

Austria: A Protection Model

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INTRODUCTION

This chapter gives a review of the juvenile delinquency and law in Austria. Austria is a relatively small country with a surface of about 83,860 km² in the middle of Europe. It entered the European Union in January 1995. Its frontiers border both “old” EU and “new” EU member states and Switzerland. The country has approximately 8,174,700 inhabitants (2003). Of these about 1,245,300 children are aged under 14 (637,700 males and 607,600 females), 378,700 minors aged 14–18 years (194,400 males and 184,300 females); about 296,900 are “young adults” (18–21 years). The birth rate rose by 2.5% from 2003 to 2004.

The outcomes of a study of Grafl and Beclin (2000) on the development of juvenile delinquency from 1989 to 1998 and the current situation are presented in Section 1. The crime prevention programmes that take place in school and during leisure time are included in Section 2. Sections 3 and 4 illustrate the intervention possibilities of the police and the prosecutor in cases of juvenile delinquent behaviour. The last two sections present our comments on the Austrian sentencing policy (Section 5) and the system of sanctions (Section 6).

The reactions possible under Austrian criminal law to cases of juvenile delinquency behaviour are covered by a special Act, the Juvenile Court Act (*Jugendgerichtsgesetz* 1988 – JGG). This Federal Act contains substantive and procedural regulations, including regulations on the enforcement of imprisonment, for those aged up to 18 years. Though the law defines “juveniles” as persons from 14 to 18 years of age (JGG, 1988), it theoretically also allows for extra-penal measures, according to family law or the law of youth welfare. However, if deemed necessary, such measures can be applied in a criminal court.

In view of the history of the Austrian JGG, the main policy trends can be understood as follows (Jesionek, 2003). In 1928, the first Act of JGG arose from the idea of education. Conventional punishments, both fines and imprisonment, should only be used as last resort when juvenile delinquency is involved

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(Neumair, 1996). This was also the goal of the dramatic and all-encompassing reform of 1988 (Jesionek, 2001; Bogensberger 1992) that was designed with the aim of achieving decriminalisation, while continuing to provide justice for the victims of crime (Jesionek, 1990). On this basis, a new form of immunity from punishment was introduced for misdemeanours committed by juveniles aged 14 and 15 years old at the time of the offence. The age of criminal majority was raised from 18 to 19 years.

In addition to procedural simplifications, special regulations with regard to custody were introduced. Release of information pertaining to criminal records was restricted, and sentences for juveniles shortened in order to avoid the stigmatisation of offenders as much as possible.

For the same reason, the potential for non-intervention and diversion was expanded significantly. Efforts were made to replace traditional convictions and/or sentences imposed by a criminal court, on the basis of a successful practical experiment at some courts and offices of prosecution.

For cases in which conventional criminal penalties prove unavoidable, legislation made sentencing more flexible by the removal of minimum sentences. Equally in the spirit of the principle of last resort, emphasis has been put on special deterrence (*Spezialprävention*), as opposed to general deterrence (*Gener-alprävention*) that can be taken into consideration only in exceptional cases.

Another important matter was to continue cooperative, coordinated activities in the interest of the juvenile. The juvenile judge, therefore, has no longer been concerned purely with criminal matters, but is also in charge of related aspects of youth welfare. A system of separate juvenile courts exists in the larger cities, whereas for the rest of the country only special departments for juvenile cases have been established within the regular criminal courts.

In recent years, Austrian legislation has moved “backwards,” that is, it has moved to a more punitive system. An amendment in 2001 changed the age of civil majority from 19 to 18 years in the General Civil Code (*Allgemeines bürgerliches Gesetzbuch*). For this amendment it was argued that the 1988 reform had granted access to the more flexible and milder juvenile justice system to an age group commonly associated with a great deal of criminality. As limited compensation for this move, certain new regulations of procedure were introduced for “young adults,” i.e., persons from 18 to 20 years. This legislation recognised that crime levels in this age group can rise temporarily, due to the difficulties associated with the adjustment to adulthood. However, it was not consistent with the popular demand for a more comprehensive set of rules for “young adults” (covering only the three years up to the age of 20 or going further, e.g., by including all adults under 25).

On 1 July 2003, the famous old Vienna Juvenile Court (*Jugendgerichtshof Wien*) was closed. It was integrated into several county courts (*Bezirksgerichte*) and the Vienna District Court for Criminal Matters (*Landesgericht für Strafsachen Wien*). Whether the good network (in regard of an effective exchange of information), which existed between criminal and family judges as well as with