

Austria

Criminal Code (article 217)

Criminal Code(excerpts)

Part 8 : Procedural and Punitive provisions

Section 5

§ 217

Whoever brings a person to perform illicit prostitution, even if such person already commits prostitution, in another country than the one whose citizenship such person has or where such persons has his/her habitual place of residence, or procures such person for such purposes, shall be sentenced to imprisonment of six months to five years, and, if the crime is committed for profit, to imprisonment of one to ten years.

Whoever induces by deception a person to commit prostitution in another country than the one whose citizenship such a person has or where such person has his/her habitual place of residence or coerces such person by violence or dangerous threat to move to another country or conveys such person to another country by violence or by exploitation of such person's error shall be sentenced to imprisonment of one to ten years.

Federal Law Concerning the Entry, Residence and Settlement of Aliens

(1997 Aliens Act)

Issued on 14 July 1997

Federal Law Gazette of the Republic of Austria, FLG I No. 75/1997, amended by FLG I No. 86/1998, FLG I No. 158/1998, FLG I No. 20/2000, FLG I No. 34/2000, FLG I No. 66/2000, FLG I No. 134/2000, FLG I No. 98/2001 and FLG I No. 142/2001

1997 Aliens Act

(NR: GP XX RV 685 AB 755 s. 77. BR: 5456 AB 5464 S. 628.)

Legislationline Comment : see in particular article 105.

The National Council has ruled as follows:

(...)Section 5

Penal provisions Alien smuggling

Article 104. (1) Any person who facilitates the illegal entry of an alien into a Member State of the European Union or into a country bordering Austria with the intention of thereby obtaining a not merely insignificant pecuniary advantage for himself or for another (alien smuggling) shall be

sentenced by the court to a term of imprisonment of up to one year or to payment of a fine of up to 360 times the average daily wage.

(2) Any person who engages in alien smuggling and has already within the last five years been convicted of any such offence by a court of law shall be liable to a term of imprisonment of up to two years; a sentence imposed by a foreign court in proceedings conforming to the principles set out in article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms shall also be regarded as a conviction.

(3) Any person who engages in alien smuggling on a commercial basis (article 70 of the Penal Code) or as a member of a criminal group shall be liable to a term of imprisonment of up to five years.

(4) A person who commits the offence in such a way that the alien is subjected to conditions of great suffering throughout a lengthy period, in particular during transportation, shall be liable to a term of imprisonment of between six months and five years or, if the offence results in the death of the alien, to a term of imprisonment of between one and ten years.

(5) A person who acts as the leader of an association of a fairly large number of persons formed for the purpose of repeatedly engaging in alien smuggling shall be liable to a term of imprisonment of between one and ten years.

(6) Aliens whose illegal entry is facilitated by the commission of the offence shall not be liable to prosecution as accomplices (article 12 of the Penal Code). Their compulsory return or expulsion may be delayed if and for as long as is necessary in order that they may be questioned regarding the facts of the case; the foregoing shall be without prejudice to article 69.

(7) The agents of the public security service shall, in the event of impending danger, be empowered to take provisionally into custody any property carried by the perpetrator or conveyances or containers used for the commission of the offence, as a guarantee of surrender of proceeds (article 20 of the Penal Code), forfeiture (article 20b of the Penal Code) or confiscation (article 26 of the Penal Code). The cargo on board of the conveyance may be handed over to the registered keeper or his authorized representative. Notification of the measures taken shall be given without delay to the court.

(8) The conduct of proceedings relating to an offence as defined in paragraph (1) above shall be the responsibility of the courts of first instance.

Exploitation of an alien

Article 105. (1) Any person who exploits an alien who is unlawfully resident in the federal territory in order to procure a regular income for himself or for another by taking advantage of the particular dependence of that alien shall be sentenced by the court to a term of imprisonment of up to two years.

Arranging of fictitious marriages

Article 106. (1) Any person who on a commercial basis (article 70 of the Penal Code) arranges or procures marriages between aliens, or between Austrian nationals and aliens, although he knows or should have known that the persons concerned will invoke their marital status as grounds for the granting of a residence authorization but do not intend to lead a joint family life, within the

meaning of article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, shall be sentenced by the court to a term of imprisonment of up to one year or to payment of a fine of up to 360 times the average daily wage.

(2) Aliens and Austrian nationals whose marriage is arranged or procured shall not be liable to prosecution as accomplices (article 12 of the Penal Code).

Unauthorized residence

Article 107. (1) Any person who:

- 1 .Fails to depart promptly following the imposition of a residence ban or deportation order, or
2. Without permission returns to the federal territory in contravention of a residence ban, or
3. Resides in the federal territory as an alien who is subject to the passport requirement but does not possess a valid travel document, or
4. Unlawfully resides in the federal territory (article 31) shall be guilty of an administrative infraction and be liable to payment of a fine of up to 726 Euro or to a term of imprisonment of up to 14 days in the cases referred to in subparagraphs 1 and 2 above, and to a fine of up to 726 Euro in all other cases. The place of discovery or last known residence shall be deemed to be the place of commission of the offence.

(2) There shall be no administrative infraction under subparagraph 1 of paragraph (1) above if departure was possible only to a country to which deportation is inadmissible (article 57 and article 75, paragraph (4)) or if an deportation deferment has been granted to the alien.

(3) A punishment imposed pursuant to subparagraph 3 of paragraph (1) above shall preclude further punishment for the administrative infraction simultaneously committed under subparagraph 4 of paragraph (1) above.

(4) There shall be no administrative infraction under subparagraph 4 of paragraph (1) above for as long as the alien is deprived of his personal liberty.

Aiding and abetting unauthorized residence for reward

Article 107a. (1) Any person who willfully procures or otherwise facilitates the unauthorized residence of an alien in the federal territory in return for a pecuniary advantage shall be guilty of an administrative infraction and be liable to payment of a fine of up to 3 600 Euro.

(2) An attempt to commit an infraction under paragraph (1) above shall be punishable.

(3) Aliens whose unauthorized residence in the federal territory is willfully procured or otherwise facilitated by the perpetrator in return for a pecuniary advantage shall not be liable to prosecution for aiding or abetting the commission of an infraction under paragraph (1) above.

(4) Any pecuniary advantage obtained by the perpetrator by reason of the punishable act, either before or after its commission, shall be declared forfeited.