

Information and Observations by Austria

1. National Legislation

According to **Section 64** of the Austrian Penal Code, Austrian courts have jurisdiction concerning certain crimes (e.g. extortive abduction, slave trade, trafficking in human beings, organized crime, drugs-related crime, air piracy, terrorism-related acts, rape, sexual coercion and torture) committed outside Austria regardless of locally applicable law. In cases where no other Austrian interests are affected, Austrian courts are competent if the alleged perpetrator is present on Austrian territory and cannot be extradited.

Under **Section 64 (6)** of the Austrian Penal Code, Austrian courts are also competent for other crimes committed outside Austria regardless of locally applicable law if Austria is under an obligation to prosecute these crimes under international treaties.

Moreover, **Section 64 (1) (4c)** of the Austrian Penal Code provides for full complementary jurisdiction of Austrian courts over international crimes under the Rome Statute of the International Criminal Court (RS), in particular genocide (Section 321), crimes against humanity (Section 321a), war crimes (Sections 321b to 321f) and the crime of aggression (Section 321k), which are incorporated in Chapter 25 of the Austrian Penal Code. Accordingly, Austrian Courts can exercise jurisdiction over the crimes incorporated in Chapter 25 and committed in foreign countries in all cases, regardless of locally applicable law, where

- a) the perpetrator or the victim is an Austrian citizen,
- b) other Austrian national interests are infringed by the act, or
- c) the perpetrator is a foreigner who has his habitual residence in Austria or is present in Austria and cannot be extradited.

According to **Section 65** of the Austrian Penal Code, Austrian courts have jurisdiction concerning other crimes committed outside Austria if they are punishable under locally applicable law and if the perpetrator is caught on Austrian territory and cannot be extradited for a reason other than the nature or character of his act.

2. Recent Examples of National Jurisprudence

In two final judgments by Austrian criminal courts against non-Austrian nationals for terrorism-related acts committed abroad, the Austrian jurisdiction was based on **Section 64 (1) (9) (b)** of the Austrian Penal Code. In both cases, the perpetrators were domiciled or habitually resident in Austria at the time of the institution of criminal proceedings.

- a) Judgment of the Regional Court Eisenstadt, 23 March 2022, AZ 50 Hv 15/21w

The perpetrator was a Syrian national who committed crimes in several locations in Syria, which were punishable as terrorism-related acts under Sections 278a, 278b (2) and 15 in

combination with 75 and 278c (1) (1) of the Austrian Penal Code. The accused was sentenced to two years of imprisonment.

b) Judgment of the Regional Court Wels, 19 December 2022, AZ 15 Hv 75/22f

The two perpetrators were Syrian nationals and accused of having committed crimes in Syria and Turkey, which were punishable as terrorism-related acts under Sections 278a and 278 (3) of the Austrian Penal Code. The two accused were acquitted due to lack of sufficient evidence beyond reasonable doubt.