

GREVIO Shadow Report NGO-Coalition

Austrian NGO-Shadow Report to GREVIO

Coordination:

Association of Austrian Autonomous Women's Shelters, AÖF &
Domestic Abuse Intervention Centre Vienna, IST

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INTRODUCTION

As Austria was among the first two countries to be evaluated by GREVIO regarding the implementation of the Istanbul Convention, it is an honour as well as a challenge for Austrian civil society organizations to be given the opportunity to submit the potentially first Shadow Report regarding this new mile-stone legal document.

Challenges with the coordination and drafting of this Shadow Report arose due to the short time frame for completing this report (April to mid September), in particular as it coincided with the summer months. Moreover, the participating organizations had to take on the task of coordinating and drafting the report without any financial support and in addition to their every day work with victims of violence against women (VAW) and domestic violence. Therefore, it was impossible for this report to fulfil the high quality standard we were hoping for. While we were not able to include every issue that had been discussed in the process of drafting this report and could not provide information on all topics with the same level of detail, we hope that GREVIO members will find that the report complements the State Report and thus provided a broader picture of the situation concerning VAW in Austria.

With regards to the methodology used to draft this report, it can be noted that all civil society organizations and NGOs that were originally contacted by the Council of Europe and further relevant NGOs were invited to participate in an NGO Coalition lead and coordinated by the Austrian Association of Autonomous Women's Shelters (AÖF) and the Domestic Abuse Intervention Center Vienna. The organizations that eventually participated in the drafting process and provided input to the final report are listed below.

The coordinating organizations would like to take this opportunity to thank the Council of Europe for the opportunity to contribute to the monitoring mechanism of the Istanbul Convention, a break-through legal document whose importance for the fight against VAW cannot be overstated. We are looking forward to the evaluation process and its outcome and remain at the disposal of GREVIO should any further questions or the need for clarification arise. The coordinating organizations can be contacted through:

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- Asylum Coordination
- Association Efeu
- Association Divan, Caritas Styria
- Association Frauenrechte jetzt (Women's rights now)
- Association Info Centre for migrants
- Association LEFÖ - Information, Education and Support for Migrant Women
- Association Maiz
- Association menschen@leben
- Association Miteinanderlernen
- Association Orientexpress
- Association Peregrina
- Association Witaf
- Austrian Women Ring (Frauenring) – Network of Women's NGOs
- Centre for Asylum Seekers, Caritas Vienna
- Centre Polis
- Domestic Abuse Intervention Centre Vienna (IST)
- Federal Association of Autonomous Rape Counselling Centres
- Federal Association of Intervention Centers/Centers for the Protection from Violence
- Federal Working Group on Victim-safety oriented Work with Perpetrators
- Initiative HOSI (Homosexuellen Initiative)
- Ludwig Boltzmann Institute of Human Rights
- Network of Austrian Autonomous Women's Shelters (AÖF)
- Network of Girl's and Women's Info, FMBST
- Ninlil - Empowerment and Counselling for Women with Disabilities
- peppa-Girls Centre Caritas Vienna
- White Circle (Victim support organisation)
- Women in Development Europe, WIDE
- Union of Austrian Shelters for Women ZÖF

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General Information on Women in Austria

As an introduction to our shadow reports this section gives some facts and figures as well as general information about the situation of women in Austria. Although equality between men and women is in the Austrian constitution, gender equality is still far away from reality. In many parts of society, women continue to be discriminated because of their gender.

Facts and Figures - Statistics about Violence against Women/girls and children

The Austrian Federal Act on Protection Against Domestic Violence entered into force on 1 May 1997. After several amendments, the Second Act on Protection Against Violence (2009) was adopted, with further improvements regarding the protection of and support for violence victims. The latest amendment dates back to autumn 2013 and expands the protection of children affected by violence. The corresponding acts include protection by the police and under civil law, measures under criminal law as well as victims' rights. Every person residing in Austria, regardless of their origin or nationality, is entitled to protection against violence.

Data from the Survey on violence against women European Union Agency for Fundamental Rights (FRA-2014):

- In Austria, **one out of five women (20%)** has indicated **experience of physical and/or sexual violence** since the age of 15
- **One out of eight women (12%)** has indicated to have experienced physical violence **by their partners** since the age of 15
- **One out of 17 women (6%)** has indicated to have experienced **sexual violence by their partners since the age of 15**
- **One out of 25 women (4%)** has indicated to have experienced **sexual violence by an unknown person**
- **More than one out of three women (38%)** has indicated experience of **psychological violence by their (former) partners**
- **Almost one out of three** of all people interviewed in this survey (**31%**) experience **physical, sexual or psychological violence before the age of 15 by an adult perpetrator (parents, relatives)**
- **One out of 20 girls experiences (5%) sexual violence** by an adult perpetrator
- **One out of almost seven women (15%) have been victim of stalking since the age of 15**
- **More than one out of three women (35%)** has experience **sexual harassment** since the age of 15
- **Only out of six women (16%)** reports the heaviest violent experiences in their own partnership to the police, but much more women -one out of 8 (12%)- reports such experiences if the perpetrator is unknown.
- **Most women (82%)** find it acceptable if doctors routinely asks about certain injuries if they have been caused by violence
- Currently in Austria, **one in eight victims of domestic violence does not know where to get help**, aside from the police
- **One in five women has recently seen or heard campaigns on violence against women in Austria.** This implies that **Austria ranks lowest**, behind Germany and the Czech Republic.

Femicides:

- We do not know exactly how many women are murdered by their partner or ex-partner, but we estimate, that annually approx. 20-30 women are victims of femicide.

Barring orders by the Police

- In **2015**, the police issued a total of **8.261 barring orders** in Austria, i.e. more than 22 barring orders per day. The preponderant majority of perpetrators of domestic violence are male, whereas the majority of the victims are female (Statistics of the Domestic Abuse Intervention Centre 2015).

Statistic of the Women's Shelters

- In 2015 3.331 women and their children flee to an Austrian women's shelters (1.681 women and 1.650 children) (Common statistics Statistic of the Autonomous Women's Shelters Network, AÖF) and the The association ZÖF – Union of Austrian Shelters for Women 2015).

Statistic of the national Women's Helpline 0800/222 555

- In 2015 The women's Helpline received 8.252 calls in total, from these 7.199 calls are from women and girls.

Gender Pay Gap

The Gender Pay Gap between women and men still is 22,9% in Austria. The EU average was 16,1 %. According to Eurostat the gender pay gap closes continuously, but very slowly (it was 23% 2013). Austria is therefore in European comparison for years in second to the last place, just above Estonia.

Part-time work

According to Statistic Austria almost half of the women were employed in a part time job for the first quarter of 2016. In the beginning of the 1990s the part time job ratio for women was one quarter, the ratio rose gradually to a third (32,3%) in 2000, 42,8% in 2010 and to 46,9% 2014. From January to March 2015 a new record was made with 48% in the part time job ratio by women. In contrast to this, the proportion of men, who work 30 hours or less per week, declined from 11,4% in to 11,2%.

The Lack of Childcare facilities

The lack of childcare facilities in Austria is with 58% significantly stronger than the EU-average of 44% (2013). This is a real hindrance for women in finding a job. Especially in rural areas childcare facilities are scarce, in particular for children younger than 3 years old.

Paternity Leave

In Sweden almost 90% of fathers take paternity leave, whereas in Austria these are only 17%, according to the Ministry of Family (2012). In 2012 a total of 135.770 persons received Child Care Allowance, 5.839 of them were men. This is 4,3%.

Lack of child support and poverty traps for single parents and their children

In 2015 there were 108.000 single parent families with children under 15 years in Austria, 93% of those were women headed households. A survey by the platform for single parents showed, that only half of the single mothers received regular child support from the fathers. Many women therefore depended on the state child care support system.

Gender Pay Gap and Pension

The pension gap between women and men is strikingly high. On average, women receive 40% less than men. Many elder women see themselves confronted with low pensions and they risk poverty. The average pension in 2015 amounted to 1.557 € for men, compared to only 944 € for women.

Low percentage of women in Politics

Austrian Politic is male-dominated. On the national council there are currently only 31 % of women represented (56 of 183 delegates). In the federal council there are 16 from 61 members (31%). The percentage of women in the government sinks gradually: While in 2008 40% of the federal government were women, currently there are only 25 %. The share of women in the state parliaments are no better: While in Styria the percentage of women is ahead with 40%, Burgenland (22 %), Carinthia (23 %) and lower Austria (23 %) are in the last places. In the beginning of 2016 there were only 141 women mayors in a total of 2.100 communities.

Women in Supervisory Boards

According to the Arbeiterkammer report the top executive board in Austria remains male dominated: 28,5 % of the 200 largest companies do not have women in the executive or in supervisory board. There are still 13 times more men than women in management position, the supervisory board is with 82,3% male dominated.

Women in Federal Administration

In December 2014 the percentage of women in top official position (heads of sections) amounted in the federal administration to 19,1%. 13 from a total of 68 section were led by women. In 1995 only 2 from a total of 79 sections were led by women, which forms 2,5 percent.

Women in the Police

There are only about 14% women in the Austrian police force.

Women in Universities

The share of female professor was in Austria in 2015 by 15%. In international comparison there is a tremendous need to catch up. The amendment of the university law, requires at least 40% of women represented in university boards and governing boards, like the rectorate.

Abortion

The legal basis for abortion in Austria is regulated in form of the so-called *Fristenlösung*. Since 1.1.1975 according to § 97 Austrian Criminal Code (StGB) abortion is exempt from punishment, if it is carried out within the first three months after the start of the pregnancy. Otherwise according to § 96 Austrian Criminal Code abortion is punishable for the women as well as for the abortionists. In practice there are many barriers for women who decide on abortion. Frequently, abortions within the time limit of three months are offered mainly in private clinics at high expense, because most of the public hospitals do not offer the service. Neither medicines nor institutions are bound to carry out an abortion and health insurances do not cover the costs .

Article 4 - Fundamental Rights, Equality and Non-discrimination

Discrimination Based on Migrant or Refugee Status

Background

In several of the nine provinces of Austria, some groups of migrant or refugee women, especially undocumented and asylum-seeking women and women with limited social rights and benefits, face barriers to accessing women's shelters.

Challenges

These barriers are often connected to certain administrative or financial regulations, for instance, local governments which fund women's shelters do not admit undocumented or asylum-seeking women to shelters or the shelters do not receive any funding for these women, because funding for the women's shelter depends on the individual women's entitlement to social benefits. If women's shelters take in these women, they have to provide funding from other sources such as private donations.

This represents discrimination against the women victims of violence who, in situations fleeing from violence, are not entitled to adequate protection at an appropriate time.

Recommendations

Article 4.1 of the Convention states that "Parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere." Article 4.2 states that discrimination on any ground, including migrant status, which includes undocumented migrants, needs to be avoided.

Thus Austria shall:

- Swiftly conduct an investigation about possible barriers in all nine provinces.
- Remove barriers and guarantee the right to ALL women victims of violence and their children to immediately access shelters.
- Provide core funding to women's shelters so that the funding does not depend on the status of individual women seeking help.
- Provide specialized support for migrant women, including undocumented migrant women victims of violence, through migrant women's organizations need to be expanded to all provinces, to improve women's access to justice (see also section on Article 22).

Discrimination Based on Sexual Orientation and Gender Identity

Background:

Austria implemented the two 2004 European Union anti-discrimination directives into the federal Equal Treatment legislation only in a minimal fashion, thus transposing into Austrian legislation a hierarchy in the protection from discrimination created at the EU level. While protection from discrimination on the grounds of age, religious belief and sexual orientation is limited to employment and occupation, protection from discrimination on the grounds of sex, disability, race or ethnic origin is also granted in areas such as social protection, social benefits, education, access to and provision of goods and services, including housing.

This unequal level of protection is not only unconstitutional but also a violation of Article 26 of the International Covenant on civil and political rights which reads as follows: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination.

It is obvious that the current Federal legislation in Austria does not treat "all persons" as equal before the law as they are not entitled to "equal protection of the law". It is also clear that the law does not prohibit

discrimination and does not guarantee to all equal protection against discrimination. In particular, lesbians do not enjoy the same legal protection against discrimination.

It is positive, however, that Austrian provisions to protect women victims from violence (since amendments in 2009) protect every person in their living environment (see sections on Art 52 and 53). In order to guarantee this right to every person, any mention of the relationship of the perpetrator to the victim has been removed from law. Thus, the law now operates on the principle to protect every individual's basic human right to live free from violence, rather than to protect people and certain forms of families or relationships. Also, it is not necessary that the perpetrator and victim live together or have ever lived together. Therefore, the law also protects lesbian women and transgender victims of violence.

Challenges

Despite these positive developments, homophobia and discrimination of lesbians is still prevailing in Austria and lesbians are often afraid to come forward and seek help.

Recommendations

- Trainings of police, judges, health professionals, victims support services and other professional institutions encountering the problem of violence against women and domestic violence should include awareness-raising about the rights of lesbians and transgender individuals.
- Specialist counseling services, such as the Center Courage in Vienna, should be established and funded in all provinces in order to provide adequate support.
- Lesbian and transgender organizations should be members of the national working group (IMAG) for the national action plan on violence against women.

Article 5 - State Obligations and Due Diligence

State Obligations

Background

As stated in the preamble of the Istanbul Convention, the issue of violence against women is rooted in the historically unbalanced power relationship between men and women, which has led to male domination of and discrimination against women. This inequality is rooted in the basic structures of society, and also government institutions are not free from sexism and discrimination against women. Thus all public organisations and institutions have to make an active effort to prevent sexist and discriminatory practices, and officials need to take swift action in case such practices are taking place, including overall action to achieve gender-equality and -parity in institutions.

Challenges

Gender-equality and -parity is highly important in government agencies that by their very nature deal with female victims and witnesses, such as law enforcement and the judiciary, and also in immigration services and offices supporting asylum seekers. Especially the police force should not be male dominated; in Austria, the force has a percentage of women of only approximately 14%.¹ This not only constitutes a challenge for achieving gender-equality, but also presents a big obstacle to safeguard the right of female victims of violence to be interviewed by a female police officer (a right granted especially to victims of sexual violence by the Police Security Law²). In practice, more often than not, women either cannot exercise this right, or they have to wait for hours for a female trained police officer.

Training of civil servants and other state officials should not only include training on handling cases of violence against women and domestic violence, but also training on achieving gender-equality between men and women in all areas of the work of institutions, including the police and the judiciary.

¹ As presented in the Annual Report of the Domestic Abuse Intervention Center Vienna, 2015.

² Richtlinienverordnung § 6 II Z2 'Umgang mit Betroffenen'.

Holding civil servants to the general standard of refraining from engaging in any form of violence also implies that police officers who have committed an act or several acts of violence against women or girls, or who have engaged in domestic violence in any way, are prosecuted and sanctioned AND face disciplinary consequences and be removed from positions in which they are obliged to serve victims of violence against women and domestic violence.

According to Austrian domestic law, tenured civil servants must fulfil their service duties with due regard to the legal order. There are general duties that every civil servant is held to, and in some professions, duties are defined in a more elaborate manner. In the event of a culpable breach of service duties, disciplinary action is instituted according to the Federal Disciplinary Law (“Bundesdisziplinargesetz” – BDG”, 1 January 2002). If there are indications that a breach may have occurred, the employer must initiate disciplinary proceedings in order for a Committee to investigate the situation. There are disciplinary measures according to the BDG, depending on the seriousness of the breach of official duties³: reprimand, fines of different amounts, and dismissal. Some of the more severe measures necessitate proceedings before administrative courts.

Beyond official duties, civil servants have to control how they behave and interact with others at all times, even when they are not on official duty, so that the public trust in their ability to properly execute their service duties is not affected in a negative manner.⁴ This shall also protect the high regard that civil servitude enjoys in Austria, and protect the functionality of civil service. In case a civil servant misbehaves in a way that, objectively speaking, can trigger concerns about his or her ability to properly fulfil general service duties, or detailed duties linked to his or her specific assignment (‘Dienstbezug’), disciplinary action is initiated. For instance, when a policeman is caught engaging in acts of violence against women or children – may it be his relatives or strangers – or disregards the dignity of others by touching a woman inappropriately or hurling profanities at children, and this policeman is regularly assigned to support potential victims of precisely such acts of violence, there must be a strong concern that his off-duty activities can have massive implications on his ability to properly fulfil his service duties. Taking into account on-going or completed investigations and criminal proceedings, and depending on the act in question, a civil servant can be temporarily suspended according to federal law; however, this is rarely applied to off-duty behaviour. In case the actions of the civil servant are not sufficiently punished by the decision of a criminal court, he can still receive sanctions under the BDG.⁵

In Austria, unfortunately on a regular basis, police officers are neither sanctioned, nor do they face disciplinary consequences; even if violence is reported, criminal cases are often dropped, which in return leads to no disciplinary consequences, because the fact that law enforcement authorities dropped the case is used as an argument that “nothing happened.” Women abused by men who are police officers are therefore rarely getting justice. They are often afraid of reporting violence or testifying during investigations or proceedings, because of the status of the perpetrator as police officer, and the fear that he is well connected within the police force, and that nobody will believe the victim.

Recommendations:

- Clear guidelines and related training for state actors, especially for police officers and members of the judiciary, so that any form of sexism and discrimination or any act that leads to secondary traumatization is avoided, and that state actors engaging in it receive swift and effective sanctions.
- The number of female police officers in Austria needs to be increased urgently to at least 30% within the coming years, and effective recruitment programs need to be applied to reach this goal, including improving of working conditions and exercising of rights of female police officers with children, and ending sexism within the police force.
- State agents exercising violence themselves, especially police officers, need to be swiftly reported, prosecuted and sanctioned for their acts.
- Independent from criminal sanctions, police officers and other relevant state actors need to receive disciplinary sanctions and need to be banned immediately from any position in which they get in contact with female victims of violence

³ § 91 BDG

⁴ § 43 II BDG.

⁵ See as an example decision of the Disciplinary Committee of 6 November 2014, 10-DK/2/2014.

- Civil service law regulations that in practice are applied to shield civil servants who committed violence from punishment and impede sanctions need to be removed immediately.

Due Diligence

Background

The Austrian Criminal Code criminalizes all forms of violence against women and domestic violence as covered by the Istanbul Convention that are perpetrated by non-state actors. However, when it comes to preventing, investigating and punishing acts of violence, there are severe gaps in implementing the Criminal Code.

Challenges

✓ Preventing Violence, Including Femicide/Homicide

Violence against women, especially domestic violence, is a 'repeat' crime and women are almost always victimised several times, often over the span of years, by the same perpetrator. 'Less severe' acts of violence against women can also escalate to very severe violence, including femicide and homicide, and subject the children of these women to similar mistreatment. Unfortunately, this danger countless women are facing is still under-estimated by authorities, repeat violence against women is frequently not prevented, and perpetrators are not effectively stopped, even if authorities have knowledge of an apparent risk to a specific woman. According to the ECtHR, authorities have to actively and effectively prevent violence from happening if they know or ought to know of a risk for a person to become victimised.⁶ The situation that led to the two Austrian CEDAW cases⁷ has unfortunately not improved. Several of the measures Austria announced to establish in order to fulfil the recommendations of the CEDAW Committee⁸ have not been carried out at all, or are not carried out regularly.

It is a major problem that very often, perpetrators of violence are not held in pre-trial detention until proceedings commence, but merely "auf freiem Fuss angezeigt." This bears the risk of them committing further acts of violence and severely endangers the victim. It has frequently been proven that police emergency barring orders or civil court orders are not sufficient to protect victims in cases perpetrators have committed repeat violence or threatened to kill the victim. In such high-risk cases, perpetrators should be put in pre-trial detention in order to protect victims. Several cases of femicide and homicide illustrate the severity of the problem, such as a recent case in which an 8-year-old boy was killed by his father while at school. The father had also intended to kill his daughter, but she was able to escape. A few days before this happened, the mother of the children had reported repeated and severe violence by her husband, including the threat to kill her and the children. Even though there was an official complaint, the perpetrator was not detained and thus free to carry out his actions. This case is currently pending before the ECtHR.

✓ Lack of Prosecution and Sanctions

There is no comprehensive data on how many cases of violence against women and domestic violence lead to prosecution and convictions, due to problems in the collection of administrative data (see section on Article 11). According to the little data there is and as the experience of specialized women's support services indicates, only a small minority of reported cases lead to the conviction of perpetrators.

Data from the Ministry of Justice on a few articles of the criminal code indicates that the majority of cases of violence against women are not concluded with a conviction:

Stalking (§ 107a): of 1.026 cases, 519 (50,6%) were dropped and only 57 (5,6%) were convicted.

Repeat violence (§ 107b): of 630 cases, 371 (58,9%) were dropped and 52 (8,2%) was convicted.

Rape (§ 201): of 652 cases, 336 (51, 5%) were dropped and only 47 (7, 2%) were convicted.⁹

⁶ Cf., for instance, ECtHR cases such as *Opuz vs Turkey*, *Kontrova vs Slovakia*.

⁷ *Yildirim vs Austria*, 2015, and *Gökce vs Austria*, 2005.

⁸ See Comments by Austria on the Recommendations made by the CEDAW Committee on August 6, 2007 concerning the Communications *Sahide Gökce* and *Fatma Yildirim* (in Annex 3)

⁹ Data for the Public Prosecutor's Office Vienna in 2013, see statistics in Annex 1

This data indicates a concerning lack of accountability of the criminal justice system when it comes to exercising due diligence to punish acts of violence against women.

Austria has an elaborate system of so-called “diversionary measures” (Diversion) – measures to deal with criminal acts outside of court proceedings. Victim-offender mediation is one of four types of out-of-court settlements. There is no systematic data on how often criminal cases are dealt with by those settlements, and the few existing statistics indicate that a relatively large proportion of cases of violence against women and domestic violence are dealt with in victim-offender mediation, which is problematic (see sections on Article 48 and Article 49). Diversion can be an effective measure to deal with violence against women and domestic violence, if the perpetrator is willing to recognize his wrongdoing, and in cases in which victims for various reasons hesitate to testify. However, of the four types of diversion, only one - probation time with additional measures (protective measures, obligation to attend a anti-violence program) - is adequate to address violence against women and domestic violence, which are crimes characterized by repeat and ongoing victimization. Other measures, such as fines or victim-offender mediation are not appropriate and sufficient (see also section on Article 49)

The Austrian criminal justice system is a modern institution striving not only for sanctions, but for rehabilitating perpetrators and re-integrating them into society, for instance with the help of probation services, criminal justice protective orders and alternative sanctions. However, as pointed out in other sections of this report, measures of the system that show potential, such as probation services, no-contact orders, or the obligation to attend perpetrator programs which are oriented towards the safety of victims, are hardly ever applied, because the majority of the cases does not reach the prosecution stage, as described above. This is a severe problem and a waste of the possibilities the Austrian criminal justice system provides to prevent violence and to protect victims.

✓ Underreporting

Austria, alongside many other European countries, has a severe issue with underreporting, as the FRA violence against women survey illustrates.¹⁰ This is concerning and a sign of lack of trust in the abilities of the criminal justice system.

When looking at the high number of cases dropped and the low conviction rate, the lack of trust in the system among female victims can be explained, when there is a likelihood of about 10-20% that the perpetrator will be sanctioned or punished. Women’s support services often have to encourage victims to report repeatedly, since victims suffer from “reporting fatigue” after reporting a violent act without consequences for the perpetrator. Another severe problem affecting women’s willingness to report repeatedly is secondary traumatisation they experience in the justice system (for instance, officials not believing the victim, victim blaming, sexist attitudes of justice system actors, gender stereotypes applied).

While the police emergency barring order works well as a measure to stop the perpetrator in the short run, effective longer term measures need to be put in place to prevent repeat victimisation. If this is not the case and perpetrators experience no sanction for a violent act, they receive the problematic message to “have done nothing wrong”. When the prosecution drops cases, perpetrators see it as a “carte blanche” to continue their violent actions.

Civil court protection orders can also not be seen as an alternative to measures by the criminal justice system. They need victims to take actions and also bear procedural risks while it is the responsibility of the state to protect victims. Civil court measures are thus appropriate when violence has not reached the level of criminal acts yet, but not in cases of repeat victimisation.

As stated before, the criminal justice system in Austria is not yet fulfilling its obligation to prevent violence and to adequately sanction it. There are dedicated and committed prosecutors and judges, which is a welcome development, but overall, the picture is not positive.

¹⁰ According to the FRA violence against women survey, merely 16% of women in Austria reported the most severe acts of violence to the police or another law enforcement agency, cf. <http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey>

✓ Providing Reparations

The Austrian Criminal Procedure Law, in principle, foresees that the rights and interests of victims, including the right to reparation for injuries or damages suffered, need to be safeguarded in a comprehensive way (for instance see §§ 10, 67 StPO). This is a very positive development. However, in practice this article is not always applied thoroughly.

For example, it is common practice of criminal courts to refer victims to civil court for claiming compensation. This provides an additional burden to victims, who are already traumatized and, in the worst case, re-victimised during proceedings. In addition to asking for compensation in civil proceedings, victims of violence have the possibility to apply for compensation under the Federal Victims of Crime Act (“Verbrechensopfergesetz - VOG”), but the application procedures are complex, and proceedings are lengthy.¹¹ Currently, there is no data on how many victims of violence against women and domestic violence ever received compensation, but it can be assumed from the experience of specialist victims’ support services that it is only a minority of victims.

Recommendations

- Female victims of repeat violence and death threats must be protected effectively, including their children; effective measures have to be established to prevent perpetrators from committing further violence.
- Police and civil court emergency barring orders should not be used to replace pre-trial detention of perpetrators in cases of repeat violence and threats. All relevant laws need to be adjusted or amended.
- Investigations must be done thoroughly and include all available information, as foreseen in the report on the two Austrian CEDAW cases (see annex) and as established in the explanatory report to the ratification of the Convention in Austria (see annex).
- The office of public prosecution must demand that the police immediately and without delay pass on all information on cases of repeat violence, and that all evidence is collected swiftly (“golden hour”).
- Regular cooperation among actors of the criminal justice system, law enforcement and specialist women’s support services, as well as joined risk assessment need to be implemented in all districts, not only in a few, as is currently the case (see section on risk assessment).
- Victims and their relatives who have been re-victimised because the perpetrator was not prevented from committing further acts of violence should receive free psycho-social and legal aid to file a complaint to hold authorities accountable and, should need be, to turn to international bodies, to exercise their rights under the ECHR or CEDAW (see also Article 21 of the Convention).
- It is an undue burden, including a financial risk, for victims to have to undergo additional proceedings to claim compensation in civil court; therefore criminal courts should be legally obliged to adjudicate compensation to victims of violence.
- Effective measures should be established that help decrease the attrition rate and increase the conviction rate. A governmental commission, comprising of parliamentarians and experts from specialist women’s support services and other relevant institutions, should be established to develop, implement and monitor the implementation of such measures.
- Research needs to be carried out by independent researchers to investigate which measures might be effective to decrease the attrition rate and to increase the conviction rate, and to analyse the impact of steps taken in implementing measures.
- The possibilities of the criminal justice system to prevent violence and to protect victims need to be fully used, such as probation time, probation services, protective orders and obligations to make reparations for damages done and injuries inflicted, obligations to attend victim-safety oriented programs for perpetrators, and other measures. It is of utmost importance that criminal justice measures are applied and that it is not left to victims to care for their own protection through civil court orders, once repeat violence has occurred, since it is the obligation of the state to protect victims; moreover, criminal justice measures foresee stricter consequences, for instance detention, whereas civil court measures are “softer” and often not effective in stopping the perpetrator (see section on femicide).
- All prosecutors and judges need to receive, in their basic training, at least a 5 day course on how to investigate and punish adequately; this training needs to include in-depth information about the due diligence principle, including ECHR and CEDAW cases.
- Victims’ rights need to be strengthened; contrary to rights of the accused, exercising victims’ rights does not have adequate influence on the legal proceedings: if their rights are not fully exercised (for instance the

¹¹ See comments on Article 30 for further information on this law.

right not to have to testify in front of the perpetrator), victims can in fact bring in a complaint, but disregarding their rights does not have an impact on the legal proceedings (e.g. the validity or legal force), as it is the case when rights of accused persons are disregarded. Therefore, victims still have a subordinate legal status, which negatively impacts their access to justice.

Article 6 - Gender-Sensitive Policies

Background

The Convention requires that a gender perspective is included in all areas of implementation and evaluation of the policies and that policies of equality need to be promoted and effectively implemented, since “the realisation of *de jure* and *de facto* equality between women and men is a key element in the prevention of violence against women” (Preamble).

Challenges

The first National Action Plan (NAP) of 2014-2016 did not contain a gender perspective in all areas. In addition, it did not make the necessary link to gender equality policy.

Recommendations

- Austria needs to take a gender-sensitive approach in all areas of the Convention and needs to link the measures to the measures for gender equality in the next action plan on violence against women.
- To give an example: women victims of violence who are economically disempowered and for instance unemployed need to be supported by special programs of the unemployment services (AMS) to ensure that their economic dependence on the perpetrator does not prevent them from freeing themselves from violence.
- Gender mainstreaming measures as well as gender-specific measures are necessary to prevent violence and achieve gender equality.
- Gender-sensitive policies also imply that all institutions (such as the police, justice system, municipalities, health, immigration and asylum authorities and educational institutions) dealing with the problem of violence have an internal policy on gender equality (parity in the number of women in institutions, equal chances, women in leadership positions, etc.) as well as on violence against women, such as standards to deliver empowering rights-based services to victim.
- A gender-sensitive approach also includes that women’s social and economic rights are secured and that the disadvantages women face, for instance lower income, low pension and poverty) are balanced by special programs for the advancement of women’s social and economic rights, such as cheaper rents and priority in housing programs.

Background

While in other European countries (like Germany, Sweden or the Netherlands) national action plans have existed for many years to combat violence against women and girls, in Austria until recently no national action plan on the prevention of violence against women existed. Although there was no action, plenty of action to prevent violence against women and domestic violence happened. However, in order to develop and implement a coordinated and long-term policy on violence against women and domestic violence, a national action plan is necessary.

National actions plans existed for the prevention of female genital mutilation (FGM) (National Action Plan for the Prevention and Elimination of FGM in Austria 2012-2015 under the direction of the National President Barbara Prammer). Furthermore, there is a NAP to combat human trafficking (2015-2017) (BMEIA); and an action plan on “gender equality in the professional life”.

In the course of the implementation of the Istanbul Convention, the first NAP on violence against women for 2014-2016 was adopted. The NAP 2014-2016 consists of six main measures: 1. Interlocking political measures and data collection 2. Prevention, 3. Protection and support, 4. Substantive law, 5. Investigations, prosecution und protection provisions, and 6. European and international collaboration.

The NAP does not explicitly address all forms of violence against women as covered by the Convention.

An inter-ministerial working group (IMAG) for protection against violence was established and its work will continue until the end of 2018. A report with the results of the first NAP is planned to be presented in 2017. The IMAG is chaired by the women’s section in the Federal Chancellery, consisting of BMJ, BMI, BMG, BMASK, BMEIA, BMFJ and the BMBF representatives as well as NGOs working in the field of violence against women and domestic violence.

Challenges

The current NAP does not contain a comprehensive and coordinated longer-term policy and strategy; it is rather a listing of activities which have been or will be carried out.

A NAP should be more of an analytical report, based on data and information from existing policies and integrating them into a long-term strategic NAP.

Another major shortcoming of the current NAP is that there are no resources attached to the implementation and that the responsible department is severely underfunded (see next sections on financial resources and coordinating bodies).

Nevertheless, the first NAP is an important step towards a comprehensive and long-term policy and is therefore an important milestone! It should also be taken into account that work on the NAP and the IMAG is carried out by a very engaged, but extremely understaffed department and that considerably more resources are needed to establish effective structures for a comprehensive and coordinated policy on violence against women and domestic violence.

Recommendations

- The next NAP should be a more analytical report, based on data and information from existing policies and integrating them into a long-term strategic NAP.
- The NAP needs to define clear goals and strategies for effective and comprehensive measures in all areas (policy, prevention, provision, protection and prosecution).
- The NAP needs to be concrete and outcome-orientated with indicators on how to meet the goals for all ministries and governmental bodies involved (nationally and regionally).
- Measures need to be comprehensive and coordinated as well as apply a holistic approach based on the needs and rights of the victims; victims should also be placed at the center of all measures, as required by the Convention.
- All measures need to be gender-sensitive and inclusive (non-discrimination on any grounds, Article 4).
- Long-term and short term goals in each area are needed as well as indicators to evaluate the goals.

- Appropriate resources (financial and personnel) and gender-budgeting needs to be provided for the development and implementation of the NAP.
- The NAP needs to address all forms of violence against women and all groups of women and their children witnessing violence.

Article 8 - Financial Resources

Background

The Convention talks about “appropriate financial and human resources” which means that the state authorities need to establish how much resources are needed for the prevention of violence against women and domestic violence.

Challenges

Research in Austria estimated the costs of violence against women amounts to be about €78 Million per year.¹² This seems to be a rather conservative estimate not including all costs.

The European Added Value Assessment estimates the total cost of gender-based violence against women in the EU in 2011 to be about €228 billion (1.8% of EU GDP)¹³. This amounts to about €450 per European citizen each year, and about €3,700 billion in Austria, which is about 50 times more than the Austrian estimate.

There is very little information available on how much money is currently invested to prevent violence against women and domestic violence. The Ministry for Interior and the Ministry for Health and Women allocated approximately €7.2 million in 2015 to the Intervention Centres/Centre for the protection from violence (Gewaltschutzzentren). The Ministry of Justice spent about €5.7 million in 2015 for psycho-social and legal support of victims (Prozessbegleitung); however, services are provided to all victims of violent crime, not only to victims of violence against women and domestic violence.

A very concerning problem is, that the Federal Ministry responsible for implementing the Istanbul Convention (currently the Ministry for Health and Women’s Affairs) has an annual budget of currently only €10 million for the prevention of violence against women AND for gender equality measures.

This amount of money is not appropriate to implement the measures and goals of the Istanbul Convention and to achieve gender equality. The serious underfunding of the responsible ministry is a severe obstacle in achieving progress in preventing violence against women.

Insufficient resources are available to develop, implement, monitor and evaluate a comprehensive and coordinated policy on violence against women. Practically no money is available to carry out programs (prevention, information, awareness-raising, coordination of projects between sectors, data collection, etc.) to address violence against women and to promote gender equality.

Recommendations

- In order to reach the goal of preventing violence against women and domestic violence in Austria, financial and human resources need to be increased considerably in the next years.
- Without such an investment, the goal to reduce and prevent violence will not be reached!
- Violence costs €450 per citizen, according to an EU study. Let us cut these costs to €225 and let us calculate with this number: if we make a reasonable calculation that at least 10% of the cost should be invested in prevention in order to – in the long run – save costs and even save expenses, that would make €25 per Austrian citizen per year, which would amount to €210 million.
- The coalition writing this report demands that the budget of the Ministry for Women’s Affairs to prevent violence against women and to promote gender equality be increased to €210 million over the next four years in order to considerably step up the efforts to protect and empower all victims and to prevent violence against women and their children.
- Additional adequate funding is needed in all other ministries and on the provincial level.

¹² See Haller B & David E, Kosten häuslicher Gewalt in Österreich, 2006 (p 39) (available at <http://www.ikf.ac.at/pdf/kosten.pdf>)

¹³ European Parliament (2014): European Parliament resolution of 25 February 2014 with recommendations to the Commission on combating Violence against Women (2013/2004(INL)), Para R.

- The funding of women’s support services must have a legal base, to ensure that all victims have the right to support, also in time of austerity and budget cuts.
- For specific recommendations for funding of services, see also later sections, in particular on Article 22.

Article 9 - Non-governmental Organisation and Civil Society

Background

Austria can look back on a long history of fruitful cooperation between the state and independent women’s NGOs as a main reason why Austria has been successful in introducing innovative policies such as police emergency barring orders, intervention centres, psycho-social and legal support for victims, multi-agency partnerships and other measures.

It is also a sign of democracy and the recognition of civil society and the division of power, that women’s NGOs receive full (even if not always sufficient) funding for providing empowering support to victims while still being independent with their own voice.

Tensions and conflicts can occur, but in a democratic system with democratic parties, dialogue and cooperation between societal groups are central elements of progress, social inclusion and peace.

Challenges

Unfortunately, not all parties in Austria recognise, encourage and support the work of women’s NGOs. Right-wing, nationalistic and anti-European parties particularly tend to deny the importance of women’s support services. The promotion of gender equality and democracy are crucial for the fight against violence against women and domestic violence.

Research indicates that States with many women’s NGOs have taken more effective steps to counteract violence against women than States with no or few women’s groups.¹⁴ Despite evidence of the importance of women’s NGOs to prevent violence against women, there are forces in the Austrian society which aim at discrediting women’s NGOs and feminist approaches. These are unacceptable and undemocratic tendencies that must be strongly rejected and criticized by the state. Women’s NGOs are defenders of women’s and children human rights and they need to be supported and protected in their work at all levels.

Women’s NGOs working to eliminate violence against women are regularly targets of attacks and violence themselves. In Austria women working in women’s shelters have been threatened and attacked physically by violent men. They have been discredited by right wing politicians and accused of “destroying the family”.

At the 57th Session of the Commission on the Status of Women 2013 the United Nations members states committed themselves to “Support and protect those who are committed to eliminating violence against women, including women human rights defenders in this regard, who face particular risks of violence.”¹⁵

Recommendations

- In order to ensure that women’s NGOs are recognized, encouraged and supported for their work, they have to be firmly integrated into the intervention system and the policies to prevent violence against women and domestic violence.
- For instance, women’s NGOs should formally be members of inter-ministerial working groups as part of a ministerial decision, not only as “guests”.
- Women’s NGOs should be integrated in all possible levels and should have consultative status in policy making.
- Women’s NGOs in Austria need to be protected by the states and its democratic institutions from sexist and misogynist and violent attack, from discrimination and from being discredited or hindered in their work.

¹⁴ Johnson, Janet E. / Brunell, Laura (2006): The Emergence of Contrasting Domestic Violence Regimes in Postcommunist Europe, *Policy and Politics* 34 (4): 578:98

¹⁵ United Nations 57th Commission on the Status of Women (2013): Agreed conclusions on the elimination and prevention of all forms of violence against women and girls, New York, [http://www.un.org/womenwatch/daw/csw/csw57/CSW57_Agreed_Conclusions_\(CSW_report_excerpt\).pdf](http://www.un.org/womenwatch/daw/csw/csw57/CSW57_Agreed_Conclusions_(CSW_report_excerpt).pdf)

Article 10 - Co-ordinating Body

Background

The Austrian department for Women's Affairs, currently located in the Ministry for Health and Women, as the coordinating body for the implementation of the Convention, is severely underfunded, as described in the section on Article 8.

Challenges

Compounding an already problematic situation is understaffing of the department. Only two or three civil servants are available for the coordination and implementation of the Convention, and not even full time. These civil servants also have other tasks to carry out, including administration of the funding for nine intervention centres and official statements to all law proposals regarding gender.

There are hardly any resources for monitoring and evaluation of the implementation. Moreover monitoring and evaluation should not be carried out by the same body that is developing and implementing the policies to implement the Convention.

Considerable efforts have to be made to improve data collection (see section on Article 11) and to carry out research in order to find out about incidents and conviction rates, as well as to evaluate the effectiveness of measures to implement the Convention. At the moment there is no budget to carry out research and data collection.

Recommendations

- A separate unit needs to be created in the coordinating body for the implementation of the Convention, staffed with at least 15 civil servants to carry out the task to develop and implement at regular intervals state-wide, effective, comprehensive and coordinated policies.
- Additionally, each of the nine provincial governments should have a regional coordinating body staffed with at least four civil servants and a budget of at least €3 million.
- Additionally, an independent monitoring and evaluation body should be set up (Observatory against violence against women, including a Femicide Prevention Watch) with a budget of at least €2 million per year.
- At least €3 million per year should be provided for research on incidence and conviction rates as well as for the evaluation of the efficiency of measures to implement the Convention. In the last years, very little research has been carried out in Austria (see also information on Article 11).

Article 11 - Data Collection and Research

Background

There have been coordinated efforts to improve administrative data collection on violence against women and domestic violence in Austria in recent years. A number of different authorities and institutions are collecting data on a regular basis, and some of the statistics are published in their entirety, or at least partly.

Challenges

However, gathering of relevant data is not yet sufficient, and in most areas of administrative data collection, not even the minimum standards are fulfilled yet. This constitutes a serious obstacle to monitoring and evaluating policies and measures. Austria has developed several good practices in the area of the prevention of violence against women and domestic violence, but without data and continuous and thorough evaluation, it is impossible to conclude whether measures have been applied at all, to what extent and which effect they have had. This, as a consequence, hinders effective future development of evidence-based, co-ordinated and comprehensive policies.

Recommendations

- In order to improve the collection of data and the development of evidence-based policies, it is necessary to provide adequate resources for research, data collection and monitoring.
- Some countries have set up an Observatory on violence against women, which could serve as a model for Austria. The Observatory should include a Femicide Prevention Watch, a special unit, to deal with data collection on prevention of femicides and attempted femicides.
- Adequate personal and financial resources are needed for a monitoring body and data collection, as described in the previous section.

Administrative Data

Data collection by public entities and NGOs running services:

✓ Police Data

Background

The police were exemplary in collecting data for many years, in all provinces of Austria, on the issuing of emergency barring orders, the breach of orders and police interventions in domestic violence cases (without issuing an emergency barring order).

Challenges

Since 2011, data collection in the police has deteriorated as a result of changes in documentation and administration.¹⁶ Since then, the collection of data on the breach of emergency barring orders was stopped and also a number of other police interventions, besides barring orders, were not counted any more. The number of emergency barring orders is the only data which is still collected, but it is not reliable since it the data is not generated from the process of issuing and documenting the EBO, but through the individual police officer's work documentation, a system which for various reasons is prone to error. Electronic files document all EBOs, and it should be feasible to generate statistic from this set of data.

The lack of police data has several negative implications for policy evaluation and evidence based prevention strategies. It is not known how many overall police interventions took place in the area of violence against women (for instance, as a result of people calling the police emergency number and people turning to police stations); this number is a key figure to enable conclusions on that the reporting rate to the police is changing, if it is increasing, decreasing or staying the same. This data would be also very important in comparison with prevalence data: only by comparing prevalence data with police intervention data, conclusions can be drawn regarding a possible in- or decrease of violence against women.

Recommendations

- The total number of police interventions should to include data from ALL types of police interventions: Emergency calls, police operations, intervention when people turn to police stations. It should be broken down by the different types of police action and measures taken; in Austria these are: "dispute settlement" (§ 25 of the Police Security law); emergency barring order (§ 38a); reports to the prosecutor office according to the criminal code (collected by the crime statistic); arrests by the police; judicial pre-trial detention; compulsory hospitalisation of perpetrators.
- Data on number of EBOs number on breaches of EBOs, and number of sanctions imposed as a result of breaches.
- Data on repeat violence – number of repeat incidents of violence against women.
- All interventions need to be documented properly by a report ("Meldung") so that they are transparent for victims, and accessible to victims as evidence in claiming measures for protection in the civil court. In practice, documentation is limited to entries in logbooks, which is problematic, since this information is not transparent and not accessible to victims. Moreover, logbooks do not allow for generating data.
- Data on (lethal) risk factors and number of high-risk situations – see Article 51 of the Convention (risk assessment and risk management).

¹⁶ See Wiener Interventionsstelle gegen Gewalt in der Familie, Tätigkeitsbericht 2015, P. 71.

- Data on Homicides/femicides and attempted homicides/femicides (see also next section on crime statistics).
- All police interventions data should include the following minimum standards: Gender and age of victims; gender & age of perpetrator; relationship of victim and perpetrator; type of violence; location of the violent act.
- Data on homicide/femicide reviews.

✓ Data on Civil Court Protection Orders

Background

In Austria, civil court protection orders were first introduced in 1997. Orders are issued by family law departments. There are three types of such orders:

- 1 Civil court protection order¹⁷ for the protection in the sphere of living (§ 382b Enforcement proceedings)
- 2 Civil court protection order for the general protection against violence (§ 382e Enforcement proceedings)
- 3 Civil court protection order against stalking (§ 382g Enforcement proceedings).

Challenges

Courts are collecting data on protection orders, but unfortunately, it is unusable for statistics due to major mistakes in the system of data collection. This is the reason why there are no annual statistics on either one of these important measures for protecting women from violence. For the evaluation of the implementation of protection orders it would be of utmost importance to provide annual statistics on all three measures.

Recommendations

To collect data regarding all three types of civil court protective orders:

- Protection order for the protection in the sphere of living (§ 382b Enforcement proceedings).
- Protection order for the general protection against violence (§ 382e Enforcement proceedings).
- Protection order against stalking (§ 382g Enforcement proceedings).
- Develop a new system of data collection for all relevant civil court departments and generating and publishing of annual statistics. They should contain as a minimum: number of protection orders issued; type of order (protection in the home and surrounding of the home of the victim; protection at the workplace; protection and school and kindergarden; prohibition of any contact; etc.); number of breaches of such orders; number and type of sanctions imposed as results of beaches of such orders.
- All data should be segregated by the following minimum standards: Gender and age of victims; gender and age of perpetrator; relationship of victim and perpetrator; type of violence; location of the violent act. The combination of these variables should be possible for generating data.

✓ Data on Criminal Court Protection Orders

Background

The Austrian criminal proceedings foresee that the criminal court can issue protective measures in order to prevent further violence and in order to provide alternative sanctions to perpetrators (see also information to Article 53).

Such orders can be issued in various stages of criminal proceedings:

- As part of out of court settlements (Diversion)
- As an alternative to pre-trial detention
- As a condition for a suspended sentence
- As a condition for early release from a prison sentence.

Protective orders can contain one or more of the following measures:

- Prohibition to contact or approach the victim
- Prohibition to attend certain places (home of the victim, workplace, school/kindergarden, etc.)
- The obligation to be supervised by a probation officer and/or the obligation to attend an anti-violence program

¹⁷ In the form of a temporary injunction.

- and other measures.

Challenges

Protective measures in criminal proceedings are hardly applied to protect victims (see information to article 53).

Currently there are no statistics available on any of the court orders available within criminal proceedings.

Recommendations

- All criminal justice departments issuing protective measures should be obliged to annually collect and publish the following data:
- number of protection orders issued and type of order (protection in the home and surrounding of the home of the victim; protection at the workplace; protection at school and kindergarten; prohibition of any contact; etc.)
- number of breaches of such orders
- number and type of sanctions imposed as results of breaches of such orders.
- All data should be segregated by the following minimum standards: Gender and age of victims; gender and age of perpetrator; relationship of victim and perpetrator; type of violence; location of the violent act and the combination of these variables.

✓ Crime Statistics (Police)

Background

In Austria, the crime statistic (“Kriminalstatistik”) is generated and published by the Federal Ministry of the Interior, based on the crimes reported by the police.¹⁸ Main findings are published online in the report ‘Safety’ (“Sicherheit” 2015).¹⁹ The crime statistics do not contain any data on convictions; this is part of the criminal justice statistics (see next section).

Data Verfahrensautomatik Justiz: Besides the crime statistic and the criminal justice statistics, the Ministry of Justice has started to generate data on reported crime and on convictions from their electronic documentation system (Verfahrensautomatik Justiz). This data is only generated for special needs, not annually, and is not generally publicly available. Occasionally the Ministry of Justice is providing data from this source, for instance for expert meetings. Some of these data is used in this shadow report, for instance in the information on Article 49. The Verfahrensautomatik Justiz data collection system is a promising tool and should be used widely in the future to generate data needed for monitoring the Convention. However, there are still some problems that need to be solved. It is positive that the statistic includes the gender of the perpetrator and of the victim (this is not the case in the criminal justice statistic, for instance). The system uses a flagging method to identify cases of domestic/partner violence, the abbreviation “FAM”, but the definition itself and how the definition is applied are not clear which makes the data not very reliable.

Recommendations

- The data collection system Verfahrensautomatik Justiz should be expanded and improved
- The relationship between perpetrator and victim should be recorded in a more differentiated way and not in a form of flagging for a group (see also section on crime statistic)
- and statistics should be generated from it systematically and annually and they should be published.

Because the data Verfahrensautomatik Justiz is not a general statistic and not publicly available, our comments mainly regard the two big data sources, the crime statistic and the criminal justice statistic.

Challenges Regarding the Public Crime Statistic

The 2015 report, which also contains a short summary in English, shows the serious problems which still exist in the crime public crime statistic: almost 517.900 cases of violent crime as defined in the criminal code were

¹⁸ Federal Ministry for Interior : Crime statistic 2015 http://www.bmi.gv.at/cms/BK/publikationen/krim_statistik/Jahresstatistik_2015.aspx

¹⁹ Federal Ministry for Interior, Safety 2015 (Sicherheit 2015) http://www.bmi.gv.at/cms/BK/publikationen/krim_statistik/Jahresstatistik_2015.aspx

reported in 2015. The published report identifies five main areas of crime: residential burglary (approx. 15.500 cases), theft of cars (approx. 3.300 cases), violent crime (approx. 40.300 cases), cybercrime (approx. 10.000 cases), and economic crime (approx. 48.600 cases).

Violence against women or domestic violence is not mentioned as a specific problem anywhere in the report. This, unfortunately shows, that the problem does not seem to have sufficient priority in the Austrian crime prevention policy. Even though the police systematically collect data on gender and age of perpetrators, as well as on the gender and age of victims, this data is not included in the report on the crime statistics. The Austrian crime statistics do not provide any information on violence against women and girls, which represents a major problem.

Also, the relationship between perpetrators and victim is not attributed. Instead, the statistics use categories which are not appropriate to analyse the problem of violence against women and domestic violence: In the section on violent crime it is reported that in 61,5% of the cases there is a relationship between the perpetrator and the victim. However, the categories for relationship –incidental acquaintance (5,7%); acquaintances (29,3%); family in household (18,1%); family outside of household (8,4%)²⁰ – are unsuitable to draw a picture on the problems violence against women and domestic violence. Expressions such as “family in household” or “family outside of household” are not precise enough to gain a comprehensive picture of violence against women and domestic violence. The data these variables produce is not reliable to understand the problem, as the categories are too vague and ambiguous.

An important knowledge deriving from these statistics is, that violence crime in the family represents a considerable part of violence crime (at least 26,5%) in about 10.600 cases, which is the same number as cybercrime. Also the report indicates that there were 2.376 cases of crimes against sexual integrity in 2015. It can be assumed that women and girls are disproportionately affected by this form of violence. The section on cybercrime does not contain any information on cybercrime against women either, although the survey of the European Agency on Fundamental Rights (2014) shows that almost 1 in 20 women in Austria experienced cyber stalking.²¹

Regarding homicide and femicide, the report on crime statistics 2015 indicates that there were 135 cases of homicide in 2015, 28 more than in 2014. 96 were attempted homicides and 39 completed homicides.²² Unfortunately, the number of femicides, of women killed by men, is not revealed.

Recommendations

- Violence against women and domestic violence should have a high priority in crime statistics, and crime prevention measures.
- Data in the Austrian crime statistics should be segregated, by the following minimum standards: Gender and age of victims; gender and age of perpetrator; relationship of victim and perpetrator; type of violence; location of the violent act and, if needed other categories.
- A combination of these variables should be possible for generating data, to be able, for instance, to determine how many girls under 14 years become victims of sexual or other forms of violence.
- Relationship of perpetrator to victim: this information is crucial because it provides the information as to who is the victim and who is the aggressor or perpetrator: Husband/ex-husband; common law partner/ex-common law partner; boyfriend/ex-boyfriend; father/stepfather; son/stepson; other family member, other relative; friend/acquaintance; stranger (Council of Europe 2008).
- Repeat victimisation: this variable refers to capturing the repetitive nature of violence, in that women victims of violence may have contact with an agency, such as police or hospital services, numerous times as a consequence of the violence. This variable may help to identify high-risk victims of violence.
- Data on femicide (attempted and completed).
- Violence against women should be dealt with as a serious form of crime in the crime statistics.

²⁰ Ibid. p. 20.

²¹ European Agency on Fundamental Rights (2014): Data explorer, <http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey>

²² Report Sicherheit 2015.

✓ Criminal Justice Statistics

Background

Criminal justice data is generated and published by Statistic Austria, based on the conviction data received by the Ministry of Justice.²³

Challenges

As in other areas mentioned, data collection needs to be improved considerably in the area of criminal justice data, in order to be able to monitor the implementation of the Istanbul Convention and evaluate the effectiveness of measures. The criminal justice statistic does contain data about the gender and age of the perpetrator, but none of this information is gathered regarding the victim. It furthermore does not include any data on the relationship of perpetrator and victim. It provides information on sanctions and types of sanctions, but this information is neither segregated by gender and age of victim, nor by the relationship of the perpetrator and the victim. Therefore, the existing data collection does not provide sufficient information to be able to answer questionnaire section V.O regarding number of cases in which authorities had prior knowledge of women's exposure to violence, the type of sanctions and further measures imposed as a result of criminal proceedings (including deprivation of liberty), with an indication, where appropriate, of their suspended execution and average length.

Recommendations

- All data on forms of violence addressed in the Convention, including data on violence resulting in the death of women, should contain the following information:
- Number of cases of violent crimes against women addressed in the Convention, including data resulting in the death of women (femicide and attempted femicide).
- Numbers for each type of violence.
- Age of victims.
- Repeat victimisation: Number of cases in which the authorities had prior knowledge of the women's exposure to violence, which requires to collect statistical data on repeat occurrence of violence.
- Prosecution: Number of alleged perpetrators prosecuted in relation to these cases.
- Preventive measures: Number and type of protective orders issued in criminal proceedings to prevent further violence (protective and restraining orders prohibiting contact with the victim; order to attend and anti-violence program; order to probation) including number of breaches of these orders, and sanctions issued.
- Age of perpetrators.
- Location of crime.
- Relationship of the perpetrator and the victim.
- Attrition: Number of terminations of proceedings.
- Convictions/sanctions/punishment: Number of court settlements; number of convictions, sanctions and types of sanctions.
- All data should allow for disaggregation by type of violent crime according to the Convention. As indicated above, all data should be segregated by the following minimum standards: Gender and age of victims; gender and age of perpetrator; relationship of victim and perpetrator; type of violence; location of the violent act. The combination of these variables should be possible for generating data.

✓ Psychosocial and Legal Assistance in Legal Proceedings

Background

Since 2009, victims of violent crime have the right to psychosocial and legal aid in criminal and connected civil proceedings – according to § 66 of the Criminal Procedure Law, and § 73b of the Civil Procedure Law. This is a major milestone in promoting access of women victims of violence to justice. The support is free of charge and unbureaucratic: victims do not have to apply for it, it is enough if they voice their wish to receive this support at a victims' support service contracted by the Ministry of Justice with delivering this service. More than twenty

²³ Statistic Austria: Criminal justice data: http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/soziales/kriminalitaet/index.html

specialist and general victims' support services have a contract with the Ministry of Justice, among them are all regional Intervention Centers, and several women's shelters.

Challenges

The Ministry of Justice has obliged the victims' services they contract to provide data on the gender of victims, but does not make statistics public (yet).²⁴

In Vienna, in 2015 the Domestic Violence Intervention Center served 1.324 victims of violence against women and domestic violence according to this law, of which 91,8% (1.215) were female and 8,2% (109) male victims.²⁵

Recommendations

As a minimum, the following data on psycho-social and legal aid should be collected and published in Austria:

- Number of victims who received support under this law.
- Type of support (psychosocial aid, legal aid, both) and proceedings (criminal, civil proceedings, both)
- All data should allow for disaggregation by type of violent crime according to the Convention. As indicated above, all data should be segregated by the following minimum standards: Gender and age of victims; gender and age of perpetrator; relationship of victim and perpetrator; type of violence; location of the violent act. A combination of these variables should be possible for generating data.

✓ Prison

Background

The Austrian prison administration collects general data on the prisoners on a regular basis, such as on age or gender.

Challenges

There is no national data available in Austria about the number of convicted perpetrators serving a prison sentence or are subject to alternatives to imprisonment (electronic bracelet) as a consequence of violence against women or domestic violence, the length of sentences served, and the conditions for release available in Austria.

Recommendation

- As a minimum, the following data should be collected: number of convicted perpetrators serving a prison sentence or who are subject alternatives to imprisonment due to an act of violence against women or domestic violence; length of sentences served.

✓ Probation Service

Background

There is no national data available in Austria about number of convicted perpetrators who committed violence against women or domestic violence and who are mandated to probation.

Recommendation

- As a minimum, the following data should be collected: number of convicted perpetrators who committed violence against women or domestic violence and who are mandated to probation.

✓ Health Sector – Emergency Departments, Hospitals

Background

There is no national data available in Austria regarding violence against women in the health sector. Data collection is difficult in this sector, due to the de-centralised and inconsistent structure of the health system.

²⁴ Or it cannot be easily found

²⁵ Wiener Interventionsstelle gegen Gewalt in der Familie (2016): Tätigkeitsbericht 2015, Wien, P. 50

Challenges

Austrian law obliges every major hospital to establish a victims' protection unit ("Opferschutzgruppen").²⁶ This legal provision, although still not applied fully in all hospitals, is an important measure to raise awareness in hospitals on the issue of violence against women and domestic violence, and helps integrate a victim-sensitive approach, as well as preventive measures. This law would provide an excellent entry point and opportunity to collect data, which at the moment is not collected systematically (see also information to article 20).

Recommendations

As a minimum, hospitals with a victims' protection unit Opferschutzgruppe, should be obliged to collect data on:

- Number of patients victims of violence against women and domestic violence seeking help.
- Number and type of interventions (apart from therapeutic interventions: documentation of injuries, protective measures, reports to the police & other authorities, referrals to special victim support services, etc.).
- All data should allow for disaggregation following minimum standards: Gender and age of victims; gender and age of perpetrator; relationship of victim and perpetrator; type of violence; location of the violent act.

✓ Data Specialist Women's Support Services (Women's Help-lines, Shelters, Centers)

Background

In Austria women's support services which are national services or have a national network do collect national data. These are:

- a) The national women's helpline
- b) The network of autonomous women's shelters (AÖF)
- c) The Intervention Centers/Centers for the Protection from violence (Gewaltschutzzentren).

a) Women's Helpline Against Violence 0800/222 555

The Women's Helpline, founded 1998, documents every call in an internal database collection tool and prepares statistics for the annual report that is published on the Website: www.frauenhelpline.at

The following data is collected by the AÖF-Women's Shelters (not all data collected is also published):

- Total number of all callers * Number of female and male callers
- Age of the caller * Relationship of victim and perpetrator/s (internal data)
- Length of the calls (internal data) * Time of the calls (morning, afternoon, nights, weekend)
- Frequencies of calls (internal data) * Calls from which region of Austria (only if it is necessary)
- Multi-language-counselling (Arabic, English, BKS, Russian, Turkish and, since 2016, Persian/Farsi and Dari)
- Types of Violence (Stalking, honour marriage, and the heaviest forms of violence)
- Intervention in case of serious violence, police or youth welfare system or hospital (only with permission of the victims) (internal data)
- Referral to other organisations (Women's shelters, women's counselling centers, intervention centers, or hospitals)

b) Women's Shelters Networks

The Autonomous Women's Shelters Network AÖF provides the AÖF-Statistics including data from all shelters since 1992 as part of their daily activities. Based on the data collected by the Women's Shelter in Neunkirchen and provided by all AÖF-Women's shelters, the Autonomous Women's Shelters Network AÖF evaluates and interprets the statistics. The AÖF-statistics are published in the AÖF-progress report and also as separate document. Both documents can be downloaded free of charge at www.a oef.at.

The following data is collected by the AÖF-Women's Shelters (not all data collected is also published):

- Days of stay in Women's Shelter
- Civil status of clients
- Age of clients
- Origin of clients

²⁶ See Wiener Interventionsstelle gegen Gewalt in der Familie (2015): Gemeinsam gegen Gewalt an Frauen und häusliche Gewalt handeln. Leitfaden für Leitung und Praxis in Krankenhäusern zu Versorgung von gewaltbetroffenen PatientInnen, p. 57 ct.

- Women who cannot stay immediately in a Women's shelter due to lack of space
- Counselling for victims who don't stay in a Women's shelter
- Use of weapons (internal data)
- Age of children living in a Women's shelter (girls & boys)
- Number of children living in a Women's shelter (girls & boys)
- Duration of stay
- From where / whom clients get information about Women's shelter
- Residence of clients
- Nationality of clients (internal data)
- Citizenship of clients (internal data)
- How often clients stay in a Women's Shelter
- Nationality of abuser / client (internal data)
- Education of clients
- Income situation of clients when they move in a Women's shelter
- Income situation of clients when they move out a Women's shelter
- Housing situation after the Women's Shelter
- Perpetrator
- Income situation of perpetrator
- Legal measures

The association ZÖF – Union of Austrian Shelters for Women provides the ZÖF-Statistics including data from all shelters since 2013 as part of their daily activities. Based on the data ZÖF evaluates and interprets the statistics. The annual statistics are also published on the website www.frauenhaeuser-zoef.at.

c) Domestic Violence Intervention Centres/Centers for the Protection from Violence (Gewaltschutzzentren)

The Centers are obliged by the contract of the Ministry of Interior and the Ministry of Health and Women to regularly collect a number of data. From this data, Intervention Centers create their statistics (see Annex 1).

Recommendations

- National networks of women's shelters and centers are necessary in order to be able to provide harmonized data on the national level and funding is needed for the development of coordinated data.
- As collecting harmonized national data on women's support services requires financial and human resources, increased public funding for this work is necessary.

✓ Data Employment Services

Background

The Austrian Unemployment Services (AMS) has a nation-wide network of gender-equality focal points, and provides special support to women, including to migrant women, and refers women victims to specialist women's support services (see also information to Article 20). This is a good practice example for the cooperation between general and specialist services.

Currently there is no publicly available data on how many women victims of violence are supported by the AMS through gender-equality programs and how many women victims of violence are identified and referred to specialist services.

Recommendations

- Data on number of women served by special programs for gender-equality and against VAW in the AMS should be collected periodically.

✓ Data Housing Programs

Background

In order to empower women victims of violence, and to safeguard their right to live free from violence, housing programs are of utmost importance. To be empowering, the goal must be to provide permanent housing, not provisional or transitional housing.

Challenges

There is not much data and information on housing programs for women survivors of violence. One example: in Vienna the city's housing department has a special unit, focusing on prioritizing housing needs of special groups, including women victims of domestic violence.

Recommendations

- Research should be carried out about the housing situation in all 9 provinces and existing or missing housing programs for women victims of violence and their children.
- Housing cooperations and housing programs should provide annual statistics on services provided to women victims of violence and the number of houses made available to them.

✓ Data Gender Specific Asylum Claims

Background

To date, not much data exists on residence permits and how permits are granted – for instance, does the husband apply for a permit and the woman then receives a residence permit based on this? Or is her permit granted independent of the partner's permit?

Challenges

There is neither comprehensive data about residence permits deriving from the partners' residence permit, nor comprehensive data on residence permits granted independent of that. Furthermore, there is no comprehensive data on cases of claimed gender-based persecution (in the country of origin and/or the receiving country) and the outcomes of these procedures (see also information regarding Article 59 and 60).

Recommendation

- National data should be collected on the number of women victims of violence applying for an autonomous residence permit and the outcome of such claims.
- Data should be collected on women applying for and asylum based on gender specific claims and the outcome of such claims.

Research Data

The Convention requires the following concerning research: "For the purpose of the implementation of this Convention, Parties shall undertake to:... b. support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention." (Article 11)

Background

Austria has very little research on violence against women and domestic violence. There is no department or unit at any of the universities on gender based violence and there are no research programs of fund focussing on this issue. This is a serious problem not only for research but also for education of professionals. Almost no profession has integrated teaching on violence against women and domestic violence into their curriculum. It is impossible to train all professional outside the formal educational system (see also information to article 15).

Existing research: In the period between 2011 and 2016 only a few research projects have been carried out in the field of domestic violence and violence against women. However, most of the studies were extremely small scale and part of EU funded projects in the framework of the „Justice Programme“ or „Rights, Equality and Citizenship Programme“ of the European Commission with co-funding the Federal Ministry of Education and Women.²⁷

²⁷ Since May 2016 Women affairs changed to the federal Ministry of health due to government reshuffle.

Within these studies, the topics were „partner violence against older women“ (2013)²⁸, „violence against women with disabilities and their access to support“ (2014)²⁹, „sexual violence against domestic workers“ (2014)³⁰, to „restorative justice in case of domestic violence“ (2016)³¹.

The project on „violence against women with disabilities“³² revealed that women with disabilities are at high risk to be exposed to violence and experience various dimensions of violence particularly caused by the dependency of other persons and institutions. Moreover it came out that violence against women with disabilities is still a huge taboo within society.

Recent studies commissioned by Austrian governmental bodies were: A study on „High-risk victims. Homicide in close relationships. Convictions in Austria between 2008 and 2010“³³ which revealed that violence committed by male perpetrators is much more massive in comparison to female perpetrators. Another study tried to figure out how and to what extent girls and women are using the 24-hour Women’s Emergency Hotline.³⁴

Challenges

Research projects in Austria in the last 5 years were very few and small scale. Such projects are mostly very small scale. They are not able to comprehensively evaluate the efficacy of measures taken in Austria to implement the Convention prevent violence against women and domestic violence, to study the root causes and effects of all forms of violence, or provide knowledge on incidences and conviction rates as required by the Convention.

No study was carried out in the last ten years on the efficiency of police emergency barring orders, protection orders, the work of Intervention Centers, the psycho-social and legal support of victims in legal proceedings or on attrition rates and conviction rates in the area of violence against women and domestic violence or any other preventive measure.

Further research areas underreported are refugees, (undocumented) migrant women, asylum seeking women victims of violence, elderly women, situation of children and girls, who effected by violence or an evaluation and analyses about the joint custody and the impact of the “Kindschaftsänderungsgesetz” from 2013” on the safety of children experiencing and witnessing domestic violence. Research is also needed on of all form of sexual violence (sexual harassment, rape and sexual abuse) and on specific forms of violence such as force marriage and FGM.

There is an urgent need of researches from the perspectives of victims like the study from Daniela Gloor/Hanna Meier/Social Insight 2014 in the Switzerland³⁵.

Recommendations

- Studies need to be carried out in the next four years on the efficiency of police emergency barring orders, protection orders, the work of Intervention Centers, the psycho-social and legal support of victims in legal

²⁸ Amesberger, Helga/Haller, Birgit (IKF): Mind the gap! Improving Intervention in intimate partner violence against older women. Financed by Daphne III, co-financed by Federal Minister of Women and Civil Service, Vienna 2013. <http://www.ikf.ac.at/projekte.htm> (26.7.2016)

²⁹ Mandl, Sabine/Schachner, Anna/et.al. (Ludwig Boltzmann Institute of Human Rights, Queraum, NINLIL, et.al): Access to specialised victim support services for women with disabilities who have experience violence. Financed by Daphne III, co-financed by the Federal Ministry of Women and Education, Vienna, 2014. <http://women-disabilities-violence.humanrights.at> (26.7.2016)

³⁰ Halbmayr, Brigitte (IKF): Increasing the capacity of domestic workers of different origins to respond to sexual violence through community-based interventions. Financed by Daphne III, co-financed by the Federal Ministry of Education and Women as well as Federal Ministry for Labour, Social Affairs and Consumer Protection, Vienna, 2014. <http://www.ikf.ac.at/projekte.htm> (26.7.2016)

³¹ Haller, Birgit (IKF)/Hofinger, Veronika (IRKS): Restorative Justice in Cases of Domestic Violence. Financed by DG Criminal Justice, co-financed by the Federal Ministry of Education and Women, Vienna, 2016. <http://www.ikf.ac.at/projekte.htm> (26.7.2016)

³² See footnote 3

³³ Haller, Birgit (IKF): High-risk victims. Homicide in close relationships. Convictions in Austria between 2008 and 2010. Financed by the Minister of Women and Social Service, Vienna, 2011. <http://www.ikf.ac.at/projekte.htm>

³⁴ Haller, Birgit/Bischof, Karin/et.al: Focus group on violence. Financed by 24-hours Emergency Hotline and Women’s Department of the City of Vienna (MA57), Vienna, 2011. <http://www.ikf.ac.at/projekte.htm>

³⁵ Daniela Gloor, Hanna Meier (2014): «My hopes for the future: Just a normal life.» How victimised women experience intervention in partner violence. Summary of findings, conclusions and recommendations. A research study in the context of national research program 60 „Gender equality“. Translation: Renate Klein. Social Insight, Schinznach-Dorf.

proceedings, on attrition rates and convictions rates in the area of violence against women and domestic violence and on other measure.

- Such studies need to conduct analyses from the perspectives of victims, not only from the perspective of experts and they need to include a big enough sample of survivors including groups such as migrant and asylum seeking women.
- It is urgently necessary that an research fund for research on violence against women is established and that research on the root causes and effects of violence as well as on incidents, convictions rates and on the efficiency measures taken are conducted by independent researchers.
- Increased funding for gender-sensitive criminological, socio-legal and qualitative social research on the causes and effects of sexual violence is needed.
- At least 3 million should be invested in such a research fund as a start for three years.

Survey Data

Background

In Austria one representative study on „domestic violence against women and men“³⁶ was carried out in the respective period (2011). The study focused on psychological, physical and sexual violence as well as sexual harassment. Further Austria was part of the EU survey on violence against women conducted by FRA.

Challenges

Regarding the survey from 2011 there are two concerns: Men and women were interviewed with the same methodology and questions³⁷, which gives a distorted picture about violence against women, It shows that women and men are more or less affected by partner violence in the same way. For example: Psychological violence was most frequently mentioned by women and men, however, there is just a slight gender related difference (nine out of ten women reported about psychological violence and eight out of ten men). More than half of all interviewed women and men experienced physical violence. When it came to sexual violence the gender gap is more visible, every third women was exposed to sexual violence but only one in ten men reported having been sexually abused.

The historical and societal background of violence against women which has lead to the domination of men over women in all areas of society, has to be regarded in any survey and research. Violence against women by men is gender-based and it is not the same problem as violence against men, which is not predominantly exercised by women. Thus VAW it should not be research with the same methodology together with violence against men, to avoid bias and gender-blind results. The gender-sensitive EU wide representative study on violence against women carried out by FRA fundamental rights agency in 2014 revealed that every third women) experienced violence.³⁸

Recommendation

- Violence against women surveys need to have a gender-sensitive approach and focus solely on women
- Violence against men should be survey separately
- The FRA study should be repeated in Austria every four years, using a bigger sample size than in the original study, so that violence against migrant and asylum seeking women and specific forms of violence such as forced marriage and Female Genital Mutilation (FGM) can be included.
- Austria should actively take part in to the planning on the Eurostat survey on violence against women.

³⁶ Kapella, Olaf/Baierl, Andreas Geserick/ Christine, Schmidt/Eva-Maria (OIF), et.al.: Domestic Violence against Women and Men. Financed by the Federal Ministry of Economy, Family and Youth, Vienna, 2011.
www.oif.ac.at/publikationen/weitere_publicationen/detail/?tx_ttnews%5Btt_news%5D=2410&cHash=c2c1cc73679b1211963100a4a911aade (26.7.2016)

³⁷ Throughout Austria representative survey 1.292 women and 1.042 men (n= 2.334) were interviewed.

³⁸ Violence against women. An EU-wide survey, FRA-Fundamental Rights Agency, Vienna, 2014
http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_en.pdf (26.7.2016)

Chapter III - Prevention

Article 12 - General obligations

Background

Violence against women occurs every day in many different contexts: in the private sphere, in the public sphere, at work and also in the context of social media, internet platforms and blogs. Women are exposed to sexual, racist and misogynist assaults.

Challenges

A popular example of gender-specific hate-comments is the so-called 'shit storm' directed against the Minister for Women's Affairs and Education, Gabriele Heinisch-Hosek, in 2014. In 2011, the lyrics of the Austrian national anthem had been changed to include a reference to not only "great sons" of the nation, but also "great daughters" ("Heimat bist du großer Söhne und Töchter"). Although this change was adopted in the parliament, in 2014 Austrian musician Andreas Gabalier sang the national anthem without the "daughters". Minister Heinisch-Hosek reacted to it and wrote a personal comment to musician Andreas Gabalier via Facebook. This posting triggered a major negative reaction from the public with thousands of hate-postings. Abuses like "huge clumsy clot" (großer Trampel) or "idiot-woman" (Idioten-Weib) were some of the less harmful comments. What the Minister had to go through is not an individual case – many women are subjected to similar experiences if they are speaking for women's rights and against violence against women, or speaking about feminism in the public sphere or through social media.

In the context of the implementation of the new statutory offense §218 StGB "sexual harassment in public", many misogynist comments also appeared and women were accused of "provoking sexual assaults" or accused of "wanting to take revenge on innocent men by lying about being assaulted".

If women defend themselves and report sexual assaults or rape, it regularly occurs that they are blamed or even charged for "false accusations", while perpetrators often do not have to face any consequences.

A specific issue in this context is violence experienced by sex workers, as they are a particularly vulnerable group due to stigmatisation. The national laws and policies play a key role in combating violence, reducing vulnerability and ensuring universal access to rights and justice, also for sex workers.

Recommendations

- Comprehensive prevention measures against sexism and sexual violence should be taken, as sexist attitudes and gender stereotypes are learned by boys and girls from early childhood. Fighting sexual violence against women is not only a question of saying "no" when advances are unwanted, but it also requires self-confidence, as well as awareness of one's own body, will and desires as a basic condition to for consensual relationships. In this context, measures to fight sexism and consequently prevent violence against women should address and actively engage men and boy.
- Lessons about sexuality, self-determination, consent and sexual violence should be included in school curricula (see also recommendations on Article 14)
- Empowering all women to demand their rights and fight against violence has to include ensuring safer working conditions for sex workers by decriminalizing sex work

Article 13 - Awareness-raising

Background

While the legal situation concerning violence against women is generally positive in Austria, awareness-raising in society is urgently needed, as violence against women continues to be deeply rooted in Austrian society. Thus, preventing violence against women and children requires changing the social and cultural patterns concerning stereotypical roles for women and men and overcoming the deeply engrained ideas about women's inferiority to men.

Unfortunately, awareness-raising work is not carried out by the Austrian government on a constant basis. Only singular, one-time campaigns on the topic of violence against women have been financed by the European Commission and co-financed by the Austrian Ministry of Women's Affairs.

The latest such campaign was "Living FREE of Violence" (GewaltFREI LEBEN)³⁹, which was running in 2014 and 2015 and was carried out mainly by the Austrian Autonomous Women's Shelters Network (AÖF) in cooperation with the Domestic Abuse Intervention Centre and the Austrian Federal Youth Representative Council and funded by ? After 2015, however, there was no possibility to continue the project because financial support ended.

Challenges

It would be highly important that campaigns like "Living FREE of Violence", in which many partnerships are built up, do not stop after the official end of the project, but that continued funding is ensured so that awareness-raising campaigns and projects can be sustainable. Moreover, the campaign was mainly carried out by NGOs, as is the case with most awareness-raising campaigns on gender-based violence in Austria. Such campaigns are usually initiated by relevant NGOs in this field without a call and also receive competitive applications. Thus, there are no constant awareness-raising campaigns in Austria carried out by the state at all. Due to lack of funding, it is not even possible to promote the number of the women's helpline against violence on a consistent basis in order to raise public awareness of its existence (see also section on Article 24).

Furthermore, awareness-raising campaigns should be conceptualized in more diverse ways, and campaigns targeting specific topic should be carried out in addition to general awareness-raising campaigns on violence against women. A study of all campaigns carried out in Austria from 2007 to 2011⁴⁰ showed that of those campaigns which were mostly limited to individual dimension and to physical violence, women were mostly shown as passive and silenced victims. They were focused on secondary prevention and addressing women as victims of violence rather than focus on primary prevention. Awareness-raising campaigns on specific topics should include psychological violence, sexual violence and also campaigns specifically targeting migrant women, women with disabilities, elderly women and victims of forced marriage. Campaigns and other awareness-raising work (see below) should be visible in public, especially in the rural area, for women and girls who do not have access to internet or social media.

Moreover, awareness-raising work should not only be limited to carrying out campaigns, especially as there is very little research on the impact of such campaigns and little knowledge about how to effectively target campaigns to a specific audience. Comprehensive awareness-raising work should include informational campaigns and (social) media work, as well as organizing workshops and trainings, producing informational material and advertising videos.

Specialist women's support services in Austria are very engaged in awareness-raising work in addition to their tasks to support victims. For example, they inform school classes about violence against women and their work and brief professionals working with women and children impacted by domestic violence. They publish informational material, coordinate its dissemination and organize public events on the topic of violence against women. They further engage in international campaigns, organizing events related to, for instance, International Women's Day, One Billion Rising or the UN WOMEN 16 Days of Activism against violence against women and girls. This additional awareness-raising work carried out by women's support services on top of their actual tasks, however, is not supported by consistent public funding. It is urgent that the government recognizes the importance of this work and the necessity of guaranteed funding. The know-how of the experts in the field of violence against women should be used and valued. In this context, it is important to emphasize that it should not only be the responsibility of the Ministry of Women's Affairs to support such awareness-raising work, but other ministries should provide funding as well (e.g. the Ministry of Health, the Ministry for Family Affairs or the Ministry of the Interior).

³⁹ Homepage: www.gewaltfreileben.at

⁴⁰ Birgit Wolf (2013) *Shaping the visual' of gender based violence. How visual discourse on intimate partner violence and European anti-violence initiatives construct accounts of the social world.* PhD thesis, Universitat Autònoma de Barcelona, Spain

Recommendations

- The government should design, fund and implement Austria-wide awareness-raising and informational campaigns, focusing on primary prevention and gender equality, which not only consists of TV spots and poster campaigns, but also includes trainings and workshops especially for children and young persons, and for professionals working with survivors of domestic violence, e.g. judges, physicians, psychologists and teachers. Activities should also include a focus on men and children, and the social environment of victims of violence such as families, friends and colleagues, as well as local, cultural, religious or other communities.
- Continued funding for awareness-raising activities of specialist support facilities for women must be guaranteed.
- There should be specific awareness-raising about sub-topics in the context of violence against women, e.g. sexual violence or anti-violence campaigns addressing the intersection of gender and ethnicity/religion or addressing violence in contexts of LGTBQs.
- The telephone number of the national Women's Helpline should be advertised widely in the public, and daily in Newspapers and TV-channels.

Article 14 - Education

Background

In Austria, the curricula of all types of schools include guidelines concerning the issues mentioned in Article 14 para 1, namely within "Allgemeine Bildungsziele" (general educational goals) and "Allgemeine didaktische Grundsätze" (general didactic principles).

The curriculum for new secondary schools 2012 provides, for example, that "(...) a research based discussion concerning gender specific stereotypes is needed to unfold the scope of action and potentials of the boys and girls. It is essential to choose the content and the methods of education in a way both sexes are addressed. It should be appealing for every person no matter which social background the student has. It's a teacher's burden to establish a climate of common respect and to reflect her/his own expectations, roles of sexes and patterns of interaction. Teachers should have a basic knowledge about gender research, both regarding tangible topics and pedagogical, psychological, sociological and didactic issues."⁴¹ The curriculum for primary schools provides for the following "general didactic principles": "sensitization for roles of sexes", "conscious contention with gender specific roles and behavioural pattern", "awareness raising of the equity of women and men during the working process", "equity of women and men, division of tasks".⁴²

Violence against women, however, is not treated in an explicit way within the Austrian curriculum.

Experts from relevant NGOs have already developed special teaching materials dealing with the prevention of violence against women (among others, supported and financed by the Austrian Federal Ministry of Education).⁴³

⁴¹ See https://www.bmb.gv.at/schulen/unterricht/ba/gs/gender_lehrplaene.html

⁴² See *ibid.*

⁴³ Examples:

Schneider, Claudia/ Tanzberger, Renate, unter Mitarbeit von Hauer, Gerlinde/ Bianca, Schrittwieser (2016): **Auf dem Weg zur Chancengleichheit. Didaktische Anregungen zum Unterrichtsprinzip "Erziehung zur Gleichstellung von Frauen und Männern" und zum Gleichbehandlungsgesetz für Berufsschullehrerinnen und -Lehrer.** Hg. v. AK Wien/ Abt. Frauen und Familie. Aktualisierte Auflage, Wien; https://aws.arbeiterkammer.at/assets/uploads/Auf_dem_Weg_zur_Chancengleichheit_fertig6.pdf

samara (Hg.) (2015): **Transkulturelle Gewaltprävention und Gesundheitsförderung;** http://www.transkulturell-samara.at/assets/2012/03/samara_handbuch_web_2015-12-14a.pdf

Leeb, Philipp/ Tanzberger, Renate/ Traunsteiner, Bärbel (2014): **Gender. Gleichstellung. Geschlechtergerechtigkeit. Texte - Unterrichtsbeispiele - Projekte.** Hg. v. Zentrum polis - Politik lernen in der Schule. Wien; http://www.politik-lernen.at/dl/KsnLJMJKomLKMJqx4KJK/edpol_gender_2014_web.pdf

Schneider, Claudia/ Tanzberger, Renate/ Traunsteiner, Bärbel (2014): **Unterrichtsprinzip Erziehung zur Gleichstellung von Frauen und Männern. Informationen und Anregungen zur Umsetzung in der Volksschule.** Hg. v. BMB - Abteilung für GM - Gender Mainstreaming/ Gleichstellung und Schule. 2. aktualisierte Auflage. Wien; <http://pubshop.bmbf.gv.at/download.aspx?id=191>

Schneider, Claudia/ Tanzberger, Renate/ Traunsteiner, Bärbel (2014): **Unterrichtsprinzip Erziehung zur Gleichstellung von Frauen und Männern. Informationen und Anregungen zur Umsetzung ab der 5.Schulstufe.** Hg. v. BMB - Abteilung für GM - Gender Mainstreaming/ Gleichstellung und Schule. 2. aktualisierte Auflage. Wien; <http://pubshop.bmbf.gv.at/download.aspx?id=192>

polis aktuell 2014/03: **Frauenrechte sind Menschenrechte.** Hg.: Zentrum Polis. Wien;

Furthermore, there is a central pedagogical service facility working in the field of political education in schools, the association *Zentrum polis*. In the school years of 2014/2015 and 2015/2016 *Zentrum polis* put together an package of educational measures concerning violence against women in political education⁴⁴. This project was carried out under the authority of the Austrian Federal Ministry of Women's Affairs (as part of the Austrian Action Plan on Violence Against Women).

Experience of relevant NGOs has shown that there is a great demand for workshops dealing with violence offered free of charge at Austrian schools. Within the framework of the state-wide campaign "Living FREE of Violence" (GewaltFREI LEBEN)⁴⁵, the Austrian Federal Youth Representative Council (BJV) trained multipliers who carried out anti-violence workshops, reaching more than 3,000 children and youths. Because of project funding from the EU and co-funding from the Austrian Ministry for Women's Affairs, the workshops could be offered free of charge – an important factor allowing many schools to profit from them.

From 2014 to 2016 a national strategy for prevention in schools named "Weiße Feder" (White Feather) is commissioned by the Federal Ministry of Education, focusing on three main aspects, one of which is (sexual) violence against girls and women. This strategy is an important step and developing a similar strategy focusing on domestic violence against women and children would be highly important.

Challenges

Despite the demand for workshops on violence against women and domestic violence in schools, it is difficult for many schools to commission them if they are not offered free of charge. The Association of Austrian Autonomous Women's Shelters (AÖF) offers workshops for schools (on topics such as empowerment, violence in relationships and also workshops addressing teachers), however, only very few schools are able to afford them as AÖF is unable to offer these workshops for free (costs range from €290 to €990, depending on the duration).

Experience of relevant NGOs with trainings of teachers concerning gender-sensitive education has further shown that most of the teachers did not know about the above-mentioned teaching material on violence against women, although it is available online free of charge. The use of these learning materials is thus dependent on the individual commitment of teachers.

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- <http://www.politik-lernen.at/site/gratisshop/shop.item/106281.html>
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<http://www.politik-lernen.at/site/gratisshop/shop.item/106320.html>
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<http://www.politik-lernen.at/site/gratisshop/shop.item/106241.html>
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<http://www.politik-lernen.at/site/gratisshop/shop.item/105888.html>
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<http://www.politik-lernen.at/site/gratisshop/shop.item/105786.html>
polis aktuell 2007/06: **Vielfältige L(i)ebenswelten – Diskriminierung aufgrund sexueller Orientierung**. Hg.: Zentrum Polis. Wien;
<http://www.politik-lernen.at/site/gratisshop/shop.item/105385.html>
Tanzberger, Renate/ Leeb, Philipp (2012): Eine Handreichung für Lehrkräfte entstanden im Rahmen von **MÄGI - Mädchengesundheit inspiriert**. Im Auftrag vom Verein Sprungbrett; http://www.efeu.or.at/seiten/download/maegi_broschuere.pdf
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<http://www.wien.gv.at/menschen/queer/pdf/bullying-schule.pdf>

⁴⁴ It covered: toolkit for teachers about protection of women against violence, including and updating of didactic examples concerning VAW, feature dossier about VAW, trainings for teachers and multipliers about gender specific violence in the school setting, new lemmas for the youth's lexicon about politics

⁴⁵ For further information about « Living FREE of Violence » (GewaltFREI LEBEN) see also section on Article 13

Similar experiences were made for offering workshops at schools. Whether or not anti-violence workshops are held is often based on the individual commitment of schools and/or teachers. If the workshop has to be paid, it is even more difficult for schools and teachers.

Recommendations

- The topics of gender-based violence and domestic violence have to be included in the curricula of all pedagogues (kindergarten teachers, teachers, etc.).
- Teaching material has to follow gender equality standards and must not reproduce gender stereotypes.
- Existing toolkits and teaching materials listed above should be used state-wide.
- Prevention work for and with children and youth should be carried out state-wide and should be part of curricula in schools. Singular workshops (2-4 hours) cannot cover all needs and do sometimes not meet expectations of schools and teachers. Long-term workshops (as offered, for instance, by *Zentrum polis*) free of charge would be important.
- Principals in schools should be sensitized so that they support teachers to deal with domestic violence in their school classes and to take part in special trainings.
- Dissemination of a well-structured manual which gives advice on how to act in case of domestic violence in schools is also important.

Art 15 – Training of Professionals

General Background

In Austria there is only one profession that has integrated teaching on violence against women and domestic violence into their curriculum (the police). All other professionals dealing with victims or perpetrators do not include systematic and comprehensive teaching on this issue. Therefore, filling in the two tables annexed to the questionnaire (in-service training and initial training/educational or professional training) is virtually impossible.

General Challenges

It is impossible to train all professionals outside the formal educational system, as there are no resources for doing that and it is not possible in practice to train tens of thousands of social workers, psychologists, sociologists, lawyers, journalists, therapists and other professionals outside the formal educational system.

Recommendation

The integration of the topic into the formal education of all relevant professions must therefore be a **priority** in the next four years and this goal must be integrated in the next national action plan on the prevention of violence against women and must be implemented systematically.

Training of Police Officers

Background

In the beginning of the 1990s, employees of the Association of Austrian Autonomous Women's Shelters (AÖF) together with colleagues of the autonomous women's shelter began establishing workshops on the subject of violence in the family for police officers training. In the meantime, "violence in the private sphere" has become an inherent part education. Every prospective police officer has to study the reasons, forms and patterns, as well as the dynamics of violence and the perpetrators' strategies. Police officers receive special training on these topics in a 2-3-day interdisciplinary seminar called "violence in the private sphere", as part of their basic training. This is organized by a collaboration of experts from violence protection centres. Furthermore, the officers are constantly trained and sensitized in advanced trainings. The training as part of the basic training for police officers has proven effective and is a model for good practice.

Challenges

However, trainings are regulated differently in each province of Austria. In Vienna, for example, the interdisciplinary trainings have a duration of three days, whereas they only last for two days in other provinces. In Vienna, the trainings are held together with counsellors of the Intervention Centres, of the women's shelters and of the Youth Welfare Service, whereas in other provinces the trainings are carried out by counsellors of the women's shelters together with employees of the Intervention Centres or only by employees of the Intervention Centres.⁴⁶

Multidisciplinary practice is not guaranteed in all provinces and the tasks of the different support services are not explained, thus their importance is not conveyed in the same way in each province. A clear and standardized nationwide regulation of police trainings and quality standards are missing.

The coaches of the police are well-educated, especially concerning the Federal Act on Protection against Domestic Violence. But practical experience of daily police work in the context of domestic violence is often missing. Furthermore, training material is partly not up to date. Training films, in particular, must be updated regularly.

In addition, there is too little investment for training trainers. Since the implementation of the police trainings in the 1990s, only two train-the-trainer workshops were held, in which quality standards and the design of the trainings were worked out. This is far too little – such workshops must be repeated at least every two or three years.

Another challenge is the growing group sizes in police trainings. The number of police trainees taking part in the training session has increased continuously within the last years. It is now common for up to 30 participants to take part in a training session. This number of trainees makes intensive and comprehensive training difficult. Role plays, in-depth-discussions and engaging the trainees is therefore challenging. A smaller group size (15 to 20 participants) would be important, as well as adequate training facilities.

Moreover, while integrated trainings are a good foundation, it would be important to also establish mandatory trainings for police officers who have finished their formal education. Right now, the participation in further trainings is not mandatory and each province and region is dealing in a different way with it.

Recommendation

- Trainings should continue to be a part in the curricula of the police education and adequate funding has to be provided to continue to carry out this trainings in cooperation with experts from women's support services.
- The trainings have to be regulated nationwide concerning duration, content, design of the trainings, number of trainees and coaches from support services and police.
- Quality standards have to be redefined regularly within train-the-trainer-trainings together with anti-violence experts and the police.
- Financial funds for the renewal of teaching material must be provided continuously.
- Mandatory further trainings dealing with domestic violence have to be implemented in all provinces and regions.
- Teaching material as well as further trainings should also deal with the fact that children are also victims too in cases of domestic violence, with high-risk cases of women and children and with the situation of migrant women, asylum-seekers, women with disabilities and elderly women as well as LGBT people.

⁴⁶ The services are called Intervention Centers in the law. Apart from Vienna, all Centers changed their name to Gewaltschutzzentrum/Centers for the Protection from Violence. When the term "Intervention Center" is used, all centers in Austria are included.

Training of Social Workers

Background

Well trained social workers are very important in the field of prevention of violence and domestic violence. In Austria, social workers are educated at universities of applied science in a three-year study programme.

Challenges

The topic violence against women, gender-based violence and violence in the family is currently not a part of the syllabus in college for social work or within the curriculum of the programme in universities. In both cases, the subject of violence is not compulsory, and is only taken in elective courses.

Furthermore, the fact that few migrant students are admitted to these study programmes is problematic. Native speaking counselling in the field of domestic violence would be highly desirable.

Recommendations

- Gender-based violence, violence against women and domestic violence must be implemented into the education of social work in all universities and universities of applied sciences in Austria.
- The quality standards in the education have to be developed regularly.
- Access for students with a migrant background should be improved.
- In basic education as well as in further trainings, the following topics should be considered: international obligation and human rights law on VAW, understanding of violence against women and domestic violence as gender-based, the affect of domestic violence on children, principles of victim-centered, human rights based and empowering support, legal provisions and specialist services, risk assessment and safety planning as a priority, situation of migrant and asylum-seeking women, inclusion of and non-discrimination against undocumented women, women with disabilities and LGBT people.

Training of Public Prosecutors and Judges

Background

After completing their law studies at university, judges and public prosecutors endure a four-year training programme that consists of practical training at courts as well as seminars and placements in other relevant institutions. For judges, continuing education is one of the professional obligations once they have been elected for a post.

Challenges

Violence against women and children is not part of the curriculum of law studies at the university level. While the four years of professional training for judges and public prosecutors do include some seminars on the topic of violence against women and children, these are not extensive enough to ensure a comprehensive understanding of issues as diverse and complex as structural inequality, gender bias and stereotypes and traumatization of victims. Furthermore, while candidates must complete a two-week practical training at a social institution, the list of possible institutions does not only include victims' support organizations but also organizations mostly dealing with the rehabilitation of perpetrators or with custodianships for adults who need a legal guardian. A potential public prosecutor or judge can therefore go through his or her four-year training without ever meaningfully engaging with the issues listed above. The result is that there is a widespread lack of (gendered) understanding of violence against women as well as the underlying root causes of this form of violence among judges which leads to victims often not being believed and/or the violence experienced by them not being taken seriously (see also section on Article 49).

Once selected as a judge, continuing education is one of the professional obligations specified by the Judicial and Public Prosecution Service Act, and judges can choose from a range of seminars offered on various topics, including some on the topic of violence and victim protection. However, there are no mandatory training programmes in place.

Recommendations

- In order to ensure a gendered understanding of violence against women as well as the underlying root causes of this form of violence, **comprehensive education and training** on this topic needs to be **included in the training of public prosecutors and judges**. It would be highly important to include a **mandatory seminar of at least one week** in the curricula of the training of public prosecutors and judges. This seminar should include education by experts on forms and effects of trauma on victims in order to sensitize future public prosecutors and judges for the behavior of traumatized witnesses that might differ from the typical behavior of non-traumatized witnesses. The seminar should be developed and carried out in cooperation with experts from victims' support organization to share their expertise and provide practical insight.
- In order to encourage continuing education of judges on the topic of violence against women, a sufficient number of relevant seminars have to be offered and specifically promoted among judges.
- The topic of violence against women, domestic violence and violence against children should already be part of the curriculum in general law study programs at universities.

Training of Healthcare Professionals

Background

Medical doctors, nurses, midwives, psychologists and therapists are trained in different educational institutions and various ministries are responsible for their education. Therefore, the establishment and implementation of training courses into their curricula is difficult. Knowledge on the topic would be crucial for medical professionals, as they are often the first to notice that a woman is affected by domestic violence.

Challenges

The subject of violence is missing from every curriculum for studies in the health care and medical sector as well as from the curricula for psychiatry, psychology and psychotherapy. There have been several attempts to implement this topic as a mandatory subject in the curriculum.⁴⁷

More and more medics are trained and sensitized through the legal establishment of victim protection units in hospitals since 2011, but the implementation of these victim protection units is slow. While most hospitals have had children protection units for years now, victim protection units still have not become a consistent standard.

Recommendations

- The subject of violence against women and domestic violence should be introduced in the curricula of all professions in the healthcare sector (doctors, nurses, midwives, psychologists and therapists).
- Not only should the so called "front-line" employees be trained, but also management of hospitals.
- Training and instruction should be held by violence experts of victim protection establishments in collaboration with instructors from the healthcare sector (members of victim protection units).
- The use of the documentation sheet in cases of injuries and the kit for securing evidence in cases of sexual violence are part of the quality standards and is required by WHO.
- Mandatory professional advanced vocational training for all occupational groups in the healthcare sector should be introduced, not only in hospitals but also for resident doctors and midwives in their surgery as well as for medical and nursing staff in convalescent homes and rehabilitation centers should also take part in mandatory trainings and instructions.
- Victim protection units should be swiftly established in all Austrian hospitals.
- Provide financial and government means for trainings and advanced vocational training for all trainers.

⁴⁷ For example, the project "Medpol" (medicine and police) as well as the working group IMAG and NAP "Protection of women against Violence" tried to tackle this problem.

Training of Immigration/Asylum Officials (see also Art 60)

Background:

Employees in the field of asylum and refugees have a variety of educational backgrounds, ranging from social workers and interpreters to lawyers and judges.

Challenges

In order to protect refugee women from gender-related violence, it is vital to train and sensitize employees of asylum centres (*Erstaufnahmezentren*) and refugee shelters in the subject-matter of violence against women and children.

The employees should be informed about counselling organizations so that they can refer to those when uncertain or pass on the information to concerned victims. In Austria there is the Women's Helpline and a network which is free of charge, anonymous and provides confidential counselling as well as support opportunities for women. Refugee women should have access to these services.

Recommendation

- Training and sensitizing of employees in all migrant and refugee organizations have to be established as mandatory.
- Regular interdisciplinary network and coordination meetings should be held between victim protection centers, men's counseling centers and children and youth organizations.
- Provide financial and personnel resources for victim protection and for prevention measures.

Training of Educational Staff and School Administrators

Background

The education of teachers and pedagogues lies under the responsibility of the Ministry for Education. Currently education is being discussed and should be regulated new. There is a chance for implementing the topic of violence against women and children and domestic violence into the education system – a long-standing demand of women's support services.

Challenges:

It is necessary to have teacher's trainings about violence against women and domestic violence and children. They are often confronted with children affected by domestic violence, but often do not know what to do. Furthermore, the Security of Police Act may require that schools be involved for cases that require a barring order. Another concern is that trainings are voluntary, so it depends on the individual engagement of teachers if they choose to take part in workshops and trainings as offered by women's support services about violence against women and children and domestic violence.

Recommendations

- Immediate statutory basis for the implementation of domestic violence and violence against children in education.
- Obligatory further trainings for every pedagogue.
- Adequate payment for experts of women's NGOs for carrying out trainings and for training material (see section on Article 13).

Training of Journalists and other Media Professionals

Background

There are different ways of education of journalists in Austria: at universities, specific colleges of higher education (Journalism and Communication Management) or on specific colleges.

The Istanbul Convention invites the media to implement measures for strengthening the respect and dignity of women and to contribute to the prevention of violence against women. The Convention encourages the media to implement a code of ethics, including that human rights are the basis for reporting about violence against women, that gender differences are always considered and that sensationalist reporting is avoided (see section on Article 17).

Challenges

Currently, journalists are not obligated to discuss violence against women – neither within the frame of their education nor within further trainings.

With the campaign „Living FREE of Violence“ (GewaltFREI LEBEN)⁴⁸ a project was carried out which tried to engage journalists to discuss violence against women. Within this project called “Medienwerkstatt” the Association of Austrian Autonomous Women’s Shelters published a manual which deals with responsible reporting about violence against women⁴⁹. The manual outlines causes, background information and consequences of violence against women and violence against children and it gives advice on how journalists can report responsibly. The manual should engage journalists to report in a sophisticated and objective way. Reporting in such a way can help to change public perception of violence against women and can thus ultimately contribute to protecting women and children from violence.

Journalists as well as their professional representations and training schools for journalists (also universities and colleges) are invited to collaborate to establish responsible reporting about violence against women and children.

Recommendations

- Implementation of domestic violence and violence against children and responsible reporting in education.
- Obligatory further trainings for journalists about violence against women and violence against children.
- Dissemination of manual about responsible reporting (published within Living FREE of Violence – GewaltFREI LEBEN) in all editorial offices and intranet.
- Public funding for media trainings for experts working in the field of violence against women and violence against children (as they are a source of information for journalists and are representing their organizations in the media).

Training of Interpreters and Expert Witnesses

Background

Interpreters are educated at universities. It is required when working as a court-certified interpreter, to fulfil certain specific requirements. Expert witnesses often have legal training or are psychologists or social workers (for instance, working at child and youth welfare or family legal aid).

Challenges

The professional work of interpreters is especially important for the prevention of violence and victim protection. Interpretation in this field is needed on many different contexts, for example when affected women and children report to the police, when they receive counselling by specialist support services, in (criminal and civil) judicial procedures as well as in medical consultations, during hospital stays and during asylum procedures. As their interpretation work touches upon very sensitive issues for the person they are translating for, it is highly important that interpreters are trained and sensitized about violence against women and violence against children, as well as the dynamics of violence and the perpetrators’ strategies.

This also applies for expert witnesses. Their work often plays a decisive role for the future of women and their children who have experienced violence. Therefore, knowledge about the dynamics of domestic violence is crucial.

Recommendations

- Obligatory further trainings for interpreters and expert witnesses about violence against women and violence against children.
- Providing public funding for manuals and training material.
- Regular interchange and cooperation with experts working in women’s support services.

⁴⁸ For further information on the project, see section on Article 13

⁴⁹ See also section on Article 17

Article 16 - Preventive intervention and Treatment Programmes

Background

In Austria, there are mainly two different types of organizations that carry out activities and work with perpetrators of domestic violence. Firstly, there are programs run by counselling centres that focus on supporting men, or organizations that provide comprehensive counselling services (such as family counselling centres and other related institutions). They all operate at the regional/provincial level. In addition, there is the Austrian national probation service (“Neustart”) which is run by an NGO that works on behalf of the Ministry of Justice; the work of Neustart is based on the law on probation, and covers a great variety of services, including alternative sanction measures and restorative justice measures, such as victim-offender mediation.

In 2011, the Domestic Violence Intervention Centre Vienna, which, together with the above-mentioned Men’s Centre, runs a program focusing on perpetrators, initiated by the National Working Group on victim-safety oriented work with perpetrators of gender based violence.⁵⁰ The working group is comprised of experts from NGOs from all Austrian provinces who are working with perpetrators, as well as experts from specialized women’s support services. The expert group is recognized and funded by the federal government with a small grant of €5,000, in order to coordinate meetings.

The aim of the working group is to establish and implement standards for the work with perpetrators that comply with the Istanbul Convention: to ensure that the safety of and the human rights of victims are of primary concern in the work with perpetrators; to ensure that a gendered understanding is applied; and that activities are carried out in close coordination with women’s support services. The working group has already achieved important progress:

- A mapping of programs was carried out which included the analyses of data collection in this sector.⁵¹
- A protocol of cooperation was established between the national probation service⁵² and specialist support services for women victims of violence,⁵³ agreeing that in every case of probation in domestic violence cases, that the probation service would work together with the specialist victim’s support services to ensure the victim’s safety and adequate support.
- Standards and guidelines for victim-safety oriented work with perpetrators were developed and presented to the inter-ministerial working group responsible for the implementation of the national action plan on violence against women. The standards are based on a gendered understanding of domestic violence.

Challenges

Despite progress that has been made since the Istanbul Convention entered into force, there continues to be gaps in the area of work with perpetrators that remain a concern:

Lack of accountability of the criminal justice system and lack of referrals to perpetrator programs

The most concerning problem is that currently very few perpetrators are referred to programs which focus on working with perpetrators. According to the mapping carried out by the BAG OTA, this has to do with a concerning lack of accountability of the justice system: even if violence is reported,⁵⁴ the majority of cases of violence against women are not sanctioned, as data of the Ministry of Justice from 2013 shows (see Annex 1).

This lack of accountability of the criminal justice system is very problematic, because it conveys the message that violence against women is not taken very seriously (see also sections on Article 5 and Article 49). It also has a very problematic effect on the work with perpetrators, since few perpetrators are referred to perpetrator programs. This means that in the Austrian criminal justice system, which is not only repressive but foresees that sanctions are combined with measures of rehabilitation such as working with probation officers, probation time and other possibilities, these modern measures are hardly applied in cases of gender-based violence. A

⁵⁰ Bundesarbeitsgemeinschaft opferschutzorientierte Täterarbeit – BAG OTA.

⁵¹ Wiener Interventionsstelle gegen Gewalt in der Familie Statistic 2015 – see Annex

⁵² The work of the national probation service is established by law and carried out by a non-governmental non-profit organisation (Neustart).

⁵³ Women’s refuge (“Frauenhäuser”), Domestic Abuse Intervention Center Vienna (“Interventionsstelle”), and protection against violence centres (“Gewaltschutzzentren”).

⁵⁴ According to the FRA violence against women survey, merely 16% of women in Austria reported the most severe acts of violence to the police or another law enforcement agency, cf. <http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey>

concrete example is that probation services would be ready to offer specialist trainings to perpetrators as part of probation. However, only in two provinces such trainings take place, because very few perpetrators are ordered by the criminal justice system to join a probation program. It is estimated that currently not even 1% of perpetrators in the reported cases of gender violence are mandated to attend perpetrator programs.

Lack of victim-safety oriented programs for perpetrators and lack of funding

The afore-mentioned mapping shows that currently only two (Vienna and Graz) out of 11 programs for perpetrators in Austria work in close cooperation with specialized women's support services. Working with perpetrators addresses safety for women and justice, and thus falls under the competence of the federal government. The first such program, the Anti-Violence Program Vienna, established in 1999, receives some federal funding, but still does not have secure funding and is in danger of being shut down every year. It is not known how much funding is currently spent on programs for work with perpetrators.

Lack of data

The National Working group BAG OTA has found during the mapping research that currently, there is no comparable national data on work with perpetrators in Austria. Therefore, the question in the questionnaire – number of places and number of perpetrators enrolled annually – cannot currently be answered. Data from the year 2015 concerning the oldest program draws the following picture: 158 perpetrators were in contact with the program, 23 (14.6%) completed the program, 74 (46.8%) did not start or dropped out, 61 (38.6%) are still in the program.

Programs for sex offenders

Domestic violence often implies acts of sexual violence and abuse. Thus sexual violence is included as a form of violence in programs for domestic violence perpetrators. Special programs for sex offenders exist in Austria.

Recommendations

- Effective measures must be taken, including through ministerial decrees and mandatory training for judges and other relevant personnel during their basic training, to ensure that gender-based violence against women is effectively prosecuted, punished and that – where appropriate – perpetrators are referred to anti-violence programs which fulfil the standards of the Istanbul Convention.
- Adequate and sustainable (long-term) funding must be provided to establish victim-safety oriented programs for perpetrators in all nine provinces of Austria, and programs which fulfil the standards of the Istanbul Convention should be funded.
- The financial support for the work of the national expert groups needs to be continued and increased to ensure that standards can be further developed and implemented and comparable national data can be collected and provided annually.
- The following minimum data should be collected on the national level using the same categories in order to make the data comparable:
 - Number of victim-safety oriented places of perpetrator programs
 - Number of perpetrators enrolled and number of completers
 - Number of victims supported by women's support services with whom the program cooperates
 - Age and gender of perpetrator
 - Age and gender of victim
 - Relationship of the perpetrator to the victim
 - Form of violence against women
 - Geographical location

Article 17 - Participation of the Private Sector and the Media

Media

Background

Especially in cases of severe forms of domestic violence, the Austrian press does not routinely report in a sensitive way, and privacy issues are sometimes violated.

Challenges

In the framework of the Austrian-wide awareness-raising and information campaign “Living FREE of Violence” (2014 to 2015), the Austrian Autonomous Women’s Shelter Network published a guideline on how to report responsibly about violence against women (**title: “Verantwortungsvolle Berichterstattung für ein gewaltfreies Leben”**).⁵⁵ Experts from different fields (sociology, psychology, law, journalism, Press Council) illustrated main issues for reporting responsibly:

- **Differentiated image:** Domestic violence against women is not an individual or private problem, but is rather embedded in structures in society which perpetuate domestic violence against women. This should be part of responsible reporting about cases of domestic violence /violence against women.
- **Giving information about specialised supporting facilities for women:** Many women affected by domestic violence do not know where they can receive help and support, as the results of the FRA survey show. To improve this situation, it is necessary that contact information about specialised supporting facilities for women, for instance the national Women’s Helpline, is given.
- **Concepts:** No belittlements like “family tragedy” or “domestic quarrel” if it is severe violence or murder.
- **Survivors:** Protecting their dignity must be priority. Victims should not only be portrayed as passive victims, wounded and helpless. They should also be portrayed within their context of life, as people who have family, work and hobbies.
- **Responsibility and visions:** It is important to call on society to not ignore domestic violence if they witness it. Instead it is important to encourage bystanders to seek help. And it is important to not only call on individual action but also on action on the level of society. Society has to take responsibility and should contribute to stop violence against women, for instance, by means of an active equal opportunities policy.
- Stories of survivors should be also part of reporting about violence against women as visions of a violence-free society in which equal partnership is normal.
- **Holding interviews with survivors:** If one wants to hold an interview with a survivor, comprehensive preparation is necessary as well as accepting a “no” in every situation. The first contact should be via e-Mail, not via telephone. The interviewee must have the opportunity to check through the interview before it is printed. After publishing, the interviewee should obtain information again. The interview should not be written passively.
- **Illustration:** When illustrating an article about violence against women, women should be illustrated within the context of their life and within their social environment. Prejudice concerning age, origin or religion are totally out of place as well as only showing pictures of women as victims. Pictures should also illustrate the responsibility of men as well as the socio-structural dimensions of violence against women. In case of reporting about a certain case, the protection of the victim’s dignity and privacy must always be the most important.
- **Protection of privacy and anonymity:** of victims always have to be given priority.

Recommendation

- Guidelines and self-regulatory standards should be strengthened and journalists should be encouraged even more to report in a responsible way about violence against women. Manuals like the one published within the campaign “Living FREE of Violence” (GewaltFREI LEBEN) should be disseminated and violence against women should be implemented in education and further trainings of journalists (see also recommendations Training of Journalists in section on Article 15).

Private Sector

Background

Example: One aspect of the Austrian-wide campaign “Living FREE of Violence” (GewaltFREI LEBEN)⁵⁶ was to build up partnerships, also within the private sector. Experience has shown that there is a strong interest to

⁵⁵ Online available :

http://gewaltfreileben.at/images/Bilder/PDFs/Interaktives_PDF_final_gewaltfrei_Verantwortungsvolle_Berichterstattung_A4_WEB.pdf/ /

For further information about campaign « Living FREE of Violence » (GewaltFREI LEBEN) see also Article 13 – Current Situation.

⁵⁶ For further information about campaign see also Article 13 – Current Situation.

engage in the prevention of violence against women, while at the same time there is a great lack of information on the issue.

Challenges

There is a lack of dissemination of informational material on violence against women and its consequences as well as on where affected women can get help, including in the workplace. Furthermore, there is a lack of trainings offered for committeemen and managers, which women's support services could carry out if they receive adequate payment for this work and personnel resources.

Recommendations

- Engaging the private sector is closely linked to awareness-raising and informational work (see sections on Articles 13 and 19).
- The provision of trainings and workshops on violence against women for interested parties in the private sector should be financed by the government. Women's support services could carry out these trainings if adequately funded.
- Measures to improve the dissemination of informational material on violence against women within the private sector should be taken.

Information and Communication Technology Sector

Background

The EU-wide representative study carried out by FRA (Fundamental Rights Agency) in 2014 revealed that 11% of the interviewed women experienced inappropriate advances on social websites or have been subjected to sexually explicit emails or SMS messages. 20% of young women (18-29) have experienced cyber harassment. FRA under-lines the need for internet and social media firms to proactively assist victims of cyber harassment to report abuse.

Challenges

Our experience shows that cyber harassment and cyber-mobbing are also growing problems in Austria. Cyber-mobbing was made punishable by the amendment of the Austrian Penal Code that entered into force on January 1, 2016.⁵⁷ After this important step, it would be necessary to encourage internet and social media firms to proactively assist victims of cyber harassment to report their experiences. Offering interchange with women's support services would be useful, so that strategies for encouraging women can be developed with the goal to protect and prevent such harmful cases from happening to begin with.

Recommendations

- Encouraging internet and social media firms to proactively assist victims of cyber harassment to report abuse.

⁵⁷ See § 107c StGB („Fortgesetzte Belästigung im Wege der Telekommunikation oder eines Computersystems“)

Background

Article 18 establishes several important principles in supporting victims such as the protection of ALL victims from any further acts of violence as well as legislative and other measures to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant agencies (including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organizations and other relevant organizations and entities) in protecting and supporting victims.

All measures taken must:

- be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim;
- be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment;
- aim at avoiding secondary victimization;
- aim at the empowerment and economic independence of women victims of violence; and
- allow, where appropriate, for a range of protection and support services to be located on the same premises;
- address the specific needs of vulnerable persons, including child victims, and make it available to them.

Another important principle is that provision of services shall not depend on the victim's willingness to press charges or testify against a perpetrator.

Finally, the Article establishes the obligation to take appropriate measures to provide consular and other protection and support to nationals and other victims entitled to such protection.

In Austria, some of these principles are well-established, such as the principle that the provision of services shall not depend on the victim's willingness to press charges or testify against the perpetrator.

Challenges

Several other principles, such as a gendered understanding and a focus on the human rights and safety of the victims are established in specialist women's support services, but not always in general agencies.

The same goes for the obligation to avoid secondary victimization and to aim at the empowerment and economic independence of victims.

Providing a range of services to victims on the same premises is also not yet common. The Vienna Intervention Centre is trying for a long time to provide support to children witnessing violence directly on their premises to make it possible that the mother/parent and the children receive support at the same place and do not have to be burdened by having to attend different services (see section on children in this chapter).

Multi-agency cooperation between all relevant agencies including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organizations and other relevant organizations and entities in protecting and supporting victims, is often difficult and does not function well. It is especially challenging to get the judiciary and public prosecutors to cooperate with specialist women's support services (see also information on Article 51 regarding risk assessment).

Recommendations

- All agencies in Austria which encounter the problem of violence against women and domestic violence need to have clear protocols and guidelines in place for how to:
 - guarantee the protection of ALL victims from any further acts of violence (safety planning);
 - apply a gendered understanding of violence against women and domestic violence;
 - focus on the human rights and safety of the victim;
 - apply an integrated approach;
 - avoid secondary victimization which may be caused by unhelpful practices and attitudes such as expecting the victim to repeat the story to different people, not believing the victim, judging and blaming the victim, minimizing the violence, etc.;
 - aim at the empowerment and economic independence of women victims of violence;

- allow, where appropriate, for a range of protection and support services to be located on the same premises; and
- address the specific needs of vulnerable persons, including child victims, and make it available to them.
- Such protocols and guidelines must be supported by continuous training.
- Legislative and other must be established to enable agencies to engage in multi-agency cooperation, taking into account the rights and interests of victims, placing them at the center of cooperation and ensuring that they are represented by a specialist women's support services during such cooperation.
- In order to protect from further acts of violence, adequate psychosocial care for those affected by violence, including free access to treatment facilities, is needed.

Article 19 - Information

Background

Specialist women's support services such as women's shelters and their national networks (Network of Autonomous Women's Shelters Information-Centre (AÖF), Union of Austrian Shelters for Women (ZÖF), Network of Intervention Centres/Centre for the Protection from Violence) continuously provide knowledge and information for female victims of assault and their children. Informational materials (flyers, brochures, posters, postcards, pens, etc.) are produced and constantly updated. They also disseminate information in different languages. For example, AÖF, together with the Domestic Abuse Intervention Centre Vienna, provide brochures in multiple languages on the rights of survivors of violence. The information can be downloaded for free in 20 languages, including Arabic and Farsi.⁵⁸

Additionally, for face-to-face support, online services have been established. For examples, since 2000 AÖF provides a help-chat for women affected by violence; the women's counselling centre in Vienna provides online legal counselling for women; the Ministry for Women's Affairs offers a fem:helpApp⁵⁹, developed together with women's support organizations, to inform victims and help them to document violence.

Challenges

The biggest challenge in disseminating information is that there are often few resources provided to conduct the work. The consequences of underfunding are that no large scale and wide-spread informational campaigns can be carried out. Mass media can only rarely be used for dissemination of information since advertising is extremely expensive.

Fundraising for financial means from private donors is work-intensive and takes away from important resources which should be invested in supporting survivors. This is a vicious and counter-productive circle that needs to end.

The underfunding of information dissemination leads to another problematic effect in the prevention of violence against women and domestic violence, namely that citizens have little knowledge about the problem, the rights for protection and the existence of specialist women's support services. In the EU-wide representative survey on violence against women carried out by FRA in 2014, only 20% of the interviewed women indicated to have recently seen or heard of any advertising campaigns against violence against women. This places Austria at the bottom (the average in the EU is 50%). This data indicates the necessity of continuous funding for awareness-raising and information dissemination for specialised women's support services and governmental units.

Public information work has to be addressed to different target groups and needs, for instance, the needs of migrant women, women with disabilities or elderly women. Currently it is very difficult for women survivors of violence who have no access to the internet, live in the countryside or whose mother tongue is not German to obtain information about their rights or where they can get help.

⁵⁸ <http://www.interventionsstelle-wien.at/gewaltschutzbrochuere>

⁵⁹ https://www.bmb.gv.at/frauen/services/fem_help_app.html

Recommendations

- Funding for publishing, providing and spreading of informational material – also in different languages – should be part of the basic funding for women’s support services and should be increased regularly as costs also increase.
- Every women’s support service needs a separate staff position for public relations and fundraising.
- It is important to ensure a low threshold for access to information e.g. regarding the financial situation, other resources of the victims, around-the-clock support, etc.
- Continuous public informational work by the state in coordination with women’s NGOs must be part of the coordinated policy and integrated into the next national action plan.

Article 20 - General Support Services

Background

The Convention states that general support services have an important role “to assist victims and refer them to the appropriate services”. Article 22 to 26 then specifies which specialist support services are needed.

Article 20 lists services which must be provided, including financial assistance, housing, education, training and assistance in finding employment. In Austria, not all general services are adequately equipped in all regions to properly support victims.

Two good practice examples are:

Austrian Employment service (AMS): The Austrian Unemployment Services (AMS) has a nation-wide network of women’s focal points⁶⁰, and provides special support to women, including migrant women and women victims of violence against women and domestic violence. Victims of violence are referred to specialist women’s support services. Networking and trainings serve to establish effective cooperation between the agencies and thus, survivors of violence receive better services. The focus on gender equality and the prevention of violence against women and domestic violence addresses the purpose of the Convention to promote substantive equality between women and men (Article 1b).

Housing programmes in Vienna: Women should not have to face becoming homeless or be forced to continue to live with perpetrators after a divorce or separation, because of lack of housing, which is unfortunately often still the case in Austria. However, in some regions good practice models for housing programs have been developed. For example, in Vienna the city’s housing department has a special unit which focuses on prioritizing housing needs for special groups, including women victims of domestic violence. Migrant women living in Vienna for a certain period of time are also entitled to social housing. The experience of the Autonomous Women’s Shelters Network (AÖF) shows that affordable housing is one of the key factors for victims to be able to build up a life free from violence. In practice though, in each region of Austria there is a concerning lack of affordable housing. The statistics from AÖF show that in 2015, 21% of women who stayed in a women’s shelter returned to the abuser. The dire financial situation and notably the lack of affordable housing is one of the key reasons for their return. Thus, housing programmes are key measures to guarantee the right for victims to live a life without violence.

Article 20 paragraph 2 mentions social and health services as key actors with the potential to identify violence against women and domestic violence, to provide first assistance to victims and to refer them to appropriate women’s support services.

Austria has a fairly good network of specialist women’s support services, yet still it can happen that capacity is missing (see information to section 22-26).

In the last few years, important steps have been made in the health sector, respectively in hospitals, to improve the response to patients who are victims of violence against women and domestic violence. As known from the FRA survey on violence against women (2014), victims often turn to the health sector first when seeking help. Thus the sector has a great potential to identify the problem, to provide first assistance and to refer patients to specialist support services.

⁶⁰ AMS Frauenbeauftragte

In 2011, a law was adopted that obliges bigger hospitals to establish a “victim support group” (Opferschutzgruppe), consisting of an interdisciplinary team in hospitals. This groups also function as a connection to specialist women’s support services. A manual was developed in 2015 addressing the management of hospitals and assisting them to establish standards and guidelines on how to assist victims.⁶¹

Challenges

Despite progress being made, the sensitisation of general services is still an ongoing work in Austria. Women’s support services lack the necessary resources to provide coaching and training to all relevant services.

It is urgent that specialist women’s support services receive funding not only for supporting victims, but for carrying our awareness-raising and providing training to general services, especially to staff in hospitals and other health services.

Recommendations

- All general service agencies in Austria, who encounter the problem of violence against women and domestic violence need to have clear protocols and guidelines in place of how to identify violence against women and domestic violence and how to provide appropriate help.
- In applying such standards, the principles from Article 18 need to be applied.
- Specialist women’s support services need to receive adequate funding to carry our awareness-raising and training in general services, in order to enable them to provide first assistance to victims and refer them to the appropriate services.

Article 21 - Assistance in individual/collective complaints

Background

Information on and assistance with regional or international complaint mechanisms is not easily available to victims in Austria. While there is one non-profit organization Verein Frauen-Rechtsschutz/Association for Women’s Access to Justice that can support women financially by covering the costs of a lawyer in national criminal and civil proceedings, the association is highly selective in its decision of which cases can be supported due to its very limited budget. Women seeking assistance from the association have to file a written application explaining why their case is worthy of support. The general precondition for the case to be supported by the association is that the applicant is either financially unable to afford a lawyer herself or the case qualifies as a test or model that may yield new legal decisions of general importance.

Challenges

The above-mentioned Association for Women’s Access to Justice is a small organization based in Vienna. It can only support a small number of cases under restrictive circumstances and the support is mainly focused on national legal proceedings. Its services do not include providing legal advice or informing victims of possibilities to seek justice through individual or collective complaint mechanisms offered at the regional or international level. Only legal proceedings that are ongoing or will be initiated by the victim herself can be supported, and the support is exclusively of financial nature. Moreover, the existence of the association itself is not widely known to the public. Only in cases where women happen to gain knowledge of the possibility of financial support by the organization and file a written application to the association can their case even be considered for support.

No general structure to ensure that victims receive information and are offered assistance with regional or international complaint mechanisms has been put in place in Austria. In order to enable victims to access such mechanisms, the state would firstly have to ensure that they receive information on the possibility to file complaints to different regional or international tribunals or treaty bodies. Secondly, victims would have to be offered legal advice free of charge to support them in the decision on which complaint mechanism is best

⁶¹ Wiener Interventionsstelle gegen Gewalt in der Familie (2016): Gemeinsam gegen Gewalt an Frauen und häusliche Gewalt handeln. Leitfaden für Leitung und Praxis in Krankenhäusern zur Versorgung von gewaltbetroffenen PatientInnen; Publikation erstellt im Rahmen des Projektes GewaltFREI LEBEN, Autorinnen: Elisabeth Gruber und Rosa Logar mit Unterstützung von Michaela Egger, Wien
Zu bestellen bei: office@interventionsstelle-wien.at

suited for them. Thirdly, the victim would have to be provided with legal and psycho-social support throughout the complaint procedure.

The provision of assistance of victims for individual or collective complaints could be organized as follows: Assistance should be provided by organizations that are independent from state structures, but funded by the state. Instead of establishing a new structure of organizations, the mandate of already existing organizations, such as the Violence Protection Centres, could be extended to include the provision of legal aid in regional or international complaint mechanisms. Tasking the Violence Protection centres by providing this extra service to victims would be an efficient as well as victim-friendly approach, as these centres are already familiar with the victims' cases and this would also ensure an equitable geographical distribution of such services.

The extension of the mandate of the Violence Protection Centres to include legal aid in regional or international complaint mechanisms, however, is only possible if the funds allocated to these organizations are increased. This could be done by including the provision of these services into the system of court assistance funded by the Ministry of Justice, i.e. by extending the right of victims to state-financed court assistance to comprise regional or international complaints.

In practice, one possible way of providing this extra service at Violence Protection Centres would be to create a special position for a competent person at each Violence protection Centre. This person would not only be in charge of providing legal advice on the complaint mechanisms to victims, but also to do outreach to other institutions by offering trainings and expertise. Moreover, these specialists could be tasked to promote the legal avenues on the regional and international level in order to inform the public on this issue.

In cases where victims were involved in national legal procedures (either as witnesses or private parties in criminal proceedings or as parties in proceedings under civil law) the state should be obliged to inform the victims (in written form) of the remaining regional or international complaint mechanisms and the preconditions thereof whenever the national procedure has been discontinued by the public prosecutor's office, a diversionary (non-custodial) sentence is issued or a court judgment has been passed.

Recommendations

- In order to ensure victims are made aware of regional and international complaint mechanisms available to them, the public prosecutor's offices and courts should be obliged to inform victims in writing on such mechanisms whenever their case is discontinued, the case ends with a diversionary (non-custodial) sentence or a judgment is passed.
- In order to ensure access to and assistance with individual or collective complaint mechanisms at the regional or international level, state-supported but independent organizations throughout Austria should provide legal advice and support with individual cases to victims. The provision of these services could be organized as outlined in detail above.

Article 22 - Specialist Support Services

Background

Article 22 covers the obligation to provide or arrange for specialist women's support services to all women victims of violence and their children. Specialist support services should be available in adequate geographical distribution and provide short- and long-term specialist support services to all victims.

Basically there are three types of specialist women's support services needed: women's helplines, women's shelters (residential support) and women's centres (non-residential support).

Women's centres include rape crises centres, intervention centres and women's counselling centres and other non-residential women's support services, but also services for specific groups of women such as migrant and asylum-seeking women and victims of forced marriage.

Information on women's shelters, helplines and support services for victims of sexual violence centres will be provided in the respective chapters.

Information on women's centres:

✓ Rape crisis centres and centres for girls experiencing sexual violence and abuse

(see section on Article 25)

✓ Women's/girls counselling centres

Background

- *Number and geographical distribution:* Austria has 58 women's girls counselling centres in all nine provinces. The centres are organized in a national network of women's centres.⁶²
- *Number of paid staff per service:* no national data⁶³ is available on this question;
- *Accessibility (24/7 or other):* no national data available
- *Gendered understanding and safety at the centre:* all centres apply a gender-specific and empowering approach.
- *Target groups:* The majority of the centres are general counselling centres addressing questions of employment/unemployment, legal and psycho-social counselling, economic rights, family law, education, awareness-raising and other issues of empowerment of women. They also provide counselling and support to women victims of violence, but are not solely focusing on the issue.
Five of the centres are specialist on the prevention of violence against women and supporting women victims of violence.
- *Annual number of women seeking help (shelter requested and received):* no national data available.
- *Funding:* no national data available. women's centres often rely on different funding streams: Federal Unemployment services (AMS), Federal Ministries (Women affairs, Family, Social affairs), funding of provincial governments, private donations and volunteer work. Most funding is annual funding and the centres have to invest considerable resources to cover their costs. This takes away resources for the support of women.
- *Run by:* most centres are run by independent/autonomous women's NGOs.
- The amount of money allocated to the running of the women's centres is not known. It would be very important to be able to provide data on the funding.
- *Free of charge:* the services are mostly free of charge.
- *Co-ordination and prevention:* the centres cooperate with many regional agencies. They also carry out a lot of awareness-raising and training work in the community, which is an important part of prevention work. Often they revive little or no funding for this work.

Challenges

Women's centres could play a bigger role in the support of women victims of violence and their children as well as local awareness-raising and prevention work. However, they often lack the resources to carry out this work. Most funding is annual funding and the centres have to invest considerable resources to cover their costs. This takes away resources for the support of women. Another problem is that women's centres often only exist in bigger cities and not in rural areas.

Recommendations

- Secure and sustainable funding (including a legal base and multi-annual funding).
- Expansion of the work of women's centres in awareness-raising, prevention work and in the support of women survivors of violence and their children.
- Centres for women and girls for their empowerment in all districts and cities in Austria (80 districts and 15 cities). This would also be an important measure to fulfil the requirement in Chapter III Article 12 on prevention: parties shall take the necessary measures to promote programs and activities for the empowerment of women.

⁶² See network of the women's and girls' counseling centers :

<http://www.netzwerk-frauenberatung.at/index.php/beratungsstellen>

⁶³ information on this and following questions might be available on websites of the single services ; but in order to get an overview on the situation in Austria, it would be necessary to systematically collect comparable national data ; for this, national networks of women's support services, would need to receive annual resources.

✓ Intervention Centres/Centres for the protection from violence (Gewaltschutzzentren)

Background

History: Intervention Centres were established with the first law on the protection from violence in 1997.

It was part of the policy and legal framework that women victims of violence receive empowering support and that laws alone are not enough to protect women from violence.⁶⁴ Intervention Centres were established in all provinces. Victims of violence are offered support proactively: the police are obliged to notify the respective regional intervention within 24 hours of all cases of domestic violence and stalking. The centres proactively reach out to victims and offer empowering support, including counselling, psycho-social and legal court assistance, access to human rights, access to justice, ... (see also Article 55 para 2). The Vienna Intervention Centre also runs an anti-violence program for violent men in partnership with the Men's Counselling Centre.

- *Number and geographical distribution:* 9 Intervention Centres, one in each province.
- *Number of paid staff per service:* no national data available.
- *Accessibility (24/7 or other):* Intervention Centres are not available 24/7 but the many of them have opening hours extending normal office hours.
- *Gendered-understanding and safety at the centre:* Intervention Centres serving all victims of domestic violence and stalking, because their work is based on the legal framework, which is not women-specific. However, the Intervention Centres recognize that violence against women is gender-based violence and that women are affected disproportionately by domestic violence and stalking. They all apply a gender-specific approach.
- *Target groups:* Victims of domestic violence and stalking.
- *Annual number of women seeking help:* in the year 2015, the nine Intervention Centres received 8,261 notifications by the police and 17,621 victims were supported, predominantly women and their children.
- *Funding:* the legislation against violence provides a relatively secure legal base for the nine Intervention Centres. They are funded by the Ministry for Health and Women and the Ministry of Interior. The budget for the Intervention Centres in 2015 amounted to €7.32 million.
- Additionally, all Intervention Centres receive funding by the Ministry of Justice in the framework of psycho-social and legal court assistance.
- *Run by:* women's NGOs (each Intervention Centre has its own legal body).
- *Free of charge:* all services are free of charge.
- *Co-ordination and prevention:* Intervention Centres cooperate actively with other agencies. In Vienna, a multi-agency partnership has been established to support victims in high-risk situations (see information in Article 51).

Challenges

More resources are needed in order to reach more victims of domestic violence and stalking. Several regional offices receive funding not only by the federal state, but also by provincial governments. Federal states are still in need of more resources to provide decentralized support.

In addition to the work to support victims, financial resources for the prevention of violence are needed (awareness and sensitization in all sectors of society, training and establishment of the issue in the curriculum of different professionals, expansion of victim-oriented programs for perpetrators, coordinating of victim-centred multi-agency partnerships, schools and other educational institutions, for more work with the offenders focused on victim protection, etc.).

Recommendations

- More resources for psychological and juristic support during the criminal proceedings for victims of violence, funded by the federal republic of Austria (Federal Ministry of Justice) in order to reach more victims who are entitled to this support.
- Several regional offices are financed by the federal states but there is still a need for additional resources and decentralized support.

⁶⁴ See also Annex 2 on the Austrian legal framework and the Intervention Centers

- More financial resources for the prevention of violence (to create more awareness and sensitization in all sectors of society, to establish this topic in the curriculum of schools and other educational institutions and for more work with the offenders focused on victim protection).
- Importance of mid- and long term support to achieve sustainable results in the prevention of violence. Some Intervention Centres have a high case load and can only provide short-term crisis support. For instance, the Intervention Centre Vienna is obliged by contract to serve 5,800 victims of domestic violence and stalking per year. Only 25 staff members (full time) are available to provide support to victims, which totals on average 5.9 hours per victim per year. This is not enough to provide mid-and long-term support and to achieve sustainable results in guaranteeing victims to be able to live free from violence.
- Children witnessing domestic violence cannot be currently supported, due to a lack of resources. All children should be guaranteed the right to empowering support. In Intervention Centres, at the same premises where mothers are supported, so that the family is not additionally burdened by having to attend different services for the children and the mother (see also section on children at the end of this section).
- In order to reach victims at an earlier point and be successful in the prevention of violence, Intervention Centres should be notified by the police about all interventions in cases of violence against women and domestic violence (not only in cases of emergency barring orders and stalking, as it is currently the case). Research of homicide cases show, that police had intervened in homicide cases repeatedly previously but only qualified it as “domestic fight”.

✓ Centres for specific groups of women victims of violence or specific forms of violence/centres for migrant women

Background

In addition to the women’s centres, services for migrant women victims of violence as well as for women victims of specific forms of violence (forced marriage and female genital mutilation) were established over the past few decades in Austria. Unfortunately, most only exist in Vienna or in bigger cities. There is a lack of services provided in mother tongues other than German. Since the funding of migrant organisations is not secured, they suffer from austerity measures and are even forced to close, such as the migrant counselling centre Horizont in Lower Austria.

Dependence, strict residence laws, lack of education and employment opportunities and economic inequality are the main barriers for migrants and asylum-seekers to free themselves from violent relationships. To enable migrant women and their children to live free of violence requires not only the right to be protected from violence, but also social and economic rights, such as the right to employment, to financial assistance and to housing.

The work group Migrants and Violence/Migrantinnen und Gewalt, founded in Vienna in 1996, has developed a catalogue of recommendations that can be accessed online.⁶⁵

- *Number and geographical distribution of migrant women’s centres.*
Centres for migrant women exist mainly in urban areas. There are:
 - 6 Centres for migrant women in Austria; 4 in Vienna (LEFÖ, Counselling Centre for migrants; Peregrina; Miteinander lernen/Learning Together), 1 in Linz (Maiz9, 1 in Graz (Danaida)
 - 1 Centre for survivors of forced marriage (Orient Express)
 - 1 Centre for victims of female genital mutilation
 - And some general counselling services which have a focus on migrant women (such as the faith-based organisation Hemyat).
- *Number of paid staff per service:* no national data available
- *Accessibility (24/7 or other):* not accessible 24/7; no further national data available
- *Gendered understanding and safety at the centre:* they all have a gendered understanding.
- *Target groups:* Migrant women victims of violence, asylum-seeking women, women victims of forced marriage and of female genital mutilation.

⁶⁵ Forderungen der Arbeitsgruppe Migrantinnen und Gewalt.

http://www.aoeff.at/images/06_infoshop/62_infomaterial_zum_downloaden/Infoblaetter_zu_gewalt/Forderungskatalog_Migration_Feb-2014.pdf

- *Annual number of women seeking help* (shelter requested and received): no national data available.
- *Funding*: no national data available.
- *Run by*: mainly by women's NGOs.
- *Free of charge*: yes.
- *Co-ordination and prevention*: Coordination and prevention belong to the work of the Centres, however, they receive little or no resources and thus are not able to conduct awareness-raising and training in the communities, which would be very important for the prevention of violence against women and domestic violence.

Examples of migrant women centres:

Centre for young migrant women: The *peppa girls centre, run by Caritas, offers extensive counselling and support for young girls and women. They provide informational material as well as counselling in different languages or with interpreters. The experience of the centre shows that young migrant women encounter many barriers to access help; even the access to telephone helplines can be difficult because women don't have a phone or phone credit. Girls who have not had a chance to learn to read cannot access printed or online informational material. It can also be difficult to work with interpreters and it is important to ensure that translations are exact and complete. Sometimes interpreters may be bias and represent the interests of third parties. It is important to ensure low-threshold access to information e.g. regarding financial support and access to women's shelters. Services providing an overview on free places in women's shelters would be helpful.

LEFÖ: The association LEFÖ offers comprehensive health prevention, information and counselling for migrant sex workers. LEFÖ also leads the intervention centre for women affected by trafficking and provides support, advice and shelter for victims.

Services regarding forced marriage: There are two organisations that support women and girls affected and threatened by forced marriage: The Association Orient Express in Vienna and the counselling centre DIVAN of the Caritas in Styria. Orient Express is a women's counselling centre with extensive consultation for migrants. It offers workshops and counselling for parents and students and also provides online counselling against forced marriage.

Since 2013, Orient Express offers accommodation in an emergency apartment for girls and young women affected or threatened by forced marriage. The service accommodates up to 10 girls/young women (including emergency beds) for victims from all parts of Austria, who are impacted or threatened by forced marriage.

The Caritas Styria operates the counselling centre DIVAN in Graz – women-specific counselling for migrants with a specialised offer for victims of "violence in the name of honour". DIVAN offers mother tongue, psychosocial and legal counselling and advice for migrants and support for victims affected by "violence in the name of honour". Support is also offered for victims of forced marriage. Also, long-term support and accommodation are provided.

Services regarding female genital mutilation: The African women's counselling centre in Vienna as well as the women's health centre's (FEM) support women and girls that are affected or threatened by genital mutilation. Also, there is a lack of precise data on the extent of genital mutilation in Austria. The National Action Plan to prevent and eliminate female genital mutilation in Austria 2012-2015 (under the administration of the chairwomen of the National Assembly Barbara Prammer) also addresses this.

Challenges for women's centres

Centres for migrant women and for specific forms of violence face even more problems than women's centres or Intervention Centres. They only exist in bigger cities and there is not even one such centre in each province. The funding is often insecure and short-term. Due to lack of resources for informational work and awareness-raising, services cannot make themselves known to a wider public.

Recommendations

- Duplication of the number of migrant women's centers within the next four years.
- Intensive and empowering support has to be given to undocumented women victims of violence and all centres should be able and well-resourced to help them to access their human rights.
- At least one centre for migrant women victims of violence in the provinces which do not have a centre yet.

- Empowerment Centres for asylum-seeking and refugee women in all provinces, providing counselling, awareness-raising, training and access to justice, employment and social economic rights to asylum-seeking and refugee women
- Sustainable and long-term funding for all services.
- Adequate funding for informational work, awareness-raising, training and prevention work, and for innovative programs to address communities engaged in stopping violence against women and domestic violence (community-based projects).

Women with special vulnerabilities:

Forced marriage:

- Expansion of emergency accommodation and counselling centres for women who are affected or threatened by forced marriage.
- Training of the police, justice and all important facilities about the legal measures and the background of forced marriage.
- Improved access to the education and employment market and social benefits, especially with the residence permit “special protection” (“Besonderer Schutz”).
- Quicker procedures to obtain a residence permit.
- Upon the abduction of women, a close and good collaboration between all the important institutions (police, justice, youth welfare and aid organisations etc.), especially when minors are involved, is needed. A functioning coordination mechanism throughout Austria would be necessary. There it should also be decided who stays or becomes the representative of the minor. Sensitized contacts are needed in the federal states.

Female Genital Mutilation:

- Female genital mutilation should be in the curriculum of medical studies in Austria
- Female genital mutilation counselling centres should receive more funding so that staff can be employed, and more services can be offered.

✓ **Specialist women’s support services for victims of sexual harassment in the workplace and in public**

Background

Sexual harassment in public has received little recognition in Austria for a long time. Only after massive and repeated incidents of this form of violence took place in Germany (Cologne) but also in Austria, awareness of this extremely widespread issue was raised and women’s groups successfully lobbied for a reform of the Austrian Penal Code to criminalize sexual harassment in public (see section on Article 40). Despite the shortfalls of the new legal provision, this was a major step for the right of women not to be subjected to violence in the private or public sphere. However, provisions for the protection and support of women are still missing and it is urgently necessary that women victims of sexual harassment receive adequate, gender-sensitive and holistic support.

Challenges

Currently the needs of women victims of sexual violence in the public and at the workplace are underserved in Austria. Victims of sexual violence in the workplace have the right to legal counseling and support by the Office of the Ombudsperson for Equal Opportunity. However, psycho-social support is often missing.

Recommendations

- As it would be inefficient and costly to establish separate services for women victims of sexual harassment, synergies should be used and adequate funding should be provided to Centers for the Protection from Violence/ Intervention Centers as well as to women’s centers in all regions to include the provision of empowering and gender-sensitive support to all women victims of sexual violence in public and in the workplace.
- In regions where women’s centers are still missing, such centers should be established within the next 4 years.

Article 23 - Shelters

Background

The first women's shelter was founded in 1978 in Vienna. Now 30 of these facilities exist in Austria⁶⁶, most of them are situated in cities.

In 1988 the Association of Austrian Autonomous Women's Shelters (AÖF) was established as a network of the Austrian women's shelters. In 2013 a second network emerged (ZÖF).

All women's shelters aim at fulfilling quality standards (safety, anonymity, confidentiality, empowerment, autonomy and self-determination of women). They also accommodate and support children coming to the shelter with their mothers. Some, but not all, women's shelters offer places for boys over the age of 14 years. Many offer counselling in different languages for migrant women (in Vienna in the form of video interpretation).

As mentioned in Article 22, there are five women's shelter which also run counselling centres for women victims of violence (Vienna, Vöcklabruck, Wels, Wr. Neustadt and St. Pölten).

- *Number and geographical distribution:* All 30 women's shelters offer room for 766 women and children. According to the recommendation in the Istanbul Convention, Austria would need 834 places to fulfil the minimum standard⁶⁷; thus at least 68 places are missing. Additional women's shelters would be needed in rural areas (Mühlviertel, Waldviertel).
- *Number of paid staff per service:* no data available
- *Accessibility (24/7 or other):* all women's shelters are accessible 24/7.
- *Gendered understanding and safety at the centre:* all women's shelters have a gendered understanding.
- *Target groups:* women victims of violence and their children.
- *Annual number of women seeking help (shelter requested and received):* in 3,331 persons were supported in the women's shelters, 1,681 women and 1,650 children.⁶⁸
- 353 women could not be admitted to a women's shelter due to lack of space.
- *Funding:* The main funding of women's shelters comes from provincial governments. The provinces Upper Austria and Burgenland adopted a legal base for funding women's shelters. The four Viennese women's shelters also have relatively secure funding and an unlimited contract with the City of Vienna.

These are good practice examples. In Vorarlberg, the women's shelter is part of a large NGO, the Institute of Social Services (ifs – Institut für Sozialdienste). In Lower Austria, there is an agreement for the funding of the women's shelters, but no legal base, so the agreement can be terminated within a certain period of time. In other provinces, the women's shelters have to apply for money every year and there is not secure funding. In Tyrol, the women's shelter has been waiting for many years for funding of a new house. Women and children have to stay in a building which is in poor condition.

The financing base of AÖF for infrastructure and staff comes from several ministries and the local government: the Austrian Federal Ministry for Health and Women's Affairs, the Federal Ministry of Families and Youth and from the Municipality of Vienna Department 57 (MA 57) for Women's Issues. However, the funding is by far not sufficient and awareness-raising and prevention work are desperately needed to address harmful attitudes and gender stereotypes.

- *Free of charge:* The services of women's shelters are mostly free of charge for women without an income. Women with income often need to provide a financial contribution according to their possibilities.
- *Run by:* all women's shelters are run by independent women's NGOs; some are more closely affiliated with party, government or faith-based organizations.
- *Coordination:* Women's shelters are usually well-established in the communities and work together closely with other agencies while maintaining their independence, which is important for a strong voice for women's rights.

⁶⁶ See network of the womens' and girls' counseling centers :

<http://www.netzwerk-frauenberatung.at/index.php/beratungsstellen>

⁶⁷ Network of autonomous women's shelters (AÖF) <https://www.facebook.com/verein.aeof>

⁶⁸ Network of autonomous women's shelters (AÖF)

http://www.aeof.at/images/06_infoshop/6-2_infomaterial_zum_downloaden/statistiken_der_aeof/Statistik%202015_barrierefrei.pdf

Challenges

Core funding vs insecure “patchwork funding”: Many women’s shelters, after decades of existence, still struggle with inadequate funding and inadequate funding structures and procedures. This is not only humiliating and a sign that policy makers do not always care about the human rights of women and children, it is also a waste of resources, because the shelter staff is occupied with fundraising and securing funding, while their energy should go into empowering support for women and children.

Funding models:

The most adequate funding model for women’s shelters is core funding, based on legislation. Core funding means that shelters get a certain sum of money, based on the size and services they deliver. Core funding is independent from the number of women and children staying in the shelter and also independent from the individuals seeking help. This is very important to be able to guarantee emergency assistance immediately to ALL women seeking help, independent of their nationality, religion or legal status, as required by the Convention. The system also guarantees women confidentiality and anonymity, which is important for their safety.

Inadequate funding and discriminatory practices occur when funding is based on a system of daily rates, especially when the payment of these daily rates depends on entitlement of women to minimum benefit. For women who have no right to minimum benefit, the government does not pay for the stay in a women’s shelter. These women would then often not be admitted to women’s shelters, or only for a very short period of time, because the shelter receives funding, unless there are other funding sources from donations.

Thus, the best model for funding is core funding with a sound legal base. Such a system requires that state control rules do not supersede the right of women and children to safety; it requires trust between women’s NGOs and state agencies funding women’s shelters. Austria has shown in several examples that such a system can work.

As mentioned, according to the Istanbul Convention Austria would need 834 places, therefore 68 are missing. There is a lack of rooms especially in the rural regions as Mühl- and Waldviertel as well as in big federal states, such as Styria. Missing capacities lead to the concerning situation that women and children cannot be accommodated immediately. Last year 353 women and children had to be turned away from women’s shelters.

Access to the women’s shelters: Regarding access to women’s shelters, every federal state has its own legislation and rules. Especially undocumented women are often not admitted or only hosted for a few days. Another severe problem in accessing safe accommodation is that funding and other regulations can make it impossible or very difficult for women victims of violence, to seek shelter in another province. Such flexibility is of utmost importance for the safety of women and children.

The national action plan coordinating body should adopt a policy on how to secure adequate funding and safe access of all women and their children to shelters, including women with mobility problems.

Support for children: Women’s shelters are also child protection centres and they are the only institutions which offer children safety and security. The number of children in the women’s shelters are the same or sometimes higher than the number of women. There are not enough employees in the women’s shelter as well, especially for supporting children. Not all women’s shelters can offer places for boys over 14 years, which is sometimes a big problem for women. For this reason, some boys have to stay with the violent father.

Recommendations

- Adequate funding of women’s shelters: legal base, core funding, sustainability – at least a three-year contract.⁶⁹
- Funding schemes and contracts should guarantee the right of all women and children to access women’s shelters, including undocumented women, refugee women, women asylum-seekers and women with different abilities.

⁶⁹ Quality standards Women’s Shelters/Qualitätsbroschüre :

www.aoeff.at/images/06_infoshop/6-1_infomaterial_zum_bestellen/6-1-1_broschueren_und_folder/Qualit%C3%A4tsbrosch%C3%BCre_A%C3%96F_%202008_Englisch.pdf

- The question for policy on non-discrimination is always: Are there any groups excluded from the measure? If yes, why? What measures are taken to include them.
- Access to funding and funding of women's shelters should be regulated by a coordinated policy in the framework of the next national action plan in cooperation with the provinces. A **national protocol on access to safe services** should be developed and adopted by the national working group (IMAG) in the framework of the next national action plan. The policy should be implemented all over Austria until the mid-term of the next national action plan.
- Provincial governments should review their policies of access for women to shelters and their funding. Core and sufficient funding, based on legal provisions, should be introduced where they do not yet exist.
- All women's shelters need to provide access in a non-bureaucratic way, including immediate admission to the shelter and operate 24/7.
- Safety must be a priority, including efficient safety measures in all women's shelters and the right for survivors to find safe accommodation in other regions and provinces.
- Increase the number of women's shelters, and establish of women's shelters in rural areas (Waldviertel, Mühlviertel, Styria), and increase the number of places (68 places) in the next three years.
- Women's shelters should not only be "a roof over the head", but places in which women and children are safe, where they can recover from violence and receive empowering and professional support.
- Women's shelters should not be desolate places because this would send the message to survivors of violence that they do not matter.
- The venues of women's shelters should be functional as well as comfortable; as a minimum standard women's shelters should provide one small living unit per women and her children; there should be a garden and sufficient recreational spaces and lounges.⁷⁰ It is especially urgent that the new autonomous women's shelter in Tyrol be built quickly within the next year.
- Women and children should be supported by qualified staff in shelters, who are trained in providing a gender-sensitive and empowering approach.
- The diversity of women seeking support has to be regarded by providing cultural sensitive support.
- The human rights and safety of women and their children need to be at the centre of the work of the women's shelter, including democratic and participatory structures and processes.
- All children need to have the right to access women's shelters with their mothers, independent from their age and gender. At least two child workers should be available in each women's shelter, in shelters which accommodate more than 20 children, at least three child workers.⁷¹
- Every women's shelter should at least have one room which is wheelchair accessible.
- Secure and sustainable funding should be provided to networks of women's shelters.
- Women's shelters should also receive core funding to carry out prevention activities, such as awareness-raising, campaigns and training in the communities and regions where they work.

Article 24 - Telephone Helplines

Background

The Austrian National Women's Helpline⁷² was founded in 1998 by the Ministry for Women's Affairs and is run by the Association of Austrian Autonomous Women's Shelters, AÖF. The women's helpline is the first contact point by phone for all women and girls seeking help.

The women's helpline offers multi-lingual support for about six hours per week and on demand in the following languages: Arabic, Bosnian-Croatian-Serbian, English, Farsi/Dari, Persian, Russian, Ukrainian and Turkish.

- The Women's Helpline is funded by the Ministry for Health and Women's Affairs.
- It operates 24/7, is free of charge and anonymous
- *State wide*: Yes, the helpline operates nationally
- *Free of charge*: Yes.
- *24/7*: Yes.

⁷⁰ See previous footnote - quality standards of women's shelters

⁷¹ See Qualitätsstandards für die Arbeit mit Kindern und Jugendlichen in den österreichischen Frauenhäusern, AÖF 2005

⁷² Frauenhelpline gegen Gewalt/Women's Helpline against Violence, 0800 222 555, <http://www.frauenhelpline.at/>

- *How confidentiality and anonymity is ensured:* It is a principle that callers can stay anonymous and that no information is passed on about them without their consent.
- *Trained staff:* the national women's helpline is run by trained female staff.
- *Annual number of calls:* in 2015 the helpline received 8,252 calls of which 7,199 were from women and girls.

Challenges

Staff costs and infrastructure costs of the women's helpline is almost 100% funded by the Ministry of Health and Women's affairs in the frame of a three-year contract; multi-lingual support is currently not funded fully and fundraising needs to be carried out regularly to provide this services to migrant and asylum seeking women.

The costs of the callers are covered by the ministry as well.

There are NO financial resources for information and prevention included in the budget which leads to the concerning problem that the number of the women's helpline is not widely known by women, especially not by women in rural areas (see also chapter 19). Funding of the women's helpline is not sustainable and legally secured. Any change in government could mean that the women's helpline and other women's support services may be easily abolished. Right-wing parties have already made it clear that they think that specialist women's support services and women's shelters are not necessary. Thus it is of utmost importance that governments and parliaments work together to establish as much as possible a secure legal base for the existence of specialist services for women and children victims of violence.

Recommendations

- The national women's helpline has to be legally secured in the federal law.
- Steady funding needs to be provided not only for the counselling, but also for informational and prevention work, awareness-raising, campaigning and public relations work, including social media.
- All staff costs - especially for multi-lingual counselling - should be covered by the state.

Article 25 - Support for Victims of Sexual Violence

Background

There are five autonomous rape-counselling-centres in Austria in the provinces Vienna, Upper Austria, Styria, Salzburg and Tyrol. Four provinces do not provide autonomous rape-counselling-services.

There is a Federal Association of the autonomous rape counselling centres called Bundesverband der Autonomen Frauennotrufe Österreichs (BAFÖ).⁷³

Additionally, a 24/7 hour women's helpline for victims of sexual violence is run by the city of Vienna.

The Austrian Rape Counselling Centres offer highly specialised short- and long-term psycho-social counselling and support for women and adolescent girls aged 14 following rape, harassment, sexual attack or abuse. The services also include legal advice and support for legal procedures. Prevention and awareness-raising measures as well as information about all issues concerning sexual violence against women and adolescent girls are provided.

The Federal Association of the Austrian Autonomous Rape Counselling Centres acts as an interface between the Austrian Rape Counselling Centres and other professionals, politics and society. It is an instrument to reach socio-political objectives in the fight against sexual violence against women, such as the obvious condemnation of any kind of sexism and misogyny.

- *Number and geographical distribution:* Six service in total: Five autonomous rape-counselling centres and one women's helpline for victims of sexual violence run by the city of Vienna.
- *Number of paid staff per service:* no data available.
- *Accessibility (24/7 or other):* apart from the women's helpline of the city of Vienna, none of the centres are 24/7, due to a lack of funding.
- *Gendered understanding and safety at the centre:* All centres apply a gendered understanding to sexual violence against women.
- *Target groups:* Women and girls who experience sexual violence including rape and sexual abuse.

⁷³ See <http://www.frauennotrufe.at/cms/index.html>

- *Funding:* Funding is mixed from Federal ministries to provincial governmental bodies; there is no sustainability in funding.
- *Run by:* Five are run by autonomous women’s NGOs and one is run by the city of Vienna.
- *Free of charge:* Yes.

Challenges

Of Austria’s nine provinces, only five provide rape-counselling-centres. Although funded by the federal state, the provinces and the communities, there is no long-term security and each has to regularly advocate and secure the necessary funding.

Because of the specific challenges in dealing with sexual violence against women – compared with other forms of violence – it is essential that victims and relevant persons of their social environment have access to specialised psycho-social counselling in qualified and appropriate rape counselling-centres.

Recommendations

- Adequate funding of existing specialised Austrian Autonomous Rape Counselling Centres for women and adolescent girls affected by sexual violence.
- Sufficient funding of the Federal Association of the Austrian Autonomous Rape Counselling Centres (BAFÖ).
- Funding of at least one Autonomous Rape Crisis Centre in each of the remaining four Austrian provinces (Carinthia, Lower Austria, Vorarlberg, Burgenland).

Article 26 - Protection and Support for Child Witnesses

See Section “Special focus on children” at the end of this Chapter

Article 27 - Reporting & Article 28 - Reporting by professionals

Information on these Articles can be provided upon request.

Special Focus on Children: Protection of Girls/Children Victims of Violence or Witnesses of Violence

The following information refers to the situation of girls/children who are victims of (physical, sexual and psychological) violence in the domestic sphere. It also includes information regarding child witnesses (Article 26) and information concerning custody, visitation rights and safety (Article 31).

The definition of woman in the Convention includes girls under the age of 18 (Article 3 Definitions). Therefore the following report focuses on girls, but as Austrian laws protect victims of all gender, all children are included. The Convention focuses on gender-based violence against women, including girls, therefore the term girls/children is used in this section.

Legal Protection of Girls/Children Victims of Violence

Background

The Austrian legislation on domestic violence applies to children when they become victims of domestic violence, which is important and one of the many positive aspects of Austrian legislation.

The emergency barring order by the police (EBO) and the civil law protection order also apply to girls/children.

Theoretically, children could also be protected by protective measures issued by the criminal court for instance in the context of pre-trial detention or suspended sentences but such measures are hardly applied in general and even less to protect girls/children.

Improvements were made in the police emergency barring order in 2013 concerning the protection of children – the protection granted was expanded and included not only the home and surrounding of the home, but also the kindergarden or school.⁷⁴ However, the protection only applies to children up to 14 years; teenagers from 14-18 years are not protected. This is problematic, since it is difficult for an under-age person to protect her/himself from a violent parent/father.

An important legal improvement recognising the harm done by witnessing violence came into force in 2013 in the civil law, recognising that witnessing violence in the family constitutes an infringement of the wellbeing of children.⁷⁵ However, this legal provision is hardly applied when it comes to questions of custody and visitation rights. The right of the parent, behaves violently towards family members, often overrides the right of the children to be protected from any form of violence.

Challenges

As already mentioned above, there are severe problems and challenge in the implementation of laws and the protection of children who are victims of violence or who witness violence:

Despite the fact that the legislation is intended to protect children from DV, not enough protection is granted to girls/children in domestic violence situations. Girls/children suffer enormously from the violence they witness, a fact that is not fully recognized in Austria yet. Domestic violence is a typical repeat crime committed often over years. Girls/children living in a situation of domestic violence are witnessing violence and they are also frequently direct victims of violence.

Children also regularly become victims of severe violence, including homicide. In Austria child homicide is taking place regularly in the context of domestic violence, often as the “ultimate revenge” when the mother dares to leave the violent partner. In one of the cases an 8-year old boy has been killed by his father at school. A few days before the murder, the mother had reported repeat violence, including death threats against her and the children. But, as it is the case so often with death threats in the context of domestic violence, the prosecutor office did not ask the court for an arrest, and the perpetrator remained at large. He was free to

⁷⁴ Since August 2016 the police emergency barring order for schools and kindergarden can also be issued independently from an order for the home of the victim, before this was only possible in conjunction with an EBO for the home of the victim.

⁷⁵ § 138 – Kindeswohl (Allgemeines Bürgerliches Gesetzbuch ABGB)

obtain a firearm and commit his crime..⁷⁶ This case was brought to the ECtHR by the mother and is still pending. This case and other cases show that the criminal justice system in Austria unfortunately does not take domestic violence against women and their children seriously enough yet. Cases of repeat and severe violence should not be left to the victims to solve, and seek protection from the civil justice system.

Another problem is the missing recognition of the harm done to children witnessing DV and the protection from witnessing violence. Protection might theoretically be granted by civil court protection orders, which include psychological violence (“behaviour which seriously infringes the mental health of victims”⁷⁷). However, practice shows that this law is rarely applied to protect children and even rarer children witnessing violence. Moreover, the requirement of “serious infringement of mental health” is too high (also for adult victims). It implies one must have suffered psychological violence for a longer period of time and already have developed mental health problems, which seems intolerable, especially for children.

Civil court protection orders to protect children can be applied by the – non-violent – parent or by the Youth Welfare Office (YWO). However, the YWO rarely issues applications on behalf of children, because they expect the mother to take this step. It would be important if the YWO would take an active role in protecting children by applying for protection orders. This would relieve the mother who is also a victim of violence and it would avoid the perpetrators’ aggression against the victim.

Currently, there is no statistic of the Youth Welfare Office on the number of protection orders they apply for on behalf of children and the number of orders granted.

Further problems regarding data collection:

Very little data is currently available concerning girls/children and the protection of violence. The crime statistic as well as the criminal justice statistic does not provide information on the age of victims or the relationship to the perpetrator (see section on data collection). The police emergency barring order statistic has the same problem.

A statistic on the civil law protection orders is generally missing. Thus we do not know how often protective measures are applied to protect girls/children from violence and how often such measures are applied to protect children from psychological violence, including witnessing violence.

The only statistics which are segregated according to age of the victims are the statistics of Intervention Centers (= Centers for the Protection from Violence/Gewaltschutzzentren).

The 2015 data of the Intervention Center Vienna reveals, that only 257 police emergency barring orders (8,2% of all EBPs) are issued to protect children from violence.

Recommendations

As described above, girls/children are not sufficiently protected from domestic violence in Austria and legal as well as psycho-social provisions need to be improved (see also information regarding article 31):

- Effective measures need to be taken in all agencies and institutions concerned with domestic violence, such as regulations, standards and guidelines, as well as training, to improve the protection of girls/children from violence.
- Cases of repeat and severe violence should not be left to girl/child victims to seek protection from the civil justice system. The authorities need to actively act on their own initiative to protect girls/children victims if factors of immediate danger are known (see also section on due diligence).
- In issuing police emergency barring orders, more and thorough attention needs to be given to girls/children
- In the police EBO form assessing the situation and the risk, all children in the household must be mentioned and their experience of past or present violence, direct or indirect (witnessing) must be identified and regarded when issuing an EBO.
- Girls/children up to 18 years should be protected by EBO in schools and other places they need to attend, including sports and leisure facilities.

⁷⁶ Logar, Rosa (2014): [Murder rarely happens out of the blue. Danger management and safety management as methods to prevent severe violence](http://www.interventionsstelle-wien.at/murder-rarley-happens-out-of-the-blue), in: Domestic Violence Intervention Centre Vienna: Final Activity Report 2013, p 18-23, Vienna <http://www.interventionsstelle-wien.at/murder-rarley-happens-out-of-the-blue>

⁷⁷ § 382b para 1 Exekutionsordnung (EO)

- The law on civil protection orders needs to be revised in the area of psychological violence and the threshold needs to be lowered (for instance: instead of “considerably infringing the mental health of victims” it should be enough if the psychological violence “infringes the wellbeing of victims”).
- ALL RELEVANT agencies need to be obliged to provide statistics segregated according to age, gender and the relationship of the perpetrator to the victim.
- The Youth Welfare office should be obliged to provide such statistics on EBOs applied for children, annually.

The role of Youth Welfare Offices in Protecting Girls/Children

Background

It is positive, that in Austria, the Youth Welfare Office (YWO), which is a statutory agency responsible for the protection and wellbeing of children, must be notified by the police of any intervention in cases of violence in which children are concerned.

This shows the principle concern of the Austrian system for the protection of children from violence and it is an important part of the protective system. It also covers all geographical areas of Austria.

The YWO can oblige parents who are violent to regular contacts with social workers, to attend an anti-violence program and to other measures. It can do that in the form of volunteer agreements (written agreements) or by applying to the court to order certain measures.

As mentioned above, the YWO is also the only agency with the competence to apply for a civil court protection order removing the perpetrator from the house of the victim or prohibiting contact. But it rarely uses this competence to protect girls/children.

The Youth Welfare Office has a great potential, to hold perpetrators accountable and to mandate them to change their violent behaviour. Unfortunately this potential is currently often not used. Moreover there are concerning practices which can lead to disempowerment of victims:

Challenges:

The main task of the YWO is to carry out a procedure to clarify the exposure of children to violence. According to the experiences of specialist women’s support services, the vast majority of the cases are closed after the clearing procedure without any further measures.

Girls/children are not supported directly by the agency. Sometimes they are referred to counselling services. However, capacities in services to provide support to women AND their children at the same premises (see IC convention Article 18. 3) are missing. It is too much of a burden if women have to seek help from different agencies for their children and themselves. Also the risk of re-traumatisation is high, if victims have to tell their experience of violence to several agencies.

Concerning tendencies of YWOs are that they are rarely holding perpetrators accountable and expecting change to come from the victims. It is a sign of gender-discrimination, to rather hold mothers accountable for the protection of children, than to address violent fathers. This is especially problematic and counter-productive if mothers are victims of violence themselves.

Theoretically the procedure of the YWO demands that social workers contact the perpetrator. They can also oblige him to see the social worker regularly and to attend an anti-violence program. However, in practice this happens only in the minority of the cases and, as stated, most cases are closed without any further intervention to oblige the perpetrator to stop his violent behaviour.

In contrast, victims of violence are often pressured and even obliged by “volunteer” arrangements, to comply with certain measures, such as to visit the Intervention Center. This is a practise violating the right of victims to decide freely if they want to seek help and by whom.

Recommendations:

- It should be a standard, enforced through regulations that the Youth Welfare Office as the statutory agency should oblige the perpetrators to regularly visit them, whenever children are involved (when the perpetrator is a (step) father/parent or has a caretaker role).
- The YWO should also oblige perpetrators, to attend a victim-safety oriented program for perpetrators. In cases of repeat violence, such measures should be imposed not by a volunteer agreement, but through a family court order, initiated by the Youth Welfare office.
- YWO should not be allowed to oblige or mandate victims of violence to seek help or to fulfil other requirements. Victims need to be empowered and supported, but not made responsible for the protection of the children. The responsibility lies with the perpetrator.
- YWO should use its competence to apply for protective orders obliging the perpetrators to leave the home of the girl/child victim and not to contact it, when children experience and/or witness violence, in cooperation with the victims.

Provision of Counselling for Girls/Children Witnessing of Violence

Background

As described, the YWO as statutory agency is responsible for the wellbeing of the children, but they are not providing support or counselling for the children themselves. They might refer girls/children to counselling, but capacities and family friendly facilities providing services for the mother and the children at the same premises (see Article 18.3) are missing.

Challenges

While most women's shelters have at least some resources to support children who experienced and/or witnessed violence, such support for children does practically not exist in non-residential services.

Intervention Centers (Center for the Protection from violence-Gewaltschutzzentren) get funding only to provide support for girls/children who are directly affected by violence in a certain situation, but not to children witnessing violence.

The Intervention Center Vienna, for instance, has supported 474 girls/children direct victims of violence in the years 2015, but the 5.733 girls/children who were witnessing violence could not be supported due to a lack of resources.

In the last years, the Intervention Center Vienna applied three times for funding to the Ministry for Family affairs to support children witnessing violence, but the funding was never granted with the argument, that the YWO is responsible for the children.

Thus, in reality in Austria, thousands of children witnessing domestic violence are left without support; as mentioned, support for all children witnessing violence is a requirement in Article 22.2. of the Convention.

It would be of utmost importance, that children witnessing violence receive adequate psycho-social support and counselling. Such support needs to be provided at the same premises where their mothers are referred to for support, the Intervention Centers. It is important that mothers are not overburdened or re-traumatised by having to seek help for themselves and their children at different agencies. Moreover, it is essential to provide holistic and empowering support to the mother and her children, and not to separate them.

Recommendations

- Intervention Centers need to receive adequate resources to support children witnessing violence at the same premises as their mothers and to provide holistic and empowering support to the family (mother and children) victims.
- All children witnessing violence must be able to exercise their right to appropriate support and counselling, including girls/children from (undocumented) migrant or asylum seeking families.

Custody, Visitation Rights and Safety

Background

In Austria, a law came into force in 2013, regulating that both parents would keep custody rights after a divorce.

Challenges

Specialist support services such as Intervention Centers and women's shelters had raised their concern regarding the safety of children, when the law was prepared. Officials from the Ministry of Justice assured the experts, that joint custody would not be granted in cases of domestic violence. Unfortunately the reality is different. After divorce violent fathers often keep full custody rights. The way the legal provision is framed, supports that: custody of both parents is rule and family courts tend to keep the status quo. So the mother, who is a victim of domestic violence herself, has to apply for a removal of the custody. Some courts take a long time to deal with such applications and it happens regularly that the violent parent keeps custody rights.

This happens, despite the fact, that since 2013 an article exists in the law, that qualifies the danger of being subjected to violence and witnessing violence against a parent or close person as acts jeopardizing the wellbeing of a child.⁷⁸ The law was introduced after intensive lobbying specialist support services and it is not properly implemented yet.

Even in cases of recent violence and even if victims are still in a women's shelter, for instance, it is the practice that visitation rights are granted quickly to violent fathers. As a precaution, such visitation right is sometimes ordered to take place in so called "visitation cafes", funded by the Ministry of Social Affairs. However, these facilities are not safe for children, there is no protection from violence and if a violent father runs off with the child, little can be done to prevent it. Such regulations also force women as victims of violence to meet the abuser. Meetings in the context of visitation rights, are often used by perpetrators to harass and even to abuse the (ex-)wife and also the children. Incidences of violence occur regularly in such contexts.

Violent partners should be obliged to see social workers over a longer time (at least 6 month after the last incident) and to attend a victim-safety oriented program as a pre-condition for visitation rights. There is a provision in Austrian law that demands these conditions.⁷⁹ Unfortunately this law is hardly applied by family courts.

A concerning practice is also, that the needs and rights of girls/children are often not taken into account. If girls/children express, that they are afraid and that they do not want to see the father, they are often not listened too. Almost automatically it is assumed, that it is the mother who had influenced the children to thwart visitation by the father. This "reflex" severely jeopardizes the rights of children, which, according to article 19 in the Convention on the Rights of the Child (CRC). The Convention states that children have the right to have contact with both parents, which includes the right not to have contact, otherwise it would not be a right but an obligation.

Thus the requirement in the Convention, to "ensure that, in the determination of custody and visitation rights of children, incidents of violence" are taken into account, is not fulfilled in Austria and custody and visitation rights of parents supersede the rights of children not to be subjected to violence.

Recommendations

- Authorities should, on their own initiative, remove or restrict custody and visitation rights of fathers/parents who have been violent towards their partner and the children.
- The protection of children from violence has to be taken seriously, the danger of direct and indirect violence has to be recognized and children must receive active protection from violence.
- The visitation rights of violent fathers/parents should not be the rule, but the exception.
- Children remaining with violent the father after the mother has fled from violence, should be protected immediately by the authorities and not left with the father, even if he has custody – as required by the ruling of the ECHR *Kontrova vs Slovakia* 2007.

⁷⁸ § 138 Abs. 7 Kindeswohl – Allgemeines Bürgerliches Gesetzbuch ABGB

⁷⁹ § 107 Abs 3.3 Außerstreitgesetz (AußStrG)

- Witnessing violence should be taken seriously and as a form of violence and danger to the well-being of children, as foreseen in the Austrian law.
- Violent partners should be obliged to see social workers over a longer time (at least 6 month after the last incident) and to attend a victim-safety oriented anti-violence program as a pre-condition for visitation rights.
- Finally the rights and needs of children need to be taken seriously and girls/children should never be obliged to visit their father, especially not if he had been violent.

Chapter V - Substantive Law

Article 29 - Civil Lawsuits and Remedies

Background

Article 29 of the Istanbul Convention does not only stipulate an obligation to provide victims with adequate civil remedies against the perpetrator, but also against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers (see para 2). As outlined in the sections on Art 5 (State Obligations and Due Diligence) and Art 49 (General Obligations regarding Investigation, Prosecution, Procedural Law and Protective Measures), the police's or the public prosecutor's failure to take information on dangerous perpetrators seriously and to respond to it by taking or ordering the necessary steps to prevent further violence have tragically led to severe harm, including the killing of victims, in several cases in Austria. The legal avenue available to victims in such cases is filing a lawsuit against the responsible State authority under the Liability of Public Bodies Act (Amtshaftungsgesetz – AHG). This Law provides for monetary compensation for damages to persons caused by unlawful acts of persons when implementing the law on behalf of legal entities, if the individual person is at fault for the unlawful act, i.e. if he or she acts culpably.

Challenges

The requirement that the person implementing the law on behalf of the legal entity has to act culpably is interpreted very restrictively by Austrian Courts. The persons acting on behalf of legal entities are granted a very wide margin of appreciation. Only when the courts find that this wide margin of discretion has been exceeded or laws have been interpreted in an unjustifiable way can lawsuits of damaged victims be successful. Courts often argue that an individual person involved in causing the damage could not have known any better and do not find any individual culpable when a chain of actions (or non-actions) led to the final outcome. Further, lawsuits cannot be filed against State authorities when the damage was caused by the (lawful) implementation of unjust laws or the lack of a legal provision, i.e. when the legislator itself (not the state authorities implementing the laws) is to blame for the damage. Because of these restrictions, lawsuits under the Liability of Public Bodies Act (Amtshaftungsgesetz – AHG) are rarely successful.

Recommendations

- Courts should apply the Liability of Public Bodies Act (Amtshaftungsgesetz – AHG) less restrictively and grant persons acting on behalf of legal entities less margin of appreciation in order to ensure this civil remedy actually provides an adequate way for victims to hold State authorities to account for their failure to prevent or protect them from violence by the perpetrator.

Article 30 - Compensation

Background

The requirement to provide state compensation for victims of crime has been implemented in Austria by the Federal Victims of Crime Act (“Verbrechensopfergesetz – VOG”)⁸⁰, which entered into force on 1 September 1972 and has constantly been amended since.

Compensation is provided in case the injured party fell victim to an unlawful and intentional criminal act, punishable by more than six months' imprisonment, which must have caused actual bodily harm, or have impaired the victim's health. Applications can be made independently during the stage of police investigations, or during criminal proceedings. The claim for compensation does not necessitate suing the perpetrator first under civil law; however, when the amount of state compensation under VOG is being calculated, compensation payments already made by the wrongdoer will be taken into account. In case of death, surviving dependants are also eligible to apply for compensation.

⁸⁰ Victims of Crime Act – Verbrechensopfergesetz (VOG), 9 July 1972, Austrian Official Federal Gazette No 288/1972.

Challenges

Even though the VOG has been amended several times, to extend the eligibility criteria or simplify administrative proceedings, most recently in 2015, problems remain that complicate compensation, especially for low-threshold services. Injuries suffered are already significantly impacting the well-being of victims of crime, and complex and lengthy bureaucratic proceedings with an uncertain outcome have a further negative impact on their recovery. The criteria for approval of applications by victims are not defined clearly enough in the VOG and the final approval of often costly therapy measures cannot be predicted at the time of the claim, thus many eligible persons shy away from filing an application. Some therapeutic institutions are trying to cover costs by delivering pro bono services, but resources are scarce and coverage cannot always be secured by private funding.

There is a need to further amend the law and make it more victim-centred and 'victim-friendly'. The following points highlight the need for reform in particular areas of the law.

Eligibility

Any person who was legally staying in Austria at the time of commission of the crime is eligible to receive compensation according to the VOG. This, however, excludes persons who at the commission of the crime did not have a permit to legally reside in the country.

Compensation for victims of sexual crimes

According to § 1 I VOG, victims of crimes who have suffered bodily harm or injuries are entitled to compensation; however, lump-sum compensation according to § 6a VOG will only be granted to victims who have suffered grievous bodily harm or bodily harm causing severe long-term consequences. Victims of sexual crimes frequently suffer from acute traumatization and face the risk of life-long re-traumatization caused by ordinary situations, which does not fulfil the criteria of §6a VOG, but constitutes an impairment of health and should therefore also be entitled to lump-sum compensation (see also Art 30 para 2 Istanbul Convention).

Lump-sum

According to § 6a I VOG, one-time compensation in the amount of 2,000 € can be provided for suffering grievous bodily harm as defined in § 84 of the Austrian Penal Code. This is a fairly low sum, taking into consideration that common treatment, such as psychological or long-term medical therapy, are very costly measures.

Preliminary orders

§ 7a VOG provides for the possibility of advanced payment of compensation, however, this is rarely granted in practice. Instead, the payment is stayed until the criminal proceedings have been completed.

Exclusions

§ 8 VOG includes a number of exclusions. Particularly in the context of domestic violence, § 8 para 1 Z2 VOG seems very problematic, which negates compensation if the victim has intentionally initiated the criminal act or exposed him- or herself to the danger in a grossly negligent manner. This does not take into consideration the dynamics of violence in social relationships, and minimizes the responsibility of the perpetrator by blaming the victim.

Subsidiarity and foreign laws

§ 8 para 3 VOG excludes persons from compensation who have decided to relinquish compensation in criminal proceedings or in case they could have been compensated by other states on the basis of foreign laws. In many cases, victims are not aware of the fact that they cannot receive compensation under the VOG if they decide to forgo compensation by the perpetrator in criminal proceedings. Furthermore, it is very difficult and often unreasonable to ask victims to apply for compensation in their home country, given that many do not have sufficient knowledge on how to obtain information about the legal requirements.

Duration of proceedings

Applications should be processed promptly by the criminal courts and the public prosecution according to § 9 para VOG. However, the law fails to mention other institutions' duties in this regard, such as the services of the social ministry, which is why lengthy delays frequently occur in practice.

Subrogation of claims

Victims of crime often do not file financial claims under the VOG because they fear that the State will take recourse against the perpetrator, as this might, for instance, affect the ability of the perpetrator to pay alimony.

Victims' rights

Victims of crime who are eligible for filing applications according to the VOG should be informed on the existence and the content of this law by the authorities (police, public prosecutor's offices, courts).

Recommendations

The Law governing state compensation for victims of crime (Federal Victims of Crime Act – Verbrechensopfergesetz (VOG)) should be amended as follows:

- Every person who has suffered bodily or psychological harm or whose sexual integrity has been violated as a result of a criminal offence committed in Austria should have a right to be compensated under the VOG, regardless of whether they had a permit to legally reside in the country when the crime was committed.
- As the current lump-sum of 2,000 € is insufficient in many cases, the amount should be raised.⁸¹
- In cases where immediate action is urgently needed, relevant authorities should be able to grant payment before investigating procedures have been concluded, when eligibility is probable and can be proven with certificates such as a criminal complaint.
- In cases involving domestic violence, it is recommended not to apply the exclusion criteria listed in § 8 para 1 Z2 VOG. When victims have waived their right to compensation, exclusion should only be possible if they have been sufficiently informed of the impact of their decision prior to the waiver. Should victims be entitled to more extensive compensation according to foreign laws, exclusion should only be possible if the government has researched this in advance.
- All government authorities involved should be obliged to process claims of victims of crime promptly.
- The government should refrain from taking recourse against the perpetrator in cases where this has a negative impact on the interests of the victims or their relatives.
- Victims should be informed of their rights under the VOG by the institution of initial contact (police) and the criminal court or the public prosecution.

Article 31 - Custody, Visitation Rights and Safety

See Section "Special focus on children" at the end of Chapter IV

Article 32 - Civil Consequences of Forced Marriages

Information on this section can be provided upon request

Article 33 - Psychological Violence

Background

Severe forms of psychological violence are criminalized in the Austrian Penal Code such as: Deprivation of Liberty (§ 99 Strafgesetzbuch –StGB), Slavery (§ 104), Coercion (§ 105), Grave Coercion (§ 106), Forced Marriage (§ 106a), Menacing Threat (§ 107), Persistent Stalking (§ 107a).

Since a few years there is a discussion among experts in Austria about the question whether other forms of psychological violence should be criminalized as well. Several organizations demand criminalization, but no

⁸¹ The following amounts could serve as a guideline: The lump-sum should be increased to 3,000 € for cases of sexual violence that result in bodily harm or occupational disability that lasts longer than 3 months; to 8,000 € for cases of severe long-term results; and 12,000 € for particularly severe cases. For cases of grievous bodily harm, the lump-sum amount should be increased to 3,000 €; and to 4,000 € for cases that result in bodily harm or occupational disability that lasts longer than 3 months.

concrete definitions have been developed yet. In the UK a new provision has been introduced in the national criminal code in 2015 on “Controlling or coercive behaviour in an intimate or family relationship”.⁸²

Challenges

As outlined in detail below in the section on Art 42 and Art 49, there is a worrying practice of public prosecutor’s offices and courts to not take threats seriously under certain circumstances, which leads to the offence of menacing threat (which is often part of severe psychological violence) not being applied in practice.

Recommendations

Measures to ensure threats (and other forms of psychological violence) are taken seriously, including by sensitizing public prosecutors and judges for the topic of violence against women and domestic violence (see also recommendations regarding the training of public prosecutors and judges in the section on Article 15) and by developing binding guidelines for the handling of cases of violence against women and domestic violence by public prosecutors in form of a ministerial decree (see also recommendations in section on Article 49)

Article 34 - Stalking

Background

While Stalking is codified as a criminal offence in the Austrian Penal Code (§107 a Strafgesetzbuch –StGB), the statutory range of punishment is up to one year, which means that this offence is excluded from the possibility of a forensic commitment of the perpetrator being ordered by the court. Only in cases where the range of statutory punishment is *higher* than one year can a forensic commitment be ordered (see §21 StGB). Other relevant offences are affected by this rule too – the offence of menacing threats (§107 StGB), for example, only provides for a statutory range of punishment of up to one year as well and can therefore not result in a forensic commitment of the perpetrator.

Challenges

In some cases of extreme stalking (or menacing threats), a forensic commitment would be more appropriate than a prison sentence, as this might sometimes not serve the purpose of preventing the individual perpetrator from re-committing the offence.

Recommendations

The possibility of court-ordered forensic commitments should not be tied to a minimum statutory range of punishment, but instead such a measure should be possible to be ordered by the court on an individual basis in cases where this seems to be the more appropriate means.

Article 35 - Physical Violence

Background

Although the Austrian Penal Code contains offences causing bodily harm and even a specific provision on the continued use of force by a perpetrator, the conviction rate in cases of domestic violence and violence against women is low. This is particularly true for charges being brought under the specific provision of continued use of violence. In 2013, only 8,2% of the criminal cases regarding the continued use of violence that were dealt with by the public prosecutor’s office in Vienna resulted in a conviction of the perpetrator, with almost 60% being discontinued by the public prosecutor.⁸³

⁸² UK: Serious Crime Act 2015, 76Controlling or coercive behaviour in an intimate or family relationship <http://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted>

⁸³ See statistics in Annex 1

Challenges

One reason for the low conviction rate seems to be the difficulties of victims in proving that there were continued incidents of violence because they rarely document each incident and the resulting injuries and there are rarely third party witnesses of the violent acts. In this respect it is important to emphasize that the testimony of the victim herself is a piece of evidence that should be assessed differently than the testimony given by the potential perpetrator, bearing in mind that witnesses testify under oath while suspect are legally allowed to lie in criminal proceedings (see also section on Article 49).

Another obstacle to the successful prosecution of perpetrators for the continued use of violence is the type of questions the victims are asked in court proceedings. While public prosecutors and judges place a lot of emphasis on questions regarding the frequency and exact dates of violent incidents, victims who have been routinely assaulted and have become accustomed to living with violence are often unable to precisely remember individual incidents. When pressed to state dates and intervals of violent assaults during police interrogations and again during court hearings, victims are often disbelieved when their statements do not match perfectly. This unfortunate practice ignores the reality of victims of long-term violence, who are usually less able to remember details of the repeated crimes committed against them than victims of singular incidents of violence.

Recommendations

- Measures to allow for a higher conviction rate in cases of continued use of violence should be taken, including by sensitizing public prosecutors and judges for the special circumstances of victims of long-term violence (see also recommendations regarding the training of public prosecutors and judges in the section on Article 15) and by developing binding guidelines for the handling of cases of violence against women and domestic violence by public prosecutors in form of a ministerial decree (see also recommendations in the section on Article 49)
- The practice of the public prosecutor's offices to discontinue cases by default when there are two opposing testimonies of the parties should be reviewed (see also recommendation in the section on Art 49)

Article 36 - Sexual Violence, Including Rape

Background

The Austrian Penal Code did not include any specific provision prohibiting non-consensual sexual acts until recently. Only sexual acts that were committed with force, by depriving a person of her/his ability to move freely, or under threat against the life or physical integrity of a person were criminalized as rape in §201 of the Austrian Penal Code.

To adjust the Austrian criminal law to the requirements of Article 36 of the Istanbul Convention, Austria introduced a new criminal offence titled "violating a person's sexual self-determination" with its last reform of the Austrian Penal Code, which entered into force on January 1, 2016. The provision was added as a new section in the Penal Code, namely §205a.

The new provision now criminalizes sexual acts that are conducted against the will of a person or while the person is in a coercive situation or after she/he has been intimidated by the perpetrator.

Challenges

While the new criminal provision is an important step and introduces the concept of non-consensual sexual acts (without force or threat) to Austrian criminal law for the first time, it should be noted that the Austrian legislator originally argued in its Explanatory Remarks to the Istanbul Convention that there was no need for any adjustments in the Austrian Penal Code. It was only after several NGOs started an awareness raising campaign titled "Ein Nein muss genügen" ('No' has to be enough) that the idea that there was need for reform gained traction and the new criminal provision was eventually included in the Austrian Penal Code.

Further, while the new provision is in conformity with the minimum requirements of Article 36 of the Istanbul Convention, there would still be room for improvement regarding the criminalization of non-consensual acts with a view to taking a clear stance against sexual violence.

Firstly, it is unfortunate that the newly introduced provision on "violating a person's sexual self-determination" is not included in the section on rape. This clear separation of the two offences emphasizes the idea that sexual acts committed against the (declared) will of a person are still not to be seen as rape, but only something less

grave which cannot be called rape. The special stigma attached to the crime of rape is thus not assigned to those acts of non-consensual sexual acts comprised in §205a. The clear hierarchy of the two offences is further emphasized by the statutory range of punishment provided for by the provision on “rape” on the one hand, and “violating a person’s sexual self-determination” on the other hand. While the range of punishment for the former is one to ten years of imprisonment, the maximum punishment for the latter is two years of imprisonment with no minimum punishment. Two years of imprisonment as the maximum punishment for acts that in practice can be of very similar gravity to the victim as those acts qualified as “rape” and that may further include a comparable level of malevolence of the perpetrator, generally seems to be a very limited range of punishment which does not reflect the seriousness of these forms of sexual violence. Secondly, the wording in the newly introduced § 205a StGB is quite narrow, as only sexual acts “against the will of a person” are criminalized, whereas the phrasing “non-consensual” as provided for in the Convention comprises cases in which sexual acts were carried out “without the consent” of the victim, not only “against their will”. This can make a difference in cases where victims did not even have the chance to express their will (as, for example, when they are surprised by a sudden attack of a perpetrator.)

Recommendations

- All cases of non-consensual sexual acts as provided for in Article 36 of the Istanbul Convention should be qualified as “rape” in order to avoid sending the message to victims as well as to society as a whole that some of those acts cannot be seen as rape and are therefore only minor offences
- If the acts included in the offence of “violating a person’s sexual self-determination” are not incorporated into the provision of rape, the former should at least provide for the same statutory range of punishment as the offence of rape
- At the very least, the statutory range of punishment for “violating a person’s sexual self-determination” should be raised and a minimum punishment should be introduced

Article 37 - Forced Marriage

Information on this section can be provided upon request

Article 38 - Female Genital Mutilation

Information on this section can be provided upon request

Article 39 - Forced Abortion and Forced Sterilisation

Information on this section can be provided upon request

Article 40 - Sexual Harassment

Background

The provision on sexual harassment was amended in the Austrian Penal Code with its last reform which took effect on January 1, 2016. The now amended provision (§218 para 1a) now provided for a criminalization of violating a person’s dignity by “intensely touching” a part of their body that “belongs to their sexual sphere”.

Challenges

While this amendment is a positive development, the provision is still more narrow than foreseen by the Istanbul Convention (only physical conduct is criminalized, verbal or other non-verbal conduct is not included in the provision). Moreover, the law does not include a definition of which areas are to be viewed as belonging to a person’s sexual sphere. Only the explanatory report published with the amendment of the law lists specific parts of the body (in particular the buttocks and thighs) as meeting this definition. Courts, however, are not bound by the explanatory report and might interpret the new provision differently. Another problematic part of the provision is that the offences are conceptualized as crimes that need authorization by the victim to be prosecuted by the State, instead of being automatically prosecuted by the State.

Recommendations

- Measures to ensure the new provision is interpreted in a broad sense as suggested by the explanatory report published with the law should be taken, including by sensitizing public prosecutors and judges for the topic of violence against women and domestic violence (see also recommendations regarding the training of public prosecutors and judges in the section on Article 15)
- The provision itself should be amended to include unwanted verbal and non-verbal conduct in order to fully comply with Art 40 the Istanbul Convention
- The offence of sexual harassment should not need authorization by the victim to be prosecuted but instead be automatically prosecuted by the State

Article 41 - Aiding or Abetting and Attempt

Information on this section can be provided upon request

Article 42 - Unacceptable Justifications for Crimes, Including Crimes Committed in the Name of so-called Honour

Background

While the Austrian Penal Code does not provide for justifications related to honour or any other unacceptable justifications for crimes, there are some issues with the practical application of certain offences by public prosecutor's offices and courts, which result in exempting certain criminal acts from prosecution in practice and can therefore be seen as having similar effects as an unacceptable justification for a crime provided by the law itself.

Challenges

A very widespread practice is related to the offence of menacing threats (§107 StGB) and consists in arguing that a threat is not to be taken seriously (although its objective content would have to be considered threatening), when what was being said is interpreted to be only an expression of displeasure or resentment due to the social status of the person ("milieubedingte Unmutsäußerung"). The concept of social status and what is considered common or "normal" in terms of human interactions is very vague and leads to a big portion of threats not being punishable in the view of public prosecutors and judges because the threatening statement presumably did not fulfill the criteria of being a "real threat". In addition, there is a worrying practice of turning to the court interpreter present at a hearing to seek his or her opinion on whether certain phrases or gestures are common in a given language or culture. Interpreters are not official experts on social and/or cultural norms, however, and are often not even from the same country of origin as the parties involved in the criminal proceeding.

Recommendations

The above-described practice should be reviewed and measures to change it should be taken, including by sensitizing public prosecutors and judges for the topic of violence against women and domestic violence (see also recommendations regarding the training of public prosecutors and judges in the section on Article 15) and by developing binding guidelines for the handling of cases of violence against women and domestic violence by public prosecutors in form of a ministerial decree (see also recommendations in section on Article 49)

Article 43 - Application of Criminal Offences

Background

Some offences in the Austrian Penal Code still include a clause privileging perpetrators who are related to the victim by providing for a lower statutory range of punishment, an exemption of punishment by stipulating that

charges are not automatically being brought against the perpetrator by the State, but the victim first has to authorize the prosecution (see also section on Article 46).

Challenges

While these privileges do not affect any violent offences in the realm of domestic violence, some of the offences that do still contain privileges for perpetrators who are family members might also become relevant in the context of abusive relationships, in particular the offence of child abduction (§195 para 3). By making the severity of punishment dependent on the relationship between the perpetrator and the victim and/or placing the responsibility for criminal prosecution on the victim, the legislator sends the unfortunate message that (violent) acts committed against family members are less grave than publicly committed offences

Recommendations

- Remaining privileges for perpetrators who are related to the victims should be reviewed in the Penal Code with a view to situations of violence against women and potentially be removed
- This review should also be done with a view to the newly introduced aggravating circumstances, whose purpose the remaining privileges contradict (see recommendation in the section on Article 46)

Article 44 - Jurisdiction

Information on this section can be provided upon request

Article 45 - Sanctions and Measures

See sections on Articles 5, 48 and 49 for issues related to so-called “diversionary measures”.

Article 46 - Aggravating Circumstances

Background

New aggravating circumstances were introduced into the Austrian Penal Code in order to comply with the Istanbul Convention. These took effect with the reform of the Penal Code entering into force on January 1, 2016. §33 paras 2 and 3 StGB now provide, inter alia, that committing violent acts against family members and/or (ex)partners, against an individual requiring special protection and against minors are aggravating factors.

Challenges

While this reform is a positive development, the new aggravating circumstances are not routinely considered by judges yet. As the reform of the Penal Code has just entered into force recently, it is to be hoped that judges will adjust to the new legal framework soon. A formal issue arises, however, with other sections of the Penal Code that privilege perpetrators who are related to the victim by providing for a lower statutory range of punishment or an exemption of punishment in those cases.⁸⁴ Some other offences include a clause stating that charges are not automatically being brought against the perpetrator by the State, but the victim has to give his or her consent to the prosecution. This also concerns offences that are typically committed against family members, as it is the case with child abduction.⁸⁵ This contradicts the purpose of the newly introduced aggravating circumstances laid down in §33 StGB.

Recommendations

- Sections of the Penal Code that provide for a lesser punishment in cases where the perpetrator was a family member should be adjusted to the newly introduced aggravating circumstances that provide for the possibility of more severe punishments in those cases in order to remove contradictions in the Penal Code and to give full effect to the changes made in accordance with Art 46 of the Istanbul Convention.
- Measures should be taken to ensure judges and public prosecutors are aware of the newly introduced aggravating circumstances and take them into consideration appropriately

⁸⁴ See, for example, §166 StGB, 136 para 4 StGB, §141 para 3 StGB, §150 para 3 StGB

⁸⁵ See § 195 para 3 StGB

Article 47 - Sentences Passed by Another Party

Information on this section can be provided upon request

Article 48 - Prohibition of Mandatory Alternative Dispute Resolution Processes or Sentencing

Background

As outlined in the sections on Article 5, the Austrian Criminal Law system provides for an elaborate system of so-called “diversionary measures” (Diversion) that can be applied by public prosecutors and judges, one of which is victim-offender mediation. In civil law proceedings, no mandatory alternative dispute resolution procedures are provided for by the law, however mediation is often suggested by judges. In civil law proceedings concerning the custody for children or visitation rights of one of the parents, courts can order the parents to participate in at least one mediation meeting,⁸⁶ which can be seen to constitute a mandatory alternative dispute resolution process in violation of Art 48 of the Convention.

Challenges

Concerning Criminal Law, there is no systematic data on how often criminal cases are dealt with by victim-offender mediation, but the few existing statistics indicate that a relatively large proportion of cases of violence against women and domestic violence are dealt with in victim-offender mediation, which is problematic (see sections on Article 5 and Article 49). While the victim has to give her or his approval for mediation and cases are referred back to the public prosecutor if victims do not approve the measure, this still places the responsibility for further prosecution on the victim and sends the unfortunate message that their case was not serious enough to be dealt with by a court. If a victim chooses to agree to such mediation, measures to safeguard her victim’s rights should be applied at least. This includes measures to ensure the victim is not directly confronted with the perpetrator, but can choose to stay in a separate room during the mediation process.

Other diversionary measures, such as ordering the perpetrator to pay a fine or probation time (without additional orders such as prohibiting the perpetrator from contacting the victim or obliging him to attend an anti-violence training programme) are also problematic in this regard (see sections on Article 5 and Article 49). These alternative sentencing measures are not adequate to address violence against women and domestic violence.

With regard to civil law proceedings concerning the custody for children or visitation rights of one of the parents, the fact that courts can order the parents to participate in at least one mediation meeting is problematic and not in accordance with Art 48 of the Convention.

Concerning other civil law proceedings, no mandatory alternative dispute resolution procedures are provided for by the law, however, mediation is often suggested to the parties by judges. This is routinely done even in cases in which one of the parties has suffered violence from the other party, which is often completely ignored in civil law proceedings such as divorces. Judges seem to presume that these civil law proceedings have “nothing to do” with the violence experienced by the victim, failing to recognize the effects of such violence and re-victimizing the survivor. Although mediation is in theory voluntary in those proceedings, the victims are pressured into agreeing to the judge’s suggestion as they know the same judge will be deciding over other legal disputes related to them too (such as restraining order against the perpetrator they might have applied for or proceedings concerning the custody for their children).

With the amendment of the Austrian Code of Criminal Procedure (StPO) that entered into force on January 1, 2016 a new provision was introduced providing that victims should be “provided with sufficient time to issue a statement” by the public prosecutor before a decision to apply diversionary measures is taken.⁸⁷ There is no

⁸⁶ See § 107 para 3 (2) of the so-called *Außerstreitgesetz*

⁸⁷ See §206 para 1 StPO. Providing the victim with sufficient time to issue a statement is mandatory in cases where a barring order has been issued by the police and when „victims“ as defined by the StPO are concerned.

further explanation of how and in which from (verbally or in writing) this statement can be issued and whether the public prosecutor's office has to explicitly inform victims about this right or even actively request a statement from the victim. In practice, no changes in the standard proceeding of the public prosecutor's offices have been noticed so far and virtually no cases in which this provision was applied are known.

Recommendations

- Review the provision that courts can order parents to participate in at least one mediation meeting in civil law proceedings concerning the custody for children or visitation rights of one of the parents and take legislative measures in order to ensure compliance with Art 48 of the Convention
- Take measures to change the current practice of judges suggesting mediation in civil law proceedings even in cases connected to violence by sensitizing judges for the special circumstances of victims of long-term violence (see also recommendations regarding the training of judges in the section on Article 15)
- Take measures to change the current practice of applying diversionary measures disproportionately often to cases of violence against women and domestic violence, including by developing binding guidelines for the handling of cases of violence against women and domestic violence by public prosecutors in form of a ministerial decree (see also recommendations in section on Article 49)
- Take measures to ensure the implementation of the newly introduced provision that victims of violence can issue a statement before the public prosecutor decides on diversionary measures

Background

The Austrian Penal Code provides for the criminalization of virtually all acts of violence against women and domestic violence covered by the Convention. However, there are still serious problems regarding the implementation of laws which lead to a lack of accountability for perpetrators (see below).

One of the positive developments is that victims' rights were established in criminal procedural law. The concept of victims as subjects had virtually not existed before the reform of the Code of Criminal Procedure (StPO) in 2008. With the reform, the term "victim" appeared in criminal procedural law for the first time and important provisions were integrated, such as the principle stating that all law enforcement agencies are obliged to adequately pay attention to the rights and interests of victims and to inform them about the procedures and their rights.⁸⁸ Moreover, a separate section on victims and their rights was established in the Code of Criminal Procedure,⁸⁹ establishing various procedural rights as well as the right of victims to free psycho-social support and legal representation in court (Prozessbegleitung (Court Assistance) – see also section on Article 55). These were milestones to improve the rights of victims. However, there are also several shortcomings and problems, such as the weakness of many victims' rights due to the fact that they are hardly enforceable (see last recommendation of Article 5/Due Diligence).

Another positive step was the establishment of special units in every prosecutor's office with more than ten staff members in 2008. Those special units are tasked with handling cases of domestic violence and violence against children (Verfahren wegen Gewalt im sozialen Nahraum - Gewalt in der Familie, Gewalt an Kindern).⁹⁰ Nonetheless, there are problems with this provision, such as insufficient training of the prosecutors working in these specialized units. While the laws stipulate that the specialist prosecutors are specifically trained to handle cases of domestic violence, this is not always the case in practice and there are no clear requirements of what the training should include.

Challenges

High Level of Impunity for Perpetrators: General Problems

Although the Austrian Penal Code provides for the criminalization of virtually all acts of violence against women and domestic violence covered by the Convention, there are several procedural shortcomings regarding the investigation and prosecution of these crimes, as stated. The majority of cases are discontinued by the public prosecutor's office or the perpetrators are acquitted by the court. The Austrian statistics regarding the prosecution of the relevant offences are in stark contrast to Article 49 para 2 of the Istanbul Convention which obliges Member States to "ensure effective investigation and prosecution".

In 2013, for example, 92.8% of the rape charges in Vienna were either discontinued or ended with an acquittal of the perpetrator.⁹¹ Taking into account that studies have shown that only an estimated 5 – 10% of rapes are even reported,⁹² this would mean that a shockingly low percentage of presumed rapes (0,36% - 0,72%) would lead to criminal accountability of the perpetrator.

The high number of discontinued cases sends the unfortunate message to victims that violence against women and domestic violence are not taken seriously by the justice system and that there is little accountability for perpetrators.

⁸⁸ § 10 StPO (« Beteiligung der Opfer »)

⁸⁹ 4. Hauptstück StPO (« Opfer und ihre Rechte »)

⁹⁰ See Art. 1 § 4, para 3a Staatsanwaltschaftsgesetz-DV (« Bei Staatsanwaltschaften mit zumindest zehn systemisierten staatsanwaltschaftlichen Planstellen hat der Leiter der Staatsanwaltschaft die Bearbeitung von Verfahren wegen Gewalt im sozialen Nahraum (Gewalt in der Familie, Gewalt an Kindern) einem oder mehreren besonders geschulten Staatsanwälten zu übertragen.»)

⁹¹ See table in Annex 1 (Statistics)

⁹² See, e.g., Kelly, L and Lovett, J, *Different systems, similar outcomes? Tracking attrition in reported rape cases in eleven countries*, 2009

The public prosecutor's offices play a key role within the system. It is not only them who decide whether or not to bring charges against the perpetrators, but the public prosecutors also guide and control the investigation procedure carried out by the police.

One of the main reasons for the low conviction rate in cases of violence against women and domestic violence seems to be the lack of a gendered understanding of these forms of violence and the underlying pattern of inequality as a root cause for violence. Violence that would be considered grave in different settings tends to be downplayed when it has been committed in the context of domestic violence. This seems to be the case even for the specialized units of prosecutors described above. The lack of a gendered understanding of violence against women and domestic violence is partly due to a lack of education on these issues in the professional training of public prosecutors and judges. While the four years of professional training do include some seminars on the topic of violence against women and children, these are not extensive enough to ensure a comprehensive understanding of issues as diverse and complex as structural inequality, gender bias and stereotypes and traumatization of victims. Further, while candidates have to complete a two-weeks practical training at a social institution, the list of possible institutions does not only include victims' support organizations but also organizations mostly dealing with the rehabilitation of perpetrators or with custodianships for adults who need a legal guardian. A potential public prosecutor or judge can therefore go through his or her four-years training without ever meaningfully engaging with the issues listed above (see also section regarding Art 15 on the Training of Professionals)

Further, guidelines and protocols on how to handle cases of domestic violence and violence against women are missing. This is particularly alarming as these cases sometimes include extremely dangerous perpetrators who pose an imminent risk to the physical integrity or even life of their victims and failure to properly respond to information received on these cases might result in serious harm to the victim, including homicide. As outlined above in the Section on Article 5/Due Diligence, there were two Austrian cases brought to the attention of the CEDAW Committee, both of which included the victim being killed by the perpetrator after charges had been brought against him but authorities had failed to take the necessary steps to prevent further violence. In response to the recommendations of the CEDAW Committee on these two cases, Austria issued comments in 2007 on how it planned to implement these recommendations, in particular on how to improve the interventions of public prosecution services and courts in cases of domestic violence.⁹³ The planned measures included a model for investigation establishing which factors had to be included in the decision-making basis of the public prosecutor and providing for cooperation with other entities, such as victims' support organization. Unfortunately the suggested model has still not been implemented. Moreover, the explanatory report to the law on the ratification of the Istanbul Convention also contains investigative measures and measures for inter-agency cooperation which have not been implemented yet.⁹⁴

In general, the shortage of staff within the justice sector also has a negative impact on the investigation and prosecution of offences established in accordance with the Istanbul Convention, as public prosecutors are sometimes burdened with a heavy case load that discourages them from carrying out more in-depth investigations and constitutes an incentive to discontinue cases or apply so-called "diversionary measures" (see below in this section).

High Level of Impunity for Perpetrators: Specific Problems

With regard to the investigation procedure, several practical issues have shown to be an obstacle to the successful prosecution of perpetrators. Firstly, authorities (in particular the police) sometimes fail to collect all available evidence swiftly, even when victims present pieces of evidence, such as threatening text messages or voicemails, to the police. Moreover, although this has improved throughout the last years, photo documentation of injuries sustained by the victims is still not a consistent standard.

Regarding public prosecutors, it can be noted that the law would give them much more room for action than they make use of in practice. The law provides that public prosecutors guide and control the investigation procedure and that they would be entitled to carry out investigations themselves, such as hearing testimony from the victim and the suspect. However, this is virtually never made use of by public prosecutors. Moreover, public prosecutors focus all too often on the question whether or not the victim is prepared to testify in court,

⁹³ See Annex 3

⁹⁴ For the Explanatory Report see https://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_02449/fnameorig_309174.html

making too little effort to collect (or tasking the police to collect) other available objective evidences (see above). This leads to the prosecution in practice being dependent on the victim's willingness to testify against the perpetrator, whereas virtually all relevant crimes are official offences where charges should be brought by the state without putting the burden of prosecution indirectly on the victim.

If the victims are in fact willing to testify, several other problematic practices contribute to the low rate of convictions in cases of violence against women and domestic violence. Firstly, victims are often disbelieved when their witness testimony in court slightly differs from their testimony given at the police or when they cannot exactly determine the frequency or chronology of violence committed against them, which disregards the effects of trauma on the psyche of victims or the dynamics of a long-term violent relationship. Secondly, another wide-spread practice by public prosecutors is to discontinue proceedings by default when there are two opposing testimonies of the parties, failing to take into account that the victim's testimony should be assessed differently than the testimony given by the potential perpetrator as witnesses testify under oath while suspect are legally allowed to lie in criminal proceedings. Discontinuing the criminal proceedings by the public prosecutor's offices in such cases further forecloses the consideration of evidence by a judge, who might assess the credibility of witnesses and suspects differently.

Problems Regarding Victims' Rights in Criminal Proceedings

Another problematic practice of the public prosecutor's offices concerns the already relatively small portion of cases that are not discontinued in the first place. Of the remaining cases, a disproportionately high percentage is dealt with by diversionary (non-custodial) measures, which again sends the message that these crimes, despite their widespread nature and devastating impacts, are not regarded to be "worthy" or "grave enough" to be dealt with in court. The Austrian Code of Criminal Procedure provides for four different diversionary measures: 1) fines, 2) community work, 3) probation time with probation work and 4) victim-offender mediation. Out of these four, victim-offender mediation seems to be the most commonly ordered measure. Regular annual statistics on the application of diversionary measures in cases of violence against women and domestic violence are missing, however. From the point of view of specialist women's support services, diversionary measures are problematic for various reasons. Fines and community work are obviously not appropriate measures, but can nonetheless be imposed by public prosecutors. Victim-offender mediation is problematic because victims are pressured into a situation of having to "negotiate" with the offender (see section regarding Article 48 – Prohibition of mandatory alternative dispute resolutions processes or sentencing). Moreover, mediation is not adequate in cases of domestic violence due to the repeat nature of the crimes involved. Whenever mediation is carried out, the criminal case is closed and if perpetrators violence against the victim again at a later point, the victim has to start the whole process of reporting again, with the previous acts of violence being disregarded by the court.

As outlined in the section on Article 5, the only measure that would be appropriate in cases of violence against women and specifically in domestic violence, which are almost always repeat crimes with a high risk of re-victimization for the victims, is probation time in combination with probation work, protective orders to guarantee the safety of victims, and the order for the perpetrator to attend a victims-safety oriented anti-violence training.

There is also a contradiction regarding the principle of diversionary measures stating that redress by the perpetrator is a central element and requirement for the imposition of such measures, yet the majority of the diversionary measures do not require any redress by the perpetrator. It should be the obligation of the authorities to actively promote redress and to oblige the perpetrator to present his offers for redress instead of the victims having to ask for it.

Recommendations

- As a general measure, staff number at the office of the public prosecutor should be increased in order to ensure cases of violence against women and domestic violence can be dealt with properly and the percentage of female public prosecutors as well as judges should be increased, ideally to 50%.
- As the public prosecutor's office plays a key role in the investigation and prosecution of cases of domestic violence and violence against women, it would be highly important **that clear and binding guidelines be**

established in the form of a ministerial decree regarding the handling of cases of violence against women and domestic violence by public prosecutors. These guidelines could be based on the measures outlined in the 2007 comments on how the State planned to implement the CEDAW Committee's recommendations,⁹⁵ the measures described in the explanatory report accompanying the ratification of the Istanbul Convention⁹⁶ and the input of practitioners, including NGOs running specialist women's support services. This should be a priority in the next NAP on VAW.

➤ These guidelines should

- urge public prosecutors to take a more active role in the investigation procedure in cases of violence against women and domestic violence and ensure the swift collection of all available evidence, including by hearing testimony themselves
- counter the practice of virtually automatic discontinuation in cases where there are opposing witness testimonies of the victim and the perpetrator
- **counter the practice of applying diversionary measures to cases of VAW disproportionately often** and promote **ordering probation time in combination with other measures** (probation work, protective orders to guarantee the safety of victims, and the obligation to attend a victims-safety oriented anti-violence training) as the **most adequate form of diversionary measures** in such cases.
- underline that **victims' safety should be a central concern** in diversionary measures and encourage prosecutors and judges to inquire victims about the kind of protective measures they need.
-

➤ **Measures should be taken to ensure swift and rigorous investigations** by the police, including the swift collection of available all evidence, and the (photo)-documentation of injuries sustained by the victim. **This should also be done by way of a ministerial decree.**

➤ **Adequate and mandatory training:** In order to ensure a gendered understanding of violence against women as well as the underlying root causes of this form of violence, comprehensive education and training on this topic needs to be included in the training of public prosecutors and judges. See recommendations on Art 15/Training of Judges and Prosecutors for a **suggested design of this training.**

➤ **Victims' rights should be strengthened** in the law; it is not enough that victims can file complaints if their rights are violated; disregarding victims' rights needs to have an **invalidating consequence** on the procedure. **Victim's rights** and interests have to be **safeguarded in all legal procedures, especially concerning diversionary measures.** Redress needs to be offered to the victim and the victim needs to have the right to be involved in all cases.

Article 50 - Immediate Response, Prevention and Protection

Background

The Austrian police is obliged to promptly respond to all acts of violence. According to the experience of specialist women's support services, this is working quite well, and there are rarely complaints of the police not showing up at all, or that they did arrive very late, in cases when the emergency number (133) was called. The police emergency telephone service prioritizes calls on domestic violence. However, there is no information available as to which measures are adopted to provide prompt and appropriate responses.⁹⁷

Challenges

Services in Vienna are concerned about reports in the past year by victims that they were turned away by the police when seeking help. Such accounts are made regularly, several times a month. It seems that calls to the emergency number are taken fairly seriously, but when victims turn to the police station in person, a prompt and appropriate response is not always guaranteed. Victims chose to go to the police station instead of calling the police emergency number for various reasons: they might not feel comfortable talking on the phone,

⁹⁵ See document in Annex 3

⁹⁶ For the Explanatory Report see https://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_02449/fnameorig_309174.html

⁹⁷ It is assumed that the police carry out evaluations of the emergency calls, the average length callers have to wait for a response, and the average time that goes by before sending out a patrol car. As there is no concrete information, it is recommended that these measures would be researched if there is a country visit to Austria in the future.

especially if German is not their mother tongue, or they might not have been able to call the police in the situation of violence. Victims report that they have been standing at the help desk, often in front of other people, and that they did not have enough time to tell the story and did not feel the police officers took enough time to listen to them and to understand their issue. This needs to be urgently improved, since it is critical that victims trust the police and continue to seek help from the authorities.

Another problem is that such interventions by victims who show up at a police station are not always documented properly, and when victims need to provide evidence of the fact that they turned to the police, it is difficult to find recorded information. Thus, police officers should be required to record ALL interventions regarding cases of domestic violence and violence against women in a report that is transparent and that can be found quickly in the archive; and that also allows for copies to be provided to courts for evidence. Besides, the data of all police interventions needs to be recorded for statistical purposes, so that administrative data on all police interventions can be provided. It is crucial to know the total number of police interventions, in order to compare the data over time, to see if the numbers of victims seeking help from the police are increasing or decreasing. These numbers are also important for comparisons with the number of police barring orders issued – if the number of EBOs increase, does that mean that also the number of victims turning to the police increased, or did the response of the police change? The number of all police interventions is also an important indicator to compare with prevalence data – how many of the victims experiencing violence seek help from the police?

According to a survey by the FRA, only 12% of the women experiencing violence contacted the police or another agency after the first incident. Thus, there is serious underreporting of violence against women and domestic violence in Austria. It would be crucial for the police to take measures to increase reporting and to build trust in the police as an institution. One measure that would be necessary to improve is the response to victims coming to the police station, as describe above. Police stations are not always very victim friendly places. Therefore the police should establish, in every district, a room that is available to speak to victims in privacy.

In Austria, victims of sexual and domestic violence have the right to be interviewed by a trained female police officer. Due to the low number of women in the police force (approximately 14%), this right can often not be enjoyed, or women victims of violence have to wait long hours. Thus it is urgent to increase the number of female police officers. Police officers need to be recruited from culturally diverse groups to mirror the developments in society.

Recommendations

- The next NAP to prevent violence against women should include a comprehensive policy on how to increase the reporting rate in the area of violence against women and domestic violence.
- The police needs to implement effective measures to increase trust in the police force.
- The number of female police officers should be increased to 20% in the next four years.
- Police officers need to be recruited from culturally diverse groups.
- Special attention needs to be awarded to training all front line officers at police stations to serve victims turning to the police station for help, so they are served promptly and adequately. Police officers need to take sufficient time to find out what happened, and to listen to the persons seeking help so that victims dare to come out with their stories. Trained female police officers should be on duty at all times.
- Every police intervention needs to be properly documented so that it can serve as evidence, as well as for assessing the risk (the more often violence occurs the higher the risk).
- Statistics of all police interventions need to be generated and published annually.
- Every district police should have at least 1 victim friendly room for interviewing and supporting victims.

Article 51 - Risk Assessment and Risk Management

Background

The implementation of systematic risk assessment and safety management measures has begun in Austria, but there are still no standard procedures to protect and support women victims of violence from repeat and

severe violence, including femicide. The Austrian police has developed the instrument SALFAG; however, the instrument has not been tested and evaluated in research yet, and it is not specifically developed to assess lethal risk, as required by the Istanbul Convention.

The Vienna Intervention Center is systematically applying the Danger Assessment tool, developed by Jacquelyn Campbell, Professor at the Johns Hopkins University School of Nursing in the United States, especially to assess lethal risk.⁹⁸ The tool is one of the oldest risk assessment tools available, and the only one specializing on lethal risk. It has been tested in extensive, multi-city studies, and revised after evaluation. It includes 19 questions on risk factors and a calendar. Campbell keeps stressing that no instrument can predict the future, and that the tool cannot predict homicides, but it can serve to raise awareness and promote preventive measures. It is important that all professionals are aware of risk factors and check cases regularly and systematically.⁹⁹ Risk assessment should never be an end in itself, it is always the beginning of safety planning. Coordinated safety planning is crucial for the safety of victims and it is not yet a standard procedure in Austria. Especially the criminal justice system is often not open to coordinated safety planning, which represents a severe problem, since it is where the authorities are placed who are deciding on the initiation of preventive measures, such as pre-trial detention.

Multi-agency Partnerships for Coordinated Risk Assessment and Safety Planning

In 2011, a multi-agency cooperation called MARAC-alliance ('Multi-Agency Risk Assessment Conference') was created in Vienna with the aim of preventing severe violence against women and domestic violence. Participating institutions are the Vienna State Police Headquarters, the justice system, women's safety organizations, migrant organizations, organizations which work with perpetrators, and other relevant institutions. The case-related cooperation is organized in two MARAC-teams which cover 11 of the 23 districts of Vienna. The MARAC-coordination is carried out by the Domestic Violence Intervention Center Vienna. Multi-agency pilot projects were conducted in Tirol and Lower Austria in 2015. As mentioned above, it was rarely possible to achieve cooperation with the criminal justice system, which is a serious problem, because it incorporates the decision-making authorities when it comes to protection from severe and lethal violence.

The identification of victims in high risk situations has been made possible by the joined use of a risk identification tool (Danger Assessment instrument), agreed between the participating institutions. Systematic coordinated risk assessments and safety planning are the objectives of MARAC. The cooperation is based on a victim-centered approach by recognizing the needs and interests of victims of violence. A case conference can only proceed with the victim's consent, and if the victim is represented by a victim safety organization. With due regard to the data protection of victims, within a case conference only categories of danger and coordinated measures for their protection can be discussed.

Challenges

Despite progress made since the entry into force of the Istanbul Convention, there are still serious gaps and challenges in the area of risk assessment and multi-agency work:

- Multi-agency cooperation does not receive specific federal funding. The Domestic Violence Intervention Center was able to put some more resources into the project in 2014 and 2015 but sustainable funding is needed. Until now, an evaluation of the project has not been possible, and there is a lack of resources for conducting multi-agency conferences in all districts of Vienna.
- Analyzing the risk factors in cases of violence is a proven method to assess the situation of victims and to develop specific measures for their protection, as otherwise institutions do not know if their offer and measures meet the needs of a victim, and in the worst case they endanger human life. A professional and systematic risk assessment is the basis of multi-agency cooperation. Risk assessments should never be used to minimize and trivialize violence.
- In some cases victims of violence are still being blamed and held responsible for the violence they suffer. Although the perpetrator should be made accountable for his actions, change is often expected from the victim (she should change the phone provider, not use a smartphone,...).

⁹⁸ <https://www.dangerassessment.org/>

⁹⁹ See also PROTECT II Manual

Recommendations

- Expansion of Multi-agency partnerships in Austria, sufficient resources to coordinate MAPs.
- Focus on the rights and needs of victims, victim-centered approach.
- Central role of specialist support services in representing the rights and needs of the victims.
- The prosecutor offices need to have clear and binding guidelines through a ministerial decree to oblige to pay attention to risk factors and to cooperate with agencies who carry out systematic assessment of lethal risk.
- Systematic assessment of lethal risk, safety management and coordinated prevention and protection measures should be standard responses.
- Protocols and trainings for employees and officers who deal with work together with victims of violence.
- Training for all relevant professionals in the issues of equality between women and men, non-stereotyped gender roles and gender-sensitive policies in general.
- Victims of violence shall always be represented by an independent victim safety organization which secures their interests and needs. The cooperation with the justice system shall be strengthened in order to create appropriate measures for perpetrators (e.g. anti-violence training).
- A **femicide prevention watch** should be set up in Austria, as suggested by the UN SRVAW, to collect data on femicide and to develop and evaluate femicide prevention measures. The femicide watch should be integrated in the policy making and monitoring body for the implementation of the Convention.

Article 52 - Emergency Barring Orders

Background

The police emergency barring order (EBO) was introduced in 1997 and amended several times.

The EBO is a central part of the “intervention system” in Austria, which aims at providing a coordinated community response to violence against women and domestic violence.¹⁰⁰ It was clear that laws are not enough to prevent violence and Intervention Centers as specialist support services for victims were established in all regions of Austria to provide gender-sensitive and empowering support to survivors.¹⁰¹

The police are obliged to notify the respective Intervention Centre within 24 hours per fax or e-mail about every EBO and case of Stalking by sending the documentation (for further information see Article 22 section on Intervention Centers.

In principle, the EBO is an effective instrument to stop violence and to communicate to perpetrators, that violence in the family is not tolerable and has immediate consequences.

In Austria, which is a traditional country with many rural areas, actors responsible for the implementation of the law were able to put across the “philosophy” of the law, which is that the EBO is similar to a “red card” in football (who plays unfair must leave). However, constant training is necessary to promote the attitude that there is no excuse for domestic violence.

Challenges

A major shortfall of the police EBO is, that – with the exception of children - it only protects victims in their home and the surrounding of the home. It is not possible for victims to stay at home for two weeks and it is necessary to harmonize the EBO with the civil law protection orders, which guarantee protection also at the workplace of the victim. Children should be protected by the EBO not only until the age of 14, but up to 18.

There is also room for improvement in the application of the EBO. If the perpetrator leaves before the police arrive, the order cannot be issued immediately. It is necessary to improve this, since it endangers victims.

¹⁰⁰ For more information on the intervention system in Austria, see the report on the police Emergency Barring Order, the Intervention Center and other coordinated measures in Annex 2.

¹⁰¹ The services are called Intervention Centers in the law. Apart from Vienna, all Centers changed their name to Gewaltschutzzentrum/Centers for the Protection from Violence. When the term “Intervention Center” is used, all centers in Austria are included.

The police have a central role in protecting people from violence, not only by issuing emergency barring orders but also by providing safety measures to victims. Barring orders are not safe if, for instance, the door of the house of the victim is so weak that the perpetrator can break in with one blow. There was a case in Vienna, in which the victim called the police because the aggressor was outside demanding that she open the door. Before the police arrived, the aggressor broke in and killed her. In another case, the aggressor, who was also barred from the house through an EBO, persuaded the neighbor (an elderly lady) with a fake story to let him use her balcony to get into his apartment. He hid until the wife, who had gone to the police because he stalked her, returned and he strangled her in the presence of their two-year old daughter.

It would be of utmost importance that the police carry out safety checks with every intervention, that they document this on the barring order form and that they carry out safety planning with the victim. The Intervention Centers could then work together with the police in supporting victims to arrange for the installation of safety measures such as safe doors, bars, etc. Victims of violence should have the right to swiftly receive funding for necessary safety measures, under the minimum security law.

Further, the consequences of violating an EBO are very lenient for the perpetrators. While an administrative fine can be imposed by the police, this does not have a strong deterring effect for the perpetrators, especially because it often takes too long for the fines to be imposed after a violation has occurred.

Recommendations

- The police barring order should be amended and the barring order should also be valid for the workplace of the victim and should contain a no-contact order.
- Children up to 18 should be protected by EBOs in kindergarten and schools.
- The police should carry out emergency safety checks routinely after issuing emergency barring orders. If necessary, they can call in special police officers for providing additional information to the victim.
- This should be a standard procedure and in the EBO form as well.
- The police should then work together with the regional Intervention Center and the victim in order to continuously manage the safety of victims.
- Victims in high-risk situations should receive an electronic device for calling the police and the police should prioritize the safety and protection of victims.
- Violations should be made a criminal offence to increase the deterring effect on perpetrators. As a short-term measure, administrative fines for violations of barring orders should at least be swiftly imposed by the police
- Data collection of police should be improved and all interventions should be recorded (see Article 11, section on administrative data).

Article 53 - Restraining or Protection Orders

Background

In Austria, restraining or protection orders can be issued by civil courts, as well as by criminal courts.

Civil court orders: There are three kinds of protection orders in civil law:

- 1) The order to leave the house of the victim and not to return;¹⁰²
- 2) The order not to frequent certain places or not to contact the victim;¹⁰³
- 3) The order not to harass and stalk a person.¹⁰⁴

The Civil law protection order procedure is legally an interim injunction.

¹⁰² § 382 b of the so-called „Exekutionsordnung“ (EO)

¹⁰³ § 382 e EO

¹⁰⁴ § 382 g EO

Criminal court orders: Criminal protective measures can be applied in the context of suspended sentences or early release from prison sentences,¹⁰⁵ as a condition for pre-trial detention,¹⁰⁶ or within the framework of “Diversion” (out-of-court settlement of criminal cases).¹⁰⁷

Challenges:

On Austria, civil court orders are far more common than criminal court orders. For an effective system of comprehensive measures to prevent violence against women and domestic violence, it urgently required that more criminal protection orders are issued, especially in cases of repeat and severe violence. Enforcement measures are “softer” in civil court procedures, and the measure is not adequate in cases of severe violence. For example, if a perpetrator has threatened to kill his wife and the children, the possibility of pre-trial detention, with the order of the criminal court not to approach the victim (and in combination with probation services, for instance) would be the far more appropriate answer to the severe level of violence. In case of the violation of a criminal court order, for instance in the context of pre-trial detention, the consequence or sanction is that the perpetrator can be immediately detained. In case of the violation of a civil court order, the perpetrator will only be fined.

Problems of enforcement:

Civil court orders: In 2014, the enforcement was improved and the violation of a civil court order became an administrative offence punishable with a fine. This is an important improvement; before, the victim had to apply for enforcement in a lengthy civil court procedure. Nonetheless, problems in enforcement remain, and protection orders can easily become a toothless instrument, especially because the administrative procedure often takes too long, and there is no immediate reaction to the violation of a protection order. Cases of violence protection need to be prioritized and fast-track procedures need to be put in place.

Criminal court orders: The effectivity of criminal law protection orders in protecting victims also lies in the swift reaction to violations; the competent authorities need to take immediate action and, for instance, revoke the release from detention.

Another problem is that the courts do not always deal with civil protection order applications swiftly. Especially if there was no police intervention before, it takes several weeks of even months to obtain an order. This is problematic and can be dangerous, especially if the victim lives in the same house with the perpetrator. Women who were fleeing to a women’s shelter should also have the right to return back home quickly.

Another gap in the protection of victims is that the police EBO is not extended to four weeks if the victim is experiencing stalking. This gap in protection for a certain group of victims is not justifiable and needs to be closed.

Recommendations

- Clear and legally binding ministerial decrees need to clarify that in cases of repeat and severe violence, effective criminal law protection orders are issued, and that it is not left up to the initiative of the victim to protect herself and to enforce protection.
- EBOs should also be extended to four weeks when there is a civil court protection order to prevent stalking (§ 382g EO), to avoid a gap in the protection of victims.
- Swift and effective enforcement measures are necessary in cases of violations of protection orders.
- Civil court protection orders should be issued fast, within two weeks, even without a previous police intervention.
- Psychological violence: As mentioned in the section on children and their protection from violence, the requirement that in cases of psychological violence the mental health of the victim has to be considerably infringed, seems to be too high a threshold; victims should not have to endure violence until they become ill, especially not children. Witnessing violence should be recognized as psychological violence, in the case of children.

¹⁰⁵ § 51 Strafgesetzbuch StGB

¹⁰⁶ § 173. Abs 5 Strafprozessordnung (StPO).

¹⁰⁷ § 203 Abs 2 Strafprozessordnung (StPO).

Article 54 - Investigation and Evidence

Information on this Article can be provided upon request

Article 55 - *Ex Parte* and *ex Officio* Proceedings

Background

The requirements of Article 55 para 2 (assistance and/or support of victims during investigations and judicial proceedings) are implemented through the system of Court Assistance (Prozessbegleitung) in Austria. §66 para 2 of the Code of Criminal Procedure provides that all victims of violence, serious threats and sexual offences are entitled to free psycho-social and legal support in criminal proceedings and free psycho-social support in civil law proceedings (if these are linked to criminal proceedings).

Challenges

Children who have been victimized by witnessing violence committed against close family members are not entitled to Court Assistance, as they are not seen as direct victims of crimes (see also section “Special Focus on Children - Provision of Counselling for Girls/Children Witnessing of Violence”).

Further, victims of violence are entitled to legal assistance only in criminal proceedings, while Court Assistance is limited to psycho-social support in civil law proceedings. Victims thus only have a chance to be legally represented free of charge in civil law proceedings if their application for legal aid is granted (see section on Article 57). If the perpetrator is represented by a lawyer, this can lead to unequal situations in proceedings such as divorces or proceedings concerning the custody for children. This “inferior” position of the victim and the implied power dynamics in court can be extremely stressful for victims and constitute an additional burden and a re-victimization of persons who have already been victimized by the violence of the perpetrator.

Recommendations

- Court Assistance should also be available to children witnessing violence against close family members in order to ensure the provision of counselling services and legal representation to them
- Victims of violence should be entitled to the full range of Court Assistance (psycho-social support *and* legal assistance) also in civil law proceedings.

Article 56 - Measures of Protection

Background and Challenges

Regarding Article 56 para 1 lit a and g, an important practical issue arises with Austrian courts, as the majority does not provide the victim summoned as witnesses with separate waiting areas in the premises of the court, which leads to victims not being able to avoid contact with the perpetrator when having to wait in front of the room in which the hearing takes place.

Another problem related to Article 56 para 1 lit i is that victims are often confronted with the perpetrator in civil law proceedings. Although they would theoretically have the right to apply for the perpetrator to not be present in the courtroom when they testify¹⁰⁸ (just as they are in criminal proceedings), victims are usually not aware of this provision due to the fact that they are often not legally represented in court (see sections on Article 55 and 57).

- Court premises should provide for at least one assigned waiting area for victims summoned to testify in court in order to ensure that contact with the perpetrator can be avoided and to protect them from intimidation, retaliation and repeat victimization.
- Victims should be alerted by judges to the fact that they can apply for the perpetrator not to be present in the courtroom when they testify
- Courts should be technically equipped to carry out hearings of witnesses without the parties having to be present in the same room (through the use of, e.g. video cameras)

¹⁰⁸ See §289 a para 2 Code of Civil Procedure

Article 57 - Legal Aid

Background

For the right to Court Assistance (including the right to legal representation), please see section on Article 55. In cases that are not covered by the right to Court Assistance (e.g. legal assistance in civil law proceedings), legal aid (in the form of representation by a lawyer free of charge) is available to persons demonstrating a financial need, if certain conditions are met. Applications must be made to the Court in writing.

Challenges

Persons applying for legal aid do not only have to demonstrate a low level of income, but also present arguments as to why they need legal representation in the relevant civil law proceeding. Courts decide upon applications for legal aid at their discretion and there is no right to legal aid for victims of violence in those proceedings. This leads to situations where victims of violence are not legally represented in civil law proceedings (such as a divorce from the perpetrator or proceedings concerning the custody for children), while the perpetrator (who is often in a better economic position and therefore able to afford a lawyer at his own expenses) is legally represented.

Moreover, the Austrian system of legal aid does not provide for the possibility to choose one's legal representation once an application has been granted. Instead, a random legal lawyer (who often not a specialist on the relevant aspects of law) is assigned to the person applying for legal aid with no chance for the victim to influence or petition the decision.

Recommendations

- Victims of violence should have the right to legal aid in civil proceedings, at least in cases where the perpetrator is legally represented.
- Victims should have the right to choose a specific lawyer as their legal representation or at should at least be assigned a specialist in the relevant legal field.

Article 58 - Statute of Limitation

Information on this article is available upon request.

Background

In Austria, the legal basis to govern regular migration is the Settlement and Residence Act (“Niederlassungs- und Aufenthaltsgesetz (SRA)”)¹⁰⁹. In cases of separation, divorce and domestic violence according to § 27 SRA, family members (spouses) whose residence permit derives from their partners’ residence permit can apply for a permit independent of that of the partner, if they have health insurance and an adequate accommodation according to local standards, possess sufficient German skills, as well as a fixed and regular income¹¹⁰ enabling them to meet their livelihood without having to claim welfare from local authorities, or without claiming differential allowance (§ 11 Section 2 SRA). In cases where these general requirements are not met, divorced partners may apply for an independent residence permit, if a set of specific requirements are met: if the marriage (or registered partnership) was divorced (or dissolved) due to the partners’ predominant fault or if other “extraordinary circumstances” occurred, an independent residence permit can be issued (§ 27 Section 2 SRA). § 27 SRA in Section 3 also defines forced marriage, expulsion of the partner as a consequence of the commission of a serious crime and domestic violence as “extraordinary circumstances”. In cases of domestic violence, this provision applies if a family court has issued a restraining order against the offender pursuant to Articles 382b or 382e of the Enforcement Code. Restraining orders are imposed in particular if the police earlier imposed an eviction and/or barring order. The (divorced, separated) partner/victim has to inform the competent authority within one month after the divorce/dissolution or the extraordinary circumstances occurred. In cases where the competent authority was informed later than within one month, this can lead to the imposition of an administrative penalty, but the legal entitlement to obtain an independent residence permit remains.

According to § 57 Section 1 lit 3 of the Austrian Asylum Act, victims of domestic violence who had applied for a restraining order (or a restraining order could have been issued) and who – in addition – can credibly demonstrate that the issuance of the residence permit is necessary to prevent them from suffering further harm, can apply for a residence permit under this law. The provision shall enable and guarantee victim protection. Other than § 27 Section 3 SRA, this provision has to be applied before determining whether a return-decision has to be made or in cases of unclear or illegal stay. This residence permit can also be initiated *ex officio* by the responsible authority. In addition, the responsible authority has an obligation to obtain a statement from the police. Furthermore, other than in cases according to § 27 Section 3 SRA, in procedures according to § 57 Section 1 lit 3 Asylum Act it is not mandatory that a restraining order was issued - the possibility that a restraining order could have been issued is an alternative requirement. According to the legislative proposal for this law, the fact that no restraining order had been issued has to be explained (e.g. perpetrator is in detention, etc.)¹¹¹. As an additional requirement, the applicant has to credibly demonstrate that the issuance of this residence permit is necessary to prevent further harm.

Challenges

Settlement and Residence Act

As many victims of domestic violence agree to go along with a consensual divorce (e.g. for economic reasons, or avoidance of long-lasting, psychically demanding court procedures), the area of application of § 27 Section 2 SRA for a legal entitlement to receive an independent residence permit seems to be too narrow.

Furthermore, considering the degrading and threatening situation many victims of gender-based violence and domestic violence are facing, the abovementioned deadline of one month appears to be very short and might in such circumstances even put more pressure on victims. As migrant women or women with uncertain residence status can be afraid of calling the police on incidents of violence, the opportunity to receive a

¹⁰⁹ Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich (Niederlassungs- und Aufenthaltsgesetz – NAG, BGBl. I Nr. 100/2005).

¹¹⁰ Regular income according to SRA is equal to the standard income rates pursuant to Section 293 of the General Social Insurance Act. In 2016, these standard income rates amount to € 882,78 for singles, € 1.323,58 for married couples and an additional € 136,21 for each child.

¹¹¹ Legislative proposal (Regierungsvorlage) BGBl. I Nr. 29/2009, No. 1803 XXIV, https://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01803/fname_255385.pdf.

restraining order and therefore the possibility of obtaining an autonomous residence permit according to that Article decreases. Still, women are extorted by their partners on the basis of them being dependent on the men due to residence law, and therefore cannot break up with them. Many women are only informed about their rights at a counseling centre, since there is a lack of information about this provision for victims of domestic violence.

In order to prevent forced marriages, the minimum age of spouses who are brought to Austria in the context of family reunifications is 21 years. As has been shown in practice, forced marriages with persons under the age of 21 can still be contracted, with the entry into Austria being delayed until the legal age is reached. This only perpetuates the dependence of women who have been married against their will and thus is not an effective means to actually prevent them.

Once a residence permit according to § 27 Section 2 SRA has been issued, the practice in extension procedures seems to be inhomogeneous: it is legally unclear whether the “general requirements” according to § 11 Section 2 SRA have to be met or if the competent authorities can exercise discretion if certain requirements cannot be met. Given the difficult situations many women might face (e.g. as single mother, psychological trauma, etc.) particularly the financial eligibility criteria might be too high for many women to actually fulfil them.

Asylum Act

National case law and jurisdiction on the application of § 57 Section 1 lit 3 Asylum Act is inhomogeneous: The Federal Administrative Court ruled on the one hand that investigations by the authorities - e.g. on whether a restraining order could have been issued (was issued) to prevent victims from suffering further harm in the receiving country - have to be conducted carefully, in reference to the outcome of criminal investigations against the perpetrators.¹¹² Other court rulings lay down that it has to be assessed if (further) harm has to be expected in the country of origin.¹¹³ The latter argumentation might be confusing as to how to differentiate this legal reasoning from international protection determination (asylum or *non-refoulement*); it should not undermine the importance to acknowledge gender-based violence – *inter alia* domestic violence – as serious harm or persecution according to Art 1 UN 1951 Refugee Convention. The requirement that the applicant has to credibly demonstrate that the residence is necessary to prevent further harm is a very high threshold considering the nature of various cases of domestic violence (family pressure, fear of further stigmatization by family or community, etc.). The fact that many procedures take very long, until up to several months, increases uncertainty for the victim and creates mistrust in achieving legal protection.

The residence card is issued for 12 months and does not provide free access to the labour market.¹¹⁴ There is a possibility for a residence permit that includes this access in case the applicants are able to fulfill the abovementioned general requirements (health assurance, adequate accommodation according to local standards and sufficient German skills as well as a fixed and regular income enabling them to meet their livelihood without taking welfare aid from local authorities or without claiming differential allowance),¹¹⁵ once extension of the residence permit according to § 57 Section 1 lit. 3 Asylum Act was applied. Considering the circumstances many victims of domestic violence are facing, including fear of further violence, single parenting, change of accommodation, and no free access to the labour market, meeting these requirements is very difficult. Particularly the financial eligibility criteria are too difficult to meet for many women.

Recommendations

- Include the fact that a restraining order due to stalking (the so-called “stalking restraining order”, Article 382g of the Enforcement Code) was issued as further legal possibility for an independent residence permit according to § 27 SRA and according to § 57 Section 1 lit. 3 Asylum Act. Further, include the fact that an emergency barring order according to § 38 a Police Security Act was issued by the police in cases of domestic violence to the extenuating circumstances in § 27 SRA.

¹¹² Federal Administrative Court, 10.06.2016, W189 1434046-2/13E, W189 1434047-2/9E, W189 1434048-2/9E, W189 2007928-2/8E.

¹¹³ Administrative Court, 12.11.2015, Ra 2015/21/0023-0024.

¹¹⁴ Holders of a residence permit according to § 57 Section 1 lit. 3 Asylum Act are only allowed to apply for a specific job and employer at a certain location (restricted work permit “Beschäftigungsbewilligung”).

¹¹⁵ See footnote 2.

- Lower the (financial) eligibility criteria to apply for an independent residence permit in cases of § 27 SRA and § 57 Section 1 lit 3 Asylum Act (once extension was applied), or introduce and implement exception rules to take into account the burdensome exceptional circumstances many victims of gender-based violence are facing, which make it very difficult for them to meet all the general requirements as defined in the Asylum Act and the Settlement and Residence Act
- In order to increase stability for victims and their children, an independent residence permit should also provide free access to the labour market.

Article 60 - Gender-Based Asylum Claims

Background

✓ Gender-sensitive interpretation to Convention Grounds

Among other institutions, UNHCR in recent months expressed concern about sexual violence against and abuse of refugee and migrant women and children on the move across Europe, and called on authorities to take steps to ensure their protection.¹¹⁶ According to EU Directive 2013/32/EU (Recast Directive),¹¹⁷ Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision on international protection is taken in each applicant's case. Applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection. Austrian case law shows that gender-based violence in general is acknowledged as persecution or "serious harm" according to Art. 1 UN 1951 Refugee Convention,¹¹⁸ as well as according to Art. 15 EU Qualification Directive.¹¹⁹ In cases where it was not possible to establish the nexus for persecution grounds, it is acknowledged that the principle of *non-refoulement* might be applied.

✓ Gender-sensitive Procedures and Support Services for Asylum Seekers

Among asylum seekers in Europe, a great number of applicants are female. In 2015, 27,71% of applicants for international protection in Austria were female.¹²⁰ These are women who have been forced to flee from a variety of gender-based violence, such as rape or other forms of sexual violence, or treatment such as torture and other human rights abuses. Women and those fleeing gender-related persecution are entitled to access a fair and dignified asylum process regardless of the State in which they claim asylum. Many victims are heavily traumatized, which affects the coherence of their statements and their ability to share information with third parties. The situation can be improved by providing access to female interviewers during asylum procedures, and where it cannot be guaranteed to have female interviewers present at all times, victims should at least be asked for their preference and be given the choice to wait for a woman if they prefer that. Another problematic issue is that women may not wish to disclose traumatic details of their plight in front of their children, so appropriate childcare during interviews is an issue.

In Europe, the Dublin III Regulation (604/2013) provides the legal basis for establishing the criteria and mechanism for determining the Member State responsible for examining an asylum application lodged in one

¹¹⁶ UN High Commissioner for Refugees, *UNHCR concerned at reports of sexual violence against refugee women and children*, 25.10.2015, available online at: <http://www.unhcr.org/news/latest/2015/10/562a3bb16/unhcr-concerned-reports-sexual-violence-against-refugee-women-children.html>; see also: European Parliament, Committee on Women's Rights and Gender Equality, Report on the situation of women refugees and asylum seekers in the EU (2015/2325(INI)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0024+0+DOC+XML+V0//EN>.

¹¹⁷ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

¹¹⁸ See, for instance: Administrative Court, 13.11.2014, Ra 2014/18/0011 (legal reasoning on the acknowledgement of gender-based violence as persecution according to UN 1951 Refugee Convention; domestic violence, Turkey: Administrative Court (Verwaltungsgerichtshof), 24.03.2011, 2008/23/0176; forced marriage, Iraq: Administrative Court, 15.12.2015, Ra 2014/18/0118, Independent Asylum Senate: 09.05.2007, 250.030/3/9E; harmful traditional practices, westernized women, Afghanistan: Federal Administrative Court, 11.06.2014 W178 1425310-1/13E, W178 1425311-1/11E, W178 1425312-1/12E, W178 1425313-1/8E; Administrative Court 06.07.2011, 2008/19/0994, et al.

¹¹⁹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

¹²⁰ Austrian Ministry of the Interior, *Asylstatistik 2015 (asylum statistics)*, http://www.bmi.gv.at/cms/BMI_Asywesen/statistik/files/Asyl_Jahresstatistik_2015.pdf

of the EU Member States by a third country national or a stateless person. This mechanism is known as the Dublin procedure. The Dublin III Regulation applies to 32 countries, which include the EU Member States, Iceland, Norway, Liechtenstein and Switzerland. Austria has not passed any national legislation to incorporate the Dublin III Regulation, as it is directly applicable, but refers to it in § 5 Asylum Act. This provision states that the authorities issue an inadmissibility decision when Austria is not responsible for conducting the asylum procedure based on the Dublin III Regulation.

✓ Obligation to Conduct Gender-sensitive Interviews and Hearings

According to Art. 5 Dublin III Regulation, personal interviews have to ensure appropriate confidentiality and have to be conducted by a qualified person.

✓ Family Procedures

According to § 34 Asylum Act, asylum procedures of family members (married partners, minors, children) are to be handled as “family procedure”: asylum or subsidiary protection is to be derived from the person who is to be granted international protection on his or her family members.¹²¹ Nevertheless, the BFA and the Federal Administrative Court are obliged to conduct investigations whether or not family members have their “own” flight reasons, for example due to fear of gender-related harm in case of return, which is independent of the claim of the spouse or father.¹²²

✓ “Sur-place”-Refugees

The UN 1951 Refugee Convention does not distinguish between persons who flee their country in order to avoid the prospect of being persecuted and those who – while already abroad – find that they cannot safely return, e.g. due to a change of circumstances.¹²³ Harm suffered or the steps taken by the victims to overcome violence in the receiving country might constitute real risks of persecution or serious harm in case of return.¹²⁴ In case applicants are victims of gender-based violence and decided to take steps to overcome the violence (file for divorce, application of restraining order, refusal of the family claim to “convey” the children to the husbands’ family upon return, etc.) in the receiving country, these steps might be perceived as violations of local traditions or laws and/or undermine culturally or religiously influenced gender stereotypes in the country of origin. Therefore, serious harm might be reasonable in case of return (honor killings, forced child abduction, serious violence, harmful traditional practices, social isolation, etc.).¹²⁵ Moreover, it is necessary to be aware of the political and religious dimension of such activities which might be perceived as violations of traditional values and norms in countries of origin and to recognize and understand how gender can have an impact on the reasons behind the type of persecution or harm suffered¹²⁶. Therefore it is important to increase awareness about the impact of “sur-place”-activities on international protection needs among different actors and institutions involved to protect women and children from gender-based violence in the receiving countries (women’s shelters, criminal courts, family courts, police, etc.) once such “sur-place”-activities have been realized.¹²⁷ It is thus important to improve knowledge and training about legal provisions on divorce, separation, guardianship, etc. as well as on harmful traditional practices in the countries of origin on the one hand and on conflict of law rules in reception countries in family- and divorce law on the other hand. It is further important to increase the awareness about the impact of evidence and/or outcomes of court-procedures (family court, criminal court, etc.) and police-investigations on international protection determination

¹²¹ Administrative Court: 29.06.2015, Ra 2015/18/0031; 28.04.2015, Ra 2014/18/0146 (relevance to assess protection according to Art 8 ECHR).

¹²² Administrative Court: 24.03.2015, Ra 2014/19/0063, 25.11.2009, 2007/01/1153; Constitutional Court, 27.09.2013 U2234/2012 et al, 07.03.2012, U1473/11 et al; Constitutional Court: 27.09.2013, U2234/2012 et al; 20.09.2012, U2109/11 - U227/11; U179/12; U423/12 et al; U741/12; U882/12; U1032/12.

¹²³ Hathaway, J. C.; Foster, M. (2015): The law of refugee status. 2nd edition, Cambridge University Press, starting on page 75.

¹²⁴ See ECHR, 20.07.2017, N. v. Sweden, Application No. 23505/09.

¹²⁵ See *inter alia*: European Asylum Support Office (EASO), *EASO Country of Origin Information Report. Chechnya: Women, Marriage, Divorce and Child Custody*, September 2014, available online at: <http://www.refworld.org/docid/5437b83c4.html>; UK Home Office, *Country Information and Guidance - Pakistan: Women fearing gender-based harm/violence*, February 2016, available online at: <http://www.refworld.org/pdfid/56c420f34.pdf>; UN Assistance Mission Afghanistan, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, December 2010, https://unama.unmissions.org/sites/default/files/harmful_traditional_practices_english.pdf; UN Committee against Torture, CAT/C/IRQ/CO/1, *Concluding observations on the initial report of Iraq*, 07.09.2015, http://www.ecoi.net/file_upload/1930_1449138537_g1520157.pdf.

¹²⁶ ECtHR, 20.07.2010, N. v. Sweden, Application No. 23505/09; Administrative Court, 15.12.2015, Ra 2014/18/0118.

¹²⁷ See Inter Agency Standing Committee (IASC), 2015, *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action Reducing risk, promoting resilience and aiding recovery*, <http://gbvguidelines.org/wp-content/uploads/2016/01/GBV-Guidelines-Key-Questions-Answered-Nov15.pdf>; in this report the importance of cross-sectoral coordination is highlighted in each section and guidance is provided for sector actors regarding cross-sectoral linkages. It is also recommended that sector actors review the content of all thematic area sections, not just those that apply to their area of operation.

procedures. Hence, legal expertise of decision-makers and legal advisors, *inter alia* about different standards of proof (e.g. “in dubio pro reo principle” in criminal procedures versus “analysis of probabilities” in asylum procedures) as well as on cultural norms and stereotypes is crucial.

✓ Reception Procedures and Support Services for Asylum Seekers, Including Reception of Victims of Gender-based Violence

In Austria, the Federal Government is responsible for organizing reception, as long as investigations on the admissibility of the application of international protection are conducted. Admissibility of the application is determined if no other EU Member State is responsible according to the Dublin III regulation, no safe third country was identified or a subsequent application based on new arguments or evidence was accepted for examination on the merits of the case. Once admissibility is determined, local provinces (Bundesländer) are responsible for reception, which includes accommodation, health assurance, money for food and “pocket money” – the so-called “Grundversorgung”. The duration of the stay in federal reception facilities varies greatly, ranging from a few days to several months.

Challenges

✓ Gender-sensitive interpretation to Convention grounds

In practice, it has proven to be very difficult to effectively and efficiently identify victims of gender-based violence, which is a challenging and complex endeavour. Officers in centres that deal with applications for asylum are often not trained sufficiently on handling cases of gender-based violence. Another problem is that applications that are based on gender-based violence are often rejected either due to a lack of “intensity” of the claimed harm, lack of credibility or the assumption that the country of origin might be able and/or willing to protect the applicant from further harm. In addition, the concept of “internal flight alternative” is often applied incorrectly or without due consideration of the local realities. Austrian High Courts repeatedly remitted cases to the lower court (Federal Administrative Court) or lower authority (Office for Immigration and Asylum, BFA) due to procedural shortcomings or lack of investigation about gender-based violence to come to a new decision.¹²⁸

Furthermore, it must be assumed that there is a large number of unreported cases of gender-based violence due to the lack of information for the victim on her rights or where to report and seek help, fear of the perpetrator, stigma and cultural norms.

✓ Gender-sensitive Procedures and Support Services for Asylum Seekers

In Austria, contrary to Art 5 Section 5 Dublin III Regulation, gender-sensitive safeguards are often not considered. This happens, for instance, because of a lack of information about an applicant’s gender-based flight reasons, which are independent of flight reasons of the partner or father or another male relative, or when the interpreter is male and the female victim is afraid of sharing information with them. Furthermore, even though an appointed legal adviser must be present at the interview to provide the asylum seeker with an opportunity to be heard, legal advisers are often informed only in a very short time-frame before the interview is conducted, which means that they lack time to adequately study the file or to provide legal counselling before the interview takes place.

✓ Obligation to Conduct Gender-sensitive Interviews and Hearings

There are reported cases of women who became victims of gender-based violence, for example sexual exploitation or domestic violence, in other EU member states. However, many women still are very reluctant to report these cases to the Austrian police or Asylum Authorities. When asked, women refer to their fear of what impact this could have on the asylum claim and on the perpetrator or fear reprisals; especially in cases of domestic violence, sexual exploitation or trafficking in human beings. Early identification of victims of gender-based violence in the reception country or in other Member States as transfer countries is essential to identify special reception and/or procedural needs. Cases have been reported where the claim of the applicant that she was a victim of trafficking in human beings in an other EU Member State was ignored or was not considered with due diligence.

¹²⁸ See, for instance, Administrative Court, 15.12.2015, Ra 2014/18/0118, Administrative Court, 24.03.2011, 2008/23/0176, Constitutional Court, 20.09.2012, U179/12, Constitutional Court, 20.09.2012, U2109/11 - U227/11.

According to § 20 Asylum Act, applicants who claim to be victim of violations against sexual self-determination have to be questioned by a person of the same gender. However, the Federal Administrative Court (Bundesverwaltungsgericht), as well as the Higher Administrative Court (Verwaltungsgerichtshof) and the Constitutional Court (Verfassungsgerichtshof) have repeatedly ordered remittal due to violations of § 20 Asylum Act: The BFA and the Administrative Court have repeatedly ignored the applicant's right to have a hearing or interview with a case officer or judge, and an interpreter, of the same gender in cases of claimed violations of the right to sexual self-determination.¹²⁹ Also, Art. 15 EU Recast Directive is inadequately transposed, as applicants do not have the right to be interviewed by an adjudicator and interviewer of the same sex even where this would be feasible and the request is based on reasonable grounds.¹³⁰

✓ Inadequate (or lacking) Investigations and Reasoning about Claimed Gender-based Violence

Austrian High Courts have been remitting numerous cases of both adult and minor applicants to the lower Court or the first instance authority due to inadequate or a lack of investigations and reasoning about claimed gender-based violence.¹³¹ The legal assessment of asylum claims based on gender-based violence is complex: as gender-based persecution often originates from non-state actors (family members, community members, other persons with power over the victim, etc.) assessing the willingness and/or ability of the country of origin to protect the claimant is essential, and requires in-depth gender-sensitive knowledge of the local realities in the countries of origin, for instance of harmful practices, access to justice and (informal) conflict resolution, or occurrence of "honor crimes". However, country of origin information and expertise is often insufficient in terms of depicting local gender-specific realities.

Furthermore, evidence assessment might be challenging, as claimants are often unable to provide the decision makers with "hard facts". Hence, assessing the credibility of the claim becomes even more important, considering that many victims of gender-based violence might be traumatized, feel shame, or fear stigmatization or reprisals.¹³² Contrary to UNHCR's position that there shouldn't be a requirement to prove substantiation of the claim conclusively and beyond doubt¹³³, case-law shows that applicants who claimed that they were victims of gender-based violence often have to meet a particularly high threshold to prove the reasonableness of the claim and the plausibility of risks in case of a return to the country of origin. As soon as the Federal Administrative Court is responsible for the complaint-procedure, once an appeal has been filed, the principle of interdiction of novation has to be applied. The application of this principle constitutes a very high threshold and it often has the consequence that at this state of proceedings, (newly) claimed persecution (based on gender-based violence) is rejected as not credible and/or deemed to be raised at first chance by a refugee – ignoring the terrifying, intimidating situation many victims of gender-based violence are facing.

✓ Family Procedures

In practice, investigations of the relevant authorities often strongly focus on the claim of the male spouse, relative or father: in the course of the first interrogation by the police upon arrival in Austria, often the male relative is interrogated first, and his wife and children are only asked briefly whether or not they have their "own" flight reasons. This question, if asked at all, is frequently denied, *inter alia* due to lack of awareness of

¹²⁹ Constitutional Court, 11.12.2013, U1914/2012 et al; 25.11.2013, U1121/2012 et al; 25.11.2013, U1749/2012 et al; 27.09.2012, U688/12 et al; 27.09.2012, U1606/11, U343/12, U399/12 et al, U999/12, U1515/12; 18.09.2015, E1003/2014; 06.06.2014, U1820/2013; 16.09.2013, U852/2013; 12.03.2013 U1674/12. Federal Administrative Court: 17.11.2015, W215 1434016-1/17E; 28.08.2015, W215 1418335-1/18E; 21.04.2015, W215 1413672-1/20E, W215 1422928-1/11E, W215 1434054-1/10E; 06.10.2015, W124 1433138-1/51E.

¹³⁰ Constitutional Court, 11.12.2013, U1914/2012 et al; 25.11.2013, U1121/2012 et al; 25.11.2013, U1749/2012 et al; 27.09.2012, U688/12 et al; 27.09.2012, U1606/11, U343/12, U399/12 et al, U999/12, U1515/12; 18.09.2015, E1003/2014; 06.06.2014, U1820/2013; 16.09.2013, U852/2013; 12.03.2013 U1674/12. Federal Administrative Court: 17.11.2015, W215 1434016-1/17E; 28.08.2015, W215 1418335-1/18E; 21.04.2015, W215 1413672-1/20E, W215 1422928-1/11E, W215 1434054-1/10E; 06.10.2015, W124 1433138-1/51E.

¹³¹ Constitutional Court, 12.06.2015, U1099/2013 et al; 18.09.2015, E1003/2014.

¹³² Constitutional Court, 19.09.2014, U1327/2012 et al (considering traumatization while being interviewed, Chechnya); see also: UN High Commissioner for Refugees (UNHCR), *Beyond Proof, Credibility Assessment in EU Asylum Systems: Summary*, May 2013, available online at: <http://www.refworld.org/docid/51a704244.html> and Hungarian Helsinki Committee, *Credibility Assessment in Asylum Procedures - A Multidisciplinary Training Manual*, 2013, Volume 1, <http://www.refworld.org/docid/5253bd9a4.html>

¹³³ UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV; <http://www.refworld.org/docid/4f33c8d92.html>: according to para 196 of the UNHCR Handbook, the possibility of a shift of the burden of proof to the state is emphasized: "if the applicant's account appears credible, he [or she] should, unless there are good reasons to the contrary, be given the benefit of the doubt." See also: UN High Commissioner for Refugees (UNHCR), *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, <http://www.refworld.org/docid/3ae6b3338.html>

gender- or child-specific flight reasons or a lack of awareness of the relevance of gender-based violence on international protection determination procedures. In many cases, a focus on the spouse or father can be observed throughout further stages of the procedure.¹³⁴

Omitted investigations on “own”, individual (gender-based) flight reasons make women and children more vulnerable to withdrawal and/or denial of international protection: If asylum or subsidiary protection is to be withdrawn from the male family member who was originally granted international protection, withdrawal procedures have to be initiated for other family members as well, if their residence status is solely deriving from the male relative. In cases of family reunification – due to newly implemented longer deadlines for subsidiary protection holders¹³⁵ which have to be met before family reunification can be applied – as well as due to narrow legal definitions of “family members”¹³⁶ – meanwhile adult girls can often not be considered for family reunification, and young, unmarried women who remain behind without family protection are even vulnerable. Also, wives and under-age children can be left behind for many more years in (post-)conflict-zones where women are highly vulnerable to gender-based violence, e.g. sexual exploitation or forced marriage.¹³⁷

✓ “Sur-place” Refugees

In general, Austrian Asylum Authorities and Courts acknowledge gender-based violence as persecution or serious harm according to Art. 1 UN 1951 Refugee Convention. However, as shown above, the application of procedural safeguards relevant for gender related asylum claims has to be improved. As a consequence, inadequate investigations and reasoning lead to inappropriately long procedures¹³⁸ and thus uncertainty, which not only strongly impacts applicants’ social wellbeing,¹³⁹ but also has severe impact on other, related legal claims.¹⁴⁰

✓ Reception Procedures and Support Services for Asylum Seekers

Especially asylum-seekers with special, including medical, needs, and unaccompanied minors undergoing age assessments, tend to remain in federal reception facilities for six months or longer, which is problematic because federal facilities are not designed for longer term accommodation. In addition, due to the inhomogeneous practice of family courts to determine and appoint legal guardianship for unaccompanied minor asylum seekers, these persons are often lacking sufficient protection: There are cases that alleged family members who arrived in Austria after the minors had arrived were immediately appointed as legal guardians, without court hearings, without an assessment of the best interest of the child, and so forth. In other cases, family courts were reluctant to appoint legal guardians at all, which put the minors in instable (accommodation) situations. Insufficient or no assessments of the best interest of the child can increase the risks of gender-based violence through sexual exploitation, child marriage, and other issues. Persons who entered the country illegally, and who apply for asylum can be detained up to 48 hours to ensure that the police can question them about their flight route and ask basic questions about their flight reasons. There are very few cases of arrested women and minor girls being held in detention together with men. Those women and girls are particularly at risk of gender-based violence.

¹³⁴ Constitutional Court, 06.03.2014, U544/2012 et al: The Constitutional Court urged to comply with the obligation to conduct individual investigations and reasoning for every family member (here: wife and children).

¹³⁵ According to § 35 Section 4 and § 60 Asylum Act family members of beneficiaries of subsidiary protection can apply for reunification 3 years after protection was granted to the reference person. The reference person has to fulfill income-related conditions: health assurance, an adequate accommodation according to local standards as well as a fixed and regular income enabling him/her to meet his/her livelihood without taking welfare aid from local authorities or without claiming differential allowance (see FN 2). In cases where the reference person is a beneficiary of asylum, income requirements have to be met if family reunification was applied later than 3 month after asylum was granted. Due to lack of access to embassies, lack of needed documents, movement restrictions for women, security incidents, etc. this deadline cannot be met in many cases.

¹³⁶ According to § 2 Section 2 lit 22 Asylum Act family members are defined as either minor children, parents or spouses who have been living as married partners in their country of origin. This narrow definition of spouses has the consequence that couples who married in another country but the country of origin (e.g. in a refugee camp in a neighboring country) don’t meet the legal definition of a family member. The same applies to 18-year-old daughters and sons (who might still be living in war zones or instable areas).

¹³⁷ See UN Security Council, 20.04.2016, S/2016/361, *Report of the Secretary-General on conflict-related sexual violence*, http://www.ecoi.net/file_upload/1226_1464078986_n1611178.pdf.

¹³⁸ Austrian Ombudsman Board repeatedly determined inappropriately long duration of asylum procedures, see: Austrian Ombudsman Board (Volksanwaltschaft), *Misstandsfeststellungen und Veranlassungen der Volksanwaltschaft 2015*, http://volksanwaltschaft.gv.at/downloads/evrqv/misstandsfeststellungen_der_volksanwaltschaft_-_bundesverwaltung-1.pdf.

¹³⁹ See UNHCR et al, December 2015, *Mental Health and Psychosocial Support for Refugees, Asylum Seekers and Migrants on the Move in Europe – a multi-agency guidance note*, <https://data.unhcr.org/mediterranean/download.php?id=280>.

¹⁴⁰ Inappropriately long asylum procedures can make family reunification impossible: if minor applicants turn 18 while the asylum-procedure is still pending, family reunification is not possible anymore. The same might happen to women who might not be able to apply for family reunification, if – as a consequence of inappropriately long asylum procedures - their children might turn 18 in the meantime.

✓ Reception of Victims of Gender-based Violence

According to Art. 22 EU Reception Conditions Directive (2013/33/EU)¹⁴¹, Member States are obliged to assess special protection needs of vulnerable persons within reasonable time. According to Art. 21 EU Reception Conditions Directive, inter alia, victims of different forms of gender-based violence (rape, sexual exploitation, human trafficking, and female genital mutilation) are defined as applicants with special reception needs. In 2015, Austria had been strongly criticized for poor reception conditions, lack of qualified interpreters, lack of access to medical treatment and insufficient capacities.¹⁴² In addition, mother tongue-services focusing on vulnerable groups are mostly available in cities, and not in rural areas or smaller communities. In many facilities, other multilingual asylum-seekers are used as interpreters when no multilingual staff members are available. This support is often seen as very problematic by the asylum-seekers themselves, especially when conversations concern private matters, family issues or are in the context of medical examinations. Especially for women it is difficult to address medical questions or female health topics in front of other asylum-seekers. Furthermore, hearing emotional stories from fellow residents is very challenging for asylum-seekers who are not trained to face these psychological difficulties.

Even though the reception situation has improved in the meantime, due to a lack of identification of special reception needs, e.g. of victims of gender based violence, during the admissibility procedure, cases are underreported and identification is difficult, once the case was referred to the local provinces. As many shelters for asylum seekers are lacking good infrastructure for counselling centers or support services, special needs often cannot be identified within reasonable time. In this context, access to and provision of information is crucial. Communication of information seems to be key challenge in some facilities; and information regarding counselling organizations (women's counselling, legal counselling, family tracing) and general information regarding the asylum procedure, the Austrian basic care and health system are not sufficiently addressed.

Staff of shelters for asylum seekers report that in cases of domestic violence, either the police resorts to banishing the offender from the shelter or a court issues a restraining order. In other cases, house bans are initiated so staff has the possibility to argue for perpetrators to stay away from the house, based on an alleged infringement against the rules of the house. This, however, often results in their homelessness and lack of minimum support, which may prevent women from reporting violence.

Overall, due to family or community pressure or lack of information about the laws in Austria victims of domestic violence often still hesitate to ask for help. The risk of "honour" crimes perpetuates the phenomenon of underreporting. Such dynamics increase fear of deportation or loss of residence status, which is a very powerful tool used by perpetrators to prevent victims of violence against women and domestic violence from seeking help from authorities or from separating from the perpetrator. Staff of shelters reports that in many cases – once a ban had been ordered – it is challenging to assess whether or not reunification with the family member(s) should be initiated or not after a certain amount of time. It was further reported that there is a lack of accommodation for women with special needs (shelters for single women, LGBTIQ persons, etc.) who might be in a particular high risk of gender-based violence.

Both at the federal and provincial level, there are very few facilities for single women, female heads of households and SGBV survivors. At the federal level, in Austria's largest federal reception center Traiskirchen, single women and female heads of households are accommodated in a separate building with additional support provided by special care workers and psychologists. One more facility shall be opened in autumn 2016. At the provincial level, there are only four facilities for single women, female heads of households and SGBV survivors. The facilities have a capacity of max. 70 persons each and provide psychosocial and medical support. LGBTIQ-persons are generally not accommodated separately but in mainstream reception facilities. However, some NGOs provide smaller accommodation units for LGBTIQ persons, e.g. the NGO "Tuerkis-Rosa-Lila-Villa"

¹⁴¹ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

¹⁴² Austrian Ombudsman Board (Volksanwaltschaft), *Missstandsfeststellungen und Veranlassungen der Volksanwaltschaft 2015*, http://volksanwaltschaft.gv.at/downloads/evrqv/missstandsfeststellungen_der_volksanwaltschaft_-_bundesverwaltung-1.pdf; European Council on Refugees and Exiles, *Navigating the Maze: Structural Barriers to Accessing Protection in Austria*, December 2015, <http://www.refworld.org/docid/568fd4324.html>. This report, issued following a visit to Austria at the beginning of December 2015, finds severe restrictions on asylum seekers' access to the procedure, stemming from severe delays in even the first stages of registration as well as from the legal formalities attached to registration, which may often not be completed if there is no reception place available for the applicant. Additionally, the use of Dublin procedures, even where there is no prospect of transferring a person to another country, further impedes access to the Austrian asylum process, while people may wait for over a year for a substantive decision by the asylum authority on their claim. This state of legal limbo is coupled with an escalating phenomenon of homelessness or inadequate accommodation, thereby running the risk of making destitution part of the asylum system itself.

cooperates with Diakonie and is in the course of establishing partnerships with other NGOs to provide support on a larger scale. Tuerkis-Rosa-Lila-Villa and LGBTIQ individuals feel that staff members of facilities run by the federal government are not trained on LGBTIQ-related matters or handling respective issues. LGBTIQ asylum-seekers are thus often regularly not identified as persons with special reception needs in the course of the initial assessment. The City of Vienna has commissioned the establishment of a special counselling center for LGBTIQ asylum-seekers.

✓ Reception in Women's Shelters

The percentage of migrant women seeking protection in women's shelters is above average.¹⁴³ It is estimated that only 2% of the inhabitants of women's shelters are asylum seekers.¹⁴⁴ For women with unclear residence status or those illegally staying in Austria who seek protection against domestic violence in women's shelters, it is not guaranteed in every case that they can get basic services ("Grundversorgung"). Moreover, there is a lack of institutions focusing on the specific situation of these women. The majority of women's shelters, intervention centres and violence protection centres, as well as other women's and migrant women's counselling centres indeed offer support in various languages, but an extensive offer in the most required languages could not be implemented so far due to a lack of financial resources.

In principal, Women's Shelters are open to all women – independent of their age, religion, or other background information – but regarding accommodation for female asylum seekers, the local governments in Austria have different regulations. Austria is a federalist state, and the Women's shelters are financed by the local governments. Therefore, different regulations apply. In some of the federal states, asylum seekers can only stay in women's shelters for a few days or weeks (Upper Austria and Carinthia), and afterwards they have to go back to the asylum seekers' facilities. In other federal states, houses are provided for female asylum seekers (Lower Austria, 'Haus der Frau' in Hollabrunn). It is very important that all asylum seekers who are in a dangerous situation with imminent violence have the right to stay in a safety place, and the same offer is granted to any victim irrespective of their background.

Recommendations:

- Ensure that women and children are provided with information on asylum procedures, their rights and the specific services available to women applying for asylum at the earliest stage of the procedure; underline the right of women to lodge a claim for asylum independent of their spouse as key to women's empowerment and the principle of *non-refoulement*.
- Ensure that reception, transit and detention conditions are safe, humane and adequate, with separate accommodation and sanitation facilities for women and families, as well as for lesbian, gay, bisexual or transgender (LGBT) persons, including the possibility of separate housing for unaccompanied girls and single women.
- Ensure that gender-related procedural safeguards are applied (case-officer of the same gender in cases of claimed or imminent violation of the right to sexual self-determination, in-depth investigations on gender-specific flight reasons, individual assessment of every family member's claim in "family procedures", etc.). Ensure that special reception needs throughout the duration of the asylum procedure (female officers/interpreters; appropriate child care during interviews) as well as special support provided to victims of gender-based violence are met, including an appropriate monitoring of their situation, access to professional legal counseling in all stages of the procedure, appropriate medical advice and counseling, including in cases resulting in pregnancy, and provision of necessary physical and mental health care.
- Deliver comprehensive and mandatory training for interviewers and interpreters on sexual violence, trauma and memory as well as on human rights and gender-related issues, including rights of LGBT persons, inter-cultural communication, psychology, and ethics.
- Ensure that personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as legal, medical, cultural, religious, child-related or gender issues. Information should be provided to arriving groups on the fact that violence against women, including that domestic violence, is considered to be a crime in Austria/Europe. Provide sufficient

¹⁴³ On average, more than 50% of inhabitants of women's shelters are migrants.

¹⁴⁴ Estimate based on the experience of women's shelters in recent years. At present, no exact numbers of female asylum seekers in this context are available.

resources to give counseling for men about the legal situation in Austria, in order to prevent violence and actively engage them as “positive” role models.

- It is very important that women who have become victims of (sexual) violence are able to report the crime to the reception staff and the police. Complaints and reports about sexually oriented comments, assaults and rape should be taken seriously by staff and the victim must receive support from the reception staff and access to legal counseling. This will increase the likelihood that other women also report these crimes.
- The complexity of gender-related claims should be properly taken into account in procedures based on the concept of safe third country, the concept of safe country of origin or the notion of subsequent applications.
- Consider revising the legal definition of “family member” according to § 2 Section 1 lit. 22 Asylum Act in that sense that the requirement that married partners must have been living as married partners in their country of origin should not be mandatory (see: ECHR, 06.02.2013 Hode and Abdi v. the United Kingdom, Application No. 22341/09).
- Consider revising the legal requirements for family reunification according to § 35 Asylum Act as particularly the long deadlines after subsidiary protection was granted and the high income requirement might put women and minors in high risk of gender-based violence - taking into account the volatile and dangerous situation family members often face in their home-countries as well as the fundamental right of family unit according to Art 8 ECHR. Furthermore, include same-sex marriages as a basis for family reunification, even if the same-sex marriage is not recognized in the country of origin.
- Revise country of origin information to ensure that gender-related local realities are depicted sufficiently (women’s access to (in-) formal justice, harmful traditional practices, “honor”-related crimes, etc.) including child-specific information.
- Ensure that a gender-sensitive interpretation is given to each of the UN 1951 Refugee Convention grounds - extend the interpretation to individuals who are gay, lesbian, bisexual or transgender, who may also face particular forms of gender-related persecution and violence.
- Ensure sufficient resources for supportive child-care and counseling considering the experiences children might have made as victims of gender-based violence or as dependents of victims of gender-based violence and the consequences (psychological trauma, fear, emotional retreat, etc.) being guided by the principle of the best interest of the child.
- Increase the awareness of the impact of “sur-place” activities on international protection needs among different actors and institutions involved to protect women and children from gender-based violence in the receiving countries (women’s shelters, criminal courts, family courts, police, etc.) once such “sur-place”-activities have been realized; establish networks and trainings.
- Consider the political and religious dimension of “sur-place” activities which might be perceived as violations of traditional values and norms in countries of origin and to recognize and understand how gender can have an impact on the reasons behind the type of persecution or harm suffered; increase the awareness about the impact of evidence and/or outcomes of court-procedures (family court, criminal court, etc.) and police-investigations on international protection determination procedures; ensure legal expertise of decision-makers and legal advisors.
- Ensure access for female asylum seekers to all women’s shelters across Austria. Ensure that there are common regulations on this issue in each federal state.

Chapter VIII - International Co-operation

Article 62 - General Principles

International Cooperation

Background

Article 62 establishes the obligation for parties to cooperate with each other to the widest extent possible, for the purpose of preventing, combating and prosecuting all forms of violence covered by the scope of the Convention, including protecting and providing assistance to victims, investigations or proceedings concerning the offences established in accordance with the Convention and enforcing relevant civil and criminal judgments issued by the judicial authorities of parties, including protection orders.

The authors of this shadow report have not yet received any information from state authorities on how these obligations are implemented.

However, in the field of protecting and providing assistance to victims, specialist women's support services are cooperating in Europe through the European network WAVE, of which they are members. Among many activities, WAVE runs an Information Centre where victims seeking help in cross-country cases can receive assistance. In this Information Centre, members of institutions seeking information are also helped.

Austria is providing funding to the WAVE network and Information Centre and thus engaging at this level in the promotion of cross-country cooperation. This can be seen as a good practice example for cooperation.

Recommendations

- Cross-country cooperation activities and support to victims should continue to be further funded by the Austrian government.
- Financial support should be increased and further projects of cooperation developed.

Development cooperation

Background

Article 62 paragraph 4 suggests to parties to integrate the prevention and fight against violence against women and domestic violence in assistance programs. Such integration includes entering into bilateral and multilateral agreements with third states to facilitate the protection of victims through consular and other protection and support to their nationals and other victims entitled to such protection.

The support of women's empowerment programs in the context of the Austrian development cooperation, among them programs to combat different forms of violence against women, has suffered fluctuations and has reached alarmingly low levels in recent years (4.26% in 2012 and 2.51% in 2014, compared to 10% in 2013, of the overall aid commitments from the Austrian Development Agency).¹⁴⁵ This low level of support in 2014 has directly affected women's equality organizations, with a decrease of their support from \$7 million US in 2013 to \$0.8 million US in 2014.¹⁴⁶

Recommendations

- We recommend that the Austrian government strengthen and expand good practices and makes use of past experiences in the support of women's rights organizations and networks via Austria's bilateral cooperation.
- In the context of Austrian development cooperation, we recommend to increase direct support for initiatives and institutions that address the manifold forms of violence against women, and promote women's social and economic rights in cooperation countries. The direct support to women's rights organizations should be increased significantly.

¹⁴⁵ Federal Ministry for Europe, Integration and Foreign Affairs (2016): ODA Report 2014, p.54,

http://www.entwicklung.at/fileadmin/user_upload/Dokumente/Publikationen/ODA-Berichte/Englisch/ODA_Report_2014.pdf

¹⁴⁶ OECD (2016): Aid in Support of Gender Equality and Women's Empowerment. Donor Charts, p.4

<http://www.oecd.org/dac/gender-development/Aid-in-support-of-gender-equality-and-womens-empowerment.pdf>

Source Wiener Interventionsstelle gegen Gewalt in der Familie (2016): Tätigkeitsbericht 2015, 70-75.

Österreichweite Statistik 2015 mit Erläuterungen und Reformvorschlägen

Österreichweite Zahlen im Überblick

Im Jahr 2015 ...

... wurden von der Polizei österreichweit **8.261** Betretungsverbote verhängt

... **17.621** Opfer familiärer Gewalt wurden von den Gewaltschutzzentren / Interventionsstellen betreut

... **85,5 %** der unterstützten KlientInnen waren Frauen und Mädchen, **92,4 %** der Gefährder waren männlich

... **2.193** Anträge auf einstweilige Verfügung wurden mit Unterstützung der Gewaltschutzzentren / Interventionsstellen gestellt

12.1 Übersicht polizeiliche Interventionen Gewalt in der Familie 1997–2015

Die österreichweiten Statistiken für das Jahr 2015 beziehen sich auf die von den Gewaltschutzzentren und der Wiener Interventionsstelle erhobenen Daten – Statistik des Bundesverbands der Gewaltschutzzentren und Interventionsstellen Österreichs.

Seit der Einführung der ersten Gewaltschutzgesetze im Jahr 1997 war die Polizei die einzige Institution, die regelmäßig, nämlich jährlich Statistiken zu Einsätzen häuslicher Gewalt herausgab. In den ersten 14 Jahren nach Einführung der polizeilichen Wegweisung im Jahr 1997 wurden grundlegend wichtige Daten erfasst: Die Zahl der polizeilichen Betretungsverbote (BV), die Zahl der Aufhebungen und Übertretungen von BVs und die Zahl sonstiger Einsätze bei Gewalt in der Familie (Streitschlichtungen).

Bedauerlicherweise gibt es seit 2010 Rückschritte in der Datenerfassung der Polizei. So werden nur mehr polizeiliche Betretungsverbote statistisch erfasst, alle anderen Interventionen bei Gewalt in der Familie dagegen nicht mehr. Dies ist problematisch, da keine Aussagen darüber getroffen werden können, ob Polizeieinsätze insgesamt zu- oder abnehmen.

Zudem sind die vom Bundesministerium für Inneres erhobenen Daten aufgrund einer Änderung in der Datenerfassung nicht mehr so zuverlässig wie in den ersten eineinhalb Jahrzehnten. Für die Darstellung der österreichweiten Statistik 2015 werden daher die von den Gewaltschutzzentren und der Wiener Interventionsstelle erhobenen Daten herangezogen. Es ist davon auszugehen, dass diese Zahlen stimmen, da diese aus den übermittelten Meldungen der Polizei generiert werden und damit die einzelnen Aktenvorgänge zählen.

Die Übersicht über 18 Jahre zeigt, dass in dieser Zeit über 100.000 Betretungsverbote in Österreich verhängt wurden. Insgesamt wurden 187.484 Polizeimeldungen bei Gewalt in der Familie verzeichnet. Hier handelt es sich um Betretungsverbote, Strafanzeigen (inklusive Stalkinganzeigen) und Streitschlichtungen.

Tabelle 32: Polizeiliche Interventionen 1997–2015

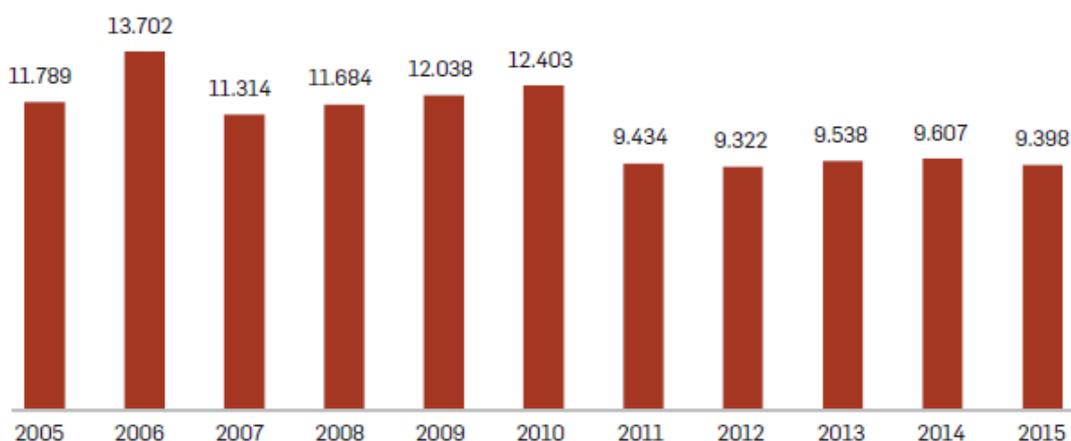
Jahr	Meldungen an GSZ/IST über Polizeiliche Interventionen	Davon BVs	Weitere Interventionen Gewalt in der Familie (Streitschlichtungen)	Übertretungen Von BVs	Übertretungen BV in %
1997	1.449	1.449	k. D.	138	k. D.
1998	2.673	2.673	k. D.	252	k. D.
1999	8.309	3.076	5.233	301	9,8%
2000	10.992	3.354	7.638	430	12,8%
2001	10.800	3.283	7.517	508	15,5%
2002	11.335	3.944	7.391	475	12,0%
2003	10.738	4.180	6.558	633	15,1%
2004	10.959	4.764	6.195	641	13,5%
2005	11.789	5.618	6.171	668	11,9%
2006	13.702	7.235	6.467	629	8,7%
2007	11.314	6.347	4.967	586	9,2%
2008	11.684	6.566	5.118	615	9,4%
2009	12.038	6.731	5.307	655	9,7%
2010	12.403	6.759	5.644	770	11,0%
2011	9.434	7.993	k. D.	k. D.	k. D.
2012	9.322	8.063	k. D.	k. D.	k. D.
2013	9.538	8.307	k. D.	k. D.	k. D.
2014	9.607	8.466	k. D.	k. D.	k. D.
2015	9.398	8.261	k. D.	k. D.	k. D.
Gesamt	187.484	107.069	-	-	-

Die Tabelle und die unten stehende Grafik zeigen den „Einbruch“ in der Datenerfassung seit dem Jahr 2011: weitere Einsätze bei Gewalt in der Familie (Streitschlichtungen) werden nicht mehr erfasst. Es ist nicht anzunehmen, dass es diese Interventionen nicht mehr gibt, doch werden sie offensichtlich nicht in Form einer Meldung dokumentiert und statistisch gesammelt, sondern nur mehr in „Tagesberichten“ festgehalten. Auch werden keine Daten mehr über die Übertretung der Betretungsverbote erfasst.

Diese Entwicklung ist bedauerlich, zumal Österreich eines der beiden ersten Länder ist, deren Umsetzung vom GREVIO-Komitee überwacht wird (siehe Kap. 09). Im Fragebogen¹⁹, der an die österreichische Bundesregierung übermittelt wurde, wird u. a. nach der jährlichen Zahl polizeilicher Interventionen bei Gewalt an Frauen und Gewalt in der Familie gefragt.

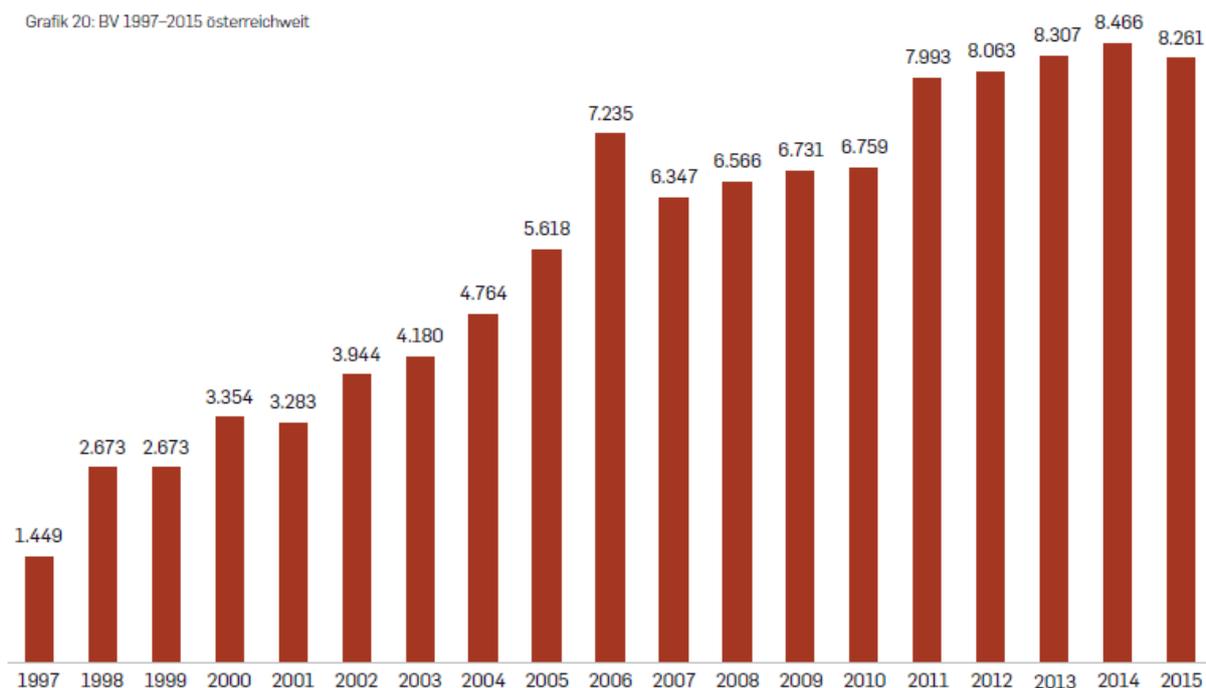
(19. Siehe Anhang und <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805c95b0>)

Grafik 19: Erfasste Polizeimeldungen Gewalt in der Familie 2005–2015



12.2 Polizeiliche Betretungsverbote in Österreich 1997–2015

Grafik 20: BV 1997–2015 österreichweit



Die Abbildung zeigt nochmals die Entwicklung der Betretungsverbote in den vergangenen 18 Jahren. Diese sind von 1.449 im Jahr 1997 auf 8.261 angestiegen und haben sich fast versechsfacht.

Die Zahl hat sich in den letzten fünf Jahren auf hohem Niveau „eingependelt“ und ist im letzten Jahr etwas zurückgegangen. Dies kann jedoch nicht als Trend gesehen werden, da es jährlich Schwankungen gibt.

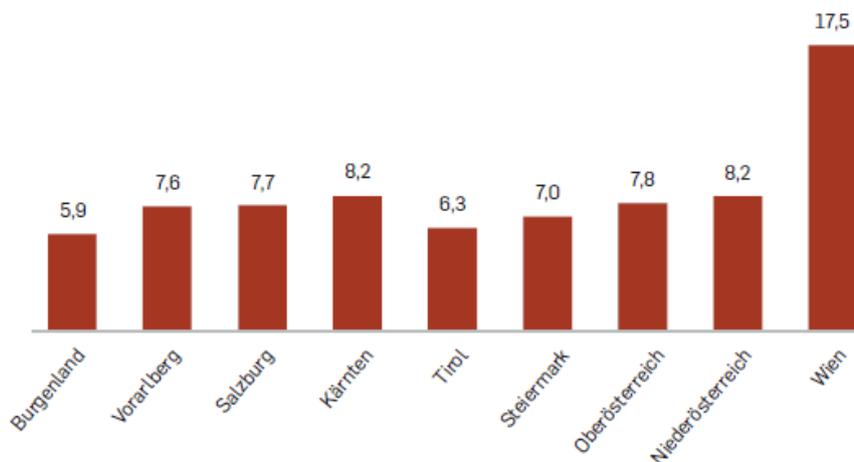
12.3 Betretungsverbote 2015 Österreichweit

Tabelle 33: Betretungsverbote 2015 nach Bundesländern

Bundesländer	EinwohnerInnenzahl ¹⁹	BV	BV pro 10.000 EinwohnerInnen
Burgenland	288.356	171	5,9
Vorarlberg	378.592	288	7,6
Salzburg	538.575	415	7,7
Kärnten	557.641	459	8,2
Tirol	728.826	460	6,3
Steiermark	1.221.570	854	7,0
Oberösterreich	1.437.251	1.128	7,8
Niederösterreich	1.636.778	1.348	8,2
Wien	1.797.337	3.138	17,5
Gesamt	8.584.926	8.261	9,6

Die Tabelle der Verteilung der Betretungsverbote in Österreich zeigt, dass die meisten polizeilichen Betretungsverbote in Wien verhängt werden, und zwar fast 40 Prozent der gesamten BV in ganz Österreich (bei einem Bevölkerungsanteil von ca. 21 Prozent). Durchschnittlich wurden in Österreich im Jahr 2015 9,6 Betretungsverbote pro 10.000 EinwohnerInnen verhängt. Im Jahr 2013 waren es durchschnittlich 9,8 und im Jahr 2014 10,0 gewesen.

Grafik 21: Anzahl Betretungsverbote nach Bundesland im Verhältnis zur EinwohnerInnenzahl



Die Grafik macht noch einmal die Unterschiede zwischen Wien und den Bundesländern deutlich. Die Unterschiede zwischen den Bundesländern sind relativ gering. Sie bewegen sich im Rahmen von 5,9 bis 8,2 Betretungsverboten pro 10.000 EinwohnerInnen.

Diese Unterschiede geben Anlass zur Besorgnis und müssen dringend analysiert werden, denn Opfer sollten überall den gleichen Schutz erhalten.

19. Siehe Statistik AUSTRIA 2015: Bevölkerung zu Jahresbeginn 2002–2016 nach Politischen Bezirken: http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstand_und_veraenderung/bevoelkerung_zu_jahres-_quartalsanfang/080907.html

12.4 Reformvorschläge

Die Entwicklung, dass die polizeiliche Datenerfassung nicht ausgebaut, sondern vielmehr eingeschränkt wurde, ist bedauerlich, zumal Österreich wie dargestellt eines der beiden ersten Länder ist, deren Umsetzung vom GREVIO-Komitee überwacht wird (siehe Kap. 09). Bis 1. September 2016 muss ein umfassender Bericht übermittelt werden (siehe auch Kap. 08). Zur Erstellung des Berichtes wurde vom GREVIO-Komitee ein Fragebogen²⁰ an die Bundesregierung übermittelt.

Im Bereich polizeilicher Interventionen und Schutzmaßnahmen wird nach folgenden Daten gefragt:

- ▶ Zahl aller polizeilichen Interventionen betreffend Gewalt an Frauen im Jahr (einschließlich der Anzeigen und der Interventionen die nicht mit einem BV abgeschlossen werden)
- ▶ die Zahl von polizeilichen Wegweisungen / Betretungsverboten im Jahr
- ▶ die Zahl der Übertretungen solcher Maßnahmen
- ▶ die Zahl von Sanktionen für Übertretungen (siehe Fragebogen S. 17).

Die Wiener Interventionsstelle ersucht die Bundesregierung, die erforderlichen Maßnahmen zu setzen, damit in allen Bereichen, die von der Istanbul-Konvention geforderten Daten erhoben, statistisch erfasst und jährlich publiziert werden.

Wichtig ist es auch zu analysieren, warum die Schutzmaßnahme Betretungsverbot so unterschiedlich angewandt wird und welche Maßnahmen gesetzt werden müssen, damit Opfer überall in gleicher Weise Schutz gewährt wird. Für die Analyse wäre es wie dargestellt wichtig, dass die Zahl aller Polizeiinterventionen erfasst wird, um zu sehen, ob es auch hier große Unterschiede zwischen den Bundesländern und Wien gibt oder ob es eher daran liegt, dass weniger BVs verhängt werden.

Die genaue Erfassung aller polizeilichen Interventionen ist notwendig, nicht zuletzt auch für die Strafverfolgung und die Prävention von Gewalt. Im Bereich der Strafverfolgung verlangt etwa der §107b des Strafgesetzbuchs (Fortgesetzte Gewaltausübung), dass frühere Vorfälle einbezogen werden. Es ist sehr schwierig die entsprechenden Beweise zu erbringen, wenn Polizeieinsätze nicht genau dokumentiert wurden. PolizeibeamtInnen müssen für Erhebungen von Anzeigen und für gerichtliche Anfragen oft mühsam in Tagesberichten nach Einsätzen suchen, was besonders schwierig ist, wenn das genaue Datum des Einsatzes nicht mehr bekannt ist. Wie dargelegt, sollten daher alle Einsätze als Meldung dokumentiert und statistisch erfasst werden, auch wenn z. B. „nur“ eine Gefahrenerforschung durchgeführt und danach kein Betretungsverbot verhängt wird. Die Polizei wird kaum gerufen wenn „nichts passiert ist“. Im Gegenteil: Wie aus der Studie der EU-Grundrechtsagentur hervorgeht, scheuen sich Opfer von Gewalt an Frauen und häuslicher Gewalt häufig, die Polizei zu rufen. Selbst beim schwerwiegendsten Gewaltvorfall, den die Befragten erlebten, wandten sich nur 33 Prozent an die Polizei oder eine andere Einrichtung (vgl. Agentur der Europäischen Union für Grundrechte 2014: 24).

20. Siehe Anhang und <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805c95b0>

Zentral ist auch die Dokumentation und Erfassung so genannter Streitschlichtungen. Wie im Abschnitt 3.1. der Statistik zu Wien bereits dargelegt, zeigt eine österreichische Studie zu Tötungsdelikten, dass es im Vorfeld dieser Delikte häufig schon Betretungsverbote und Streitschlichtungen gab. Die Studie schlussfolgert, dass es für die Prävention schwerer Gewalt wichtig ist, dass Opferschutzeinrichtungen informiert werden (Haller 2012: 61f). Meldungen von Gefahrenerforschungen und Streitschlichtungen sollten immer an die Gewaltschutzzentren/Interventionsstellen überwiesen werden, zumindest dann, wenn es bereits vorher zu Polizeieinsätzen gekommen ist. Neuerliche Notrufe bei der Polizei sind Hinweise auf ein Gefahrenpotential, das im schlimmsten Fall zu schwerer Eskalation führen kann.

Alle Datenerfassungen sollen den Minimalstandards der Istanbul-Konvention entsprechen und zumindest folgende Kriterien erfassen:

- ▶ Geschlecht von Opfer und Täter
- ▶ Alter von Opfer und Täter
- ▶ Beziehungsverhältnis von Täter zum Opfer
- ▶ Art der Gewalt
- ▶ Ort der Gewalt
- ▶ und die Verknüpfung dieser Daten

Neben der Istanbul-Konvention des Europarates beschäftigt sich auch die Europäische Union verstärkt mit dem Thema der Datenerfassung bei Gewalt an Frauen und häuslicher Gewalt. In den Schlussfolgerungen des Rates (Council of the European Union 2014) erfolgte der Aufruf an die Mitgliedstaaten und die Kommission: „[To] improve the collection, the analysis and the dissemination at both national and EU level of comprehensive, comparable, reliable and regularly updated data on violence against women, notably on victims and perpetrators, disaggregated by sex, age and victim-perpetrator relationship, as well as on the number of incidents reported by the victims and recorded by law enforcement authorities, on the number of convictions, and on the punishments handed down to offenders, by ensuring a coherent approach which makes full use of existing and, as appropriate, new EU surveys, and involving all relevant actors, including national and European statistical offices, and making full use of the work of the European Institute for Gender Equality (EIGE) and FRA where appropriate.“

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Strafanzeigen und Erledigung von Verfahren nach §§ 107, 107a, 107b und 201 StGB im Bereich der Staatsanwaltschaft Wien

Die Daten in der nachfolgenden Tabelle stammen aus einer Abfrage des Justizministeriums.²¹ Diese wurden bereits im Tätigkeitsbericht 2014 veröffentlicht. Da uns aber keine neueren Zahlen vorliegen und das Thema Erledigung von Strafverfahren von großem Interesse ist, drucken wir die Daten nochmals ab.

Tabelle 34: Strafanzeigen und Erledigung von Verfahren nach §§ 107, 107a, 107b und 201 StGB im Bereich der Staatsanwaltschaft Wien

§ 107a Beharrliche Verfolgung	2009	%	2010	%	2011	%	2012	%	2013	%
Abbr./Aussch./Sonst. ²²	366	28,4 %	300	23,4 %	279	24,3 %	220	19,1 %	239	23,3 %
Einstellung	608	47,2 %	657	51,3 %	578	50,4 %	637	55,3 %	519	50,6 %
Diversion	51	4,0 %	50	3,9 %	46	4,0 %	61	5,3 %	54	5,2 %
Anklage	150	11,6 %	161	12,6 %	132	11,5 %	133	11,5 %	122	11,9 %
Freispruch	44	3,4 %	40	3,2 %	43	3,7 %	34	3,0 %	35	3,4 %
Verurteilung	70	5,4 %	72	5,6 %	70	6,1 %	67	5,8 %	57	5,6 %
Gesamt	1.289	100 %	1.280	100 %	1.148	100 %	1.152	100 %	1.026	100 %
§ 107b Fortgesetzte Gewaltausübung	2009	%	2010	%	2011	%	2012	%	2013	%
Abbr./Aussch./Sonst.	14	28,6 %	19	6,8 %	49	9,2 %	68	9,4 %	59	9,4 %
Einstellung	26	53,1 %	144	51,2 %	274	51,6 %	405	56,0 %	371	58,9 %
Diversion	0	0,0 %	3	1,1 %	7	1,3 %	17	2,3 %	17	2,7 %
Anklage	6	12,2 %	74	26,3 %	115	21,7 %	140	19,4 %	102	16,2 %
Freispruch	3	6,1 %	16	5,7 %	37	7,0 %	29	4,0 %	29	4,6 %
Verurteilung	0	0,0 %	25	8,9 %	49	9,2 %	64	8,9 %	52	8,2 %
Gesamt	49	100 %	281	100 %	531	100 %	723	100 %	630	100 %
§ 201 Vergewaltigung	2009	%	2010	%	2011	%	2012	%	2013	%
Abbr./Aussch./Sonst.	267	38,3 %	289	37,3 %	256	33,1 %	185	29,2 %	192	29,4 %
Einstellung	282	40,5 %	318	41,0 %	361	46,7 %	325	51,3 %	336	51,5 %
Diversion	0	0,0 %	0	0,0 %	2	0,3 %	4	0,6 %	1	0,2 %
Anklage	79	11,3 %	86	11,1 %	77	9,9 %	63	9,9 %	63	9,7 %
Freispruch	17	2,4 %	29	3,8 %	22	2,8 %	15	2,4 %	13	2,0 %
Verurteilung	52	7,5 %	53	6,8 %	56	7,2 %	42	6,6 %	47	7,2 %
Gesamt	697	100 %	775	100 %	774	100 %	634	100 %	652	100 %
§ 107 Gefährliche Drohung	2009	%	2010	%	2011	%	2012	%	2013	%
Abbr./Aussch./Sonst.	1.399	24,0 %	1.283	21,1 %	1.118	18,5 %	977	15,1 %	1.053	16,7 %
Einstellung	2.423	41,6 %	2.824	46,4 %	2.961	49,1 %	3.522	54,5 %	3.370	53,7 %
Diversion	141	2,4 %	189	3,1 %	192	3,2 %	207	3,2 %	174	2,8 %
Anklage	998	17,1 %	972	15,9 %	945	15,7 %	1.011	15,7 %	936	14,9 %
Freispruch	306	5,2 %	254	4,2 %	261	4,3 %	238	3,7 %	223	3,6 %
Verurteilung	565	9,7 %	565	9,3 %	553	9,2 %	504	7,8 %	520	8,3 %
Gesamt	5.832	100 %	6.087	100 %	6.030	100 %	6.459	100 %	6.276	100 %

21. Die Zahlen stammen aus der Verfahrensautomatik Justiz und betreffen die Staatsanwaltschaft Wien; die Zusammenstellung erfolgte durch die Wiener Interventionsstelle im Mai 2015.

22. Abbruch/Ausscheidung/Sonstiges.

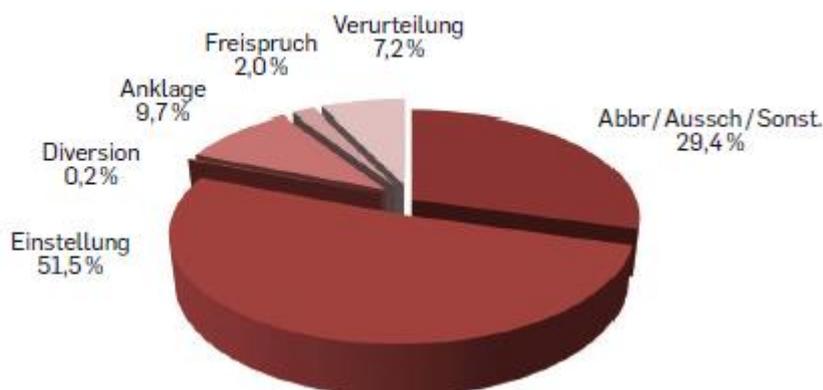
Die Tabelle zeigt Anzeigen und Strafverfahren in den Bereichen Gefährliche Drohung (§ 107), Beharrliche Verfolgung (§107a), Fortgesetzte Gewaltausübung (§ 107b) und Vergewaltigung (§ 201) nach dem Strafgesetzbuch (StGB).

Auffallend und besorgniserregend sind die hohe Zahl der Einstellungen, Abbrüche und Ausscheidungen und die sehr geringe Zahl der Verurteilungen. Die Verurteilungsrate im Jahr 2013 liegt lediglich zwischen 5,6 und 8,3 Prozent! Die Einstellungen hingegen liegen bei 50,6 bis 58,9 Prozent.

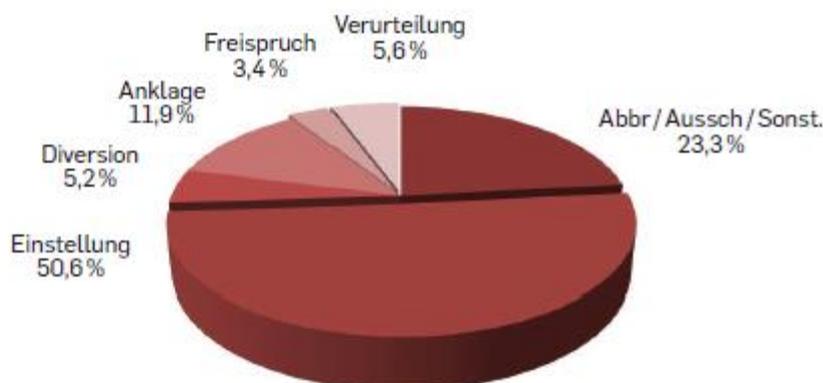
Offen ist, was mit der Zahl der Verfahren die unter der Rubrik Abbrüche/Ausscheidungen und Sonstiges verzeichnet sind, passiert ist. Das sind auch noch einmal zwischen 9,4 und 29,4 Prozent.

Da die Daten nicht nach Geschlecht aufgeschlüsselt sind, können keine direkten Informationen abgeleitet werden, wie häufig Frauen von dieser Form der Gewalt betroffen sind. Im Bereich Stalking (107a Beharrliche Verfolgung) und im Bereich Vergewaltigung ist jedoch aus der Praxis hinlänglich bekannt, dass es sich dabei um Gewaltformen handelt von denen Frauen überproportional häufig betroffen sind.

Grafik 22: Erledigung von Strafverfahren Vergewaltigung im Jahr 2013



Grafik 23: Erledigung von Strafverfahren Beharrliche Verfolgung (Stalking) im Jahr 2013



Die Grafiken zeigen noch einmal deutlich die geringe Zahl der Verurteilungen bei Vergewaltigungen und bei Stalking. Angesichts dieser Zahlen ist die derzeit von manchen geführte öffentliche Debatte gegen ein umfassenderes Verbot von sexueller Gewalt beschämend (siehe Editorial).

Es muss auch bedacht werden, dass Gewalttaten an Frauen ohnehin schon Delikte sind, die von den Betroffenen aus Angst und Scham oft nicht angezeigt werden: Laut Studie der EU-Grundrechts-Agentur melden nur 33 Prozent der Opfer den schwerwiegendsten Gewaltvorfall an die Polizei oder eine andere Einrichtung (vgl. Agentur der Europäischen Union für Grundrechte 2014: 24).

Zum Problem des Under-Reporting kommt noch die niedrige Verurteilungsrate. Dies ergibt ein erschreckendes Bild von Straffreiheit für Gewalt an Frauen und häuslicher Gewalt, dass die politisch Verantwortlichen rasch auf den Plan rufen sollte. Die Wiener Interventionsstelle gegen Gewalt in der Familie ersucht die Regierung und das Parlament dringend sich mit diesem Problem zu beschäftigen und wirkungsvolle Maßnahmen zu implementieren, um die Anzeigenrate zu erhöhen und die Einstellungsrate zu senken.

Positiv ist, dass es dem Bundesministerium für Justiz bereits möglich ist, aus dem relativ neuen Datenerfassungssystemen (die sogenannte Verfahrensautomatik Justiz) Daten zu Strafverfahren zu erheben und damit erste wichtige Aussagen zu treffen. Notwendig ist, dass die Daten noch besser gesichert und nach den Minimalkriterien (Geschlecht, Alter, Beziehungsverhältnis Täter-Opfer) aufgeschlüsselt werden und dass diese Kriterien verknüpft werden können (siehe Kap. 08).

- ▶ Investitionen in moderne Informationstechnik-Datenerfassungssysteme zahlen sich aus. Nicht zuletzt sparen diese auch Ressourcen in der Datenerfassung, da Daten nicht, wie heute noch üblich, mehrmals eingegeben werden müssen. Die erfassten Datensysteme sollten umfassend konzipiert sein, das bedeutet es sollte eher nach Gesamtlösungen gesucht und Sonderlösungen für einzelne Deliktsbereiche vermieden werden. Damit würde ein Beitrag zur Modernisierung der gesamten Kriminalstatistik und gerichtlichen Kriminalstatistik geleistet.
- ▶ Moderne Datenerfassungssysteme sollen in der Lage sein, mehreren Zwecken zu dienen: Fachliche Dokumentation von Verfahren und der Arbeit der Justizbehörden und Gerichte (damit sollen Verfahren auch rascher und bürgerInnenfreundlicher gestaltet werden können); Dokumentation der Arbeit der Staatsanwaltschaft und der Gerichte; Controlling; Datenanalyse zur Evaluation von Maßnahmen, Öffentlichkeitsarbeit etc.
- ▶ Elektronische Datenerfassungssysteme können auch dazu dienen, Verfahren zu beschleunigen und Schutzmaßnahmen effektiver zu gestalten (z.B. strafrechtliche Schutzweisungen für Opfer); damit erhalten BürgerInnen auch bessere und effektivere Leistungen der Polizei und der Justiz.
- ▶ Datenerfassungssysteme müssen selbstverständlich datenschutzrechtliche Bestimmungen einhalten und den Schutz von persönlichen Daten vor Veröffentlichungen garantieren. Dies ist technisch möglich und es sollten von allen Beteiligten gemeinsam bestmögliche technische und rechtliche Lösungen gefunden werden.

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Information on Police Emergency Barring Orders Austria

January 2016

Introduction

In Austria, the first emergency barring order came into force in May 1997 as a part of the so called “first package of laws on the protection from violence”.¹⁴⁷ Inspired by the UN Human rights conference which took place in 1993 in Vienna and recognized violence against women as a human right violation, experts from women’s shelters and government worked together to improve the protection of women and their children from violence. Women’s shelters existed since 1978 in Austria, but the right of women and children to stay safe in their home had yet to be established.

In 1993, an inter-ministerial working group was installed, working for almost three years and in four sub-groups and experts from women’s shelters/support services were participating actively and chairing one of the working groups. The main goal of the initiative was to guarantee victims of domestic violence the right to stay at home and to make the perpetrator accountable for the violence by barring him from the home of the victim. How that could be realized was not yet known when the working groups started and the first measure discussed was a pro-arrest policy, modeled after the U.S. But cultural differences forbade this solution; arrest was just not “popular”, especially not in cases of minor bodily injuries. Experts were of the opinion, that arrest should be left to cases where there were grounds for detention. Moreover, arrest by the police could last a maximum of 48 hours and the question was also: what would happen after? As well, experts in Austria were looking for a measure that could also be applied preventively, before violence was committed.

Thus, the working group had to come up with another solution than placing arrests. They therefore “invented” the police barring order. This idea came from an existing article in the Police Security Law, § 38, which gave the police the power to ban people from certain areas in public places if their safety was jeopardized.

The length of the police emergency barring order was initially seven days.

Besides the emergency barring order (EBO), the law from 1997 established several other important protective measures such as the civil law protection order as a follow-up measure after the police barring order and, very importantly, the right of every victim of violence to receive proactive, comprehensive and empowering support through so called Intervention centers.¹⁴⁸ Such centers were established in each of the nine provinces in Austria and a system was introduced which secured that all victims of domestic violence and stalking would be offered empowering support immediately after police intervention.

Within the 16 years of its existence, the police barring order was reformed and improved several times; first it was prolonged to 10 days because seven days had proven to not be long enough to initiate follow-up measures; and since 2009 (the year when the so called “second package for the protection from violence” came into force), the duration has been two weeks, with the possibility to be prolonged to four weeks if victims apply for a civil court protection order.

The latest improvement of the police barring order came into force in September 2013: until that time the police could protect victims only in their home and surroundings of the home. In this case, the police are now able to ban the perpetrator from the school or kindergarten, if children are endangered.

Besides the emergency barring order by the police and the civil court protection order, there are also legal possibilities in the criminal justice system to issue protective orders. These measures are not well integrated in the measures against violence against women and domestic violence yet. Also, protective measures in the criminal justice system cannot be applied immediately, because there are no special or fast-track courts.

The Austrian police barring order are part of an integrated approach and a multi-agency intervention system which includes not only legislative measures to protect victims from violence and hold perpetrators accountable, but also measures to support and empower survivors. In the following sections, the emergency barring order and its implementation in practice will be outlined. Then the support for victim in the context of EBOs will be described and in the third part the cooperation of the agencies involved and the overall system of an integrated approach will be explained.

The regulation of the police barring order and the support system for victims

¹⁴⁷ See Bundesgesetzblatt xxx 1996

¹⁴⁸ The name was modeled after the Domestic Abuse Intervention Program DAIP in Duluth/Minnesota, one pioneer program developing a coordinated multi-agency and community response (Rösemann 1989; Shepard/Pence 1999)

In the following section, the principles and the concrete implementation of the police barring order will be outlined.

- **Legal base and authorities issuing the order**

The police emergency barring order is based in the Security Police Act § 38a and, as the name states, the authority issuing the order is the police. Every police officer dealing with an intervention on violence against women or domestic violence can issue an emergency barring order for 14 days in cases of imminent danger. The police barring order cannot be shortened or reversed by the police officer who issued it. This can only be done by the administrative legal service, which has to review the decision of the police officer within 48 hours and can reverse the order if the requirements are not fulfilled. According to statistics, only 5% are reversed and the vast majority of the police decisions are confirmed. (Appeal rights see later.)

- **Gender-neutral approach in the legislation**

The Austrian emergency barring order does not have a gender-specific approach as the Spanish law does; although domestic violence is gender-based violence which affects women disproportionately, the legislator in Austria opted for a gender-neutral approach that addresses every person in danger of violence. However, the gender-neutral law does not mean that the gendered nature of the problem is ignored; particular attention is given in Austrian measures and policies to the fact that it is predominantly women who experience violence in the home. According to statistics on police barring orders, about 90% of the victims are female, while more than 90% of the perpetrators male.

- **Protected persons**

The emergency barring order protects every person at risk of immediate danger, without discrimination on any ground, in her/his home and surrounding.¹⁴⁹ It is not necessary that the victim and perpetrator are related or that they live together or have lived together. Police barring orders can also be issued to protect victims of stalking. The law also applies to people in same-sex partnerships or relationships. It protects old people from violence through caretakers as well as young people who are threatened in their home by peers (for instance violence among students living together). Migrants and minority ethnic people are covered and undocumented migrant women victims of violence have the right to be protected in their home as well. The police have to treat victims of violence as victims and not as suspects or delinquents (they are not supposed to check the residence permit when called to a domestic violence emergency).

- **Protection of children**

Since all persons are protected, the police barring order obviously also protects children. It provides an important alternative to taking children out of the family if they run a risk of violence. This requires that there is a non-violent parent or other person in the house taking care of the children.

- **Criteria for applying emergency protective measures**

The police have the power and the obligation to issue an emergency barring order if there are facts that point to an imminent danger to life, health or freedom of a person (no discretion).

The law does not cover the protection of property. However, if an aggressor is throwing pieces of furniture and a person may be hurt, this can be seen as posing a risk to the person.

It is not necessary that an act of violence has been committed already; the barring order is a preventive instrument to avoid violence from occurring in the first place. This is important with regard to the due diligence principle that requires states to actively protect victims from harm, instead of waiting until harm has been done and then reporting it.

The police have to carry out an investigation on the spot in order to identify possible factors for an immediate danger. Certain information such as a first testimonies of the victim and the aggressor, signs of fights, possible attacks or threats, injuries, testimonies of witnesses, existence of fire arms, previous assaults or interventions, and violence against the children have to be checked and later documented in a specific form¹⁵⁰.

It is important to note that “risk” does not mean high-risk in the sense of a threat to be killed or severely injured; this would put the threshold for protection much too high and the state would run the risk of not fulfilling the due diligence principle to protect a victim from (further) harm. Immediate danger is for example also given if there is a risk that a person would be hit and maybe suffer a physical injury. Police barring orders are in fact measures that are adequate for situations that are NOT particularly dangerous. In high-risk situations (for instance if a perpetrator has repeatedly injured a person or is threatening to do so or to kill the victim) the police barring order in Austria has failed to protect victims; in such cases, the stronger measures of detention is necessary to stop the perpetrator from causing further harm— see part on safety.

- **Places where the violence occurs**

¹⁴⁹ The police has to define the respective surrounding and write it down in their report; they also have to inform the aggressor for which area the barring order is valid

¹⁵⁰ Remark: if possible an English version of the emergency barring order law as well as of the form will be provided for the appendix; if this is not possible because of translation costs, the link will be provided in the list of resources

It does not matter where the violence or the risk of violence occurs. If for instance a husband would beat or threaten his wife on the street and some passerby would call the police, they would have to follow the same procedure: assess the immediate danger and, if they come to the conclusion that there is a risk, issue a barring order and prohibit the aggressor from going home. Thus, it does not matter if the violence or threat of violence occurs in the home, the public or some other place. The police barring order can also be used to protect women and children in a women's shelter if the aggressor is, for instance, stalking them there.

- **Areas of protection**

As described above, the emergency barring order covers different areas where victims are protected.

A barring order can consist of three parts:

- an order to immediately vacate the home of the victim
- an order not to come (back) to the home of the victim or the surroundings of the home
- An order not to approach the school or kindergarten or another child care facility if children are the endangered persons (new since September 2013).

If the perpetrator lives together with the victim, the police issues the order to leave and the order not to come back to the home or surroundings; if the perpetrator does not live with the victim, the order only includes the prohibition to seek out the victim's home.

What is considered the "home" of a victim? The understanding of "home" in Austrian law does not only cover a permanent home or a home that the victim owns. The home can also be the property of the aggressor. The barring order allows the police to temporarily restrict the owner rights to access their property (see also section property rights).

"Home" means that the victim lives there, at least for the moment. It would not be possible to evict an aggressor who assaults a person visiting him at his home for an afternoon. But if for example, the mother-in-law is visiting for a week and normally lives in another town, then the place would be regarded as her home and an aggressor would be evicted. In this case, the emergency order would end after a week when the victim leaves; but a victim should not be forced to leave earlier than planned, unless it is her will.

A home can also be a temporary home, for instance a hotel room where a couple spends their holidays, or even a tent or a caravan. There have been cases in Austria when the police issued emergency barring orders on camping sites.

The victim does not have to prove formally that she lives in the place where she needs protection; it is enough that it be obvious for the police that this is the case.

A victim should never be expected to leave and find another place to stay. It is, as stated, the purpose of the law to guarantee victims the right to stay in their current home.

Despite a fairly good regulation, there are still gaps in the Austrian emergency barring order: the police cannot protect victims at the workplace or cannot prohibit contact. This poses a risk for further violence. Good practice would require that emergency barring orders provide comprehensive protection to victims and allow them to move freely in their daily lives.

- **Effect of EBOs on property rights**

Property rights are only affected in the sense that the access to property can be restricted for some time. But this does of course not affect ownership. The police barring order have been evaluated by the constitutional service in Austria, which has to examine every draft law, as constitutional. The temporary restriction is justified by the need to protect a higher right than the property right of the aggressor, namely the right to life, health and freedom of the victim.

- **Issues of safety**

Violence against women and domestic violence can take on various forms and degrees from assaults which do not cause any bodily harm to severe injuries, attempted or committed homicide/femicide. Research and practice show, that violence against women tends to escalate when women leave or try to leave the partner - and most cases of femicide are committed at that time. When conceptualizing emergency barring orders, it is of crucial importance to keep the dangerousness of the problem in mind and NOT to assume that all perpetrators will be prevented from committing further violent acts by a barring order. The experience in Austria shows that a police barring order is not an adequate deterrent if the situation is very dangerous and the perpetrator has, for example, threatened to kill the woman. In cases when a crime has been committed already, and there is a danger for further harm, stronger measures such as the immediate detention of the perpetrator are needed. Two cases brought to the attention of the CEDAW Committee revealed the danger of using an emergency barring order in such situations of protection: in both cases the women were repeatedly assaulted, they tried to separate and the husbands threatened to kill them. The Austrian police issued an emergency barring order but despite of the threat to kill the victim, the criminal justice authorities did not detain the offenders; they were of the opinion that the EBO as a "more lenient measure" was sufficient. The Austrian state argued that a detention would have been a

disproportional interference in the offender's right to freedom but the CEDAW committee decision clearly stated that "the perpetrators rights cannot supersede the right of the victim to life, health and security".¹⁵¹

To summarize, emergency barring orders have proven to be adequate in Austria when the degree of danger is not high. As soon as there is a danger for repeat or severe harm, a police barring order is not the right instrument, and criminal justice measures such as detention have to be applied to prevent the perpetrator from committing a crime.

To put the safety of victim at the centre requires state authorities, survivor services and offender programs to work closely together and to engage in joint danger assessment and coordinated safety management (see WAVE 2012).¹⁵²

- **Duration of the EBO**

As stated the length of the barring order is always 14 days. There is no discretion the police officer can use to shorten or prolong it. This has proven to be important in Austria, because individual police officers are not burdened with the decision on how long to protect a victim. The principle at work is that the EBO should be reasonably long enough to enable the victim to get support, to reflect on her situation, to make decisions and to get further protection without interruption; it should be realistic to reach these goals in the time the EBO is in place. In Austria it would be difficult to prolong the police barring order by a court protection order if the duration would be only seven days, for instance. This was the case when the law came into force in 1997; soon it became clear that to obtain a court protection order would take longer and the duration of the police barring order was prolonged to 10 and later to 14 days. Now, survivors have 14 days within which they can start to recover from the violent attack, receive support and make an informed decision if they want further protection or if they wish the partner to come back home after two days. If victims decide for the latter, they have to apply for a court order within the 14 days. As soon as the court receives the application, police need to be informed and this step automatically prolongs the emergency barring order to four weeks. Experience shows, that courts are taking decisions and issuing the judicial protection orders within this time.

A sufficient duration of the emergency barring order is also important to deliver the message to the aggressor that violence is unacceptable and has consequences. If the barring order would be valid for 48 hours only and there would be no extension of the protection, the message the aggressor receives would be "you have to behave for 48 hours but after that you can go back home and the victim cannot prevent you from doing so". Such a regulation could do more harm than good and make victims even more vulnerable.

To summarize, the duration of the emergency barring order should depend on the system of interventions, how well measures are tuned to each other and how fast and effective courts work to protect victims without causing gaps in protection.

- **Empowerment, balancing victim's rights and states obligations**

As explained, the Austrian legal regulation of protection from violence is two-tiered. The first part is the police barring, a measure taken by the state authorities without the victim having to take action (besides turning to the police who could also be alarmed by another person). The victim will not be asked by the police if they want the aggressor to leave the house. This regulation meets the due diligence principle that the state has to actively protect victims in dangerous situations. Women victims of partner violence are often dependent on the aggressor (economically and socially); there is also the obligation to be loyal to a family member and not to report them to the police and recoil from taking legal action against the husband or partner. It would place too much pressure on the victim to decide in an acute situation of violence if they want the violent partner to leave the home.

However, women victims of violence do not only have the right to be protected from violence in their home, they also have the right to family¹⁵³ and both rights need to be respected and guaranteed. The Austrian legislation tries to do this by protecting the victim ex officio in the acute phase of violence and then, in the second phase, gives agency to the victim if they want further protection or not. In this second phase it is only the victim who is authorised to apply for a judicial protection order, with two exceptions: if the victim is a child¹⁵⁴, the (non-violent) parent can apply for a protection order on its behalf. The second exception is that the youth welfare office can make an application for a protection order if children are in danger.

If the aggressor has already committed a crime, there is a third legal track that comes into place, the criminal justice system (the measures there and how they connect to the barring order will be described in the last section).

- **Costs**

The issuing of a police barring order does not cost anything - not to the victims or even the perpetrator.

¹⁵¹ CEDAW 2005: Gökce vs Austria and Yilderim vs Austria

¹⁵² WAVE (2012): Capacity Building in Risk Assessment and Safety Management to Protect High Risk Victims. A Learning Resource, EU DAPHNE project PROTECT II, Vienna

¹⁵³ European Convention on Human Rights, Article 8 – Right to respect for private and family

¹⁵⁴ child or young person until 18a

The judicial protection order was liable to charges for the victim until July of 2013, now it is cost free; it was important to abolish the charges because the right to be protected from violence is a basic right and access to this right should not depend on the victim's financial means.

- **Monitoring compliance**

The law foresees that police must actively monitor compliance with the barring order and have to check at least once in the first three days if the aggressor returned to the home of the victim.

- **Consequences for breach of the EBO**

If the aggressor violates the order, he is charged an administrative fine of up to €500 for every offence. In cases of repeat breach of the barring order he can also be arrested.

Experience from sixteen years of existence of the police barring order in Austria show that only in about 10% of the cases a breach of the barring order is reported. However, this may be a dark figure since the police are not always notified.

It is also important to note, that while breaching orders may be low in numbers, ignoring a barring order has to be seen as a risk factor, especially if paired with repeat violence or threats; in such cases authorities need to take stronger measures to prevent further violence and protect victims (WAVE 2012).

Are there consequences for the victims if she lets the perpetrator back to the home? When the police barring order came into force in Austria, there was a discussion if the victim could be fined as well if she lets the perpetrator back to the house, because this could be seen as an incitement to an administrative offence. In some cases, victims were reported, but very rarely charged and by now it is the general approach of the authorities that sanctioning the victim is not justified. It would alienate the victim and it would bear the danger that victims would not turn to the police for protection anymore. It would also be unfair to sanction a victim who is under the influence of the perpetrator and often afraid of him, for not being able to resist the perpetrator when he demands to enter the home.

Thus the obligation to abide the barring order lies with the perpetrator - the obligation not to enter the home concerns him.

- **Rights of perpetrators**

Where do perpetrators go? Was one of the central questions discussed before the barring order came into force in Austria. There were worries that aggressors would be left in the streets in the cold and freeze to death. The reality showed that no such disasters happened.

The ministerial decree for the implementation of the law foresees, that every aggressor who is barred from the common home is informed by a leaflet about his rights. This involves:

- Information about the barring order and the area where they are not allowed to enter
- Information about sanctions in cases of a breach of the order and the amount of the fine
- Information about emergency accommodation in case they do not have a place to stay
- Information on where to get help
- Information that they have to name an address where the court can serve a judicial order and what the consequence is if they do not provide the authorities with an address, namely that a judicial order will come into force even without them being notified.

(This has proven to be a very important technical detail to avoid unintended gaps in protection because formal requirements are not fulfilled.)

- **Appeal**

The perpetrator has the right to appeal to an administrative court against the decision of the police to issue a barring order. However, the appeal does not have a suspensive effect. If the applicant wins the case, they can claim compensation.

According to the logic of the law, only the perpetrators are affected by the EBO procedure and a party in the case. This could be questioned since victims have the right to be protected from violence and if this right is not guaranteed they should be able to appeal. But this right is not realised in Austria yet.

- **Standing and rights of victims**

As described, victims are not a party in this procedure and do not have the right to appeal. They can also not apply for a barring order, since it is issued ex officio by the police. This regulation has proven to be adequate, since it would put too much pressure on the victim to have to take the initiative. However, it may be important if victims would have the right to appeal if the police do not issue a barring order and do not provide the necessary protection.

Victims have the right to information and they will also receive a leaflet by the police officers explaining their right to apply for a judicial protection order within the two weeks of the EBO. They also receive information where to get help and they are informed that they will be contacted by the regional Intervention Centre.

- **Core steps of issuing an emergency barring order**

As explained, EBOs in Austria are issued by police officers on the spot. They have to investigate if there are facts that point to an immediate danger for life, health or freedom of a person. During the investigation, they have to interview the aggressor and the victim separately to avoid pressure on the victim by the aggressor.

If they come to the conclusion that there is a risk to a person/to several persons, they declare to the aggressor that an EBO is issued against them and that they have to leave the house and are not allowed to return for two weeks.

If the aggressor is not present, they must search for them immediately.

The police have to define the area that they are not allowed to enter and inform the aggressor about it.

Then they ask the aggressor to hand over the keys to the house and tell them that they are allowed to pack personal belongings that are needed for two weeks. They are not allowed to take things which belong to the family, for instance the television and, if a conflict arises about a certain object the police have to note this in their report and the item stays in the house.

Then the police hand over the information leaflets to victims and perpetrators and ask the perpetrator to leave the house with them.

The system of pro-active and empowering support of victims

The support of victims is the second core part of the preventive measures that were introduced in 1997. All victims are offered proactive support in the context of police barring orders. Intervention Centres were established in all nine provinces of Austria and the institutionalized cooperation between the police and the Intervention Centres was introduced.

The police notify the regional Intervention centre about ALL cases concerning violence against women, domestic violence and stalking within 24 hours, per fax or by e-mail.

- **Independence of Intervention Centres**

Intervention Centres were established as victim support organisations, run by NGOs. It was seen as important for victims rights and democracy, that the support organisations are independent (from the state, but also independent from any party or religious organisation) because they need to be able to provide confidential empowering support, stand on the side of the victim and to represent their rights and needs. (A state-run agency, for instance, would not be able to stand on the side of the victim, because it is part of a hierarchical decision-making organisation and cannot act independently; also parties or religious organisations are bound to the belief system of their organisation and could not guarantee independence of victim support). The independence of Intervention centres is also as necessary in order to support victims who experience victim-blaming or discrimination by members of institutions. Support services which are dependent will maybe not be able to raise their voice to defend victim's rights and to support victims in bringing forth complaints.

- **Funding by the federal government**

It is the obligation of the state to provide support to victims and the Austrian Intervention Centres, as well as other support services such as women's shelters or rape crises centres – and to be fully funded by the state. Since it is a federal competence to protect victims from violence and to guarantee their rights, the funding of the Intervention is provided by the federal government (Federal Chancellery/Minister for Women and Ministry of Interior).

All Intervention Centres in Austria have obtained a contract with the government which includes in detail the obligations, the kind of services and the quality standards they must provide.

The contract is unlimited and can be terminated by both parties within a period of one year.

Intervention Centres also receive funding from the Federal Ministry of Justice; all victims of violent crime have the right to psycho-social and legal support in legal proceedings and Intervention centres are offering this support (see also section on interface with the criminal justice system).

In 2012 the nine Intervention Centres in Austria received €xxx (add numbers) million by the federal government. They provided support to xxx victims of violence against women and domestic violence.

- **Services to all victims, gender-specific approach**

Intervention centres provide services to all victims of domestic violence and stalking referred to them by the police. While they serve all victims, they also apply a gender-specific approach because about 90% of the victims are women suffering from gender-based violence by a male partner. This is important in order to tackle the root-cause of violence, namely the "historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women" (Istanbul Convention, preamble) and the over-all aim of the Intervention Centres is to promote equality between women and men and the right of women and their children to live free from violence. A gender-specific approach implies that victims are empowered and that their ability to make their own decisions and to live independently is strengthened. In Austria, as in many other countries, discrimination against women is still a fact and gender equality is not fully realised yet in many areas of society.

Women victims of violence experience discrimination, for instance in the form of victim-blaming ("what has she done that he was hitting her?") or in the form of stereotypical gender-roles and expectations ("she was shouting at him, she cannot be a victim").

It is the task of the Intervention Centres to address such discrimination and to support victims to defend themselves against them.

- **Specialised support**

General services are not enough to support victims of violence; just as patients with special health problems need specialist doctors, victims of violence against women and domestic violence need services which specialise on the problem. The Austrian Intervention Centres are services specialised on the support of women victims of violence and stalking and other victims of domestic violence. The staff is trained and specialised on the dynamics and risks of violence against women and domestic violence; staff members are able to support survivors adequately in safety planning and in dealing with all aspects of the problem of violence. Support is tailored to the individual needs of victims, which may be diverse and complex, as the situation of victims differ.

- **Safety**

The main goal of the Intervention centres is to prioritise the safety and security of victims and to ensure that this approach is also realized in multi-agency cooperation. Safety and empowerment are of high priority, also in the centre, because an agency which staff is not safe and feels helpless cannot provide empowering services to victims.

- **Fair access and non-discrimination**

The Austrian Intervention Centers support all victims, regardless of their nationality, ethnicity, age, gender, sexual orientation, ability, residence status or any other status and thus is fulfilling the Istanbul Convention non-discrimination obligation (Article 4). Undocumented migrant women victims of violence also have the right to support and it is the task of the Intervention Centers to inform women how to obtain a residence permit.

Intervention Centers also provide staff with diverse cultural backgrounds and language skills in order to support migrant and minority ethnic women.

- **Advocacy on the individual and system level; participation and consultation**

Intervention Centers support individual survivors in realizing their rights and needs; they also work on the level of society to improve the conditions women survivor of violence encounter. Feedback of service users is important to evaluate and improve services of the Intervention Centers.

- **Empowerment, voluntary support**

As stated, empowerment of victims is an important principle and an aim of the service provided in the Intervention Centers. It means that service users get high quality support tailored to their needs, that they are informed about their rights and entitlements and are able to make autonomous decisions in a way which makes them supported and empowered and are treated with respect, dignity and sensitivity. Empowerment also means that the needs and decisions of adult victims are respected, whether the victim decides to stay with the partner or not. Another aspect of empowerment is that any support is voluntary and the victim is not forced or pressured to accept help; the support of victims is not dependent on their willingness to report violence or take legal steps such as applying for a protection order.

- **Support of children**

Intervention Centers also provide support to children¹⁵⁵ victims of violence if they experience abuse and the police issued a barring order against the violent parent. In such cases, children are the “direct” victims; however, children are often also “indirect victims” witnessing violence or the impact of violence. These children, unfortunately, do not receive support by the Intervention Centers in Austria yet, because funding is still insufficient.

- **Confidentiality**

Confidentiality is another important principle of the Intervention Centers. Without the consent of the victim, no information is passed on to third parties. Confidentiality is limited when there is an immediate risk to life, health of freedom of the victim (examples: the aggressor is trying to break into the house and the victim does not want the police to be called; or the victim is desperate and wants to commit suicide); also if children are in danger of abuse, the confidentiality can be limited and the child protection authorities are notified. Such a breach of the principle of confidentiality needs to be communicated to the victim and thoroughly documented and justified.

- **Transparency, data protection**

Another important element of empowerment is that the victim knows which information is stored about it in the files; according to the data protection law, people have the right to access their files. This is also the case with the support of the Intervention Centre and means that services as well as institutions need to be very careful with any personal data. Transparency is also important in multi-agency work and especially in multi-agency case-conferences where the data of victims is shared.

¹⁵⁵ The term children in this text also includes young people up to 18 years of age

In Vienna, multi-agency case conferencing started in 2011 to better support victims in situations of high-risk. The principle applied is that information sharing in the case conference is done with the consent of the victim; only in exceptional situations of immediate danger, which have to be documented and justified thoroughly, and exchange of information between agencies cannot take place without the victim's consent.

This principle of victim's participation and consent is important to avoid institutions which are already powerful to exercise even more power over the victim. Multi-agency cooperation, if not done in a victim-centered way and with the clear goal of benefitting the survivor, can disempower victims and lead to their withdrawal. The principle of victim consent can cause obstacles for multi-agency cooperation; victims may not give consent because they do not trust the agencies, for instance. Thus, instead of bypassing the victim, the aim is to do everything to gain the victim's trust and consent.

- **Short- and long term support important for prevention**

Intervention centers offer short as well as long-term support, however not in all regions of Austria as the financial resources are not always sufficient to provide long-term support to survivors. This is a concerning problem regarding successful prevention because it is known from practice and research, that the problem of violence cannot be solved within a few weeks and not even a few months; support and protection need to be offered continuously and over at least a year or more. Recent research shows¹⁵⁶, that victims continue to suffer violence often for months and years after the files of institutions are already "closed". Thus it is important for Intervention Centers to keep in touch with the survivors over a long time and repeatedly offer proactive support and contact the victim to see if they need support and if the violence has stopped.

- **Cost free**

The help of the Intervention Centers is cost-free.

- **Networking and international cooperation**

Networking of specialized support services for victims of violence against women and domestic violence is necessary to develop good quality services and to learn from each other. In Austria the Intervention Centers and women's shelters meet regularly, work together and learn from each other; they are also involved in policy making in part of ministerial working groups on policies regarding violence against women and domestic violence.

International cooperation is important as well, since violence does not stop at the border; cases of violence against women and domestic violence with cross-country dimensions are increasing. The Austrian Intervention Centers engage in transnational networking for instance as members of the European Network WAVE. EU legislation on the mutual recognition of protective orders in criminal and civil matters will come into force on 11 January 2015, which will make trans-national cooperation of specialized women's support services even more necessary.

- **Work with perpetrators**

Work with perpetrators is still in its infancy in Austria, like in many countries in Europe. The Intervention Centre Vienna runs a victim-protection oriented perpetrator program together with the Men's Counselling Centre since 1999. This is an integrated program including an anti-violence training as well as a support program for survivors and it is run in partnership by two agencies. It is the only program of its kind in Austria and it is still very small, reaching only about 1% of the perpetrators who receive an EBO. The reason is, that at the stage of police intervention, aggressors cannot be obliged to attend an anti-violence training. This can be only done in the context of a criminal sanction as an alternative to a conventional sentence. Since the attrition rate is still high in Austria, not many cases of violence against women end with a conviction and only rarely are perpetrators mandated to partake in anti-violence training. This represents a serious gap in the Austrian Intervention system, since sanctions and help are necessary to change violent behavior.

Multi-agency cooperation and the integrated approach

- **Judicial protection order**

As described, the emergency barring order by the police is prolonged to four weeks if the victim applies for a civil court protection order. Practice shows that courts are able to make a decision about the application within the available time. In Austria, civil courts have special departments for family law issues and protective orders in domestic violence cases are dealt with in the family courts. This is important for the prevention of violence, because the same department and judge will then also deal with issues of divorce, custody and visitation issues and it is crucial that the judge is informed about the violence.

There are three kinds of protective orders in civil law:

- The order to leave the house of the victim and not to return (§ 382b EO)
- The order not attend certain places or not to contact the victim (§ 382e)

¹⁵⁶ Quote research from Switzerland

- And the order not to stalk a person (§ 382g EO).

Civil law protective orders to leave the home can be issued up to six months and can be prolonged if the victim starts a divorce procedure within this time. The order not to attend certain places or to refrain from stalking a victim can be issued for one year or longer.

As with the police barring order, every person is entitled to the civil law protection. The law does not say who the aggressor is and thus it does not require that there is any kind of kinship or relationship. This was not the case in Austria at the beginning, when the law required that victim and perpetrator live together or had lived together. The problem with this regulation was that there were always victims who were not covered by the protection, for instance young couples who did not live together yet. Only the principle that every person is entitled to protection can fulfil the human right to life free from violence; with any other regulation it would rather be a specific form of family or relationship that would be protected, than the right of the individual.

Until recently, the breach of a civil law order was difficult to sanction, since it was a lengthy procedure and the victim had to take the initiative. This kind of sanction proved to be inadequate and it did not deter perpetrators to violate the order. As of September 2013 the breach of a civil court order can be sanctioned as an administrative offence immediately by the police, with a fine up to € 500 per violation. The same procedure as with the police barring order is applied.

- **Interface with the criminal justice system**

As described, protective orders can also be issued the criminal justice system, although these possibilities are not used much in Austria yet and the potential of criminal law is not fully used for the prevention of violence against women and domestic violence. There are several obstacles to that, such as the high attrition rate and the low level of integration of the criminal justice system into policy measures to prevent these forms of violence.

Another obstacle is that protective measures in the criminal justice procedures cannot always be applied in acute situations of violence, because there are no special criminal courts or fast-track in courts in Austria that would be able to provide protection to victims immediately. However, there is an emergency procedure in the criminal justice system in cases of severe crime, when the question of detention arises. In such cases, the criminal court can for instance issue an immediate protective order as a condition for a release from pre-trial detention. But, as stated, there is not much experience with this yet; in Vienna the Intervention Centre started an initiative together with the probation service to encourage criminal judges not to just release perpetrators from detention, but also instruct the perpetrator not to contact the victim; in case of a breach of the order, the perpetrator would be detained again immediately; thus this order is a much stronger measure and a more adequate answer to severe and repeat violence.

An important improvement for victims' rights came into force in 2009, when a law was introduced that guaranteed all victims of violence cost-free psycho-social and legal support of victims in criminal and other legal proceedings. As stated, Intervention Centers are providing such support to victims which includes legal representation of the victim in the criminal procedure as well as the accompaniment by a person providing psycho-social support in criminal and also in related civil proceedings.

- **Institutionalised multi-agency cooperation**

Cooperation between agencies should not depend on the willingness on persons, but should be integrated into the system of preventive measures and entrenched in the law.

In Austria, cooperation between the police, civil/family court, Intervention centres, and the Youth welfare office is integrated well, whereas the cooperation with the criminal justice system is still underdeveloped. Cooperation with the health sector and other areas needs to be strengthened as well.

The rights and needs of victims stand in the centre of all multi-agency cooperation and the Intervention centre is the core agency responsible for providing empowering support to survivors.

Areas of institutionalised cooperation:

Cooperation between the police and the family court

Institutionalised cooperation between the court and the police guarantees that no gaps in protection occur. The police must send the report on the barring order immediately to the police, as well as the key to the house that they had confiscated from the aggressor.¹⁵⁷

The court has to inform the police about the application for a civil law protective order and has to send the decision to the police who are responsible for the fulfilment.

Cooperation between the police and the intervention centre

¹⁵⁷ If the court does not issue the decision for an protection order within 4 week, the judge has to hand the key for the house back to the perpetrator; this seems to serve as another motivation for issuing the decision on time, because judges do not want to be the ones providing the aggressor with access to the hope of a victim in a situation that might still be dangerous

The police have to send the report about the barring order and also reports about stalking to the regional Intervention Centre within 24 hours. In practice, the centres receive the notification within 3-4 hours on average, which enables them to contact the victim quickly.

Cooperation between the police and the youth welfare office

The police also have to notify the youth welfare office, the authority legally responsible for the protection of children, whenever there are children in the family.

Cooperation between the family court and the intervention centre

Intervention Centres support victims to apply for civil court protection orders and communicate with the court to make sure the application is dealt with in the given time, so that no gaps in protection occur.

• **Monitoring and data collection**

Regular data collection is necessary to monitor implementation and effects of emergency barring orders as a tool for prevention.

Until two years ago, the Austrian Federal Ministry of Interior published a rudimentary set of annual data which included the number of police barring orders, the number of violations, and the number of other interventions in cases of domestic violence. Through a change in data collection, the reliability of this data has deteriorated and in 2012 no solid data could be published by the Ministry of Interior.

As a minimum administrative data in the area of EBOs should contain:

- The total number of police interventions in the area of violence against women and domestic violence per year
- Data on the number of emergency barring orders per year
- Number breaches of EBOs
- Numbers of sanctions for breaches.

Another problem of data collection in Austria is that the minimum standards, as recommended in the Istanbul Convention's Explanatory Report, are not available yet.

The minimum standards for data collection are:

- sex of victim and perpetrator
- age of victim and perpetrator
- relationship between perpetrator and victim
- form of violence
- location

And the linkage of this data (so that it would be possible to for instance answer the questions: In how many cases were women the victims? Who were the perpetrators in cases where the victims were female?)

The intervention centres do provide annual data which fulfill the minimum standard.

What is still missing is national data of all Intervention Centers.

As an indicator for the degree of implementation, the number of EBOs per 10,000 inhabitants is generated annually. In 2015, the indicator was 9.6 EBOs per 10,00 inhabitants, varying between 17.5 (Vienna) and 5.9 (Burgenland).

**Comments by the Republic of Austria
on the Recommendations made by the CEDAW Committee
on August 6, 2007 concerning the Communications**

Sahide GOEKCE, No. 5/2005 and Fatma YILDIRIM, No. 6/2005

Concerning the views and recommendations of the Committee on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as: CEDAW Committee) of August 6, 2007 relating to its Communications on the cases Sahide GOEKCE, No. 5/2005, and Fatma YILDIRIM, No. 6/2005, the following comments are submitted pursuant to Article 7, para. 4 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women within the stipulated period:

Comments

The recommendations of the CEDAW Committee comprise the following points:

- a) Strengthen implementation and monitoring of the Federal Act for the Protection against Violence within the Family and related criminal law, by acting with due diligence to prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so;
- b) Vigilantly and in a speedy manner, prosecute perpetrators of domestic violence in order to convey to offenders and the public that society condemns domestic violence as well as ensure that criminal and civil remedies are utilised in cases where the perpetrator in a domestic violence situation poses a dangerous threat to the victim; and also ensure that in all action taken to protect women from violence, due consideration is given to the safety of women, emphasizing that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity;
- c) Ensure enhanced co-ordination amongst law enforcement and judicial officers; and also ensure that all levels of the criminal justice system (police, public prosecutors, judges) routinely co-operate with non-governmental organisations that work to protect and support women victims of genderbased violence;
- d) Strengthen training programmes and education on domestic violence for judges, lawyers and law enforcement officials, including on the Convention on the Elimination of All Forms of Discrimination against Women, general recommendation 19 of the Committee, and the Optional Protocol thereto.

In response to these recommendations, Austria has endeavoured to take and/or intensify appropriate measures in order to eliminate the deficits in the protection of women against domestic violence identified by the CEDAW Committee and to continuously improve such protection.

At the beginning it should be emphasized that Austria does not regard protection against domestic violence as the individual victim's problem, but as a concern of public security. In order to be able to offer protection to victims as rapidly and efficiently as possible while safeguarding their personal integrity and thus to combat domestic violence effectively, the legislator has put in place a system of measures. This complex problem area is addressed through co-ordinated cooperation between law enforcement bodies, judicial authorities as well as welfare and victim protection organisations, not least with a view to lowering the number of unreported cases of domestic violence.

The establishment of intervention centres which must be informed of any police action in cases of domestic violence was of vital importance as these centres constitute a core element of this system. Once these centres have received relevant information, they function pro-actively, i.e. they establish contact with the threatened person whom they offer their support. These centres primarily serve the purpose of increasing the security of women and children who have been exposed to threats and physical abuse. These interventions are focused on putting a stop to violence, and not on preserving or ending a marriage or consensual union. In their support to victims, intervention centres set the priority of working out together with their clients both a short-term and a long-term security concept. The dangerousness of the perpetrator is jointly assessed with the victim and an emergency plan is drawn up together with the victim.

In response to the ever larger number of incidents of domestic violence and with a view to preventing tragic events as the two cases presented in the "views", the Austrian Federal Government raised the financial resources allocated to intervention centres (the financing is done jointly by the Federal Minister of the Interior and the Federal Minister for Women's Affairs). The funds earmarked for intervention centres against domestic violence were increased from € 3,368,324.97 in 2006 to € 5,459,208.-- (+62%) in 2007, and once again, in 2008, to € 5,630,740.-- which represents an increase by 3.14%. It can be expected that this considerably topped up budget will result in an improved service quality of the intervention centres as these will be able to draw on more human resources and use better infrastructure. At this point of time, however, a detailed comment on such improvements cannot yet be made as the evaluation for 2007 is still ongoing.

In addition, a series of other mechanisms for protection against violence were subsidised by the Federal Minister for Women, Media and Civil Service (Federal Minister for Women's Affairs), the Ministry of the Interior and other ministries and Province governments (see, for example, Annex ./A: subsidies granted by the Ministry of the Interior in 2007). Mention should also be made of another general measure aimed at improving the quality of violence prevention in Austria: in cooperation with the intervention centres and Vienna University, a study is conducted on domestic violence in which indicators are defined.

In the first part, the new legal provisions for the protection against domestic violence will be explained. Thereafter, specific measures destined to improve the practical implementation of these provisions by different agents will be presented.

A. In the administration of justice

I. Statutory measures

I.1. Protection of victims

In an effort to bolster the position of victims during criminal proceedings, especially in view of their emotional strain and stress, victims exposed to violence, severe threats or sexual abuse have been granted the right to **free support from psycho-social and legal experts throughout criminal proceedings** since January 1, 2006. Under the Amendment to the Code of Criminal Procedure, Federal Law Gazette No.19/2004, which took effect on January 1, 2008, victims – as before – are entitled to psycho-social and legal support throughout criminal proceedings (Section 66, para. 2 of the Code of Criminal Procedure as amended). This support comprises the preparation of the victim for the criminal proceedings and the associated emotional stress and strain, as well as assistance during questioning or cross-examination in the course of the proceedings and legal advice and representation by a lawyer. In the interest of the smooth functioning of this system in practice, the Ministry of Justice has entrusted appropriate victim protection services with the support of victims during legal proceedings and reimburses expenses incurred in their support function to them. The psycho-social expert supporting the victim may accompany the latter for questioning and give advice as a person of trust (Section 160, para. 2, Code of Criminal Procedure, as amended).

The option and obligation to interrogate them **in a way that minimizes the distress caused to victims** by being questioned in court (Section 165, para. 2, of the Code of Criminal Procedure, as amended) was extended to include the trial itself. At present, all victims who are entitled to support throughout criminal proceedings must be interrogated in the aforementioned manner (the defendant must not be present during such interrogations, indirect questions are not permissible, etc.) (Section 250, para. 3 of the Code of Criminal Procedure, as amended).

Accordingly, the specific situation of victims of domestic violence is taken into account and, at the same time, the court seized with a domestic violence case gains first-hand experience with the suffering inflicted, which will motivate it to impose sanctions commensurate with the victim's situation. By supporting victims throughout legal proceedings it can be ensured that these individuals who are under extreme psychological pressure are treated with respect and dignity and given assistance in order to be better able to cope with the stress to which they are exposed in criminal proceedings.

In order to meet the need for special protection of victims of domestic violence, Section 173, para. 5, no 3 of the Code of Criminal Procedure, as amended, explicitly provides for the option that instead of arresting a **perpetrator pending further investigations "more lenient means" may be employed** (pledges and orders). In cases of violence that has occurred in dwellings within the meaning of Section 38a of the Code of Criminal Procedure, more lenient means would be a perpetrator's pledge to refrain from any contact with the victim, the prohibition for the perpetrator to return to the family apartment and its immediate environs or the order to comply with such an existing prohibition or interim injunction and to hand in all keys to the family apartment. **If the offender ignores his pledge or such an order, pre-trial detention may be imposed on him as a direct sanction under the Code of Criminal Procedure.**

Section 177, para. 5 of the Code of Criminal Procedure as amended stipulates, in the interest of more effective victim protection and on the basis of appropriate precautionary arrangements, that victims who have been exposed to violence in dwellings must be informed forthwith by the criminal police of the release of the defendant before a sentence is rendered by a first instance court, stating the definitive reasons for his release and indicating the more lenient means imposed on the offender.

If the perpetrator is released from pre-trial detention, it will be the responsibility of the public prosecutor's office to assure that the relevant information is passed on to the victim.

I.2 Criminal prosecution of perpetrators in cases of serious threats without the victim's authorisation

In addition, the requirement that the victim has to give her authorization for criminal prosecution in cases of dangerous threats made in the family (Section 107, para. 4 of the Code of Criminal Procedure) was eliminated as of July 1, 2006 so that victims are now relieved of the pressure exerted by their families to withdraw their authorization for criminal

prosecution. This new approach underlines the fact that it is not the victim but solely the public prosecutor who has to take a decision on the prosecution of the criminal offence of dangerous threat (Section 107 of the Penal Code). The criminal police and the public prosecutor's offices, to whose attention the suspicion of a criminal offence has been brought, must, ex officio, conduct an investigation of any such case (Section 2, Code of Criminal Procedure as amended).

Ultimately, the public prosecutor's office will lead the investigation procedure and take a decision on whether a charge is to be brought against the perpetrator or the investigation procedure discontinued (Section 101, Code of Criminal Procedure, as amended). In the event that the investigation procedure is discontinued by the public prosecutor's office, the victim has the right to lodge a claim with the Higher Regional Court for the investigation procedure to be continued (Section 195 of the Code of Criminal Procedure as amended).

I.3 Requirement to speed up criminal proceedings

The reform of the Code of Criminal Procedure which took effect on January 1, 2008 illustrates in the procedural principle set forth in Section 9 of the Code of Criminal Procedure as amended, the requirement to speed up all criminal proceedings enshrined in the Austrian Constitution (Article 6, para. 1. of the European Convention on Human Rights). The obligation to conduct legal proceedings swiftly, without any undue delays, emphasises the priority task of proceedings, namely to assure expedient law enforcement (and assertion of the victim's interests) with a view to assuring confidence in legal provisions.

I.4 Creation of specific competences for major public prosecutor's offices

Section 4, para. 3a of the Regulation issued by the Minister of Justice relating to the amendment to the Regulation on the Implementation of the Public Prosecutors Act (Implementation Regulation for the Act governing Public Prosecutors) stipulates – for public prosecutor's offices with at least ten established posts – that the head of the public prosecutor's office has to assign the task of processing cases of violence that has occurred in the immediate social environs (violence within the family, violence directed at children) to one or several specifically trained public prosecutors. As a consequence of this provision, specifically trained public prosecutors who are familiar with the phenomenon of domestic violence are to be entrusted with criminal proceedings dealing with violence in family settings. Thus a more profound understanding of the particular situation of victims of violence within relationships (within families) can be assured.

II. Measures for improving practical implementation

With a view to improving the processing of cases involving violence against women by public prosecutor's offices, the heads of all Austrian prosecutor's offices and public prosecution directorates were informed in detail on the Recommendations of the CEDAW Committee concerning the Communications on the cases Sahide GOEKCE, No.5 / 2005 and Fatma YILDIRIM, No.6 / 2005 on the occasion of the annual staff meeting held on November 13, 2007 **in the Federal Ministry of Justice** and also engaged in an exchange of opinions concerning issues of co-operation with law enforcement bodies and intervention centres.

With a view to improving and intensifying co-operation and the flow of information amongst public prosecutor's offices, courts and victim protection facilities, the Federal Ministry of Justice initiates, at regular intervals, "round tables" bringing together representatives of regional courts and public prosecutor's offices with those of local victim protection entities. These "round tables", primarily serve the purpose of deepening mutual understanding and ultimately bringing about more efficient co-operation and communication in concrete cases. The creation of specific competences for major public prosecutor's offices in cases of violence in the victim's immediate social environs should contribute to more efficient co-operation between public prosecutor's offices and victim protection entities, because in concrete cases cooperation will be restricted to a small circle of responsible persons; this will facilitate communication and promote mutual understanding.

In addition, a working party on domestic violence was set up in the Ministry of Justice in response to the recommendations of the CEDAW Committee concerning the administration of justice. This working party deals with the questions as to how in cases of domestic violence the interventions of public prosecution authorities and courts can be improved and works out a training concept for judges and public prosecutors, so that maximum protection can be afforded to victims of domestic violence.

In line with the recommendation of the CEDAW Committee, routine co-operation between the public prosecution authorities and non-governmental organizations committed to the protection and assistance of female victims of gender-specific violence should be assured, this round of discussions comprised participants from a wide range of different disciplines, who represented the Association of Austrian Public Prosecutors, the Association of Austrian Judges, the intervention centres and centres for protection against violence in Austria, the legal profession and the departments of the Federal Ministry of Justice responsible for legislative measures in substantive criminal law, the basic and advanced training institutions for candidate judges, judges and public prosecutors as well as the technically competent unit for the supervision of public prosecution authorities in specific criminal matters.

II.1. Improvement of the interventions of public prosecution authorities and courts in cases of domestic violence

In view of the fact that the need for rapid and optimum response mostly arises in the evenings or on weekends, i.e. outside regular office hours, there was discussion of best possible action during these times, i.e. during standby duty, and a best practice model was devised for this situation. This model is to be presented in the course of numerous training programmes and will be continuously expanded. The following elements of this best-practice model have been defined.

II.1.1. The decision-making basis

In order to be able to broaden the decision-making basis, it is of primary importance to gain a most comprehensive survey of the overall situation. Particularly in cases of domestic violence this must include an analysis of the protagonist's history – going beyond investigation of the current facts of the case – as well as the identification of objective facts which allow the most reliable assessment of the future situation to be made, especially with regard to the dangerous character of the protagonist.

So as to be able to determine the current sequence of events of the case a hearing, if feasible, of all available witnesses is important. Given the generally very emotional state of all parties involved, an interrogation of unbiased witnesses, if possible, is of great value. It is obvious that the police can enlist the services of interpreters, if necessary. Nevertheless, the question should be clarified as to whether an interpreter had previously been employed during any hearings or interrogations. Should the person concerned have been interrogated without an interpreter's assistance, it would be necessary to raise the question as to whether the interrogated party had the capacity to express him- or herself clearly, so as to be able to better assess the validity of his or her testimony.

In order to be able to investigate the past history of a case, which naturally provides clues to forecasting the further development and assessing the dangerousness of the perpetrator, the aforementioned witnesses must obviously be interrogated.

In any case, it must be clarified whether and when earlier incidents involving domestic violence had occurred and/or whether written complaints had been filed in the past. It must also be verified who had filed such complaints and/or who had suffered damage. Frequently law enforcement offices who have been working for some time in the respective district are, to some extent, familiar with this environment although their knowledge remains to be documented. Any information received from victim protection entities must obviously also be used.

It is also relevant whether in the past expulsion and prohibition to return orders or temporary injunctions had been issued against the defendant and if so, whether he had complied with these. In most cases, the police draws on the so-called criminal police file index and logs recorded incidents contained in these files. In this context it must, however, be borne in mind that the criminal police file does not give a sufficiently clear picture of whether and how these incidents had been dealt with in previous court proceedings. The status of an offender's criminal record must be established as a standard routine as this obviously contains valuable clues to his past life, although it fails to give a complete picture of it, because sentences that were pronounced only recently are frequently not yet documented in the record, and hence no conclusions can be drawn with regard to pending or discontinued proceedings or acquittals. To the extent to which this is technically feasible, ideally the register for the automation of legal proceedings (Verfahrensautomation Justiz) should be checked. This appears also necessary in view of the fact that arrest warrants or pretrial detention orders cannot be justified by incidents for which legal proceedings have already been discontinued or which have even resulted in acquittals. Conversely, delinquency in the course of pending proceedings constitutes a valid reason for arresting the offender.

If possible, the facts of earlier cases should also be established (in the light of the above observations) as these permit conclusions regarding the perpetrator's readiness to resort to violence and/or indicate a tendency towards the use of violence by the perpetrator (eventually an intensification of acts of violence).

Investigation of the perpetrator's past history must also take into account the background of the facts of the present case, i.e. any disputes about custody and visiting rights of children and divorce or settlement procedures. For assessing the dangerousness of the offender not only his past history needs to be considered but also any weapons prohibitions imposed on him as well as his specific personal situation. In many cases, an unprejudiced assessment of the origin, social milieu and background will not contradict repeated observations in service and empirical data, because traceable circumstances, such as war traumas, fanatical religious beliefs and socially accepted or even demanded violence in the perpetrator's ethnic or social environment, etc. may, under certain circumstances, give rise to the justified fear that further acts of violence can be expected. Other circumstances, such as, for example, alcoholism, gambling or an imminent threat of deportation or the loss of a residence permit after divorce from the victim, may also yield valuable clues for assessing the dangerousness of the perpetrator.

Furthermore, the observation of law enforcement officers dealing with the offender concerning his personality traits in connection with his behaviour during official acts or his response to an expulsion order serve as valuable argumentation and decision-making tools in assessing the danger that a crime will be planned and/or committed.

Valuable clues to the perpetrator's readiness to resort to violence can be gained by studying the type of violence to which he resorted both in the present case and in earlier incidents. Therefore, it appears necessary, also for this reason, to identify

all circumstances such as the use of weapons, violence against children, persons with special needs, or pregnant women, the committing of a crime on account of a minor incident, or particularly brutal behaviour, etc.

II.1.2. Documentation:

Just as important as the establishment of facts and past histories as a decision-making basis is the accurate documentation of these data in the official memorandum which has to be written after the telephone conversation with the public prosecutor on duty. A complete description of all facts known to the public prosecutor on duty at the time of his decision is indispensable also for his own protection, especially when he/she reports a perpetrator who is at large. In training programmes, this issue cannot be overemphasized because in those tragic cases – which can, however, never be excluded with absolute certainty despite utmost diligence – in which the perpetrator who is at large and commits the threatened crime after having been reported, the reasonableness of the decision taken by the public prosecutor on duty can be determined only post factum in the light of an ex-ante analysis on the basis of the time of his/her decision as documented in the official records. In this process, it must also be analysed whether and, if so, what measures had already been taken by other authorities (expulsion and prohibition to return order pursuant to the Police Act and temporary injunction pursuant to the Act on the Enforcement of Judgments). For the public prosecutors who are subsequently entrusted with such a case, the official notice is of particular significance as it is the only source from which it can be seen whether the body of knowledge has significantly changed since the decision taken by the public prosecutor on duty to such an extent that the measure adopted by that time needs to be revised.

II.1.3. Instructions for further investigations and repeated contacts with the police:

In many cases, a single contact between the public prosecutor on duty and the competent police station will not be sufficient. If in view of the abovedescribed considerations further investigations appear necessary and if these can be conducted within a reasonable time-frame, the need may arise to instruct the investigating officer to make another phone call to the public prosecutor on duty, so that the latter may reconsider and eventually modify his/her earlier decision on the facts of the case.

II.1.4. Decision

Before the public prosecutor on duty can consider an appropriate reaction to the crime described in the telephone conversation, it is necessary to clarify whether any other authority had already reacted to it. Such reaction must be in line with the Federal Act for the Protection against Violence within the Family, Federal Law Gazette No. 759/1996, providing for expulsion orders and the prohibition to enter the family dwelling (formerly the prohibition to return order) in accordance with the Police Act and the so-called temporary injunction for protection against violence (Sections 382 b to 382 d of the Act on the Enforcement of Judgments) which are briefly described below.

Reminder:

In accordance with Section 38 a of the Police Act police officers may eject persons from whom the danger to the life, health and freedom of another person emanates out of an apartment and its immediate environs and prohibit the former from entering these premises for a period of ten days, if, in view of certain facts such as a previous attack, it is feared that such an assault is imminent (Section 38 a, para. 1 and 2 of the Police Act). This period may be extended to a maximum of 20 days if an application has been filed for the issuance of a temporary injunction pursuant to Section 382 b of the Act on the Enforcement of Judgments with a district court. Compliance with the prohibition to enter the apartment is checked by law enforcement officers at least once a day during the first three days after it has been pronounced (Section 38 a, para. 7 of the Police Act). The pronouncement of a prohibition to enter the family apartment must be checked within 48 hours by the law enforcement authority (Section 38 a, para. 6 of the Police Act). Non-compliance with the prohibition to enter the family apartment is punished by an administrative fine of up to euro 360 (Section 84, para. 1, no. 2 of the Police Act).

In accordance with Section 382 b of the Act on the Enforcement of Judgments, courts may instruct a person who has made a physical assault on a close family member, threatens him or her with such an assault or behaves in such a way as to impair the physical health of a close family member and thus makes living together or meeting intolerable, to leave the family home and its immediate environs and/or prohibit him/her from returning there for up to three months, to impose a ban on staying in certain places and to avoid meeting with such family members or establishing contact with him or her (Section 382 b, para. 1 and 2 of the Act on the Enforcement of Judgments). Family members are all persons who live or have lived with the abuser in a family or family-like community (Section 382b, para. 3 of the Act on the Enforcement of Judgments). The validity of the temporary injunction is extended if certain proceedings such as divorce or separation of property are pending until these are concluded. The police may be entrusted with the enforcement of such orders. Upon the applicant's request, law enforcement officers can be entrusted with the task of creating the conditions stipulated by the temporary injunction by using their power of command and coercion (Section 382 d, para 1 and 4 of the Act on the Enforcement of Judgments).

Today, as in the past, the public prosecutor on duty has or had several options in taking his/her decision: If the situation does not appear to be too alarming, he/she may order that a complaint be lodged against the abuser at large (irrespective of whether he has already been arrested or not).

If the perpetrator has absconded (or has not yet been formally arrested by the police), the need may arise to issue an arrest warrant. In this context it should be pointed out that as a result of the deletion of Section 452 of the Code of Criminal Procedure, for offences falling under the jurisdiction of district courts and carrying sentences of more than six months' imprisonment, i.e. offences set forth in Section 83, para. 1 of the Penal Code, pre-trial detention may be ordered due to the danger that a crime could be committed.

If the defendant has already been arrested, (until January 1, 2008) the public prosecutor on duty had only one option – if a complaint against the defendant at large was not possible – i.e. to order imprisonment with the prospect of pre-trial detention.

Since January 1, 2008 the option set forth in Section 173, para. 5, no 3 of the Code of Criminal Procedure as amended and described under item I.1 has been available, which will gain vital importance especially in cases of domestic violence, and therefore awareness of it should be heightened. If the defendant has been arrested pursuant to Section 171, para. 2 of the Code of Criminal Procedure, under Section 172, para. 2 of the Code of Criminal Procedure it is now possible not to commit the perpetrator to a prison if the purpose of his apprehension can be achieved by more lenient means pursuant to Section 173, para. 5, no 1 to 7 of the Code of Criminal Procedure. In such cases the criminal police has to instruct the defendant, upon order of the public prosecutor, to record pledges from the defendant or to confiscate his keys to the family apartment and to release him/her thereafter. The court will take a decision concerning the duration of the application of such more lenient means.

In cases of violence in apartments (Section 38 a, Police Act), a more lenient measure would be the defendant's pledge to refrain from any contact with the victim, and to comply with the order not to enter a certain dwelling and its immediate environs pursuant to Section 38 a, para. 2 of the Police Act or a temporary injunction pursuant to Section 382 b of the Act on the Enforcement of Judgments, including the confiscation of all keys to the family apartment (Section 173, para 5, no 3 of the Code of Criminal Procedure) and the instruction to avoid certain places or persons (including the victim) (Section 173, para. 5 no 4 of the Code of Criminal Procedure). Section 173, para. 5, no 3 of the Code of Criminal Procedure expressly refers only to violence in apartments. If the violence has occurred in other places, Section 173, para. 5, no 4 of the Code of Criminal Procedure can be evoked, as it provides for the order to the perpetrator to avoid certain apartments, certain places and certain persons, but the keys can only be confiscated in the cases set forth in Section 173, para. 5, no 3 of the Code of Criminal Procedure.

If the offender cannot be released in accordance with Section 172, para. 2 of the Code of Criminal Procedure, he/she must be committed to prison in the precinct of the competent court within 48 hours (Section 172, para. 3 of the Code of Criminal Procedure).

If the defendant was at large and could therefore not be apprehended, the option of more lenient means (Section 172, para 2 of the Code of Criminal Procedure) is obviously not available. Hence a prohibition order (not to enter the apartment) pursuant to Section 38 a of the Police Act cannot be issued, and the only alternative is the issuance of a court-approved arrest warrant (Section 171, para. 1, of the Code of Criminal Procedure) with a search for the defendant (Section 167, no. 1, Section 168, para. 2, Section 169, para. 1 of the Code of Criminal Procedure) and the lodging of a complaint against the perpetrator at large.

In cases of doubt, in particular, in which the public prosecutor on duty ultimately decided to issue an arrest warrant, it is advisable not to consider the case closed with this warrant. In this context, it has proved valuable in practice to regularly mandate the police to discuss the case with the public prosecutor on duty before the offender is committed to prison, because after the arrest and interrogation of the defendant a picture may emerge that is entirely different from the initial situation, which calls for a revision of the assessment of the facts of the case.

II.2. Training and further training concept

Additionally, the working group developed a comprehensive concept for the training and further training of trainee judges, judges and public prosecutors. In this context, Article 16 of the Service Regulations for Judges and Public Prosecutors (Richter- und Staatsanwaltschaftsdienstgesetz (RStDG)) deserves mention. It expressly stipulates that the Bench examination must also cover the subjects of prevention of violence and the right to protection against violence. Although these issues have always been part of the practical training of trainee judges and hence part of the Bar Examination, the Regulations underline their particular relevance for this exam.

The training concept developed by the working group provides for training and further training courses to be attended jointly by judges, public prosecutors, contributors to intervention centres and to other services for the protection of victims. These courses are to be organised by inviting interdisciplinary lecturers from sectors such as prevention, police and judicial

authorities. The concept also includes intensive training of public prosecutors on duty as part of a comprehensive training model. Specific training modules are planned on subjects such as “protection of victims/protection against violence”, “domestic violence”, “structures of violence” and “predicting the dangerous character of an offender”. The outline of the training and further training concept for judges and public prosecutors is contained in Annex /B.

B. Law enforcement officers

“Domestic violence” is an integral part of the basic training of every law enforcement officer. This part of the training serves to enhance and deepen the individual awareness and understanding of cases of domestic violence and to create a sensitive approach to such cases.

Furthermore, continuing issue-related seminars and workshops are being organised with instructors and trainers of police training courses (current topics: protection of victims, reform of the Code of Criminal Procedure, human rights, ethics, etc.)

The great importance attached to effective prevention of domestic violence in the training of law enforcement officers is also demonstrated by the training of special prevention officers (242 persons throughout Austria at the moment). Great effort is being spent on imparting an understanding of the nature and dynamics of violent relations and of the situation that victims of violence find themselves in. Focal areas in the training of prevention officers are:

- Types, patterns and the impact of violence against women and children,
- Interviews conducted with children,
- Situation of women who have suffered violence,
- Crisis management for victims, rights of victims, suggestions on how to treat victims correctly,
- Psychological profile of perpetrators, perpetrator strategies,
- Assessment of the dangerous nature of a situation,
- Recommendations on police intervention in case of domestic violence,
- Legal basis,
- Information on intervention centres, women’s refuges, counselling centres for men and other NGOs.

Ongoing network meetings with NGOs, training and further training measures, and training courses carried out in cooperation with NGOs are strategic priorities for 2008.

In particular, against the background of the present views, which were a reaction to the killing of two women from the migrant community by their husbands, a special initiative started in 2007 deserves mention: in Vienna, an attempt is being made to recruit citizens with a migrant background for the police service. This project aims at attracting qualified persons from various ethnic and cultural backgrounds and at enhancing the intercultural competence of law enforcement officers. Officers from migrant communities with appropriate language skills are better suited and more efficient in providing information about the rights and duties to those in migrant communities. This is of particular importance when intervening in a case of domestic violence, where victims have to be treated with empathy to create an atmosphere of trust, and where a determined stand has to be taken against aggressors to whom the legal basis has to be explained. In a confrontation with the police, the perpetrator’s acceptance of the police intervention is considered much higher if the officer possesses intercultural competence. It is also expected that in such circumstances the situation will deescalate.

C. Creating awareness among boys and youths

Commitment and initiatives against violence concern everyone. Since 2007, policy activities of the Ministry for Social Affairs have focussed on combatting male violence and on the prevention of violence, in particular among boys and male youths. These initiatives include cooperation with White Ribbon on “Men against male violence”, promotion and support of various violence prevention projects and cooperation with the Minister for Women’s Affairs and the Ministry of Education.

The Minister for Women’s Affairs, the Minister of Education and the Minister for Social Affairs jointly initiated Gender Days 2007. Their aim is to prevent violence, to provide positive and identity-reinforcing orientation aids for boys and male youths in a gender-equitable education, and to enhance the awareness for nonviolent solutions of conflicts.

In nursery schools and elementary schools, i.e. as early as possible, it should be made clear to boys and male youths that there must be no room for violent acts of men in our daily lives. Gender Days workshops on the prevention of conflicts and violence have raised public awareness among Austrians of violence among youths, violence against women and domestic violence, and thus provided a first step towards prevention.

Another focal point is qualified training, which provides the opportunity for employment and hence for avoiding violence and crime among youths.

D. Awareness and information

The exhibition “Behind the façade” was presented March 7 – 19, 2007, at the Federal Chancellery and opened by the Minister for Women’s Affairs, together with the Federal Chancellor and the Minister of the Interior. It signalled to the general public the great importance the Federal Government attaches to the fight against violence. A panel discussion on “Providing protection against violence for migrant women” was held in the course of the exhibition. The exhibition addressed occupational groups confronted with domestic violence, and, in particular, schoolchildren. Numerous school classes attended the guided tours at the exhibition. Preparation and follow-up sessions were also provided for them.

Furthermore, the Federal Minister of the Interior and the Federal Minister for Women, Media and the Civil Service mandated the intervention centres in Vienna and Lower Austria to organise and implement an international symposium entitled “10 years of Austrian legislation on the protection against violence in an international context”. The symposium was held in Vienna on November 5 and 6, 2007 and in St. Pölten on November 7, 2007.

The Austrian Act on Protection against Violence within the Family (Gewaltschutzgesetz) has celebrated its tenth anniversary. On that occasion, experience with domestic violence in the past 10 years in Austria and in Europe in general was reflected, and good practice models and innovative measures were presented. Among the 35 participants were a large number of police officers, many of them in executive functions, members of the administration of justice, members of centres for the protection of women and of other social service institutions.

The women’s helpline for victims of violence was installed at the end of 1998 during the campaign “Stop Violence”. It has been operated by the Association of Autonomous Austrian Women’s Refuges (Verein Autonome Österreichische Frauenhäuser, AÖF) since June 1999 and is a nationwide service that can be called around the clock, all-year round, and at no cost. It helps women in crisis situations and assists them in finding a suitable place to take refuge close to their home. An effective campaign that helped raise public awareness of the women’s helpline was run between November 2007 and January 2008. Posters, free cards, ads and TV commercials informed the general public, in particular the women concerned, about this important service. There are plans to continue advertising for the helpline in May and June 2008.

III. Publication of recommendations

In conclusion, please note that an unofficial German translation (sometimes together with the English original) of the views and recommendations of the CEDAW-Committee was published not only on the homepage of the Federal Chancellery but also on “Intranet Justiz”, a clearly arranged information platform for members of the Austrian administration of justice, and on the website of the Ministry of Justice www.bmj.gv.at, which is accessible to the general public.

Federal Ministry of the Interior grants for the protection against violence in 2007:

Recipient	Amount
2007	
Womens Access to Justice (Frauenrechtsschutz) Association aiming at breaking down barriers to justice that women and children are confronted with as victims of violence in criminal proceedings, in cases pertaining to marriage and family law, when enforcing claims under civil law in cases of actual or threatened violence or claims for gender equality under labour and social law.	€ 15,000.00
Verein Notruf Workshops on information about and prevention of sexual violence; evening sessions, further training and coaching.	€ 18,560.00
Verein Männerberatung Innsbruck „MANNSBILDER“, counselling for violent men and male youth, group work	€ 8,912.75
Verein Selbstlaut Working on prevention with children, youths and teachers in primary and secondary schools	€ 14,797.00
Gewaltschutzzentrum Steiermark Association for prevention of violence, assistance to victims and protection of victims	€ 2,500.00
LEFÖ Contributes to the “Intervention centre for victims of trafficking in women”, a victim protection facility for women affected by trafficking in humans	€ 99,120.00
Männerberatung/Wien Association for the counselling of men to stop violence in	€ 78,420.00
Dr. Eva WAGNER, study on domestic violence, project “Taking a firm legal stance against aggressors“	€ 3,240.00
Verein Männerwelten Salzburg Counselling for men and male youth, in particular counselling for perpetrators and violent youths	€ 17,550.00
Pro Mente Burgenland Preventive measure: “Be yourself – be self-confident and strong when steering through life“	€ 36,000.00
Verein Theater Nemesis Support for the theatre play on the protection of our children, with participation of the audience, entitled “Taking good care of myself“	€ 26,375.40
Wald erleben/Bad Sauerbrunn Forest education focussing on prevention of violence	€ 3,240.00
IOM – trafficking in humans Organisation for migrants Development of guidelines for data collection to combat trafficking in humans, including comparable indicators	€ 30,635.58
Transfer AGIS Project dealing with trafficking in children	€ 53,403.82
Total	€ 411,754.55

New training and further training concepts for judges and public prosecutors

I. Training: Content

- Police Act (SPG), Act on the Enforcement of Judgements (EO), Code of Criminal Procedure (StPO): How to react to violence in immediate social environs
- Cooperation of police and administration of justice on acts of violence
- Phenomenology of violence, reasons for staying in a relationship characterised by violence; psychology of victims/traumatising effects on victims after acts of violence; dealing with victims; psychology of offenders; case studies
- Assessing the dangerous character of offenders who use violence and threat in immediate social environs
- Duties and scope of victim protection facilities, youth welfare offices and similar institutions

Training modules

- Seminar “Domestic violence“

Content: Structures and relationships of violence; stalking; role of the penal code when ostracising violence; cooperation of police and administration of justice on acts of violence in immediate social environs; duties and scope of victim protection facilities, youth welfare offices, etc.

- Seminar “Predicting the dangerous character of an offender“

Content: Offender profiles, criteria for assessing violence scenarios; cooperation of police and administration of justice on violence in immediate social environs – fast exchange of relevant information with public prosecution authorities

II Further training

Curriculum “Violence in immediate social environs“ for public prosecutors with special competence pursuant to Article 4 (3a) of the Implementing Order relating to the Public Prosecutor’s Act (DV-StAG); seminars for judges and public prosecutors, in particular for those on stand-by duty.

Content

- Structures of violence and behaviour of persons caught up in relationships of violence
- Adequate appreciation of evidence and judicial proceedings in the administration of justice
- Importance of the role of public prosecutors for the protection of persons threatened by further acts of domestic violence
- Cooperation with law enforcement officers
- Bridging the gap and connecting the interface between public prosecution office/ criminal court and family court
- Including family judges, police officers, NGOs and other experts in seminar organisation, lecturing and target groups.

Training modules

- “Case studies: chronology of Yildirim and Goekce cases“

Content: Review of the views of the CEDAW Committee
Target groups: Judges, public prosecutors, members of intervention centres and other victim protection entities

- “Predicting the dangerous character of an offender“

Content: Offender profiles, identification of danger signals, behavior and interaction patterns of offenders, communication and interrogation strategies, criteria for assessing violence scenarios

- “Violence structures – the role of the Penal Code and civil law in ostracizing violence“

Content: Interface family courts/law enforcement and criminal courts Improved interaction; legal and organisational changes required to ensure better protection against violence (e.g. organisation of stand-by duties; legal concept of temporary suspension, etc.)

- “Homicide offences and serious violence in immediate social environs“ Interdisciplinary meeting on prevention and case management
Content: Case study on how to bring about improvements by quickly recognising dangerous situations
- “Criminal law and code of criminal procedure for NGOs“
Content: Basic principles of criminal law interventions as a prerequisite for constitutional proceedings
Target groups: Judges, public prosecutors and representatives of NGOs
- “Daily routine at an intervention centre/women’s refuge“
Responsibilities of intervention centres and other victim protection facilities
Content: Responsibilities and scope of victim protection facilities to prevent violence
Target groups: Judges, public prosecutors and NGOs
- “Consideration of evidence and interrogation methods“
Seminar for judges/public prosecutors with at least one year of professional experience
Content: Judging credibility in violence relationships; impact of traumatisation when giving evidence
- “Combatting domestic violence: a mandate for criminal and civil courts“
International workshop as part of the HELP programme of the Council of Europe
Content: Deliberations on designing training concepts in the field of trafficking in human beings and protection of victims How can training modules be designed most effectively?
Aim: Preparing curricula and material
Target groups: Heads of judicial academies Human rights officials from Council of Europe
Experts with practical experience member states
- “Self-management for public prosecutors and criminal judges“
Keeping calm when having to make a difficult decision; discussion and reflection on job profile and professional image
Content: Methods on how to keep up performance under stress
Target groups: junior and senior public prosecutors and criminal judges
- “Scientific data and international research findings on domestic violence“
Content: Presenting current data and research findings as a basis for determined action in order to improve range of action in cases of violence in the immediate social environs
- Supervision for public prosecutors