



Federal Ministry for
Family Affairs, Senior Citizens,
Women and Youth

Federal Ministry
of Justice and
Consumer Protection

Greater Protection in Cases of Domestic Violence

Information on the Act on Protection against Violence

Preface

Victims of violence, be they women, children or men, need our help and our support. Protection against violence is also a question of values: people cannot live a free and self-determined life if they have to fear violence or if their lives bear the scars of violence.



Domestic violence continues to be widespread, according to the findings of a 2014 study by the European Union Agency for Fundamental Rights. 35 per cent of women in Germany have experienced physical and/or sexual violence at some time in their lives. 22 per cent of women suffered physical and/or sexual violence from a partner.



Thus, fighting violence against women continues to be very important. This includes supportive police measures when domestic violence occurs. It also takes place through cooperation between the police, judiciary, youth welfare offices, women's refuges and advice centres, and through the provision of an adequate number of places in women's refuges and other appropriate forms of accommodation.

Thus, in fighting violence, the Federal Government takes a comprehensive approach, offering victims protection and assistance that is tailored to their needs. The Act on Protection against Violence (*Gewaltschutzgesetz*) plays a key role here. In particular, the principle that "The perpetrator has to go, the victim stays in the home" is enshrined in this Act. That means direct protection for victims, but also the security of being able to remain within their familiar home and surroundings. And it makes clear to perpetrators that violence is not a private matter, even if it takes place within one's own four walls.

The nation-wide Violence against women support hotline is an important part of this support system. Available round the clock, it offers free of charge advice from qualified counsellors on the telephone number 08000-116 016 and on the website www.hilfetelefon.de. This advice is anonymous and confidential, available in many languages and barrier-free.

Only through making joint efforts can the victims of violence be given more effective protection and further violence be prevented. A life without violence is essential for participation in society and real equality.



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Contents

Preface	3
Domestic violence: A social problem	7
What legal protection is there for victims of domestic violence?	9
What does the Act on Protection against Violence regulate?	11
Which court is responsible?	12
Allocation of the home: The violent person goes, the victims can stay	13
Protection orders	15
What evidence is there?	17
Urgent protection orders	18
How is the court's decision enforced?	20
What happens when court orders are violated?	20
Is it necessary to involve a lawyer?	21
The court's duty of notification	22
What happens when children are involved?	22
What do court orders under the Act on Protection against Violence mean for custody and contact rights?	24

What happens when foreigners are involved?	25
Can court orders under the Act on Protection against Violence protect the victims even when they are abroad?	27
Does the Act on Protection against Violence mean that women's refuges are no longer needed?	28
Who can help you if you are a victim of domestic violence?	28
Appendix	30
Act on Protection against Violence (Gesetz zum zivilrechtlichen Schutz vor Gewalttaten und Nachstellungen – Gewaltschutzgesetz – GewSchG)	30
Excerpt from the German Civil Code (Bürgerliches Gesetzbuch – BGB)	33
Excerpt from the German Criminal Code (Strafgesetzbuch – StGB)	36
Excerpt from the German Residence Act (Aufenthaltsgesetz).....	37

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 for 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.

Since March 2014, the results of a new representative study by the European Union Agency for Fundamental Rights have become available on the extent of violence against women in Europe. The study shows that the extent of violence against women in Germany continues to be extremely widespread. Some 22 per cent of the women polled between 18 and 74 years of age have experienced physical and/or sexual violence within a relationship. The protection of the victims – most of them women and children – must therefore be guaranteed through a broad support system. Another alarming result of the EU study is that two thirds of the female victims do not go to the police and also that they do not seek assistance from any other organisation. It is known that this problem also exists in Germany. Victims often remain silent out of shame or fear of the perpetrators and do not trust state institutions. To make it easier to seek assistance, especially for

these women, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth set up and activated the national Violence against women support hotline in March 2013, which can be called on telephone number 08000 116 016. It has been set up permanently to provide competent counselling for women who have become victims of violence of all kinds, and it does so anonymously and around the clock, 365 days a year, in many languages, regardless of disability and, if necessary, helps make contact with local support services. In Germany, there are currently some 400 women's refuges and safe lodgings for women and 750 advice centres providing counselling in cases of violence against women.

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 victims of domestic violence?

Anyone who is beaten at home needs help. This may first of all involve talking about the different options for protection, such as those offered by special assistance facilities, e.g. specialist advice centres, women's refuges or the nation-wide Violence against women support hotline. The police offer assistance in cases 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 violent person where he/she is no longer allowed to go. In most Federal *Länder*, the police may also take the violent person 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 violent person 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 violent person 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 claim and apply for the following **protection measures under civil law**:

- protection orders,
- allocation of the home,
- compensation and damages,
- a judicial settlement of the custody of common children,
- prohibition or restriction of access.

Protection orders and allocation of the home are included in the Act on Protection against Violence for the preemptive protection of victims against further violent acts. They can be used to prohibit contact between the violent person 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. Violent individuals 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 violent person. Decisions to this effect are made by the family courts upon application by the victims. 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.

The only cases not covered by the Act on Protection against Violence are cases where children are mistreated by their parents. In such cases, the special provisions of the laws concerning parents and children and guardianship apply, which provide for measures to be taken by the family court with the involvement of the youth welfare office (cf. p. 22 ff. 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/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 violent person 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 violent person 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 violent person has physically assaulted the victim or impaired his or her health or has encroached upon his or her freedom, this right exists without any other conditions being fulfilled. If only threats of such assault have been made, 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 violent person is entitled, the home can only be allocated for a certain **period**. If the violent person 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 violent person, 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 violent person may do nothing that might limit the victim's use of the home.

During this (time-limited) use by the victim, the violent person 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 aggrieved person demands it from the violent person 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 violent person and the victim are **married** to one another, the marital home may be allocated for the period of separation **until divorce** under Section 1361b of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB) if it would amount to “undue hardship” for the violent person 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 living in the household 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 generally not possible in the case of violence between spouses on account of the danger to the victim of violence. If the violent person continues to claim the home, allocation of the matrimonial home is possible later, also for the time after divorce (Section 1568a of the German Civil Code).

The legal situation for registered same-sex partners is comparable under Sections 14 and 17 of the Act on Registered Life Partnerships (*Lebenspartnerschaftsgesetz* – LPartG).

In the case of all allocations of homes, 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

home 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 the violent person for the protection of the victim. Possible protection measures may include prohibitions such as the following:

The violent person is prohibited from

- coming within a certain proximity of the victim's dwelling determined by the court,
- visiting 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 email),
- meeting the victim (if this should happen, the violent person 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, shops, leisure facilities) 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 of health or encroachment upon the freedom of another), but are also possible when there have been serious threats of such acts. Moreover, the violent person 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/her 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 violent person 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?

In court proceedings, the court has to investigate *ex officio* the facts of relevance to a decision. These investigations are often difficult because when domestic violence takes place, there are often no witnesses other than the victim, and in the case of mistreatment, the physical 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 information and accounts of the person submitting the application and use the statements of the persons affected as the basis of its decision. The court can take evidence in so-called free evidence proceedings (e. g. by obtaining information by telephone) or in the formal taking of evidence. In the formal taking of evidence under the German Code of Civil Procedure (*Zivilprozessordnung* – ZPO), the court can examine witnesses or involved parties, ask for documents (e. g. doctor's certificate, police report) to be submitted, obtain an expert report or inspect the consequences of violence.

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, i. e. 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 is 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 violent person.

This evidence to the contrary is subjected to high standards: as a rule, a mere promise by the violent person 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 person. 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 provisional decision as quickly as possible for the protection of the person affected by violence.

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 defendant. To this end, the possible dangers that may be caused by the violent person should be presented as precisely as possible when submitting an application 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 or further violence or to avert major disadvantages for the applicant. Prima facie evidence has to be provided. 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 defendant 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.
- A complaint is only admissible against a temporary injunction if the court took its 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). The execution is so designed to ensure that the court's protection against violence order can be enforced quickly and simply, taking the victim's special needs into account.

In urgent cases, the execution of a decision may be declared admissible even before the court decision is served on the defendant. This is intended to prevent new acts of violence resulting from the announcement of the decision.

The court enforcement officer (*Gerichtsvollzieher*) is responsible for enforcing the protection orders; 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" evictions are possible if the violent person returns to the dwelling.

In the case of a violation of a protection order, the victim can instruct the court enforcement officer directly to enforce the protection measures ordered, even in the face of resistance on the part of the perpetrator, possibly with the assistance of the police.

Within the context of enforcement, a fine may also be imposed or the perpetrator arrested for contempt of court.

Violations of court protection orders are also liable to prosecution and may be punished by a fine or imprisonment of up to one year. 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 a protection order imposed in a court settlement, however, is not subject to penalty. Thus, with a view to effectively enforcing protection measures, 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 the enforcement of a court order that has been issued is prevented or impeded on account of information gaps.

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 laws on children apply: legitimate and 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 injunctions 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 competent youth welfare office should be heard by the court 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. The court can also appoint a guardian *ad litem* ("attorney of the child") for the child, whose task is to determine the child's interests and to assert them in the proceedings.

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 removal 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) of the Civil Code).

In addition, the youth welfare office is to be informed of a decision that has been taken in proceedings on allocation of the dwelling under the Act on Protection against Violence 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 consider 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, every parent has the right to contact with the child, regardless of whether the child is legitimate or illegitimate. That also applies when parental custody has been withdrawn.

The child's best interest is always to be taken into account in connection with any court measures affecting a child, 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 in individual cases 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; this may be a member of staff of the youth

welfare office or of a youth welfare institution or of an association. This arrangement is referred to as “protected” or “accompanied 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 from the violent person, this may affect his/her right of residence. A foreign spouse who has come to join a spouse already living in Germany only acquires an independent right of residence in Germany if marital cohabitation has lawfully existed in the federal territory for at least three years (Section 31 (1) sentence 1 no. 1 of the Residence Act (*Aufenthaltsgesetz*)). If a separation before the expiry of this period should take place, it may be possible to enable the spouse to continue his or her residence in Germany in order to avoid particular hardship (Section 31 (2) of the Residence Act). Particular hardship shall be deemed to apply, for example, if the continuation of marital cohabitation is unreasonable because the foreigner 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 three 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 an 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 right of residence independent of the legal residence status of the violent person 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 (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)).

Can court orders under the Act on Protection against Violence protect the victims even when they are abroad?

In principle, orders under the Act on Protection against Violence only grant protection against the violent person for victims of violence within Germany. If the victim is threatened by the violent person abroad, for example during a holiday, the order of a German court cannot protect him/her. In such cases, it may be advisable to obtain a protection order under the law of the state of stay. Other provisions apply in foreign countries within Europe, however, when the country of stay is a European Union Member State, with the exception of Denmark. The EU Regulation on mutual recognition of protection measures in civil matters, which came into force on 11 January 2015, is to be observed, according to which protection measures against violence under civil law taken by Member States are also recognised in the other European Union Member States and protection measures granted the victims can be extended to another Member State. Under this Regulation, if a victim who has already obtained a protection order from a German court intends to take up temporary or permanent residence in a foreign country within the EU, this court will, upon application, issue a certificate concerning the protection order. With this certificate, the victim can apply for recognition and, if necessary, enforcement of the protection order in the Member State of his/her stay. The authorities in the state of stay then treat the protection order as if it had been issued by the authority responsible for issuing such orders in that state.

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

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 Arbeitssuchende*) 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 on the emergency number 110
- The courts' legal departments (*Rechtsantragsstellen*)
- The municipal commissioner for women's or gender equality (*kommunale Gleichstellungsbeauftragte*), who can be contacted via the relevant municipal administration/town hall or 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 68077237;
www.frauenhauskoordinierung.de
 (with a search function for local assistance)

- The local women's emergency helpline (*Frauennotruf*) and local women's counselling centres (*Frauenberatungsstellen*) (telephone book) or via the National Association of Women's Counselling and Rape Crisis Programmes – Women against Violence (*Bundesverband Frauenberatungsstellen und Frauennotrufe e. V. (bff)*); www.frauen-gegen-gewalt.de (with a search function for local assistance)
- The Violence against women support hotline (available of charge free throughout Germany around the clock on 08000 116016) www.hilfetelefon.de
- Intervention centres (*Interventionsstellen*) that exist in some Federal *Länder* to offer counselling on protection against violence (telephone book)
- Centres for men (*Männerbüros*) and men's counselling centres (*Männerberatungsstellen*) (in many larger cities, telephone book)
- Branch offices of “*Weisser Ring*”, a victim support organisation (nation-wide victim helpline, tel. 116006; www.weisser-ring.de)
- Other victim organisations of the *Länder*, operating, for example, under the nation-wide umbrella organisation, the Association of Victim Support Organisations (“*Arbeitskreis der Opferhilfen*” – ado) or in regional foundations for victim protection
- 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, which can be contacted on 116 111 (and also on 0800 1110333 on Mondays to Saturdays from 2.00–8.00 p.m.); www.nummergegenkummer.de
- Help and advice for perpetrators of domestic violence from the member organisations of the *Bundes-Arbeitsgemeinschaft Täterarbeit Häusliche Gewalt e. V.*; www.taeterarbeit.com

Act on Protection against Violence (Gesetz zum zivilrechtlichen Schutz vor Gewalttaten und Nachstellungen) (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 of the German Civil Code

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.

**(in the version of the Act to Amend
the Equalisation of Accrued Gains and
Guardianship Law of 1 July 2009
(Federal Law Gazette I, p. 1696)**

**Section 1568a of the German
Civil Code**

Matrimonial home

(1) One spouse may demand that the other spouse assign to him the matrimonial home on the occasion of divorce if he is more dependent on using it, taking account of the best interests of the children living in the household and of the circumstances of the spouses, than the other spouse, or if such assignment is equitable for other reasons.

(2) If one spouse, alone or together with a third party, is the owner of the plot of land on which the matrimonial home is located, or if one spouse, alone or together with a third party, has a usufruct, the heritable building right or a residential right *in rem* in the plot of land, the other spouse may only demand that it be transferred if this is necessary to avoid an inequitable hardship. The same applies to the ownership of an apartment and a permanent residential right.

(3) The spouse to whom the home is left

1. at the time of receipt by the landlord of the spouses' notification of transfer, or

2. on entry into force of the decision on the procedure to allocate the home

enters into a tenancy in place of the spouse obliged to effect the transfer into which the latter entered, or alone continues a tenancy relationship entered into by both. Section 563

(4) applies with the necessary modifications.

(4) A spouse may only demand the establishment of a tenancy relationship regarding a home which the spouses have on the basis of a service or employment relationship existing between one of them and a third party if the third party consents or this is necessary in order to avert a severe hardship.

(5) If no tenancy relationship exists with regard to the matrimonial home, both the spouse who has a claim to its transfer and the person entitled to the tenancy may demand the establishment of a tenancy relationship at conditions that are customary locally. On proviso of section 575 (1), or if the establishment of an indefinite tenancy relationship is inequitable on consideration of the justified interests of the landlord, the landlord may demand a suitable time-limit to be set on the tenancy relationship. If no agreement is reached with regard to the amount of the rent, the landlord may demand a suitable rent, in cases of doubt the rent which is customary locally.

(6) In cases falling under subsections (3) and (5), the right to enter a tenancy relationship or to its establishment ceases to exist one year after the final decision in the divorce case becomes final if it was not legally asserted prior to this date.



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 of the German Criminal Code

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.



Excerpt from the German Residence Act

(in the version of 29 August 2013
Federal Law Gazette I p. 162)

Section 31 of the German Residence Act

Independent right of residence of spouses

(1) In the event of termination of marital cohabitation, the spouse's residence permit shall be extended by one year as an independent right of residence unrelated to the purpose of the subsequent immigration of dependants if

1. marital cohabitation has lawfully existed in the federal territory for at least three years or
2. the foreigner has died while marital cohabitation existed in the federal territory

and the foreigner was in possession of a residence permit, settlement permit or EU long-term residence permit up to this point in time, unless he or she was unable to apply for an extension in time for reasons beyond his or her control.

Sentence 1 shall not apply if no extension of the foreigner's residence permit is permissible or if it is not permissible to issue the foreigner with a residence permit or EU long-term residence permit because this is precluded by a rule of law on account of the purpose of residence or by a subsidiary provision attaching to the residence permit pursuant to Section 8 (2).

(2) The requirement stipulated in subsection 1, sentence 1, no. 1 for marital cohabitation to have existed lawfully for three years in the federal territory shall be waived if necessary to enable the spouse to continue his or her residence in order to avoid particular hardship, unless an extension of the foreigner's residence permit is not permitted. Particular hardship shall be deemed to apply if the obligation to return to the country of origin resulting from the termination of marital cohabitation threatens to substantially harm the foreigner's legitimate interests, or if the continuation of marital cohabitation is unreasonable due to the harm to the foreigner's legitimate interests; in particular this is to be assumed where the spouse is the victim of domestic violence. Such legitimate interests shall also include the well-being of a child living with the spouse as part of a family unit. In order to avoid abuse, extension of the residence permit may be refused if the spouse is reliant on benefits in accordance with Book Two or Book Twelve of the Social Code for reasons for which he or she is responsible.

(3) By way of derogation from Section 9 (2), sentence 1, nos. 3, 5 and 6, the spouse shall also be granted a settlement permit if the spouse's subsistence is ensured after the termination of marital cohabitation by maintenance payments from the for-

eigner's own funds and the foreigner possesses a settlement permit or an EU long-term residence permit.

(4) Without prejudice to subsection 2, sentence 4, claiming benefits in accordance with Book Two or Book Twelve of the Social Code shall not preclude extension of the residence permit. The residence permit may thus be extended for a limited period for as long as the conditions for granting the settlement permit or EU long-term residence permit have yet to be met.

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