

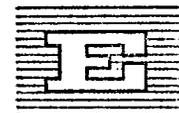
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COMMISSION ON HUMAN RIGHTS
Thirty-third session

PERIODIC REPORTS ON HUMAN RIGHTS

Reports on freedom of information, for the period
1 July 1970-30 June 1975, received from Governments
under Economic and Social Council resolution 1074 C (XXXIX)

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AUSTRIA

[31 March 1976]

[Original: English/German]

I. Concise introductory description of general policies and significant developments during the period from 1 July 1970 to 30 June 1975 with regard to the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers.

Austria has a Commission set up by the Federal Government to prepare a review of the country's provisions on fundamental rights. Regular reports on the activities of this expert body have been provided since 1964 in Austria's contributions to the United Nations yearbooks, and in its deliberations the Commission takes account of the evolution of human rights protection within the framework of the United Nations. After detailed discussions on the whole area of human rights, the Commission has appointed a Drafting Committee to work out proposals on the wording of each fundamental right. One of the maxims adopted by the Committee is that safeguards of human rights of proven value in Austria should be retained but that in addition, in redrafting individual fundamental rights, allowance should be made for the ideas and concerns incorporated in international instruments on human rights (in particular the European Convention on Human Rights and the United Nations Covenants on human rights). The Committee is now discussing the fundamental rights constituted by freedom of expression, freedom of the press and freedom of information in general. (These discussions relate in particular to the following issues: freedom of expression; freedom of information; freedom of the press; recognition of the public function of the press, radio and television; prohibition of censorship and of administrative postal prohibitions; general and equal accessibility of public communication channels such as postal services, telephone, telegraph, telex, picture transmission facilities etc.). As the Committee has not yet completed its work, we cannot say at the moment precisely how the various safeguards of freedom of information will be reformulated.

But remaining for a moment in the field of general legal policy relating to freedom of information, we may note the efforts made in Austria to ensure that a wide spectrum of opinions can be expressed in particular in those media which are likely to influence public opinion.

On 10 July 1974, a special federal constitutional law was passed to ensure the independence of radio and television (Federal Gazette No. 396/1974). Its Article I declares radio and television to be of public concern and calls on the federal legislature to adopt "simple", that is to say non-constitutional, legislation on the organization of radio and television broadcasts, safeguarding in particular the objectivity and non-partisan character of reporting, the proper balance of programmes, and the independence of the people and organization in charge. This requirement was implemented on the very same day by the enactment of the Federal Law of 10 July, 1974, concerning the Functions of the Austrian Broadcasting Corporation (FG No.397/1974 as amended by FG No.80/1975), the main concern being to provide safeguards for the multiplicity of opinions as a counterweight to the virtual monopoly enjoyed by the State in the field of radio and television communications (through the Austrian Broadcasting Corporation - "Osterreichischer Rundfunk").

Also designed to foster and preserve the multiplicity of opinions are the following laws:

(a) Federal Law of 9 July 1972, on the Encouragement of Civic Education Activities by Political Parties and Mass Communications Media, (FG No. 272/1972 as amended by FG No. 396/1973).

(b) Federal Law of 2 July 1975, on the Functions, Finance and Electoral Campaigning of Political Parties (Parties Act), FG No. 404/1975. This gives the political parties a legal right to receive financial assistance for public information activities.

(c) Federal Law of 2 July 1975, concerning Assistance to the Press, FG No. 405/1975. This provides for financial aid to Austrian dailies and weeklies to help them to meet part of the cost of news transmission and of the services required to ensure distribution of their papers. The conditions on which assistance is provided include the following:

on account of the subject matter they deal with, these papers must reach a wider readership than purely specialist publications, and their main aim must be to provide information and form opinion in the fields of politics, general economic affairs, and culture; they may not be shoppers' magazines or press organs of professional organizations; and they must be of more than local interest (which means that their readership and significance must extend at least over one Land).

II. Influence of United Nations instruments on constitutions and legislation adopted and court decisions rendered during the period for the recognition, enjoyment and protection of freedom of information.

Austria has no comments to make on this heading.

III. Legislative and other measures adopted during the period, concerning in particular:

(a) the development of information media;

In Austria, too, the media have undergone the development and expansion noticeable throughout the world. It is the intention of the Austrian Federal Government to create a body of law covering all the media by amplifying existing press law, much of which has stood up well to the test of time. Early 1975 saw the completion of a new Media Bill designed to bring about an overall reform of press and media law. The provisions of the Bill essentially stem from two central concerns: (a) to protect the media as an instrument helping the individual to exercise his right to obtain information and to express his views, and as an essential factor in the process of the free formation of opinion; (b) to protect the individual against illegitimate reporting and invasion of his privacy.

The Bill includes among other provisions a new wording of the individual's fundamental right of expression and information and a new statement of the fundamental right of the media to be free from interference, a right rooted both in the individual's freedom of expression and information and in the role the media are called upon to perform in society. With respect to what is referred to as the "internal freedom of the media", the main object of the Bill is to lay down statutory rules for the introduction of "editors' bills of rights". (The Government Bill concerning a Federal Law on the Press and Other Communications Media [Media Act] was submitted to the National Assembly on 26 November 1975).

As regards technological innovations, it may be noted here that cable television is gradually making its appearance in Austria, and a number of associations have been formed to study its potential.

- (b) the operation of press and publications, radio, film, television and other media;

Radio and television in Austria is vested in a central body, "Österreichischer Rundfunk" (Austrian Broadcasting Corporation, abbreviated ORF). It is a special body corporate set up under a federal law (the Broadcasting Act FG No. 397/1974 mentioned earlier). A certain measure of decentralization results (a) from the statutory obligation imposed on the ORF to provide at least three radio and two television channels, and (b) from the Corporation's intended subdivision into "Länder studios", an intention already very largely implemented in the sound radio field. The Corporation's functions include:

1. to provide the public with comprehensive information on all important political, economic, cultural and sporting issues (objective selection and transmission of news and reports; transmission of comments, viewpoints and political statements that are of interest to the public, taking due account of the multiplicity of opinions represented in public life; presentation of comments and factual analyses by the ORF's own staff, with proper regard to the principle of objectivity);
2. to foster popular and youth education;
3. to inform about and foster activities of the arts and sciences;
4. to provide entertainment of a sound standard;
5. to encourage the population's interest in the active pursuit of sports.

As regards the dissemination of news and opinions through other media, using words or pictures, printed matter or sound carriers, attention is called to the existing constitutional safeguards of the freedom of expression and of the press (Article 13 of the Basic Law on the General Rights of Nationals, Paragraphs 1 and 2 of the Resolution of the Provisional National Assembly of 30 October 1918, State Gazette No.3, and Article 10 of the European Convention on Human Rights). Hence every private citizen is free, within the statutory limits, to produce and disseminate, or obtain information from, printed matter, films or other media.

- (c) the participation of journalists and the public in the ownership or control of the media;

For the time being, the Broadcasting Act is the only statutory instrument to provide for the participation of journalists in the control of an information medium. Section 17 of the Act enjoins the ORF to respect the independence and personal responsibility of all programme-designing staff-members as well as the professional freedom of the journalists employed by the Corporation. In order to ensure the observance of these principles, Section 18 of the Act provides that the ORF and the representatives of the journalists, elected by direct, equal, secret ballot on the basis of proportional representation, should agree upon and sign an editors' bill of rights ("Redakteursstatut"). It may be added that a number of newspapers have also signed editors' bills of rights as internal arrangements functioning on a voluntary basis (i.e. without statutory compulsion).

- (d) the professional training of information personnel;

Austria has no comments to make on this point.

- (e) standards and professional ethics for journalists, and bodies concerned with the implementation of such standards.

Austria has no statutory provisions to prescribe standards and codes of professional ethics to journalists. There is, however, the "Austrian Press Council", a voluntary organization which may be invoked by the interested parties whenever an issue of this sort arises. The Council watches over the observance of journalistic ethics without having powers of enforcement. It has only its moral authority to ensure compliance with its recommendations.

IV. Limitations upon the exercise of freedom of information, particularly those pertaining to:

- (a) the protection of the reputation, rights and freedoms of others, including protection against interference with privacy;

All constitutional safeguards of fundamental rights relating to freedom of expression, the press or information are subject to the general proviso that the law must be observed. Thus, the older statute (Article 13 of the Basic Law on the General Rights of Nationals) provides that the liberties just mentioned may only be exercised "within the limits of the law". Article 10(2) of the European Convention on Human Rights describes in greater detail on what grounds and in what cases these freedoms may be restricted: "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

On 23 January 1974, the Austrian Parliament passed a new Penal Code (FG No. 60/1974) which entered into effect on 1 January 1975. As regards restrictions on freedom of information, the new Code, in addition to penal provisions designed to protect the individual's honour etc. (Sections 111-117) and to punish slander (Section 297), also contains a chapter with penal provisions - some of them new - aimed at violations of privacy and of certain professional secrets:

Section 118 - violation of the secrecy of correspondence and suppression of letters;

Section 119 - violation of the secrecy of telecommunications;

Section 120 - misuse of sound-recording or listening devices;

Section 121 - violation of professional secrecy (this is intended in particular to protect confidential information on a person's health);

Section 122 - violation of business or industrial secrecy;

Section 123 - business or industrial espionage;

Section 124 - business or industrial espionage with intent that the data be used in a foreign country.

The above sections of the Penal Code are attached to this report as annex A.

(b) the protection of national security or of public order, or of public health or morals, including suspension of freedom of information in situations of emergency;

In this area, the new Penal Code contains the following penal provisions (annex B), most of which do not, however, go beyond the confines of the old penal law:

Section 188 - disparagement of religious doctrines;

Section 219 - public incitement to illicit sexual acts;

Section 220 - encouragement of immorality with persons of the same sex or with animals;

Section 248 - disparagement of the State and its symbols;

Section 252 - betrayal of State secrets;

Section 253 - disclosure of State secrets;

Section 254 - espionage with respect to State secrets;

Section 256 - engaging in secret intelligence work to the detriment of Austria;

Section 276 - spreading false, disquieting rumours;

Section 281 - incitement to non-compliance with laws;

Section 282 - incitement to criminal offences and approval of criminal offences;

Section 301 - illegal publication of confidential information relating to judicial or administrative proceedings;

Section 317 - disparagement of foreign symbols;

Section 319 - engaging in military intelligence work for a foreign country;

Section 320 - endangering Austria's neutrality.

Restrictions on the dissemination of printed matter are governed by the provisions of the Federal Law of 31 March 1950, on combating Immoral Publications and Protecting Young People against Moral Dangers, FG No. 97/50. Such restrictions are ordered where printed matter is likely to have a damaging effect on the moral, intellectual or physical development of young people.

A restriction of this kind means that it is prohibited:

- to disseminate the printed matter in any manner among persons under 16,
- to sell it in the streets or through news vendors, or
- to display it in places where it is accessible to persons under 16.

The legal position with regard to these restrictions has remained unchanged during the period under review, except that it is no longer permissible to impose a restriction on all successive issues of a publication appearing over a certain period. The relevant enabling clause, Section 10(2) of the above-mentioned law, was declared unconstitutional by the Constitutional Court in its ruling No. G 31/71-10 of 16 December, 1971.

During the period from 1 July 1970, to 30 June 1975, 1239 petitions requesting such restrictions were entered, and the petition was granted in 541 cases, as can be seen from the following table:

<u>Period</u>	<u>Petitions filed</u>	<u>Petitions granted</u>
1/7/70-30/6/71	55	39
1/7/71-30/6/72	104	57
1/7/72-30/6/73	223	128
1/7/73-30/6/74	371	140
1/7/74-30/6/75	486	177

- (c) advocacy of and propaganda for national, racial or religious hatred or racial and religious discrimination;

In this respect special mention is due to Section 283 of the Penal Code (Incitement to Hatred, cf. annex C) which widens the scope of criminal law in comparison with the old Code.

- (d) propaganda for war;

- (e) coverage by the press and other media of court proceedings;

Austria has no comments to make on these items.

- (f) other considerations.

V. Action with a view to ensure that freedom of information and access to information is enjoyed by increasing numbers of the population and without distinction of any kind, such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status.

VI. Difficulties experienced in ensuring the enjoyment of freedom of information and access to information and methods and measures utilized to overcome these difficulties.

Austria has no observations to make on these headings.

AUSTRIAN REPORT ON FREEDOM OF INFORMATION DURING
THE PERIOD 1 JULY 1970-30 JUNE 1975

Summary

Austria has a Commission set up by the Federal Government to prepare a review of the country's provisions on fundamental rights. In its deliberations, the Commission gives full consideration to the evolution of human rights protection within the framework of the United Nations. The guiding principle of the Commission is that time-tested safeguards of fundamental rights should be retained, and that in redrafting individual fundamental rights allowance should be made for the ideas and concerns incorporated in international instruments on human rights (in particular the European Convention on Human Rights and the United Nations Covenants on human rights). As this review is still under way, it cannot be said at the moment precisely how the various safeguards of the freedom of information will be reformulated. It is, however, appropriate here to refer to efforts made in Austria to ensure the multiplicity of opinions in particular in those media which are likely to influence public opinion. Thus, on 10 July 1974, a special federal constitutional law was adopted to ensure the independence of radio and television. The Federal Law of 2 July 1975, concerning Assistance to the Press provides for financial aid to Austrian daily and weekly papers.

In Austria, too, the media have undergone the development and expansion noticeable throughout the world. It is the intention of the Austrian Federal Government to create a body of law covering all the media by amplifying the existing statutory provisions on the press, which have largely stood up well to the test of time. A relevant draft law was recently laid before Parliament. It includes among other provisions a new wording of the individual's fundamental right of expression and information and a new statement of the fundamental right of the media to be free from interference, a right rooted both in the individual's freedom of expression and information and in the role the media are called upon to perform in society.

The Austrian Broadcasting Corporation is an independent body corporate set up under a federal law. Its functions include, among other things, the provision to the public of comprehensive information on all important political, economic, cultural and sporting issues. In doing so, the Corporation is to take due account of the multiplicity of opinions represented in public life, and in presenting comments and factual analyses prepared by its own staff it has to give proper regard to the principle of objectivity.

As regards the dissemination of news and opinions through other media, using words or pictures, printed matter or sound carriers, attention is called to the existing constitutional safeguards of freedom of expression and of the press. Under them, every private citizen is free, within the limits of the law, to produce and disseminate, or obtain information from, printed matter, films or other media.

The fundamental rights of freedom of expression, freedom of the press, and freedom of information are safeguarded by the country's constitution, but may only be exercised within the limits of the law, as the exercise of these freedoms carries with it duties and responsibilities. On 23 January 1974, the Austrian Parliament passed a new Penal Code which entered into force on 1 January 1975. As regards restrictions on freedom of

information, the new Code, in addition to penal provisions designed to protect the individual's honour and to punish slander, also contains a chapter with penal provisions - some of them new - aimed at violations of privacy and of certain professional secrets. Another innovation in the Code is the offence of "Incitement to Hatred". This makes it a crime, among other things, to call for hostile acts to be perpetrated against a religious community, race, nation etc.

Annex A

EXTRACT FROM THE PENAL CODE

Offences against honour

Defamation

§ 111.

(1) Any person who, in a manner perceptible by a third person, attributes a contemptible quality or attitude to another person or accuses him of dishonourable or immoral conduct in a way likely to make him contemptible or discredit him in the estimation of the public shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding 360 daily units. */

(2) Any person who commits such an act in a printed work, on the radio or in any other way that makes the defamation accessible to a wide section of the public shall be liable to imprisonment for a period not exceeding one year or to a fine not exceeding 360 daily units.

(3) The person shall not be liable to punishment if the allegation is proved to be true. In the case of paragraph (1), the person shall likewise not be liable to punishment if circumstances are proved which gave him sufficient grounds to believe the allegation to be true.

Evidence of truth and evidence of good faith

§ 112.

Evidence of truth and evidence of good faith shall be heard only if the person who has committed the act pleads the correctness of the allegation or his good faith. Where facts of private or family life or punishable offences are the subject of proceedings commenced only at the request of a third party, evidence of truth and evidence of good faith shall be inadmissible.

Reproach involving an offence already dealt with

§ 113.

Any person who, in a manner discernible to a third party, reproaches another person with an offence for which the sentence has already been served or the fine paid, or for which the sentence has been conditionally reviewed or remitted, or for which the passing of sentence has temporarily been postponed, shall be liable to imprisonment for a period not exceeding three months or to a fine not exceeding 180 daily units.

*/ Translator's note: The "daily unit" (Tagessatz) was first introduced in Austria as a method of determining fines in the 1975 Code. § 19, paragraph (2) stipulates that the daily unit shall be fixed according to the offender's personal circumstances and economic capability at the time of the judgment of first instance and shall be not less than 20 and not more than 3,000 schillings.

Impunity for exercising a right or acting under the pressure of
special circumstances

§ 114.

(1) Where an act specified in § 111 or § 113 occurs in the accomplishment of a legal duty or the exercise of a right, the act shall be lawful.

(2) No one compelled by special circumstances to make an allegation falling under § 111 or § 113 in the form and manner in which it was made shall be liable to punishment unless the allegation is incorrect and the person making the allegation could have been aware of this fact had he exercised the necessary care (§ 6).

Insult

§ 115.

(1) Any person who, publicly or before several people, abuses, derides, causes bodily harm or threatens to cause bodily harm to another person shall be liable, if he is not liable to more severe punishment for such conduct under another provision, to imprisonment for a period not exceeding three months or to a fine not exceeding 180 daily units.

(2) An act is committed before several people if it is committed in the presence of more than two persons other than the person committing the act and the person attacked and can be perceived by these other persons.

(3) Any person who lets himself be carried away solely by anger at the conduct of another person to the point of insulting him or causing or threatening to cause him bodily harm in a manner excusable in the circumstances shall be excused if his anger is generally understandable, due account being taken in particular of the time which has elapsed since the conduct causing it.

Public insult to a constitutional representative body, the
federal army or an authority

§ 116.

Acts falling under § 111 or § 115 shall likewise be punishable if they are directed against the National Council, the Federal Council, the Federal Assembly or a Land parliament, the Federal Army, an independent division of the Federal Army or an authority and are committed publicly. The provisions of § 111, paragraph (3), § 112 and § 114 shall also apply to such offences.

Right to bring an action

§ 117.

(1) Proceedings shall be brought for offences against honour only at the request of the person whose honour has been impugned. They shall, however, be brought automatically if the allegations are directed against the Federal President, the National Council, the Federal Council, the Federal Assembly or a Land parliament,

the Federal Army, an independent division of the Federal Army or an authority. Authorization to bring an action shall be obtained from the injured party, the injured representative body or the injured authority, and from the Federal Minister for National Defence if the action arises out of an insult to the Federal Army or an independent division of the Federal Army.

(2) If an offence against the honour of a civil servant or a minister of a church or religious society established within the country is committed during the accomplishment of his duty or during the conduct of a service, the public prosecutor shall prosecute the person committing the offence with the authorization of the injured party and the office of his superior, within the period which would otherwise be available to the injured party to bring an action. The same shall apply if such an offence is committed against one of the said persons in connexion with one of their professional acts in a printed work, on the radio or in any other manner making it accessible to a wide section of the public. The injured party shall be entitled at any time to join the case. If the public prosecutor does not bring proceedings with respect to such an offence or if he withdraws from the prosecution, the injured party shall be authorized to bring an action himself. In this case, the period allowed for bringing the action shall commence as soon as the injured party has been informed by the public prosecutor that he is not prosecuting or that the action commenced will be dropped.

(3) If one of the acts punishable under § 111, § 113 and § 115 is directed against the honour of a dead or missing person, his spouse, relations in direct line and brothers and sisters shall be entitled to demand prosecution.

Infringement of privacy and disclosure of certain professional secrets

Violation of the secrecy of letters and suppression of letters

§ 118.

(1) Any person who opens a sealed letter or other such written matter not intended for him shall be liable to imprisonment for a period not exceeding three months or to a fine not exceeding 180 daily units.

(2) Any person who, in order to gain cognizance for himself or for another unauthorized person of the contents of written material not intended for him,

1. opens a sealed receptacle in which the material has been placed, or

2. uses technical means to achieve his purpose without opening the closure of the written material or the receptacle (subparagraph 1), shall be similarly liable.

(3) Any person who intercepts a letter or other written material (paragraph (1)) or otherwise prevents the recipient from having cognizance of its contents shall be similarly liable to punishment.

(4) The person shall be prosecuted only at the request of the injured party. If, however, the act is committed by a civil servant in the exercise of his functions or taking advantage of an opportunity arising out of his official activity, the public prosecutor shall prosecute the person provided the injured party gives his authorization.

Violation of the secrecy of telecommunications

§ 119.

(1) Any person who, with the intention of obtaining for himself or for another unauthorized person information transmitted by telecommunication and not intended for him, attaches a device to a telecommunications installation or otherwise activates it for reception shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding 360 daily units.

(2) Any person who, with the intention specified in paragraph (1), uses a device which has been attached to a telecommunications installation or otherwise activated for reception shall be similarly liable.

(3) The person shall be prosecuted only at the request of the injured party. If, however, the act is committed by a civil servant in the exercise of his functions or taking advantage of an opportunity arising out of his official activity, the public prosecutor shall prosecute the offender provided the injured party gives his authorization.

Misuse of sound-recording or listening devices

§ 120.

(1) Any person who uses a sound-recording or listening device to gain knowledge for himself or for another unauthorized person of a non-public statement not intended for him shall be liable to imprisonment for a period not exceeding one year or to a fine not exceeding 360 daily units.

(2) Any person who, without the consent of the speaker, makes the recording of a non-public statement by another person available to a third party for whom it is not intended or publishes such a recording shall be similarly liable.

(3) The person shall be prosecuted only at the request of the injured party.

Violation of professional secrecy

§ 121.

(1) Any person who publishes or uses a secret concerning another person's state of health which has been entrusted to him or become available to him exclusively because of his profession in the professional practice of medicine, nursing, obstetrics, pharmaceuticals or the conduct of medico-technical examinations, or through his duties in hospital administration or in sickness or accident insurance, life assurance or social security, the publication or use of which is likely to infringe a legitimate interest of the person who has requested his services or for whom they have been requested, shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding 360 daily units.

- (2) Any person committing such an act to derive financial advantage for himself or for another person or to damage another person shall be liable to imprisonment for a period not exceeding one year or to a fine not exceeding 360 daily units.
- (3) An expert engaged by a court or other authority for a particular hearing who publishes or uses a secret that has been entrusted or become available to him exclusively because of his work as an expert and the publication or use of which is likely to infringe a legitimate interest of the person who has requested his services or for whom they have been requested, shall be similarly liable.
- (4) Assistants to persons exercising one of the functions described in paragraphs (1) and (3), even if they are not working in a professional capacity, and persons participating in the work for training purposes, shall be treated in the same manner as such persons.
- (5) The offender shall not be liable to punishment if the publication or use is justified in content and form by a public or legitimate private interest.
- (6) The person shall be prosecuted only at the request of the person whose interest in secrecy has been prejudiced (paragraphs (1) and (3)).

Disclosure of business or industrial secrets

§ 122.

- (1) Any person who publishes or uses a business or industrial secret (paragraph (3)) which has been entrusted or become available to him in carrying out any supervision or verification or a census required by the law or commissioned by an authority, shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding 360 daily units.
- (2) Any person committing such an act to derive financial advantage for himself or for another person or to damage another person shall be liable to imprisonment for a period not exceeding one year or to a fine not exceeding 360 daily units.
- (3) Paragraph (1) shall relate only to a business or industrial secret which the person is under a legal obligation to keep and the publication or use of which is likely to prejudice a legitimate interest of the person subject to supervision, verification or a census.
- (4) The person committing the act shall not be liable to punishment if the publication or use is justified in content and form by a public or a legitimate private interest.
- (5) The person shall be prosecuted only at the request of the person whose interest in secrecy has been prejudiced (paragraph (3)).

Business or industrial espionage

§ 123.

- (1) Any person who seeks to obtain a business or industrial secret with the intention of using it, passing it to another person for use or making it public shall be liable to imprisonment for a period not exceeding two years or to a fine not exceeding 360 daily units or to both such imprisonment and fine.
- (2) The person shall be prosecuted only at the request of the injured party.

Business or industrial espionage on behalf of a foreign country

§ 124.

- (1) Any person who seeks to obtain a business or industrial secret with the intention that it should be applied, used or otherwise exploited abroad, shall be liable to imprisonment for a period not exceeding three years. A fine not exceeding 360 daily units may also be imposed.
- (2) Any person who discloses for application, use or other exploitation abroad a business or industrial secret which he is under a legal obligation to keep shall be similarly liable.

Slander

§ 297.

- (1) Any person who exposes another person to the risk of punishment by falsely accusing him of an action for which the authorities are required to prosecute, or of failing to carry out an official or professional duty, shall himself be liable to imprisonment for a period not exceeding one year if he knows (§ 5, paragraph 3) that the accusation is false and to imprisonment for a period of six months to five years if the action or omission of which the other person is falsely accused is punishable by imprisonment for a period exceeding one year.
- (2) A person who voluntarily removes the threat of official prosecution before an authority has taken any measures to prosecute the accused person shall not be liable to punishment under paragraph (1).

Annex B

EXTRACT FROM THE PENAL CODE

Disparagement of religious doctrines

§ 188.

Any person who, in circumstances in which his behaviour is likely to arouse justified anger, disparages or derides an object of reverence of a church or a religious society within the country, or a religious doctrine, or a legally permitted custom or a legally permitted institution of such a church or religious society, shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding 360 daily units.

Public incitement to illicit sexual acts

§ 219.

Any person who publicly makes an announcement intended to incite to illicit sexual acts and likely by its content to arouse justified anger shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding 360 daily units.

Encouragement of immorality with persons of the same sex or with animals

§ 220.

Any person who in a printed work or film or otherwise publicly encourages immorality with persons of the same sex or immorality with animals or advocates it in a manner likely to encourage such immoral acts shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding 360 daily units, unless he is liable to a heavier penalty as a participant in the immoral act (§ 12).

Disparagement of the State and its symbols

§ 248.

(1) Any person who mischievously insults or reviles the Republic of Austria or one of its Federal Länder in such a way that his action becomes known to a wide section of the public shall be liable to imprisonment for a period not exceeding one year.

(2) Any person who, in the manner described in paragraph (1), mischievously insults, reviles or otherwise disparages a flag of the Republic of Austria or one of its Federal Länder flying on an official occasion or at a public event, the Federal anthem or a Land anthem, shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding 360 daily units.

Betrayal of State secrets

§ 252.

(1) Any person who makes a State secret known or available to a foreign Power or to a supra-national or international institution shall be liable to imprisonment for a period not exceeding ten years.

(2) Any person who makes a State secret known or available to the public shall be liable to imprisonment for a period of six months to five years. If the State secret relates to facts that are a threat to the Constitution (paragraph (3)), the person shall be liable only if he acted with the intention of harming the Republic of Austria. The erroneous assumption that a fact is a threat to the Constitution shall not exonerate the person from liability.

(3) Facts that are a threat to the Constitution are facts which reveal endeavours to abolish by unconstitutional means the democratic, federal or constitutional structure of the Republic of Austria, to end its permanent neutrality, to destroy or inhibit a legal system anchored in the Constitution or repeatedly to act in defiance of that legal system.

Disclosure of State secrets

§ 253.

(1) Any person who, as a result of a legal obligation resting on him personally, is called upon to keep a secret which he knows to be a State secret and fails to fulfil this obligation in circumstances in which the secret may become known or available to a foreign Power, a supra-national or an international institution or the public, shall be liable to imprisonment for a period not exceeding three years.

(2) If the State secret relates to facts that are a threat to the Constitution (§ 252, paragraph (3)), the person shall be liable only if he acted with the intention of harming the Republic of Austria. The erroneous assumption that a fact is a threat to the Constitution shall not exonerate the person from liability.

Espionage with respect to State secrets

§ 254.

(1) Any person who retains or obtains a State secret with the intention of making it known or available to a foreign Power, a supra-national or international institution or the public and thereby creating a risk of severe prejudice to the national defence of the Republic of Austria or to the relations between the Republic of Austria and a foreign Power or a supra-national or international institution shall be liable to imprisonment for a period of six months to five years.

(2) § 253, paragraph 2 shall apply mutatis mutandis.

Concept of a State secret

§ 255.

In this section "State secrets" means facts, objects or knowledge, particularly writings, designs, models and formulae, and information about them, which are available only to a restricted circle of people and must be kept secret from a foreign Power or a supra-national or international institution in order to obviate the risk of severe prejudice to the national defence of the Republic of Austria or to the relations of the Republic of Austria with a foreign Power or a supra-national or international institution.

Secret intelligence activities to the detriment of Austria

§ 256.

Any person who establishes or operates a secret intelligence service or in any way supports such an intelligence service to the detriment of the Republic of Austria shall be liable to imprisonment for a period not exceeding three years.

Dissemination of false, disquieting rumours

§ 276.

Any person who intentionally spreads a rumour which he knows (§ 5, paragraph(3)) to be false and likely to disquiet a large number of people and consequently to endanger public order, shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding 360 daily units.

Incitement to non-compliance with the law

§ 281.

Any person who incites to general non-compliance with a law in a printed work, on the radio or by any other means which places the incitement before a wide section of the public shall be liable to imprisonment for a period not exceeding one year.

Incitement to punishable offences and approval of punishable offences

§ 282.

(1) Any person who incites a punishable offence in a printed work, on the radio or by any other means which places the incitement before a wide section of the public shall be liable to imprisonment for a period not exceeding two years, unless he is liable to a more severe penalty as a participant in the offence (§ 12).

(2) Any person who, with regard to a premeditated act punishable by imprisonment for a period exceeding one year, expresses his approval by the means described in paragraph (1) and in a manner likely to shock the general sense of justice or to encourage other persons to commit such an act shall be similarly liable.

Prohibited publication

§ 301.

(1) Any person who despite a legal prohibition publishes in a printed work, on the radio or by any other means a communication concerning the content of the deliberations in a court or an administrative authority, from which the public was excluded and does this in such a way that the communication comes to be available to a wide section of the public shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding 360 daily units.

(2) Any person who, by one of the means described in paragraph (1), publishes a communication concerning the discussion of proceedings before a court or an administrative authority, the voting or the result and any person who fails to comply with the obligation placed upon him in such proceedings by legal order of the court or of the administrative authority shall be similarly liable.

Disparagement of foreign symbols

§ 317.

Any person who, in a manner causing the act to become known to a wide section of the public, mischievously insults, reviles or otherwise disparages a flag or national emblem of a foreign State or of an international institution flown by a domestic authority or representative office of the foreign State or international institution, or a national anthem of a foreign State played on a public occasion, shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding 360 daily units.

Conditions of punishment

§ 318.

(1) The person committing an act that falls under §316 and §317 shall be prosecuted only on application from the Federal Government.

(2) The provisions of §316 and §317 shall be applied only if the Republic of Austria maintains diplomatic relations with the injured State and there is a statement from the Federal Ministry of Foreign Affairs that reciprocity is assured.

(3) The person shall be liable to punishment for acts against an international institution under § 317 only if the Republic of Austria belongs to that institution.

Military intelligence activities for a foreign State

§ 319.

Any person who establishes or operates a military intelligence service within the country for a foreign Power or a supra-national or international institution or supports such an intelligence service in any way shall be liable to imprisonment for a period not exceeding two years.

Endangering neutrality

§ 320.

Any person within the country who knowingly, during a war or armed conflict to which the Republic of Austria is not a party, or if there is an immediate risk of such a war or conflict for one of the parties:

- (1) equips or arms a military formation or a vessel, land vehicle or aircraft of one of the parties for participation in the military undertakings,
- (2) forms or maintains a corps of volunteers or establishes or operates a recruiting office therefor or for the army of one of the parties,
- (3) in breach of the existing regulations exports war material from the country or transports such material through the country,
- (4) grants financial credit or organizes a public collection for military purposes, or
- (5) transmits military information or sets up or uses a telecommunications installation for this purpose, shall be liable to imprisonment for a period of six months to five years.