

## National Laws

Legislation of Interpol member states on sexual offences against children

# Austria - Autriche – Austria\*

Vienna

The information on this page is up to date as of spring 2006

## I. Ages for legal purposes

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### Age of simple majority

The age of simple majority is 18 years. 'Minors' are persons who have not attained 18 years. Persons who have not attained 14 years are "under age".

### Age of consent for sexual activity

There are no legal provisions about this.

### Age of consent for marriage

At the age of 18 years a person has full legal capacity and becomes marriageable.

## II. Rape

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Rape is a criminal offence in Austria, governed by Austrian Penal Code:

### § 201 - Rape

1. Whoever coerces a person by serious force directed against this person or by the threat of immediate danger for life and limb to perform or to endure sexual intercourse or a sexual act equated to sexual intercourse shall be punished by imprisonment from one to ten years. Anaesthesia has to be regarded as serious force.

### § 202 - Sexual coercion

1. Whoever coerces a person except in the cases referred to in section § 201 by force or by dangerous threat to perform or to endure a sexual act shall be punished by imprisonment up to three years.

### **III. Other forms of child sex abuse**

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#### **§ 206 – Grievous sexual abuse of minors**

1. Anyone who has sexual intercourse, or a sexual act equivalent to intercourse, with a minor will be sentenced to 1-10 years' imprisonment.
2. Anyone who incites a minor to perform or endure sexual intercourse, or a sexual act equivalent to intercourse, with another person, or, in order sexually to arouse or satisfy himself or a third party, incites a minor to perform a sexual act equivalent to intercourse on him, shall also be punished.
3. If the act results in grievous bodily harm (under Section 84(1)) or pregnancy of the minor, the perpetrator shall be sentenced to 5-15 years' imprisonment. If the act results in the death of the minor, the perpetrator shall be sentenced to 10-20 years' imprisonment or to life imprisonment.
4. If the perpetrator is not more than three years older than the minor, the sexual act does not involve penetration with an object and the act does not result either in grievous bodily harm (under Section 84(1)) or the death of the minor, then the perpetrator under paragraphs 1 and 2 shall not be punished, unless the minor is under 13 years of age.

#### **§ 207 - Sexual abuse of minors**

1. Anyone who, except for the case provided in Section 206, performs a sexual act on a minor or has a sexual act performed on him by a minor, will be sentenced to six months' to five years' imprisonment.
2. Anyone who incites a minor to perform a sexual act (under paragraph 1) with another person or, in order sexually to arouse or satisfy himself or a third party, incites a minor to perform a sexual act on him, shall also be punished.
3. If the act results in grievous bodily harm (under Section 84(1)), the perpetrator shall be sentenced to 1-10 years' imprisonment. If the act results in the death of the minor, the perpetrator shall be sentenced to 5-15 years' imprisonment.
4. If the perpetrator is not more than four years older than the minor, and if none of the consequences provided in paragraph 3 apply, then the perpetrator under paragraphs 1 and 2 shall not be punished, unless the minor is under 12 years of age.

#### **§ 208 – Endangering the moral development of persons under 16 years of age**

1. Anyone who performs an act likely to endanger the moral or psychological development or health of persons under 16 years of age in front of a minor or a person under 16 years of age with whose upbringing, education or supervision he is charged, in order sexually to arouse or satisfy himself or a third party, will be sentenced to up to one year's imprisonment, unless, according to the circumstances of the case, an endangering of the development of the minor or person under 16 years of age can be ruled out.
2. If the perpetrator in the first case in paragraph 1 is not more than four years older than the minor, then the perpetrator shall not be punished, unless the minor is under 12 years of age.

#### **§ 211 - Incest**

1. Whoever performs sexual intercourse with a person who is a consanguine descendant, shall be punished by imprisonment up to one year.
2. Whoever seduces a person, who is a consanguine relative in the ascending line, into sexual intercourse, shall be punished by imprisonment up to 3 years.
3. Whoever performs sexual intercourse with his brother or his sister, shall be punished by imprisonment up to six months.

#### **§ 212 - Abuse of authority**

1. Whoever sexually abuses his minor child, adopted child, stepchild or ward and whoever sexually abuses a minor person, who is under his education, training or supervision by taking advantage of his position, or tempts to make him perform a sexual act on himself in order to sexually excite or satisfy himself or a third person, shall be punished by imprisonment up to three years.

### **IV. Child prostitution**

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Child prostitution also constituted a criminal offence, covered by a/m laws. Besides, the Austrian youth protection regulation (administrative laws) prohibits child prostitution.

#### **§ 215a – Promotion of prostitution and pornographic performances of minors**

1. Any person who recruits a minor, regardless of whether the minor is already engaged in prostitution, to perform prostitution or to participate in a pornographic performance or who offers or procures the minor to another person for that purpose shall be liable to a term of imprisonment not exceeding three years. The same sentence shall apply to any person who

- exploits a minor who is engaged in prostitution or participating in a pornographic performance for financial gain for himself or a third party.
2. Any person who commits the crime as part of a criminal association, using severe violence or in such a way that the crime endangers the life of the person intentionally or through gross negligence or the crime is particularly detrimental to the person, shall be liable to a term of imprisonment of between six months and five years. Any person who commits the crime against a minor below the age of 14 shall be liable to a term of imprisonment of between one and 10 years.
  3. A person shall be deemed to participate in a pornographic performance if he performs a sexual act which is reduced to itself, removed of other expressions of life and for the sexual arousal of the viewer, on himself, on another person or with an animal, allows such a sexual act to be performed on himself or who displays his genitals or pubic region in such a manner.

## V. Child pornography

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### § 207a - Pornographic depictions of minors

#### (1) Anyone who

1. produces or
2. imports, transports or exports for the purpose of dissemination or
3. offers, procures, transfers, presents or makes available in any other manner to another person a pornographic depiction of a minor (under paragraph 4) will be sentenced to up to three years' imprisonment.

**(2) Anyone who commits the offence** for financial gain will be sentenced to six months' to five years' imprisonment. Anyone who commits the offence as a member of a criminal organisation, or in such a way that the minor sustains particularly grievous harm, will be sentenced to 1-10 years' imprisonment; anyone who produces a pornographic depiction of a minor (under paragraph 4) using severe violence or who, in producing such pornographic depiction, endangers the life of the depicted minor either intentionally or as a result of gross negligence, will also be punished.

**(3) Anyone who obtains**, or is in possession of, a pornographic depiction of a minor over 14 years of age (under paragraph 4, subparagraphs 3 and 4) will be sentenced to up to one year's imprisonment. Anyone who obtains, or is in possession of, a pornographic depiction of a minor (under paragraph 4) will be sentenced to up to two years' imprisonment.

#### (4) Pornographic depictions of minors are:

1. realistic depictions of a sexual act performed on a minor under 14 years of age or by such minor on himself, on another person or with an animal,
2. realistic depictions of an event performed with a minor under 14 years of age, examination of which creates the impression, according to the circumstances

- of the case, that it involves a sexual act performed on such minor or by the minor on himself, on another person or with an animal,
3. realistic depictions
    - a. of a sexual act within the meaning of subparagraph 1 or of an event within the meaning of subparagraph 2, though with minors over 14 years of age, or
    - b. of the genitals or pubic region of minors, provided such depictions are distorted in a sensational manner, focus on the genitals or pubic region or are devoid of other manifestations of life in order sexually to arouse the observer,
  4. pictorial representations, an examination of which - following alteration of a depiction or without use of such alteration - creates the impression, according to the circumstances of the case, that it is a depiction within the meaning of subparagraphs 1-3.

**(5) In accordance with paragraph 1**, subparagraph 1, and paragraph 3, anyone who:

1. produces, or is in possession of, a pornographic depiction of a minor over 14 years of age with the latter's consent or for the latter's own private use, or
2. produces, or is in possession of, a pornographic depiction of a minor over 14 years of age, within the meaning of paragraph 4, subparagraph 4, for his own private use, provided no risk of dissemination of the depiction is associated with the act,  
shall not be punished.

## **VI. Internet**

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**§ 207a** of the Austrian Penal code also prohibits distribution and possession of material containing child pornography by downloading from Internet. In 1997, the Ministry of Interior, set up a unit to combat child pornography in the Internet.

**\* The information on this page has partly been taken from the Europol "Overview of the legislation on Child Pornography in the Member States" of the European Union (Europol public information, 2005)**

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To avoid any eventual confusion we inform you that the translation of the above mentioned articles from the Austrian Penal Code is not an official one.