

The Austrian Act on the Protection against Domestic Violence

The core element of the comprehensive reform
regarding the response to domestic violence
with special emphasis on the role of the law enforcement police.

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1. Three Components of the Shift in Paradigm

The past few years have seen a fundamental and broadly based change in the response to domestic violence perpetrated by men against women. The Act on Protection against Violence (Federal Act on the Protection against Domestic Violence, Federal Law Gazette 1996/759) which entered into force on May 1, 1997, reflects this new orientation, or rather this shift in paradigm, which has led to a new understanding of the phenomenon of domestic violence and defined appropriate responses by the state to it.

The impact of this shift in paradigm is considerable: not only have public authorities and private women's institutions changed their attitude towards domestic violence, but the general public now responds to this phenomenon in a manner that is entirely different from what it was prior to the reform. In particular, the media coverage of domestic violence mirrors the new approach. Reports on cases of violence no longer merely state the facts indifferently, but now invariably end with the question whether the authorities had been informed and whether they had taken any action to prevent the crime. Thus the public authorities have come to assume responsibility for combating domestic violence as a result of societal developments.

1.1. Domestic Violence Is a Public Concern

The change wrought by the Act on Protection against Domestic Violence is visible at a glance: **acts of violence perpetrated in the domestic sphere are no longer defined and treated as a private matter or family affair**, but as a **cause for public concern**, or to be precise, **as a matter concerning the maintenance of law and order**. Thus the borderline between the public and the private sphere has shifted: violence in the home is no longer considered as a matter that concerns only the family, and not the state. Although the intimacy of the private sphere must be, and has traditionally been respected by the state, this sphere has been redefined: it ends where state intervention is necessary in order to protect the physical safety of an individual.

1.2. The Response of the State with due regard for Relational Violence

Upon closer inspection, the fundamental change in the way in which the police respond to acts of domestic violence becomes obvious.

In the past, the police, when informed about acts of violence, did not remain inactive, but acted in a way which could best be described as **an effort to limit the direct imminent damage resulting from such violence.**

Either the police remained in the home until the situation calmed down or the victim was advised to leave the home and take temporary refuge with a friend, relatives or in a home for battered women in order to escape further threats or violence. Prior to the reform, the **police intervened only** in cases where acts of violence were actually perpetrated by men **in a particular situation.** Victims were advised to go to a safe place so as to avoid any further deterioration of the given situation. In the past, the public authorities, therefore, did not initiate a process of change going beyond pacification and conflict settlement. This type of intervention is clearly not an emergency action, but represents a restrained, minimalist approach, from which a clear signal emanates. Whilst the epi-phenomenon of the recent act of violence could not be ignored, the response did not consist in addressing the family relationships underlying the violence. Perhaps it was simply overlooked that any act of violence in a couple's relationship has a deeply rooted cause and this is why it could be assumed with some degree of probability that in a week's or month's time violence would again erupt in the life of the couple, that in the criminal proceedings the pressure exerted on the victim would build up until it became unbearable, the woman would withdraw her statement, or, if exposed to serious threats, also her authorisation for the assailant's persecution.

These experiences were legion in the everyday work of the police. The self-restraint shown by police officers especially towards the perpetrators stemmed, however, from their hesitation to interfere in private family relationships, even if these produced violence. The police shunned influencing family relationships in any way and calmed their conscience by telling themselves that every (adult) individual is responsible for the family situation in which he or she lives. Especially as regards the relationship between the perpetrator and

the victim, the change in attitude has resulted in a new objective for police intervention. Whereas prior to the reform, these relationships were considered to belong to a sphere where the state must not intervene, since the reform, the relationship between the perpetrator and the victim has been considered the actual target of the intervention. This means, however that the **task of the police** which is clearly defined in law and which consists in offering the threatened individual **preventive protection** in the face of a **probably imminent criminal act** (§ 22, para. 2 of the Law Enforcement Police Act), prior to the reform was **not**, or **only inadequately, performed** in cases of **relational violence** which gave ground for the assumption that dangerous acts would re-occur in the future.

Thus the second aspect of the shift in paradigm which is of particular practical significance, can be described more precisely: The state, and especially the police no longer consider an act of domestic violence as a non-recurring, one-time phenomenon, but regard and treat it as an epi-phenomenon of the underlying relational violence. Hence, they are fully aware of the fact that there can be no genuine prevention that would assure the safety of the victim, as long as the violent relationship persists.

1.3. The Response of the State Reinforces Legal Standards

A striking feature of the former response is its disregard for the impact of the violent acts on legal standards. Advising the victim to take refuge would appear justified if she were exposed to a wild animal attacking her and if this animal could not immediately be brought under control. Therefore, in the past, the response of the police to domestic violence was primarily **focused on the victim**, and not aimed at restraining the violent man. Often, although not always, criminal proceedings were initiated after acts of violence had occurred; however, such cases were prosecuted only half-heartedly as it always had to be assumed that the women who had been exposed to violence would remain biased in her violent relationship and would, therefore, not be available as a witness for the prosecution for the entire duration of the proceedings.

The third essential element of the shift in paradigm deserves special mention in that, **male violence directed at spouses or live-in partners** is no longer considered as a natural

phenomenon but as a **serious crime** for which the **perpetrator is responsible**. The new response of the state was conceived with a view to expressing unconditional disapproval of the act of violence. This disapproval, the expression of which is the central task of criminal justice, applies to all sections of society alike. Therefore, one of the prime concerns of the reform project was the creation of an environment in which it could be assured that the administration of criminal justice would perform this function. From this perspective, the reform efforts could also be described as a **criminalisation project**.

In the debate on the reform, a concept of violence was used which is based on the definition set forth in criminal law and thus refers to **criminal conduct aimed at dominating the victim and exercising power and control over her**.

This concept of violence is not the only conceivable one, but was chosen because of its practical value; it offers the dual advantage of conveying the key points of the reform and of being compatible with police law and police action programmes, in which clear rules governing the behaviour of officers in specific situations (both in maintaining law and order, or intervening criminal cases) play a central role.

Against the background of these standards and principles, the reaction of the law enforcement officers telling the victim to seek temporary refuge (and if necessary to take her children with her) is manifestly inappropriate. **The response of the police must reflect the severity of the crime and convey the message that the perpetrator is responsible for it**. This signalling effect is of tremendous importance for

- bringing about a change in the perpetrator's attitude and behaviour
- helping the victim to cope with the trauma of violence
- society's approach to violence.

Therefore, the burden and inconveniences resulting from measures taken for the protection of the victim must be borne by the violent man and not by the person threatened by violence.

1.4. Summary

These three core elements of the shift in paradigm, all of which relate to society's understanding of acts of violence, clearly outline the reform programme: **The state (and especially law enforcement authorities) must assume responsibility for taking appropriate and commensurate measures for the preventive protection of individuals experiencing relational violence, i.e. living in relationships in which they are exposed to criminal acts of violence perpetrated by another individual.**

2. The Reform of Police Intervention

2.1. Definition of the Scope of the Study: Domestic Violence Directed against Women

The term “violence” as it will be used in the following, has already been defined earlier. According to this definition, the term refers to criminal conduct (liable to prosecution by court), which serves the purpose of exercising power and control over others. Physical violence, in whatever form, may prompt a “family court” to issue a prohibition order in accordance with § 382b the “Rules Governing Execution”, must, however, not be regarded by law enforcement officers as one of the instruments available to them. Forms of structural violence are not covered by this study.

The present study focuses on male violence directed at women, because: first, this topic was by far the most pressing issue in the drafting of the Act on Protection against Domestic Violence and in the relevant training programmes; second, domestic violence perpetrated by men against women accounts for more than 90% of all police interventions in the domestic sphere, and third, this form of violence constitutes a very special phenomenon in our society, because it is the consequence, the manifestation and one of the causes of the imbalance of power between the genders. In line with the Act on Protection against Violence, which deals exclusively with “domestic violence”, this study is also restricted to violence perpetrated in the home. In contrast to violence perpetrated in public, domestic violence has become a crucial issue, which can be ascribed to historical, social and practical causes: Historically, the house or home constituted a specific district of domination, an enclave within overarching spheres of domination. From the social

perspective, the family is a place in which patriarchal structures can be brought to bear and hardly be restrained by public control. The walls surrounding our homes de facto act as an efficient mechanism for shutting out public control. The terms “domestic violence” of “violence in the home” encompass a wider field than the term “violence in the family”, as the former also include violence directed at female domestic workers or au-pair girls.

2.2 The Reform Guidelines

The Austrian reform project follows **five guidelines**. These are:

- the fundamental assumption that **domestic violence is a public concern**
- **precedence of the threatened person’s demand for safety;**
a solution had to be found in view of the fact that **acts of domestic violence are not generated by specific situations, but have their root cause in relationships;**
- the **need to show “zero tolerance”** of violence, even if it occurs in the domestic sphere;
- emphasis on **responsibility of the perpetrator;** and
- the **need for a holistic and multi-institutional approach.**

These guidelines served as a basis for defining concepts for police intervention.

2.3. Violence in the Private Sphere as a Public Concern

The right of individuals to the protection of their physical integrity by the state, which is enshrined, in particular, in Article 8 of the European Convention on Human Rights, persists, irrespectively of whether the individual is in a public place or at home. Although the private sphere and family life, as a matter of principle, must be respected by the state pursuant to Article 8 of the ECHR, the right to the privacy of the home (relatively) undisturbed by the state, must end whenever state intervention is required to protect the safety of individuals in the domestic sphere. Hence, the **police must not consider domestic violence as a private matter or family affair**, but must be aware of their public mandate also when confronted with violence in the home.

This theoretically binding approach gives rise to major difficulties for law enforcement officers in their daily work. They must leave behind the shadows of a long tradition which

had hammered home to them that the police had no dealings within families and could not achieve anything anyway. The demand that they should separate the father from his family instills fears and causes insecurity in police officers. In such situations, law enforcement officers **are entitled**

- **to get clear statutory instructions** concerning their intervention
- **to receive thorough training through** within they become acquainted primarily with the reality of relational violence and its dynamics, and
- **not to be left alone with their case, after their intervention**, by other competent institutions, such as the family courts, the criminal justice system, the youth welfare offices and private institutions.

2.4. Focus on Relational Violence, not on the Actual Situation

Prior to the entry into force of the Act on Protection against Domestic Violence, police officers typically reacted to domestic violence by trying to settle the “dispute” or by advising the victim to leave the home, if necessary taking her children with her, and to go to a safe place, i.e. to her mother’s or a friend’s home, or to a home for battered women. As mentioned earlier, the specific characteristic of this type of intervention consisted in ignoring the root cause of the conflict, i.e. relational violence, and pretending that an act of domestic violence was a singular occurrence, resulting from the escalation of a particular situation involving two “conflicting parties” whose real relationship was not analysed and for lack of obvious characteristics was therefore generally considered as being based on a power balance. Such an interpretation of domestic violence in no way reflects the roles assigned to family members and their relationships to one another. Thus the crucial motif is eliminated from the picture: Terms such as “conflict” or “quarrel” gloss over the imbalance of power characteristic of relational violence.

The essence of relational violence consists in one individual’s (i.e. the man’s) overbearance resulting in the wish to control the behaviour of another individual (i.e. the woman), if necessary by resorting to physical violence. As long as police intervention took place on the assumption that the situation represented a one-off act of violence, the objectives were de-escalation, pacification, settling a family dispute, and mediating in the

escalated “conflict”. To restore peace within the family looked like a noble effort. Yet, this type of intervention merely sanctioned a relationship of domination, i.e. the domination of the man over “his” spouse or live-in partner. Police intervention which overlooks that individual acts of violence are not committed purely spontaneously, but are the outcome of relatively stable power and control patterns governing the interactions between the partners, reinforce these relationships and heighten the probability that the woman will again be exposed to violence in the future.

Yet it should be clear that individuals who share a home, if not a table and a bed, have a relationship which casts them in particular roles and determines the way in which they interact. If in road traffic strangers get involved in a quarrel about the right of way or the speed limit, it is normally enough to de-escalate the situation. These two strangers have no common history, which acts as a link between them. When they leave each other, it is for good, and the probability of a repetition of the quarrel is negligible. The situation is entirely different for a man and a woman who share a home and their lives. In this relationship, every action and reaction forms part of a densely interwoven network of behavioural patterns and mutual expectations, nothing comes entirely as a surprise, nothing happens out of the blue, certainly not something as serious as an act of violence. Therefore it is entirely implausible to assume that an act of violence committed within a relationship between a man and a woman can be ascribed to the escalation of a situation and has nothing to do with the relationship as such.

Relational violence is, in essence, **instrumental by its nature**. It is a demonstration of power aimed at **establishing control**. Relationships in which violence occurs are first and foremost relationships characterised by domination, which is, of course, illegitimate.

The tendency of police officers to overlook the underlying pattern of violence even if they intervene repeatedly in the same homes, and to content themselves with calming the situation, which, of course, does not prevent future outbreaks of violence, corresponds to the usual pattern of police interventions outside homes. Such interventions are normally aimed at de-escalating situations without major efforts and at quickly restoring “peace and order”.

There is no quick fix for relational violence. Police interventions can merely be the first step. Something else has to be considered: if this first step leads to the expulsion of the violent man from his home, he will hardly contribute to a calming of the situation in the short run. (On the other hand training has shown that police officers tend to overestimate the danger of escalation; in actual practice, perpetrators very rarely show resistance to prohibition orders.) The end result of the intervention can not be anticipated, as it depends on the co-operation of other institutions, in a certain way also on the collaboration of the individuals exposed to violence, and is therefore beyond the control of law enforcement officers. From all of this it becomes obvious that such initial interventions are diametrically opposed to the everyday logic and routine of the police.

In training courses, police officers are drilled into avoiding overreactions in their interventions. In cases of domestic violence, however, exactly the opposite is necessary: a police intervention merely focused on the particular act of violence attempting to de-escalate the situation, pacify the parties, or to tell the victim to leave the home, does not correspond to the requirements of effective prevention of violence. If the perpetrator and the victim experience that the police intervention does not radically attack the root cause, this underlying pattern of relational violence will persist and thus become part of the problem, and not offer a solution to it.

2.5. Role of Police Intervention in Enforcing Standards

Intervention that seeks to de-escalate the situation is not only entirely insufficient with regard to prevention, but also emits the **wrong signal**. This should be taken seriously, because not only the victim and the perpetrator, but also the witnesses will infer from the police intervention what importance the state attaches to the incident.

Therefore police intervention must convey the clear message that **violence in the domestic sphere is not a pardonable slip**, but a severe criminal act of injustice. Domestic violence must not be trivialised as a private conflict or a family quarrel.

In addition, the police intervention should be directed against the violent man and should not leave it to the victim to obtain protection; it should demonstrate that the **state holds**

violent men responsible for their acts. Zero tolerance of domestic violence as a criminal injustice must go hand in hand with holding perpetrators liable for their actions. Although male violence directed at women has deep-seated societal causes, this in no way relieves violent men of their responsibility for their conduct. The response of the police and the judicial system to male violence should clearly illustrate this approach and should avoid any behaviour that could be interpreted by perpetrators as an excuse for, or trivialisation, of their behaviour.

This demand holds especially true for programmes **working with violent men**. Such programmes must not be motivated by the need to offer perpetrators therapeutic support, but must build on their responsibility. It must be the goal of such programmes to prompt perpetrators to **assume personal responsibility**, to give up their exaggerated desire for controlling their partners and to learn to behave respectfully towards women.

Again and again it is remarkable how many justifications and excuses violent men come up with in order to explain their behaviour. Various forms of victim-blaming are extremely popular: perpetrators engage in fault-finding, regarding the victim guilty because she behaved in such a way as to provoke or deserve violence. Rejecting such excuses and firmly insisting on the responsibility of the perpetrator are absolute musts which have to start with the police intervention. Accordingly, police intervention must not create the impression that the behaviour of the woman played any role. *Ipsa jure* it does not matter whether the person exposed to violence wants the police to intervene, and in particular, to obtain a prohibition order or not. Intervening police officers must resolutely face the perpetrator and draw his attention to his responsibility for the violent act and its consequences. Law enforcement officers must, therefore, refrain from making any statements that could be interpreted by the perpetrator as condoning his violent behaviour.

In accordance with their mandate to maintain law and order, the police are expected to avert dangers, not only in a theoretical sense, but also in practice they must take a firm and unambiguous stand to help justice prevail over injustice. In contrast to staff of the fire protection or construction police authorities, the role of law enforcement officers is not restricted to removing dangers, but always also consists in setting standards. Disregarding this aspect means overlooking one of the crucial functions law enforcement performs for

our society. However, in an increasingly pluralistic society threatened by centrifugal forces, this function becomes at the same time ever more important and ever more difficult. Nevertheless – despite plurality – the state’s right to the monopoly of power and the outlawing of violence as a means to enforce private interests constitute the indispensable system of core standards on which our society depends. In principle, this also holds true for domestic violence, although it must be admitted that this consensus on core standards is relatively new. As in Austria these core standards were, in essence, only introduced with the reform of family law in the seventies, this consensus must be energetically defended.

2.6. *Women in Violent Relationships or the Crucial Question: Why do they not simply leave ?*

By disregarding relational violence, police officers perceive the event in a way that does not allow them to understand the behaviour of the victim. The questions as to why the woman does not simply leave the violent man or why she keeps returning to him, which immediately spring to the mind of police officers, are both a riddle and a source of never-ending frustrations. Complaints of police officers are legion: about women who drop charges brought by the police against perpetrators, who retract their testimony, who cancel their authorisation for prosecution of the assailant (because they are exposed to threats and intimidation), or to put it in a nutshell, women who torpedo their allies’ efforts because they obviously do not know what they want and in the end always return to their violent partners (perhaps because they are “hooked” on violence?)

The solution to this riddle becomes obvious as soon as the very specific situation of the victim who has lived for months or even years with a violent man is understood. It cannot be reasonably expected of a person who has been exposed to violence for so long that she will immediately team up with the police against her partner the moment they arrive in the home. The forces keeping the woman in a violent relationship are far too powerful. These are:

- first of all, the paralysing fear of the perpetrator’s reaction to any attempt on her part to create some leeway for herself or even

- to separate from the man,
- the identification with the perpetrator known as the “Stockholm Syndrome”,
 - the fear of economic misery,
 - the fear of losing her children; the fear of the shame associated with having failed as a spouse and mother by not having been able to lead a harmonious family life,
 - in general, the suspicion or experience that our society does not put the blame in the violent man, but holds the female victim liable for the violent event.

In addition, women who live in violent relationships are often incapable of realising that they are victims of violence and of allowing the rage to build up which would help them to leave. Only once the victim has succeeded in liberating herself from a violent relationship will she be able to clearly understand the degree of violence to which she has been exposed and draw the conclusion that separation from the violent man was the right solution.

Law enforcement officers who are not sufficiently well trained and hence cannot grasp the dynamism of a violent relationship, again and again are disappointed, discouraged or confused when they see that the victims for whose “salvation” and “liberation” they had intervened, do not support their efforts, but torpedo them by trivialising violent events or by telling lies. What seems illogical from outside, appears logical when penetrating to the core of this dynamism. A woman who has lived in a violent relationship for an extended period of time will first and foremost think of the way in which the perpetrator will respond to police intervention. She has justified fears that the violent man will take it out on her for “being bothered by the police”. This reaction will be even stronger if the police calls into question that man’s “right” to exercise control over “his” wife or girlfriend. After all her experience with her partner, the victim must assume that the violent man will make every effort to reaffirm his power through an escalation of violence.

Against this background, the question has to be raised what it means when a woman repeatedly forgives a violent man and “makes it up” with him. Frequently, the couple

turns up at the police office a day after the intervention, seemingly happily reunited and unanimously demands that the prohibition order be lifted. But it must be borne in mind that genuine reconciliation is only possible outside violent relationships. As long as the woman has not been able to free herself from the shackles of relational violence, the “reconciliation” with the perpetrator remains a treacherous arrangement of highly dubious value. Only once the victim has reached a minimum distance from her assailant and acquired a sufficient degree of self-assurance and safety, will she be able to gradually comprehend how relational violence developed and can realistically assess her current situation. Reconciliation can be reached at the end of this process – after the power imbalance between the partners has been eliminated, but never at its beginning.

2.7 The Indispensable Role of the Dual-Phase Model

The reform in Austria had to respond to a very delicate situation, a real dilemma. On the one hand, its declared objective from the very beginning had been to aim at empowerment, at strengthening the position of the woman faced with violence. On the other hand, the state intervenes at a moment when the woman is in an extreme situation where she cannot realistically be expected to turn against the assailant immediately. For police intervening in the first phase this means no less than that they cannot count on the woman's support.

As a consequence, the reaction of the state has to be structured in two phases: During the first phase the intervention must not depend on the wish of the woman; in an emergency, it must even take place against her will. Any other solution would mean asking too much from a woman at risk who is under psychological pressure due to a violent relationship. However, this first, patronising phase must be strictly limited. Control over the further process of change must clearly and unconditionally pass to the woman at risk afterwards.

In accordance with this, the prohibition order is issued by law enforcement under applicable Austrian legislation regardless of the woman's wishes – originally it covered a period of seven days, which were extended to ten days under the amended Police Act of January 1, 2000 – but its continued effect after that period depends on the woman at risk,

who, during that period, has to request an interim injunction from a Family Court to replace the prohibition order.

2.8 The Need for a Holistic Concept and Its Co-Operative Implementation

Police intervening against the backdrop of a violent relationship and in view of the unlawfulness of violence become aware of their limited options. A violent relationship cannot be ended by police intervention alone; such an intervention is not an appropriate sanction, it is only a first step and there is an urgent need for follow-up co-operation with other institutions – such as the family courts, the youth welfare offices, criminal courts and private institutions. If, during that first phase, police succeed in helping the woman to get a largely realistic view of her situation and to muster the courage that she should change her life, they have given an important impetus for a long-term process of change.

As established by Christa Pelikan as a result of a secondary analysis of numerous programmes to prevent violence committed by men in the home, the common point of departure for all successful prevention programmes is that no institution can be successful if it proceeds alone and that a holistic and co-operative approach is the key.

In this context, the term "holistic" should be taken to mean that what is decisive here it is not an isolated partial aspect of the phenomenon of violence and of the way violence is dealt with but the fact that all aspects contributing to the situation of violence must be considered and dealt with, e.g. an adequate reaction to the behaviour of the assailant, support to the person at risk, concern for children who might be directly or indirectly affected, the outlawing of violence by society, as well as aspects of training and organising police officers. The many institutions dealing with different aspects of the phenomenon of violence must not work in isolation because this will inevitably result in contradictions, duplication of efforts or deficiencies.

The situation prior to the reform was such that many institutions were concerned with aspects of domestic violence but the pieces of the puzzle of how to deal with domestic violence did not form a whole. As a consequence, there were major differences in the way the phenomenon of violence was understood, and the functions of various "cogwheels in

the system" were inconsistent, preconceptions about the work of other institutions were wrong, and there was even resentment against competing institutions (or institutions perceived as competitors); of course, there was also a lack of communication.

The first step is certainly the most difficult one, i.e. the gradual development of a shared understanding among policemen and policewomen, judges and the staff of women's institutions of what violence committed by men against women and a violent relationship mean. In Austria, integrating the staff of women's institutions (especially homes for battered women) in the training of law enforcement personnel has proven particularly fruitful.

The elaboration of an overall concept considering all partial aspects to be dealt with, oriented on clear-cut objectives and applied by all institutions involved – governmental and non-governmental alike - must be complemented by joint co-operative implementation. The effective implementation of the concept in day-to-day practice can only be ensured by an institutionalisation of continuous communication and by safeguarding smooth transitions from one phase to the other.

However, for such co-operation to function following prerequisites need to be fulfilled:

- the existence and continuation of shared fundamental ideas and a common "working philosophy",
- a clear assignment of roles making optimal use of the potentials of the individual institutions,
- well organised interfaces and communication,
- a sufficient degree of respect vis-à-vis the co-operating partners and their tasks as well as readiness to co-operate,
- an institutionalised means of jointly evaluating co-operation.

In Austria the Prevention Advisory Council established at the Ministry of the Interior acts as the guardian of co-operation. It consists of representatives of the governmental agencies concerned and of the non-governmental victim support institutions. Through various channels – concomitant research, internal law enforcement statistics, annual activity and observation reports of the Intervention Centres as well as events where special topics are presented and discussed – the Prevention Advisory Council evaluates the co-operation among the institutions involved in the prevention project on an ongoing basis.

The dynamism behind this process is reflected in the fact that Parliament was able to pass an important amendment of the Act on the Protection against Domestic Violence as early as two years after the law had taken effect.

2.9 The Role of the Intervention Centres

This is where the decisive importance of the role played by non-governmental counselling services becomes clear. Under the Act on Protection against Domestic Violence (§ 38a (4) of the Police Act), law enforcement officers are obliged to inform a woman at risk of suitable "centres for the protection of victims". A "suitable centre for the protection of victims" is first of all defined as an institution recognised by the Federal Ministry of the Interior as a victim protection facility and promoted pursuant to § 25 (2) of the Police Act.

Once the victim protection facility has proven valuable, the Federal Ministry of the Interior signs a contract, commissioning it to address people jeopardised by violence to offer counselling and immaterial support. As soon as they have received such a commission, the victim protection facilities are promoted to the inner circle of Intervention Centres.

This succinct regulation is actually a key element of the reform. It is based on the assumption that the state must not wait for the woman involved in a violent relationship to find her way to the counselling service but must act and address her in this respect. We have to act on the understanding that the woman is in need of counselling so that she can see the options she has to change her life and actually realise them, and that, in view of the circumstances, she is often unable to break out of the violent relationship on her own.

Experience to date has shown that without targeted support of the women at risk, many of them do not request an interim injunction, which means that things are back to what they were like before the police first intervened.

Hence it is of great importance for the overall success of the project to succeed in addressing the woman in the first phase, to explain to her in credible terms that there is an alternative to the violent relationship and to encourage her to believe in the possibility of changing her situation fundamentally. It is evident that a non-governmental institution which is clearly and credibly oriented on the interests of the woman will more easily succeed in gaining the woman's confidence than the police will.

2.10. Result: The Function of Initial Police Intervention

What the police can do for women in the first phase is the following:

- it is within their remit to break the vicious circle of violence temporarily by expelling the assailant;
- they can thus give the woman at risk a relatively secure space where she can take her time so as to become aware of her situation and her options, a place where she can gather strength, and where she can be approached by other institutions which want to

support a process of change without the man preventing or disturbing this; last but not least,

- the police can support such follow-up intervention by other institutions by quickly passing on accurate and comprehensive information on the situation before and after the intervention. The compilation of accurate documentation about the first intervention by law enforcement officers and the act of passing such documentation on to the institutions which are to step in afterwards.

Obviously, the expulsion of the assailant from the home of the woman at risk is not an objective or principle but one of the instruments of the project. At this point, light should be shed on how well this instrument conforms with the objectives outlined above; against the backdrop of these aims, the strong points of this measure will become clear. It is an effective means and a strong message

- supporting the safety and security of the woman as the violent relationship is interrupted and the woman is given leeway to make a change;
- manifesting that violence is criminal and unlawful;
- showing the assailant that he is responsible for his behaviour, and finally creating a basic situation that enables other institutions, in particular the Intervention Centres, Family Courts, and the Youth Welfare Office, to join in the process of intervention.

3 Annex: Texts of Laws and Regulations

1. Police Act

Federal Law Gazette no. 566/1991 as amended by Federal Law Gazette I no. 146/1999

CID Counselling

§ 25. (1) ...

(2) Moreover, the law enforcement authorities shall promote projects which serve the prevention of dangerous assaults on the life, health or property of individuals.

(3) The Federal Minister of the Interior is authorised to commission, under a contract, time-proven and suitable victim protection facilities to take up contact with people endangered by violence for the purpose of counselling and immaterial support (Intervention Centres). If such victim protection facilities primarily serve to counsel and support women, such a contract shall be co-signed by the Ministry for Women's Issues and Consumer Protection; if such a facility primarily serves the counselling and support of children, the contract shall be co-signed by the Ministry for the Environment, Youth and Family Matters.

Expulsion and Prohibition to Return to the Home in Incidents of Domestic Violence

§ 38. (1) If in view of certain facts, especially in view of a preceding assault, it can be assumed that a dangerous attack on the life, health or freedom of an individual is imminent, law enforcement officers are authorised to expel the author of such dangerous acts from the home and the immediate surroundings in which the individual exposed to such threats, lives. Law enforcement officers must inform the perpetrator of the area of which he has to keep clear; this area is to be determined with due regard for the requirements of effective prevention.

(2) Law enforcement officers are furthermore authorised to prohibit the expelled person from returning to the premises defined in accordance with Paragraph one above. However,

coercion must not be used as a means to enforce this prohibition. When a prohibition from returning to the home is imposed, it is necessary to make sure that this interference with the private life of the perpetrator corresponds to the principle of proportionality (Section 29). Law enforcement officers are authorised to take all keys to the home held by the perpetrator; they have to give the perpetrator an opportunity to take with him urgently needed personal effects and to obtain information on potential lodgings. If the perpetrator needs to enter the home he has been banned from, he shall only be allowed to do so in the presence of a law enforcement officer.

(3) When a prohibition order is issued, law enforcement officers shall obtain from the perpetrator an address to which information on the suspension of a prohibition order or an interim injunction pursuant to Section 382b Rules Governing Execution can be sent. Should the perpetrator fail to indicate such an address, such documents can be deposited without prior delivery attempts until an address is given; the perpetrator shall be informed to this effect.

(4) Law enforcement officers shall also have the obligation to inform the potential victim of the possibility of obtaining an interim injunction in accordance with Section 382b Rules Governing Execution and of centres for the protection of victims (Section 25, para. 2).

(5) Reports on the issuing of prohibition orders shall not only describe the circumstances leading to police intervention, but shall also state circumstances which would warrant a procedure pursuant to Section 382b Rules Governing Execution.

(6) The competent law enforcement authority shall be immediately informed of the issuance of a prohibition order, which shall be examined within 48 hours. For this purpose, the law enforcement authority concerned may enlist the assistance of all institutions and bodies that could contribute to establishing the facts of the case. The district administration may in its capacity of law enforcement authority involve doctors in the public health service. If the law enforcement authority finds that the conditions for imposing the prohibition order do not exist, the authority must repeal the order and immediately inform the parties concerned; if possible, information to both parties shall be communicated orally or over the phone, or by written notification delivered personally.

Once the prohibition order has been repealed, the expelled person must be given the keys taken from him pursuant to para. 2 above, or should an application for an injunction pursuant to Section 382b Rules Governing Execution have been made, the keys will be deposited with the competent court.

(7) Law enforcement officers shall check whether the prohibition order is complied with; such checks shall be run at least once during the first three days of the duration of the prohibition order. The prohibition order expires after the tenth day of its issue; in cases in which an application for an interim injunction has been filed pursuant to Section 382b Rules Governing Execution within that period, the prohibition order expires when the decision of the court has been served on the respondent, and in any event no later than after the twentieth day of its issue. If such an application pursuant to Section 382b Rules Governing Execution has been filed, the court shall inform the law enforcement authority thereof without delay.

Admissibility of Disclosure of Data

§ 56. (1) Notwithstanding the cases listed in Section 7 (1) sub-para. 3 of the Data Protection Act and Section 57 (3), the law enforcement authorities may only disclose personal data

1. ...

6. to suited victim protection facilities (§ 25 paragraph 2) to the extent that this is necessary to protect individuals at risk;

7. ...

Other Administrative Offences

§ 84. (1) Whosoever

1. ...

2. violates a prohibition order pursuant to § 38a (2), or

3. ...

commits an administrative offence punishable by a fine not exceeding ATS 5,000 or two weeks of imprisonment in case the fine is not enforceable.

2. Rules Governing Execution

Imperial Law Gazette no. 79/1896 as amended by Federal Law Gazette I 147/1999

Protection from Domestic Violence

§ 382b. (1) If a person commits a physical attack on or a threat thereof against a close relative, or shows behaviour which is extremely detrimental to the physical integrity of this person, thereby making it unbearable for the victim to continue to live together with the perpetrator, the court upon application of the victim shall

1. expel the perpetrator from the home and the immediate surroundings and
2. prohibit the perpetrator from returning to the home and the immediate surroundings,

if the home serves the purpose of satisfying the immediate housing needs of the applicant.

(2) If a person commits a physical attack on or a threat thereof against a close relative, or shows behaviour which is extremely detrimental to the physical integrity of this person, thereby making it unbearable for the victim to continue to meet the perpetrator, the court upon application of the victim shall

1. prohibit the perpetrator from staying on certain premises which will be specified and
2. prohibit the perpetrator from meeting or contacting the applicant,

unless this would be contrary to serious interests of the respondent.

(3) Pursuant to Paragraph 1 and 2 close relatives include

1.
 - a) spouses and live-in partners,
 - b) brothers and sisters and relatives of direct descent, including adopted and foster children and adoptive and foster parents,
 - c) the spouses and live-in partners of the persons mentioned under letter b.
2.
 - a) relatives of direct descent, including adopted and foster children and adoptive and foster parents, the spouse or the live-in partner, and

b) brothers and sisters of the spouse or live-in partner, if they live in a joint home with the respondent or have lived in a joint home with him in the last three months prior to the filing of the application.

(4) An interim injunction in pursuance of Paragraph 1 and 2 may be issued irrespective of the question whether the parties concerned continue to live in a joint home and without being linked to divorce proceedings, a judicial separation or the annulment of the marriage, proceedings related to the distribution of the joint assets and the joint savings, or proceedings to clarify the question of the right to use the home. However, without pending proceedings such an injunction shall only be valid for three months.

Procedure and Order

§ 382c. (1) Hearing the respondent prior to issuing an interim injunction pursuant to Section 382b (1) shall in particular be refrained from in cases in which immediate danger caused by the respondent is imminent. This may primarily be based on a report of the law enforcement authority which the court shall obtain ex officio; the law enforcement authorities shall send such reports to the courts without delay. If the application is filed without undue delay after a prohibition order (Section 38a (7) Police Act), such application shall be served on the respondent without delay.

(2) Unless otherwise requested by the applicant, the order for the expulsion of the respondent from the home shall be served on the respondent by the enforcing agent upon enforcement. The applicant shall be informed of the date thereof.

(3) Information on the content of a decision concerning an application for the issuing of an interim injunction pursuant to Section 382b and of a decision repealing such decision shall also, without delay, be passed on to

1. the Federal Police Directorate, if such matters fall within its local jurisdiction, or the district administration in its capacity of law enforcement authority,
2. the youth welfare office in charge locally if one of the parties is under age.

(4) If, on the occasion of an expulsion pursuant to Section 38 (3) Police Act, the respondent gave the law enforcement officers an address to which communications can be sent, such address shall be considered the address for service in court proceedings. Should the perpetrator has failed to indicate such an address although he was informed of the legal consequences thereof, service can be effected by depositing communications without prior delivery attempts (Sections 8 and 23 Act Governing the Service of Official Documents) until the court has been notified of such an address.

Enforcement

§ 382d. (1) Interim injunctions pursuant to Section 382b (1) shall be enforced immediately ex officio or upon application.

(2) The enforcing agent shall expel the respondent from the home and impound all his keys to the home and deposit such keys with the court. The respondent shall be given an opportunity to take his personal effects and documents as well as all the objects for his sole personal use or the exercise of his occupation.

(3) If the respondent is not present when the injunction is enforced, the enforcing agent shall give him, within two days and upon application, an opportunity to obtain his belongings within the meaning of para. 2 above from the home. The respondent shall be informed of this right by a message posted on the door of the home by the enforcing agent.

(4) The court may order the law enforcement authorities to have an interim injunction pursuant to Section 382b (1) executed by the law enforcement officers available to it. In this case, these officers, in their capacity as agents enforcing the injunction, are obliged, upon request of the applicant, to create a situation conforming with the interim injunction pursuant to Section 382b (1) by using their direct authority to command and coerce, and to report the result to the court issuing the interim injunction.