

Countdown to Impunity – Corruption related Statutes of Limitation in the EU

Transparency International -
Austrian Chapter

National Report



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I. Introduction

Transparency International – Austrian Chapter is taking part in the project “Countdown to Impunity – Corruption related Statutes of Limitation in the EU”, managed by the Transparency International Secretariat in Berlin. Eleven European countries are involved in the project carrying out in-depth research. And the results of a general overview of national regulations in the remaining sixteen EU member states are implemented in the comparative study as well. The project has been supported by the European Commission, namely the Directorate-General Home Affairs.

The methodology of the research consists of desk review of the relevant provisions in criminal, civil, administrative and disciplinary law. Furthermore, case law, scientific papers and statistics – which are only available to a very limited extent – have been integrated. In addition, interviews with several experts from different fields (judges, prosecutors, lawyers, academics, specialized anti-corruption agencies,...) lead to a very distinguished view on the topic.

Already at the beginning I would like to clarify that we do not want to question the concept of SoL in general and that we accept the rationales behind it. Nevertheless, we follow the hypotheses that corruption related offenses might be special regarding prescription due to their nature as hidden crimes and due to the lack of a direct victim. Further benefit and recommendations raise from the comparative analysis of different legal systems and traditions. Who would have known that there are no SoL periods in the Ireland? And who would have expected that a case could prescribe in Italy even if the perpetrator has already been convicted in the first two instances before?

II. The Austrian system of Statutes of Limitation

1. Criminal Law in General

1) The SoL periods

The Austrian criminal code (Strafgesetzbuch, StGB) contains provisions on the prescription of prosecution in §§ 57 and 58. § 57 regulates the following:

The Statute of Limitations does not apply to offenses which require life imprisonment or ten to 20 years imprisonment. Nevertheless, life imprisonment is substituted by ten to 20 years imprisonment as the maximum possible penalty, if 20 years have already passed since the crime was committed.

Criminal liability for all other offenses possibly ends due to Statutes of Limitation. The SoL period begins when the punishable activities are finished or the punishable behavior ends.

Paragraph 3 of § 57 statutes a system of SoL periods depending on the maximum possible sanction in years of imprisonment: The SoL period is

- 20 years if the maximum possible sanction is more than ten years imprisonment.
- ten years if the maximum possible sanction is ten years imprisonment.
- five years if the maximum possible sanction is five years imprisonment.
- three years if the maximum possible sanction is one year imprisonment.
- one year if the maximum possible sanction is six month imprisonment.

2) Grounds for suspension (§ 58 StGB)

A suspension technically means that the SoL period stands still for a certain period of time. When the reasons causing suspension cease to apply, the rest of the SoL period continues to run.

Another solution for prolonging the SoL in fact would be interruption (which is not foreseen in Austrian criminal law) where prescription restarts from the beginning and the whole SoL period is available again.

If a result that constitutes an element of an offense occurs after prescription begins (punishable activities are finished or punishable behavior ended) the SoL period cannot end before it would have ended calculated from the day the result occurred or before one and a half the length of the SoL period and at least three years passed since the beginning of prescription (suspension of the end of the period).

Due to the fact that the SoL period begins when the offender finished his activities (which might be before all elements of an offense are fulfilled) this provision has the sense to avoid prescription before the results respective damages resulting from the punishable activities occurred.

e.g.: A mayor accepts a bribe and gives sanction to the construction of a building even though it is obvious that the ground is not appropriate. Five years later the building collapses and a damage of some hundred thousand Euros occurs among the neighbors. As a damage of more than 50.000 Euros constitutes an element of (the aggravated) offense of abuse of office (§ 302 StGB), the suspension ground of § 58 par 1 StGB applies.

If an offender commits another crime during the prescription period of an earlier offense and if both crimes are based on the same wrongful attitude, the earlier offense cannot prescribe before the SoL period of the offense committed later has expired as well (suspension of the end of the period).

According to § 71 StGB two or more criminal acts are based on the same wrongful attitude if they are either committed against the same object of legal protection or based on the same condemnable motivation or based on the same negative character trait. All those expressions have been concreted in numerous academic papers and court decisions.

e.g.: the SoL period for the basic form of public bribery is 5 years. If a civil servant would accept a first bribe in 2007 and another bribe in 2010, both cases could not prescribe before the 5 year period of the second case would have expired in 2015.

Furthermore, there are grounds suspending the running of the SoL period in general (and not only the expiration like above), meaning that the following times do not count for the calculation of SoL periods:

- times where prosecution cannot be started or continued due to legal provisions, except if the Austrian constitution (B-VG) statutes else.

This ground for suspension is particularly relevant regarding the immunity of members of the national parliament and the state parliaments and will be treated in more detail in the chapter on implementation of the SoL.

- the time between the first interrogation as accused, the first threat or exercise of force against the offender, the first demand of measures for taking evidence (8. main part of the criminal proceedings code) against the offender, ruling of manhunt, arrest or pre-trial custody or formal accusal and the legally binding conviction or any other form of end of the proceeding. This provision is extremely important and has the consequence that the SoL periods are in fact only relevant until the beginning of the preliminary proceeding.
- the time until the victim is 28 years old in case of an offense against life, freedom or sexual integrity of a minor victim.
- the time given to a delinquent do fulfill conditions of diversion (alternative dispute settlement).

2. Concrete periods for corruption related offenses

| Criminal Offenses | Legal Source | Period of Limitation (years) until end of investigation or initiation of prosecution* | Period of Limitation (years) until end of prosecution or sentence | |
|--|---|---|---|-----------------|
| | | | Relative period | Absolute period |
| Bribery | | | | |
| Public Sector | | | | |
| Amtsmissbrauch (Abuse of Office, Bribery cases often fulfill the elements of this offense too) | § 302 Strafgesetzbuch (StGB, criminal code) | 5 years or 10 years | | |
| Bestechlichkeit (passive Bribery for abuse of public | § 304 StGB | 5 years 10 years | | |

| | | | | |
|--|-------------|--|--|--|
| functions) | | (bribe of more than 50000 euros) | | |
| Bestechung (active Bribery for abuse of public functions) | § 307 StGB | 5 years 10 years (bribe of more than 50000 euros) | | |
| Vorteilsannahme (passive Bribery for fulfilling public duties) | § 305 StGB | 5 years | | |
| Vorteilszuwendung (active Bribery for fulfilling public duties) | § 307a StGB | 5 years | | |
| Vorbereitung der Bestechlichkeit oder Vorteilsannahme (Preparation of passive Bribery) | § 306 StGB | 5 years | | |
| Vorbereitung der Bestechung (Preparation of active Bribery) | § 307b StGB | 5 years | | |
| Private Sector | | | | |
| Untreue (Abuse of function / warrant) | § 153 StGB | 1 year 5 years (damage of more than 3000 euros) 10 years (damage of more than 50000 euros) | | |
| Geschenkannahme durch Bedienstete oder Beauftragte (passive bribery in the private sector) | § 168c StGB | 5 years | | |

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|--|-------------|---|--|--|
| Bestechung von Bediensteten oder Beauftragten (active bribery in the private sector) | § 168d StGB | 5 years | | |
| Geschenkannahme durch Machthaber (special form of passive bribery in the private sector) | § 153a StGB | 3 years | | |
| | | | | |
| Embezzlement | | | | |
| | | | | |
| Veruntreuung (unlawful appropriation of entrusted property) | § 133 StGB | 1 year or 5 years or 10 years (depending on sum of enrichment) | | |
| Unterschlagung (unlawful appropriation of randomly acquired property) | § 134 StGB | 1 year or 5 years (depending on sum of enrichment) | | |
| | | | | |
| Trading in Influence | | | | |
| | | | | |
| Verbotene Intervention (illegal interventions) | § 308 StGB | 5 years | | |
| | | | | |
| Abuse of Functions | | | | |
| | | | | |
| Missbrauch der Amtsgewalt (Abuse of public functions) | § 302 StGB | 5 years or 10 years | | |
| Untreue (Abuse of warrant, private sector) | § 153 StGB | 1 year or 5 years or 10 years | | |
| | | | | |
| Illicit Enrichment | | | | |
| - | | | | |
| | | | | |
| Money Laundering | | | | |
| Geldwäscherei (money) | § 165 StGB | 5 years | | |

| | | | | |
|--|---------------|--------------|--|--|
| laundering) | | | | |
| Obstruction of Justice | | | | |
| Falsche Beweisaussage (incorrect testimony of a witness before court, prosecutor or police) | 288 StGB | 5 years | | |
| Falsche Beweisaussage vor einer Verwaltungsbehörde (incorrect testimony of a witness before administrative authorities) | 289 StGB | 3 years | | |
| Herbeiführung einer unrichtigen Beweisaussage (causing a incorrect testimony) | § 292 StGB | 3 or 5 years | | |
| Fälschung eines Beweismittels (forgery of evidence) | § 293 StGB | 3 years | | |
| Unterdrückung eines Beweismittels (concealing of evidence) | § 295 StGB | 3 years | | |
| Begünstigung (knowingly supporting a criminal abdicating from one's responsibility) | § 299 StGB | 5 years | | |
| Urkundenfälschung (forgery of documents) | § 223 ff StGB | 3 or 5 years | | |

* In Austria, de jure the SoL period runs until the end of prosecution, but de facto the formal accusation and sometimes even other investigative measures suspend the SoL period until the legally binding end of the proceedings.

3. Civil proceedings

The absolute SoL period in civil law is 30 years and begins when a right could have been carried out the first time (§ 1478 ABGB, general code of civil law). Furthermore, there are shorter special relative SoL periods of mostly three years for some legal institutions, counting from different days on.

The most important prescription period in the field of corruption is those for damage claims (§ 1489 ABGB). In general, a claim for damages prescribes in three years from the day when damage and wrongdoer are known to the injured party (relative period) or in 30 years from the day the damage occurred (general absolute period). But if the damage was caused through behavior that constitutes an intentionally committed criminal offense and could possibly be sanctioned with a sentence of a year or more of imprisonment, the injured party can claim for damages within 30 years from the day the damage occurred even if damage and wrongdoer are known from the beginning.

Furthermore, titles for the rescission of a contract if certain mistakes or a threat were influencing the content of the agreement could be relevant in corruption cases. There is a SoL period of three years from the day the agreement was signed in case of mistake and a three year SoL period from the day the threat lapsed in case of threat.

4. Disciplinary proceedings

In general, disciplinary liability applies for public servants (including special provisions for judges and prosecutors) and free-lance professions (standing outside of the industrial code), for example lawyers, notaries, physicians and architects. It can be relevant in addition to a conviction under criminal law because there are possible disciplinary sanctions (e.g. prohibition of exercising a certain profession) that could not be imposed in criminal law. In this context § 27 StGB has to be noticed: A public servant who is either convicted for a crime including elements of abusing his authority or convicted to at least six month unconditional imprisonment (for any crime) or at least one year of imprisonment or even probation is dismissed by operation of law.

Important disciplinary acts for certain professions are the *Beamtendienstrechtsgesetz* (BDG, service regulations law for public servants), the *Richter- und Staatsanwaltschaftsdienstgesetz* (RStDG, service regulations law for judges and prosecutors) or the *Disziplinarstatut für Rechtsanwälte* (DSt,

disciplinary statute for lawyers).

These laws all know the concept of prescription and mainly propose a shorter SoL period running from the day the competent disciplinary authority gets to know of the disciplinary offense and a longer period running from the day the offense was committed. Nevertheless, the longer period cannot be considered as absolute period because it can be suspended as well.

The grounds for suspension are generally speaking similar to those in criminal law. In all acts the prescription period is suspended for the time a criminal proceeding is running. In the BDG and the DSt there is another helpful provision, prolonging the longer (or so called “absolute”) disciplinary SoL period to the same length as the SoL period in criminal law in case a violation of disciplinary law is sanctioned under criminal law as well. However, the shorter period, which runs from the day the competent authority learned of the offense, is not prolonged to the level of criminal law.

5. Administrative proceedings

The research has not found any relevance of administrative offenses in the context of corruption related behavior because the violations of administrative law are pushed away if criminal liability applies, which is the case for serious corruption issues. In addition, criminal liability sometimes is even accessory to violations of administrative law. That means that the breach of administrative law constitutes a necessary element of a criminal offense. To put it another way: a violation of administrative law directly leads to criminal liability.

Furthermore, the sanctions of administrative law are fines or maybe custody and therefore they do not constitute a specific type of sanction unlike disciplinary measures.

The criminal liability of legal persons is provided in the Association Penalty Act (Verbandsverantwortlichkeitsgesetz, VbVG) since 2005.

III. Implementation of SoL in corruption related proceedings

1. Criminal proceedings

1) Statistics

At first it has to be said that there are no statistics in Austria which enable the public to see what percentage of criminal cases in general or corruption related cases in particular are closed due to prescription.

However, statistical data about the number of complaints at the police respectively prosecutor level and the number of legally binding convictions classified by offense are publicly available. One weakness of this data is that it is not possible to track complaints until the end of the investigation or trial. The prosecutor could have different reasons for deciding to terminate prosecution: the suspect could be innocent, the arguments of the prosecution unconvincing, there could be problems with the evidence, or the prescription period might have already expired.

Furthermore, different grounds for the termination of the investigation or prosecution can coincide. E.g.: It was not possible to prove that a certain element of a crime was committed, therefore the prosecutor had to accuse the suspect of a less severe crime. Due to the shorter maximum possible punishment, the SoL period had already expired.

From all these factors mentioned, it can be derived that the prosecutor does not have to publish one single reason for terminating prosecution, and that it is therefore probably hardly compatible with the Austrian system of criminal proceedings to obtain exact statistical data on the percentage of prescribed cases.

2) Case Law

Isolated corruption related cases have been found where a conviction was impossible due to the expiration of SoL periods. For example, there have been two judgements concerning public sector bribery in 1990 (verdict number 14 Os 87/90) and 1996 (verdict number 15 Os 113/96). In both

cases the Austrian Supreme Court had to declare the accused not guilty because the SoL period had already expired.

However, when considering these cases, one must consider that the maximum possible sentence for the basic form of bribery in 1996 was one year (resulting in a 3 year prescription period) and even shorter before. Therefore, the cases cannot be compared with the current legal status, which mandates in a prescription period of minimum 5 years.

3) Interview Outcome

General information

According to the expert's opinion, it can be determined that there are cases of prescription in criminal law. But they are not seen as extraordinary or problematic, and only occur from time to time. As described above, SoL periods are suspended if an offender commits another offense during the SoL period of the first crime. That means in fact that a delinquent has to respect the law for the whole SoL period in order to gain the benefits of the SoL. Consequently, it is seen as appropriate (and rationale of prescription) that the accused cannot be prosecuted after an appropriate period of law abiding behavior. Neither the deterrent effect on the particular offender, nor general crime prevention demand a punishment of the perpetrator in such cases.

Concerning corruption related offenses, none of the interviewees could remember recent cases closed due to statutes of limitation. But once prescription in combination with the qualification as the less severe form of an offense might at least have been used as excuse to avoid accusing a certain person. The general opinion is that statutes of limitation are not among the main challenges in the fight against corruption in Austria and that there are not many prescribed cases.

Nevertheless, there is no common sense if prescription occurs more frequently in the field of corruption related crimes than in general. The hypothesis that lapse of time might be more important for corruption related offenses due to structural particularities has at least been mentioned and understood.

Asked directly for particularities of corruption related offenses regarding speedy detection, investigation and prosecution, most experts mentioned structural differences from other crimes. Unfortunately, corruption often goes undetected. This is explained by the fact that there is no immediate victim (unlike a victim of violence) who can file charges with the police. With corruption, none of the involved persons has any interest in reporting the crime.

Explanations for delays or lack of investigation or prosecution

Experts have many possible explanations for delays in prosecution or lack of investigation of corruption related offenses. Most of them are not directly connected to SoL, and most of them are not even time related obstacles in proceedings. Nevertheless, they could serve as helpful overview about different structural problems in Austrian anti corruption measures. The following explanations are most prevalent:

- Human resources: many experts mentioned that there is a lack of expertise in the field of business (e.g. accounting) and economics, prosecutors often have to learn by doing, furthermore a general lack of prosecutors is seen; consequently penal trials concerning business offenses are characterized by a very long time of trial and an imbalance of resources and business knowledge.
- Corruption is still sometimes seen as petty offense, therefore prosecutors might tend to close corruption related proceedings rather than “hand-tight” property crimes or violence crimes.
- The structural particularities of corruption related offenses mentioned above, resulting in a high percentage of undetected or late detected criminal acts.
- Problems in giving evidence for complex corruption related causally determined processes.
- Influence of accused politicians or public officials, resulting in a certain amount of fear that investigation measures could influence the own career in a negative way and attempts to exploit investigations for political purposes.

Provisions for a leniency policy, the protection of whistle blowers and the withdrawal of the recent disarming of anti corruption offenses are seen as main issues to overcome those difficulties.

Concerning parts of the criticism, it has to be mentioned that the Ministry of Justice has presented a draft law which shall enter into force on the 1st of January 2011 and foresees the implementation of a leniency policy and of competence centers for the prosecution of economic crimes. Transparency International Austrian Chapter generally appreciates the planned reform; however, there are concerns about some details and the supply with human resources in the competence centers as well. A more detailed statement will be published soon on <http://www.ti-austria.at>.

The length of SoL periods regarding corruption related offenses

The length of the SoL period for corruption related offenses is widely considered to be appropriate. Only one practitioner working in a law enforcement agency mentioned that longer periods would be

favorable from his perspective and even he admitted that it might be not reasonable from a systematic point of view and that many other experts would wish the same for their working field.

The length of SoL periods for criminal offenses in general

The SoL periods in Austrian criminal law are generally regarded as long enough. There are not many cases where SoL periods expired and in case it happens it is seen as appropriate, thinking of the rationale of prescription.

Offenses against property were the only category of crimes in which a prolongation of the maximum possible sentence and in consequence the length of the SoL period has been even considered. The explanation for this point of view is that a maximum sentence of 10 years might be long enough for a damage or illicit enrichment of 50.000 Euros (the limit where the highest possible sentence from one to ten years imprisonment begins to apply) but not for billions or trillions of damage respective enrichment sums.

Sexual abuse related offenses against a minor victim are the only category of crimes where a special suspension ground statutes that the SoL period only begins on the 28th birthday of the victim. Coinciding with a SoL period of up to 20 years for the most severe forms, this provision has the effect that an offender could be prosecuted until the victim's 48th birthday. This special provision was mentioned as an example for an excessive prescription period.

Grounds for suspension

The Austrian criminal code provides grounds for suspension, but not for interruption or extension. Those grounds (which are explained above) are seen as sufficiently comprehensive. None of the experts promoted a new ground for suspension on his own.

Explicitly asked for their opinion on a ground for suspension which applies as long as a high public official is in office and has the possibility to conceal evidence in a very effective way, experts reasoned that it is rather unnecessary. This point of view was supported by the fact that there are only a few cases of prescription and especially by the ground for suspension applying if the delinquent commits another crime. This provision is in this form unique to Austrian criminal law and has the consequence that some forms of obstruction of justice (which constitute separate offenses) might suspend the SoL period for earlier committed corruption related offenses.

Another argument against the implementation of this new ground for suspension is that the elements of injustice of subsequent acts that do not statute a separate crime are generally already included in the sentence of the corruption related offense and should not be the point of origin for further legal consequences.

Even if the existing grounds for suspension are regarded as sufficient, there is one ground which does not apply in all cases as it should. The problems which could occur in case of immune members of parliament are participants in a proceeding will be outlined in detail in the section “weaknesses”.

None of the interviewed experts mentioned problems regarding mutual legal assistance. However, it has to be seen critically that there is no explicit ground for suspension in case of a request for mutual legal assistance. This could cause problems as the involvement of foreign authorities can lead to a delay of investigations. Nevertheless, the lack of an explicit provision might be less problematic in the Austrian legal framework that it might be in other jurisdictions because the prosecution can choose from a variety of acts that result in a suspension of the prescription period until the end of trial (e.g. hearing of the alleged offender, demand for evidence taking measures, ruling of manhunt, etc., see above in more detail). So in fact, the SoL period is not relevant anymore in the period between the first of these investigative measures and the final judgement.

3. Civil proceedings

Regarding statutes of limitation there are no problems seen. The special provision on damage claims resulting from a criminal act (details see above) would apply in nearly all corruption related constellations and allow claiming for damages for 30 years from the day the offense was committed.

4. Disciplinary proceedings

As explained above, the system of disciplinary SoL is similar to criminal law. Nevertheless, the shorter period (often six month or one year) might constitute an obstacle for disciplinary liability sometimes. Particularly, the connection with § 76 par 5 StPO (Strafprozessordnung, criminal proceedings code) could be relevant. This provision says that the police, prosecutor or court has the duty to inform the competent service entity if a criminal proceeding against a public servant is initiated or terminated. This duty of information might launch the shorter disciplinary SoL period

and might therefore leave less time for disciplinary proceedings. This effect is even tightened by the fact that the short SoL period is not prolonged to the level of the SoL period for criminal proceedings (unlike the long or so called “absolute “ SoL period) if the public servant’s breach of duties statutes a criminal offense.

IV. Best practices, weaknesses and recommendations

1. Best practices and recommendations

As the Austrian system of SoL periods works generally well, there are some provisions which might have role model character for the legislation in other countries. The following components constitute pillars of the Austrian system:

1) No absolute SoL period in criminal proceedings

In Criminal Law there are no absolute SoL periods which cannot be suspended or prolonged in any other way. This approach fits well with the comprehensive system of grounds for suspension and the relatively long periods itself.

2) Suspension of the SoL period during preliminary and main proceedings

In fact the SoL periods are only relevant between the day a crime was committed and the first investigative measures (§ 58 par 3 Z 2 StGB).

3) Ground for Suspension in case of a new offense committed

If an offender commits another crime during the prescription period of an earlier offense and if both crimes are based on the same wrongful attitude, the earlier offense cannot prescribe before the SoL period of the offense committed later has expired. Depending on the interpretation of the expression “wrongful attitude”, where the motivation for the punishable behavior could be taken into account, maybe even subsequent acts like obstruction of justice or money laundering suspend the SoL period of the corruption related offense itself.

4) Special SoL provision for damage claims resulting from a criminal offense

If damage was caused through behavior that constitutes an intentionally committed criminal offense, which could possibly be punished with a sentence of a year or more of imprisonment, the injured party can claim for damages within 30 years from the day the damage occurred even if damage and wrongdoer are known from the beginning. This provision avoids SoL obstacles in corruption related civil proceedings.

2. Weaknesses

1) Duration and Rate of success in business related (corruption) cases

As mentioned above, the organization of the Austrian law enforcement agencies does not fit too well to the prosecution of economic and business related crimes. Such criminal acts are characterized by a high work load and complicated facts, demanding for business and economic expertise (e.g. accounting, ratio analysis, etc.). If public prosecutors are responsible for all criminal offenses committed in a certain region, they might tend to focus on offenses against property or life instead of corruption related offenses or other economic crimes for some structural incentives: They are used to offenses against property or life, have the demanded (legal) skills and might see a better chance of success in trial.

According to some experts the lack of business expertise is accompanied by a general lack of human resources and the way the training of prosecutors work. Prosecutors are trained judges, so they got used to work on their own. It seems to be really unusual to work as a team.

The Specialized Anti Corruption Prosecution Office (Korruptionsstaatsanwaltschaft) introduced in 2008 is definitely an important step in the right direction. Nevertheless, the allocation of human resources has underachieved and financial incentives to recruit the best and most motivated prosecutors have been disestablished.

Specialized competence centers for economic and business related crimes have been discussed in the media in the past weeks and have been promoted by the Minister of Justice. Therefore, improvements might hopefully take place soon.

2) Loophole of the ground for suspension in case of immune deputies are involved in proceedings

According to § 58 par 3 number 1 StGB, times where prosecution cannot be initiated due to special legal provisions do not count for the SoL period. This provision is practically relevant for the members of the two chambers of the Austrian federal parliament (National Council and Federal Council) and the nine state parliaments.

Those deputies can never be pursued by law enforcement authorities for criminal offenses related to their parliamentary work (professional immunity) and can only be pursued for non professional criminal offenses if a special committee of the parliament gives sanction to the prosecution measures (extra professional immunity).

The problem is that according to the interpretation in a new decree of the Austrian Ministry of Justice (BMJ-D1086/0001-IV 2/2009), prosecution measures are already forbidden respectively need the sanction of the parliamentary committee if even only one person involved (maybe even a witness!) has parliamentary immunity. However, the ground for suspension does only apply on the immune deputy himself but not on all other involved persons. The result is that in case an immune deputy is one of many participants and the proceeding is therefore delayed, the SoL period for him but not for all other participants is suspended. This is definitely a loophole in the system of the otherwise very comprehensive Austrian grounds for suspension. Formulated exaggerated by one interviewee that means the competent committee of the parliament could even use its power to delay a decision or to forbid prosecution in order to allow the SoL period for the not immune persons involved to expire. In addition, the meaning of the provision is higher than you might think regarding only the number of parliamentarians. Many of them hold other public functions as well, for example as majors, and are under the protection of extra professional immunity even in these contexts.

In the interviews held the deputies' privilege was generally criticized regarding behavior that is not connected with the profession of a member of parliament. And even the professional immunity – which is internationally recognized – is occasionally considered to be obsolete today. Its opposers argue that its historical rationale was to protect the deputies in a new and weak parliamentary system against assaults of the royal authorities and that this meaning might not be that relevant anymore today.

However, if the immunity of the deputies is in question, it must be noted that the professional as well as the extra professional immunity is guaranteed by the Austrian constitution (Art 57, 58 and Art 96 Bundesverfassungsgesetz, B-VG) and could therefore only be abolished with a majority of

two thirds of the National Council. Independently of questioning the immunity, however, the suspension ground for the SoL period should be extended to liable members of the criminal proceedings.

V. References

1. Austrian federal laws and administrative decrees

- Criminal Code (Strafgesetzbuch, StGB)
- Criminal Proceedings Code (Strafprozessordnung, StPO)
- General Code of Civil Law (Allgemeines Bürgerliches Gesetzbuch, ABGB)
- Service Regulations Law for Public Servants (Beamtendienstrechtsgesetz, BDG) and other disciplinary codes (RStDG, DSt)
- Association Penalty Act (Verbandsverantwortlichkeitsgesetz, VbVG)
- Decree number BMJ-D1086/0001-IV 2/2009 of the Ministry of Justice

All acts can be found online (only in German) under: <http://www.ris.bka.gv.at>

2. Commentary literature

- Höpfel Frank / Ratz Eckart, Wiener Kommentar zum Strafgesetzbuch (RDB Online, 1999 - 2010)
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- Bertel Christian / Klaus Schweighofer, Österreichisches Strafrecht Besonderer Teil II (8. Auflage, 2008)
- Bertel Christian / Venier Andreas, Strafprozessrecht (4. Auflage, 2010)
- Oskar Maleczky, Strafrecht Allgemeiner Teil II (13. Auflage, 2009)

- Fuchs Helmut / Ratz Eckhart, Wiener Kommentar zur Strafprozessordnung (RDB Online, 2002 – 2010)

3. Scientific papers

- Medigovic Ursula, Was vom Korruptionsstrafrecht übrig bleibt – Zum Korruptionsstrafrechtsänderungsgesetz 2009, in ÖJZ 2010/31
- Schuschnigg Arthur, Das neue Korruptionsstrafrecht – Novelle der Antikorruptionsbestimmungen bringt mehr Rechtssicherheit, in SWK 2009, W95

4. Face to face Interviews

- Univ.-Prof. Dr. Andreas Venier (Professor, University of Innsbruck, Department of Criminal Law)
- Ass.-Prof. Dr. Martin Spitzer (Assistant Professor, University of Vienna, Department for Civil Law)
- Präsident Dr. Johann Rzeszut (former President of the Austrian Supreme Court and Prosecutor general and current board member of Transparency International Austrian Chapter)
- Ass.-Prof. Dr. Robert Kert (Assistant Professor, University of Vienna, Department of Criminal Law)
- Mag. Walter Geyer (Head of the Specialised Anti Corruption Prosecution Office)
- Mag. Martin Kreutner, MSc (former head of the Anti Corruption Agency in the Ministry of the Interior, Chair of European Partners against Corruption)
- a renowned criminal defense lawyer, who does not want to be mentioned by name

5. Statistical data

- Criminal statistics of the police authorities and judicial criminal statistics (available in English):
http://www.statistik.at/web_en/statistics/social_statistics/criminality/index.html