

## **Answer by Austria to question 6b**

Juvenile delinquency is defined as a criminal act committed by a person between the ages of fourteen and eighteen [section 1 para. 2 and 3 Jugendgerichtsgesetz (JGG), Juvenile Justice Act].

Criminal acts committed by a minor under the age of fourteen years are exempt from all forms of criminal prosecution. In reaction to such acts, only measures to ensure and foster the personal development of the minor can be taken by a tutelage court/family court [section 4 para. 1 JGG].

A juvenile (i.e. a person between the age of 14 and the age of 18) who commits an offence shall furthermore not be liable to punishment, if

1. he/she is for certain reasons not mature enough to be aware of the unlawfulness of the offence or to act accordingly, or
2. he/she commits an offence while still under the age of sixteen, if there is not gross fault on his/her part and there are no specific reasons requiring the application of the criminal law relating to young offenders to prevent the young person from committing criminal acts.

In the Austrian legal system, there is no principal distinction in substantive law between offences committed by adults and those committed by juveniles. There are however important differences in the gravity of punishment that can be applied and the criminal procedure.

The guiding principle of juvenile criminal law, which is as mentioned mainly laid down in the Juvenile Justice Act, is to prevent the offender from committing further criminal offences and thus help him to develop into a responsible, law-abiding citizen [section 5 para. 1]. Certain procedural provisions of the JGG and certain restrictions of the gravity of sanctions also apply to person between the age of eighteen and twenty-one, which are considered as “young adults” [section 1 para. 5 and section 19 JGG].

As a general rule, in proceedings against juvenile offenders, and in most of the proceedings against young adult offenders, the maximum term of a prison sentence and the maximum amount of fines to be determined on the basis of daily rates, shall be halved. There is no minimum sentence. Fines which are calculated on the basis of the respective value, benefit or damage, including compensation in lieu of confiscation and in lieu of value, shall be imposed only insofar as they do not jeopardize the defendant’s further development [section 5 para. 4, 5 and 6 JGG].

Juvenile and young adult offenders cannot be sentenced to life imprisonment. An offence punishable with life imprisonment and an offence punishable with imprisonment of between ten and twenty years of life imprisonment, shall (a) in those cases where a young person has committed the offence at the age of sixteen or over, be punishable with imprisonment of between one and fifteen years, (b) otherwise with a prison sentence of between one and ten years [section 5 para. 2 JGG]. An offence punishable with imprisonment of between ten and twenty years shall be punishable with imprisonment of between six months and ten years [section 5 para. 3 JGG].

The Austrian Juvenile Penal System, which could be labelled as “procedural decriminalization”, provides the possibility of discontinuing or renouncing prosecution. The public prosecutor shall refrain from prosecuting a juvenile offender, if the offence carries merely a fine or a prison sentence not exceeding five years and if additional measures do not seem to be necessary in order to prevent the young offender from committing further criminal acts. But the alleged offender must in any event be prosecuted, if the offence has resulted in the death of a human being [section 6 para. 1 JGG]. On the same conditions the court shall by decision discontinue proceedings for a punishable act after initiation of a preliminary investigation or indictment until closing of the trial [section 6 para. 3 JGG].

Where it seems necessary to formally inform the alleged offender of the wrongful character of certain acts such as the one in respect of which information was laid, and of any possible consequences thereof, the guardianship court shall do so upon a request by the Public Prosecutor's Office [section 6 para. 2 JGG].

Furthermore, under the general prerequisite that the fault of the perpetrator is not considered to be severe, the criminal act did not entail the death of a person and a punishment does not seem to be necessary to keep the suspected person from committing further crimes, the public prosecutor has to offer the suspect diversion measures.

There are four forms of diversion measures: payment of a sum of money (sec. 200 CCP), community service (sec. 201 and 202 CCP), probation combined with the assistance of a probation officer and obligations (sec. 203 CCP) and victim-offender mediation (sec. 204 CCP). However, under the same conditions the court shall suspend the criminal proceedings for all offences committed by a juvenile without regard to the gravity of the sanction.

The next possible reaction is the instrument of the suspended sentence containing a statement of guilt without pronouncing a sentence [section 12 JGG] or with a custody sentence reserved [Section 13 JGG]. Terms of a probation, probation assistance, as well as court orders can be part of the condition attached to the suspended sentence.

According to section 12 JGG the court shall refrain from passing a sentence, where only a minor penalty is to be imposed on a juvenile offender and where it has to be assumed that the conviction is in itself sufficient to prevent the criminal from committing further offences.

According to section 13 JGG no sentence shall be passed during a probation period of between one and three years for an offence committed by a juvenile, if it is to be assumed that the conviction and the warning that the sentence may be passed are as such or in conjunction with other measures adequate to prevent the offender from committing further criminal acts.

The possibility of conditional or unconditional sentence completes the catalogue of court reaction to juvenile delinquency.

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To avoid the negative results especially of short-term imprisonment, pre-trial-detention shall only be imposed, if necessary and if no other reaction is possible. Therefore, pre-trial-detention cannot be imposed in respect of minor offences.

Public Prosecutors and judges are obliged to recheck, if pre-trial-detention is necessary. Therefore, and to reconsider other possible procedural methods, conferences, that include the social network of the juvenile perpetrator (Sozialnetzkonferenz), to avoid pre-trial-detention have to be held.

Furthermore, in almost every case, an individual assessment has to be executed, which should, in particular, take into account the personality and maturity, the economic, social and family background, including living environment, and any specific vulnerabilities of the juvenile perpetrator.

Last but not least, the Austrian Juvenile Justice Act ensures that judges and prosecutors who deal with criminal proceedings involving juveniles have specific competence in that field and have effective access to specific training.

In conclusion, the “tools” of the Austrian Juvenile Justice Act allow the best possible decisions by prosecutors and judges in criminal proceedings against juvenile perpetrators and guarantee as much measures of restorative justice as possible.