

TEMPLATE POLICY PAGE

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| Category: | Domestic Violence |
| Country: | Austria |
| Year: | / |

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| Main policy page: | / |
| Relevant legislation: | <p><u>Domestic Violence – Improvements in the Austrian Security Police Act (from the Federal Act in the Protection against Domestic Violence, Federal Law Gazette 1996/759) into force since May 1, 1997</u></p> <p>Legal Basis:</p> <p>Section 38a Security Police Act - Ban and expulsion from home for protection against violence</p> <p>(1) If, based on certain facts, in particular because of a previous dangerous assault, it is to be assumed that a dangerous assault on life, health or freedom is imminent, the members of the police force are authorised to prohibit a person who poses a danger (endangerer) from entering</p> <ol style="list-style-type: none"> 1. a dwelling where an endangered person lives as well as its immediate surroundings; 2. and, if the endangered person is under the age of 14, furthermore from entering <ol style="list-style-type: none"> a) a school that the endangered person under the age of 14 attends to fulfil the requirements of compulsory education as provided in the Compulsory Education Act, Federal Law Gazette No. 76/1985, or b) an institutional childcare facility he/she attends, or c) a day nursery he/she attends including an area within a radius of fifty meters. <p>(2) When the ban from home is placed, the members of the police force have to</p> <ol style="list-style-type: none"> 1. inform the endangerer of the premises to which the ban applies; the scope of the ban under para 1 subpara 1 shall be laid down in accordance with the requirements of an effective preventive protection; 2. expel him in case he refuses to leave the area included in the ban under para 1, 3. remove all keys to the dwelling under para 1 subpara 1 from the endangerer he has in his possession, 4. Give him the opportunity to take with him urgently required personal items and inform him of options to find accommodation. <p>In the event of a ban to return to his own dwelling, it is to be ensured in particular that this interference with the private life of the person affected respects proportionality (section 29). Provided that it becomes necessary that the person affected pays a visit to the dwelling which he has been prohibited from entering, he may only do so in the presence of a member of the police force.</p> <p>(3) The members of the police force are obliged to request the endangerer to disclose a delivery address for the purpose of service of the lifting of the ban from home or of an restraining order under sections 382b and 382e of the Enforcement Act (EO). If he fails to do so, the service of such documents can be effected by deposit without a prior service attempt until such a disclosure is made; this shall be</p> |

pointed out to the endangerer.

(4) The members of the police force are further obliged to inform

1. the endangered person about the possibility of obtaining a restraining order under sections 382b and 382e EO and about appropriate victim protection facilities (section 25 para 3) and,
2. if persons under the age of 14 are endangered, immediately
 - a. the locally responsible child and youth welfare office pursuant to section 37 of the Federal Act on Child and Youth Services 2013 (B-KJHG 2013), Federal Law Gazette I No. 69, and
 - b. the head of an institution pursuant to para 1 subpara 2 for which the ban has been imposed.

(5) When documenting the placing of a ban from home, not only the circumstances relevant for the intervention are to be considered but also those that may be of importance for a procedure under sections 382b and 382e EO or for the endangerment assessment pursuant to section 22 B-KJHG 2013 by the responsible child and youth welfare office.

(6) The security authority shall immediately be informed of the placing of a ban from home and review it within 48 hours. If the security authority establishes that the ban from home should not have been placed, it shall lift it immediately vis-à-vis the endangerer; the endangered person shall immediately be informed that the ban from home will be lifted; if possible, the ban from home shall be lifted and the endangered person shall be informed of the lifting verbally or in writing by personal delivery. The keys removed under para 2 shall be handed back to the endangerer after the lifting of the ban from home; in case of the filing of an application to impose a restraining order under sections 382b and 382e EO, they shall be deposited in the ordinary court.

(7) Insofar as a ban from home is placed also for the local jurisdiction of another security authority (sections 8 and 9), it shall immediately be notified. The enforcement that goes beyond the review of the ban from home (para 6) rests with the security authority having local jurisdiction.

(8) Members of the police force shall check the compliance of the ban from home at least once during the first three days of its validity. The ban from home shall end two weeks after having been placed. If the ordinary court informs the security authority of the filing of an application to issue a restraining order under sections 382b and 382e EO within this period, the ban from home shall be extended until the date of service of the ordinary court's decision to the opponent, but no later than four weeks from the date of the placing of the ban. In case of a withdrawal of the application, the ban from home shall end two weeks after having been placed, in case of a withdrawal of the application after the extension of the ban from home has taken effect, it shall end as soon as the security authority learns of the withdrawal by notification received from the ordinary court.

(9) The ordinary court shall immediately notify the security authority having local jurisdiction of the filing of an application to issue a restraining order under sections 382b and 382e EO and the extent of the application as well as of any withdrawal.

Key elements of the Austrian protection against violence bill

The bill consists of three elements which are developed on combination and are tuned to each other. Thus victims of DV shall receive comprehensive and complete protection against violence as well extensive support.

The 3 elements of the bill (§ 38a SPG):

1. Eviction and barring order by the police for duration of **14 days**
2. Longer- term protection by means of a protective temporary injunction under civil law (3 month or longer)
3. Support for the victim, violence prevention measures and coordination of the interventions by establishing Intervention Centers.

Police Intervention

For each intervention in cases of DV, the police must assess the danger involved. If the result of this assessment should be an imminent dangerous assault on the life, health and freedom of a person, the police must immediately evict the endangering person from the dwelling and prohibit the reenter of the dwelling and it's surroundings for fourteen days.

- The eviction protects every person living in the dwelling, no matter who owns or rents the dwelling.
- If the person affected by violence applies for a protection injunction under civil law at the Family Court, the duration of the eviction by the police is extended to four weeks.
- The court informs the police that such an application has been filed.
- The police has to inform the nearest competent Intervention Centre in written form and provide the documentation of the intervention.
- If underage children are involved, the Youth Welfare Department must be informed.
- On the occasion of the eviction both the endangerer and the victim must be informed about this measure by an information leaflet.
- The endangered has the right to take personal belongings with them.
- The police shall check compliance with the barring order at least once within three days after eviction.
- In case of a violation the offender is fined and removed from the dwelling and its surroundings by order and by force if they refuse to leave. Should they repeatedly violate the barring order, they can be arrested.

Elements of good practice

- All police rights and duties are clearly regulated by law
- The police has the power and obligation to enter the apartment even against the will of the affected
- The protection and safety of the victim is the priority aim of the intervention
- Eviction and barring is an effective instrument for the police to protect victims prior to a violent incident
- If the live, health or freedom of a person is threatened, the police must effect the eviction, there is no legal discretion
- The police has to monitor compliance with the barring order
- Victims and perpetrators have statutory rights to information, which must be fulfilled by the police
- Cooperation of the police with the civil court, Intervention Centers and the Youth Welfare are obliged
- The police is obliged to prosecute if an offence has been committed
- Careful investigation and considering of all evidence as well as a detailed documentation of intervention are obligated
- Specific measures such as multi- agency conferences in severe and repeated cases of violence
- Citizens have the right to file a complaint about police measures with an independent authority or court

Data transmission and Central Data Base for the Protection against Violence

Pursuant to article 56, para one, sub-para three, of the Austrian Security Police Act, the transfer of personal data to suitable victim protection facilities, such as Intervention Centers, is permissible provided. This appears necessary in order to afford protection to individuals at risk as set forth in article 25, para three (Criminal Advisory Service), of the Security Police Act.

Safety authorities are authorized to transmit personal data only to certain institutions for the protection of victims.

The full police report is transmitted to these facilities, but the personal data of third parties, such as witnesses, are anonymized for reasons of data protection.

In the formal decree on "Domestic Violence" issued by the Federal Ministry of Interior on May 7th 2008, the data transmission to law enforcement authorities is specified. However, the police report contains comprehensive data on the type of violence, criminal acts, the relationship between the victim and the perpetrator in cases of offences against the victim's life and physical integrity, freedom, sexual integrity and property.

The relationship is classified as falling into one of the following categories:

- Family relationship in domestic environment
- Family relationship outside a domestic setting
- Acquaintanceship
- Casual acquaintanceship
- No relationship
- Unknown

In addition to the police report, all police interventions in cases of domestic violence, expulsion or prohibition orders or breaches of orders are registered in the official statistics on the protection against violence (Gewaltschutzstatistik).

In accordance with the restrictions set forth in article 58c, para one, of the Austrian Security Police Act, a further transmission of personal data is not permissible.

The Crime Report of the Federal Ministry for the Interior, which contains tables on perpetrator-victim relationships is attached to the Joint Annual Security Report of the Federal Minister for the Interior and the Federal Minister for Justice. The Security Report with its annexes, including the Crime Report, is generally accessible on the home page of the Austrian Parliament.

In accordance with the Register for the Automation of Legal Proceedings (Verfahrensautomation Justiz), criminal cases involving offences against the physical integrity or the life of a victim committed with criminal intent as well as sexual offences or offences to the detriment of a live-in partner or a spouse as defined in the Penal Code, must be marked with the identification code "GIP (violence within private sphere)" in order to allow Statistical evaluation of the suspect.

Trends:

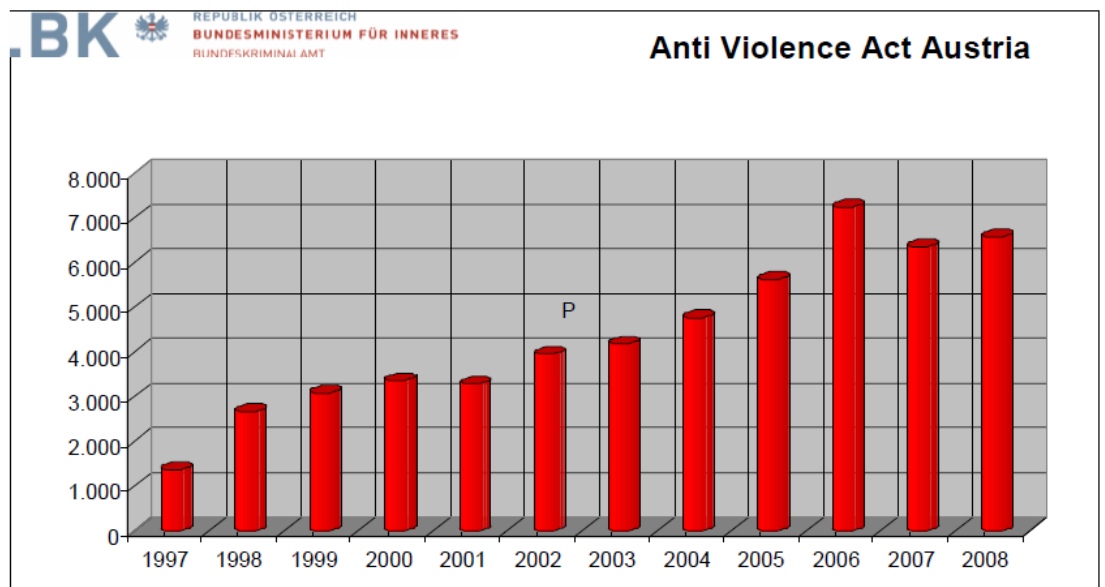
Development of the police interventions in the area of domestic violence

Removal of the violent individual from the home where also the victim resides, provides an efficient instrument and distinct signal pointing out the victim's right to security, and clearly showing the perpetrator's responsibility for his violent behaviour. The rising number of prohibition orders proves that the Anti-Violence Act, which has become a role model for the whole of Europe, is quite effectively enforced by Austrian law enforcement. The rates increased from 4.200 in 2003 to 6.600 prohibition orders in 2008 (see Tab. 1) Summing up we can say that the target of the Anti-Violence Act to interrupt the spiral of violence by removing the violent individual from the scene, and to support the victim of violence through the proactively contact of the Intervention Centres, has been reached.

| | Prohibition orders | Repeal | Mediations |
|-------------|---------------------------|----------------|-------------------|
| 1997 | 1.365 | No data | No data |

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| | | available | available |
| 1998 | 2.673 | No data available | No data available |
| 1999 | 3.076 | No data available | No data available |
| 2000 | 3.354 | 116 | 7.638 |
| 2001 | 3.283 | 105 | 7.517 |
| 2002 | 3.944 | 109 | 7.391 |
| 2003 | 4.180 | 124 | 6.558 |
| 2004 | 4.764 | 106 | 6.195 |
| 2005 | 5.618 | 120 | 6.171 |
| 2006 | 7.235 | 132 | 6.467 |
| 2007 | 6.347 | 130 | 4.967 |
| 2008 | 6.566 | 147 | 5.118 |
| | | | |
| Total | 52.405 | 1.089 | 58.022 |

(Tab. 1, Source: Criminal Intelligence Service, Vienna, 08/2009)



As the statistic shows, the number of eviction and barring orders in Austria has risen each year. This is probably less due to growing violence than to the fact, that the legal measures are increasingly adopted by the police. Within the last 10 years a total of more than 50.000 prohibition orders were effected. So the bill is not just paper work but a tool that is used in practice. It should be mentioned however, that the growing number of evictions has been registered mainly in Vienna.

General

Austria is a small country with approximately 8 mill. inhabitants. It is a parliamentary democracy. In 1995 it became a member of the EU.

The first women´s shelters opened in Austria 1978. Currently there are 26 women´s shelters with about 400 places for women and their children. In 2004 2.767 women and children were admitted to women´s shelters. In addition there are a number of counselling centres for women, counselling against sexual violence, regional helplines and centres assisting immigrant women.

Since 1999 a nationwide free helpline for women has been operating round the clock

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| | <p>(0800/ 222 555), which is financed by the federal government.</p> <p>Also since 1995 Intervention Centres have been established as a further extension of the help network.</p> |
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| Contacts: | <p>National organisations (Intervention Centers):</p> <p>Gewaltschutzzentren Österreich http://www.gewaltschutzzentrum.at</p> <p>ENGLISH SUMMARY</p> <p>Domestic Abuse Intervention Centre Vienna http://www.interventionsstelle-wien.at/start.asp?ID=333&b=52</p> |
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