

EXTRACT FROM THE AUSTRIAN PENAL CODE

(TRANSLATION)

Other Definitions

§ 74, para. 1 (4a). Public officer: anyone who

- a) is member of a domestic constitutional assembly, insofar as he votes in an election or ballot or otherwise acts or refrains from acting in the exercise of the duties determined in the internal rules of procedure,
- b) as an organ or employee discharges tasks of legislation, administration or justice for the federation, for a province (Bundesland), for an [association of municipal corporations](#), for a commune, for a social insurance institution or its association, for another state or for an international organisation, with the exemption of public officials mentioned under a) when executing their duties,
- c) is otherwise authorised to perform official duties in fulfilment of the law for a body mentioned under b)
- d) acts as an organ of a legal entity or due to the employment status to a legal entity, which is under the review of the court of auditors, or a comparable institution of the Provinces (Länder) or a comparable international or foreign control institution and works by far predominantly for the administration of a body mentioned under b)

Agreements Restricting Competition in Procurement Procedures

§ 168b. (1) Whoever in a procurement procedure submits a request to participate, renders a tender or conducts negotiations based on an unlawful agreement aimed at inducing the contracting party to accept a certain tender, shall be punished by imprisonment of up to three years.

(2) Whoever voluntarily prevents the contracting party from accepting the tender or providing its service, shall not be punished under para. 1. If the tender is not accepted or the service of the contracting party not performed through no fault of the offender, he will be exempt from punishment, if he voluntarily and earnestly seeks to prevent the acceptance of the tender or the provision of the service.

Acceptance of Gifts by Employees or Agents

§ 168c. (1) An employee or agent of an enterprise who demands, accepts or allows himself to be promised an advantage for himself or for a third person for the exercise or the

refraining from the exercise of a legal act in a business transaction in violation of his duties shall be punished by imprisonment of up to two years.

(2) If the value of the advantage exceeds EUR 5,000, the offender shall be punished by imprisonment of up to three years.

(3) Who accepts or allows himself to be promised only a minor advantage shall not be punished under para. 1, unless the offence is committed on a commercial basis.

Bribery of Employees or Agents

§ 168d. Whoever offers, promises or gives not merely a petty advantage to an employee or agent of an enterprise for him or a third person for the exercise or the refraining from the exercise of a legal act in a business transaction in violation of his duties, shall be punished by imprisonment of up to two years.

Chapter Twenty-Two Punishable Breaches of Official Duty and Related Criminal Offences

Abuse of Official Authority

§ 302. (1) A public official who wilfully abuses his authority to conduct official matters executing the laws in the name of the federal government, a Land, an association of municipalities, a municipality or another body under public law with the intent to harm the rights of another person shall be punished by imprisonment from six months to five years.

(2) A person who commits the offence conducting official business with a foreign power or a supranational or cross-national institution shall be punished by imprisonment from one year to ten years. A person who, by committing the offence, causes a damage exceeding EUR 50,000 shall be punished in the same way.

Negligent Breach of the Freedom of a Person or of the Sanctity of the Home

§ 303. A public official who negligently harms the rights of another person by limiting or depriving it of its personal freedom or by carrying out an illegal house search shall be punished by imprisonment of up to three months or a fine of up to 180 daily rates.

Corruptibility

§ 304. (1) A public official or an arbitrator, who demands, accepts or accepts a promise of an advantage for himself or a third person for performing or refraining from performing an official act in violation of his duties shall be punished by imprisonment of up to three years. Likewise to be punished is an expert assigned by the court or another administrative body for certain proceedings who demands, accepts or accepts a promise of an advantage for himself or a third person for delivering an incorrect evidence or expertise.

(2) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment from six month up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from one year up to ten years.

Acceptance of Advantages

§ 305. (1) A public official according to section 74 para. 1 (4a subpara. b to d) or an arbitrator who accepts or accepts a promise of an advantage for himself or a third person contrary to an interdiction by public service or organization law for performing or refraining from performing an official act in accordance with his duties shall be punished by imprisonment up to two years.

(2) Likewise such a public official or arbitrator shall be punished who demands an advantage for himself or a third person for performing or refraining from performing an official act in accordance of his duties, unless that was explicitly permitted according to a public service law or organization law provision or by a public service approval.

(3) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from six months up to five years.

Preparation of Corruption or of the Acceptance of Advantages

§ 306. (1) An Austrian public official or arbitrator, a public official or arbitrator of another Member State of the European Union or a Community official, who demands, accepts or accepts a promise of an advantage for himself or a third person with the intention to initiate the performance or refrainment from performing of an official act in violation of his duties in the future shall be punished by imprisonment up to two years.

(2) Likewise a public official according to section 74 para.1 (4a subpara. b to d) or an arbitrator shall be punished, who demands an advantage for himself or a third person with the intention to initiate the performance or refrainment from performing an official act in accordance with his duties in the future, unless that was explicitly permitted by public service law provision or institutional service provisions or a public service approval.

(3) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment up to three years, whereas who commits the offence with regard to the value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from six month up to five years.

Bribery

§ 307. (1) Whoever offers, promises or gives an advantage to a public official or an arbitrator for himself or a third person for performing or refraining from performing an official act in violation of his duties, shall be punished by imprisonment up to three years. Likewise anybody is to be punished who offers, promises or gives an advantage to an expert (sec 304 para. 1) for himself or a third person for delivering an incorrect evidence or expertise.

(2) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment from six month up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from one year up to ten years.

Offering an Advantage

§ 307a. (1) Whoever offers, promises or gives an advantage to a public official according to section 74 para. 1 (4a) subpara. b to d or an arbitrator for himself or a third person contrary to an interdiction by public service or organization law for performing or refraining from performing an official act in accordance with his duties.

(2) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment from six month up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from one year up to ten years.

Preparation of Bribery

§ 307b. (1) Who offers, promises or gives an advantage to an Austrian public official or arbitrator, a public official or arbitrator of another Member State of the European Union or a Community official for himself or a third person in order to initiate the performance or refrainment from performing of an official act in violation of such duties in the future shall be punished by imprisonment up to two years.

(2) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment from six month up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from one year up to ten years.

Active Repentance

§ 307c. (1) With respect to criminal offences according to Section 304 to 307b anybody is not to be punished who before the authority (section 151 par 3) is informed about his guilt, abdicates to conduct or - in case more persons are involved -, impedes the conduct or averts the success and in any case in the course of a self-denunciation deposits the accepted advantage or the equivalent amount of money at the authority.

(2) Under the preconditions of par 1 the offender is also not to be punished if case without his assistance the conduct or the success remains undone, he however unknowing that fact seriously makes an effort to impede the conduct or to avert the success.

Illicit Intervention

§ 308. A person who knowingly either directly or indirectly exercises influence on a public official or an arbitrator in order to make him perform or refrain from performing an act belonging to his official duties by violating these duties and who demands, accepts or accepts a promise of an advantage for himself or a third person is to be punished by imprisonment up to two years. Whoever comits the offence in regard of the value of the advantage exceeding 3.000 Euro shall be punished by imprisonment up to three years, whereas who conducts the acts with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from six month up to five years.

Breach of Official Secrecy

§ 310. (1) A public official or former public official who discloses or exploits a secret, which has been confided or has become accessible to him exclusively by virtue of his office and the disclosure or exploitation of which is capable of harming a public or justified private interest, shall be punished by imprisonment of up to three years, if the offence is not subject to more severe punishment under other provisions.

(2) Whoever as a member of a committee according to art. 53 B-VG (Federal Constitutional Law) or of a standing sub-committee of inquiry set up under art. 52a B-VG or as a person entitled to attend the negotiations of these committees discloses or exploits a secret, which has become accessible to him in confidential session and the disclosure or exploitation of which is capable of harming a public or justified private interest, shall be punished in the same way.

(2a) Whoever as a representative or employee of the European Police Office (Europol), liaison officer or person under a particular obligation of discretion (art. 32 para. 2 of the Europol Convention, BGBl. (Federal Law Gazette) III no. 123/1998) - even after leaving office or employment - discloses or exploits a fact or information, which has become accessible to him exclusively by virtue of his office or activity and the disclosure or exploitation of which is capable of harming a public or justified private interest, shall be punished in the same way.

(3) An offender who discloses an official secret related to anti-constitutional facts (§ 252 para. 3) shall only be punished if he acts with the intent of harming private interests or causing detriment to the Republic of Austria. The mistaken assumption of anti-constitutional facts does not exempt the offender from punishment.

False Certification and Authentication in Office

§ 311. A public official who falsely records a right, a legal relationship or a fact in a public document for the issuance of which he is competent, or who falsely places on a thing an official symbol of authentication for the placing of which he is competent shall be punished by imprisonment of up to three years, if he acts with the intent that the document be used in legal transactions for proving the right, the legal relationship or the fact or that the thing be used in legal transactions, unless the offence is subject to punishment under § 302.

Tormenting or Neglecting a Prisoner

§ 312. (1) A public official who physically or mentally torments a prisoner or any other person in the custody of a public authority who is in his power or to whom he has access due to his official function shall be punished by imprisonment of up to two years.

(2) A public official who grossly neglects his duty of care or custody to such a person and thus, even if only grossly negligently, seriously harms this person's health or physical or emotional development shall be punished in the same way.

(3) If the offence results in serious bodily injury (§ 84 para. 1), the offender shall be punished by imprisonment of up to three years; if it results in bodily injury with serious lasting effects (§ 85), he shall be punished by imprisonment of up to five years; if it results in the death of the injured person, he shall be punished by imprisonment from one year to ten years.

Criminal Offences due to Abuse of an Official Function

§ 313. If an intentional act generally subject to punishment is committed by a public official abusing the possibilities created by his official function, the corresponding maximum term of imprisonment or fine may be exceeded by one half. However, the term of imprisonment may not exceed 20 years.