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## **The Austrian Legislation against Domestic Violence<sup>1</sup>**

### **Brief summary of the key aspects of the legislation and the judiciary system relevant to the protection of women and children**

#### Overview of the relevant legislation

In November 1996 the Austrian National Assembly passed the Act on Protection against Domestic Violence, which came into force as from 1<sup>st</sup> of May 1997; amendments became effective on January 1, 2000 and January 1, 2004. The Protection against Domestic Violence Act is not a single law, its provisions are laid down in the Civil Code, the Enforcement Code and the Security Police Act. The law provides the victim's right to protection from an offender in his/her living environment and social surroundings by entitling the police to impose eviction and barring orders on perpetrators. The barring order can be extended if the person at risk applies to the Family Court for an interim injunction. Furthermore so-called "intervention centres" offering free counselling and support to victims of domestic violence were established.

For about one and a half years the need of legislation against stalking has been discussed in Austria and at present the Federal Ministry of Justice is working out a bill on this topic. The Federal Ministry of Justice has also announced that in spring 2005 it will present a bill providing for free psycho-social and legal support at Court for victims of violence.

#### Protection against Domestic Violence Act: key features

If a perpetrator threatens or injures a person living in the same household, the police have to evict the perpetrator from the common home and its immediate surroundings and to bar him from re-entering it – even if he is the owner of the house or apartment. Such an order has to be imposed if a dangerous attack on life, health or freedom is imminent. The victim cannot influence the imposition of a barring order.

A barring order is valid for ten days (before the amendment in 2000, it was valid for only seven days) and it is controlled by the police during the first three days. The perpetrator has to

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<sup>1</sup> This report was written in June 2005 for CAHRV – Coordination Action against Human Rights Violations.

hand over his keys to the police; if he wants to pick up some belongings, he has to inform the victim of his visit. When the perpetrator is found at home during the validity of the barring order, he is fined for this offence under the Administrative Criminal Law and can even be arrested if he refuses to leave (if the victim has allowed the offender to come back home, she can be fined, too).

In each of the nine Austrian provinces a so-called intervention centre has been established. These are non-governmental organisations, funded by the Federal Ministries of the Interior and of Social Affairs. Their main tasks are to take care of people subject to violence and to network with all the institutions involved in violence protection. The police have to notify the intervention centre without delay of every eviction and barring order providing also the victim's personal data. The centre contacts the victims and offers support to them (development of crisis plans, safety programmes etc.).

After a barring order has been imposed, the victim can apply for an interim injunction at the Civil Court (Family Court) within ten days. If such an application is submitted, the barring order is automatically prolonged to 20 days. The Court who requires evidence of acts of violence is supposed to come to a decision within this period. Although after barring orders a high number of interim injunctions are allowed, there is no "guarantee" for the allowance.

An interim injunction can be issued against a (former) close relative after physical abuse, or after threats, or in case of psychological terror if this seriously impairs the victim's mental health and whenever these attacks make life with the violent person intolerable. In the Act's first version an injunction was only possible if victim and offender were or had been living in the same household within the last three months; since 2004 there is no time limit anymore.

The temporary injunction is valid for a maximum of three months, only if the victim has filed for a divorce (and in a few other special cases) it can be prolonged up to the divorce. The offender can not only be forbidden re-entry to his house, but he can also be banned from the immediate vicinity and from other defined areas (e.g. the route to the victim's workplace, the workplace, the children's school). Contact in any form can also be forbidden. If the offender violates the order forbidding contact or enters a protected area, the victim can apply for a fine for contempt of court.

Youth welfare authorities as guardians of minors can also apply for interim injunctions if a child is at risk. This applies both to cases of direct and indirect violence against the child, provided that the mother as the child's statutory representative has not filed an application herself.

It is one of the key characteristics of the Protection against Domestic Violence Act that in case of violence the police has to react without considering the victim's interests. Only in a second step, with regard to the interim injunction, the victim decides autonomously. This two-phase approach makes clear that the state feels responsible for safety in private lives and that it is aware of the problematic situation of victims who are involved in a violent relationship and who are put under pressure by the offender.

### **Most influential research studies (implementation of legislation; effectiveness of legislation with regard to the protection of women and children)**

The author of this country report has elaborated two evaluation reports dealing with various aspects of the Protection against Domestic Violence Act. They were funded by the Ministry of the Interior.

- Gewalt in der Familie. Eine Evaluierung der Umsetzung des österreichischen Gewaltschutzgesetzes, Vienna 1999 (Domestic Violence. An evaluation of the implementation of the Austrian Protection against Domestic Violence Act)
- Folgestudie zur Evaluierung des Bundesgesetzes zum Schutz gegen Gewalt in der Familie, Vienna 2002 (Follow-up study for the evaluation of the Austrian Protection against Domestic Violence Act)

The main results of the first study are published (in German): Dearing, Albin/Haller, Birgitt (Hg.): Das österreichische Gewaltschutzgesetz, Wien 2000. An overview of both evaluations is published (in German): Dearing, Albin/Haller, Birgitt (Hg.): Schutz vor Gewalt in der Familie. Das österreichische Gewaltschutzgesetz, Wien 2005.

## **A) Domestic Violence. An evaluation of the implementation of the Austrian Protection against Domestic Violence Act (1999)**

The first evaluation study was based on the analysis of police interventions and on interviews with representatives of institutions involved in the protection against violence (police, intervention centres, Civil Court, Penal Court, youth welfare) as well as with victims and perpetrators. The research was undertaken in eight Austrian regions.

Here some basic findings in short:

The frequency with which the Protection against Domestic Violence Act has been applied by Austria's two security bodies varies considerably, the urban police being much more "active" than the so-called "gendarmerie" that intervenes in rural areas. In 1998 each of them imposed approximately 1.300 eviction and barring orders – but the police are responsible for approximately one third of the Austrian population, while the gendarmerie is in charge of two thirds. Since 2002 the gap has even widened: more than 60 percent of eviction and barring orders are imposed by the police.

From May 1997 until 2000, the total number of eviction and barring orders increased continuously; in 2001 it dropped slightly for the first time. Since 2002 numbers have been increasing again.

**Table 1: Eviction and barring orders**

	1997	1998	1999	2000	2001	2002	2003	2004
Federal police directorates	646 (47,3 %)	1.320 (49,4 %)	1.654 (53,8 %)	1.807 (53,9 %)	1.880 (57,3 %)	2.422 (61,4 %)	2.580 (61,7 %)	2.976 (62,5 %)
Federal rural police ("gendarmerie")	719 (52,7 %)	1.353 (50,6 %)	1.422 (46,2 %)	1.547 (46,1 %)	1.403 (42,7 %)	1.522 (38,6 %)	1.600 (38,3 %)	1.788 (37,5 %)
total	1.365 (100 %)	2.673 (100 %)	3.076 (100 %)	3.354 (100 %)	3.283 (100 %)	3.944 (100 %)	4.180 (100 %)	4.764 (100 %)

Source: internal statistics of the Ministry of the Interior.

**Table 2: Eviction and barring orders– Annual rates of growth**

	1998	1999	2000	2001	2002	2003	2004
Federal police directorates	+ 36,2 %	+ 25,3 %	+ 9,3 %	+ 4,0 %	+ 28,8 %	+ 6,5 %	+ 15,4 %
Federal rural police (“gendarmerie”)	+ 25,5 %	+ 5,1 %	+ 8,8 %	- 9,3 %	+ 8,5 %	+ 5,1 %	+ 11,8 %
total	+ 30,5 %	+ 15,1 %	+ 9,0 %	- 2,2 %	+ 20,1 %	+ 6,0 %	+ 14,0 %

Source: in-house calculation based on 1997 figures extrapolated to twelve months.

Before the Protection against Domestic Violence Act came into force, the instrument most frequently used to respond to domestic disputes was that of “dispute settlement”: the officers talked to the “conflicting parties”, seeking to “calm” and “appease” them and occasionally suggested to the woman to seek refuge, for instance in a women’s shelter. The idea behind the wish to “mediate” between victim and perpetrator was that violence in a personal relationship was regarded as a “private matter”, and therefore the state and its authorities were not supposed to interfere. The instrument of dispute settlement is still available to police officers, along with eviction and barring orders. Since 2000 dispute settlements have decreased continuously, but they are still more frequently used than eviction and barring orders. It is striking that dispute settlement is still the method of choice used by the rural police reacting to family conflicts because of their reluctance to “interfere” in family affairs.

**Table 3: Eviction and barring orders vs. “dispute settlements”**

	2000	2001	2002	2003	2004
ev./barr. orders	3.354	3.283	3.944	4.180	4.764
dispute settlemts	7.638	7.517	7.391	6.558	6.195

According to an analysis of more than 1.000 police files (in the years 1997-98), dispute settlement was used in 52 percent of all cases, eviction and barring orders in 43 percent of cases and a charge was made in 5 percent of cases (most of them because of bodily injuries) without any other intervention.

In the course of the first evaluation 25 victims and seven offenders were interviewed, some of the victims twice to get information on the sustainability of the police measures. Among the victims there was a big range of reactions. Some women opposed barring orders, because they wanted to stay together with their partners and thought this measure to be too strict and therefore inadequate. Others judged the barring order as very important for themselves in order to understand that they should separate from their partners. Some women told us that the perpetrators had been shocked by their own behaviour and that their relationship had changed for the better. When the offenders did not have to face a banning order, but only a dispute settlement, in some cases their partners were critical of this solution: In their view the police intervention had made their partners even stronger, as they realised that nobody would stop their aggressive behaviour.

Some of the offenders to whom we talked did not understand that they had done something wrong. Others felt sorry about their behaviour and knew that they had to change if they did not want to lose their partners.

Most of the victims were very satisfied with the behaviour of the police. We found it remarkable that mixed teams were judged as impartial whereas male officers seemed to be partial to women. Only in the rural areas women complained: the gendarmerie was often prejudiced against women. They did not believe what the women told them or blamed the women for their partners' aggressions.

The women highly appreciated the intervention centres' work as well as the support they got in the women's shelters. It was important for them to get information on the legal situation as well as an emotional backing-up. Youth welfare authorities were not judged as positively as intervention centres – some interviewees said that they had not been correctly informed there, others did not feel strongly supported.

Also the work of youth welfare authorities, civil and criminal courts has been evaluated. At least during the start-up phase, the attitude of the youth welfare offices vis-à-vis the Violence Protection Act was ambivalent. On the one hand, the new provisions were welcomed, because barring orders prevented children living in the common home of victim and offender of imminent danger and extended the available time frame for the reaction of the youth welfare offices. On the other hand, they hardly used the instrument of the interim injunction in

the interests of children, who were directly or indirectly affected by violence. Such “interference” was occasionally refused with the argument that youth welfare offices are non-partisan institutions, never siding with either parent, but, on the contrary, seeking to strengthen and to preserve the family.

The initial trend displayed by the Family Courts throughout Austria towards issuing interim injunctions was soon curbed by the rulings of the Supreme Court, especially on the issue of unacceptability: Not every family dispute involving violence justified either an eviction order or an interim injunction. The fear that these rulings would result in fewer interim injunctions being issued turned out to be unfounded, however, and protection from violence is being very effectively provided by the civil judiciary.

Concerning the Criminal Courts, major shortcomings are still evident in their working sphere. A high percentage of proceedings instituted because of domestic violence are quickly dismissed, not only because victims of violence refuse to give evidence and to authorise criminal prosecution<sup>2</sup>, but also because the assault is not deemed punishable. Violence in the private sphere is still perceived as a privileged offence. Another aspect still neglected under formal penal law is the upgrading of victims’ rights.

The Protection from Violence Act unequivocally involves youth welfare authorities and the civil judiciary in ensuring the safety of persons subject to violence and assigns a clearly defined role to them. The result is (relatively) effective action in both areas. It is particularly difficult for youth welfare offices to deal with domestic violence because they recognise mothers subjected to violence as victims, while, at the same time, having to hold them responsible for their children. This may lead to situations in which women are additionally challenged instead of supported. A case in point would be the threat of the children being removed, should the woman re-admit the evicted partner to the home, which exposes the victim of violence to massive pressure from both the perpetrator and the youth welfare office.

On the contrary, the Protection from Violence Act does not make any reference to the role of the criminal judiciary. Therefore some criminal lawyers believe that the new legal provisions are none of their concern, and they fail to understand that the administration of criminal jus-

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<sup>2</sup> An authorisation is essential to the prosecution of threats made against family members and nobody is obliged to testify against family members.

tice has an important role to play in interpreting and specifying these new legal provisions. A multi-institutional approach involving all the state actors and excluding any controversial message, is vital in enforcing comprehensive protection from violence.

Summarising the results of the evaluation study, we stated that the Protection against Domestic Violence Act was widely accepted both by the police and by victims. It was a main finding of the evaluation that the application of the Protection from Domestic Violence Act strongly depends on the persons involved in the intervention process, on their commitment and on their attitudes. This can be seen in the different reactions of police and rural gendarmerie, but also among the representatives of the courts and of youth welfare authorities. The higher the value of marriage and family is rated, the higher is the probability that domestic violence is ignored. As a consequence training for all the persons who are involved in the prevention of domestic violence was suggested: They have to become aware of the fact that domestic violence is wrong and their understanding of women in violent relationships has to be improved.

### **B) Follow-up study for the evaluation of the Austrian Protection against Domestic Violence Act (2002)**

The follow-up evaluation concentrated on the following topics: the long-term effects of barring orders, the reaction of criminal law on domestic violence, the effects of training programmes for violent men as well as the situation of migrants and children.

We interviewed 22 women two thirds of whom had already participated in the first study. In all cases there had been a longer period (nine months up to three years) between the act of violence referred to and the interview.

More than half of the interviewees had divorced or separated from the partner, among the remaining women one half was in divorce proceedings (but not all of them felt sure that they really wanted to divorce), the other half was still living in a relationship with the perpetrator. Out of those who still lived with their partners only one interviewee stated that the relationship had changed to the better. The others reported that they had been violated again, but could not leave their partners: They did not feel strong enough for this step, were



economically dependent on them or were too frightened.

Some women told us that the police had refused to intervene in repeated cases of violence. So this problem was not only encountered when the new legislation had come into force, but it still persists. The police officers told them that they judged another intervention to be useless as the women had not separated from the perpetrator after the previous one.

The reaction of some interviewees towards eviction and barring orders changed in the course of time. While in the beginning they had opposed these measures (esp. when they did not want to give up their partners, but their partners left them), they admitted in the follow-up interviews how helpful the new legislation had been. Meanwhile they had managed the separation emotionally and told us that without the help from the police they would never have decided to separate. This proves the importance of the police taking these victims serious. And moreover, the support of the intervention centres is essential for the managing of the separation process – this is why these centres are essential actors with regard to successful protection against violence.

In order to evaluate the reaction of criminal law on domestic violence we analysed the files of the State Prosecutor's Offices in Vienna and Salzburg dealing with domestic violence dating from January to June 2001. There were several interesting findings: for example about half of the legal proceedings after bodily injuries were abated, partly because they were not regarded as punishable (argument: the victim had forgiven the deed and the couple had reconciled).

In January 2000, the Austrian Code of Criminal Procedure was amended introducing so-called diversion measures. These measures – including fines, time of probation and victim-offender mediation – replace formal criminal proceedings. About one third of the legal proceedings after bodily injuries ended with a diversion measure: victim-offender mediation being used more often in Salzburg than in Vienna, whereas in Vienna fines were imposed more frequently. Even legal specialists deny that fines might be useful in cases of domestic violence (they are neither supposed to make clear that violence is wrong nor to change something to the better) and the usefulness of victim-offender mediation is denied at least by the intervention centres (argument: it ignores power imbalances between victim and perpetrator, victims are overruled).

There is one diversion measure that seems the most appropriate reaction on domestic violence, namely the imposing of a time of probation on condition of the attendance of an anti-violence-training. This possibility is given in Vienna (see below) but at the time the evaluation was done it was only rarely made use of.

**Tab. 4: Judicial reactions on complaints of bodily injuries (§§ 83, 84 Penal Code)\***

	<b>Vienna</b>	<b>Salzburg</b>
abatements	110 (49,8 %)	39 (52,7 %)
diversion measures	75 (33,9 %)	26 (35,1 %)
<i>victim-offender-mediation</i>	59 (26,7 %)	23 (31,1 %)
<i>fine</i>	8 (3,6 %)	1 (1,4 %)
<i>time of probation</i>	7 (3,2 %)	2 (2,7 %)
<i>works of public utility</i>	1 (0,5 %)	-
demands for a penalty	36 (16,3 %)	9 (12,2 %)
<i>proceedings still ongoing</i>	9 (4,1 %)	1 (1,4 %)
<i>conviction</i>	21 (9,5 %)	6 (8,1 %)
<i>acquittal</i>	6 (2,7 %)	2 (2,7 %)
<b>total</b>	<b>221 (100 %)</b>	<b>74 (100 %)</b>

\* § 83 = bodily injury, § 84 = aggravated assault

**Table 5: Judicial reactions on complaints of dangerous threats (§ 107 Penal Code)**

	<b>Vienna</b>	<b>Salzburg</b>
abatements	35 (62,5 %)	14 (66,7 %)
diversion measures	7 (12,5 %)	1 (4,8 %)
<i>victim-offender-mediation</i>	5 (8,9 %)	1 (4,8 %)
<i>fine</i>	2 (3,6 %)	-
demands for a penalty	14 (25,0 %)	6 (28,6 %)
<i>proceedings still ongoing</i>	3 (5,4 %)	1 (4,8 %)
<i>conviction</i>	4 (7,1 %)	2 (9,5 %)
<i>acquittal</i>	7 (12,5 %)	3 (14,3 %)
<b>total</b>	<b>56 (100 %)</b>	<b>21 (100 %)</b>

Judicial reactions differed slightly when a complaint had been combined with eviction and barring orders.

**Table 6: Judicial reaction after eviction and barring orders (§§ 83, 84 and 107 Penal Code)**

	<b>Vienna</b>	<b>Salzburg</b>
abatements	23 (59,0 %)	10 (55,6 %)
diversion measures	9 (23,1 %)	6 (33,3 %)
<i>victim-offender-mediation</i>	5 (12,8 %)	4 (22,2 %)
<i>time of probation</i>	2 (5,1 %)	1 (5,6 %)
<i>fine</i>	2 (5,1 %)	1 (5,6 %)
demands for a penalty	7 (17,9 %)	2 (11,1 %)
<i>proceedings still ongoing</i>	2 (5,1 %)	1 (5,6 %)
<i>conviction</i>	3 (7,7 %)	-
<i>acquittal</i>	2 (5,1 %)	1 (5,6 %)
total	39 (100 %)	18 (100 %)

Since 1999, the Federal Ministry of the Interior has promoted the “Training Programme for Men Designed to Put an End to Physical Violence in Relationships between Couples”, launched as a model project by the Men’s Counselling Centre of Vienna. The programme for perpetrators consists of three parts: the training of perpetrators, which is provided by the Counselling Centre, the support to the female partners by the intervention Centre, and the joint co-ordination of violence-preventing measures as well as the networking with other police, youth welfare and judiciary bodies. At the time of our evaluation only a small number of perpetrators was sent to the Counselling Centre by the State Prosecution or the Court, most of the participants attended the programme voluntarily, some others had been obliged by the youth welfare office to go there.

With regard to the situation of foreign women being victims of domestic violence it seems that the Protection against Domestic Violence Act does not offer an as efficient protection for them as for Austrians, especially for two reasons. Firstly, foreigners are often not interested in contacting the police because they fear the police and women often do not speak German well enough to contact authorities. So in many cases they seek refuge in women’s shelters (where

migrants are over-represented) instead of calling the police. Secondly, many migrant women come to Austria in the course of the so-called “family reunification”. Their right of residence depends on the husbands’ right – in case of divorce or if the husband loses it (for ex. because of a conviction), the family members lose it, too. Furthermore, these women are not allowed to work during the first four years of their stay in Austria. Therefore they depend economically on their husbands and cannot separate from them. For years the intervention centres have been claiming a self-contained right of residence and of employment for foreign women because otherwise they have no chance of leaving a violent partner.

Last, but not least, our study dealt with the situation of children. If there are children living with the family, both the youth welfare authorities and the intervention centres are immediately notified by the police, once eviction and barring orders have been imposed. However, police reports focus primarily on the situation and condition of the endangered woman, largely ignoring that of the children. So, there is a “blind spot” as regards the situation of children. Just like other institutions, the youth welfare offices are confronted with the problem of being at times wrongly or incompletely informed by mothers who (justly) dread the reproach of having failed to ensure appropriate protection for the children, as well as the possible consequence of the children being removed from their care.

In our first study we reported that representatives of youth welfare authorities stressed their non-partisanship and did not want to do side with either parent. At the time of our second evaluation, at least in Vienna, this attitude had manifestly changed: Domestic violence was also perceived as violence against children, which calls for intervention. Nevertheless, applications for interim injunctions are rarely filed, because this step is conditional on the mother’s consent and on her ability to protect the children. Between May 1997 and June 2002 only 31 such applications had been filed in all of Austria.