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## Toughening of criminal law and its influence on sentencing

### Zaostrzenie prawa karnego i jego wpływ na wymiar kar

**Abstract:** The development of criminal law in German-speaking countries has been characterised by a tendency towards strictness and criminalisation in recent years. In light of this, the question arises as to how this toughening of the law affects actual judicial sentencing practice. This article aims to summarise these developments in the toughening of criminal law, using Austria as an example. It also examines whether corresponding tendencies can be found in Austrian judicial sentencing practice, and whether the legislative toughening of Austrian criminal law can be regarded as a decisive factor in any harshening of Austria's judicial sentencing practice.

**Keywords:** sentencing, criminalization, tightening of criminal law, criminal law developments, sentencing practice, Austrian criminal law

**Abstrakt:** Rozwój prawa karnego w krajach niemieckojęzycznych charakteryzował się w ostatnich latach tendencją do surowości i kryminalizacji. W związku z tym pojawia się pytanie, jak to zaostrzenie prawa wpłynęło na rzeczywistą praktykę wymiaru kar. Niniejszy artykuł ma na celu podsumowanie zmian w zaostrzeniu prawa karnego na przykładzie Austrii. Analizuje również, czy w austriackiej praktyce sądowego wymiaru kar można dostrzec podobne tendencje oraz czy zaostrzenie przepisów w austriackim prawie karnym może być uznane za decydujący czynnik w ewentualnym zaostrzeniu praktyki wymiaru kar w Austrii.

**Słowa kluczowe:** wymierzanie kar, kryminalizacja, zaostrzenie prawa karnego, rozwój prawa karnego, praktyka wymiaru kar, austriackie prawo karne

## Introduction

Scientific findings and surveys repeatedly show that feelings of insecurity are widespread in society. In addition, an increase in punitive attitudes is also repeatedly described. At least in German-speaking countries, these developments are also accompanied by a clear tendency towards criminalisation in criminal legislation: new criminal offences and, above all, higher penalties for existing offences are regularly the political means of choice when it comes to reacting to sensational criminal cases or growing social problems.

The (majority of) criminological research, however, indicates that such legislative measures do not have the desired deterrent or preventive effect. In judicial practice, too, there are examples of a reluctance to constantly increase penalties in the law and to toughen criminal law in other ways. This raises the question of whether and to what extent these legislative acts are also reflected in judicial and sanctioning practice. Taking Austria as an example, this paper looks at these developments and, with reference to crime statistics and scientific studies, explores whether the impact of higher penalties can also be seen in corresponding convictions and judicial sentencing practice. The major Austrian criminal-law reform from 2015 will serve as the primary illustrative example; among other things, this also brought about comprehensive legal changes for penalties, which can now be examined for their effects since coming into force. But there has also been a broad variety of other (toughening) amendments to Austrian criminal law by other legal acts in recent decades. Therefore, the paper investigates such legislative influences on sentencing.

### 1. Toughening of criminal law – recent developments, particularly in Austria

Criminal law can be made stricter in many different ways. When it comes to toughening that may affect sanctioning practice, the form of higher penalties is, of course, particularly interesting. However, a toughening of criminal law can also manifest in a variety of other ways, including criminalisation, i.e. the adoption of new offences making behaviour punishable that was not punishable prior to the amendment. This can involve completely new offences, the expansion of existing criminal offences or the creation of new aggravated penalties associated with aspects of the offence. In addition, the following may be considered further examples for legal amendments that lead to a toughening of criminal law:

- extending the scope of application of a nation's criminal law so that offences committed in foreign countries can be prosecuted to a greater extent
- extending the periods in statutes of limitations for criminal liability (or for enforcing sentences)

- restricting the circumstances that eliminate criminal liability
- increasing the consequences directly associated with sanctions (this area can be understood quite broadly, to include:
  - extending redemption periods
  - extending the appearance of criminal convictions in official registers
  - inhibiting the payment of fines in instalments
  - reducing the possibilities to influence the date that one's prison sentence commences [for reasons worthy of consideration]
  - worsening the conditions of imprisonment or [further] restricting the rights and freedoms of prisoners)
- creating or extending other legal “consequences” of a conviction in addition to the sentence (e.g. occupational bans, loss of voting rights, court directives to avoid specified individuals or places or to abstain from consuming alcoholic beverages)
- reducing the scope of application of alternative forms of sanctions or alternatives to (court-imposed) fines or imprisonment.

If one takes a closer look at the legal developments in the German-speaking criminal-law systems, many examples of such toughening of criminal law can be found. A current example concerning Germany is the recent Coalition Agreement for Germany's 21<sup>st</sup> legislative period, the majority of which provides for planned changes to criminal law (and criminal procedure law), such as creating new offences, increasing the penalties and expanding investigative competences (CDU, CSU, SPD 2025: 88–92). The scholarly literature repeatedly points out that the development of criminal law in these countries (Germany, Austria and Switzerland) is characterised by a tendency towards criminalisation rather than decriminalisation and towards aggravation rather than mitigation (Singelstein, Kunz 2021: 305–306; regarding similar criminalisation tendencies in other countries see e.g. Lacey, Zedner 2023 [concerning Great Britain]).

Herein, however, the example of Austria is used to illustrate in more detail how legal amendments have toughened Austria's criminal law in recent years. In doing so, only selected examples of legal amendments are discussed, with a particular emphasis on those that appear to be particularly typical of current developments, especially significant (in practice) or otherwise exceptionally important or illustrative. These are intended to highlight the many facets of criminal-law toughening that far exceed mere increases in penalties. To complete the picture, however, a brief digression will also refer to some examples of decriminalisation and other mitigations of Austrian criminal law during this period that can be found. The analysis focusses on the major criminal-law reform adopted in 2015 (*Strafrechtsänderungsgesetz 2015*), which stands out due to its wide scope.

It should also be noted at the outset that only changes in substantive criminal law are considered here, not criminal procedural law. Amendments to the Austrian Criminal Code (*Strafgesetzbuch* [StGB]) are therefore of particular interest.

## 1.1. Toughening from the major Austrian criminal law reform of 2015 (*Strafrechtsänderungsgesetz 2015*)

The *Strafrechtsänderungsgesetz 2015* [Criminal Law Amendment Act 2015] (Austrian Federal Law Gazette I 2015/112<sup>1</sup>) is the most extensive reform of Austrian criminal law in recent history. Among other changes, it entailed a fundamental revision and harmonisation of penalties used in the StGB and criminalised some conduct that had not been subject to criminal liability at all or not to the same extent. Due to the large scope of this reform, the amendments made by the *Strafrechtsänderungsgesetz 2015* have been extensively discussed in the scholarly literature (e.g. Tipold 2017; Grafl, Haider 2018: 6–9).

### 1.1.1. Penalties raised by the *Strafrechtsänderungsgesetz 2015*

Firstly, the “paradigm example” of toughening criminal law is discussed: raising penalties. Overall, the *Strafrechtsänderungsgesetz 2015* led to harmonised monetary and custodial penalties in the StGB. In particular, it established a uniform ratio between the maximum imprisonment and the maximum fines across all offences in the Austrian Criminal Code. Prior to the *Strafrechtsänderungsgesetz 2015*, the maximum amount of day-fines (*Tagessätze*)<sup>2</sup> for fines within the StGB was 360. For some offences,<sup>3</sup> this maximum fine of 360 day-fines was used as an alternative to imprisonment for up to 6 months, but it was also used as an alternative to imprisonment for up to 1 year for other offences<sup>4</sup> within the StGB (see also Bundesministerium für Justiz 2015: 10).

The *Strafrechtsänderungsgesetz 2015* removed this inequality, but did so by doubling the maximum for day-fines – and therefore significantly toughened the criminal laws in Austria. The new maximum of 720 day-fines became the standard alternative to those offences within the StGB that are punishable by imprisonment for up to 1 year. Accordingly, the alternative fines were standardised to a maximum of 360 day-fines for penalties of up to 6 months’ imprisonment, a maximum of 180 for up to 3 months’ imprisonment and a maximum of 60 for up to 1 month’s imprisonment (see also Bundesministerium für Justiz 2015: 10–11).

Apart from these increases in fines, there were also further offence-specific increases in penalties, particularly for offences against limb and life (*Delikte*

<sup>1</sup> Austrian laws are published in the *Bundesgesetzblatt* (Austrian “Federal Law Gazette”) and are accessible online for free: <https://www.ris.bka.gv.at/Bgbl-Auth/>.

<sup>2</sup> In order to avoid unequal treatment depending on the financial situation of those convicted, maximum fines in Austria are not specified as a specific amount of money, but as an upper limit for day-fines (penalty units). The value of one daily rate is determined individually for each convicted person (in the range from 4 EUR to 5,000 EUR) according to their personal circumstances and financial capacity. The specific fine is therefore obtained by multiplying the number of day-fines by the individual daily rate for the convicted person concerned.

<sup>3</sup> E.g. for Theft pursuant to § 127 StGB prior to the *Strafrechtsänderungsgesetz 2015*.

<sup>4</sup> E.g. for Assault pursuant to § 83(1) StGB prior to the *Strafrechtsänderungsgesetz 2015*.

gegen Leib und Leben). For example, the threat of imprisonment for Serious Assault with Direct Intent (*Absichtliche schwere Körperverletzung*, § 87(1) StGB) was increased from 1–5 years to 1–10 years, and in more severe cases (§ 87(2) StGB) from 5–10 years to 5–15 years.

Furthermore, the *Strafrechtsänderungsgesetz 2015* brought about some additional increases in penalties or sentencing (or similar topics). For instance, new special aggravating factors were introduced in § 33 StGB (due to international obligations<sup>5</sup>) concerning certain intentionally committed offences against limb and life as well as offences against sexual integrity and self-determination, with a special regard to minor victims as well as offences committed in the context of domestic violence or within the family environment. In addition, the possibility of settling criminal proceedings by means of a Withdrawal of the Prosecution (*Diversion*)<sup>6</sup> was restricted for offences against sexual integrity and self-determination by the *Strafrechtsänderungsgesetz 2015* (§ 198(3) *Strafprozessordnung* [Austrian Code of Criminal Procedure]).

### 1.1.2. Further criminal law toughening by the *Strafrechtsänderungsgesetz 2015*

Besides these aspects concerning penalties, the *Strafrechtsänderungsgesetz 2015* led to a further toughening of Austrian criminal law through the adoption of new offences. Amongst others, the offences of Forced Marriage (*Zwangsheirat*, § 106a StGB), Persistent Harassment Involving Telecommunication or Computer Systems (*Fortgesetzte Belästigung im Wege einer Telekommunikation oder eines Computersystems*), Violation of the Right to Sexual Self-determination (*Verletzung der sexuellen Selbstbestimmung*, § 205a StGB), Unlawful Collusion amongst Bidders in Bidding Processes of Attachment Proceedings (*Unzulässige Bieterabsprachen in exekutiven Versteigerungsverfahren*, § 292c StGB) and the Crime of Aggression (*Verbrechen der Aggression*, § 321k StGB) were added to the Austrian Criminal Code (Bundesministerium für Justiz 2015; see also Tipold 2017: 39; Grafl, Haider 2018: 6–8).

Furthermore, various existing offences were revised, whereby the scope of criminal liability was often extended or new aggravating circumstances were added.<sup>7</sup> This applies to a broad variety of offences against life and limb, especially for intentionally and negligent assaults and (grossly) negligent killings (§§ 80,

<sup>5</sup> Certain changes reflect requirements stipulated by the Council of Europe Convention on preventing and combating violence against women and domestic violence (“Istanbul Convention”; CETS No. 210).

<sup>6</sup> The possibility of settling criminal proceedings by means of a so-called Withdrawal of the Prosecution (*Diversion*) as defined in §§ 198–209 *Strafprozessordnung* [Austrian Code of Criminal Procedure] provides for a conclusion of those proceedings without a formal conviction. Conditions can be imposed (and usually are), such as the payment of a sum of money, engagement in unpaid community service, probation or victim–offender mediation.

<sup>7</sup> However, there have also been some mitigating amendments by the *Strafrechtsänderungsgesetz 2015* (for more details, see section 1.3).

81 and 83–88 StGB). Since the *Strafrechtsänderungsgesetz 2015* came into force in 2016, a distinction has been made between all intentional assaults whether the (particularly severe) injuries were caused with the intent to injure the victim or “just” with the intent to do bodily harm to the victim. Dependent on this intent, different penalties apply.

The scope of criminal liability has also been extended regarding some existing offences, e.g. Unlawful Use of a Computer System (*Widerrechtlicher Zugriff auf ein Computersystem*, § 118a StGB), Damaging Electronic Data (*Datenbeschädigung*, § 126a StGB) or Disrupting the Operation of a Computer System (*Störung der Funktionsfähigkeit eines Computersystems*, § 126b StGB). Additionally, the new aggravating circumstances concerning essential elements of stolen critical infrastructure can serve as another example of the *Strafrechtsänderungsgesetz 2015* toughening Austrian criminal law: pursuant to § 128(1) No. 4 StGB, the theft of such essential elements of critical infrastructure constitutes the Aggravated Offence of Stealing, which entails a sextupled penalty compared to the non-aggravated offence of Stealing (see also Bundesministerium für Justiz 2015: 16, 21 and 23).

The *Strafrechtsänderungsgesetz 2015* also brought about some extensions of the scope of application of Austria’s criminal law – providing for new possibilities (see § 64 StGB) to prosecute particular offences when committed in foreign countries, irrespective of the laws of the jurisdiction where those offences occurred (Bundesministerium für Justiz 2015: 12–13).

## 1.2. Toughening by other legal amendments to Austrian criminal law

During the past two or three decades, Austrian criminal law has been subject to various more or less extensive legal amendments. In fact, in the second half of its existence, the Austrian Criminal Code was amended more than three times as often as in the first: since the turn of the millennium, there have been well over 50 amendments to the StGB. A comprehensive description of these legal amendments (or even just the aggravating changes) is beyond the scope of this article. However, to illustrate the breadth of these amendments, a few particularly typical, interesting or otherwise notable aggravations from the past 10 to 15 years are highlighted as examples (due to their special significance in practice or because they seem exceptionally illustrative for current legal developments). In doing so, it must be accepted that this selection of particular examples of Austria’s criminal law toughening could give a somewhat distorted picture of the extent of the issue. For this reason and to complete the picture, some examples of legislative changes in Austrian criminal law that have led to mitigation are discussed in section 1.3.

### 1.2.1. Additional examples for higher penalties (and related amendments)

Penalties have also been regularly toughened beyond the *Strafrechtsänderungsgesetz 2015*. This applies particularly to offences against sexual integrity and self-determination, where there have been particularly frequent (and sometimes repeated) increases in the penalties – for instance by the Second Protection against Violence Act (2. *Gewaltschutzgesetz*) or the Sexual Offences Amendment Act 2013 (*Sexualstrafrechtsänderungsgesetz 2013*). Those changes involve the introducing or increasing of minimum penalties as well as increasing the maximum penalties. In some cases, the penalty for the very same offence has even been increased several times over the years (see e.g. Grafl, Haider 2018: 11–14). The penalty for Rape (*Vergewaltigung*) pursuant to § 201(1) StGB (Rape without Further Aggravating Circumstances), for example, was increased from 1–10 years' imprisonment (from the previous 6 months to 10 years) to 2–10 years' imprisonment by the Protection against Violence Act 2019 (*Gewaltschutzgesetz 2019*). In the case of the Sexual Abuse of a Vulnerable or Mentally Impaired Person (*Sexueller Missbrauch einer wehrlosen oder psychisch beeinträchtigten Person*, § 205 StGB), the penalties have even been increased several times in recent years (in addition to extending the offence itself). First, a penalty of up to 5 years' imprisonment was applied for the offence, pursuant to § 205(1) StGB (the above-mentioned Sexual Abuse without Further Aggravating Circumstances). With the Second Protection against Violence Act (2. *Gewaltschutzgesetz*), a minimum penalty of 6 months' imprisonment was adopted. Later, the lower and upper limits of this penalty were further increased by the Sexual Offences Amendment Act 2013 (*Sexualstrafrechtsänderungsgesetz 2013*), creating the current penalty of 1–10 years' imprisonment.

The same applies to the aggravating circumstances as defined in § 205(3) StGB, which provide for a more severe penalty in certain cases: if the offence resulted in a serious assault or pregnancy of the victim, a penalty of 1–5 years' imprisonment used to apply; if it resulted in the death of the abused person, the penalty was 5–15 years' imprisonment. The Second Protection against Violence Act (2. *Gewaltschutzgesetz*) substantially increased these penalties: if the abuse pursuant to § 205 StGB resulted in a serious assault or pregnancy of the victim, a penalty of 5–15 years' imprisonment currently applies, as the lower and upper limits of the penalty have both been increased. For such offences resulting in the death of the victim, the same is true: currently, the highest penalty within the Austrian Criminal Code also applies in cases of the Sexual Abuse of a Vulnerable or Mentally Impaired Person that resulted in the person's death: imprisonment for 10–20 years or even life imprisonment.

Regarding other increases in sanctions and tougher sentencing provisions, the option to suspend fines imposed by Austrian courts in full, for example, was abolished by Budget Accompanying Act 2011 (*Budgetbegleitgesetz 2011*). Furthermore, an occupational ban concerning occupations involving the education, training or supervising of minors or other close contact with minors was introduced for certa-

in perpetrators by the Second Protection against Violence Act and later extended by the Sexual Offences Amendment Act 2013 (see also Grafl, Haider 2018: 5–6).

### 1.2.2. Additional examples of criminalisation and legislative extension of Austrian criminal law

Recent years have seen the creation of several new offences and the expansion of criminal liability by extending existing offences. For example, the following offences were added to the Austrian Criminal Code: Persistent Stalking (*Beharrliche Verfolgung*, § 107a StGB), Persistent Use of Force (*Fortgesetzte Gewaltausübung*, § 107b StGB), Initiating Sexual Contact with Persons under the Age of 14 (*Anbahnung von Sexualkontakten zu Unmündigen*, § 208a StGB; also known as “grooming”) or Battery of Public Transport Employees Exercising Specific Functions or of Members of the Health or Emergency Services or the Fire Brigade Tasked with Specific Duties (*Tätlicher Angriff auf mit bestimmten Aufgaben betraute Bedienstete einer dem öffentlichen Verkehr dienenden Anstalt oder Angehörige des Gesundheits- oder Rettungswesens oder Organe der Feuerwehr*, § 91a StGB). These extensions of criminal liability and the increased criminalisation have repeatedly been subject to criticism (e.g. Göllly, Lambauer 2024 [concerning § 91a StGB]).

Additionally, a great variety of existing offences was extended in order to make additional conduct punishable under Austrian criminal law. This applies to offences against sexual integrity and self-determination in particular, but is not limited to them. Thus, criminal liability was also extended concerning various offences against limb and life (e.g. §§ 83(3), 85(2a), 87(1a) and 91a StGB) or concerning offences against the property of another or against the integrity of money or non-cash means of payment (e.g. §§ 147(2a), 148a, 241b, 241f and 241h(2) StGB).

Another example of the toughening of Austrian criminal law concerns an important extension of the statute of limitation (Second Protection against Violence Act, pursuant to § 58(3) No. 3 StGB). Currently, the statute of limitation does not apply to the period of time before the victim of an offence against limb and life, or sexual integrity and self-determination reaches the age of 28 if they were a minor when the offence was committed.

### 1.3. Brief digression: Examples of decriminalisation and other mitigations of Austrian criminal law in recent years

Although the degree of mitigation of Austrian criminal law in the recent past has (clearly) lagged behind the extent of toughening, it should be noted that there have nevertheless been many examples of mitigation and decriminalisation in Austrian criminal law. A brief selection of such mitigation is mentioned below. Some of these

examples are related to the previously described fundamental reforms of certain offence groups (e.g. assaults), which had both toughening and mitigating effects.

In fact, especially the *Strafrechtsänderungsgesetz 2015* brought about some mitigation, such as alternatively adding fines for some offences that were previously only punished with prison sentences, a lower penalty for burglaries of premises which are not dwellings and higher value and damage limits above which a higher penalty applies (Bundesministerium für Justiz 2015). Some offences were abolished, such as the offence of Advertising for Fornication with Animals (*Werbung für Unzucht mit Tieren*, ex§ 220a StGB), Spreading False, Disturbing Rumours (*Verbreitung falscher, beunruhigender Gerüchte*, ex§ 276 StGB) or Incitement to Disobey the Law (*Aufforderung zum Ungehorsam gegen Gesetze*, ex§ 281 StGB), thereby bringing about some decriminalisation (Tipold 2017: 39). Extending the more flexible and gentler regulations for juveniles to young adults, which was introduced by the Juvenile Courts Amendment Act 2015 (*Jugendgerichtsgesetz-Änderungsgesetz 2015*), can also be seen as mitigation. A particularly significant example from the more recent past is that the requirements for detention in a Forensic Therapeutic Centre (§ 21 StGB: *Strafrechtliche Unterbringung in einem forensisch-therapeutischen Zentrum*) were increased in 2022, making it harder to place individuals who cannot be punished due to mental incapacity in such centres.

#### 1.4. Preliminary result

Despite the fact that, as described above, Austrian criminal law has also been repeatedly “softened” in recent years, it has become clear from the previous sections that there was a lot of toughening of (substantive) criminal law in Austria, affecting a wide variety of criminal-law provisions. However, this should not suggest that the developments and all these toughening amendments are to be seen critically, rejected or even considered illegitimate from a criminal policy perspective.

Some of the toughening amendments were also the consequence of, for instance, (vehement) criticism, e.g. from criminal law academia, which was ultimately responded to. Overall, however, the constant toughening of Austrian criminal law is often subject to (scientific) criticism. This is particularly true for the frequent increases in maximum penalties which lack (sufficient) criminological evidence of their preventive effectiveness. Furthermore, legal amendments are particularly criticised if they seem to be hasty reactions to a certain crime that receives extensive media attention.

In general, however, it should be emphasised that the trend towards toughening and a more punitive or repressive criminal law in Austria, as described above, can be substantiated by a large number of examples of legislative amendments.

## 2. Toughening in judicial sentencing in Austria?

There are currently no comprehensive empirical studies based on court file evaluations or interviews, for example, on the effects that toughening criminal law has on the sentencing practice of Austrian criminal courts. As such studies cannot be carried out easily, not least due to restricted access and the resources needed for such studies, the only option is often to fall back on other sources of information, such as (publicly) available (official) statistical data. The following therefore examines how criminal law deals with this statutory toughening in practice – where statistical data is available and allows the question to be answered.

### 2.1. Statistical data regarding the Austrian prison system

Initially, a general comparison of the total prison population in Austria over the past few decades could be considered in order to evaluate whether Austrian sentencing practice is becoming harsher or not. However, this statistical parameter in itself appears quite unspecific and subject to too many other (potentially distorting) influences, making it less suitable for a reliable assessment of whether the Austrian criminal courts' sentencing practice reflects the toughening of criminal law. Moreover, the total number of prisoners and the number of prisoners per 100,000 inhabitants in Austria have not shown a continuous upward or downward trend since 1980. It has rather fluctuated, although overall it has tended to increase since the turn of the millennium (Bundesministerium für Justiz 2024: 144–145, 160).

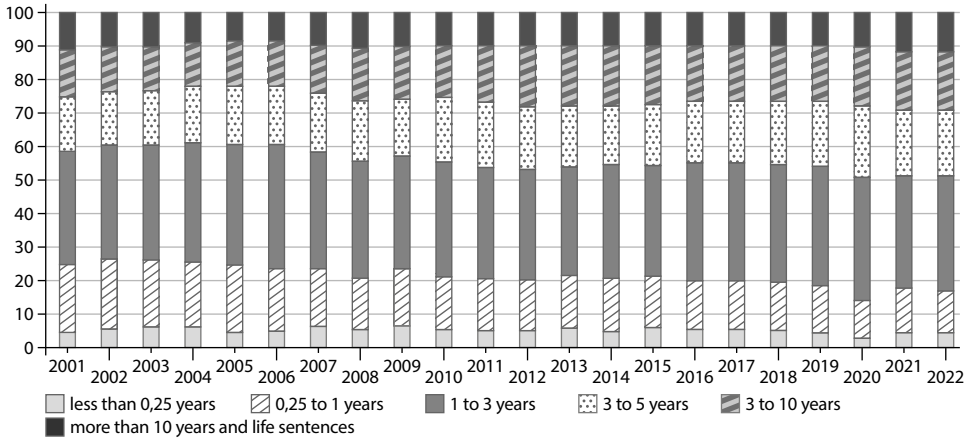
It is clear from the prison statistics (Bundesministerium für Justiz 2024: 154), however, that for over 40 years there has been an almost continuous increase in prison sentences exceeding 10 years and an even greater increase in persons detained in mental health facilities (§ 21 StGB: *Strafrechtliche Unterbringung in einem forensisch-therapeutischen Zentrum*).

A review of the Austrian Federal Ministry of Justice's *Strafdauerklassen* (Prison Sentence Duration Categories; these categories serve only statistical purposes) is also enlightening. Since 2001, an overall trend towards longer sentences (as per the courts' verdicts<sup>8</sup>) can also be observed, i.e. a higher proportion of longer Prison Sentence Duration Categories.

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<sup>8</sup> The Prison Sentence Duration Categories refer to the duration of the sentences imposed by the courts in their verdicts ("front door"), not to the actual duration influenced by release rules, for example.

**Figure 1. Prison sentence duration categories in Austria (as per the courts' verdicts), 2001–2022**



Source: Based on data from Bundesministerium für Justiz (2024: 176).

Besides this trend for longer Prison Sentence Duration Categories (as per the verdicts), a considerably clearer upward trend in the “actual duration of imprisonment” can also be observed. The actual average duration of imprisonment has increased almost continuously since 2001, or has at least remained largely constant (Bundesministerium für Justiz 2024: 178). Overall, the available data can be seen as an indication of a generally harsher sentencing practice in Austria in recent years.

## 2.2. A closer look at the types and lengths of imposed prison sentences

The focus will now be on criminal statistics relating to prison sentences imposed by the Austrian criminal courts in recent years. To determine whether Austrian sentencing practice has become harsher, two aspects seem to be of particular interest: the length of the prison sentences and their specific circumstances, i.e. whether the sentence was (partially) suspended or not.

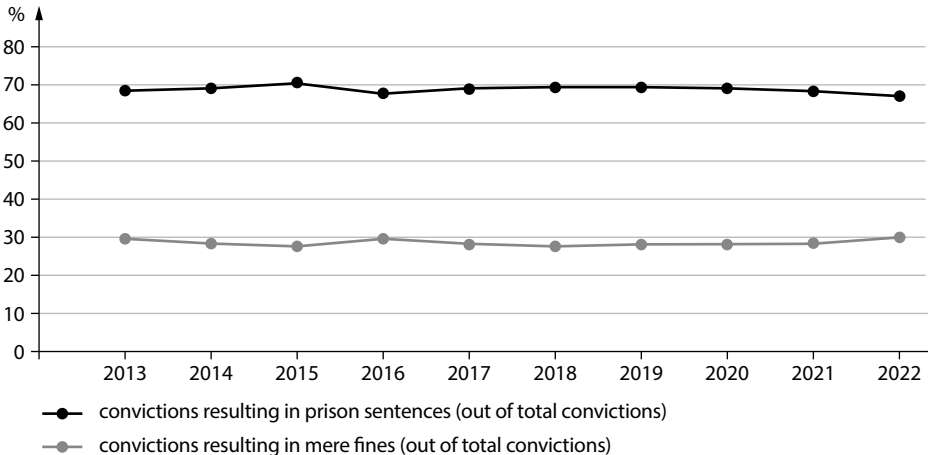
To begin with, however, reference should first be made to a study based on criminal statistics that examined developments in assault and sexual offences (and the corresponding sentencing practices) in Austria between 2008 and 2017 (Grafl, Haider 2018). This study by Christian Grafl and Isabel Haider also evaluated the effects of the *Strafrechtsänderungsgesetz 2015* on Austrian judicial sentencing practices. Concerning the area of assault and sexual offences, which has seen comprehensive legal amendments in recent years, the authors found a tendency towards harsher sentencing practices during the observation period (Grafl, Haider 2018: 78). Although the study observed a rather short period of time after the *Strafrechtsänderungsgesetz 2015* came into force (2 years), and therefore reliable statements on the (lasting) effects of this major criminal-law reform were only possible to a limited extent, there were indications that – at least with regard to

certain offences – the legal toughening could have had a direct impact on judicial sentencing practice (Grafl, Haider 2018: 78). Another study also observed a harsher judicial sentencing practice in Austria (Grafl 2020: 42).

Based on the results of this study, which, by looking specifically at certain groups of offences, revealed some indications of a harsher sentencing practice due to the legal toughening, the development of Austrian (prison) sentencing practice will now be analysed more broadly. Since the aim here is to look at the toughening of criminal law and its effects on sentencing practice as a whole (and not to limit it to specific offences), the following section focusses on Austrian judicial sentencing practice as a totality. It will therefore be examined across all offences and penalties whether an increase in more severe types of punishment and longer prison sentences can be observed in recent years.

Therefore, the data for the last 10 years for which the corresponding statistics are already available for Austria (2013 to 2022) is considered. The data derives from *Statistik Austria* [Statistics Austria] and from the latest<sup>9</sup> Austrian National Security Report for Austria (*Sicherheitsbericht*) for the year 2022 (Bundesministerium für Justiz 2024: 12, 55, 141).<sup>10</sup> Due to the wider availability of more specific and differentiated data, the following section focusses primarily on prison sentences. It can be said, however, that the proportions of convictions in which prison sentences were imposed and those which resulted in mere fines in relation to the total convictions were relatively stable, as can be seen in Figure 2.

**Figure 2.** Proportions of convictions resulting in prison sentences vs fines (per cent of the total convictions in Austria), 2013–2022



Source: Based on data from Bundesministerium für Justiz (2024). Convictions missing at 100% relate to other types of convictions, e.g. convictions without a sentence.

<sup>9</sup> As of April 2025.

<sup>10</sup> This official data from the Austrian Federal Ministry of Justice is generally considered to be reliable.

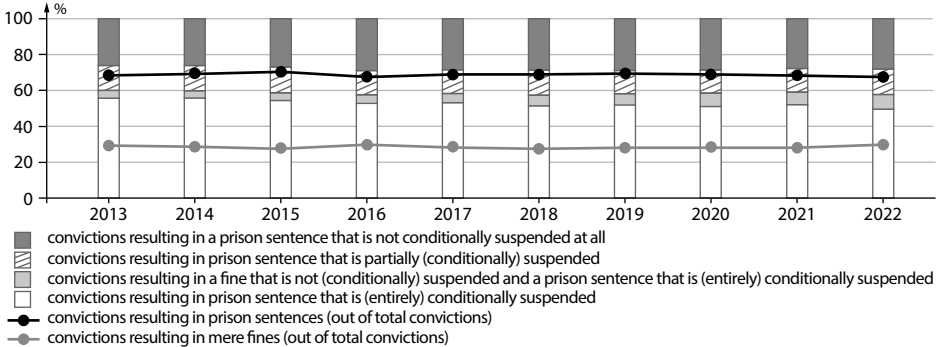
Although there has recently been a slight increase in convictions resulting in fines, as the figure rose by around 1.5 percentage points from 2021 to 2022, in 2022, the figure was only around 0.5 percentage points higher than in the first year of the comparison (2013) and roughly at the same level as in 2016. In view of this overall fairly stable proportion of convictions resulting in fines,<sup>11</sup> the proportions of fines and prison sentences among all convictions do not reveal any clear trend towards harsher or softer judicial sentencing in Austria during this period. However, the relatively constant proportion of convictions resulting in prison sentences allows and justifies a closer examination of those sentences that include imprisonment. A possible shift towards more severe types of sentences or longer prison sentences would indicate a harsher sentencing practice overall.

The following four categories of convictions that include a prison sentence are to be distinguished:

- convictions resulting in a prison sentence that is (entirely) conditionally suspended (§ 43 StGB; *[gänzlich] bedingt nachgesehene Freiheitsstrafen*)
- convictions resulting in a fine that is not suspended and a prison sentence that is (entirely) conditionally suspended (§ 43a(2) StGB)
- convictions resulting in a prison sentence that is partially (conditionally) suspended (§ 43a(3 and 4) StGB, *teilbedingte Freiheitsstrafen*)
- convictions resulting in a prison sentence that is not suspended at all (*[gänzlich] unbedingte Freiheitsstrafen*).

These categories of prison sentences are listed above by increasing severity. In order to make this increase in severity more clearly recognisable in the graphs, the categories of convictions are arranged in ascending order of severity. More severe types of sentences are therefore located higher up in the chart. An increase in the bars in the upper part of the chart (Figures 3 to 7) therefore indicates a general toughening of the Austrian judicial and sanctioning practice.

**Figure 3.** Convictions that included a prison sentence in Austria, 2013–2022, by category

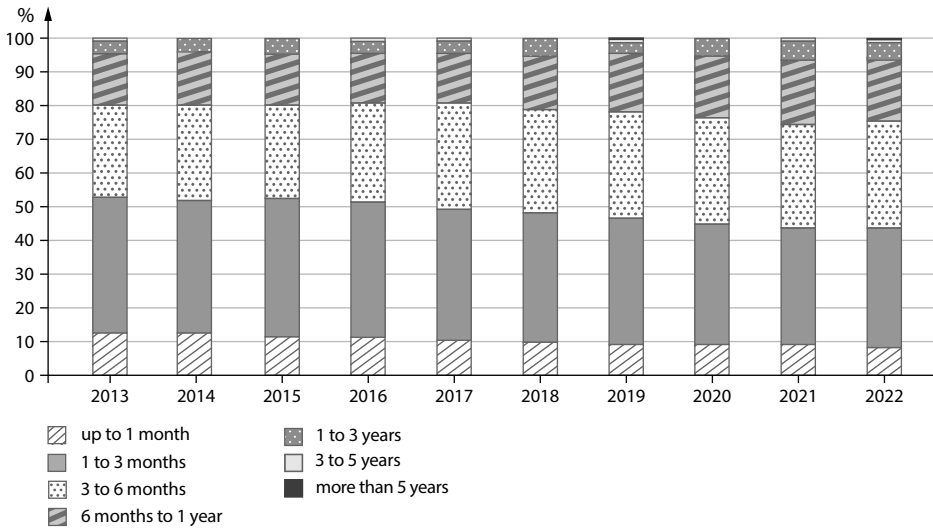


Source: Based on data from Bundesministerium für Justiz (2024: 141).

<sup>11</sup> It should be noted that the sentencing practice within Austria is known to be quite different in the four Higher Regional Court Districts (Bundesministerium für Justiz 2024: 127–128; Grafl 2019, 2020). One of the main differences also concerns the fact that the proportion of fines varies greatly depending on the Higher Regional Court District. Therefore, only the data for Austria as a whole is considered here in order to not overstate regional differences.

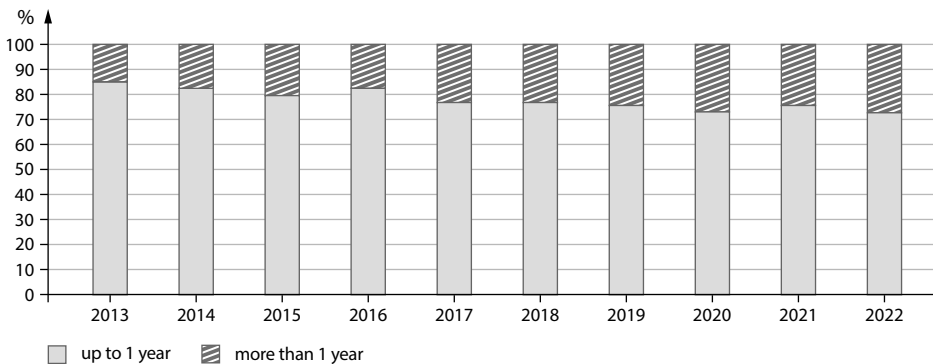
Although upward and downward movements and shifts between individual categories and years can be seen in some cases, a closer look reveals a (slight) increase in the severity of the sentences overall, as the size of the bars located higher up in the chart (indicating harsher types of sentences) increased over time. This trend towards higher severity becomes even clearer when looking at how the respective lengths of the prison sentences have been distributed in the four different categories over the last few years.

**Figure 4.** Convictions resulting in a prison sentences that were (entirely) conditionally suspended in Austria, 2013–2022, by the length of the prison sentence



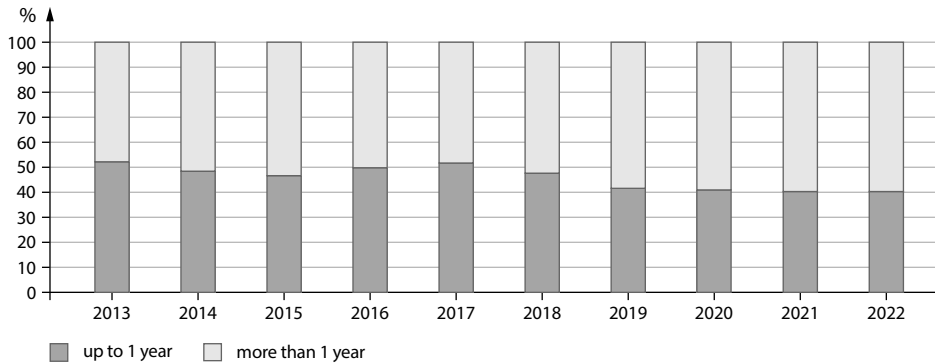
Source: Based on data from Bundesministerium für Justiz (2024: 141).

**Figure 5.** Convictions resulting in both fines that were not suspended and in prison sentences that were (entirely) conditionally suspended in Austria, 2013–2022, by the length of the prison sentence



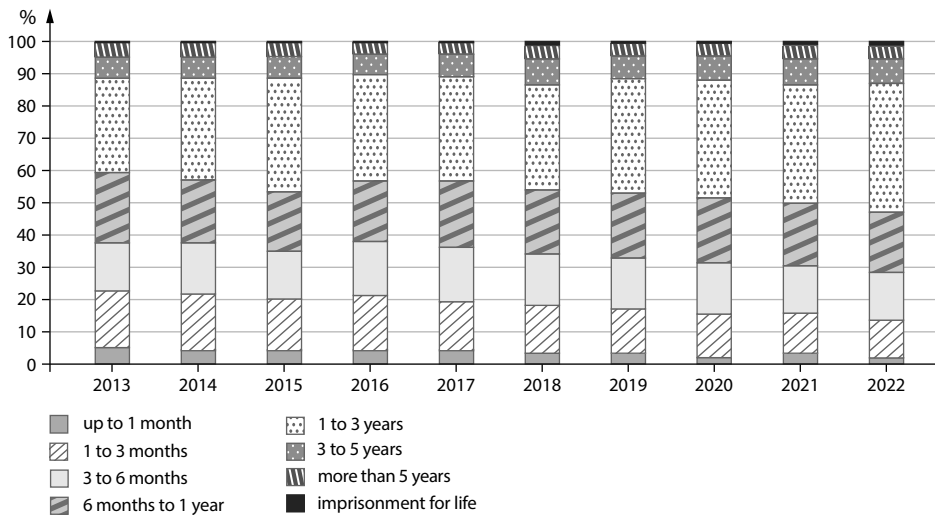
Source: Based on data from Bundesministerium für Justiz (2024: 141).

**Figure 6.** Convictions resulting in prison sentences that were partially (conditionally) suspended in Austria, 2013–2022, by the length of the prison sentence



Source: Based on data from Bundesministerium für Justiz (2024: 141).

**Figure 7.** Convictions resulting in prison sentences that were not suspended in Austria, 2013–2022, by the length of the prison sentence



Source: Based on data from Bundesministerium für Justiz (2024: 141).

As Figures 4 to 7 reveal, there was an increase in the severity of all four categories of imposed prison sentences, (indicated by the size of the bars located higher up in the charts growing over time), as their length increased overall from 2013 to 2022. According to this data, again, there is a clear indication of a generally harsher sentencing practice in Austria in recent years, which is consistent with other findings (Grafl, Haider 2018; Grafl 2020).

### 3. Analysis

The analysis of recent developments in Austrian criminal law and judicial sentencing practice shows that there is evidence of a trend towards a “toughening” in criminal law as well as an increasing harshness in sentencing practice. However, it is not easy to provide reliable evidence of a connection between these two trends based on the data and scientific findings available to date. Overall, however, there are numerous indications that harsher sentencing practices in Austria are – at least in part – due to the “toughening” of criminal law. Firstly, a corresponding correlation, at least with regard to individual offences, can be demonstrated in scientific studies (Grafl, Haider 2018: 78). Furthermore, some other obvious explanations for an increasingly harsh sentencing practice can be precluded (apart from the fact that it could be a consequence of tougher criminal-law provisions), such as a general increase in crimes that were recorded by the police, which could alone motivate the criminal courts to tend to impose harsher sentences in the hopes of stopping a general increase in (recorded) crime. However, there is no evidence of such a general (significant) increase in police-recorded crime in Austria in the period under review; in fact, a significant overall decline in police-recorded crime can be seen from 2013 to 2021, with a (substantial) increase only recorded for 2022 (Bundesministerium für Inneres 2023: 29–30). The harsher sentencing practice therefore cannot be explained by a general increase in recorded crime, especially since no increase in more severe crimes or their proportion of the total number of crimes was observed (Grafl, Haider 2018: 15–16). At the same time, however, there are indications that mitigating legal amendments did not have a corresponding mitigating effect on Austrian sentencing practice (Hochmayr 2024; 2024a).

In contrast, the fact that in practice a certain percentage of the maximum penalty is often used as a starting point for individual sentencing is another indication that the toughening of criminal law – and the increases in penalties in particular – has had an influence on the actual judicial sentencing practice. However, since a certain percentage of the maximum penalty is regularly chosen as the starting point for sentencing, to which the mitigating or aggravating factors specific to the individual case are then applied,<sup>12</sup> an increase in the maximum penalty of an offence carries considerable weight. If, for example, the upper limit of a penalty is doubled, this starting point for individual sentencing is also doubled if the same percentage of the now higher maximum penalty is used.

<sup>12</sup> In Austria, there are no detailed, “mathematically described,” sentencing criteria comparable to, for example, the codified Sentencing Guidelines of the USA (United States Sentencing Commission 2025), but only (example) legal catalogues of mitigating and aggravating factors – without specific weighing criteria. These factors are to be applied by the courts in each case individually. Nevertheless, in practice there are traditional guidelines or suggestions that are used as unwritten rules. For example, it is repeatedly referred to that sentencing for a person with no previous convictions can begin at one sixth of the maximum penalty (e.g. Oberlandesgericht Wien 2025), whereby mitigating and aggravating circumstances are then taken into account by reducing or increasing the actual sentence accordingly from the one-sixth basis.

In addition, it is reasonable to assume that the toughening of criminal law, which leaves no room for discretion to public prosecutors and courts, will have a quite strong impact on sentencing practice. This applies, for example, to the abolition of milder forms of sanctions (such as the possibility to suspend fines in full and not only partially) or the introduction of minimum penalties, which then may not be undercut as a rule (except for individual, particularly exceptional cases). On the other hand, in the case of amendments that only increase the courts' discretionary powers (such as providing for a wider penalty range for sentencing), there remains the possibility that the courts will not take the increased range of penalties fully into account when sentencing and could to a certain extent maintain their sentencing practice from prior to the amendment.<sup>13</sup>

If one assumes, based on what has been said so far, that the toughening of criminal law also impacts (harshens) the actual judicial sentencing practice, the question quickly arises as to whether this can be considered appropriate from a criminal policy, criminological and overall societal perspective. This question leads deep into major, enduring areas of research in criminology, such as the general preventive or deterrent effect of higher penalties or the effectiveness of (short or long) prison sentences. However, in order to not exceed the scope of this paper, a few particularly important points shall be briefly addressed here. If sensational criminal cases receive a lot of media attention and the general public is outraged by the crime, the first choice among the means available to politicians in response to this outrage is often to increase the penalties for the corresponding offences (see e.g. Schender 2019; Grafl 2025). It seems to offer a quick solution to an actual problem, and it is thought to be cost-neutral. A closer look, however, suggests otherwise: the prison system is definitely a costly area for the state budget (Bundesministerium für Justiz 2020: 38–39). For example, the average cost per prisoner or detainee in Austria between 2019 and 2022 was around EUR 130 to 157 per day (Bundesministerium für Justiz 2020: 38; Zadić 2022: 5–6). Taking into account these costs, it is clear that toughening the criminal law, which leads to longer prison sentences, must certainly be regarded as a relevant cost factor for the state budget (see also Tipold 2023: 1; for more information on the various problems associated with (excessively) severe increases in penalties, see also HLPR 2024; Independent Sentencing Review 2025). In view of this circumstance, but above all in view of the highly intrusive nature of criminal law and the severe consequences associated with (prison) sentences for those affected, the decision to make such aggravating legislative changes should in any case be preceded by a corresponding, evidence-based evaluation of the objectives that can be achieved by the planned amendments. At this point, reference should be made to the *Zehn Gebote guter Kriminalpolitik* (Ten Commandments of Good Criminal Policy) by the *Netzwerk*

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<sup>13</sup> However, it should also be noted that legal changes concerning penalties may have complex effects on judicial sentencing practices. This can also lead to unexpected or undesirable effects, e.g., measures intended to reduce sentencing disparities can result in new inequalities (Drápal, Šoltés 2023).

*Kriminalpolitik* (Criminal Policy Network), an association of renowned Austrian experts, which rightly call for a rational, fact- and science-based criminal policy (Netzwerk Kriminalpolitik 2017; Grafl 2025; Weißer Ring n.d.).

Apart from questions regarding the effectiveness of (repeated) increases in penalties (and similar criminal-law toughening), it should also be noted that the Austrian courts in practice only exceptionally utilise the upper ranges of the penalties anyway (Schender 2019: 202; Grafl 2025). This adds another facet to the question of whether it makes sense to further increase existing sentencing ranges, one which will have to be assessed on an offence-by-offence basis.

Due to a lack of corresponding scientific research, there is currently little (empirical) evidence for a “punitive turn” in Austria’s society and judicial practice, whereas the toughening of criminal law is discussed more extensively. In general, and for many other countries in particular, however, such a “punitive turn” has been researched and described more comprehensively (e.g. Barker 2006; Garland 2013; Garland 2017; Brandariz, Cummins 2021; Newburn, Jones 2022; Sozzo 2025; Starke, Wenzelburger 2025; see also the numerous references in each). However, in summary, it can be assumed that a “toughening” of Austrian criminal law also has a harshening influence on actual judicial sentencing practice. In view of the considerable effects of harsher sentencing practices and the questionable preventive effectiveness of repeatedly increasing penalties, according to criminological research (e.g. Dölling et al. 2006; see also Apel 2013; Bock 2019: 333–335; Singelstein, Kunz 2021: 347; Grafl 2025), the legislature has a particular responsibility to examine the appropriateness and effectiveness of any planned criminal policy measures. In any case, it will be crucial to critically observe further developments in criminal law and the emerging trends – as well as their influence on the actual judicial sentencing practice.

## Conclusions

The statistical data and the (sparse) Austrian literature indicate a toughening of Austrian judicial sentencing practice. There is much to suggest that these developments are at least partly due to tougher criminal law, although this still needs to be researched further. Given the huge impact of punitive trends on the practice of criminal law and sanctions, these developments should continue to be critically monitored and evaluated.

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