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Criminalizing Terrorist Acts

The newly amended Penal Code covers terrorist acts targeting other states or the financing, planning and facilitating of such acts from Austrian territory. Leading or participating in a terrorist group and financing of terrorism do not require an attempted or committed terrorist act to be criminal. Collecting funds or recruiting members for terrorist acts in the future is sufficient to warrant criminal sanctions; the location of the target, inside or outside Austria, is irrelevant. "Participation" means that "anybody who inter alia supports a (criminal) group by providing information or assets or in any other way with the awareness that he/she thereby promotes the group or its criminal acts participates as member in the group." Recruitment is an example of such support. The planning of terrorist acts can be punished with six months to five years prison as an act of conspiracy, when at least one other person is involved and crime planned is murder, kidnapping, hijacking of an aircraft or endangering by explosives, regardless of an actual attempt or commission of the specific terrorist act.

Austria has jurisdiction over offenses committed abroad when they involve a conspiracy to commit terrorist acts or terrorist offenses, and the perpetrator was a foreign national at the time and his or her surrender or extradition is refused, and over the crime of financing of terrorism committed abroad.

Transnational Organized Crime and Weapons of Mass Destruction

Austria has signed the Protocol against Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition and is preparing to introduce new national legislation to ratify the UN Convention against Transnational Organized Crime. Austria has signed the Council of Europe Cybercrime Convention to fight innovative forms of crime. Furthermore, including the fight against terrorism in the mandate of ODCCP is an important goal of Austria's foreign policy. Austria supported inclusion of international measures in the Plans of Action to the Vienna Declaration at the 10th UN Congress for Crime Prevention and Criminal Justice.

"As regards the illegal movement of chemical and biological materials, Austria has implemented the Chemical and Biological Weapons Conventions prohibiting, inter alia, the transfer of or the assistance in manufacturing or acquiring biological and chemical weapons." Austria reviewed and adopted additional national measures to prevent the use of chemical, biological and toxin weapons by terrorists or criminals. Permission is required for activities that involve certain controlled toxic chemicals or precursors, and licenses are necessary for the transfer of relevant biological and chemical materials. Ordinance No. 211 by the Minister of Health and Public Service on reporting of slightly toxic products, 23 January 1989 describes the details that have to be supplied when reporting on the use of slightly toxic substances. Ordinance No. 212 by the Minister of Health and Public Service on protection measures needed during the transport of toxic substances, 23 January 1989, deals with safety requirements during the transport of toxic substances.

As for nuclear materials, Austria has implemented its obligations under the Convention on the Physical Protection of Nuclear Material "with regard to the protection of nuclear materials used for peaceful purposes in international transport and is actively participation in current international efforts to extend the scope of the Convention to domestic use, storage and transport." The Penal Code prohibits the handling of nuclear, chemical and biological weapons and warrants a penalty: "Whoever manufactures, produces, develops for the application, imports, exports, transports through the country, buys, possesses, transfers or assists another person in these acts shall be sentenced to imprisonment for up to 20 years or life."

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Recruiting members for armed associations is a criminal offense to be punished with up to three years prison. The “supply of weapons to armed association constitutes a criminal offense,” punishable with up to three years prison. Support for criminal organizations abroad is also punishable. Acquiring, possessing or transferring weapons or ammunition “in order to equip a considerable number of people for combat” is a crime punishable with up to three years prison. Section 177 of the Penal Code provides that importing, exporting or transferring war material through Austrian territory without the required permissions or in violation of regulations pertaining to trade with certain countries is a criminal offense; punishment is imprisonment for 1 – 10 years. Negligence is the required minimum level of culpability, and the offense entails punishment of up to two years prison or a “fine of up to 360 day fines.” Negligence is also enough to warrant punishment of up to one year in prison or a fine for the possession of certain arms, weapons and ammunition.

The Foreign Trade Act and the War Material Act impose controls on exports of weapons. Austria applies the standards of the EU Code of Conduct on Arms Exports and Licensing for exports of weapons for third countries. Accordingly, no license is granted when there is a risk that exported weapons may be diverted to terrorist groups. Under the War Material Act, there are strict procedures regarding the permission to conduct trade with war material, conforming to the European Political Co-operation in view of a harmonisation of arms exports.

Suppressing Money-Laundering and the Financing of Terrorism, and Freezing Assets

Austria has ratified the International Convention for the Suppression of the Financing of Terrorism and imposes criminal sanctions for such activities. The financial intelligence unit of EDOK (organized crime squad) cooperates closely and shares information with other (countries’) agencies.

The Penal Code lists the crimes associated with terrorism financing and provides penal measures. Financing of armed associations is punished by up to three years imprisonment. The intentional financing of a specific terrorist act can be considered an act of assistance or participation to the terrorist act itself. The underlying terrorist act would have to at least be attempted to make its financing punishable. Depending on the gravity of the predicate offense, penalties range from ten to 20 years prison or life imprisonment. Under certain circumstances, providing or collecting money to finance the activities of a criminal organization will be deemed participation in the organization itself, so that no terrorist act would be required to punish the financing of the group. This would be punished by six months to five years prison. Another offense would be related to money laundering: handling assets knowing that they belong to a criminal association, and this entails a penalty of up to five years prison. A recent amendment “criminalizes the financing of terrorism and the collection of funds for terrorist purposes by terrorist groups and others.”

Austrian law allows the freezing of funds linked to terrorism and held in Austria upon request by another country regardless of whether the state is a EU member or not. “In case of Austrian jurisdiction, however, the relevant provisions of the Penal Code will primarily apply to funds linked to terrorism that are located in Austria.” Because the Penal Code criminalizes the use or collection of funds to facilitate a terrorist act, any non-profit organization that would attempt to divert funds for terrorist purposes or would collect funds to use them for a terrorist act at a later stage, in Austria or abroad, would commit a crime. After September 11th, 2001, the Ministry of the Interior has begun to investigate suspicious and possible links between non-profit organizations and terrorism.

International Cooperation

There is intense co-operation with foreign intelligence services and law enforcement agencies, as well as EUROPOL. “Austria organized a meeting of the Police Working Group on

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Terrorism (PWGT) on combating terrorism and participated in several other international meetings on this subject.” The new EUROPOL Task Force on Terrorism counts a representative of Austria.

For legal assistance and extradition, Austria is a party to all relevant “multilateral European conventions on extradition and mutual assistance in criminal matters,” including the Council of Europe and European Union documents, such as the European Convention on Extradition and its Second Protocol, the European Convention on the Suppression of Terrorism, the European Convention on Mutual Assistance in Criminal Matters and its Protocol, and any existing extradition instruments within the EU and the Schengen Implementation Convention. For mutual legal assistance, Austria has entered into bilateral agreements with Australia, Canada, Monaco, Poland, the United States of America and Yugoslavia. Bilateral treaties in addition to the European Convention on Mutual Assistance in Criminal Matters were concluded with the Czech Republic, Germany, France, Liechtenstein, Hungary, Italy, Israel, Slovakia and Switzerland.

The Act on Extradition and Mutual Assistance in Criminal Matters regulates domestic proceedings but is limited to situations where no international treaty governs, based on the principle of reciprocity. The crimes contained in the international treaties are considered extraditable offenses, because Austria usually does not apply a list system, but rather determines whether extradition is in order according to the penalty provided for the crime in the states involved, with a minimum threshold of one year imprisonment. Requests for extradition cannot be refused for political reasons since the relevant international conventions abolished the political offense exception. With respect to terrorist acts, the criminal character of the act is always deemed to prevail.

BIBLIOGRAPHY OF AUSTRIAN LEGISLATION

Criminalizing Terrorist Acts

1. Penal Code, Section 277
2. Government bill to amend the Penal Code
3. Penal Code, Sections 64, 65, 278b, c, d

Transnational organized crime and Weapons of Mass Destruction

1. Penal Code, Section 177a
2. Verbot d. Entwicklung, Herstellung, Lagerung u. Einsatz chem. Waffen, BGBl. III Nr. 38/1997
3. Foreign Trade Act No. 172/1995, 9 March 1995
4. Ordinance No. 211 by the Minister of Health and Public Service on reporting of slightly toxic products, 23 January 1989
5. Ordinance No. 212 by the Minister of Health and Public Service on protection measures needed during the transport of toxic substances, 23 January 1989
6. Federal Law on Imports, Exports and Transit of War Material, BGB1 No. 540/1977
7. Federal Government Decree No. 624/1977, On Military Equipment, 22 November 1977

Laws Pertaining To Biology

1. Verbot d. Entwicklung, Herstellung, Lagerung u. Einsatz chem. Waffen, BGBl. III Nr. 38/1997
2. Waffengesetz 1996, BGBl. I No. 12/1997, 1997
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8. Waffengebrauchsgesetz BGBl.No. 149/1969, 1969
9. Penal Code of Austria, Section 177

Suppressing Recruitment of Members and The Supply of Weapons to Terrorists

1. Security Police Act, Section 21
2. Penal Code, Sections 12, 15, 278a, d (to be amended), 279, 280
3. Weapons Act, Section 50 (Waffengesetz 1996, BGBl. I No. 12/1997, 1997)
4. War Material Act, Section 7
5. Civil Aviation Security Act
6. Waffengebrauchsgesetz BGBl.No. 149/1969, 1969

Suppressing Money-Laundering and the Financing of Terrorism, and Freezing Assets

1. Penal Code, Sections 12, 15, 20, 20b, 278a, b, c, d, 279 (as amended)
2. Criminal Procedure Code, Section 144a
3. Banking Act, Sections 39, 41, 70, 78, 99
4. Foreign Exchange Act, Sections 23, 24, 33a

International Cooperation

1. Act on Extradition and Mutual Assistance in Criminal Matters, Sections 3, 14