

Federal Law of December 4, 1979 on Extradition and Mutual Assistance in Criminal Matters (Extradition and Mutual Assistance Law (ARHG))

TITLE I
General Provisions

Primacy of Intergovernmental Agreements

§ 1. This law shall be applicable only insofar as no other provisions are stipulated in intergovernmental agreements.

General provision

§ 2. A foreign request shall only be complied with provided that public order or other fundamental interests of the Republic of Austria are not harmed.

Reciprocity

§ 3. (1) A foreign request shall only be complied with provided that it is guaranteed that the requesting State would also comply with a similar request by Austria.

(2) A request may not be filed under this law by an Austrian authority if a similar request by another State were not able to be complied with, except in the event that a request appears to be needed urgently for specific reasons. In this case the requested State shall be notified of the lack of reciprocity.

(3) In the event of doubt over observance of reciprocity, the opinion of the Federal Minister of Justice shall be sought.

(4) Another State may be guaranteed reciprocity in connection with a request made under this law, provided that no intergovernmental agreement exists and that it would be permissible under this law to comply with a similar request of this State.

Conditions

§ 4. Conditions imposed by another State associated with the granting of extradition, transit deportation, or surrender, the provision of mutual assistance, or in connection with taking over criminal prosecution, surveillance, or enforcement, and that have not been disallowed, must be observed.

Expenses

§ 5. Expenses arising from the granting of an extradition or surrender, from the provision of mutual assistance, or in connection with taking over criminal prosecution, surveillance, or enforcement in Austria, must be borne by the Republic of Austria, always provided that reciprocity is guaranteed preventive measures. Compensation for experts' fees arising from provision of mutual assistance and for transit deportation expenses must always be sought from the requesting State.

Provisions regarding import, export, and transit

§ 6. The restrictions contained in the regulations relating to customs, foreign exchange, or monopoly law, or those contained in the regulations on trade in merchandise, or prohibitions of import, export, or transit of goods, including merchandise and assets, shall not conflict with the surrender, transit transportation, or forwarding of goods permitted under the provisions of this law.

Travel documents

§ 7. Persons who are handed over to another State, or who are taken in charge by another State, shall not require any travel document (passport or document in lieu of passport) or visa to cross the border.

Preventive measures

§ 8. For the purposes of this law a preventive measure shall be defined as a measure related to the deprivation of liberty decided by way of a court decision as provided for by criminal laws in addition to or instead of a penalty. In the event that the duration of a measure yet to be enforced is indeterminate, the maximum permissible limit shall be assumed.

Application of the Code of Criminal Procedure

§ 9. (1) Provided that nothing else arises from the provisions of this law, the Code of Criminal Procedure of 1975 shall apply correspondingly.

(2) §§ 46 through 50, 100, and 381 through 392, as well as § 393 Paragraph 3 Final Sentence of the Code of Criminal Procedure of 1975 shall not apply to the procedure for extradition of persons, but § 45 Paragraphs 2 through 4 shall apply albeit only with the proviso that the date of the statement by the examining magistrate shall be substituted for the notice of filing of the claim (§ 31 Paragraph 2).

(3) The public prosecutor may dispense with prosecuting a criminal offense provided that the Austrian criminal jurisdiction is based only on § 65 Paragraph 1 Line 2 of the Criminal Code and that dispensing with the prosecution does not conflict with the public interest, in particular that a penalty is not required in order to deter others from committing criminal offenses.

(4) In cases where the surveillance of a person convicted by a foreign court must be taken over or the decision of a foreign court must be enforced, the public prosecutor may dispense with the prosecution of the criminal offense that is the basis of the foreign conviction, provided that it can be assumed that the domestic court would not impose a considerably heavier penalty or a stricter preventive measure than that decided by the foreign court.

Title II

Extradition from Austria

FIRST CHAPTER

Admissibility of Extradition

General Principle

§ 10. Extradition of persons to another State for the purpose of prosecution for offences punishable by court penalty or for enforcement of imprisonment or a preventive measure imposed for such an offense shall be permitted at the request of another State according to the provisions of this law.

Criminal offenses that are subject to extradition

§ 11. (1) Extradition shall be permitted for prosecution of intentionally committed criminal offenses that are punishable by the law of the requesting State with imprisonment of more than one year or with a preventive measure of the same duration and punishable under Austrian law with imprisonment of more than one year. The sanctions amended by § 5 Line 4 of the Juvenile Court Law of 1988 shall not be used as a basis for deciding whether a criminal offense gives cause for extradition. It is not

relevant whether an application as required for prosecution under Austrian law has been made or such an authorization has been given.

(2) Extradition for enforcement shall be permitted in cases where the sentence of imprisonment or preventive measure has been pronounced as a result of one or more of the criminal offenses described in Paragraph 1 and when at least a further four months remain to be enforced. Where several periods of imprisonments or the remaining parts thereof exist, they shall be aggregated.

(3) In the event that extradition is permitted under Paragraph 1 or 2, a person may also be extradited for prosecution for other criminal offenses or for the enforcement of other prison sentences or preventive measures, in cases where extradition would not otherwise be permitted due to the length of the sanction (Paragraph 1) or of the extent of the penalty or measure (Paragraph 2).

Constitutional provision Prohibition of extradition of Austrian citizens

§ 12. (Constitutional Provision) (1) Extradition of Austrian citizens is not permitted.

(2) Paragraph 1 shall not prevent the return of an Austrian citizen who has been surrendered only temporarily to the Austrian authorities by a foreign authority for the purpose of execution of specific proceedings or in connection with the provision of mutual assistance.

Primacy of extradition

§ 13. In the event that an extradition procedure is pending against a foreign citizen or that sufficient grounds exist for the institution of such proceedings, it shall not be permitted to convey him/ her out of the country on the basis of other legal provisions.

Criminal offenses of a political nature

§ 14. Extradition shall not be permitted in the following cases:

1. for political crimes,
2. for other criminal offenses that are based on political motives or aims, except where, taking into consideration all the circumstances of the individual case, in particular the way in which the offence is committed, the means used or threatened, or the severity of the actual or intended consequences, the criminal nature of the offence outweighs its political nature.

Military and tax-related criminal offenses

§ 15. Extradition for criminal offenses that according to Austrian law are exclusively

1. of a military nature, or
2. contravene regulations related to taxes, monopolies, customs, or foreign exchange, or regulations related to handling of merchandise or to foreign trade shall not be permitted.

Austrian Jurisdiction

§16. (1) Extradition for punishable acts that are subject to Austrian jurisdiction is prohibited.

(2) However, Para. 1 does not bar extradition if

1. Jurisdiction is exercised only on behalf of another country, or
2. Precedence is to be given to conducting the criminal proceedings in the requesting country taking special circumstances into account, particularly for reasons of ascertainment of the truth, determination of penalties, or enforcement.

(3) Notwithstanding the provisions of Para. 2, extradition is prohibited if final sentence has already been passed in Austria on the person to be extradited, or if the person has received final acquittal or has been exempted from prosecution for reasons other than those specified in §9, Para. 3. In cases pursuant to Para. 1, line 2, extradition is also prohibited if there is cause to suspect that the person to be extradited would receive a significantly more severe sentence overall in another country than he/she would under Austrian law.

Jurisdiction of a Third Country

§17. Extradition is prohibited if the person to be extradited for punishable acts

1. has been granted final acquittal or has otherwise been exempted from prosecution by a court in the country where the offense was committed, or
2. has received final sentencing from a court in a third country, and the penalty has been fully enforced or waived in whole or in part for the portion of the sentence remaining to be enforced, or if the enforceability of the penalty comes under the statute of limitation pursuant to the law of the third country.

Limitation

§18. Extradition is prohibited if prosecution or enforcement comes under the statute of limitations in accordance with the laws of the requesting country or Austrian law.

Safeguarding of the principles of constitutional due process; Asylum

§19. Extradition is prohibited if there is cause to suspect that

1. the criminal proceedings in the requesting country will not comply or have not complied with the principles of Art. 3 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, *Bundesgesetzblatt* [Federal Law Gazette] 210/1958,

2. the penalties or preventive measures imposed or expected in the requesting country would be enforced in a manner not consistent with the provisions of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, *Bundesgesetzblatt* [Federal Law Gazette] 210/1958, or

3. the person to be extradited would be subject to prosecution in the requesting country because of his/her origin, race, religion, membership in a specific ethnic or social group, nationality, or political views, or may expect other serious prejudice for any of these reasons (extradition asylum).

Prohibited penalties or preventive measures

§20. (1) Extradition for prosecution of an offense subject to capital punishable under the laws of the requesting country is permissible only if it can be guaranteed that the death penalty will not be imposed.

(2) Extradition for enforcement of the death penalty is prohibited.

(3) The provisions of Para. 1 and 2 also apply analogously to penalties or preventive measures that do not comply with the provisions of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, *Bundesgesetzblatt* [Federal Law Gazette] 210/1958.

Prosecution of underage persons

§21. Extradition of persons who, under Austrian law or the law of the requesting country, were deemed minors not subject to prosecution at the time of the offense, is prohibited.

Hardship Cases

§22. Extradition is prohibited if it would cause obvious and unusual hardship for the person to be extradited, owing to their youth (§1, line 2 of the Juvenile Court Act of 1988), their longstanding residence in Austria, or other serious reasons based on their personal circumstances, taking into due consideration the gravity of the criminal offense with which they are charged.

Specialty of extradition

§23. (1) Extradition is permissible only if can be guaranteed that

1. in the requesting country, the extradited person will not be prosecuted, punished, limited with respect to their personal freedom, or subsequently extradited to a third country either for an offense committed prior to their surrender that is not, by itself, covered by the authorization of extradition, nor exclusively for one or more offenses that, by themselves, do not form the basis for extradition (§11, Para. 3),

2. in case of a change in the legal assessment of the offense upon which extradition is based, or if provisions of criminal law other than those originally presumed are used, the extradited person is prosecuted and punished only insofar as extradition would still be permissible under the new approach.

(2) Consent for criminal prosecution or the enforcement of a term of imprisonment or preventive measure can be granted upon request after extradition has been implemented if the extradition would have been permissible with respect to the requesting country for the offense upon which the request is based, even if only with prior approval. Similarly, subsequent extradition to a third country can be permitted if extradition to that third country would have been permissible.

(3) A grant of extradition pursuant to Para. 2 is not required if

1. after his/her release, the extradited person remains within the territory of the requesting country for more than 45 days even if the person was able and allowed to leave it,

2. the extradited person leaves the territory of the requesting country and returns there voluntarily or is legally returned there from a third country, or

3. the extradition has taken place in conformity with §32

Extradition requests from several countries

§24. If two or more countries are seeking extradition of the same person, a decision must be made regarding the precedence of the extradition requests, taking all circumstances into consideration, specifically treaty obligations, the place of commission of the offense, the chronological sequence in which the requests were received, the nationality of the person to be extradited, the possibility of subsequent extradition and, if the requests relate to various criminal offenses, the seriousness of the criminal offenses concerned, as well.

Surrender of Items

§ 25. (1) With respect to extraditions, items that may be used as evidence or items that the extraditable person has acquired by means of the offense or the proceeds of the exploitation of items stemming from said offense may be surrendered.

(2) Should it not be possible to grant an extradition that would otherwise be admissible pursuant to the provisions of this Federal Law, as the person sought has fled, is deceased, or could not be located in the national territory, items may nevertheless be surrendered on the basis of a request for extradition or a separate request.

(3) Items may be surrendered as evidence provided such items are returned immediately on request.

(4) However, items may not be surrendered if there is concern that the surrender of said items would obstruct or inappropriately complicate the prosecution or exercise of the rights of third parties.

SECTION TWO Jurisdiction and Procedure

Jurisdiction of the Court of First Instance

§ 26. (1) Examining an extradition request, ordering detention pending extradition, or the preparation of a submission for extradition falls within the jurisdiction of the Court of First Instance in whose district the extraditable person is permanently or habitually resident, or in the absence of a permanent or habitual residence, the Court of First Instance for the district in which the person sought was located. If the person sought is under court-ordered detention, jurisdiction shall be determined by the detention location. If it is not possible to determine the jurisdiction of a particular court pursuant to these provisions, jurisdiction shall be awarded to the Vienna Regional Criminal Court and to the Vienna Juvenile Court in the case of juveniles.

(2) In the event that several persons are to be extradited as a result of their involvement in the same offense or as a result of interconnected offenses, extradition proceedings shall be conducted jointly for all such persons. Priority for competent courts shall be regulated pursuant to (1). § 34 of the 1988 Juvenile Courts Act is to be applied accordingly.

(3) The provisions contained in (1) and (2) shall also be applied to the surrender of extradition-related items. The Court of First Instance in whose district the item to be surrendered is located has jurisdiction over the examination of a separate request for the surrender of items.

Searches

§ 27. (1) Requests submitted for detention pending extradition shall be examined by the court to establish whether sufficient grounds are present to assume that the underlying offense is subject to extradition. If these conditions are met, a search for the person sought shall be conducted and instructions for the detention of said person issued, if necessary.

(2) The court shall not be required to consider a request submitted by a computer-assisted search system, by the International Criminal Police Organization (INTERPOL), or by any other official international criminal police assistance mechanism if there are no grounds to assume that the person sought is in Austria and if the request only gives rise to search procedures that do not involve an appeal to the public to assist in the search.

Submission for Extradition

§ 28. (1) If sufficient grounds are present to assume that a person located in Austria has committed an extraditable offense, the district attorney must examine if there are grounds for extradition. If this is the case, following an interview by the examining magistrate with the person sought, the district attorney shall request said examining magistrate to file a report with the Federal Minister of Justice. The Federal Minister of Justice shall consult the country in which the offense has been committed as to whether a request for extradition will be lodged. The Federal Minister of Justice may waive the interview if it is to be assumed that a request for extradition will not be lodged or if it can be ascertained from the documentation that extradition would have to be refused for any of the reasons contained in § 2 and § 3(1). The court must be informed of this decision and of the reasons for waiving the interview. An appropriate deadline for receipt of the extradition request shall be determined. If the extradition request is not submitted in good time, the Federal Minister of Justice must inform the court to this effect.

(2) On receipt of information that an interview pursuant to (1) is to be waived, or that an extradition request has not been received in good time, the court shall release the person in detention pending extradition immediately, provided the district attorney has not requested pretrial detention. Allowance shall be made for the period of detention served pending extradition in the case of a conviction by an Austrian court pursuant to § 38 of the Criminal Code.

Detention Pending Extradition

§ 29. (1) Detention pending extradition may only be ordered if sufficient grounds are present to assume that a person located in Austria has committed an extraditable offense. The provisions governing pretrial detention shall be applied accordingly, subject to any amendments contained in the provisions of this Federal Law.

(2) Detention pending extradition may not be ordered or maintained if the purposes of said detention can be achieved by means of simultaneous court-ordered pretrial detention or penal custody. The examining magistrate shall impose any exceptions from the execution of the pretrial detention or penal custody that are essential to the implementation of the extradition process. If the purposes of detention cannot be achieved by means of simultaneous penal custody or if the extradition procedure would be considerably impeded by maintaining said penal custody, the examining magistrate shall order detention pending extradition. In this case, the execution of the sentence is interrupted and allowance shall be made for the period of detention served pending extradition when calculating the interrupted penal custody period.

(3) Prior to a decision ordering detention pending extradition, the person sought shall be informed of the charges brought against him and shall be instructed that he has the right to make a statement or to remain silent and contact a defense attorney beforehand. The person sought shall also be instructed on his right to request a public hearing in a Court of Second Instance.

(4) If detention pending extradition for a person sought but not represented by a defense attorney is ordered, such person shall be provided with a court-appointed defense attorney (1975 Code of Criminal Procedure § 42(2)). Said court-appointed defense attorney shall represent the person sought for the duration of the remand hearing required under § 181 2(1) of the 1975 Code of Criminal Procedure and for such time until a defense attorney is appointed pursuant to § 41 (2,3 or 4) of the 1975 Code of Criminal Procedure. The latter defense attorney shall not be provided if the person sought is in agreement with the simplified extradition procedure. In any case, the obligation to provide a court-appointed defense attorney expires when a defense attorney has been selected.

(5) The effectiveness of the decision to impose or prolong detention pending extradition ceases to be limited by the detention period if and as soon as the person sought declares his agreement with the simplified extradition procedure (§ 32) or if the Court of Second Instance rules the extradition admissible (§ 33), and official remand proceedings cease from this point onward.

(6) However, the person sought shall be released if he has already been in extradition custody for one year without any decision having been taken on the extradition request (§ 34). The extradition detention period may only be extended beyond six months if this is unavoidable due to the particular difficulty or extent of the proceedings and if the offense underlying the extradition is a crime pursuant to § 17 of the Penal Code.

Processing of Submitted Requests

§ 30. The Federal Ministry of Justice shall forward extradition requests to the competent Court of First Instance for further processing. The Federal Minister of Justice shall reject a request forthwith if

circumstances prevail that preclude extradition for any of the reasons contained in § 2 and § 3(1) or if the request is unsuitable for the due process of law.

Proceedings of the Court of First Instance

§ 31. (1) The examining magistrate shall interview the person sought with regard to the extradition request pursuant to § 29(3). An examination to determine sufficient cause to suspect the person sought of the alleged offense on the basis of the extradition documents should only be conducted insofar as there is considerable doubt (especially if there is proof or proof can be presented) that could result in the person sought being freed of all suspicion.

(2) On completion of the necessary enquiries, the examining magistrate shall forward the files to the Court of Second Instance with a well-founded opinion as to whether the extradition is admissible.

Simplified Extradition

§ 32. (1) Following a foreign request for extradition or detention pending extradition, the person sought may declare his agreement with the extradition and consent to being transferred without undergoing formal extradition proceedings. However, if the person sought is in detention pending extradition, he may only effectively declare his consent during the remand proceedings to be conducted pursuant to § 181 2(1) of the 1975 Code of Criminal Procedure at the earliest and his consent will only become legally valid if included in the record of proceedings by order of the court.

(2) In the event of extradition pursuant to (1), the examining magistrate shall instruct the person sought that he shall have no recourse to protection under § 23(1 and 2) or under the corresponding provisions of international agreements, and that he can only effectively revoke his consent until such time as the Federal Minister of Justice orders his transfer.

(3) The simplified extradition of a juvenile is only admissible with the joint approval of his legal representative or if he is represented by a defense attorney.

(4) If the person sought has declared his agreement with the simplified extradition, the examining magistrate shall forward the file to the Federal Ministry of Justice forthwith.

Ruling on Permissibility

§ 33. (1) The decision on the permissibility of extradition is made by the second-instance court in closed session if neither the senior public prosecutor nor the person to be extradited has moved for a public hearing and such a hearing also appears unnecessary for the purpose of evaluating the permissibility of the extradition. The second-instance court can always declare the extradition impermissible in closed session irrespective of a motion to schedule a public hearing. Before a decision is handed down in closed session, the senior public prosecutor and the person to be extradited and his legal counsel must be given the opportunity to give an opinion on the extradition request.

(2) In other cases a public hearing shall be scheduled, to which the senior public prosecutor, the person to be extradited, and the legal counsel shall be summoned. The person to be extradited must be represented by legal counsel in the hearing (§ 41 of the 1975 Code of Criminal Procedure). If the person to be extradited is in custody, he shall be brought before the court. The summoning of the person to be extradited and of his legal counsel and the advisement of the person to be extradited who is in custody shall be undertaken in such a way that the parties concerned have a period of at least eight days to prepare their case.

(3) Except in the cases cited in the 1975 Code of Criminal Procedure, the hearing may be ordered closed if the person to be extradited so demands or if international relations could be impaired..

(4) During the hearing, a member of the court, acting as reporter, presents an account of the previous course of the proceedings without expressing an opinion on the decision to be handed down. The senior public prosecutor is then allowed to speak. After that the person to be extradited and his legal counsel are given the opportunity to express an opinion on the extradition request and on the remarks by the senior public prosecutor. The person to be extradited and his legal counsel are in any event entitled to speak last. After these presentations the court withdraws for deliberation.

(5) The court hands down its decision in the form of an order which is read out aloud by the presiding judge. The second-instance court may order additional investigation by the examining magistrate prior to reaching its decision.

(6) The second-instance court shall communicate its order to the Federal Ministry of Justice, thereby attaching the official records.

Granting and Denying Extradition

§ 34. (1) The Federal Minister of Justice shall decide on the extradition request in accordance with international agreements and the principles of international legal relations. In so doing, he shall pay regard to the interests of the Republic of Austria, to obligations under international law, especially those pertaining to the law of asylum, and to the protection of human dignity. He shall deny extradition insofar as the second-instance court has declared it impermissible.

(2) If the extradition is permissible with regard to more than one state, then the Federal Minister of Justice shall also decide which extradition request takes precedence.

(3) If the preconditions of § 32 are satisfied and the person to be extradited has not revoked his consent, the Federal Minister of Justice shall order the surrender of the person to be extradited, with due regard for § 37, No. 1 and 3. If, however, there are doubts concerning the permissibility of the extradition for one of the reasons cited in Part One of Chapter II, then the procedure pursuant to §§ 31, 33, and 34 Sect. 1, 2, and 4 shall be conducted.

(4) The Federal Minister of Justice shall communicate his decision to the requesting state and, except in the case of simplified extradition, also to the second-instance court, which shall see to it that the person to be extradited and his legal counsel are notified by way of the first-instance court.

Documents

§ 35. (1) The permissibility of the extradition shall be examined on the basis of the extradition request and its documents. Such documents must in any event include the official copy or the certified copy or photocopy of a court-issued warrant of arrest, of an instrument of the same operative effect, or of an enforceable judgment of conviction.

(2) At any stage of the proceedings the Federal Minister of Justice may, at his own initiative or at the request of the examining magistrate or the second-instance court, demand supplementation of the documents by the state requesting extradition and set a reasonable deadline therefor. If said deadline passes without avail, the decision shall be made on the basis of the existing documents.

Surrender

§ 36. (1) The examining magistrate shall order execution of the extradition. If the person to be extradited is not in custody, he shall be detained insofar as that is necessary in order to ensure execution of the extradition. The person to be extradited shall be transferred to the

respective border crossing or to the other agreed place of surrender by judicial police officials. Personal belongings of the person to be extradited that are in judicial custody shall also be surrendered unless the person to be extradited has provided instructions to the contrary.

(2) The surrender of a juvenile can also be effected by surrendering the juvenile to his parent or legal guardian or to an empowered agent of said person, provided that the purposes of the extradition constitute no obstacle to such an arrangement.

(3) A juvenile whose extradition is expected to be granted can be surrendered even before the extradition request is decided on if that is deemed necessary to spare him detriment associated with lengthy extradition proceedings and if observance of the speciality rule is ensured. The Federal Minister of Justice shall decide on early surrender.

Deferral of Surrender

§ 37. The surrender shall be deferred

1. if the persons to be extradited cannot be transported,
2. upon reopening of the extradition proceedings, or
3. if domestic criminal proceedings are pending against the person to be extradited, if he must be detained pending investigation by revenue authorities, or if a prison sentence or preventive measure imposed by a court or an administrative authority must be executed against the person to be extradited. If exemption from prosecution or execution is declared by virtue of the extradition (§ 34, Sect. 2, No. 2 of the 1975 Code of Criminal Procedure, §§ 4 and 157, Sect. 1 of the Treatment of Offenders Act), then the surrender shall be carried out without delay.

Provisional Surrender

§ 38. (1) Irrespective of the deferral of surrender pursuant to § 37, No. 3, a person against whom a prison sentence or preventive measure is executed can be provisionally surrendered to another state at its request for the conduct of certain procedural actions, especially trial and delivery of judgment, if his return following the conduct of said procedural actions is ensured. Provisional surrender shall not take place if it could result in unreasonable detriment for the person to be extradited.

(2) Provisional surrender does not interrupt execution of the domestic prison sentence or preventive measure.

(3) The Federal Minister of Justice shall decide on the request for provisional surrender.

Reopening of the Extradition Proceedings

§ 39. The second-instance court shall set aside its order handed down in closed session pursuant to § 33 if new facts or evidence come to light that raise serious doubts about the correctness of the order, judged either on their own or in conjunction with the extradition documents and the results of any investigations. The further proceedings shall be conducted pursuant to §§ 31, 33, and 34.

Subsequent Extradition Proceedings

§ 40. If the person to be extradited has not been surrendered by way of simplified extradition, §§ 31, 33, and 34 shall apply to the proceedings on requests pursuant to § 23, Sect. 2, subject to the proviso that the second-instance court always decides in closed session. Before a decision is reached, the person to be extradited must be given an opportunity to comment on the request.

Procedure for the Surrender of Objects

§ 41. (1) §§ 31 through 35 shall be applied analogously to the surrender of objects. In the case of a special request for surrender, the official copy or the certified copy or photocopy of a court-issued order of attachment or of an instrument of the same operative effect may be furnished in lieu of the documents designated in § 35, Sect. 1.

(2) The surrender of objects shall be deferred as long as they are needed for pending domestic judicial or administrative proceedings.

(3) Pursuant to § 367 of the 1975 Code of Criminal Procedure, an object taken through a criminal act can be returned to the rightful owner even without conducting the procedure under Sect. 1.

CHAPTER III Transit Deportation

PART ONE Permissibility

General Principle

§ 42. (1) Under the provisions of the present federal law, the transit deportation of persons through the territory of the Republic of Austria for the purpose of prosecution of an act subject to judicial punishment or execution of a punishment or preventive measure imposed on account of such an act is permissible at the request of a state to which the persons are to be extradited by a third state.

(2) The provisions of the present chapter also apply analogously to requests for the transit transportation of persons through the territory of the Republic of Austria to a third state for the purpose of assuming criminal prosecution or the execution of a foreign court decision. Transit transportation shall be approved even if extradition would not be permissible on the basis of one of the reasons cited in § 11.

Permissibility of Transit Deportation

§ 43. A transit deportation is permissible only if deportation would be permissible pursuant to §§ 11, 14, 15, 18 through 21, and 23.

Constitutional provision Ban on the transit deportation of Austrian citizens

§ 44. (Constitutional provision) The transit deportation of Austrian citizens through the territory of the Republic of Austria is impermissible.

Austrian Jurisdiction

§ 45. (1) A transit deportation on account of a criminal act that is subject to Austrian jurisdiction is permissible unless on account of said criminal act

1. the person subject to transit deportation is to be extradited to the Republic of Austria, or

2. the person subject to transit deportation has already been finally and conclusively sentenced domestically or has been finally and conclusively acquitted or otherwise exempted from prosecution domestically for a reason other than the absence of Austrian jurisdiction.

(2) A domestic criminal charge against the person subject to transit deportation on account of a criminal act not covered by the request for transit deportation constitutes an obstacle to transit deportation only if extradition to the Republic of Austria is required on account of said criminal act.

Use of the Airspace

§ 46. (1) Consent to transit deportation is not required if the airspace is to be used and no stopover in the territory of the Republic of

Austria is planned. In that case, it is sufficient for the requesting state to confirm that the person subject to transit deportation is not an Austrian citizen, that he is not subject to transit deportation on account of one of the criminal acts cited in §§ 14 and 15, No. 1, and that one of the documents designated in § 48, Sect. 1 is present.

(2) If in the event of an unplanned stopover the flight cannot be continued without delay, then the notice concerning use of the airspace shall be regarded as a request for the imposition of custody pending extradition.

PART TWO Competence and Procedure

Decision

§ 47. (1) The Federal Minister of Justice shall decide on the request for transit deportation in agreement with the Federal Minister of the Interior. He shall communicate said decision to the requesting state in the provided manner.

(2) A communication concerning use of the airspace shall be reviewed by the Federal Minister of Justice in agreement with the Federal Minister of the Interior. If use of the airspace is impermissible, the Federal Minister of Justice shall notify the requesting state of that circumstance in the provided manner.

Documentation

§ 48. (1) Admissibility of the transit deportation is to be examined on the basis of the request for transit deportation and its documentation. This documentation must in any case consist of the original or a certified copy or photocopy of a court arrest warrant, a document of similar effect or an enforceable convicting judgment.

(2) The Federal Minister of Justice, in agreement with the Federal Minister of the Interior, can request additional documentation from the state requesting transit deportation and impose an appropriate deadline. If this deadline expires without response, the decision will be made on the basis of the documentation available.

Transfer

§ 49. (1) The approval of the transit deportation must indicate the border crossings at which the person subject to transit deportation is to be taken into custody and to be transferred. The person subject to transit deportation may only be transferred if such transit has been approved and the person is fit for travel.

(2) Execution of transit deportation is the responsibility of the security authorities. Objects that have been handed over with the person subject to transit deportation may also be transferred in connection with transit deportation.

(3) Execution of transit deportation is to be interrupted if

1. after acceptance of the person subject to transit deportation, new facts or evidence become available which alone or in connection with the transit deportation documentation and the results of any inquiries would be grounds for serious reservations about the admissibility of the transit deportation,
2. the person subject to transit deportation during the transit has committed a prosecutable criminal act while in the territory of the Republic of Austria, unless under appropriate application of §§ 34 (2) line 2 of the 1975 Code of Criminal Procedure or §§ 4 and 157 of the Execution of Sentences Act, prosecution or execution of the sentence is waived, or
3. the person subject to transit deportation becomes unfit to travel.

CHAPTER IV
Mutual assistance for Foreign Countries

PART ONE
Conditions

General Principle

§ 50. (1) In criminal matters, including the procedure to order preventive measures and to issue a order affecting property rights and situations on extinguishment and criminal records, the procedure on compensation for arrest and conviction by a criminal court, requests for pardon and matters of enforcement of sentences and measures, under the provisions of this federal law, at the request of a foreign authority, mutual assistance may be provided.

(2) Considered an authority in the meaning of paragraph (1) is a court, a public prosecutor's office or an authority involved in matters of penal or other enforcement.

(3) Mutual assistance in the meaning of (1) is any support that is provided for a foreign proceeding in a criminal matter. It also includes the approval of activities as part of observations that extend across borders as part of bilateral national agreements.

Mutual Assistance not permitted

§ 51. (1) The offering of mutual assistance is not permitted in cases where

1. the act on which the request is based is either not subject to punishment under Austrian law or under §§ 14 und 15 is not subject to extradition,
2. the proceeding on which the request is based would not be subject to extradition under § 19, line 1 und 2 or
3. either the special conditions imposed by the 1975 Code of Criminal Procedure for certain investigatory acts, such as seizure and opening of letters or the monitoring of telecommunications, are not present or providing mutual assistance would result in infringing the obligation to confidentiality application to criminal matters under Austrian law.

(2) The absence of the criminal liability under Austrian law does not impede the service of documents if the recipient is willing to accept them.

Transfer of objects and records

§ 52. (1) Objects or records may only be transferred if it is certain that they will be returned as soon as possible. The return of transferred objects can be waived if they are no longer required.

(2) Objects in which the Republic of Austria or third parties have rights may be transferred only on condition that these rights remain unaffected. Transfer is not allowed if there is concern that it would frustrate or make inordinately difficult enforcement or realization of such rights.

(3) The transfer of objects or records should be delayed as long as they are required for pending court or administrative proceedings within Austria.

Summons

§ 53. (1) A summons to appear before a foreign authority may be served to a person within Austria if it can be guaranteed that the person will not be prosecuted, detained or subject to restrictions of their personal liberty for an action committed before they left the Republic of Austria. Prosecution, detention or the restriction of personal liberty is however allowed

1. on account of a criminal act that is the subject of the summons of a person as defendant,

2. if after conclusion of the questioning, the person summoned remains for more than fifteen days within the territory of the requesting country although the person could and should have left, or

3. if, after leaving the territory of the requesting country, the person voluntarily returns or is lawfully returned there.

(2) Summonses that contain threats of punishment for non-compliance may only be served with the instruction that the threatened measures cannot be enforced in Austria.

(3) Witnesses and experts are to be paid, at their request, an appropriate advance on their travel costs if the other country so requested and reimbursement of the advance has been promised by the other country.

Transferring Arrested Persons to Give Evidence

§ 54. (1) A person who is in detention awaiting trial, a prisoner or in preventive detention, can be transferred to a foreign country for important investigative activities, in particular giving evidence or confrontation, at the request of a foreign authority, if

1. the person agrees to this transfer,

2. their presence is not necessary for criminal proceedings pending in Austria,

3. their detention is not prolonged by the transfer and

4. the requesting country promises to keep them in detention, return them directly after execution of the investigative activity and not to prosecute or detain them for an act committed before they were transferred.

(2) The transfer does not interrupt detention or a prison sentence or preventive measures.

PART TWO

Jurisdiction and Procedure

Jurisdiction for Processing Letters Rogatory

§ 55. (1) The district court is competent to process letters rogatory, §§ 2 and 3 notwithstanding; in cases where under the 1975 Code of Criminal Procedure, the decision is reserved for the *Ratskammer* or in which there is a request for a search, seizure, temporary injunction or a decision under § 145a of the Code of Criminal Procedure, the court of justice of the first instance in whose district the mutual assistance procedure is to be brought has jurisdiction. §§ 23 and 24 of the 1988 Youth Court Act are applicable as appropriate. If approval of cross-border observation is sought, the court of justice of the first instance in whose district the border will probably be crossed has jurisdiction; in case of observation in an aircraft that flies into Austria, however, the court of justice in whose district the landing site is located has jurisdiction. Information about a criminal procedure, execution of a prison sentence or preventive measures is issued by the court with jurisdiction; for requests for the transfer of records, the office in which the records are kept has jurisdiction. If a person detained in the prison of a court of justice is to be interrogated, that court of justice has jurisdiction. If the jurisdiction cannot be determined according to these rules, the District Court of the Inner City of Vienna, in cases in which the decision is reserved for the court of justice of the first instance, the Regional Criminal Court of Vienna has jurisdiction.

(2) If a person to be transferred is in prison or preventive custody, the decision on the request for transfer is made by a single judge of the court given in § 16 of the Penal Sentence Enforcement Act, otherwise it is the court on whose order the detention is based. The Federal Ministry of Justice is to be informed of this decision. The Federal Minister of Justice must refuse the transfer if one of the circumstances listed in §§ 2 and 3 (1) is present. Transfer at the appropriate border crossing or any other transfer site agreed to is performed by police officers of the Ministry of Justice.

(3) If a person detained in another state is to be transferred through Austria to a third state for important investigative activities, in particular their interrogation or confrontation, §§ 44, 47 and 49 apply as appropriate.

Form and Content of Letters Rogatory

§ 56. (1) Mutual assistance may only be provided if it is possible to determine from the request the facts and the rule of law of the criminal act on which the request is based. Reference to the criminal statutes applicable or applied in the requesting state is sufficient for requests for service.

(2) A request for a search of persons or premises, the seizure of objects or monitoring of telecommunications must have attached the original or a certified copy or photocopy of the order from the relevant authority. If not a court order, there must be a statement from the authority seeking the mutual assistance that the conditions required for such measures under applicable law in the requesting country are satisfied.

Rejection of Mutual Assistance; Incompetence

§ 57. (1) If the mutual assistance is refused entirely or in part, the requesting foreign authority must be notified in the appropriate way with indication of the reasons.

(2) If the requested court or prosecutor is not competent for fulfillment, the letters rogatory are to be forwarded to the competent court or other competent authority.

Applicable Procedures

§ 58. Mutual assistance is to be provided according to the provisions for criminal procedures within Austria. A request to follow a specific deviating procedure will be granted if this procedure is consistent with the principles of Austrian criminal procedure. If mutual assistance is provided in the form of confiscation (§ 143 of the 1975 Code of Criminal Procedure) or a temporary injunction (§ 144a of the 1975 Code of Criminal Procedure), this is to be limited in time; the foreign authority making the request is to be informed in the appropriate way

Permissibility of Foreign Entities and Participants in Mutual Assistance Proceedings

§ 59. (1) Foreign entities may not perform investigations and procedures under this federal law on the territory of the Republic of Austria. The competent foreign judge, prosecutor and others participating in the procedure as well as their legal counsel may be allowed to attend and participate in mutual assistance proceedings if it appears required for the proper handling of the letters rogatory. The approval of the Federal Minister of Justice is required for foreign entities to perform the official tasks required for this purpose, except in the case of cross-border observations.

(2) Persons whose presence at a mutual assistance proceeding has been allowed under (1), may not be prosecuted, detained or restricted in their personal liberty during their stay in Austria for an action committed before their entry to Austria. Prosecution, detention or restriction of their personal liberty is however allowed,

1. If the persons allowed to attend the mutual assistance proceeding remain on the territory of the Republic of Austria more than fifteen days afterwards although they could and should have left, or

2. if after leaving the territory of the Republic of Austria, they voluntarily return or are legally brought back.

(3) If a person allowed to attend a mutual assistance proceeding is in detention abroad, the person can be transferred at the request of the other

country if the detention is based on the judgment of a competent court or on a reason for detention recognized under Austrian law. The transferred person is to be kept in detention in Austria and returned without delay after execution of the mutual assistance hearing.

CHAPTER V

Assumption of criminal prosecution and observation; Enforcement of foreign criminal convictions

SECTION ONE

Assumption of criminal prosecution

Jurisdiction and procedures

§ 60. (1) Petitions for the assumption of criminal prosecution shall be preliminarily investigated by the Federal Ministry of Justice. If the petition for criminal prosecution is found to be without merit, the Federal Minister of Justice shall deny further consideration of the petition; if the petition has merit, then the Federal Minister of Justice shall refer the petition to the appropriate State Prosecutor. The Federal Minister of Justice may at any stage of the procedure request the State requesting prosecution to provide supplementary documentation or evidence, either on his own behalf, or upon request by the court or by the Federal Prosecutor. The Federal Minister of Justice must inform the State presenting the petition regarding decisions and resolution of any criminal proceeding.

(2) If criminal proceedings are assumed, and local jurisdiction cannot be determined, and the proceedings according to Austrian law come under the jurisdiction of a district criminal court, the jurisdiction shall be the District Court of the Inner City of Vienna; otherwise, it shall be the Vienna State Court for Criminal Matters; in the event of juvenile cases, the Vienna Juvenile court shall have jurisdiction.

(3) If Austrian jurisdiction is based exclusively upon an international treaty, the Court must provide a hearing for the accused to determine the basis of assumption of criminal prosecution.

SECTION TWO

Assumption of observation

Requirements

§ 61. The observation of a person convicted by a foreign court, whose penalty has been postponed, or whose penalty has been delayed due to a preventive measure, or whose imprisonment has temporarily delayed due to intervening measures related to the convictions, shall be permitted upon request of the petitioning state if:

1. the proceedings and decision of the foreign court meet the conditions of the principles set forth in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Legal Gazette No. 210/1958,
2. the verdict under Austrian law would result in criminal penalties,
3. the verdict is not the result of punishable acts described in §§ 14 and 15,
4. the convicted individual is not subject to prosecution in Austria for the offense or released from Austrian jurisdiction or otherwise released from prosecution, and

5. the convicted individual's domicile or place of residence is Austria.

Observation procedures

§ 62. Observation shall release the offender from further criminal prosecution in this matter during the course of observation. To the extent required or necessary, measures appropriate to the decision of the foreign court or provided for by Austrian law (§§ 51 and 52 of the Criminal Code) shall be enforced.

Jurisdiction and procedures

§ 63. (1) The Federal Ministry of Justice shall submit petitions for the assumption of observation to the jurisdictional court (Paragraph 2). In the event a petition does not provide cause for observation under the provisions of §§ 2 and 3, Paragraph 1, or if the petition is inappropriate for legal disposition, the Federal Minister of Justice shall deny the petition. At any stage of the proceedings, the Federal Minister of Justice may request additional documentation or evidence from the petitioning State to support the petition for assumption of observation.

(2) The court having jurisdiction over the district in which the convicted individual resides shall respond to the petition for assumption of observation and will decide on procedures appropriate for the assumption of observation. If under Austrian law the foreign judgment provides a criminal penalty under the jurisdiction of the district court, the district court shall be responsible for the appropriate procedures for observation, otherwise the judge of the lower court shall decide on such measures. §§ 23 and 24 of the Juvenile Court Statute of 1988 shall apply as required. The Public Prosecutor and the convicted person shall have fourteen days to present their objections to the superior court.

(3) The Federal Minister of Justice shall inform the petitioning state regarding the status of the petition for the assumption of observation, as well as the bases for any decisions regarding measures and judgments.

SECTION THREE

Enforcement of foreign criminal convictions

Requirements

§ 64. (1) The enforcement or continued enforcement of the judgment of a foreign court resulting in a penalty of fine or imprisonment requiring preventive measures or forfeiture of money or property shall be permitted upon petition by another State if:

1. the proceedings and decision of the foreign court meet the conditions of the principles set forth in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Legal Gazette No. 210/1958,
2. the verdict under Austrian law would result in criminal penalties,
3. the verdict is not the result of punishable acts described in §§ 14 and 15,
4. under Austrian law the judgment would be subject to the statute of limitations,

5. the person convicted by the foreign court would not be subject to prosecution under Austrian law or otherwise released from criminal liability.

(2) The enforcement of a judgment of a foreign court resulting in imprisonment or other preventive measure shall be permissible only if the convicted person is an Austrian citizen, has a domicile or residence in Austria, and has agreed to enforcement in Austria.

(3) The enforcement of preventive measures shall be permissible only if Austrian law provides for comparable measures.

(4) Enforcement of a judgment of a foreign court affecting property rights shall be permissible only if the judgment meets the requirements for financial penalties or forfeiture of assets under Austrian law and a comparable penalty has not been promulgated in Austria.

(5) Enforcement of a judgment of a foreign court resulting in a fine or other financial penalty shall be permissible only if the fine or other penalty can be collected in Austria and the penalized individual can be notified, if he can be contacted.

(6) Enforcement of a judgment of a foreign court resulting in forfeiture of assets shall be permissible only if the assets or objects described in the judgment are located in Austria, and the penalized individual can be notified, if he can be contacted.

(7) Fines or other funds, assets and forfeited assets shall revert to the Federal Government.

Judgments Regarding Domestic Enforcement

§ 65. (1) If the enforcement of the judgment of a foreign criminal court is to be assumed, Austrian law shall determine the manner of enforcement of the penalty, preventive measure or measures relating to forfeiture of assets. A decision of a foreign court relating to forfeiture of assets may also be enforced as a forfeiture in Austria, if permitted under Austrian law.

(2) Enforcement in Austria may not be more stringent than it would be in the other State.

(3) §§ 38 and 66 of the Criminal Code shall be applied as required.

Processing of submitted petitions

§ 66. The Federal Ministry of Justice shall refer petitions for the enforcement of foreign criminal penalties to the appropriate lower jurisdictional court (§61 Paragraph 1). The Federal Minister of Justice shall deny those petitions not permissible at the time of submission under §§ 2 and 3, Paragraph 1, or if the petition is inappropriate for legal enforcement. The Federal Minister of Justice may at any stage of the proceedings, or upon request of the lower court, request additional documentation or evidence from the petitioning State.

Jurisdiction and procedures

§ 67. (1) A tribunal of three judges (§ 12, Paragraph 3 of the Code of Criminal Procedure 1975) of the lower district court identified in § 26, Paragraph 1, in which the assets or objects are located, shall have jurisdiction over the petition for the enforcement and adaptation, preventive measure or forfeiture of assets. The Public Prosecutor and the

convicted person shall have fourteen days to present their objections to the superior court.

(2) The Federal Minister of Justice shall inform the petitioning state regarding the status of the petition for the enforcement and notify the state in the event of enforcement.

(3) Once the enforcement of a penalty has been assumed or a preventive measure put into effect, further criminal proceedings arising from the original judgment may not be pursued.

(4) Enforcement, related releases, and rights to pardon shall be governed by relevant Austrian law.

(5) Enforcement shall be discontinued when the enforceability of the penalty or preventive measure is no longer in effect under the provisions of the laws of the petitioning state.

CHAPTER VI.

Obtainment of extradition, transit, transfer, law enforcement assistance, as well as the assumption of criminal prosecution, custody and execution of sentence

SECTION ONE

Obtainment of extradition, transit and transfer

Jurisdiction and procedures

§ 68. (1) If there is cause to obtain extradition of a person located abroad for prosecution or execution of a sentence of confinement or as a preventative measure, the court must send the documents required to obtain extradition to the Federal Ministry of Justice upon the request of the prosecuting attorney. This shall be incumbent upon the examining magistrate of the court where the criminal proceedings are pending in cases of extradition requests for criminal prosecution and the presiding magistrate (single judge) of the court that has imposed the prison sentence in the first instance, arranged the preventative or revoked conditional release in cases of extradition requests for execution of sentence.

(2) The Federal Minister of Justice may refrain from the obtainment of extradition, when:

1. extradition is not expected,
2. it is anticipated that only a fine or a minor or suspended jail sentence would be imposed,
3. the jail term to be served is minor, or
4. extradition would be associated with disadvantages or burdens to the Republic of Austria that are not commensurate with the public interest of the criminal prosecution or of the execution of sentence.

(3) The provisions analogous to §§ 1 and 2 shall be applied for obtainment of transit and transfer of objects.

Obtainment of extradition custody

§ 69. If the requirements for obtainment of extradition exist, the court designated in § 68, Paragraph 1 may request the foreign court of jurisdiction to impose custody for extradition upon request of the

prosecuting attorney. The Federal Ministry of Justice must be notified immediately of such requests.

Special interest of extradition

§ 70. (1) A person who has been extradited to Austria may, without consent of the requested state, due neither to an action committed before his transfer not covered by the extradition warrant, nor exclusively due to one or more actions that in and of itself is not subject to extradition, be sentenced, limited in his person freedom, or further extradited to a third state. The special interest of the extradition shall be not an obstacle to such measures, however, when:

1. the extradited person remains in the territory of the Republic of Austria for more than 45 days after release, although he was permitted and able to leave,
2. the extradited person leaves the territory of the Republic of Austria and voluntarily returns or is legally brought back from a third state, or
3. the requested state abstains from following the special interest.

(2) If the action for which extradition is requested is deemed to be legally different than stated in the extradition request or if provisions other than the originally assumed criminal provision are applied, the extradited person may be prosecuted and sentenced only insofar as the extradition would also be permitted under the new point of view.

(3) If the extradition of a person convicted of several coinciding criminal actions is approved only for execution of a part of the sentence imposed for some of these criminal actions, only that portion of the sentence may be executed. The extent of the sentence to be executed shall be determined by a decision of the court that imposed the sentence in the first instance. If in the first instance a sentence was imposed in a court with a jury, the court of first instance with the composition specified in § 13, Paragraph 3 of the Criminal Proceedings Act of 1975 shall decide. The public prosecutor and the convicted individual may appeal this decision to the superior court within fourteen days.

(4) The provisions of Paragraphs 1 thru 3 shall be applied analogously to the transit.

SECTION TWO

Obtainment of law enforcement assistance

Requirements and procedures

§ 71. (1) Requests of law enforcement assistance shall be directed in the prescribed manner to the foreign court, the foreign state prosecutor, or the responsible penal authorities in whose district the law enforcement assistance action is to be taken. The request must contain the facts pertinent to the proceedings and information otherwise required for proper execution.

(2) Insofar as direct law enforcement assistance contact is not required, the Federal Minister of Justice may refrain from pursuing a law enforcement assistance request for reasons specified in §§ 2 and 3, Paragraph 1.

Subpoena of persons from abroad

§ 72. (1) If the personal appearance of a person to be examined before the court is deemed necessary, the foreign court of jurisdiction must request the service of a subpoena in the prescribed manner. This subpoena may not contain threat of force in case of non-compliance.

(2) The subpoenaed person may not be prosecuted, sentenced, or restricted in his personal freedom in Austria due to an action committed before his entry into Austria. Prosecution, sentencing and restriction of personal freedom is, however, permitted:

1. due to a punishable action that forms the subject of the subpoena for a person as an accused,
2. when the subpoenaed person remains in the territory of the Republic of Austria for more than fifteen days after examination, although he was able and permitted to leave, or
3. if he voluntarily returns or is legally brought back after leaving the Republic of Austria.

Transfer of arrested persons for evidence purposes

§ 73. (1) A person in custody abroad can be transferred to Austria for purposes of carrying out important investigative actions, in particular for the purpose of examination or identification. The provisions of § 53, Paragraphs 2 and 3 shall be applied analogously.

(2) If a person in investigative or penal custody in Austria is to be transferred abroad for the purpose of an important investigative action to be undertaken, in particular an examination or identification, § 54 shall be applied analogously. The consent of the person to be transferred (§ 54, Paragraph 1, Line 1), however, shall not be required.

SECTION THREE

Obtainment of assumption of criminal prosecution, supervision, and execution of a sentence of domestic criminal conviction abroad

Obtainment of assumption of criminal prosecution

§ 74. (1) The Federal Minister of Justice may request another state to initiate criminal proceedings against a person for a criminal action that is subject to Austrian jurisdiction when the jurisdiction of this state appears justified and

1. the extradition of a person abroad cannot be obtained or obtainment of extradition is refrained from for another reason, or
2. the sentencing of a person in Austria in the other state is in the interest of establishing the truth or is appropriately for reasons of assessing punishment or execution of sentence and when this person is extradited due to another punishable offense and it is otherwise assumed that the criminal proceedings in the other state will be carried out in the presence of this person.

(2) If there is cause to obtain the assumption of criminal prosecution, the prosecutor shall forward the required documents related to the case to the Federal Ministry of Justice.

(3) A request under Paragraph 1 is inadmissible if it is determined that the person would be exposed to a disadvantage due to one of the reasons specified in § 19, or when the punishable action is threatened in the requested state with the death penalty.

(4) After arrival of the notification that the criminal prosecution in the requested state has been assumed, the domestic criminal prosecution shall be suspended temporarily. If the perpetrator is legally convicted in the foreign court and the sentence is executed entirely or, insofar as it is not executed, is waived, the domestic proceedings shall be activated.

(5) Prior to a request for assumption of criminal prosecution, the suspect shall be interrogated if he is in Austria.

Obtainment of surveillance

§ 75. (1) If there is cause to request another state for surveillance of a person for whom a probationary period has been determined on the basis of the decision of a domestic court under §§ 43, 43a, 45, 46 or 47 of the Criminal Code or § 13 of the Juvenile Legal Code of 1988, the presiding magistrate (single judge) of the court that rendered this decision in the first instance must send the required documents for obtainment of surveillance to the Federal Ministry of Justice. Before a request for surveillance, a statement of the prosecuting attorney shall be obtained and the convict will be interrogated, if he is in Austria.

Obtainment of Execution of Sentence

§ 76. (1) If there is cause to request another state to assume execution of sentence of a legal verdict that results in a sentence or preventative measure or revocation thereof or in the arrangement of an absorption of enrichment, the presiding magistrate (single judge) of the court that rendered the verdict in the first instance must send the documents required for obtainment of assumption of execution of sentence to the Federal Ministry of Justice. The Federal Minister of Justice must refrain from placing the request when it is assumed that assumption of the execution of sentence will be denied based on reason in §§ 2, 3, Paragraph 1 or in Paragraph 3, lines 2 and 3.

(2) A request for assumption of the execution of sentence of imprisonment or preventative measures is permitted, when:

1. the convict is in the requested state and his extradition cannot be obtained or obtainment of extradition is refrained from for another reason, or
2. the penal purposes can be better achieved by execution of sentence or further execution of sentence in the requested state.

(3) Assumption of execution of sentence of imprisonment or preventative measure cannot be requested when:

1. the convict is an Austrian citizen, unless he resides in the requested state and is located there,
2. there is concern that the punishment or preventative measure in one of the requirements of Art. 3 of the Convention for the Protection of Human Rights and Basic Freedoms, BGBl. No. 210/1958, would not be executed in an appropriate manner,
3. there is concern that the convict in the case of transfer into the requested state would expect persecution or disadvantages of the type designated in § 19, Line 3, or

4. there is concern that the convict would be placed in a significantly worse position on the whole in the other state as he would through execution of sentence or further execution of sentence in Austria.

(4) A request for assumption of execution of sentence of a fine or the arrangement of an absorption of enrichment is permitted when the proceeds are expected in the requested state.

(5) If the requested state makes notification that it is assuming execution of sentence, the execution of sentence will temporarily be suspended in Austria. If the convict returns to the territory of the Republic of Austria without having served the entire sentence or preventative measure in the requested state as specified in the request for assumption of execution of sentence or is forgiven the unexecuted portion, the court shall execute the remainder of the sentence or preventative measure. The court must, however, refrain from the subsequent execution of sentence and forgive the remainder of the sentence conditionally or unconditionally, or release him from the preventative measure conditionally or unconditionally insofar as the convict is placed in a more unfavorable position on the whole than if the execution of sentence that took place abroad would have taken place in Austria.

(6) The provisions of the Austrian Mercy Law (Gnadenrecht) shall still apply to the execution of sentence in the requested state.

(7) The provisions of the Austrian Mercy Law (Gnadenrecht) shall still apply to the execution of sentence or legal asset arrangement in the requested state.

(8) The presiding magistrate (Paragraph 1) must arrange the transfer of the convict to the authorities of the requested state in accordance with § 36, Paragraph 1.

(9) Before a request for assumption of execution of sentence, a statement of the prosecuting attorney shall be obtained and the convict interrogated, if he is in Austria.

CHAPTER VII Final provisions

Effective date and transition provisions

§ 77. (1) This Federal Statute shall enter into effect July 1, 1980.

(2) Regulations deriving from this Federal Statute may enter into effect before its publication, but no earlier than July 1, 1980.

(3) After July 30 1980, the following shall no longer be in effect:

1. §§ 59, 157, and 421, Paragraph 3 of the Criminal Procedures Code of 1975 and § 59, Paragraph 1 of the of the Criminal Procedures Code, but with the provision that deportation procedures in process prior to the effective date of this Federal Statute shall continue to be applied;

2. The Regulations of the Ministry of Justice dated September 2, 1891, concerning the transport of criminals through Austria, Imperial Legal Gazette No. 34/1891.

Enforcement clause

§ 78. (1) The Federal Minister of Justice shall be charged with the enforcement of this Statute, with the exception of § 6, in which case he shall enforce this Statute in conjunction with the Federal Government; he shall enforce §§2 and 42 to 49 in conjunction with the Federal Interior Ministry.

(2) Federal Minister of Justice, in the enforcement of this Statute, shall comply with all regulations, particularly with regard to interaction with foreign authorities; with regard to the proper processing of the form and content of petitions, information and documentation in deportation and letters rogatory; with regard to matters pertaining to the assumption of criminal penalties, observation and enforcement; with regard to the use of translations; as well as with regard to response to petitions of foreign authorities and the performance of deportation or expulsion through regulations.