

## LAW AND THE POLICE: WHAT CAN THE POLICE DO - AND WHAT NOT?

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## Personal check/ID check:

**Example:** The police come up to me on the street for no reason and want to see my ID.  
Can they do that?

The police can ask you for ID to establish your identity. However, they need a (legally defined) reason to do so.

These reasons (§35 SPG, §36 BFA-VG, §34 FPG) are:

- Suppose the police believe that you have been involved in a criminal offense. In this case, you must give the police your name, gender, date of birth, place of birth, occupation, and home address. You do not have to provide any other information.
- If you can provide information about a criminal offense committed by someone else. You only have to give the police your name, date of birth, and home address. You do not have to provide any other information.
- If the police assume that you are staying in Austria unlawfully (illegally) (e.g., because there is a return decision against you and you have to leave Austria, or because you entered Austria without authorization). In this case, you must provide the police with your name, date of birth, nationality (or the fact that you are stateless), and residential address. You do not have to provide any other information.
- The police may also carry out identity checks at railway stations where trains are traveling to other countries.
- The police may also check your identity if they believe that you are a danger to others due to your mental health. You must give the police your name, date of birth, and home address.
- The police may also check minors if they assume that they have left home.

**In all these cases, you are obliged to show your ID!**

All in all, the police must have an explanation for assuming one of these reasons! They would need to be able to provide a well-substantiated reason and not one that is ill-intended/vague. For example, they cannot ask to check someone only for reasons such as if they „do not speak German“ or „come from a certain country of origin“.

**TIP:** If the police ask you for your ID, first ask if you must show it. If the police say you must show it, ask for the specific reason (have the paragraphs written down). Then, ask for the police officer's badge number.

## Information:

**Example 1:** I'm meeting my friends outside. The police approach us and ask what we are doing.

**Example 2:** The police ring our doorbell and ask if we are planning to return to our country of origin.

These interviews are often combined with an ID check. However, other rules apply. **As a general rule, all information relating to our private lives is protected by data protection law, including toward the police (§ 1 DSG)!**

The police can obtain information about your private lives (who you are meeting, what you are doing there, what your future plans are) if, for example, they assume that you have information that you/someone you know

- has/have committed a criminal offence
- has/have the unlawful entry or residence of a person who does not have Austrian citizenship

**BUT:** The information is **voluntary**, and the police officers must make this clear (§54 SPG, §33 FPG)! **If I do not want to answer, the police cannot force me to!**

**TIP:** If the police ask you what you are doing or whether you are planning to return to your country of origin, first ask why they want to know. Ask whether you HAVE to give the information and make it clear once again that you do not want to give any information. Ask for the specific reason for the inquiry (have the paragraphs written down) and ask for the police officer's service number.

## Searches (backpack, clothing etc.):

**Example:** The police come up to me and want to check my backpack.

Can they do that?

The police may search you and your bags (including suitcases etc.) if they have arrested you or if

- you are caught committing a criminal offence.
- The police have to investigate a criminal offence, and the search is necessary for this purpose.
- the police assume that you are in possession of prohibited items (§ 40 SPG) (weapons, drugs, etc.). → **There needs to be a reason for this assumption!**

**TIP:** If the police want to check your backpack, first ask them why and how they came to this assumption. Ask whether you **MUST** allow the search. Do not object to the check, but make it clear that the search is not voluntary and that you do not want it! Ask for the specific reason (have the paragraphs written down) and ask for the police officer's service number.

## House search:

**Example:** The police ring my doorbell and want to go into my flat.

Can they do that?

In principle, your own home is a **protected area** that may only be entered **with the owner's consent** (domestic authority). However, there are exceptions to this rule:

You have to let the police into your flat if:

- there is a suspicion **that a criminal offense has been committed or that a dangerous attack is imminent (§ 39 SPG)**

**Examples:**

- Someone screams for help in the flat (§ 39 SPG)

But also:

- If there is a presumption that at least three persons who do not have Austrian citizenship are present and one of them is not legally resident in the country (§ 36 FPG).
- If there is a presumption that someone is pursuing unauthorised gainful employment without legal residence (§ 36 FPG).

Or

- The police have a court-authorised **order** from the public prosecutor's office **or** a **search warrant** from the BFA or another authority

➔ **In short: either it is a criminal offence that must be averted IMMEDIATELY or the life or health of a person is in danger, or the police have a confirmation from the court or the BFA or another authority.** The police can also ask to be allowed to enter the flat for no other reason. In this case, you can refuse entry!

**TIP:** If you want the police to enter your home, first ask why and whether they have a warrant from the court or an authority. Also, ask again whether you **MUST** let the police officers in. Make it clear once again that you will not allow the search to be carried out voluntarily, but do not resist. Ask for the specific reason (have the paragraphs written down) and ask for the police officer's service number.

## Arrest:

**Example 1:** The police say I have to come to the police station!

**Example 2:** The police call and ask if I can come to the police station to make a statement

Basically, if the police say you **MUST** go with them, then it is an arrest.

If you are detained (arrested) by the police, the following points are important:

- You always have the right to consult a **lawyer**. The legal journal service for arrested suspects of the Austrian Bar Association is available around the clock on **0800/376 386** (the first telephone consultation is free of charge!)
- You should **not resist arrest**, as this may have (further) criminal consequences
- You have the right to **inform** someone about your arrest

- The police must **inform you** of the **reason for the arrest** and inform you of your rights and obligations (information sheet in a language you can understand)
- You may refuse to testify and have the right to remain silent
- Only sign the minutes of your interrogation if you agree with them and everything has been written down correctly.

If the police asks if you **CAN** go, then this is to be understood as an **informal invitation**.

**TIP:** If the police tells you to come to the police station, ask if it is an arrest, and you **MUST** go. If so, do not resist. Call the legal journal service as soon as possible.

If the police say that you don't have to but **CAN** come, ask them to answer the inquiry in writing and get advice beforehand if necessary.

# What to do in the event of misconduct by the police:

## 1. STEP: DOCUMENT

### *Filming/Photos*

It is **permitted** to **film or take photos of** police officers during official acts. The police may not prevent you from doing so.

Caution when posting on the internet: In principle, it is **not** permitted to post photos or videos on social media (Instagram, Facebook, etc.). But there are exceptions! Before publishing, it is advisable to contact a counseling centre

### *Witnesses*

It is always a good idea to exchange contact details with people who were present at the police action and are willing/able to testify as witnesses.

### *Service number of the police officers*

Always make a note of the police officer's service number (7 digits); they must provide this information (§9 RL-VO).

### *Reminder*

As soon as the situation is over, write down all the details. What exactly happened, when, and where? Who was present? What did the police say? What did you answer? What exactly did the police do? How did you feel during the incident? How do you feel now?

### *Injuries and other damage*

If you have injuries, take photos and go to the doctor immediately to have the injuries documented.

If your items are damaged, take photos and keep them!

## 2. STEP: GET HELP AND ADVICE

Contact a counseling center as soon as possible to clarify your legal options!

The **Diakonie legal and social counseling** service can help you here!

Further counseling centres are e.g:

#### **ZARA Civil Courage and Anti-Racism Work**

Phone: +43 1 929 13 99

Email: [office@zara.or.at](mailto:office@zara.or.at)

#### **Documentation centre on Islamophobia and anti-Muslim racism**

Phone no. +43 676 40 40 005

Email: [office@dokustelle.at](mailto:office@dokustelle.at)

### 3. STEP: COMPLAINT

You have **six weeks** after an offense by the police **to** lodge a complaint! As a general rule, the sooner you seek legal advice, the better. This way, evidence can be secured, and a decision on a complaint can be made in good time!