

KNOW YOUR RIGHTS INITIATIVE E.V.

Home searches

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/PROTECTION OF ONE'S OWN HOME

Protection of the home by the constitution - Art. 13 GG

The concept of a home/dwelling is understood broadly: not only the home/dwelling as an object, but the privacy of the premises is protected - also hotel rooms or workrooms.

It does not include premises that cannot constitute a private place of retreat, such as waiting areas in railway stations and public authorities' buildings.

The owners of the dwelling are protected. This includes all persons who exercise actual control over the premises, i.e., tenants and their relatives. Protection of the inviolability of the home strengthened by prescribed procedural rules of the judge's prerogative.

Deviations from this are only permitted in case of imminent danger - imminent danger may only be affirmed if waiting until a search warrant has been issued would jeopardize the purpose and success of the search.

/WHEN MAY THE POLICE CARRY OUT SEARCH?

Averting danger, Art. 23 PAG

Criminal prosecution, §102 of the Code of Criminal Procedure. Apprehension of a person who is alleged to have committed a criminal offence or finding evidence relating to a criminal offence.

If a search warrant is available, the purpose and objective of the search, the danger or criminal offence to be averted must be stated. If concrete evidence is sought, it must be specified in more detail and the period of the search must be stated.

If there is imminent danger, you must expressly demand a search certificate at the end of the search. This must record the office, reason, time, result and the objects taken during the search.

Consent

- Must be obtained prior to the measure and the person must be mentally and legally capable of doing so.
- In the case of minors, based on the age of fundamental rights: from 13.
- One is not legally obliged to do so.

Day and nighttime

- In principle, dwelling searches may take place both during the day and at night.
- At night, however, there are stricter requirements for the admissibility of dwelling searches.
- At night (9 p.m. to 6 a.m.), dwellings may only be searched because of imminent danger, in the case of prosecution in the act of committing a crime and to avert a present danger to a significant legal asset.

/WHAT MEASURES MAY THE POLICE TAKE?

- **Entry:** Gain access to the dwelling and stay there until the purpose has been achieved. The police may take an impression of the dwelling without touching anything. This does not require a search warrant from the court.

Search : A focused search is conducted for objects or persons that the owner of the dwelling does not wish to disclose or hand over of his or her own accord.

The police generally need a court order for this unless there is imminent danger.

The measures must be proportionate at the time they are ordered and during their duration (the seriousness of the offence, the evidentiary significance of the objects sought and the degree of suspicion of finding them are particularly important here).

If own property is damaged, also document this.

/SEIZURE AND CONFISCATION

Seizure and confiscation mean **the establishment of a custody relationship under public law** by depriving the owner of the actual power of disposal.

If objects are taken during the search, the person concerned cannot defend himself or herself at that moment against the seizure.

After the seizure, an explicit objection should be made if there is no court order for the seizure. Then the police must obtain a court confirmation within three days.

/LEGAL PROTECTION OPTIONS

An action for determining continuation of the search must be brought before the administrative court (§ 113 I 4 VwGO) by analogous application if the search itself is considered unlawful.

The seizure/confiscation can be challenged directly with an action to set aside the seizure order (time limit for action of one month from notification of the seizure order, §§ 42 I Alt. 1, 74 I 2 VwGO).

If the freezing order is not opposed or if it was initially lawful and a claim for restitution is subsequently asserted because its conditions no longer apply, an action could be brought. Although this is not subject to a time limit, it is nevertheless advisable to react immediately.

/CHECKLISTE

- **Keep calm**, do not consent to a search, but do not block access.
- **Consult a lawyer**; officers may start the search anyway, but you may consult a legal advisor.
- **Ask for a search warrant and a copy (if there is no copy, take a photo yourself)**
- If a relative or close person is present, insist that he/she may remain as a witness.
- Have them show their service cards and write down the names of the officers themselves.

- If it is a criminal offence, determine if you are being instructed as an accused or witness.
- Do not make any statements about the matter, **be careful with small talk.**
- Copies of all decisions
- Make your own memorial record of the search process.



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