Measures of Organised Crime and Terrorism control were developed step by step at different levels in Austria, especially since around 1990. The measures are of preventive and repressive nature, hence relating to police investigation, cross-border cooperation, procedural regulations to ensure compliance with the basic rights guaranteed by the European Convention on Human Rights, penalty norms and crime victims’ rights. It is doubtable, however, that these measures provide adequate instruments in view of the current situation. The de lege lata status is presented below.

Organized Crime

The Penal Code does not define the term “Organized Crime” but so-called “Criminal Organisation”. According to § 278a Penal Code (StGB), created by the 1993 amendment, “Criminal Organisation” was characterised by continued commission of penal acts as listed also in § 278 Penal Code (StGB), including and especially murder and other serious violent acts against life and limb, robbery, money laundering and trafficking in human beings.

The Criminal Law Amendment Act of 1996 introduced a new definition of “Criminal Organisation”: the members of such a group aim at either large-scale enrichment or considerable influence in politics or the economy by – though not exclusively – committing repetitive and planned serious criminal acts – especially in the area of sexual exploitation of humans (including trafficking in humans, prostitution and child pornography), smuggling of migrants, illegal trafficking in warfare agents, nuclear material, radioactive substances, hazardous waste, counterfeit money, or addictive substances. Moreover, the members use corruption or intimidation to achieve their goals, or try to protect themselves against (state) prosecution in other ways, for example, by keeping the structure and members of the organisation secret – also internally by restricting the flow of information-, or by other strategies to conceal the organisation’s true criminal purposes (bogus firms, renting of safe premises, counter-surveillance to evade criminal prosecution measures). This may also include the use of force or special ruthlessness in implementing instructions within the organisation.

Furthermore, a “Criminal Organisation” is made up of a large number of persons (at least approx. ten) and designed to continue for some time, and it has a business-like structure. Hence division of labour, a hierarchical structure, and a certain infrastructure are major characteristics of organized trafficking.

Not only setting up such an organisation but also participating as a member is a crime (imprisonment ranging from six months to five years).

As a special pecuniary consequence of wrongdoing – in addition to imprisonment -absorption of the enrichment gained by or for the criminal offence (of any kind), but also absorption of pecuniary advantages gained by the offender during his membership in a Criminal Organisation is provided for, if such enrichment is likely to originate from criminal offences. Evidence for the latter is not required; the offender must furnish evidence that the enrichment was gained in a lawful manner (§ 20 para 3 Penal Code (StGB): the onus of proof lies with the defendant). Moreover, assets that are subject to the authority of a Criminal Organisation shall be declared forfeited (§ 29b Penal Code (StGB)).

Money laundering

In conformity with international agreements, money laundering has been penalized since 1993 (§ 165 Penal Code(StGB)). Included are monies originating from specific criminal acts performed by a third party (and from a crime [acts with criminal intent under penalty of more than three years of imprisonment] or specific offences such as adulteration of documents, terrorist organisation, funding of terrorism, bribery or acceptance of gifts). Criminal acts include the concealment of origin and fraudulent acquisition, keeping, management, conversion, exploitation and fraudulent transfer to a third party.

The sentences of imprisonment for money laundering involving assets of a Criminal Organisation or a terrorist organization on their behalf or in their interest are higher.
**Terrorism**

It must be added that the Criminal Law Amendment Act of 2002 created special penal provisions for combating terrorism. It is based on several international agreements, including the E.U. Frame Decision On Combating Terrorism and Funding of Terrorism. The leaders and the members of a Terrorist Organisation (at least three persons join for some time with the aim to carry out one or several terrorist crimes) are liable to prosecution. A distinction is made between leaders of organisations who restrict themselves to terrorist threats and those who actually carry out terrorist actions.

**Smuggling of migrants**

Supporting the illegal entry of a foreigner in one of the E.U. member countries or in one of the neighbour states of Austria in return for payment (smuggling of migrants) is illegal. The punishment for smuggling of migrants on a commercial basis is imprisonment for up to five years; for playing a leading role in an organisation made up of a large number of persons with the aim to commit continued smuggling of migrants imprisonment ranges from one to ten years. At present, a modification of the asylum laws to restrict immigration is on the agenda.

**Austrian jurisdiction for crimes committed abroad**

Austria has also undertaken to prosecute persons who committed the crime of Criminal Organisation abroad, if the criminal is in Austria and Austrian interests were harmed, or if the criminal cannot be extradited. The same applies to terrorist crimes committed abroad.

**Organised Crime Control**

The fight against Organised Crime lies mainly with the police, naturally. Its activity is both preventive (protection: maintenance of law and order, prevention of crimes at the planning or preparatory stage) and repressive (investigation and prosecution). The rules and regulations applying to protection by the police were first codified by the Security Police Act (enacted in 1993). Only to a small extent is the permissibility of special protection and investigation methods, especially in connection with Organised Crime Control, contingent on judicial orders; if such orders are disregarded, in some cases the use of results gained may be prohibited in the criminal proceedings.

National and international Organised Crime Control was the responsibility of several task forces within the police up to 2001. As a result of the Federal Office of Criminal Investigation Act, these task forces were dissolved by January 2002, and their agenda were taken over by a special department (Organised Crime Control) of the newly established Federal Office of Criminal Investigation. The fight against money laundering was taken over by another separate department (Economic and Financial Offences).

On the basis of the law on special investigation measures (Official Federal Gazette I 1997/105) special investigation methods for Organised Crime control were introduced into the Code of Criminal Procedure, and thus their use in crime prevention was also made contingent on court approval. For the implementation, the Surveillance Task Force (Sondereinheit für Observation, SEO) was set up, which reports directly to the general director for public security and also is to carry out the so-called big eavesdropping operations (visual and acoustic surveillance of the behaviour or communication of persons by using technical means).

The lower-level security agencies (police headquarters of the provinces, federal police headquarters and the detective departments of the provincial police headquarters) usually also have special Organised Crime departments cooperating closely with the Federal Office of Criminal Investigation in national judicial inquiries.

Due to the increasing interconnection between criminal organisations throughout Europe, a number of international special commissions are being set up, in which involved foreign police authorities are represented.

All authorities involved cooperate closely for efficient Organised Crime control, but at the prosecution level there is only a single special department dealing with Criminal Organisation, at the public prosecutor’s office in Vienna.
Instruments for Organised Crime control

The special investigation methods for Organised Crime control mentioned above are mainly the “big electronic eavesdropping operation”, the so-called dragnet investigation, and visual target surveillance. Moreover, the chapter of extraordinary mitigation of sentence in the Penal Code was extended by the “small principal witness clause”, and a special provision of the security police law made the establishment of “legends” (i.e. official “forged” documents) for undercover investigators possible. In abduction and kidnapping cases, electronic eavesdropping is also permissible without a judicial order but limited to the duration and place of detention.

“Small electronic eavesdropping operation”
Visual and acoustic surveillance in cooperation with a person to be kept under surveillance. According to the Code of Criminal Procedure this method must be necessary for solving a crime.

“Big electronic eavesdropping operation”
Visual and acoustic surveillance of a person without his knowing, also in private homes. The secret installation of surveillance equipment and intrusion into private rooms, if necessary, are permissible. This method may be used if a crime under penalty of more than ten years of imprisonment or a crime pursuant to § 278a Penal code (StGB) would otherwise be impossible or considerably more difficult to solve. Moreover, if otherwise the solution or prevention of criminal acts within the scope of the Criminal Organisation would be impossible or considerably more difficult. Moreover, the use of this investigation method for the prevention of such criminal acts is only permissible if relevant facts suggest a great danger for the public security.
An electronic eavesdropping operation may only be ordered if a person is a prime suspect.
Persons who have the right to refuse to give evidence are in principle excluded from big electronic eavesdropping operations; this does not apply to members of parliament.

Dragnet investigation
Computer-assisted reconciliation of personal data of a data processing system (including a private one) that contain certain characteristics that identify or exclude the suspected person. The use of private data, which was controversial for reasons of fundamental rights considerations, is permissible for solving crimes under penalty of more than ten years of imprisonment or solving a Criminal Organization crime. The use of so-called sensitive data, i.e. data on racial origin, political views or health data, is not permissible on principle. Non-compliance with the legal requirements for the approval of a data reconciliation leads to the right of destruction, but is not a basis for a prohibition of use in the court procedures.

Electronic surveillance (and dragnet investigation – investigation by data reconciliation -) requires a judicial order. Ensuring legal protection is the responsibility of an authority that is not subject to directions (Legal Protection Commissioner); for the order to initiate a big electronic eavesdropping operation in the business premises of a party official or a media owner, an authorization has to be obtained from the legal protection commissioner.

Adaptation courtrooms
There are no special safety devices for witnesses or members of the court in the courtrooms. General identity and object checks of persons admitted to the courthouse are considered to be sufficient. If necessary, police protection can be requested.
Most courthouses offer the possibility of examining witnesses in a separate room to protect them; the examination of the witnesses can be observed in the courtroom via picture and sound transmission. If it is feared that a witness would risk his own or a third party’s life, health, integrity or freedom by disclosing the name or other information on the third party, or by answering questions and thereby allowing to draw the relevant conclusions, the witness may be allowed to refrain from answering such questions. The witness may also be permitted to wear a face mask (e.g. a visor helmet) to prevent the risk of recognition.
If need be, a witness can be included in a witness protection program (he gets a new identity).

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