessible, announcing or publishing facts or pictures that are likely to relate to the threatened person.[29]

# 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 main forms of protection orders available in Austria are as follows:

emergency barring orders

civil (law) protection orders

protection orders issued by the criminal justice system

Austrian legislation authorizes a member of the police to impose an emergency barring order against an abuser and to evict the abuser from the residence in the event that the abuser poses a threat and refuses to leave. The underlying principle is "whoever hits must leave," which allows the victim to remain in the residence. The emergency barring orders are issued for a term of two weeks and compliance is monitored by members of the police within the first three days. If the victim applies to the court for a civil protection order (see below), the duration of the emergency barring order can be prolonged to four weeks, which gives the court time to decide on the victim's application and enables continued protection to the victim.[30] Emergency barring orders are limited to the home (residence), excluding protection at the workplace.[31]

In addition, upon the application of the victim, a civil protection order can be issued by the court for up to 12 months. A civil protection order can include different provisions — depending on the situation — such as: (i) a prohibition from entering the premises/apartments; (ii) a prohibition from staying in certain places and contacting the victim; and (iii) a prohibition from evading privacy. An application for a civil protection order can be submitted regardless of whether an emergency barring order has been imposed; filing the application is free of charge.

Based upon the reviewed information, the protection orders are issued by the criminal justice system, but they are not commonly used and do not form a part of a set of standard measures protecting women against violence. In addition, they cannot be applied immediately because there are no special or fast-track courts.[32]

## 4.1.2 Who can petition for civil protection orders?

Both civil protection orders and emergency barring orders can be petitioned for directly by the victim of domestic violence. As mentioned above, the victim can apply for a civil protection order regardless of whether an emergency barring order has been imposed by members of the police. With respect to minors under the age of majority (18 years old), a nonviolent parent (or the youth welfare officer) can apply for a civil protection order on their behalf.[33]

Emergency barring orders protect every person at risk, without discrimination on any ground. It is not necessary for the relevant person/victim to be related to the abuser in any way or that they live together. The law also protects old people from violence by caretakers, as well as young people who are threatened at home by their peers. Migrants, as well as undocumented women migrants, have equal rights in terms of protection against domestic violence.[34]

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

Based upon the reviewed information, the Protection Against Violence Act does not appear to include provisions relating to the temporary custody of a child. However, if a child under 14 years old is endangered, then the abuser may be prohibited from entering an institutional child care facility, the school or school day care center visited by the child and an area of 50 meters around any such premises.[35]

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

Yes. See the answer under "Are there civil protection orders available to victims of domestic abuse?" above.

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

No other types of orders were identified in the course of our review.

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

Yes. Both emergency barring orders and civil protection orders can be requested directly by the victim of domestic abuse. With respect to minors under the age of majority (18 years old), a civil protection order can be requested by a nonviolent parent (or the youth welfare officer) on their behalf. See the answer under "Who can petition for civil protection orders?" above.

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

Yes. As mentioned above, an emergency barring order is a short-term protection order applied by members of the police for a duration not exceeding two weeks (subject to a possible extension to an additional four-week period). See the answer under "Are there civil protection orders available to victims of domestic abuse?"

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

Yes. Based upon the reviewed information, the emergency barring orders, in case of urgency, can be granted in an *ex parte* manner without notice to or the presence of the respondent/aggressor, provided that adequate safeguards are in place allowing the subsequent review of the order, notification of the respondent and providing them an opportunity to challenge the order.[36]

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

Yes. Emergency barring orders (imposed by the police) extend protection to all persons living in the apartment/residence, such as a wife, partner, children, family members, cohabitants, etc.[37] This applies to civil protection orders as well.[38]

## 4.1.10 How long do the orders last?

The duration of the emergency barring order is two weeks, subject to a possible extension to an additional four-week period. Civil protection orders can be issued for a longer term (up to 12 months). See the answer under "Are there civil protection orders available to victims of domestic abuse?" above.

## 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 demographics information, e.g., police reports, convictions, etc.

We were unable to find any resources (in English) including most recent information on how often civil protection orders are issued and any police reports, convictions, etc.

## 4.2 Steps for receiving a protective order

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

To obtain a civil protection order, an application must be filed with the district court of the victim's place of residence. The application can be made in writing or verbally during the office hours of the court. In urgent cases, the court is obligated to accept the application outside of regular office hours. There is no fee for filing the application with the court. Evidence of violence must be presented to the court, e.g., police reports, statements by the victim, forensic findings, etc.[39]

Regarding emergency barring orders, there is no specific set of documentation that is needed to obtain the emergency barring order. The basic step for obtaining the emergency barring order is for the victim to contact the police as soon as possible after the incident occurs. Members of the police are obligated to intervene promptly in cases of violence. The police officer must evict the abuser from the residence/apartment immediately so that the victim can be safe.[40]

## 4.2.2 Does the victim need to attend a hearing?

Reviewed materials and information do not appear to address this question. However, as noted above, evidence of violence must be presented to the court, such as statements by the victim, forensic findings, etc. Active involvement from the victim is presumably needed.

## 4.2.3 Can you request remedies?

The Protection Against Violence Act does not appear to include any provisions relating to remedies, except for those already discussed in Sections 4.3 and 4.4.

## 4.2.4 Are there time limits?

It does not appear that there are any time limits imposed by the legislation, although emergency barring orders and civil protection orders last for a certain, limited time period, as described above. See the answer under "Are there civil protection orders available to victims of domestic violence?" above.

## 4.2.5 Are there different rules in emergencies?

It does not appear that there are different rules in emergencies, based upon the reviewed information and materials. The exceptions to this statement are: (i) in urgent cases, the court must accept the victim's application for the civil protection order outside of regular office hours (see the answer under "What documentation is needed to obtain a civil protection order?" above); and (ii) in urgent or dangerous cases, the civil protection order can be enforced through the police, as opposed to the court bailiff.[41]

## 4.3 Judicial discretion

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

Based upon the reviewed materials, we understand that the factors that are considered when deciding whether to grant a civil protection order are as follows:

whether physical abuse or the threat of abuse is in place and whether it makes life with the abuser intolerable

whether there is psychological violence that seriously affects the victim's mental health[42]

The reviewed materials do not appear to indicate that the judge must grant a civil protection order upon the satisfaction of the above criteria. Therefore, it is not excluded that judicial discretion might be involved in granting a civil protection order and determining the term for which the civil protection order will run.

An order for a civil protection order can be made by the court whether or not the respondent/abuser is present at the proceedings (or whether the abuser has been notified of the proceedings), although the courts usually provide the opportunity for the abuser to be present and heard at the proceedings.[43] There appears to be leeway in that respect, i.e., courts may provide an abuser, at their discretion, with an opportunity to be heard at the proceedings.

## 4.3.2 Are there age limits on who can obtain orders?

It does not appear that there are any age limits, except that, with respect to minors under the age of majority (18 years old), a civil protection order must be requested by a nonviolent parent (or the youth welfare officer) on their behalf. See the answer under "Who can petition for civil protection orders?" above.

## 4.4 Restitution and remedies available to victims

## 4.4.1 Can victims obtain reimbursement for costs and restitution paid?

Yes. The courts have the ability to award compensation costs for loss of income, financial support for any long-term care, medical aid, psychotherapy or psychosocial crisis intervention of up to 10 counseling sessions. In addition, there may be lump-sum compensation ranging from EUR 2,000 to EUR 12,000 where injuries causing harm to life or health are involved.

Compensation may be sought from the abuser as part of criminal proceedings or separately through civil law remedies. If compensation cannot be obtained from the abuser directly, the Law on Victims of Crimes provides that compensation is payable by the state for any criminal behavior that led to bodily injury or death, provided that any such crime carries a prison term of a minimum of six months.

Compensation resulting from criminal proceedings is dependent on a guilty verdict.

Certain reviewed materials indicate that the criteria for the state compensation set forth in the Law on Victims of Crimes may exclude certain classes of women/victims from eligibility. First, the law excludes migrant women if they were unlawfully resident in Austria at the time of the offense or if their respective country offers a comparable compensation scheme. Second, if a woman waives her right to seek compensation from the abuser, she will cease to be eligible for the state compensation. Third, where a recourse action is taken by the state against the abuser for any compensation paid to the victim, this may lead to financial burden on the victim and her family/children because the abuser may no longer be able to pay certain payments to his family, e.g., alimony.[44]

## 4.4.2 Can they recover wages and profits lost?

Yes. Compensation includes loss of income.

## 4.4.3 Is a separate civil process required?

Compensation may be sought as part of either criminal proceedings or separately through civil law remedies. See "Can victims obtain reimbursement for costs and restitution paid?" above.

# 5. Prosecutorial considerations

## 5.1 Police procedures

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

The police have an obligation to investigate any suspected criminal offense. A victim of domestic violence, their family or a witness should contact the police as soon as they can after an incident has occurred. This is motivated by two key reasons:

First, it makes it possible to protect evidence. If the victim has injuries, they should seek medical assistance to ensure that the injuries are documented.

Second, some crimes are subject to limitation periods, which once passed cannot be prosecuted. Under the Penal Code, the limitation period for criminal liability depends on the maximum punishment available for the specific offense. For example, for an offense that cannot be punished by life imprisonment but with more than 10 years of imprisonment, the limitation period is 20 years; if the maximum punishment is between five and 10 years of imprisonment, the limitation period is 10 years; and so on. The incident should therefore be reported as soon as possible.A number of police officers in Austria are specially trained to engage in responding to threatening individuals and work with victims to assess and recommend safety measures.[45] This has been put in place to especially tackle violence against women and domestic violence. According to a 2016 report, almost 500 police officers had received training consisting of one to two days led by state-certified trainers.

## 5.1.2 What circumstances effect law firm involvement?

The victim can request both psychological and legal assistance during the proceedings.[46] As with any court case in Austria, you have a right to representation. This can be by a lawyer, a recognized victim support organization or another suitable person.

If you need legal assistance but do not have the means to pay for this, you can apply for legal aid from the court or bar of the province where you live in Austria. The application form is available at the court or bar. Once you have applied and if legal aid is granted, you will be appointed a lawyer to represent you.[47]

## 5.2 Standard of proof

## 5.2.1 Is proof required by any legal means?

Generally, the burden of proof is set out in the Code of Criminal Procedure.[48] The prosecution (public prosecutor) has to prove the guilt of the accused, but the accused does not have to prove his innocence. In a claim for damages (pain and suffering), the burden of proof lies with the victim.

In practice, this means that the accused is innocent until proven guilty and enough evidence must be presented to the court to convince the court that the accused is guilty. If you are seeking damages, the onus is on you to prove that you suffered a loss.

There is a general advice from protection centers and women counseling centers to also seek legal advice and to bring all the necessary proof and documents that are vital for the court's decision.

## 5.2.2 Are there any requirements regarding evidence and documents?

Yes. For example, before the court, *Bescheinigungsmittel* (evidence) is needed as proof of an act of violence (this includes physical violence, violent threats and psychological violence that seriously impairs the victim's health), such as medical reports, police reports, eyewitness statements, hospital reports, doctors' reports, forensic findings, psychologist reports, photographs, etc.[49] Nonetheless, the victim's statement is also a form of evidence. It is common practice that the court would apply to the police directly to obtain police reports.[50]

Judicial practices to require written evidence affect a victim's right to access justice because proceedings may be delayed or dismissed. Judges are not required to have written evidence and may render a decision on a petition for an order for protection based on the facts and circumstances presented to them. It can be difficult to collect evidence or have witnesses testify in domestic violence cases. Monitoring of decisions in Tirana district courts indicates that decisions were based on written evidence or witnesses in 71% of cases. In practice, judges in Tirana district courts request written evidence and witnesses, or they will dismiss cases.

This practice is particularly concerning because, as indicated above, health centers are not issuing medical certificates to victims that can serve as evidence for the court. The failure of health centers to issue these required reports affects the victim's right to healthcare and the right to a fair hearing. Courts rely on written evidence or witnesses in 70% of cases. Thus, if victims do not have access to medical reports to submit as evidence, courts may postpone hearings, leaving the victim at risk of violence, or dismiss the case for lack of evidence.

## 5.2.3 Is proof "beyond a reasonable doubt" required?

According to Section 258, paragraph 2 of the Code of Criminal Procedure, the judges who have to decide the respective case are free in their consideration of evidence (*Freie Beweiswürdigung*).[51] The judges are obliged to act accurately and diligently while considering the evidence, but they are not bound to any legal rules of evidence.[52]

In civil cases, proof must generally show a "substantial likelihood" but absolute certainty is not required.[53]

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

The principle of a free consideration of evidence applies here as well, meaning that the judges are obliged to act accurately and diligently while considering the evidence, but they are not bound to any legal rules of evidence.

## 5.3 Affirmative defenses

## 5.3.1 Are affirmative defenses available to the accused?

Affirmative defenses are not specifically available under Austrian domestic violence legislation. However, both self-defense and insanity are generally available as defenses under the Criminal Code (see below for further information).

## 5.3.2 Is willful intent required?

Yes, willful intent is required.

Regarding the definition of victims and victims' rights, the Code of Criminal Procedure defines three categories of victims in Section 65, paragraph 1, as follows.

**Particularly affected victims** (Section 65(1)(a) of the Code of Criminal Procedure): This refers to any person who may have been subjected to violence or dangerous threats, or whose sexual integrity may have been impaired, or whose personal dependency may have been exploited by a criminal act **committed with intent**; the prerequisite here is an act committed with intent, but not the occurrence of a specific loss. In addition to offenses against life and limb, certain property offenses (such as robbery) or trafficking persons by taking advantage of a position of authority or coercion may also be included.[54]

**Certain relatives of a person whose death was caused by a criminal act** (Section 65(1)(b) of the Code of Criminal Procedure): This refers to the spouse, registered partner, cohabitant, relatives in a straight line, brother, sister and other dependents of a person whose death may have been caused by a criminal act, or other relatives who were witnesses to the act; in this case, intent or negligence of the act do not play a role.[55]

**Other persons who have directly or indirectly suffered pecuniary or nonpecuniary damage** (Section 65(1)(c) of the Code of Criminal Procedure): This refers to any other person who may have suffered damage as a result of a criminal offense or whose legal rights protected by criminal law may otherwise have been impaired. Thus, the impairment of any legal interests protected by criminal law is sufficient for obtaining the status of a victim in criminal proceedings.[56]

## 5.3.3 Are false accusations punishable for the victim?

It depends on when and how these accusations are made.

A victim making false accusations could be charged for **defamation**.[57]

Defamation occurs when a person falsely suspects someone else of committing a punishable act (an official offense, e.g., murder) or of violating an official or professional duty, even though the person making the accusation (offender) knows that the suspicion is false. The false suspicion must expose the accused person (victim) to the risk of prosecution by the authorities.[58]

If the person (offender) who made the false accusation has eliminated the risk of prosecution by the authorities **before** any authority has done anything to prosecute the suspect, that person will not be punished.[59]

The offense of defamation is punishable by imprisonment for up to **one year or a fine of up to 720 times the minimum daily wage.** However, if the falsely accused act (criminal offense) is punishable by imprisonment for a term exceeding one year, a term of imprisonment of **six months to five years** is provided.[60]

## 5.3.4 How is consent discussed in the law?

N/A

## 5.3.5 Is self-defense or insanity a defense?

Under the Penal Code, self-defense is an available defense where the unlawful act is necessary to prevent a current or imminent illegal attack on life or health, physical body or property. If the justified level of defense is exceeded, self-defense is not an adequate defense.[61]

Similarly, "insanity" is also an available defense under the Penal Code. If the accused at the time of committing the offense was suffering from a mental illness, mental disability or a profound disturbance of consciousness or another severe condition equivalent to a mental disorder, and the accused was unable to see the injustice of their act, the defense of insanity is available.[62]

However, under domestic violence legislation, no particular provision is made for self-defense or insanity. It is unlikely that such defenses would be readily available and accepted in domestic violence cases.

## 5.4 Witness status

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

The victim of the crime is normally interviewed as a witness in criminal proceedings. All witnesses summoned by the court, the Public Prosecutor's Office or criminal investigators must obey the summons and answer questions truthfully based on what they have seen, heard or experienced.

If a witness makes a false statement, including intentionally maintaining silence on material facts or stating a lack of knowledge on facts that are actually known, this is a criminal offense.

Any person who gives false testimony in court as a witness or, if they are not also a party, as a person providing information during their formal examination on the merits of the case, or who gives a false finding or a false expert opinion as an expert witness, will be liable to a custodial sentence of up to three years.[63]

## 5.4.2 Who may abstain from testifying in certain situations?

A victim does not have to testify in the presence of the perpetrator. Instead, all victims of sexual offenses and violence can ask to be questioned in a separate room to allow a video transmission to the courtroom. Questioning can also take place in advance of the trial to save the victim from needing to testify during the trial. Children must always be questioned separately to the perpetrator.[64]

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

In Austria, a witness is obliged to state the complete truth.[65] However, according to Section 156 of the Code of Criminal Procedure, individuals who are to testify in proceedings against a relative or victims in particular need of protection[66] (such as minors) are exempt from the obligation to testify. (In this way, for example, you can refuse to answer certain questions.)

According to Section 157 of the Code of Criminal Procedure, individuals are entitled to refuse to testify, among other things, insofar as they would otherwise expose themselves or a relative to the risk of criminal prosecution or in connection with criminal proceedings against them to the danger of incriminating themselves beyond their previous testimony. (In this way, individuals can legally refuse to testify at all. This is often the case whereby women, for example, refuse to testify against their spouses.)

For these purposes, a person's "relatives" refers to: (i) relatives and in-laws in the direct line, a spouse or registered partner and the spouse's or registered partner's siblings, direct siblings and their spouses or registered partners, children and grandchildren, the siblings of the parents and grandparents, cousins and bases, the father or mother of a direct child, adoptive and foster parents, direct adoptive and foster children, and persons over whom the person has custody or under whose custody the person is; and (ii) individuals living together in cohabitation who are treated as relatives, including their children and grandchildren.[67]

Victims will have the right to have their special need for protection assessed and determined as soon as possible in accordance with their age, mental and health condition, and the nature and specific circumstances of the crime. In any case, victims will be deemed to be "in special need of protection": (i) if their sexual integrity and self-determination may have been violated; and/or (ii) if they are minors for whom a prohibition from entry and approach could be issued for protection against violence.[68]

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

According to the Istanbul Convention, Article 26 requires that all assistance measures take due account of the rights and needs of children who have witnessed violence. Age-appropriate psychosocial counseling must be provided and the best interests of the child must be considered.

Article 18 requires that victims should receive assistance in one place, if possible, and not be forced to visit different agencies (also to prevent exposure). According to Section 289b of the Code of Civil Procedure, the court may often exempt the child from testifying before the civil court if the child's well-being is at risk.

In court, the child will mostly be questioned by an expert witness (a psychologist). They support the court when children or young people are to be questioned about events that could be unpleasant or stressful. Professionals are specially trained to do this. In some cases, the judge may also question the child directly. A guardian *ad litem* will explain the entire procedure beforehand and what it will be like.

Another special protection measure is to question the child outside of the court, which will then be played/read to the court.

As a witness, the child must be informed in a "child-friendly" or "age-appropriate manner" about their exemption from testifying or their right to refuse to testify in whole or in part.[69]

## 5.4.5 Can children be called upon to testify?

Children who are victims of a crime are normally interviewed as witnesses in criminal proceedings, but they require the presence of a trusted individual if the witness is under 14 years old.[70]

Special child protection agencies are normally appointed to support children in the court process. Children can have separate and protective adversary questioning without any direct confrontation with the accused.[71]

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

Violent acts against family members, against minors and against individuals requiring special protection are all aggravating factors under the Criminal Code.[72] As a result, a court would normally examine such aggravating factors and order a harsher sentence. A harsher sentence can be additionally between three months and two years, depending on the individual case.[73]

## 5.5 Penalties and sentencing; penalty enhancements

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

The judge has the discretion to determine whether a first-time domestic violence offense is a mitigating factor when they render the court's decision.

In a deviation from fixed penalty ranges, criminal law considers aspects that aggravate the penalty as well as aspects that mitigate the penalty in individual cases. This considers the need to be able to adequately assess the individual characteristics of each case.

In the course of sentencing, the court can move within this predetermined framework and determine a sentence tailored to the individual case.

However, criminal law does not always provide for these strict guidelines when it comes to the mitigation of punishment. In fact, in some cases, this is left solely to the discretion of the competent judges. Corresponding passages in the Criminal Code refer to Section 49, paragraph 2. This allows the court to reduce the threatened penalty to the statutory minimum at its discretion. In addition, the court is also entitled in this case to impose a fine instead of a prison sentence.

## 5.5.2 Are there criminal penalties?

Yes, there are various criminal penalties including:

Section 83 of the Criminal Code (whoever injures another person on their body or damages their health is to be punished with imprisonment for up to one year or with a fine of up to 720 times the minimum daily wage)

Section 84 on grievous bodily harm (imprisonment starting from six months up to five years)

Section 87 on intentional grievous bodily harm (increase from one to five years)

Section 107b (whoever continues to use violence against another person for a longer period of time is to be punished with imprisonment for up to three years)

Protection Against Violence Act (a violation fine has been increased from EUR 2,500 to EUR 5,000)

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

If the defendant fails to comply with a protective order, the police should remove the person from the place they are prohibited from being. Breaching this order is punishable with a fine of up to EUR 500. If the defendant is unable to pay the fine, they may be imprisoned for up to two weeks.[74]

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

Noncustodial sentences are possible in criminal proceedings where:

the facts are clear

the act is subject to a custodial sentence of no longer than five years (three years for offenses against sexual integrity and self-determination)

the act has not resulted in death

the offender's culpability is low

custodial punishment is not required to deter the guilty from criminal acts

Noncustodial sentences include:

paying a financial penalty of up to 180 times the daily rate (a fine calculated based on daily income and expenses)[75]

community service

probation with or without other obligations

mediation between the offender and the victim[76]

## 5.6 Post-release restrictions

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

The victim has the right to information regarding the release of the accused from custody during the investigation if they are a victim of violence or serious threat, or if they require special protection.

# 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.)

Battered woman syndrome is not accepted in Austrian jurisdiction. The court will look at the force used to defend oneself, and will determine if it was a life-threatening situation and if adequate force to defend oneself was used.[77]

## 6.2 Domestic violence in the workplace

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

Yes, the court can issue a restraining order to protect the victim. It is generally possible to apply to the district court for a temporary injunction for protection against attacks by the perpetrator.[78]An interim injunction can ban the offender from any type of contact or from approaching the apartment and the immediate neighborhood, as well as precisely defined places such as the workplace, school and kindergarten of the children.[79] In addition, the offender will be banned from staying in certain places and contacting the victim.[80]

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

There is no "for good cause" departure related to domestic violence, except if the violence was directed against a coworker, employer or employee.

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

There are no specific rights for personal days as a result of domestic violence; however, according to Section 8, paragraph 3 of the Employee Act (*Angestelltengesetz*), an employee is allowed to take days off for good reason. The flexibility and accommodation offered by an employer in these circumstances will vary depending on the employer and depending on what the employment contract provides for.

## 6.3 Immigration

## 6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents from using immigration laws to perpetrate domestic violence against their spouse?

There is nothing in the reviewed materials that suggest that such provisions exist. A legal trap can arise in cases of "divorce, death, illness or domestic violence, when the police is called for assistance, immigrants risk being deported, if they cannot prove their own health insurance and livelihood and therefore not secure their legal situation (which is often not possible due to the restricted access to the labour market)."[81]

Austria has not signed the UN Convention for the Protection of the Rights of All Migrant Workers and the Members of their Families, and it has not signed the ILO Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.[82]

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

There is nothing in the reviewed materials that suggest that cooperation can lead to immigration remedies. However, asylum seekers have a duty to cooperate with the Austrian authorities under the Asylum Act.

Services for migrant women who find themselves victims of violence as well as women who are victims of specific forms of violence that specifically impact migrant communities (such as forced marriage and female genital mutilation) were established over the past few decades in Austria. However, the services are rarely provided in languages other than German and are limited to bigger cities such as Vienna.

## 6.3.3 Does domestic violence law discuss asylum accessibility?

Yes. Under the Settlement and Residence Act, if an individual has been affected by violence, then a further residence permit must be granted even if the general conditions for a residence permit are not met. Where individuals fall outside of the scope of the Settlement and Residence Act, the Asylum Act offers a residence permit with special protection for cases where the right of residence is required to enable the prosecution of criminal acts. Specifically, this right of residency is provided where a court has imposed an interim injunction for protection against violence in residential dwellings or general protection against violence, and the victim needs further protection.[83]

Generally, the residence permit will be granted once a justified opinion has been received by the Austrian Federal Office for Immigration and Asylum from the criminal investigators confirming the status of the victim.[84]

## 6.4 Armed forces

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

There is nothing in the reviewed materials indicating that a military protective order is available to a victim of domestic violence.

We were unable to locate any information on this relating to Cyprus. However, victims from within the military community can access local civilian support services.

## 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?

Yes. Under the Federal Constitutional Act on the Rights of Children, judges have an obligation to consider child welfare above all else. Protecting the child from abuse and/or violence and/or witnessing violence is a key criterion when judges determine custody and visitation rights. If there are concerns about a child's well-being, supervised visitation can be arranged between the child and the noncustodial parent.[85]

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

Yes. Children have a right to be heard by the court in proceedings on custody or rights of contact from 10 years old.[86] There is nothing in the reviewed materials to suggest that the testimony of the other spouse would not be considered.

## 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?

There is nothing in the reviewed materials that prevent landlords from evicting tenants due to domestic violence.

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

There is nothing in the reviewed materials that allow a tenant to terminate a lease early due to domestic violence.

## 6.6.3 Can an order exclude the abuser from the residence?

Yes. Please see the information in Section 4.1 above on civil protection orders.

## 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 is nothing in the reviewed materials that suggest such a court order is available.

# 7. Endnotes

[1]  See [1996\_759\_0.pdf (bka.gv.at)](https://www.ris.bka.gv.at/Dokumente/BgblPdf/1996_759_0/1996_759_0.pdf).

[2]   Current version: Security Police Act [RIS - *Sicherheitspolizeigesetz* - *Bundesrecht konsolidiert, Fassung vo*m 02.12.2020 (bka.gv.at)](https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10005792).

[3]  See Security Police Act [RIS - *Exekutionsordnung* - *Bundesrecht konsolidiert, Fassung vom* 02.12.2020 (bka.gv.at)](https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10001700)

[4]    See [BGBLA\_2009\_I\_40.pdfsig (bka.gv.at)](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2009_I_40/BGBLA_2009_I_40.pdfsig)

[5]    See Security Police Act [RIS - *Sicherheitspolizeigesetz* - *Bundesrecht konsolidiert, Fassung vom* 02.12.2020 (bka.gv.at)](https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10005792)

[6]   Section 38a of the Security Police Act.

[7]    Sections 382b, e and g of the Enforcement Code.

[8]   Section 382b of the Enforcement Code.

[9] Section 382e of the Enforcement Code.

[10]    Section 382g of the Enforcement Code.

[11]   Section 107a of the Austrian Penal (Criminal) Code (Act), StGB and Section 38a of the Security Police Act, SGP.

[12]    Section 107b StGB of the Criminal Code

[13]    Section 33 of the Criminal Code

[14]   Federal Chancellery of Austria, "Domestic Violence": <https://www.bundeskanzleramt.gv.at/en/agenda/women-and-equality/violence-against-women/domestic-violence.html>

[15]    Section 1325 of the ABGB 1 (*Schmerzengeld*).

[16]    Austria.org: <https://www.austria.org/womens-rights>

[17]    Article 9(1) of the Austrian Constitution: <https://www.constituteproject.org/constitution/Austria_2009.pdf>

[18]    Sections 84 and 86 of the Penal Code.

[19]    "Emergency Barring Orders Istanbul Convention Article 52": [ES190177\_Prems 084117 GBR 2574 Convention Istanbul Article 52 WEB A5.pdf (coe.int)](https://rm.coe.int/article-52-convention-istanbul-english-version/168073cae6)

[20]    "Emergency Barring Orders Istanbul Convention Article 52": [ES190177\_Prems 084117 GBR 2574 Convention Istanbul Article 52 WEB A5.pdf (coe.int)](https://rm.coe.int/article-52-convention-istanbul-english-version/168073cae6)

[21]    Austria.org: <https://www.austria.org/womens-rights>

[22]   <http://gewaltschutzzentrum.at/>

[23]   Austria.org [https://www.austria.org/womens-rights](https://www.austria.org/WOMENS-RIGHTS)

[24]    <https://www.gsz-ktn.at/haeusliche-gewalt>

[25]   Section 48(1) of the Penal Code.

[26]    *Ibid*.

[27]   Section 74(1) of the Penal Code.

[28]    *Ibid*.

[29]    <https://www.gsz-ktn.at/haeusliche-gewalt>

[30]    See "Domestic Violence," Federal Chancellery of Austria: <https://www.bundeskanzleramt.gv.at/en/agenda/women-and-equality/violence-against-women/domestic-violence.html>

[31]   See GREVIO Baseline Evaluation Report Austria published on 27 September 2017 and available at: <https://bim.lbg.ac.at/sites/files/bim/attachments/grevio_evaluationsbericht_oestereich_englisch.pdf>

[32]   See "Emergency Barring Orders Istanbul Convention Article 52": <https://rm.coe.int/article-52-convention-istanbul-english-version/168073cae6>

[33]   See "Emergency Barring Orders Istanbul Convention Article 52": <https://rm.coe.int/article-52-convention-istanbul-english-version/168073cae6>

[34]    See "Emergency Barring Orders Istanbul Convention Article 52": <https://rm.coe.int/article-52-convention-istanbul-english-version/168073cae6>

[35]    See "Domestic Violence," Federal Chancellery of Austria: <https://www.bundeskanzleramt.gv.at/en/agenda/women-and-equality/violence-against-women/domestic-violence.html>

[36]    See paragraph 27 of the Questionnaire on the Recognition and Enforcement of Foreign Civil Protection Orders: Summary of Member Responses and Possible Way Forward available at "Emergency Barring Orders Istanbul Convention Article 52": <https://rm.coe.int/article-52-convention-istanbul-english-version/168073cae6>

[37]   See "Domestic Violence," Federal Chancellery of Austria: <https://www.bundeskanzleramt.gv.at/en/agenda/women-and-equality/violence-against-women/domestic-violence.html>

[38]    See ["Victims' Rights to Support and Protection from Violence" (September 2013)](https://www.interventionsstelle-wien.at/download/?id=692).

[39]   See ["Victims' Rights to Support and Protection from Violence" (September 2013)](https://www.interventionsstelle-wien.at/download/?id=692).

[40]   See ["Victims' Rights to Support and Protection from Violence" (September 2013)](https://www.interventionsstelle-wien.at/download/?id=692).

[41]    See ["Victims' Rights to Support and Protection from Violence" (September 2013)](https://www.interventionsstelle-wien.at/download/?id=692).

[42]    See ["Victims' Rights to Support and Protection from Violence" (September 2013)](https://www.interventionsstelle-wien.at/download/?id=692) and "Domestic Violence," Federal Chancellery of Austria: <https://www.bundeskanzleramt.gv.at/en/agenda/women-and-equality/violence-against-women/domestic-violence.html>

[43]    See ["Victims' Rights to Support and Protection from Violence" (September 2013)](https://www.interventionsstelle-wien.at/download/?id=692).

[44]    See GREVIO Baseline Evaluation Report Austria published on 27 September 2017 and available at: https://bim.lbg.ac.at/sites/files/bim/attachments/grevio\_evaluationsbericht\_oestereich\_englisch.pdf

[45]    Page 40, Council of Europe — ["Report submitted by Austria pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)"](https://rm.coe.int/16806ee8b2) (1 September 2016).

[46]    Page 41, Council of Europe — ["Report submitted by Austria pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)"](https://rm.coe.int/16806ee8b2) (1 September 2016).

[47]    See "Legal Aid": <https://www.rechtsanwaelte.at/en/support-and-services/services/legal-aid/>

[48]    <https://www.legislationline.org/download/id/8548/file/Austria_CC_1974_am122019_de.pdf>

[49]   See ["Victims' Rights to Support and Protection from Violence" (September 2013)](https://www.interventionsstelle-wien.at/download/?id=692).

[50]    See ["Victims' Rights to Support and Protection from Violence" (September 2013)](https://www.interventionsstelle-wien.at/download/?id=692).

[51]    Section 258 of the Code of Criminal Procedure Code: [StPO (Strafprozeßordnung 1975) - JUSLINE Österreich](https://www.jusline.at/gesetz/stpo/paragraf/258).

[52]    Lexis 360, Commentary to the Code of Criminal Procedure (StPO), Bertel, Section 258 StPO.

[53]    European Judicial Network "Austria": <https://e-justice.europa.eu/content_taking_of_evidence-76-at-maximizeMS_EJN-en.do?member=1>

[54]    Section 65 (1) (a) of the Code of Criminal Procedure (StPO).

[55]    Section 65 (1) (b) of the Code of Criminal Procedure (StPO).

[56]    Section 65 (1) (c) of the Code of Criminal Procedure (StPO).

[57]   Section 297 of the Criminal Code (StGB).

[58]   <https://www.oesterreich.gv.at/themen/bildung_und_neue_medien/internet_und_handy___sicher_durch_die_digitale_welt/3/3/Seite.1720218.htm>

[59]    Section 297, paragraph 2 of the Criminal Code (StGB).

[60]    Section 297, paragraph 1 of the Criminal Code (StGB).

[61]  Section 3, paragraphs 1 and 2 of the Criminal Code.

[62]   Section 11 of the Criminal Code.

[63]    Section 288, paragraph 1 of the Criminal Code.

[64]    For additional information, please see ["Victims' Rights to Support and Protection from Violence" (September 2013)](https://www.interventionsstelle-wien.at/download/?id=692).

[65]   Section 154, paragraph 2 of the Code of Criminal Procedure (StPO).

[66]   Section 66a of the Code of Criminal Procedure (StPO).

[67]   Section 72, paragraph 1 of the Criminal Code (StGB).

[68]   Pursuant to Section 66a of the Criminal Code (StGB).

[69]    See ["Witnesses - Do you have to go as a witness?"](https://www.gewaltinfo.at/recht/strafverfahren/zeugen.php#:~:text=Zeug%2Finnen%20m%C3%BCssen%20%E2%80%93%20Kinder%20in,Teiles%20der%20Aussage%20informiert%20werden)

[70]   See 5.6: Council of Europe — ["Report submitted by Austria pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)"](https://rm.coe.int/16806ee8b2) (1 September 2016).

[71]   Council of Europe — ["Report submitted by Austria pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)"](https://rm.coe.int/16806ee8b2) (September 1, 2016).

[72]   Council of Europe — ["Report submitted by Austria pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)"](https://rm.coe.int/16806ee8b2) (1 September 2016).

[73]   See Section 39a of the Criminal Code (StGB).

[74]   See ["Victims' Rights to Support and Protection from Violence" (September 2013)](https://www.interventionsstelle-wien.at/download/?id=692).

[75]    Note that financial obligations toward the victim are considered when assessing such a penalty.

[76]    Note that mediation is not mandatory and must be chosen by both the offender and the victim.

[77]    Section 3 of the Criminal Code *Notwehr* (Self-defense): <https://www.ris.bka.gv.at/eli/bgbl/1974/60/P3/NOR12029544>

[78]   See "Temporary injunction by the District Court for general protection against violence": <https://www.oesterreich.gv.at/themen/gesundheit_und_notfaelle/gewalt_in_der_familie/5/Seite.299460.html>

[79]   Protection against violence in apartments (*Schutz vor Gewalt in Wohnungen*), Section 382b of the Enforcement Code.

[80]   General protection against violence (*Allgemeiner Schutz vor Gewalt*), Section 382e of the Enforcement Code.

[81]    <https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/illegally-resident/at-report-eng-12-12_en.pdf>

[82]   <https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/illegally-resident/at-report-eng-12-12_en.pdf>

[83]  Council of Europe — ["Report submitted by Austria pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)"](https://rm.coe.int/16806ee8b2) (1 September 2016).

[84]    Council of Europe — ["Report submitted by Austria pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)"](https://rm.coe.int/16806ee8b2) (1 September 2016).

[85]    Council of Europe — ["Report submitted by Austria pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)"](https://rm.coe.int/16806ee8b2) (1 September 2016).

[86]    See "Temporary injunction by the District Court for general protection against violence": <https://www.oesterreich.gv.at/themen/gesundheit_und_notfaelle/gewalt_in_der_familie/5/Seite.299460.html>

©Copyright © 2025 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.