

(2) Where it appears that, before an application can be made under this section, the ship will depart from Australia, the official may detain the ship for such time as will allow the application to be made and the result thereof to be communicated to him, and he shall not be liable for any costs or damages in respect of the detention unless it is proved to have been made without reasonable grounds.

(3) In any legal proceeding in relation to any such injury, the person giving security shall be made defendant, and shall be stated to be the owner of the ship that has occasioned the damage; and the production of the order of the judge or court made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

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3. Austria

(a) PENAL CODE, 27 MAY 1852, AS REINSTATED BY ACT NO. 25 OF 12 JUNE 1945. J. KIMMEL, "LEHRBUCH DES ÖSTERREICHISCHEN STRAFRECHTES" (10TH EDITION, 1948), PP. 87-88, 196-197.

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CRIMES (VERBRECHEN) COMMITTED BY AUSTRIAN CITIZENS ABROAD

Article 36. A citizen of the Austrian Republic who commits a crime abroad and afterwards enters Austria may not be extradited therefor but shall be dealt with in accordance with this Penal Code irrespective of the law of the country in which the crime was committed.

If the citizen has already been punished abroad for the act, the penalty suffered shall be set off against that imposable under this Penal Code.

No decision of a foreign authority in penal matters may be executed in Austria.

CRIMES COMMITTED BY ALIENS

(a) *In Austria*

Article 37. An alien committing a crime in Austrian territory may be judged only in accordance with the present Code.

(b) *Abroad*

Article 38. An alien committing abroad the crime of high treason against the Austrian Republic (article 58), of espionage or other collusion with the enemy (article 67), of illicit recruiting (article 92), of counterfeiting of Austrian public securities or coinage (articles 106-121), or inciting to or abetting a breach of military duty (article 222) shall be dealt with according to this Code as though he were a national. (As amended by Act of 15 July 1920.)

Article 39. An alien committing abroad any crime other than those mentioned in the foregoing article shall, if he enters Austria, be taken into custody, but agreement for his extradition shall be forthwith negotiated with the State in which the offence was committed.

Article 40. If the foreign State refuses to accept extradition, proceedings against the alien offender shall, in principle, be taken in accordance with this Penal Code. If, however, the penal code of the place in which the offence was committed permits of a lesser penalty, he shall be dealt with according to such more lenient provision. The sentence shall include deportation after the term of the penalty has expired.

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LIABILITY OF ALIENS [FOR MISDEMEANOURS AND PETTY OFFENCES]

Article 234. Aliens resident in the State of Austria may likewise become liable for these misdemeanours (*Vertretungen*) and petty offences (*Übertretungen*), since they are bound to acquaint themselves as a matter of course with the general regulations on public security and order and also, if they engage in a transaction, with the special regulations applicable thereto.

Nevertheless, aliens committing in a foreign State any punishable act referred to in this part of the Penal Code may neither be extradited nor punished in Austria therefor.

MISDEMEANOURS AND PETTY OFFENCES COMMITTED BY AUSTRIANS ABROAD

Article 235. An Austrian who commits abroad a misdemeanour or petty offence and afterwards enters Austria may not be extradited therefor but shall, if the said acts have not been punished or investigated abroad, be dealt with according to this Penal Code, irrespective of the law of the country in which they were committed.

This provision shall likewise apply where an Austrian has been sentenced for a misdemeanour or petty offence committed abroad but the sentence has not been carried out. No decision of a foreign authority in penal matters may be executed in Austria.

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(b) CODE OF CRIMINAL PROCEDURE, 23 MAY 1873, AS REINSTATED BY ACT No. 26 OF 12 JUNE 1945. L. F. TLAPEK, "DIE ÖSTERREICHISCHE STRAFPROZESSORDNUNG" (2ND EDITION, 1948), PP. 51-52. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

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§ 54. (1) If a punishable act has been committed outside the Republic of Austria, that court shall be competent in the district of which the accused is domiciled or resides, and in default thereof, in the district of which he has been found.

(2) Should a foreign State offer to extradite the accused or should extradition be applied for before the competence of a domestic court has been established, the Supreme Court, after hearing the Public Prosecutor, shall designate the court which shall have competence in the case.

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