

Information leaflet for those affected by domestic violence

According to the Istanbul Convention, domestic violence includes all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, regardless of whether or not the perpetrator shares or has shared the same residence with the victim.

Possible forms of violence

Physical violence (non-exhaustive list)

- Throwing an object at a person
- Shoving, grabbing, shaking, binding
- Slapping, biting
- Kicking, punching
- Hitting a person with an object, or attempting to do so
- Beating
- Strangling

Psychological violence (non-exhaustive list)

- Coercing by threat of violence
- Throwing around, smashing, crushing or kicking an object
- Threatening to hit a person or to throw an object at them
- Using weapons, or threatening to do so
- Waylaying, stalking, controlling, isolating
- Cursing, insulting, humiliating

Sexualised violence (non-exhaustive list)

- All sexual acts that are forced via the use of threats or violence (including within marriages/partnerships)

Economic violence (non-exhaustive list)

- Prohibiting employment
- Taking away earnings, withholding money
- Taking away bank card / Post Finance Card

Social violence (non-exhaustive list)

- Prohibiting contact with family and/or friends
- Locking a person in, or preventing them from leaving the house/flat
- Locking a person out, or preventing them from entering the house/flat

The individual forms of violence are often combined, e.g. physical with psychological violence. Psychological violence can be just as harmful as physical violence and its consequences are often underestimated.

A personal consultation can clarify whether your case involves a criminal offence as per the Victim Support Act

Legal basis

On the 1st of April 2004, an amendment to the Swiss Criminal Code (SCC) came into force, such that common assault, repeated acts of aggression, threatening behaviour, sexual coercion and rape within marriages and partnerships became offences prosecuted ex officio. This means that, officially, such offences must be prosecuted. Acts of violence between spouses, as well as between homo- and heterosexual partners cohabiting indefinitely, or up to one year after separation, are prosecuted. Acts of violence between spouses are prosecuted ex officio even if the spouses each have their own residence or live separately, or up to one year after divorce.

In cases of acts of aggression, the prerequisite for prosecution ex officio is repetition of the offence. Outside marriages and partnerships, repeated acts of aggression, common assault and threatening behaviour are still only prosecuted on request. Any one-off act of aggression within a marriage or partnership is also still only prosecuted on request.

Repeated acts of aggression against children were already offences prosecuted ex officio under the old law, and still are.

Offences such as one-off acts of aggression, trespass and misuse of a telecommunications installation are still only prosecuted on request (see fact sheet C1 "Häusliche Gewalt in der Schweizer Gesetzgebung" ((only available in German, French and Italian)) at <https://www.ebg.admin.ch/en/publications-violence-en>).

Criminal proceedings

Based on an offence prosecuted ex officio or your criminal complaint, the police and the public prosecutor will initiate a criminal investigation. After completion of the criminal investigation, the public prosecutor decides:

- Whether the proceedings are to be abandoned (e.g. if the suspected offence cannot be proven and insufficient evidence is available).
- Whether the proceedings are to conclude with a summary penalty order (if the accused confesses or if the circumstances of the case are sufficiently clarified by other means and a fine or monetary penalty not exceeding 180 daily penalty units or a custodial sentence not exceeding 6 months is possible).
- Or, particularly when more severe punishments are possible, whether the proceedings are to be referred to a court that shall pass judgement.

The court passing judgement decides on the guilt of the perpetrator and the degree of penalty. It can also decide on the aggrieved party's financial claims (civil claims).

Option to suspend criminal proceedings

Unlike other offences prosecuted ex officio as per the Swiss Criminal Code, in cases of common assault, repeated acts of aggression, threatening behaviour and coercion within marriages and partnerships, the competent authority can suspend the criminal proceedings if the person affected by violence so requests, or consents to a corresponding application from the competent authority. However, this option to suspend criminal proceedings does not apply in cases of sexual coercion or rape.

The proceedings are resumed if the person affected by violence revokes consent in writing or verbally

within six months of the suspension. If consent is not revoked, the competent authority shall order definitive abandonment of the criminal proceedings. Abandonment is not possible if the situation of the person affected by violence has neither stabilised nor improved after the **six-month** suspension.

If you wish to exercise your legal rights as a private complainant, you will be invited to an interview with the police and/or public prosecutor, which you must attend, and you will be questioned as a person providing information.

If you have not declared yourself a private complainant, you will, in most cases, be summoned as a witness.

The public prosecutor can also summon you, together with the accused, to a settlement hearing. The purpose of such hearings is for the accused to apologise to you and declare themselves willing to cover your resulting expenses and possibly (see below) to provide compensation for pain and suffering. In return, you declare yourself willing to let the proceedings be suspended.

If an agreement is reached with the accused (the court calls this a settlement), the suspended proceedings are abandoned, so no conviction occurs.

If you do not wish to reach an agreement with the accused, the public prosecutor continues the investigation. If the accused confesses to the offence or if their guilt can be proven, a fine or a conditional custodial sentence is normally issued. In addition, the accused is usually ordered to cover your costs and the procedural costs.

If the accusations cannot be satisfactorily proven in the main hearing and therefore no conviction can occur, there is a risk that you will also have to pay some of the procedural costs, but only if you have acted maliciously or with gross negligence.

The most important rights of the aggrieved party during the criminal proceedings

As the aggrieved party, you have the following rights during the criminal proceedings: protection of privacy, exclusion of public access, notification of the accused's prison release or escape, prevention of any encounter with the accused, accompaniment of

confidants, refusal to answer questions that relate to your private sphere in cases of sexual offences and the right to be questioned by a person of the same gender and to request an interpreter of the same gender in cases of sexual offences.

As a private complainant, you also have the following rights: inspection of case documents, requests for the taking of further evidence, submission of civil claims, notice of judgement, and delivery of judgements and rulings.

Removal/restraining order

If a person seriously or directly endangers or threatens another person within an existing or dissolved partnership or family relationship, the Bern Cantonal Police is authorised to remove them from the flat or house and the immediate surroundings, and to prohibit them from returning. The law states that the duration of such a restraining order shall not exceed 20 days. This can be extended in the civil court. This extension must be requested immediately.

As of the 1st of January 2022, it is possible for civil courts to order electronic monitoring at the request of the plaintiff (the affected person), to determine the whereabouts of the perpetrator. This measure can be ordered for a maximum of 6 months, in addition to a restraining order or a contact ban. There is the possibility of an extension for a further 6 months.

Preventative custody

The compulsory measures court has the option of ordering preventative custody of the violent person for a duration ranging from 24 hours to a maximum of 14 days.

Children, young people

For children and youths affected by violence, generally the same legal provisions apply as for adults. However, the Criminal Procedure Code contains additional provisions to protect affected children and youths, as well as some differing provisions, e.g. involving the right to refuse to testify. Children who are under the age of 15 at the time of the hearing are questioned as persons providing information. They are not obliged to testify. Such hearings generally must occur as video hearings and in the presence of a specialist. Confrontations with the accused and the number of hearings are restricted. In addition, the hearings are to be

conducted by the same person wherever possible. Under certain circumstances, the criminal proceedings can also be suspended for protection of the child (see fact sheet C1 "Häusliche Gewalt in der Schweizer Gesetzgebung" ((only available in German, French and Italian)) at <https://www.ebg.admin.ch/en/publications-violence-en>).

The Victim Support Service offers consultations for affected children and

Medical costs

Medical costs are the costs of medical treatment, ambulances and other measures prescribed by a physician, e.g. physio- or psychotherapy.

If you are working, report the incident to your employer's accident insurance provider. If you are not working, report the incident to your personal health and accident insurance provider. If you are currently unemployed and registered with the regional job centre (RAV), report the incident there. You must then submit the invoices (e.g. from medical specialists or hospitals) to the relevant insurance provider. You can subsequently declare any excess or deductibles as damages in court (see below).

If you incur medical costs that are neither paid by the insurance nor the perpetrator, there is a possibility that Victim Support will recompense you for these. Please let us know about them.

Compensation claims for damages, pain and suffering

If you wish to assert compensation claims for damages, pain and suffering against the accused, these claims can be asserted as civil claims during the criminal proceedings. For this purpose, you must take part in the proceedings with the public prosecutor at an early stage, as a private complainant.

Claims for damages

Damages and costs caused by the criminal act mainly include:

- Damaged or destroyed clothing and shoes.
- Lost wages or income because of the criminal act.
- Telephone and travel expenses relating to the criminal act.
- Additional costs that the health or accident insurance does not cover.

Make a **damages list of the remaining damages and costs**, with evidence, if possible (bills and receipts), and submit this to the court at the hearing.

Compensation for pain and suffering

When persons are affected by violence, the question of whether they are entitled to compensation for pain and suffering often arises. Such compensation is possible under the following circumstances:

- If the criminal act leaves behind physical injury and/or psychological damage.
- If the professional and/or private possibilities experienced prior to the criminal act are left impaired.
- If, despite no injury or damage being left behind, the healing process was very painful, abnormally long or otherwise extraordinarily arduous for the affected person.

Claiming compensation for damages and/or pain and suffering from Victim Support

If you are entitled to compensation for damages and/or pain and suffering, and this is not paid, due to the perpetrator being unknown or unable to pay, such claims can, under certain circumstances, be covered by Victim Support. **Note:** These claims must be reported to Victim Support within 5 years of the date of the offence, otherwise they expire

Guidance counselling services

The Victim Support Service offers you counselling and support. The counselling is cost-free and can also be kept anonymous. We are under a strict legal obligation to maintain confidentiality.

We can provide you with general legal information and, if appropriate, put you in touch with a legal expert who can give you, or your parents, if necessary, legal advice, as well as representation in the criminal proceedings if required.

We can also offer you psychological support and put you in touch with therapy experts if necessary.

For further information and explanations, you are welcome to contact us or your legal representative.

