Domestic Violence and the Legal System in Germany

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Domestic Violence – Some Basics

- E.g. Berlin (≈ 34 lakh inhabitants) about 16,000 registered cases in 2011
- Number of persons concerned is lower due to recurrence in violent relationships
- In some place police has to show up once a week or so
- Probably high number of unregistered cases
Domestic Violence – More Basics

- About 50% of the cases: physical injuries
- Increasing number of reported cases due to awareness
- Awareness programs for citizens, welfare and service providers as well as for police officers (male dominated working culture and behavioral patterns)
- Broad concept of domestic violence in terms of gender, age, victims etc.

Victims of Domestic Violence

- Different from India: Legal regime not limited to domestic violence against women
- Victims: approx. 75% women, but also children, elderly people, man, others
- Until a decade ago common approach was to “offer” women (and children) transfer to shelter home (which still is an option if woman wishes so)
- Today it’s rather the “aggressor” who has to leave shared household
Legal Framework

- No focused legal framework until a decade ago

- Today 3 “pillars“:
  - Preventive Powers of Police (State Police Law)
  - Federal Protection against Stalking and Violence Act (Gewaltschutzgesetz of 2001)
  - Criminal Code (only retroactiv)

- In charge: Police, (civil) courts, child protection agencies and others

- No „protection officer“ or comparable institution

Intervention under Police Law

- In case of mental or physical danger for life, limb or liberty (criminal offence) police may act under State Police Act, as provided

- Any police officer, inter alia, has right to
  - Order immediate removal of „responsible“ person from a shared household and issue prohibitive order against return for up to 14 days (no extension)
  - Order can immediately be enforced by police officer by means of physical force, if necessary
  - Order can be extended to prevent any contact or communication in other places (school, office etc.) and other protection orders
Protection Order by Civil Court (I)

- Civil Court issues protection order(s) only if aggrieved person applies for
- Legal threshold: Deliberate violation of mental or physical health, body or liberty of a person
- Court order will be issued within duration of interim police order if application is filed within short time
- Court order substitutes police order

Protection Order by Civil Court (II)

- Protection Order may cover, *inter alia*
  - Temporary removal from and interdiction of return to shared household and interdiction to return (6 month or longer, depending on ownership, rental contract etc.)
  - Interdiction of contact outside of household and at specified places (school, workplace etc.)
  - Interdiction of communication by technical means
- Preach of protection order constitutes offence, punishable with imprisonment up to one year, or fine
Slides and Links

Slides of this presentation:
http://www.hwr-berlin.de/prof/clemens-arzt/lehre/

[Go towards end of page: „Lectures at Symbiosis Law School“]

German Criminal Code
www.gesetze-im-internet.de/englisch_stgb/index.html

German Criminal Procedure Code
www.gesetze-im-internet.de/englisch_stpo/index.html

Gewaltschutzgesetz
www.gesetze-im-internet.de/gewschg/index.html