

Information and Observations by Austria

April 2024

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.

In a Decree dated 5 July 2022 on national jurisdiction for crimes incorporated in Chapter 25 and committed abroad, the Austrian Federal Ministry of Justice stated that Austrian national interests (see lit. b above) may be infringed in cases where a flow of refugees to Austria is caused by the commission of such crimes, including e.g. the crime of aggression.

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.

Due to recent jurisprudence, according to which extraditions to either Ukraine or the Russian Federation are currently not permissible, there is an increasing number of prosecutions on the basis of **Section 65 (1) (2)** of the Austrian Penal Code (“representative prosecution”; *aut dedere aut iudicare*).

2. Recent Example of National Jurisprudence

In a final judgment by the Austrian Supreme Court against a non-Austrian national relating to terrorism-related acts committed abroad, the Austrian jurisdiction was based on **Section 64 (1) (9) (b)** of the Austrian Penal Code. The accused was domiciled or habitually resident in Austria at the time of the institution of criminal proceedings:

Judgment of the Regional Court Sankt Pölten, 19 October 2023, AZ 13 Hv 47/23h; affirmed by decision of the Austrian Supreme Court, 20 February 2024, 14 Os 6/24z, and the judgment of the Higher Regional Court Vienna, 9 April 2024, 19 Bs 45/24t:

The accused was a member of a terrorist group and knowingly participated in terrorist attacks primarily in Türkiye, which were punishable as terrorism-related acts under Section 278b (2) of the Austrian Penal Code.