

## Who will support me during the criminal proceedings?

The Gewaltschutzzentrum Salzburg will inform, accompany and support you free of charge right from lodging a complaint up to the end of the criminal proceedings. (Process support)

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## What are criminal proceedings?

If a member of a family is responsible for any ill-treatment, injuries, threats, sexual violence or other offences to another member, it represents an infringement which will be prosecuted by the state in principle. These offences are outlined in the penal code and are dealt with by the **criminal court** – unlike matters such as divorce, custody, alimony, etc., for which the **civil court** is responsible.

## What should be done if I myself or another person have/had been threatened, ill-treated or injured?

In an imminent danger situation, it is important to immediately inform the executive by means of an emergency call (133). The intervening officials shall ensure that you are safe; moreover, it is their responsibility to document the event and pass it on to the public prosecutor's office. This is referred to as the so-called "filing of charges".

You are "interrogated" for this purpose, photos will be produced if possible and you will be requested to undergo a medical examination.

## Which offences are reported? What happens after charges are filed?

The offences that are most commonly reported in the domestic circle are:

Personal injury as per §§ 83 ff of StGB (penal code)  
Coercion as per §§ 105 f of StGB  
Dangerous threat as per § 107 of StGB  
Persistent persecution as per § 107a of StGB (stalking)  
Damage to property in the domestic circle as per § 125 in conjunction with § 166 of StGB  
Rape, sexual assault, etc. as per §§ 201 ff of StGB

For these offences, a distinction is made between the following:

**Criminal offence liable to public prosecution:** The state prosecutes these offences (e.g. personal injury); however, your cooperation is also required in some cases:

**Criminal offence prosecuted only upon application by the victim:** e.g. child abduction; the proceedings may be initiated only if you have filed an application for criminal prosecution. You can withdraw this application.

**Offences with private prosecution:** e.g. damage to property in the domestic circle. If you wish to prosecute this offence, you stand in place of the public prosecutor's office and also bear the entire risk of litigation (costs can be incurred). The so-called prosecution application must be filed at the latest 6 weeks after finding out about the offence. Otherwise, the prosecution is no longer possible.

The above-mentioned offences must be considered as having differing severity. The severity of the offence is also important for deciding whether the district court or the regional court is responsible for criminal cases. Thus, for e.g., the district court is responsible for personal injury; however, if this offence also involves a dangerous threat or coercion, the regional court is then responsible.

## What happens at the public prosecutor's office?

The public prosecutor's office decides how the proceedings should continue after the charges have been filed. The public prosecutor's office supervises the preliminary proceedings.

The public prosecutor's office has the following options after receiving the complaint:

1) The complaint is put aside for lack of sufficient reasons for a criminal prosecution. You are also informed in writing about a stay in the proceedings owing to lack of culpability. In this case, you have the option to apply for continuation of the proceedings stayed by the public prosecutor's office, Salzburg, by fulfilling certain conditions. This application must be submitted within 14 days after being notified about the stay.

2) If the reasons are now sufficient to initiate criminal proceedings against the suspected offender, the main proceedings are initiated, i.e. you receive summons for the main proceedings;

or

3) The public prosecutor's office can withdraw from the criminal proceedings under certain conditions, e.g. if the offender fulfils prerequisites such as payment of compensation for immaterial damage/compensation for damage and/or agrees to stop contacting the victim (diversion).

If you refuse the victim-offender mediation, it leads to criminal proceedings before the court or a stay in the proceedings owing to lack of culpability.

## What happens in case of a trial?

After the charges have been filed, the court summons you for interrogation as a witness. These summonses are mostly a subpoena for the main hearing.

However, the option of a so-called "**mild interrogation**" is also available. In case of mild interrogation, the suspected offender, his defence and the public prosecutor's office have a chance to ask you questions via video equipment. The advantages of a mild interrogation are that you are not in the same room as the offender and do not need to testify any more during the main hearing. If requested by you, the Haft- und Rechtsschutzrichter (custodial and legal protection judge) has to carry out a mild interrogation for victims of sexual offences as well as relatives of the accused. You can notify your demand for a mild interrogation even at the time of filing charges or submit it in writing to the Haft- und Rechtsschutzrichter (custodial and legal protection judge) (Salzburg Regional Court, Rudolfsplatz 2, 5010 Salzburg, Tel. 0662/8043).

## What happens in the main hearing?

In the main hearing, all the parties are summoned on the same date.

In addition to the judge, lawyer, recording clerk, suspected offender and his defence counsel, your representative, expert witness if any, interpreter, your confidant(s) as well as audience (if any) are present in the courtroom.

The suspected offender is interrogated at the start of the hearing. As a witness, you are under obligation to be present in the courtroom during this interrogation. If you have joined the proceedings as a **private party** (see below), your representation shall be in the hearing room right from the beginning.

After the suspected offender has been interrogated, the witnesses and any summoned expert witnesses are interrogated. As a witness, you will first be interrogated about your particulars (name, date of birth, address, etc.). If you do not want the suspected offender to know current real physical address, you can also disclose a different address (e.g. helpline, parents, friends, etc.).

You will then be informed about your rights and duties by the judge (see below); you will subsequently be interrogated by the judge, the public prosecutor's office, the representative of the private party as well as the defence counsel about the circumstances of an offence. If you are scared of the offender, you can request the judge to testify in the absence of the offender.

It is important to always bring along the summons to the hearing since you have a claim to witness fees with that.

## How do the criminal proceedings end?

The suspected offender is either convicted or acquitted. The conviction can be a prison sentence or a fine. If the sentence is passed unconditionally, the convict has to serve the prison sentence or pay the fine. On the contrary, in case of a suspended sentence, the convict is given a probationary period within which he may not do anything wrong. If he commits new offences in this probationary period, he will have to serve the sentence.

The judge has the option to associate the sentence to a directive (e.g. the offended must not linger in the vicinity of the victim's place of residence, restraining order).

## What is my status in the criminal proceedings?

In criminal proceedings, you, as the person affected, are mainly a **witness**.

You are **under obligation to appear in court** and tell the truth. A transcript of your statement is generated.

As a witness, you have no influence on the course of the criminal proceedings. On the contrary, if you join the proceedings as a **private party**, your position as a victim is strengthened. You can inform the police directly at the time of filing charges that you wish to join the criminal proceedings as a private party. However, you can join the proceedings as a private party even at a later stage.

As a PB (private party), you have the right,

- to take a look at the court records and make copies of the same against payment
- to demand compensation for damage and compensation for immaterial damage
- to be involved in the process (right to ask questions, encourage witnesses or expert witnesses, etc.)
- to obtain information about the course of the proceedings
- to a written decision about your claims (**encouragement decree**).
- to be represented by a counsel for the above-mentioned rights

## Do I need to testify in court?

If you are related, married or related by marriage to the suspected offender or are living with him, you have the right to not testify. Divorced couples also do not need to testify. This is also applicable to former partners if they have any children together.

## Do I have a right to an interpreter?

If you do not understand German sufficiently well, you have the right to ask for an interpreter during the police interrogation as well as during the criminal proceedings.

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# Actions against domestic violence

## Criminal proceedings in case of domestic violence/stalking

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