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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

Council of Europe Action Plan on Fostering International Co-operation and Investigative Strategies in Fighting the Smuggling of Migrants

Action n°5

Country Profile Template

Legal and judicial information on migrant smuggling

LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

AUSTRIA

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GENERAL INFORMATION ON MIGRATION

➔ MIGRATORY ROUTES

The main migration route currently runs through Serbia – Romania – Hungary – Austria, following the traditional Balkan corridor. While the situation is seasonally calm, there is a notable rise in movements along the Bosnia – Croatia – Slovenia route.

At the same time, a new sub-route from eastern Libya to Gavdos/Crete has emerged. Arrivals on Crete have increased by 70%, leading to growing pressure on mainland Greece and the Balkan region.

This sea route is seasonally easier to cross, suggesting that migration flows may rise further in the coming months.



INSTITUTIONAL ORGANISATION

The Criminal Intelligence Service (Bundeskriminalamt - BK) is Austria's central authority for fighting crime nationwide and coordinating international police cooperation. It is part of the Directorate General for Public Security and operates under the Austrian Federal Ministry of the Interior. The Criminal Intelligence Service is divided into eight departments, which are further broken down into offices and units.

- Department 1: Criminal Strategy and Central Administration
- Department 2: International Police Cooperation
- Department 3: Investigations – Organized and General Crime
- Department 4: Criminal Analysis
- Department 5: Police Support Services
- Department 6: Forensics and Technology
- Department 7: Economic and Financial Crime
- Department 8: Migrant Smuggling, Trafficking in Human Beings and Special Investigations

On December 1, 2021, the unit 3.4 which was part of Department 3 has changed into its own Department II/BK/8 "Human Smuggling, Human Trafficking, and Special Investigations/JOO-Joint Operational Office" (currently provisional) within the Criminal Intelligence Service. The department handles investigations against human smuggling, human trafficking, and crimes such as visa fraud, social benefits fraud (BK Unit 8.3.1), and illegal gambling (BK Unit 8.3.2).

The establishment of "Office 8.3-Special Investigations" aims to optimize the use of synergies in combating the criminal areas.



LEGISLATIVE FRAMEWORK

In Austrian criminal law, **smuggling offences** can be found in the **Aliens Police Act** („Fremdenpolizeigesetz“ = FPG). There is a differentiation between **judicially punishable offences** and **offences that are punishable under administrative criminal law**, which depends on whether the perpetrator has unlawfully enriched himself through smuggling. If this is the case, the perpetrator is to be punished by court according to § 114 Aliens Police Act. If the perpetrator has not unlawfully enriched himself, he is only to be punished under administrative criminal law.

The central provision regarding the crime of smuggling is § 114 Aliens Police Act, which reads as follows (working translation):

§ 114 Aliens Police Act – smuggling

(1) Anyone who promotes the illegal entry or transit of a foreigner into or through a Member State of the European Union or a neighboring state of Austria with the intention of unlawfully enriching himself or a third party through a payment made for this purpose shall be liable to imprisonment of up to two years.

(2) Anyone who has already been convicted of smuggling within the meaning of para. 1 within the last five years shall be liable to imprisonment of up to three years. A conviction shall also be deemed to be a conviction by a foreign court in proceedings in accordance with the principles of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

(3) Whoever commits the offence under para. 1 on a commercial basis, in relation to at least three strangers, or in such a way that the stranger is placed in an excruciating condition for a prolonged period of time, in particular during transportation, shall be liable to imprisonment of six months to five years.

(4) Any person who commits the act referred to in para. 1 as a member of a criminal organization or in such a way that the life of the foreigner to whom the criminal act relates is endangered shall be liable to imprisonment of one to ten years.

(5) Foreigners whose unlawful entry or transit is facilitated by the offense shall not be punished as participants. Their return or deportation may be delayed if and as long as it is necessary in order to question them on the facts of the case.

(6) In the event of imminent danger, the organs of the public security service are authorized to temporarily seize objects carried by the offender or means of transport or containers used to commit the offence in order to secure confiscation (§ 19a Austrian Criminal Code = ACC), forfeiture (§ 20 to 20c ACC) or confiscation (§ 26 ACC). The load of the means of transportation can be handed over to the license holder or his representative. The court shall be informed immediately of the measures taken.

(7) Paragraphs 1 to 4 apply to criminal offences committed abroad, regardless of the criminal laws of the place of the offense, if Austrian interests have been violated by the offence.

The basic offence of smuggling is punishable by up to two years imprisonment (§ 114 para. 1 Aliens Police Act).

§ 114 paras. 2 to 4 Aliens Police Act provide for qualifications with higher penalties (imprisonment of up to three years, six months to five years or one to ten years), e.g. if the offence was committed on a commercial basis, as a member of a criminal organisation or in a way that the stranger is placed in an excruciating condition for a prolonged period of time.

§ 114 para. 5 Aliens Police Act excludes the criminal liability of the smuggled person with regard to directing or contributing to the offence. The second sentence of paras. 5 and 6 contain procedural regulations, para. 7 regulates the international scope of application for offences committed after 31st July 2013.

§ 115 Aliens Police Act supplements the provision of § 114 Aliens Police Act and stipulates as follows (working translation):

§ 115 Aliens Police Act – paid facilitation of unauthorized residence

(1) Any person who, with the intention of unlawfully enriching himself or a third party by means of a payment that is not merely insignificant, facilitates the unauthorized stay of a foreigner in the territory of a Member State of the European Union shall be liable to imprisonment of up to one year or a fine of up to 360 units.

(2) Any person who commits the act on a commercial basis or in relation to a large number of foreigners shall be liable to imprisonment not exceeding three years.

(3) The foreigner who benefited or was to benefit from the aiding and abetting under para. 1 shall not be punished as a participant.

(4) Proceedings for the offence referred to in para. 1 shall be the jurisdiction of the courts of first instance.

The basic offence of paid facilitation of unauthorized residence is punishable by up to one year imprisonment or a fine of up to 360 units (§ 115 para. 1 Aliens Police Act).

§ 115 para. 2 Aliens Police Act also provides for more severe penalties in para. 2: For example, anyone who commits the offence commercially or in relation to a larger number (guideline: 10 persons) of strangers is to be punished with imprisonment of up to 3 years.

§ 115 paras. 3 and 4 contain provisions on the impunity of the stranger and on jurisdiction.

While criminal acts in connection with migrant smuggling in terms of substantive law are regulated in the Austrian **Aliens Police Act** (Fremdenpolizeigesetz), the **Austrian Code of Criminal Procedure** (Strafprozessordnung; in the following CCP) defines the **process for inquiries into criminal offences** (i.e. any conduct punishable by **judicial** sanctions under a federal or state statute), for the **prosecution of suspects**, and for **related decisions** by the **criminal investigation department**, the **public prosecutor's office** and the **court** (§ 1 para. 1 CCP).

It should be noted that there are **no special procedural provisions** with regard to **migrant smuggling**, so that the **general provisions** apply. The following can be emphasized:

Criminal proceedings start once criminal investigation or prosecution authorities investigate a **reasonable suspicion**; such a reasonable suspicion exists, if, because of **specific clues**, it can be assumed that a **criminal offence has been committed** (§ 1 para. 1 and 3 CCP).

Criminal proceedings are divided into **investigation proceedings**, **main proceedings** and **appellate proceedings**.

- **Investigation proceedings:** Investigation proceedings serve to investigate the facts of the case and the suspicion that a crime has been committed to the extent that the prosecution authority can make a decision whether to indict, withdraw from the prosecution, or discontinue the proceedings (§ 91 para. 1 CCP).
- **Main proceedings:** The court has to probe ex officio questions about the defendant's acts that form the basis of the indictment and about the defendant's guilt (§ 2 para. 2 CCP). The conduct of the main trial, which constitutes the focal point of the proceedings, rests with the court.
- **Appellate proceedings:** The appeal procedure serves to review a judgment and any related decisions of the first instance court.

The Code of Criminal Procedure lays down a number of **basic principles of criminal proceedings**. Of these, the following can be highlighted:

- **Ex officio principle:** Within their mandates, criminal investigation and prosecution authorities have a duty to investigate any reasonable suspicion of a criminal offence that has come to their attention (not including offences that are only prosecuted at the request of entitled persons) and probe it ex officio in investigating proceedings (§ 2 para. 1 CCP).
- **Objectivity and exploration of the truth:** Criminal investigation authorities, prosecution authorities, and the courts are required to explore the truth and probe all material facts that are relevant for evaluating the criminal act and the defendant (§ 3 para. 1 CCP). All judges, public prosecutors, and all officials of the criminal investigation authorities are required to exercise their official duty impartially and without prejudice, and avoid any appearance of bias. Circumstances that may incriminate or vindicate the accused must be investigated with equal diligence (§ 3 para. 1 CCP).
- **Principle of indictment:** The decision to indict a person rests with the prosecution authority, unless provided otherwise by law (§ 4 para. 1 CCP).
- **Legality and proportionality:** In exercising their powers and taking evidence, criminal investigation authorities, prosecution authorities, and the courts may only interfere with the rights of persons as expressly provided by law and as necessary to fulfil their duties (§ 5 para. 1 CCP).
- **Fair hearing (§ 6 CCP):** This applies not only to the accused, but also to persons involved in the proceedings and persons affected by the use of coercive measures.
- **Right of defence:** The accused has the right of defence and to engage the support of defence counsel at any stage during the proceedings (§ 7 para. 1). The accused must not be forced to incriminate himself or herself. The accused is free to give or refuse testimony at any time. The accused must not be coerced or induced to make statements through coercive means, threat, promises or pretences (§ 7 para. 2).
- **Presumption of innocence (§ 8 CCP):** Every person is presumed to be innocent until they have been convicted in a judgment that is final and legally binding (res judicata).
- **Oral and public proceedings:** Judicial hearings at trial and in appellate proceedings are basically conducted orally and publicly (§ 12 para. 1 CCP; exceptions to this are laid down in the CCP). In reaching the verdict, the court must only take into account those matters that featured in the main trial (§ 12 para. 2 CCP).
- **Immediacy:** The main trial constitutes the focal point of the proceedings. The evidence on which the judgment is reached is heard in the main trial (§ 13 para. 1 CCP).

A large number of criminal proceedings are ended by means of **diversion** in Austria. Diversion is the possibility for the public prosecutor's office or the court to **dispense with formal criminal proceedings** if the facts of the case have been sufficiently clarified. In the case of diversion, the accused or defendant is offered the **opportunity to submit to an incriminating measure** (e.g. community service). However, diversion is only possible if **punishment does not appear to be warranted** in order to **prevent the accused** from committing criminal offences (special prevention) **or to deter others** from committing criminal offences (general prevention).



JUDICIAL FRAMEWORK

The **prosecution authority leads the investigation proceedings**; only she may raise a public indictment. She decides whether an indictment is filed against a particular person, whether to withdraw the prosecution, and whether to discontinue the proceedings (§ 20 para. 1 CCP).

A **prosecution authority** (Staatsanwaltschaft) is established at the seat of **Regional Courts** (Landesgerichte); a **Chief Prosecution Authority** (Oberstaatsanwaltschaft) is established at the seat of **Higher Regional Courts** (Oberlandesgerichte); in addition there is a **Central Prosecution Authority for the Prosecution of Economic Crime and Corruption** (Economic Crime and Corruption Prosecution Authority [Wirtschafts- und Korruptionsstaatsanwaltschaft (WKStA)]).

Prosecution authorities exercise their function as entities of the administration of justice through **public prosecutors** (§ 19 para. 2 CCP). According to the Austrian Federal Constitution (Art. 90a) public prosecutors are **functionaries of the jurisdiction**.

The **criminal investigation authority and the prosecution authority** must conduct the investigation proceedings in accordance with the Austrian Code of Criminal Procedure acting, insofar as possible, **in concert**. If this cannot be achieved, the **prosecution authority** has to issue the **necessary directions** which need to be followed by the **criminal investigation authority** (§ 98 para. 1 CCP; § 99 para. 1 CCP).

There are **no special jurisdiction rules** for the **criminal offense of migrant smuggling**, so that the **general rules** on jurisdiction apply. The public prosecutor's office has various investigative measures at its disposal to fulfill its tasks. A distinction must be made here: Depending on the invasiveness of the investigative measure, the **criminal investigation department** can carry out some investigative measures **on its own initiative**, whereas others require an **order from the public prosecutor's office** and some also require **court approval**. However, special provisions apply in **particularly urgent cases** (cases of imminent danger – „Gefahr im Verzug“).

The following **investigative measures and prosecution tools** can be emphasized:

- Securing, seizure, seizure of data carriers and data, disclosure of information contained in the registry of bank accounts, and disclosure of information about bank accounts and bank transactions
- Identity verification, search of places and items, search of persons, physical examination and molecular-genetic testing
- Inspection of a corpse and post-mortem
- Surveillance, undercover investigations, and fictitious transactions
- Seizure of letters, information about master data and access data, disclosure of data concerning transmission of messages, localizing a technical device, event-specific data storage, and surveillance of communication, encrypted communication and person
- Data matching supported by electronic data collection
- Visual inspection and re-enactment of the crime
- Information gathering and questioning
- Tracing, arrest, and remand

No special provisions apply to the criminal offense of smuggling in this context, meaning that the aforementioned investigative measures and prosecution tools can generally be ordered and carried out if the relevant legal requirements are met.

Once the investigation has been completed, the public prosecutor's office then decides whether to **file the indictment** at the court that has jurisdiction for the main proceedings, **withdraw from the prosecution (diversion)** or **discontinue the proceedings**. The main proceedings commence by filing the indictment, the conduct of the trial rests with the court and the prosecution authority becomes a participant in the proceedings (§ 210 para. 2 CCP).



INTERNATIONAL COOPERATION

With regard to collecting of evidence in criminal proceedings effective cooperation between the **countries of the European Union** is ensured via the European investigation order (EIO) as one of the most active instruments of legal cooperation in criminal matters between the Member States of the European Union

International cooperation in criminal investigations into alleged smuggling of migrants also takes place through requests for legal assistance based on traditional **Council of Europe conventions**, bilateral treaties, and in some cases on the basis of United Nations conventions. Whenever no treaty basis for judicial cooperation is applicable the Austrian law allows for **cooperation under the principle of reciprocity**.

Joint Investigation Groups (JIT) consisting of judges, prosecutors and law enforcement representatives from several States can be established by written agreement for a limited period of time and for the purpose of conducting a criminal investigation in one or more of the States concerned. The Austrian law provides both for setting up a JIT or for the participation in a JIT set up by another state.

In cases of migrant smuggling, the **cooperation with EUROJUST**, the European Union Agency for Criminal Justice Cooperation, can help to coordinate the work of national authorities of the Member States of the European Union and third countries. In bilateral cases, the **European Judicial Network (EJN)** can be of help to establish contacts between the judicial authorities in different Member States.

- **Joint Operational Office (JOO)**

In combating migrant smuggling, EUROPOL was utilized at the EU level as an information hub for the member states. However, when it came to the implementation of specific operational measures, only the tool of Joint Action Days was available. A concrete steering of operational measures was not possible until that point.

After the tragic incident in August 2015 in Parndorf, Austria, where 71 migrants were found dead in a refrigerated truck, the Joint Operational Office (JOO) was established on May 4, 2016 within the Federal Criminal Police Office. The JOO developed into a central investigative hub and information center in the fight against international human smuggling. The cross-border planning and coordination of subsequent investigative measures were managed by the JOO in close cooperation with the migrant smuggling/human trafficking investigative units in the state criminal police offices.

The JOO is considered the extended operational arm of Europol, with the aim of cooperating even more closely internationally and ensuring rapid information exchange 24/7. The investigative activities along the Balkan and central Mediterranean routes are centralized there and daily situation reports are created to analyze migration flows and smuggling activities. The JOO places a high emphasis on language competence: in addition to the usual languages

German and English, languages such as Arabic, Egyptian, Romanian, Bosnian, Serbian, Croatian, Slovak, Polish, Turkish and Kurdish are also used.

The following objectives of the JOO are:

- Improved collaboration with Europol and international law enforcement agencies
 - Rapid international information exchange 24/7
 - Intensification of investigative activities along the Balkan and Central Mediterranean routes
 - Creation of daily situation reports to analyse migration flows and smuggling activities
- **Task Force Western Balkan (TFWB)**

As part of Austria's EU Council Presidency in the second half of 2018, the Joint Operational Office (JOO) within the Criminal Intelligence Service (Department II/BK/8) launched the Task Force Western Balkan (TFWB). The aim of this initiative is to fight migrant smuggling along the Balkan routes through enhanced international cooperation.

The TFWB brings together a broad coalition of countries and institutions, including: North Macedonia, Albania, Bulgaria, Serbia, Kosovo*, Romania, Hungary, Montenegro, Bosnia and Herzegovina, Croatia, Slovenia, Italy, Greece, Germany, the Netherlands, Ukraine, Portugal, Slovakia, Switzerland, France, the United Kingdom, the Czech Republic, Luxembourg, Spain, Poland, Austria, and Turkey* . International partners such as Frontex, Eurojust, Interpol, and Europol also actively participate.

Several joint measures were agreed upon and implemented with the participating countries:

- 24/7 real-time intelligence sharing
- Establishment of an early warning system across member states
- Bilateral and multilateral investigations
- Operational support, including deployment of investigators, mobile forensic tools, and interpreters

On 13 December 2023, a key meeting took place in Rome, where participants agreed to further strengthen the operational component of the Task Force and make joint investigations more effective. As a result, two core initiatives were introduced:

1. A 24/7 contact function, ensuring around-the-clock reachability of national smuggling investigation units
2. A Rapid Response Mechanism (RRM), designed to provide swift operational support for preventing and investigating smuggling and trafficking crimes within TFWB countries

These initiatives aim to enable faster responses and better coordination, especially in identifying and addressing new threats or criminal trends. The ultimate goal is to embed both the 24/7 function and the RRM into existing national workflows and structures, improving connectivity and cooperation among law enforcement and judicial bodies—particularly border police, customs, and supporting agencies.

On 12 December 2023, a Joint Declaration of Intent was signed in Rome to formalize the commitment to the 24/7 contact point and the RRM. The declaration was signed by: Austria, Albania, Bulgaria, Bosnia and Herzegovina, Switzerland, Croatia, Germany, France, the Netherlands, Hungary, Italy, Kosovo, Montenegro, North Macedonia, Poland, Romania, Slovenia, Slovakia, and the United Kingdom*. Europol, Interpol, and Frontex were present as observers. In January 2025, the Czech Republic also signed the declaration.



RELEVANT CASES

Operation Ranscho: Since August 2017, Austrian and international investigators have been targeting an Iraqi smuggling network that brought over 1.000 people—mainly from Iraq and Iran—through Hungary to Austria and Germany. So far, 29 suspects were identified, 17 arrested, including one in Lower Austria.

Many of the suspects came to Austria during the 2015 migration wave and received asylum or subsidiary protection. Several were also receiving social benefits—some up to €900 per month. The smugglers charged between €7.000 and €8.000 per person, earning an estimated €7–8 million in total.