

## Austria / Autriche

### **What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?**

If a judgment by the European Court of Human Rights determines that a decision or order by a criminal court violates the Convention for the Protection of Human Rights and Fundamental Freedoms or one of its Additional Protocols, those proceedings have to be renewed upon request, if it cannot be ruled out that this violation may have a negative impact on the content of the decision of a criminal court for the person concerned (Art 363a StPO [Austrian Criminal Procedure Code]).

Beside that, decisions of international courts and treaty monitoring bodies could be the reason for general recommendations of the Federal Ministry of Justice or for the amendment of legal provisions.

### **2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?**

In this regard there are no known cases.

### **3. Are these measures reflected in the law or in the prosecution policy or debate?**

Please, see the answer to question 2.

### **4. If yes, then were there any changes in the prosecution system as a consequence of such measures?**

Please, see the answer to question 2.

### **5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?**

No.

### **6. Does the prosecution system in your country belong to the judiciary?**

Yes, since 2008 public prosecutors are organs of the judiciary by virtue of art 90a B-VG (Austrian Federal Constitutional Law)

### **7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?**

No, the Austrian system of public prosecution is organised monocratically. Its head is the Federal Minister of Justice, who has the right to give orders or instructions even in specific cases.

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### **8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?**

No.

### **9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?**

Please, see the answer to question 8.

### **10. Who has the initiative of disciplinary proceedings?**

Mainly the Federal Minister of Justice

### **11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?**

Austrian public prosecutors are appointed on a permanent basis until their retirement (basically at the age of 65).

### **12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?**

Yes.

### **13. May the government instruct the prosecution services, for instance, to prosecute or**

**not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?**

As head of the hierarchical structure of the prosecution system (see the answer of question 7) the Federal Minister of Justice basically can interfere in the action of the prosecution services both in general as well as in specific cases.

As a safeguard all instructions have to be given in writing, should contain a reasoning and have to become a part of the file concerned.

If such an instruction does not comply with the law, its addressee is obliged to refuse it.

On an annual basis all instructions concerning proceedings, which are already closed, have to be reported to both chambers of the National Parliament.

**14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?**

The aforementioned (see question 13) principles (apart from the reporting to the Parliament) apply to all sorts of instructions given to a public prosecutor.

**15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the *de facto* dimension of the prosecutorial independence?**

Please, see the answer to question 7, 13 and 14.

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**16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?**

Such decisions basically could be subject of reports in the media.

**17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?**

The interaction with the public in such cases is mainly the task of the Ministry of Justice.