POLSKA AKADEMIA NAUK • INSTYTUT NAUK PRAWNYCH

ZAKŁAD KRYMINOLOGII

ARCHIWUM KRYMINOLOGII

Archives of Criminology

PL ISSN 0066-6890

DOI 10.7420/AK2025.14

2025 • ONLINE FIRST• 1–23

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Sentencing practice and specific deterrence: Unveiling relevant factors in decision-making behaviour in Austrian criminal proceedings

Praktyka orzekania kary a prewencja indywidualna: analiza czynników wpływających na proces decyzyjny w austriackim postępowaniu karnym

Abstract: According to Austrian criminal law, court decisions must be made in a way that serves specific deterrence. This principle emphasizes that judges must weigh a variety of factors in order to impose a sentence that supports the offender's rehabilitation and the prevention of future offences. Although some norms offer insight into the range of information to be considered, the underlying concepts remain vague, leaving significant room for discretion. Additionally, judges are not obliged to provide comprehensive reasons for their considerations in their final judgment. These aspects not only lead to the lack of detailed justifications for sentencing decisions in individual cases but also result in hardly any appellate decisions that address the relevance of individual factors. Furthermore, there are no relevant studies in this area, resulting in a lack of detailed information on the factors considered in the decision-making process, leaving the following research question unresolved: What factors play what role in the reasoning-behavior within the Austrian sentencing practice?

The study "Intuition in criminal proceedings? – On the interdisciplinarity of factors in specific deterrence decision-making practice," funded by the Province of Styria (Austria), has set itself the goal of quantitatively surveying the reasoning behavior of judges and public prosecutors through questionnaires, as well as qualitatively through interviews and file analysis. By collecting both qualitative and quantitative data, the study seeks to uncover the key factors that contribute to the decision-making

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process and offer a more detailed understanding of the judicial reasoning behind individual sentences. In this paper, we present some of the findings, focusing on the empirical relevance of various factors of specific deterrence in everyday court practice, as well as on how their importance varies across different types of sanctions and between judicial and prosecutorial decisions.

Keywords: sentencing, specific deterrence, deterrence, decision-making behavior, interdisciplinarity

Abstrakt: Zgodnie z austriackim prawem karnym orzeczenia sądowe powinny być wydawane w sposób realizujący cel prewencji indywidualnej. Zasada ta zakłada, że sędziowie muszą rozważyć szereg różnych czynników, aby wymierzyć karę sprzyjającą resocjalizacji sprawcy oraz zapobieganiu przyszłym przestępstwom. Chociaż niektóre przepisy wskazują, jaki zakres informacji powinien być brany pod uwagę, podstawowe pojęcia pozostają nieostre i pozostawiają znaczną swobodę uznania. Ponadto sędziowie nie są zobowiązani do szczegółowego uzasadniania swoich rozważań w końcowym orzeczeniu. Prowadzi to nie tylko do braku pogłębionych uzasadnień decyzji dotyczących wymiaru kary w poszczególnych sprawach, lecz także do niewielkiej liczby orzeczeń drugiej instancji odnoszących się do znaczenia poszczególnych czynników. Dodatkowo brak jest istotnych badań w tym obszarze, co skutkuje niedostatkiem szczegółowych informacji na temat czynników branych pod uwagę w procesie decyzyjnym. W konsekwencji nierozstrzygnięte pozostaje pytanie badawcze o to, jakie czynniki i w jakim stopniu odgrywają rolę w sposobie uzasadniania decyzji w austriackiej praktyce orzekania kar.

Projekt badawczy „Intuicja w postępowaniu karnym? O interdyscyplinarności czynników w praktyce decyzyjnej dotyczącej prewencji indywidualnej", finansowany przez austriacki land Styria, stawia sobie za cel ilościowe zbadanie sposobu uzasadniania decyzji przez sędziów i prokuratorów za pomocą ankiet, a także jakościowo — poprzez wywiady i analizę akt spraw. Dzięki połączeniu danych jakościowych i ilościowych badanie ma na celu identyfikację kluczowych czynników wpływających na proces decyzyjny oraz dostarczenie bardziej szczegółowego obrazu uzasadniania orzeczeń sądowych w konkretnych sprawach. W niniejszym artykule przedstawiamy część wyników, koncentrując się na empirycznym znaczeniu różnych czynników prewencji indywidualnej w codziennej praktyce sądowej oraz na tym, jak ich rola różni się w zależności od rodzaju sankcji oraz między decyzjami podejmowanymi przez sędziów i prokuratorów.

Słowa kluczowe: wymiar kary, prewencja indywidualna, prewencja ogólna, proces decyzyjny, interdyscyplinarność

Introduction

Judges and prosecutors are faced with a variety of factors that have to be considered when determining sentences. In addition to the more apparent reference categories, such as the crime itself, its sentencing range and the available types of sanctions, it is also crucial to account for offender-related differences. After all, sentencing decisions must also (and probably primarily) serve the purpose of specific deterrence, which requires a careful consideration of relevant individual, person-centred criteria (Jerabek, Ropper 2024: 16–18; Pina-Sánchez, Dham, Gosling 2024: 450).

It is the judges' responsibility to comprehensively evaluate these factors (Jerabek, Ropper 2024: 19). Judges in Austria, however, are not legally obligated to thoroughly substantiate their reasoning for individual verdicts (Riffel 2023b: 21). Additionally,

there is a lack of research on which factors are taken into account, the frequency with which they are considered and the extent to which they influence sentencing decisions. A research project funded by the province of Styria, called "Intuition im Strafverfahren? – Über die Interdisziplinarität der Beweggründe in der spezialpräventiven Entscheidungspraxis" [Intuition in criminal proceedings? – On the interdisciplinarity of factors in the specific deterrent decision-making practice], investigated the decision-making behaviour of judges and public prosecutors in Austria. It was guided by the following research questions: Which factors play what role in the sentencing process in Austria? Are there any differences in the relevance of each factor depending on the reaction form chosen? And, last but not least, are there any differences between judges and prosecutors in rating these factors? By using a mixed-methods approach with a quantitative questionnaire, qualitative interviews and case file analysis, this study aimed to extract and analyse contributing factors of specific deterrence as they appear in Austrian sentencing practice. The collected data offer explanatory potential for numerous research questions in the field of judicial practice and specific deterrence, such as the key findings presented in this article.[1]

1. Specific deterrence in Austrian criminal law

As in other countries, Austrian judges must base their decisions on the individual offender's guilt while adhering to the sentencing range provided by the Austrian Criminal Code (StGB) (Stricker 2016: 3; Riffel 2023b: 21). Unlike the justification of guilt as prerequisite for any guilty verdict – which is based on a "characterological" and non-quantifiable concept of guilt and thus relies on an accusation of having not behaved as one would expect from a reasonable person while being capable of doing so – the sentencing process in Austria, for determining the type and severity of the penalty, is understood to rely on a different concept of guilt. This concept is more comprehensive because it not only focusses on the reproachable criminal behaviour itself, but also considers the personality of the offender and their behaviour both before and after the crime (Burgstaller 1982: 134; Riffel 2023b: 2–3). As a result of a preventive approach to justice, which sees prevention as the main purpose of punishment – referred to as "outcome-based sentencing" (Kienapfel, Höpfel, Kert 2024: 337) – these guilt-related preventive factors must also be taken into account (Tipold 2016: 10; Riffel 2023b: 21). Therefore, contemporary Austrian law emphasises that the court not only has to take into account aggravating and mitigating factors of the crime, but must also give due consideration to the implications of punishment and other anticipated consequences of the offence on the perpetrator's future life in society (StGB 2025: § 32 as translated by Schloenhardt,

[1] The questionnaire and collected data are currently not publicly available, but may be provided to interested researchers upon request.

Höpfel 2021). While general deterrence aims at promoting legal compliance through trust in the legal system and reinforcement of social values as well as through deterring others– and therefore addresses society in general – specific deterrence focusses on the individual offender and the prevention of individual recidivism (Riffel 2023b: 27). According to the prevailing opinion in Austria, specific deterrence is more important than general deterrence for the sentencing process in an individual case (Jerabek, Ropper 2024: 18). General deterrence is rather considered a "braking function against a minimisation of the penalty when having a favourable prognosis" [translation by the authors] (Riffel 2023b: 24) through limiting the range of punishment or the possibility of certain reactions (e.g. granting/non-granting of conditional suspension of prison sentences) (Riffel 2023b: 25–26). In the absence of empirical evidence for the effectiveness of general deterrence, it is generally advisable to refrain from tightening penalties based on it (Grafl 2006/2007: 199; Hirtenlehner 2020: 221). Additionally, more formal aspects, such as procedural efficiency through a disproportionate duration of proceedings, can also have an impact on the sentencing decision (Riffel 2023b: 48). In this respect, Austrian judges must determine the sentence within the framework – which is to be determined more abstractly according to the severity of the offence and what is appropriate in terms of general deterrence – and then adjust it to the individual case by considering aspects of specific deterrence (Riffel 2023b: 25).

In summary, punishment in Austria must ensure compensation for the offence that was committed (principle of guilt), address the individual needs of the offender (principle of specific deterrence) and take into account the enforcement of the legal system as a whole (principle of general deterrence), the three aims that Heinz Zipf (1979: 198) describes as the "magic triangle of sentencing" [translation by the authors]. According to Austrian sentencing theory, these different sources of information are considered step by step. In the first step the applicable penalty framework is to be determined (as a range between the minimum and maximum penalty established by law); in the second step aggravating and mitigating factors are taken into account; and in the final step the anticipated effects on the offender within society are to be considered (Zipf 1977: 6–7; Riffel 2023b: 51). However, not all of these steps need to be articulated and explained in detail in the respective written judgment. According to § 270 (2) no. 5 of the Austrian Code of Criminal Procedure (StPO 2025), judges only have to substantiate any mitigating and aggravating factors they consider. When handing down a fine, they must detail the personal circumstances and financial capacity of the convicted person that are relevant to the determination of the penalty. What is particularly interesting at this point is that judges are not further obligated to provide their preventive considerations. Although the sentencing framework and the most common mitigating and aggravating factors used in practice are stipulated by law, there is no law guiding the consideration of preventive factors. Despite being crucial for balancing the sentence according to the circumstances of a given case, there is hardly any information on how this is done in everyday court practice (Riffel 2023b: 51).

2. Unveiling sentencing factors

As a result of the rather flexible but opaque process of sentencing, Austria has to deal with sentencing disparities (Grafl 2020: 40) – as in other countries (Krasnostein, Freiberg 2013: 256; Pina-Sanchez, Linacre 2013: 1118; Drápal 2020: 151). Historical efforts to codify sentencing in order to counteract these disparities have largely failed (Riffel 2023a: 4), and modern approaches such as sentencing guidelines are facing challenges in the international discourse (Pina-Sanchez, Linacre 2014: 747; Yang 2014: 1268). Moreover, because Austrian judges are not legally required to provide a narrative justification of the sentencing process, there are hardly any decisions from the appellate judge that take a position on questions of preventive considerations or on individual sentencing factors. In the rare occasions where the court of appeal addresses the sentencing, the argument is often rather restrained and imprecise, for example: "The trial court has fully and correctly stated the reasons for sentencing and assessed their weight appropriately" [translated by the authors] (12 Os 87/88 1988), with these being the sole remarks regarding the determination of the sentence. Only a few individual cases provide further insight and take into account the social situation (e.g. loss of one's livelihood and "life's work") (15 Os 114/89 1989), emotional state (e.g. "mental agitation" due to a breakup) (14 Os 133/99 1999), the brazen nature of the offence (13 Os 91/86 1986) or the personal circumstances of the victim (12 Os 33/78 1978). Further insight is also provided by international literature: for example, the role of a caregiver (Kane, Minson 2022: 366), the showing of remorse (Maslen 2015: 173) or the number of offences (Dhami 2022: 55).

After all, the step-by-step theoretical approach to sentencing, which consists of successively defining the sentence according to the specific case, can hardly ever be observed in practice. In fact, sentencing is usually carried out in a single act (Riffel 2023a: 94). This bears the risk that in the absence of transparency the consideration of preventive aspects also involves factors such as considerations of ethnicity, race and gender (Mustard 2001: 113), as well as emotional shock (Eren, Mocan 2018: 171) or judicial experience (Drapal, Pina Sanchez 2023: 211). Also, there is a potential influence of these concepts on the way judges consider permissible factors (Guilfoyle, Pina-Sánchez 2025: 241).

Mitigating and preventing biases requires a more transparent process and a deeper understanding of the factors being considered and those that should be. Therefore, the question arises as to which factors are actually taken into account in this third and final step of sentencing, and how they are weighed by judges as preventive elements for specific deterrence. This is the first issue addressed in this paper.

In addition to the general consideration of preventive aspects in all decision-making processes, as outlined above, the Austrian Criminal Code explicitly emphasises the particular importance of preventive aspects for certain forms of punishment, such as the conditional suspension of sentences (StGB 2025: § 43) or the withdrawal of prosecution through diversionary measures (StPO 2025: § 198) (or "diversion").

Austrian criminal law allows the suspension of a sentence if "the mere prospect of the enforcement of the sentence, by itself or in combination with other measures, will suffice to prevent the person committing other offences, and that the enforcement of the sentence is not needed to thwart the commission of offences by others" (StGB 2025: § 43 as translated by Schloenhardt, Höpfel 2021: 51). Thus, it explicitly demands consideration of the factors of specific and general deterrence. In addition, the Austrian legislature expands on the factual basis to be created for this: "In this context, particular consideration has to be given to the nature of the offence, the character of the person, the degree of the person's culpability, the person's prior record, and the person's behaviour after the offence" (as translated by Schloenhardt, Höpfel 2021: 51). Also, the legal framework allowing for diversion has to be granted if punishment "does not appear to be warranted in order to prevent the accused from committing criminal offences or to deter others from committing criminal offences" (as translated by Schloenhardt, Eder 2024: 258).

Other provisions, however, do not provide for any explicit consideration of preventive requirements, like the imposition of a fine (StGB 2025: § 19). Even if the preventive purpose of punishment in general implies a justificatory pressure for any judicial act by providing indications for the theoretically "correct" design of a sentence (Bock 2019), different sentences may align with the purpose of sentencing to varying degrees. Therefore, the study also examines whether differences in the *verba legalia* for various types of punishment or other measures lead to variations in how preventive aspects – particularly those related to specific deterrence – are considered in sentencing decisions.

The question also arises as to what influence the decision-maker has on the extent to which considerations of specific deterrence are taken into account within their discretionary powers. In our study we compare judges and prosecutors. The role of the prosecution in Austrian sentencing practice is to assess the sentence from the prosecution's perspective and appeal against it in the event of a discrepancy between their (factual or legal) perceptions and those of the court. In addition, as mentioned above, Austrian criminal law provides for the possibility to withdraw the prosecution. Although this can still be done by the court in the main proceedings, it primarily occurs during the preliminary proceedings and is the responsibility of the public prosecutor's office. Furthermore, it is up to prosecutors to order pre-trial detention or to refrain from further prosecution in juvenile criminal proceedings due to considerations of specific deterrence. Therefore, the law provides for the incorporation of specific deterrence in the practice of public prosecutors as well. The uniform nature of mandatory training for "candidate judges" to become a judge or a prosecutor, the legal framework that applies equally to both groups and the influence on both groups of decision-making practices of Higher Regional Courts could all lead to consistent decision-making behaviour across both groups. Nevertheless, distinct working methods and differing organisational cultures give rise to markedly different structural contexts. The final question to be addressed is thus whether the varying operational practices embedded in everyday working life favour a particular mode of decision-making regarding the impact factors of specific deterrence, despite sharing a nearly identical theoretical foundation.

3. Method

To address these questions and to determine which factors are considered and weighed by judges in relation to specific deterrent sentencing, a mixed-methods design was employed. Following an exploratory design, we initially adopted a qualitative approach, utilising file analysis and expert interviews to identify factors relevant to specific deterrence. These factors informed the development of a questionnaire, which was subsequently used to gain deeper insights into the practical application of specific deterrence in sentencing.

In the first step, 15 criminal court judgments containing the sentencing decisions were analysed, and 15 judges from the Higher Regional Court of Graz were interviewed on the topic of specific deterrence. During the interviews, conceptual questions regarding the concept of specific deterrence in everyday court life were combined with more factual questions based on case studies and case narratives to capture aspects that are uniquely embedded in practical working contexts. Through this multifaceted approach to the subject, the researchers sought to align as closely as possible with the relevant professional structures.

The resulting material was subsequently analysed using Philipp Mayring's approach of qualitative content analysis. The main categories were formed deductively, grounded in theoretical frameworks and primarily informed by statutory provisions, explanatory legislative materials and leading legal commentaries on pertinent provisions regarding sentencing (such as Tipold 2015; Stricker 2016; Riffel 2023b), while the respective subcategories were derived inductively from the material itself (Mayring 2014). These results were used to create a pool of potential items and to draw conclusions about the relevance and complexity of the respective categories for constructing the questionnaire. Categories that were deemed particularly relevant or versatile were more strongly represented in the questionnaire. The final questionnaire consists of 28 items representing potentially relevant factors of specific deterrence in sentencing practice. In terms of categories, four items assess offender-related factors such as "conduct in the hearing" or an "aggressive personality." Three items assess the criminal record, with one additional item for "previous diversions." Four items cover the social integration of the offender, such as a "robust social network" or "proactive acceptance of social responsibility." Two items were included to assess the moral reprehensibility of intent, covering different potential motives and triggers such as "provocation" or "commission of the offence as a result of crisis" (Riffel 2023b: 13–14). One item targets the reprehensibility of the "manner in which the offence was committed." Three items address post-offence behaviour, such as "self-initiated restitution" or a "remorseful confession." One item addresses the family situation. Three items cover incident management, which also includes the aspect of life planning, such as a "willingness to change." Three items cover potential factors of a systematic sentencing approach, referring to the consideration of "expectations of the prosecution or higher courtss." or the "progressive escalation of sanctions." The latter

describes a stepwise aggravation of the sanction, e.g. after a suspended prison sentence, any subsequent offence necessarily entails an unconditional prison sentence. Other items address "substance-influenced offences", "the attributes of the victim" and the "income and financial burdens" of the offender.

Overall, this approach aimed at generating a practice-orientated questionnaire through a representative depiction of the topics mentioned by the practitioners in the interviews. This approach was also supported by using the participants' original wording from the interviews. In addition, examples from the interviews were given for each item to increase the validity of the measurement. The items constructed in this way were rated on a 7-point rating scale (1 = never, 7 = always) with regard to the "frequency" with which they are used in sentencing. The term frequency was chosen to avoid an evaluation of the items according to their theoretical relevance, and thus a reproduction of "textbook knowledge," and instead to assess the practical relevance of the items. Each respondent had to evaluate the item set for each of the following four reaction forms: diversion, fine, prison sentence (ps) and suspended prison sentence (sps). The data were used to generate descriptive statistics in the software program R version 4.4.0.

3.1. Sampling

The subsequent survey was conducted online via *limesurvey*. Judges, public prosecutors and district prosecutors in the judicial district of the Higher Regional Courts of Graz and Vienna were defined as the population. Therefore, the publicly accessible judicial business allocation plan of the courts and public prosecutor's offices on the website of the Ministry of Justice were used for sampling. The link to the questionnaire was sent via personalised emails. All participants received the same invitation directly from the authors; in some courts, department heads merely forwarded this invitation unchanged within their department. Thus, the sampling procedure itself was uniform. The sample size suggests an overall response rate of 20%. In total, a sample of $N = 105$ was achieved, consisting of 55 judges and 50 prosecutors.

3.2. Missing values

The requirement for inclusion in the following analysis was a complete questionnaire, which was understood as one in which no more than four responses per sanction were missing. This was ensured by means of technical settings when processing the questionnaire. The missing values were ignored in the analysis because the MCAR test (missing completely at random) did not yield a significant result, indicating that there was no connection between the missing values and the characteristics of the individuals or the items, so the values were assumed to be missing at random. Furthermore, visual plausibility checks were carried out. Questionnaires that showed a systematic response bias such as extreme responding with a clear repetitive

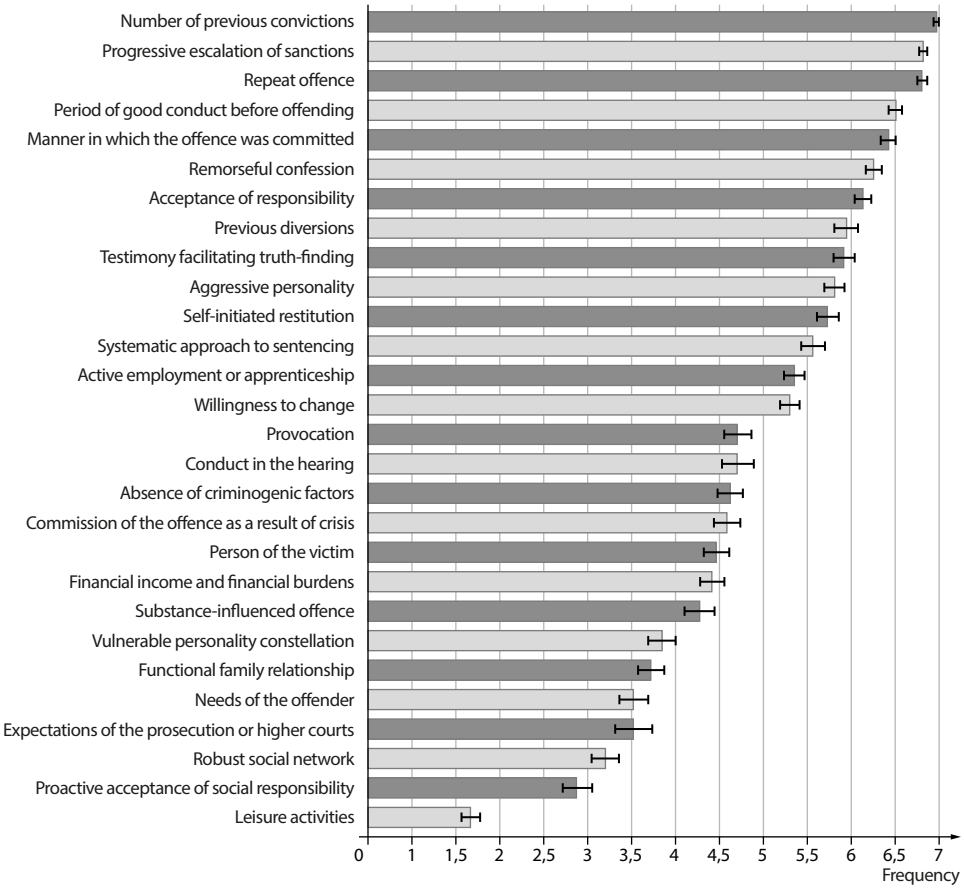
pattern or straight-lining were excluded. The remaining sample size after running the exclusion of biased questionnaires was $N = 99$.

4. Factors of specific deterrence

4.1. Analysis

To investigate the practical relevance of different factors of specific deterrence, both the overall mean value of each item across all sanctions and its standard deviation were calculated. By analysing the mean values and standard deviations of the items, we aimed to gain an overview of the roles of specific factors in sentencing practice.

Figure 1. Mean frequency scores for individual factors as rated by judges and prosecutors (1 = never, 7 = always)



Source: Authors' own elaboration.

4.2. Results

The first analysis showed interesting differences in the practical relevance of different factors of specific deterrent sentencing to everyday court life. The first item complex that proved to be particularly relevant was previous convictions (M = 6.25). The consideration of "number of previous convictions," "repeat offence" and "period of good conduct before offending" showed the most frequent use in sentencing practice across all reaction forms. This reflects the importance given to it in the interviews. The "manner in which an offence was committed" was also rated as very relevant in sentencing practice. Two sets of items that also turned out to be practically important for sentencing were the post-crime behaviour, which includes "remorseful confession," "testimony facilitating truth-finding" and "self-initiated restitution," which had an overall mean value of M = 5.96, and incident management, which includes "acceptance of responsibility" for one's actions, the "willingness to change" and an "absence of criminogenic factors," which showed an overall mean value of M = 5.37. Regarding the personality of the offender (M = 4.46), an "aggressive personality" was rated as the most relevant factor in sentencing, followed by their "conduct in the hearing," whereas the "offenders' needs" were rated as the least important aspect. Aspects of systemic sentencing were rated very heterogeneously. "Expectations of the prosecutor or higher courts" showed only modest importance, whereas the "progressive escalation of sanctions" was perceived as very practically relevant. The item set of social integration was rated as the least relevant (M = 3.52), covering a "functional family relationship" and "robust social network". However, "active employment or apprenticeship" showed a relatively high relevance.

Table 1. Mean and standard deviation for each factor

Variable Name	M	SD
Willingness to change	5.31	1.07
Absence of criminogenic factors	4.66	1.37
Functional family relationship	3.80	1.42
Proactive acceptance of social responsibility	2.99	1.63
Income and financial burdens	4.47	1.28
Commission of the offence as a result of crisis	4.63	1.42
Provocation	4.75	1.50
Remorseful confession	6.23	0.90
Testimony facilitating truth-finding	5.91	1.16
Manner in which the offence was committed	6.39	0.83

Variable Name	M	SD
Previous diversions	5.93	1.28
Self-initiated restitution	5.73	1.21
Attributes of the victim	4.51	1.39
Conduct in the hearing	4.75	1.71
Aggressive personality	5.80	1.12
Acceptance of responsibility	6.12	0.93
Vulnerable personality constellation	3.92	1.51
Needs of the offender	3.61	1.56
Active employment or apprenticeship	5.37	1.13
Robust social network	3.29	1.47
Leisure activities	1.82	1.01
Progressive escalation of sanctions	6.78	0.45
Expectations of the prosecution or higher courts	3.61	1.99
Systematic approach to sentencing	5.57	1.30
Substance-influenced offence	4.33	1.63
Period of good conduct before offending	6.47	0.71
Number of previous convictions	6.92	0.25
Repeat offence	6.77	0.54

Source: Authors' own elaboration.

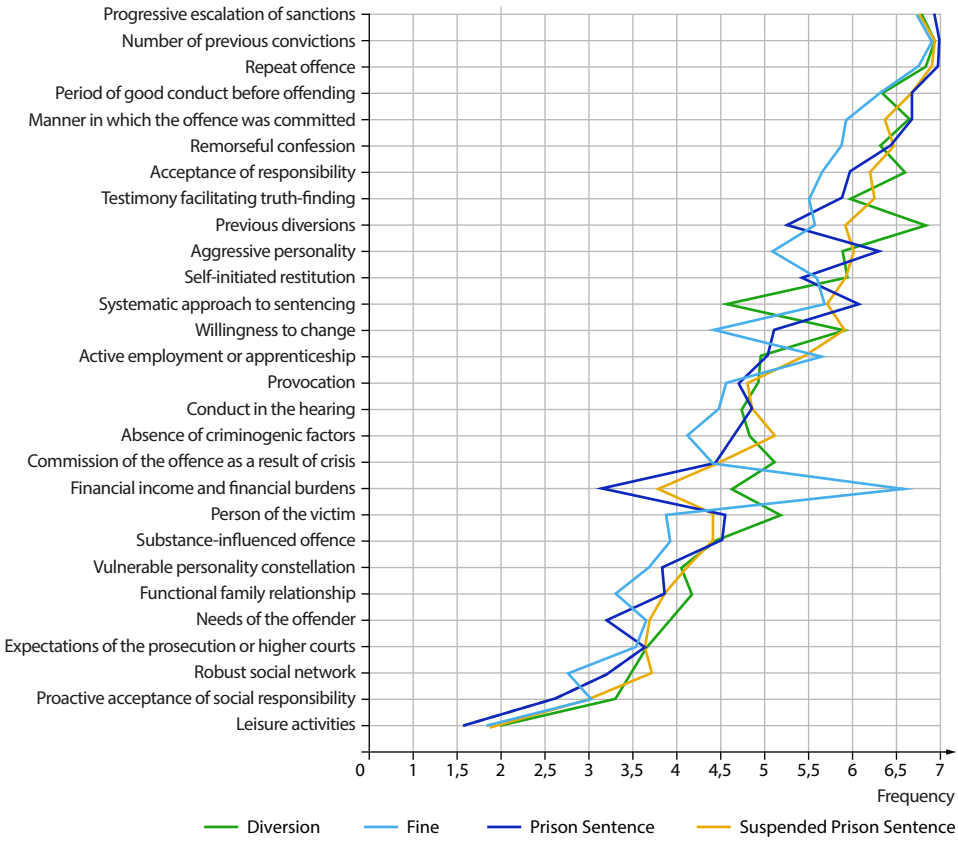
5. Different forms of punishment, reactive measures and specific deterrence

5.1. Analysis

To investigate the dependence of the relevance of different factors of specific deterrence on the respective forms of punishment or other reactive measures, mean comparisons across the four forms per item were performed using analysis of variance (ANOVA). Figure 2 shows the mean values of the items for each type in the

form of a colour-coded line plot. This figure was used to illustrate potentially relevant differences, which were subsequently tested for significance using ANOVA and post hoc comparisons (reported differences are significant at $p < .05$, corrected for multiple comparisons). Where the assumption of sphericity was violated, Greenhouse–Geisser-corrected degrees of freedom were reported (Geisser, Greenhouse 1958: 885), in addition to adjusted test statistics and effect sizes. The normality of residuals was inspected visually, which revealed deviations for some item complexes (e.g. willingness to change, systematic approach to sentencing and aggressive personality). Simulation studies, however, have shown that ANOVA can be considered robust under mild to moderate violations of both sphericity and normality, given our sample size (Blanca et al. 2024: 476). We therefore continued with the analysis as planned and advise the reader to keep these limitations in mind when interpreting the results. The items to be analysed (see Figure 2) were "acceptance of responsibility," "previous diversions," "aggressive personality," "systematic approach to sentencing," "willingness to change," "attributes of the victim," "income and financial burdens," "functional family relationships" and "absence of criminogenic factors."

Figure 2. Frequency of each factor by sanction



Source: Authors own elaboration.

5.2. Results

The greatest difference in relevance between the different sanctions, as shown in Table 2, was the offender's financial situation, which includes both income and liabilities. While the "income and financial burdens" played a subordinate role for prison sentences, it was more relevant to diversions and played a dominant role for fines. The item "previous diversions" showed a further difference in mean value depending on the type of sanction, with the highest mean value for diversions, which differed significantly from the mean values of other reactions. Another factor that stood out and seemed less important for diversions compared to other forms of sanction was a "systematic approach to sentencing." The "attributes of the victim" also played different roles depending on the type of sanction, being more important in diversions than in others. Significant differences in the mean can also be observed for "aggressive personality," indicating that this factor plays a greater role in the imposition of prison sentences and diversions compared to fines. Furthermore, "acceptance of responsibility" for one's actions was more relevant to diversions in practice compared to fines and prison sentences. The same can be observed for "functional family relationships," although the difference in mean values here was only statistically significant in relation to fines. The item "willingness to change" drew a more diverse picture: on the one hand, this seemed to be particularly relevant for diversions, as this difference was clearly significant for both fines and prison sentences; however, it was also significantly more relevant for suspended prison sentences than prison sentences. Similarly, an "absence of criminogenic factors" also appears to be more relevant to suspended prison sentences and diversions than for fines.

Table 2. Differences in factor frequency by sanction

Item	F	p	η^2	Differences in sanctions
Income and financial burdens	F(2.41, 224.37) = 72.79	< .001	.44	M_{ps} = 3.13^{d}, M_{sps}=3.21^{c}, $M_{diversion}$ = 4.62^{b}, M_{fine} = 6.60^{a}
Previous diversions	F(2.55, 234.53) = 19.55	< .001	.18	$M_{diversion}$ = 6.84^{a}, M_{fine} =5.59^{b}, M_{sps} = 5.93^{b}, M_{ps} =5.24^{b}
Systematic approach to sentencing	F(2.11, 173.28) = 23.10	< .001	.22	$M_{diversion}$ = 4.55^{c}, M_{fine} = 5.68^{ab}, M_{sps} = 5.71^{b}, M_{ps} = 6.08^{a}
Attributes of the victim	F(2.60, 247.13) = 16.73	< .001	.15	$M_{diversion}$ = 5.20^{a}, M_{fine} =3.89^{c}, M_{sps} = 4.43^{b}, M_{ps} =4.57^{b}
Aggressive personality	F(2.38, 219.06) = 17.29	< .001	.16	$M_{diversion}$ = 5.89^{b}, M_{fine} = 5.10^{c}, M_{sps} = 6.03^{b}, M_{ps} =6.32^{a}

Item	F	p	η^2	Differences in sanctions
Acceptance of responsibility	F(2.67, 245.69) = 21.27	< .001	.19	$M_{diversion} = 6.61^a$, $M_{fine} = 5.66^b$, $M_{sps} = 6.20^a$, $M_{ps} = 5.83^c$
Functional family relationships	F(3,291) = 6.33	< .001	.06	$M_{diversion} = 4.17^a$, $M_{fine} = 3.30^b$, $M_{sps} = 3.84^a$, $M_{ps} = 3.85^{ab}$
Willingness to change	F(2.67, 245.69) = 21.27	< .001	.19	$M_{diversion} = 5.95^a$, $M_{fine} = 4.40^c$, $M_{sps} = 5.92^a$, $M_{ps} = 5.10^b$
Absence of criminogenic factors	F(2.76, 265.20) = 9.59	< .001	.09	$M_{diversion} = 4.82^{ab}$, $M_{fine} = 4.12^c$, $M_{sps} = 5.12^a$, $M_{ps} = 4.63^{bc}$

Source: Authors' own elaboration.

Note: Degrees of freedom are corrected for violation of the sphericity assumption. η^2 of <.01, <.06 and <.14 can be interpreted as small, medium and large effects, respectively. Letters indicate grouping for significant differences and rank order of values (a = highest mean, d = lowest mean). If two means share the same value, the post hoc tests were unable to show a statistically significant difference in the p-values corrected according to Holm (1979).

6. Analysis by profession: Judges versus prosecutors

6.1. Analysis

For a comparison of the practical relevance of specific deterrence in the practice of judges versus public prosecutors or district attorneys, the same item sets mentioned above were examined for differences between groups (e.g. combining all item values relating to previous convictions into an averaged "previous conviction value"). Where the skewness and kurtosis indicated a highly skewed, non-normal distribution within one item complex, an MWU test was conducted. Otherwise, a *t*-test was used to compare the group values.

6.2. Results

This exploratory comparison did not yield significant results for any of the item groups. Although a conservative approach was adopted and the methods have relatively low statistical "power" given the sample size, this does not automatically mean that relevant differences would emerge with a larger sample. The sample, though small, is representative and the observed differences between the professions are only modest and can be supported theoretically. Nevertheless, the overall

picture shows that judges rated all but one item set higher than the prosecution ("manner in which the crime was committed"). Although it was not statistically significant, our data indicate possible discrepancies between judges and prosecutors in the practical relevance of "provocation and crisis," "the attributes of the victim," "the person of the offender" and "income and financial burdens."

7. Discussion

7.1. Discussion of relevant factors

A comparison of the material from the interviews and questionnaires reveals a discrepancy between the aspects that are theoretically part of the concept of specific deterrence and those factors that are actually used in everyday Austrian sentencing practice. This can be observed in the variety of variables mentioned in the interviews that concern the individual circumstances of the offender, including personality, behaviour, needs, life planning, self-esteem and language skills, which made up the majority of the content of the interviews while being underrepresented in practice according to the questionnaire responses. This is also particularly evident in the case of social integration, which emerged as the third most frequent category in the interviews, yet whose individual aspects are clearly the least frequently addressed in practice according to the questionnaire.

It is irritating that in practice, no greater attention is paid to prevention-relevant factors such as a "robust social network," an "absence of criminogenic factors," "functional family relationships," "active employment or apprenticeship" or the "needs of the offender" – especially since forensic criminological research on the relevance of risks and needs in an individual case shows that (re-)offenders and non-offenders differ precisely in their "social relations," referring to the offender's behaviour towards all life domains, e.g. relationship to the family of origin or self-chosen contacts, leisure behaviour and performance behaviour (education and occupation) (Göppinger 1983; Jehle 1992; Bock 1995: 1–28; Göppinger 2008; Bock 2019). Instead, the quantitative analysis of results is dominated by those items that deal with past (criminal) behaviour: "number of previous convictions," "repeat offence," "period of good conduct before offending" and "previous diversions". The "number of previous convictions" in particular plays a dominant role in every type of reaction form.

This focus is not surprising, as its particular significance in the Austrian practice has been repeatedly highlighted in the literature (Laubenthal, Baier, Nestler 2010; Grafl, Haider 2018; Riffel 2023b: 36). However, in view of the relevant Austrian law, it is surprising and requires further reflection. Although previous convictions are included in the demonstrative list of aggravating circumstanc-

es in the Austrian Criminal Code (StGB 2025: § 33), the law does not provide for a particular emphasis on this factor, but mentions several other aggravating factors and allows for the application of case-specific (not explicitly mentioned) aggravating factors. In light of individual considerations of criminogenic factors, previous convictions do not necessarily lead to the exclusion of an orderly way of life as a mitigating factor under Austrian criminal law (Riffel 2023b: 6). Furthermore, the assessment of the same malicious propensity of previous convictions should not simply be based on the fact that the offender has prior convictions in the same legal category of offences, but should consider whether or not similar behaviour from a criminological (!) point of view can be observed (Riffel 2023b: 6; Kaiser, Leibetseder 2024: 129). Only the aggravation of punishment for recidivism (StGB 2025: § 39) and the mandatory extension of the sentencing range according to the Protection against Violence Act 2019 (Gewaltschutzgesetz 2019) could necessitate such a focus on previous convictions under Austrian criminal law, provided the requirements are met in the individual case (Flora 2021: 35; Higher Regional Court Linz 2019; Public Prosecutor General's Office Innsbruck 2019; Beclin 2019: 2f). However, despite this mandatory extension of the sentencing range, the guiding principle of Austrian criminal law on the necessity of assessing aggravating and mitigating factors while giving due consideration to the implications of punishment and other anticipated consequences of an offence on the future life of the perpetrator in society (StGB 2025: § 32) continues to be the "common thread" of sentencing. Thus, the consideration and weighing of differentiating factors is indispensable irrespective of the application of aggravating provisions and cannot be substituted by mere consideration of previous convictions (Flora 2021: 35; Kaiser, Leibetseder 2024: 129). Moreover, prevention-orientated sentencing cannot simply consist of weighing mitigating and aggravating factors against each other.

The concept of specific deterrence and the individual appropriateness of an intervention require a more differentiated approach. The overall analysis of the factors of specific deterrence shows that while Austrian criminal law does not prioritise either culpability-related (and thus primarily retrospective) or prevention-related (and thus primarily future-orientated) factors (Zipf 1979: 197), judges appear to focus predominantly on past circumstances when determining a sentence. This raises the question of the extent to which the current sentencing practice upholds the principles of individuality, as it takes factors into account without sufficiently considering the individual context, topicality (as it is not sensitive to changes) or completeness (as the consideration is limited to a few factors) (Kaiser, Leibetseder 2024: 130). The question now arises as to whether these theoretical requirements are at least fulfilled when imposing selected forms of sanction, as they may follow a more differentiated approach.

7.2. Discussion of differences in forms of sanctions

One of the first things to notice is the overarching dominance of the offender's financial situation when imposing a fine. On the one hand, it is evident that this is based on theory, as according to Austrian criminal law (StGB 2025: § 19) the financial situation must be considered when deciding on the amount of the fine. On the other hand, the financial situation also appears relevant to the choice of form of sanction, supposedly in order to be able to estimate the success of the sanction. Given that the potential cases eligible for fines involve less serious offences, where the court has greater discretion in choosing the sanctions, this would depict situations in which an individually shaped intervention according to risks and needs could pay off preventively. However, the offenders' "social relations" are often overlooked due to the focus on their financial situation. Therefore, whereas diversions focus on the offender's social relationships, particularly in terms of their future life in society, these aspects appear to be underrepresented in case of fines. This is surprising when considering that these two reactions often apply to similar cases (low criminogenic risk, no prior [serious] convictions, etc.). When looking at prison sentences, "previous convictions" and a "systematic approach to sentencing" play a dominant role. Multiple convictions applied in a systematic approach seem to depict prison sentences as a logical response. Also, an "aggressive personality" seems to be important when considering a prison sentence. This suggests that in the case of an "aggressive personality" or a high number of "previous convictions", there appears to be no area of application left for alternative interventions based on the individual needs of the offender. In both forms of reaction, there is no observable balanced assessment of all aspects relevant to specific deterrence – only an assessment of a few dominant factors related to the offender's (criminal) past. The differentiated image of defendants tends to play a subordinate role. In the case of diversions, on the other hand, it is noticeable that preventive and personal factors are of greater relevance. In particular, the greater importance of "accepting responsibility," a "willingness to change" and the "commission of the offence as a result of crisis" are consistent with the nature of diversionary proceedings. One can speak of a theory-driven effect in the "assumption of responsibility", insofar as this proves to be particularly relevant in the subsequent articles in Austrian criminal law – for example, those connected with community service (StPO 2025: § 201(2)) or compensation for an offence (StPO 2025: § 204(1)). The more frequent use of information about the "attributes of the victim" (see above all victim–offender mediation, StPO 2025: § 204) and the "manner in which the offence was committed" (StPO 2025: § 198) results conclusively from the legal requirements. The special significance of "previous diversions," however, does not result from legal requirements, as the law does not stipulate a "maximum" number of possible "previous diversions." However, it appears that this particular significance of prior sanctions has become firmly established in practice. Similar to diversions, the offender's personality and prevention-related factors also play a greater role

when deciding on suspended prison sentences. Accordingly, the "willingness to change," an "absence of criminogenic factors" and a "robust social network" are of greater importance in practice, but still not as important as "previous convictions." Particularly in the case of this sanction, however, greater consideration of circumstances relevant to prevention would be legally required and criminologically desirable, as Austrian law requires, when imposing a suspended prison sentence, "particular consideration […] to the nature of the offence, the person of the offender, the degree of the person's culpability, his previous life and the behaviour after the offence" (StGB 2025: § 43(1) as translated by Schloenhardt, Höpfel 2021: 51), and therefore portrays a much broader and more balanced basis for assessment than seems to be the common practice.

All in all, the analysis of the different relevance of specific factors between different reaction form show alignment with the relevant law. Those sanctions which explicitly require consideration of specific deterrent aspects, according to the law (StGB 2025: § 43(1); StPO 2025: § 198), show more diverse and balanced considerations, while factors decisive for specific deterrence play a significantly subordinate role in considerations in connection with fines or prison sentences. This is surprising insofar as all sanctions, whether implicitly or explicitly, have specific deterrence as one of the underlying purposes of punishment, so that no explicit reference to their inclusion would be necessary to ensure uniform consideration. These findings apply to both judges and public prosecutors, as the analysis showed no statistically significant differences in decision-making behaviour, which – as indicated above – is likely due to the uniform training and uniform law.

Conclusions

These results indicate two aspects that need to be further addressed when thinking about appropriate and criminologically reasonable sentencing practice that is in accordance with the law. Firstly, they indicate that specific deterrence as a theoretical principle lacks practical implementation strategies that could lead to a uniform alignment of sentencing decisions according to it. Our study does not indicate that specific deterrence is already established as a guiding principle in sentencing, and its application appears to be dependent on the specific wording of the relevant norm. Potential approaches to solutions could therefore be seen in the law itself, so that specific deterrence as a guiding principle is not only implied through § 32 StGB, but also explicitly stipulated in the respective paragraphs on the relevant sanctions and their specific provisions. Secondly, taking into account the various factors that proved to be practically relevant in specific deterrent sentencing according to the interviews, the question must be asked to what extent jurisdiction itself can actually elaborate on these factors in legal proceedings. In contrast to the domain

of "previous convictions," where the type of sanctions, a "period of good conduct before offending" and a "repeat offence" can all be definitively determined from the case file – and the offender's official criminal record in particular – a more differentiated view on the offender requires more time and financial resources, as well as eclectic professional knowledge. Furthermore, aspects regarding the future life of the offender can never be determined with any degree of accuracy, but can only offer a prognostic assumption. The resulting susceptibility to errors must be taken into account and dealt with instead of continuing to assume that a complete clarification of the future is possible if one sticks to the hard facts. Furthermore, it must also be questioned whether jurisprudence alone is at all capable of assessing such a systemic aspect as a person's future behaviour in accordance with the requirements. Does sentencing require stronger interdisciplinary working practice? What does a sentencing approach which actually implements the purpose of the punishment instead of just implying it even look like? After all, this discrepancy between the requirements and practical implementation in everyday sentencing may ultimately lead to the thoroughly unsatisfactory sentencing practice portrayed above.

Declaration of Conflict Interests

The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The authors received funding from the Province of Styria, UFO-Call 2022, Project Number 13.

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