

# Greater Protection in Cases of Domestic Violence

Information on the Act on Protection  
against Violence

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## Preface

Victims of violence, be they women, men or children, require protection. Anyone who is beaten and humiliated at home needs special protection.

Ensuring the required protection is a task of politics. The Federal Government takes this responsibility seriously. The Act on Protection against Violence (*Gewaltschutzgesetz*) created central legal provisions to combat violence in general and domestic violence in particular. In particular, the principle that "The perpetrator has to go, the victim stays in the home" is comprehensively enshrined in our law. Victims are no longer expected to take care of protecting themselves, and in so doing, to have to accept the loss of their familiar home and environment. In combination with criminal law, this law for the protection of victims makes it clear to perpetrators that violence will not be tolerated by the government, even if it takes place within one's own four walls.

The Act on Protection against Violence is effective in practice and is accepted by the population. While that is pleasing, it is no reason to lean back and relax. Legislation can achieve a great deal, but it cannot do so on its own - laws have to be brought to life,

This takes place in supportive police measures when domestic violence occurs, and in courses and advanced training for all those who have to know and apply the law. It also takes place through cooperation between the police, judiciary, youth welfare offices, women's refuges and advice centres, through the provision of an adequate number of places in women's refuges and other appropriate forms of accommodation, through advisory services for victims, and much more besides. The Federal Government takes a comprehensive approach to combating violence.

This approach has been successful, and we intend to proceed along this path. After all, it is only through joint efforts that the victims of violence can be effectively protected and further acts of violence prevented.

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## **Domestic violence: A social problem**

The overwhelming majority of physical and emotional violence takes place within close social confines, that is to say "at home", and sadly, for many victims, it is part of everyday life. It is exerted to an overwhelming extent against women by their partners or former partners. Some 25 per cent of women between 16 and 85 years of age have experienced violence within a relationship. If one differentiates according to the severity of the violence, two thirds of the women affected by domestic violence have suffered serious or very serious physical and/or sexual violence and one third minor to moderate physical violence. That is the result of a representative study entitled *Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland* (Health, Well-Being and Personal Safety of Women in Germany) commissioned by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth and published in 2004. According to this study, violence takes place in all social classes and different ethnic groups. The risk is particularly high for women in phases of separation.

Thus, the aim is to guarantee the protection of the victims - usually women and children - by means of a wide-ranging support system. For a long time, this form of violence was not taken seriously by our society and was tabooed. Even today, violence against partners is often trivialised and quickly excused. No wonder the victims remain silent out of shame or fear of the perpetrator and do not trust the government institutions that are supposed to protect them. Thus, their suffering not infrequently goes on for years. Alone and without expert advice and social support, they often cannot extricate themselves from a violent relationship. Women's advice centres and refuges have therefore become indispensable supporting institutions. In Germany there are currently some 400 women's refuges, safe lodgings for women and many advice centres.

When violence against partners occurs, the children living in the household always suffer too, even if the acts of violence are not directed against them. Experiencing violence between their parents is not without consequences for their development. One finding of the representative study on violence against women in Germany, for example, was that women who in childhood and adolescence had experienced and witnessed their parents fighting physically themselves experienced violence from an ex-partner or current partner more than twice as frequently as women who had not witnessed such parental conflicts. Those who as children or adolescents had been the victims of direct violence at the hands of caregivers were the victims of violent partners as adults as many as three times more frequently than other women. These findings need to be taken into account in the field of child and youth protection.

Domestic violence has no one single cause; rather it depends on individual, personal and social conditions. In the case of violence between partners, unequal gender relationships in our society with its role stereotypes play a particular role.

### **What legal protection is there for the victims of domestic violence?**

Anyone who is beaten at home needs help. This may involve talking about the different options for protection in the first instance, such as those offered by special assistance facilities, e.g. advice centres or women's refuges. The police offer assistance in situations of acute danger. They are obliged to come immediately upon receiving an emergency call. They will document this visit and pass on their notes to the courts (criminal courts and civil courts) upon request. No-one need be

afraid of informing the police even in cases of violent conflicts within the family.

If a punishable offence has taken place, such as physical assault, coercion, rape or encroachment on freedom, the police are required to **file a complaint**. If they are called to the scene of the offence, they will file the complaint there and investigate accordingly. However, victims may also go to the police station and file a complaint there.

As part of **criminal proceedings**, this complaint is forwarded to the public prosecutor at a local court or to the prosecutor-general, who then decides whether to press charges.

The **police** can also evict a person from a dwelling and the area directly adjoining it if this is necessary for the protection of the dwelling's other inhabitants. They have to determine the spatial protection area and inform the perpetrator where he/she is no longer allowed to go. In most Federal *Länder*, the police may also take the perpetrator into temporary custody in order to enforce the eviction from the home.

If the police consider an eviction to be necessary, they will in most cases take the apartment keys from the perpetrator and wait for him/her to pack the personal items he/she requires. If a person does not go voluntarily, the police may remove him/her by force.

Some Federal *Länder* have explicitly authorised the police in their police laws to carry out such "apartment evictions" for several days to enable victims to obtain advice during this time and, if necessary, take steps under civil law and obtain court protection orders. Applications have to be made for these protection orders from the family court without delay so that there is no gap in protection because the police eviction order only applies for a few days. In a few cases, the *Land* police laws make provision for the perpetrator to be required to name an address or a person authorised to receive the protection order so that it can be served in a way that is legally valid.

As well as or instead of criminal proceedings, anyone who has become a victim of violence can apply for the following **protection measures under civil law**:

- protection orders,
- allocation of the home,
- compensation and damages,
- sole custody of the children,
- prohibition of or restriction on contact.

Protection orders and allocation of the home are included in the Act on Protection against Violence for the pre-emptive protection of victims against further violent acts. They can be used to prohibit contact between the perpetrator and the victim. This is often an indispensable measure to end an acutely dangerous situation, as it gives victims the opportunity to take care of their long-term safety and to seek support so that they can extricate themselves from the cycle of violence. Perpetrators are also shown by the state - perhaps for the first time - that their conduct is by no means legitimate and that they have to make an active effort to resolve their conflicts by a means other than violence.

## **What does the Act on Protection against Violence regulate?**

The Act protects the victims of domestic violence above all through giving them the opportunity to be able to use their own home without having to share it with the perpetrator. Decisions to this effect are made by the family courts upon application by the victim. The Act benefits all those affected by domestic violence, regardless of whether the violence takes place in a relationship between couples (including same-sex couples) or is directed against other family members.

Only in cases where children are mistreated by their parents, the Act on Protection against Violence does not apply. In such cases, the special regulations of child and guardianship law apply, which provide for measures to be taken by the family court with the involvement of the Youth Welfare Office (cf. p. 22 below).

Violence within the meaning of the Act on Protection against Violence means any physical assault, impairment to the health of or encroachment on the freedom of another with intent, regardless of whether the acts take place within or outside the context of a joint household. Psychological violence is also covered by the Act on Protection against Violence: explicitly in the case of threats and unreasonable harassment, and indirectly when it has led to psychological or physical impairment to the health of another person.

## **Which court is responsible?**

The family court, a special department of the local court, is always responsible for dealing with such cases.

Proceedings begin with the lodging of an application by the aggrieved person. He or she has the choice of lodging the application with the court in the district where

- the offence was committed,
- the joint dwelling of those involved in the proceedings is located or
- the defendant has his or her usual place of residence.

The proceedings are subject to the principles of voluntary jurisdiction. That means that the court is officially required to carry out the investigations needed to determine the facts of relevance to a decision. In addition, a court order may be adapted to the specific dangerous situation independently from the application. This gives the court greater scope, enabling it to take account of special circumstances in sensitive areas of peoples' lives.

## **Allocation of the home: The perpetrator goes, the victims can stay**

The core element of the Act on Protection against Violence is its provision on the allocation of the home. If the perpetrator of a violent act and the victim maintain a household jointly that is intended to be permanent in nature, the aggrieved person may have sole use of the dwelling, at least for a certain time, even if he or she does not have a tenancy agreement. If the perpetrator has physically assaulted the aggrieved person or impaired his or her health or has encroached upon his or her freedom, this right exists without any other conditions being fulfilled. If the

perpetrator has only threatened such assault, however, it has to be demonstrated that relinquishment of the dwelling is necessary. This is to avoid undue hardship.

The sole use of the home can only be a permanent solution, however, if the victim has sole rights to the home - for example because it is his/her sole property or on the basis of a tenancy agreement in which only the victim is named as the lessee. In cases where both are jointly entitled to the home or only the perpetrator is entitled, the home can only be allocated for a certain **period**. If the perpetrator but not the victim is (co-) entitled to the home, the maximum period of relinquishment may be six months. If the victim does not succeed in finding a substitute home in this time, the court may extend the period by a maximum of a further six months.

If the victim is not entitled to the home or only together with the perpetrator, he or she has to pay remuneration for the period of use, if this is appropriate; remuneration will have to be based on the rent for the home, but it need not be equivalent to it. During this time, the perpetrator may do nothing that might limit the victim's use of the home.

During this (time-limited) use by the victim, the perpetrator is required to try to find alternative accommodation. The municipalities will provide assistance if need be.

The condition for a claim to allocation of the home is that the victim demands it from the perpetrator in writing within three months of the offence. This period gives the victim time to decide whether he or she wishes to continue to live in the home. Thus, a woman who has fled to a women's refuge may also return to the home.

If the perpetrator and the victim are **married** to one another, the marital home may be allocated for the period of separation **until divorce** under Section 1361 b of the Civil Code if it would amount to "undue hardship" for the perpetrator to remain in the jointly used home. The law makes the explicit provision that it can be deemed that there is undue hardship if the wellbeing of children is prejudiced. In the case of domestic violence - threats of violent acts are sufficient - the entire dwelling is, as a rule, to be relinquished for sole use; as a rule, partial relinquishment, the order preferred in other cases under Section 1361b of the German Civil Code as a "milder solution", is not possible in the case of violence between spouses on account of the danger to the victim of violence.

There is a provision corresponding to Section 1361b of the Civil Code for same-sex life partners In the **Civil Partnership Act (*Lebenspartnerschaftsgesetz*)**.

In the case of all relinquishments of a dwelling, it should always also be examined whether there should be additional protection orders such as prohibitions on contact or coming within a certain proximity of the dwelling in order to afford the victim greater protection. In particular, an additional prohibition on entering the victim's home may be recommendable in many cases.

## **Protection orders**

The court can order (further) measures against perpetrators for the protection of the victim. Possible protection measures may include prohibitions such as the following:

The perpetrator is prohibited from

- coming within a certain proximity of the victim's dwelling determined by the court,
- visiting other places that are frequented by the victim (including the victim's workplace, the kindergarten or school of the victim's children, but also leisure facilities used by the victim),
- making contact with the aggrieved person (this applies to means of contact of every kind including the telephone, telefax, letter or e-mail),
- meeting the victim (if this should happen, the perpetrator is required to leave without delay).

This is not a definitive list. Depending on the individual case, applications may be made for other protection measures and other protection orders may be issued. Protection orders should be sufficiently wide-reaching to cover the diverse dangerous and threatening situations of the victims in each case. That means that the various places and facilities outside the home frequented by the victim (e.g. workplace, kindergarten, school, shopping, leisure) are to be included in the order to refrain from contact and approach. As a rule, the measures are to be time-limited; the period may be extended upon application, however.

Protection orders are not only possible when violence has already taken place (physical assault, impairment to health or encroachment upon the freedom of another), but are also possible when there have been serious threats of such acts. Moreover, the perpetrator cannot make the excuse that he/she committed the act or made the threat under the influence of alcohol. In such cases, too, he/she is responsible for his actions and the court will impose protection orders on him/her.

Protection orders may be imposed not only in the context of domestic violence, but also in case of trespass and undue harassment in the form of stalking. "Stalking" is understood to mean many different forms of behaviour e.g. the repeated surveillance and observation of a person, the constant demonstrative presence of the perpetrator near the victim, physical pursuit or approach, attempts to make contact and telephone harassment, constant messages via telefax, the Internet or mobile telephones or the repeated ordering of goods or services under the victim's name.

Such illegitimate stalking in the form of persistent direct and indirect attempts to approach the victim has been punishable under Section 238 of the Criminal Code since 2007. The condition is that the victim's life is seriously restricted by the offence.

### **What evidence is there?**

Since these are proceedings involving voluntary jurisdiction, the court can investigate the facts of relevance to a decision informally using liberally admissible evidence, a so-called *Freibeweis* (e.g. obtaining information by telephone). In addition, formal evidence under the Code of Civil Procedure (*Zivilprozessordnung*) may be used i.e. witnesses, documents (e.g. doctor's certificate, police report), expert reports, evidence from inspections and interviews with those involved. In principle, the court decides with due discretion whether the facts are to be determined by means of liberally admissible or formal evidence.



When domestic violence takes place, there are often no witnesses other than the victim. In the case of mistreatment, the injuries are also not always visible. If the victim is threatened, pursued or harassed, this is also often not easy to prove. Often, the court can only gain an impression of the situation on the basis of the accounts of the person submitting the application. However, it is not impossible for the court to make a credible and convincing statement by the aggrieved person the primary basis for its decision, particularly when that statement is supported by evidence.

Unlike in temporary injunction proceedings, which are only of a temporary nature (cf. below), the court must be convinced in the main proceedings that violence or other assaults have taken place. Reasonable doubts must be ruled out.

A reduction in the burden of proof helps in cases where the protection order or the relinquishment of the dwelling are dependent on the fear that further violent acts are likely to take place: if violent acts have already taken place on a past occasion, a factual presumption suggests that further violent acts are likely to occur. This presumption must then be disproved by the perpetrator. This evidence to the contrary is subjected to high standards: as a rule, a mere promise by the perpetrator that he/she will not use violence anymore is not sufficient.

## **Urgent protection orders**

In cases of domestic violence, there is usually an ongoing risk. This increases strongly in particular when the victim separates or wishes to separate from the violent partner. The duration of ordinary court proceedings does not do justice to the victim's greater need for protection. Therefore, when there is an urgent need for the court to act immediately, the victim may also apply for an order to be issued under the Act on Protection against Violence in the form of a temporary injunction. As a rule, this is the case when a violent act has been committed or when such a violent act is likely on the basis of specific circumstances. The court must and can then take a decision as quickly as possible to make temporary arrangements on the matter.

Temporary injunction proceedings constitute separate proceedings and do not depend on whether main proceedings have been initiated.

In comparison with main proceedings, temporary injunction proceedings have the following special features:

- In urgent cases, the court may dispense with hearing the applicant. Upon submitting an application, the possible dangers that may be caused by the perpetrator should be presented as precisely as possible in order to draw the court's attention to the urgency and seriousness of the situation.
- A temporary injunction is issued in order to prevent imminent (further) violence or to avert major disadvantages for the applicant. The applicant has to furnish evidence of this in the main proceedings. In proceedings to issue a temporary injunction, it need only be supported by prima facie evidence. Prima facie evidence means that the court needs to be convinced that it is very likely that mistreatment, threat, harassment or stalking has taken place. There are no fixed standards for presuming such probability. As a rule, a detailed,

cohesive account in the form of a statement made in lieu of oath, indicating places and times as precisely as possible, is sufficient. The submission of doctors' certificates and police reports is also helpful as prima facie evidence.

- Once a temporary injunction has been issued without a hearing, the applicant can apply for a new decision to be taken on the basis of a hearing.
- The court is required to initiate main proceedings if a party submits an application to this effect after the temporary injunction has been issued.
- There is only a legal remedy against a decision taken in temporary injunction proceedings if the court has taken its first-instance decision on the basis of a hearing. If the decision has been taken without a hearing, the court is required to hold one subsequently upon application and to take a new decision

### **How is the court's decision enforced?**

Like (almost) any court decision, the relinquishment of a dwelling and protection orders may be enforced compulsorily (i.e. executed). Within the context of the Act on Protection against Violence, the right of execution has been designed to ensure that victims get their rights quickly and simply, taking their special needs into account.

In urgent cases, the execution of a decision may be declared admissible even before the decision has been served on the defendant. In such a case, it comes into effect upon being handed over to the court office. This avoids a situation where the court decision is announced, which could lead to new violent acts being committed against the victim.

The court enforcement officer (*Gerichtsvollzieher*) is responsible for enforcing the decision; he/she can enforce the decision by means of direct force with police assistance.

The obligation to relinquish a dwelling may be enforced in accordance with the eviction rules. In the case of eviction, too, direct force is used to achieve the relinquishment quickly.

### **What happens when court orders are violated?**

When court orders are violated, the aggrieved person is protected as follows:

Relinquishment of a dwelling pronounced in the form of a temporary injunction can be carried out a number of times during the injunction's period of validity. Thus "repeated" clearance is possible if the perpetrator returns to the dwelling.

In the case of a violation of a protection order deriving from a court decision or against an enforceable settlement, the victim can contact the court enforcement officer directly; he or she enforces the protection order and, if there is resistance, may use force and make use of police assistance.

In addition, the victim has the possibility to apply to the family court that issued the protection

order for a fine to be imposed or for the perpetrator to be arrested for contempt of court.

If perpetrators violate court protection orders, they also make themselves liable to prosecution; fines or imprisonment of up to one year are the penalty. If violation of a court protection order is imminent or has already taken place, the police may be called and they are required to intervene to prevent crimes. The violation of an obligation imposed in a settlement, however, is not subject to penalty. Thus, with a view to effectively enforcing the measures provided for in the Act on Protection against Violence, the court should not encourage the conclusion of an agreement between the parties.

### **Is it necessary to involve a lawyer?**

There is no legal obligation to be represented by a lawyer. The required applications may be submitted in writing by the victim or he/she may have them recorded by the court office. In difficult cases where other legal questions also have to be resolved, however, it may be recommendable to involve a lawyer. If the victim is on a low income, an application may be made for legal advice and assistance or assistance with the cost of the proceedings.

### **The court's duty of notification**

The court notifies court orders under the Act on Protection against Violence and any amendments or reversals to them to the competent police authorities. If other public agencies, such as schools, kindergartens and youth welfare institutions, are also affected by the implementation of the court order, the court is also required to notify them of the decision. This avoids a situation where a court order that has been issued is not consistently implemented on account of information gaps between the parties to proceedings, the court and other public agencies.

### **What happens when children are involved?**

Children are often also affected by domestic violence. They become the victims of mistreatment themselves or they see mistreatment e.g. of their mother - both these experiences of violence have damaging effects. The Act on Protection against Violence does not apply to children, however; instead the protective standards of the law on children apply: legitimate or illegitimate children may be officially protected by the competent family court when the physical, mental or psychological best interests of the children or their property are endangered and the parents do not wish or are not able to avert the danger (Section 1666 of the German Civil Code).

In urgent cases, temporary orders may be issued; in case of great danger, this may be done without previously hearing the parties concerned. Persons, groups and staff of institutions who are aware of the risk to children from domestic violence can initiate court proceedings of this kind, as can the child affected itself, with the help of a third person if necessary. In conflict and emergency situations, children and young people have a right to counselling from the youth welfare office without their parents finding out.

In court proceedings, the family court is required to take the measures that are necessary to avert a danger to the child's best interest. The spectrum of possible measures ranges here from warnings, orders and prohibitions, such as the issue of a so-called "go order" or a prohibition on contact, to the removal of the right to determine the child's place of residence or of parental custody.

Eviction of a violent parent or third party, e.g. a partner of the mother, from the dwelling is also possible if the danger cannot be countered in another way (Section 1666a (1) Civil Code). In connection with the Act on Protection against Violence, there is provision for the court to hear the competent Youth Welfare Office if children live in the household concerned. This is intended to ensure that if necessary, the Youth Welfare Office can still influence the decision to be taken in the children's interest.

In addition, the Youth Welfare Office is to be informed of a decision that has been taken in proceedings on allocation of the dwelling if a child lives in the dwelling. In this way, the Youth Welfare Office is informed that a dwelling has been allocated and can then offer those involved advice and support e.g. in implementing contact rights.

### **What do court orders under the Act on Protection against Violence mean for custody and contact rights?**

Court orders under the Act on Protection against Violence will not be without influence on decisions concerning the right to custody and contact. The parent suffering violence at the hands of his/her partner should also check whether, in the context of proceedings under the Act on Protection against Violence, he/she wishes to make an application for transfer of sole custody or at least of the right to determine the child's place of residence if this could result in the child being spared further experience of violence.

If measures have been taken against a parent under the Act on Protection against Violence, the question will often arise as to whether there should be contact between the violent parent and the child.

As a rule, even a parent who does not have custody has the right to contact with the child, regardless of whether the child is legitimate or illegitimate. The child's best interest is always to be taken into account in connection with the right of contact, however. In addition, it has to be ensured that when use is made of this right of contact, no further mistreatment of or assaults on the parent at risk take place. If no amicable solution between the parents can be reached, the family court decides on the extent and use of the right of contact. It can arrange the bringing and collection of the child in such a way that the woman and the man do not meet, for example, and the woman's new address remains unknown. The court can limit the right of contact, suspend it temporarily or rule it out permanently insofar as this is necessary for the child's best interest. For example, the court can order that the contact may only take place in the presence of a third party who is "willing to intervene"; this may be a youth welfare institution or an association that appoints the individual who is to carry out this task in each particular case. This arrangement is referred to as "protected" or "supervised contact". In this way, the family court can ensure that children's visits take place in a neutral place in the presence of a specialist.

## **What happens when foreigners are involved?**

### **Aliens law:**

If a foreign wife or a foreign husband is affected by violence and wishes to separate, this may affect his/her right of residence. Foreign spouses who have come to join a spouse already living in Germany only receive their own right of residence in Germany if the spouses have cohabited for at least two years in the territory of the Federal Republic of Germany (Section 31 (1) sentence 1 no.1 of the Residence Act (*Aufenthaltsgesetz*)). If a separation before the expiry of this period should take place, further residence in Germany may still be made possible if this is necessary in order to avoid particular hardship (Section 31 (2) Residence Act). Particular hardship is deemed to exist, for example, when the foreign spouse cannot be expected to continue to cohabit with the spouse because he/she or his/her children are suffering violence at the hands of the spouse. Separation from the violent spouse in combination with protection orders or the allocation of the home under the Act on Protection against Violence within the first two years in Germany therefore cannot lead to a loss of the right of residence. The family court's decision should in any case be submitted to the Aliens Authority (*Ausländerbehörde*), since it constitutes important grounds for a decision in favour of presuming that a hardship case exists pursuant to Section 31 (2) of the Residence Act. However, one restriction should be noted. The victim is only granted his/her own independent right of residence if the extension of the residence permit of the violent spouse, from whom the victim's right of residence derives, was not ruled out, i.e. the violent spouse himself/herself had the prospect of permanent settlement. This prospect does not exist when an extension of the residence permit has been ruled out pursuant to Section 8 (2) of the Residence Act or when the purpose of the stay was temporary (e.g. a working visit limited to a period of four years as a speciality cook). In such cases - even in a hardship case - the victim has no individual residency rights independent of the legal residence status of the perpetrator as the foreigner who brought about family reunion. If the statutory requirements are fulfilled, however, the right of residence may be possible for a victim under Chapter 2 Section 5 of the Residence Act (Residence on Humanitarian Grounds).

### **Civil law:**

If the civil law of the spouses' home country is applicable to the legal relationship between them (as is often the case in many cases where both partners have the same foreign citizenship) and that civil law includes no provision for the allocation of the spouses' home for the protection of a spouse who has been mistreated or has received threats of violence, it was often doubtful in the past whether it was legitimate to resort to the possibilities of German law. There is now a clear statutory provision that German law applies to the rights to use the marital home that is located in Germany as well as pertaining prohibitions as to trespass, approaching and contact (Article 17 a of the Introductory Act to the German Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch – EGBGB*)).

## **Does the Act on Protection against Violence mean that women's refuges are no longer needed?**

No. It is not advisable for the victim to remain in the home in every case of domestic violence. It may be inadvisable for safety reasons, but also on account of a subjective feeling of being threatened and fear. It is evident in practice that for many of the women affected, allocation of the home is no alternative to escaping to a women's refuge, while on the other hand there are

women for whom allocation of the home would be an option preferable to staying in a women's refuge. Both solutions are equally good to afford protection against domestic violence. This is also taken into account when granting payment in accordance with Book II of the German Social Code - Basic Security Benefits for Job Seekers (*Sozialgesetzbuch Zweites Buch – Grundsicherung für Arbeitsuchende*) and Book XII of the German Social Code - Social Welfare Benefits (*Sozialgesetzbuch Zwölftes Buch – Sozialhilfe*).

## Who can help you if you are a victim of domestic violence?

- The police, who can be contacted by dialling the emergency number 110
- The courts' legal departments (*Rechtsantragsstellen*)
- The municipal commissioner for women's or gender equality, who can be contacted via the relevant municipal administration/town hall or via the district councils (*Landratsämter*)
- The local women's refuge, often to be found in the telephone book under "*Frauen helfen Frauen*"; enquiries may also be directed to the office of the Association of Women's Shelters (*Frauenhauskoordinierungsstelle*), tel. 030 92122083/84; fax 030 26074130; **www.frauenhauskoordinierung.de** (with a search function for local assistance)
- The local women's emergency helpline (*Frauennotruf*) and local women's counselling offices (*Frauenberatungsstellen*) (telephone book) or via the National Association of Women's Counselling and Rape Crisis Programmes - Women against Violence (*Bundesverband Frauenberatungsstellen and Frauennotrufe e. V. (bff)*); **www.frauen-gegen-gewalt.de** (with a search function for local assistance)
- Intervention offices (*Interventionsstellen*) that exist in some Federal *Länder* to offer counselling on protection against violence (telephone book)
- Men's offices (*Männerbüros*) and men's counselling offices (*Männerberatungsstellen*) (in many larger cities, telephone book)
- Branch offices of "*Weisser Ring*", a victim support organisation (nation-wide helpline 0800 0800343 and 01803 343434; **www.weisser-ring.de**)
- Other victim organisations of the *Länder*, operating, for example, under the nation-wide umbrella organisation "*Arbeitskreis der Opferhilfen*" (*ado*) or in regional foundations for victim protection (contact data via the Federal Ministry of Justice website under "*Opferschutz*")
- The Youth Welfare Office (*Jugendamt*) in cases of violence against minors
- The children's and youth helpline of the association "*Nummer gegen Kummer e. V.*" for minors (toll free from Mondays to Saturdays from 2.00 - 8.00 p.m. on 0800 1110333); **www.kinderundjugendtelefon.de**
- Help and advice for perpetrators of domestic violence from the *Bundes-Arbeitsgemeinschaft Täterarbeit Häusliche Gewalt e. V.*; **www.taeterarbeit.com**

## **Act on Protection against Violence (Gewaltschutzgesetz - GewSchG)**

(Article 1 of the Act to Improve Civil Law Protection against Violent Acts and Stalking as well as to Facilitate Relinquishment of the Marital Home in the Event of Separation of 11 December 2001 (Federal Law Gazette, Part I, p. 3513))

### **Section 1**

#### **Judicial measures to protect against violence and stalking**

(1) If a person unlawfully physically assaults, impairs the health of or encroaches upon the freedom of another with intent, the court must, on application by the aggrieved person, take the measures necessary to prevent further such acts of trespass. The imposition of measures should be for a limited period; the period of time may be extended. In particular, the court may order that the perpetrator refrain from

1. entering the dwelling of the aggrieved person,
2. coming within a certain proximity of the dwelling of the aggrieved person,
3. visiting other places to be specified which are frequented by the aggrieved person,
4. establishing contact with the aggrieved person, including by means of telecommunications,
5. bringing about a meeting with the aggrieved person, to the extent that this is not necessary in order to exercise legitimate interests.

(2) subsection 1 shall apply *mutatis mutandis* if

1. a person has unlawfully threatened another with physical assault, impairment of their health or encroachment upon their freedom, or
2. a person unlawfully and with intent
  - a) enters the dwelling of another person or that person's fenced-in property or
  - b) unreasonably harasses another person in that he repeatedly stalks that person against that person's expressly stated wishes or hounds that person by means of telecommunications.

In the case referred to in the first sentence, no. 2 (b), it shall be deemed that unreasonable harassment has not taken place if the act serves to exercise legitimate interests.

(3) In the cases referred to in subsection (1) first sentence, or in subsection (2) the court may also impose measures pursuant to subsection (1) if a person committed the act in a state of pathological disturbance of mental functioning rendering him incapable of the free exercise of will, that person having temporarily placed himself in this state as a result of consumption of alcoholic beverages or similar substances.

### **Section 2**

#### **Relinquishment of a jointly used dwelling**

(1) If, at the time an act pursuant to section 1 subsection (1), first sentence, also in conjunction with subsection (3), was committed, the aggrieved person maintained a household jointly with the perpetrator intended to be permanent in nature, the aggrieved person may demand of the perpetrator that he relinquish the jointly used dwelling for sole use.

(2) The duration for which the dwelling is relinquished shall be made subject to a time-limit if the aggrieved person and the perpetrator jointly enjoy ownership, a heritable building right, or a right in respect of the plot of land on which the dwelling is located, or if the aggrieved person rented the dwelling jointly with the perpetrator. If the perpetrator, either solely or jointly with a third party, enjoys ownership, a heritable building right or a usufructuary right in respect of the plot of land on which the dwelling is located, or if he rented the dwelling either solely or jointly with a third party, the court shall limit the relinquishment of the dwelling to the aggrieved person to a period not exceeding six months. If the aggrieved person has been unable to secure suitable alternative living accommodation on reasonable terms within the period set by the court in accordance with the second sentence, the court may extend the period for a maximum of a further six months unless this is opposed by overriding interests of the perpetrator or the third party. The first to third sentences shall apply *mutatis mutandis* in respect of dwelling ownership, a permanent dwelling right and a dwelling right *in rem*.

(3) Entitlement pursuant to subsection (1) shall not exist,

1. where there is no reason to fear that there will be further acts of trespass, unless it cannot be reasonably

expected of the aggrieved person that he continue to live with the perpetrator in the light of the severity of the act or

2. if the aggrieved person does not demand of the perpetrator in writing, within three months of commission of the act, that he relinquish the dwelling, or  
3. to the extent that relinquishment of the dwelling to the aggrieved person is opposed by interests of the perpetrator of particular significance.

(4) If the dwelling has been relinquished to the aggrieved person for his use, the perpetrator shall refrain from doing anything which might make more difficult or prevent the exercise of the right of use.

(5) The perpetrator may demand remuneration from the aggrieved person for use of the dwelling to the extent that this is equitable.

(6) If, at the time a threat pursuant to section 1 subsection (2) first sentence, no 1, also in conjunction with subsection (3), was made, the person threatened maintained a household jointly with the perpetrator intended to be permanent in nature, the person threatened may demand that the jointly used dwelling be relinquished if this is necessary to prevent undue hardship. It can also be deemed that there is undue hardship if the well-being of children living in the household is prejudiced. Subsections (2) to (5) shall otherwise apply *mutatis mutandis*.

### **Section 3**

#### **Scope of application; conflict of laws**

(1) If, at the time an act pursuant to section 1 subsection (1) or subsection (2), first sentence, was committed, the aggrieved or threatened person was subject to parental custody, guardianship or curatorship, the provisions applicable to the relationship of custody, guardianship or curatorship shall take the place of sections 1 and 2 in relation to the parents and the persons entitled to custody.

(2) Rights of the aggrieved person going beyond this shall not be affected by this Act.

### **Section 4**

#### **Penal provisions**

A person who acts in contravention of a specific enforceable order under section 1 subsection (1), first or third sentence, each also in conjunction with subsection (2), first sentence, shall be punished by imprisonment of up to one year or by a fine. Criminal liability pursuant to other provisions shall remain unaffected.

## **Excerpt from the German Civil Code**

(in the version promulgated on 2 January 2002 (Federal Law Gazette 2002 I, p. 42))

### **Section 1361b**

#### **Matrimonial home when spouses are living apart**

(1) If the spouses are living apart or if one of them wishes to live apart, one spouse may demand that the other permit him the sole use of the matrimonial home or of part of the matrimonial home, to the extent that this is necessary, taking account of the concerns of the other spouse, in order to avoid an inequitable hardship. An inequitable hardship may also exist if the best interests of children living in the household are adversely affected. If one spouse alone or together with a third party is entitled to the ownership of or a heritable building right or usufruct in the plot of land on which the matrimonial home is situated, special account must be taken of this; similar provisions apply to the ownership of an apartment, a permanent residential right and a right of habitation running with the land.

(2) If the spouse against whom the application is directed has unlawfully and intentionally injured the body, health or liberty of the other spouse or unlawfully threatened such an injury or injury to life, then as a general rule sole use of the whole home is to be permitted. The claim to permission of use of the home



is excluded only if no further injuries and unlawful threats are to be feared, unless the injured spouse cannot be expected to continue living together with the other by reason of the severity of the act.

(3) If one spouse has been permitted the use of the matrimonial home in whole or in part, the other spouse must refrain from everything that is suitable to render more difficult or defeat the exercise of this right of use. He may demand from the spouse with the right of use payment for the use, insofar as this is equitable.

(4) If, after the spouses commence living apart in the meaning of section 1567 (1), a spouse moves from the matrimonial home, and if within six months after moving out he has not notified the other spouse of a serious intention to return, it is irrebuttably presumed that he has permitted the spouse who remained in the matrimonial home the sole right of use.

## **Excerpt from the German Criminal Code**

(in the version of the 40th Act to Amend the Criminal Code (Federal Law Gazette 2007 I, p. 354))

### **Section 238**

#### **Stalking**

(1) Whosoever unlawfully stalks a person by

1. seeking his proximity,
2. trying to establish contact with him by means of telecommunications or other means of communication or through third persons,
3. abusing his personal data for the purpose of ordering goods or services for him or causing third persons to make contact with him,
4. threatening him or a person close to him with loss of life or limb, damage to health or deprivation of freedom, or
5. committing similar acts

and thereby seriously infringes his lifestyle shall be liable to imprisonment of not more than three years or a fine.

(2) The penalty shall be three months to five years if the offender places the victim, a relative of or another person close to the victim in danger of death or serious injury.

(3) If the offender causes the death of the victim, a relative of or another person close to the victim the penalty shall be imprisonment from one to ten years.

(4) Cases under subsection (1) above may only be prosecuted upon request unless the prosecuting authority considers *proprio motu* that prosecution is required because of special public interest.