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# Rights of minors in court proceedings

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The Austrian Code of Civil Procedure lays down general principles for hearing minors, i.e. persons under the age of 18, in civil proceedings. The principles serve to meet the particular need for protection of minors when faced with stressful questioning situations. In the case of minors, the hearing may be waived, in whole or in part, upon request or ex officio, if the examination in itself would endanger the well-being of the minor, taking into account the mental maturity, the subject matter of the examination and the close relationship of the minor with the parties to the proceedings and there is no other way to protect them. In the event that a hearing would endanger the well-being of a minor only if held in the presence of the parties or their representatives, a separate hearing, i.e. one in a different place, may be held, if necessary conducted by properly qualified experts. A person who is trusted by the minor may accompany them in the hearing if this is in the minor's interests. If the subject-matter of the civil action has a material connection with criminal proceedings and a victim of those criminal proceedings who is a minor below the age of 14 is to be heard in the civil proceedings, a properly qualified expert must as a matter of course be appointed to conduct the interview. Questioning in a public oral hearing may, if necessary, be conducted with the exclusion of the public.

## Juvenile criminal proceedings in Austria

A juvenile crime is an act committed by a person between 14 and 18 years of age (Section 1(1)(2) and (3) of the Juvenile Court Act [*Jugendgerichtsgesetz, JGG*]).

Offences committed by a minor below the age of 14 are excluded from any prosecution. In response to such acts, the guardianship court / family court can only take measures to safeguard and promote the minor's personal development (Section 4(1) JGG).

Furthermore, a juvenile (i.e. a person between 14 and 18 years of age) who commits an offence is not punishable if:

1. they are not, for particular reasons, sufficiently mature to recognise the unlawfulness of the act or to act accordingly, or
2. they commit a criminal offence while under 16 years of age, if they are not guilty of serious misconduct and there are no specific reasons which require the application of juvenile justice to deter them from committing offences.

The guiding principle of juvenile justice, which is primarily enshrined in the JGG, is to prevent the offender from committing further offences, thereby helping them to become a responsible, law-abiding citizen (Section 5(1)). Certain procedural provisions of the JGG and certain limitations on the severity of penalties also apply to persons aged between 18 and 21 who are considered to be 'young adults' (Sections 1(5) and 19 JGG).

As a rule, in proceedings against juvenile offenders and in most cases against young adults, the maximum period of imprisonment and the maximum daily fine are halved. There is no minimum penalty. Fines calculated on the basis of value, benefit or damage, including compensation for value and confiscation, may be imposed only to the extent that they do not endanger the further development of the defendant (Section 5(4), (5) and (6) JGG).

Juvenile and young adult offenders cannot be sentenced to life imprisonment. A criminal offence punishable by life imprisonment and an offence punishable by life imprisonment of 10 to 20 years are punishable by a term of

imprisonment of between 1 and 15 years in cases where a juvenile of 16 years or more has committed the offence, and by imprisonment of between 1 and 10 years (Section 5(2) JGG). An offence punishable by a term of imprisonment of between 10 and 20 years is punishable by a term of imprisonment of between 6 months and 10 years (Section 5(3) JGG).

Austrian juvenile criminal proceedings, which could be described as 'procedural decriminalisation', provide for the possibility of refraining from or waiving prosecution. The Public Prosecutor's Office must refrain from prosecuting a juvenile offender if the offence is punishable only by a fine or imprisonment of up to 5 years and additional measures do not appear necessary to deter the young offender from committing further offences. However, the alleged perpetrator must always be prosecuted if the act resulted in the death of a human being (Section 6(1) JGG). Under the same conditions, the court must, after the initiation of preliminary proceedings or an indictment, discontinue the proceedings in respect of a criminal offence by order until the end of the main proceedings (Section 6(3) JGG).

If it appears necessary to formally inform the alleged perpetrator of the unlawful nature of certain acts such as the act reported and of their possible consequences, the guardianship court must do so at the request of the Public Prosecutor's Office (Section 6(2) JGG).

Furthermore, under the general condition that the offence committed by the offender is not to be regarded as serious, the offence did not result in the death of a person and punishment does not appear necessary in order to deter the accused from committing further offences, the Public Prosecutor's Office is required to offer the accused person diversionary measures.

There are four kinds of diversionary measures: payment of a fine (Section 200 of the Code of Criminal Procedure [*Strafprozessordnung*, StPO], community service (Sections 201 and 202 StPO), probationary period with the support of a probation officer and with certain conditions (Section 203 StPO), and victim-offender mediation (Section 204 StPO). Under the same conditions, the court may also dismiss the criminal proceedings and order diversionary measures.

The next possible response is a finding of guilt without a penalty (Section 12 JGG) or subject to a penalty (Section 13 JGG). Direction, probation services and court orders may form part of the conditions.

Under Section 12 JGG, the court should dispense with a conviction if only a light sentence is to be imposed on a juvenile offender and it can be assumed that the conviction is sufficient in itself to deter the offender from committing further offences.

Under Section 13 JGG, no penalty may be imposed for a criminal offence committed by a juvenile during a probation period of between 1 and 3 years if it can be assumed that the conviction and the threat of the penalty, in itself or in conjunction with other measures, are liable to deter the perpetrator from committing further offences.

The possibility of a conditional or unconditional conviction completes the catalogue of judicial responses to juvenile delinquency.

If it appears necessary to formally inform the alleged perpetrator of the unlawful nature of certain acts such as the act reported and of their possible consequences, the guardianship court must do so at the request of the Public Prosecutor's Office (Section 6(2) JGG).

In order to avoid the negative consequences of, in particular, short-term detention, pre-trial detention should be imposed only if it is necessary and no other response is possible. Pre-trial detention cannot be imposed in the case of petty offences.

Prosecutors and judges are obliged to regularly assess whether pre-trial detention is necessary. Therefore, and in order to explore other procedural possibilities, conferences involving the youth offender social network (social network conference) need to be organised so that pre-trial detention can be avoided.

In addition, an individual assessment ('youth background study') must be carried out in almost every case, which should take into account, in particular, the personality and maturity, the economic, social and family background - including the living environment - and the particular vulnerability of the juvenile offender.

Last but not least, Austrian juvenile criminal law ensures that judges and prosecutors dealing with criminal proceedings against young people have particular competences in this area and can access specific training.

In conclusion, the 'instruments' of the Austrian Juvenile Court Act allow prosecutors and judges to make the best possible decisions in criminal proceedings against juvenile offenders and ensure the maximum level of restorative justice measures.

The transposition into national law of the Directive on juvenile criminal proceedings (Directive (EU) 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132, 11.5.2016, p. 1) has also ensured that juveniles are actively represented by a lawyer at the first police hearing (this was in any case provided for in all criminal proceedings for a crime without exception). In addition, interviews by the police and other law enforcement authorities must be recorded audiovisually if this is proportionate (in particular if no legal counsel is present), and the information rights of juvenile suspects have been extended in accordance with the provisions of the Directive on juvenile criminal proceedings. The remaining provisions of the Directive provide for rights already found in the JGG.

- Rights of child victims in criminal proceedings:

In Austrian criminal proceedings, in addition to the general rights of victims (Section 66 et seq. StPO), there are a wide range of specific rights and measures for the protection of child victims, such as:

- The appointment of a curator for child victims in the cases referred to in Section 66a(3) StPO;
- Information on escape and recapture and the first unguarded release from the institution or about an imminent or actual release of the prisoner, including the instructions given to him in order to protect the victim (Section 106(4) and Section 149(5) of the Austrian Prison Act [*Strafvollzugsgesetz*]);
- Psychosocial and judicial assistance in criminal proceedings pursuant to Section 66b StPO (see below);
- The possibility of separate and effective adversarial examination in the investigation and main proceedings in order to avoid direct contact between witnesses and the accused (Sections 165 and 250 StPO);
- If an adversarial hearing has taken place, the witness is released from the obligation to give further evidence and the minutes of the adversarial hearing can be read at the main hearing (Section 252(1)(2a) StPO);
- Protection of the identity of the witness (Sections 10(3), 161(1) and 162 StPO);
- Protection of the victim's privacy (Section 228(4) StPO; Section 7a(1)(1) of the Media Act [*Mediengesetz*]);
- Possibility to be heard as a witness at home or elsewhere (e.g. in the event of illness, frailty, justified circumstances - Sections 160(1) and 247a StPO);
- Victims under the age of 18 are always considered to be particularly vulnerable and in criminal proceedings, in addition to the general rights of victims, have the special rights, as listed in Section 66a(2) StPO:
  - to be heard by a person of the same sex (Section 66a(2)(1));
  - to have interpretation services (Section 66(3)) provided, where possible, by a person of the same sex during interviews with the victim during the pre-trial and trial (point 1a);
  - to refuse to answer questions concerning details of the crime if they consider describing these details to be unreasonable, or to answer questions concerning circumstances of a highly personal nature (point 2);
  - to require to be examined sensitively (Sections 165 and 250(3) StPO) during the investigation and trial, and in any event in the manner described in Section 165(3) StPO, where necessary by an expert (point 3) - particularly as a minor victim whose sexual integrity may have been violated by the criminal offence with which the accused has been charged;
  - to require the public to be excluded from the trial (Section 229(1) StPO) (point 4);
  - to be immediately informed *ex officio*, within the meaning of Sections 172(4), 177(5) and 181a StPO (point 5), and
  - to have a person they trust present during questioning (Section 160(2) StPO) (point 6).
- Under Section 70(1) StPO, particularly vulnerable victims are to be informed of their rights under Section 66a StPO at the latest before their first questioning.
- Information on the legal rights of victims shall also be provided in a language and in a manner that they understand, taking into account their specific personal needs.
- Under Section 160(3) StPO, victims who have not yet reached the age of 14 may be heard only in the presence of a trusted person. This can be either a legal representative, a judicial assistant or another

trusted person. All other victims, in particular those who have reached the age of 14 but are not yet 18 years of age, are also entitled to be heard in the presence of a trusted person of their choice. This right must be indicated in the summons to a witnesses examination.

- Since 1997, child-friendly interview rooms have been set up in all courts where criminal proceedings are conducted.

One of the important tools in the area of victim protection is psychosocial and judicial assistance in criminal proceedings. This is granted free of charge to certain categories of persons at their request.

Psychosocial and judicial assistance is available:

- for persons who may have been exposed to violence or a dangerous threat as a result of a deliberate criminal act, whose sexual integrity and self-determination may have been violated or whose personal dependence may have been exploited in the commission of such a crime;
- if the death of a person may have been caused by a criminal offence and you are a close relative of that person, or if you are a relative of that person and you were a witness to the act;
- for victims of terrorist offences;
- for victims of a typical 'online hate' offence. These include persistent persecution, continued harassment by means of telecommunications or a computer system (cybermobbing) and incitement. Also included are offences such as defamation, accusation of a judicially punishable criminal act that has already been dismissed, insults and slander, if there are indications that the offence was committed by means of telecommunications or use of a computer system;
- for minors who have witnessed violence in their social circle (violence in the family, violence against children).

Victim support is necessary in order to safeguard victims' rights and must be ensured by the victim support institution.

Psychosocial assistance includes preparing the victim for the criminal proceedings and the associated emotional burden, as well as accompanying them in interviews as a witness, providing judicial assistance and legal advice, and legal representation of the victim in criminal proceedings by a lawyer (Section 66b StPO). Persons whose sexual integrity may have been violated and who have not yet reached the age of 14 are granted psychosocial support as a matter of course.

The Federal Minister for Justice is authorised to contract appropriate, well-established institutions to provide support for the persons referred to in paragraph 1, after verifying the legal requirements (Section 66b(3), first half sentence, StPO). The Federal Ministry of Justice has contracted a large number of appropriate, well-established institutions to provide psychosocial and/or judicial assistance, many of which, such as child protection centres, violence prevention centres and intervention centres, specialise in working with children.

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