Fighting Domestic Violence - Austria

1. Legal provisions

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# 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.

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