

**European Criminal Bar Association (ECBA)  
Conference Palma de Mallorca, October 6<sup>th</sup> and 7<sup>th</sup>, 2017**

**Legal developments in Austria – criminal law**

1. New crown witness protection regime

Austria recently enacted a new crown witness protection regime (01 January 2017). The new regime is limited until end of 2021.

The Austrian regime offers immunity from prosecution against disclosure of relevant information.

The crown witness may not be qualified as „principal“ offender. Additionally, the gravity of the disclosed offence must outweigh the gravity of the criminal offence committed by the witness.

Civil claims against the crown witness are not governed by the new regime.

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2. Constitutional court confirmed constitutional compliance of the Austrian Act on Corporate Criminal Liability

In a recent ruling, the Austrian constitutional court confirmed that the Austrian Act on Corporate Criminal Liability (VbVG) does not violate the Austrian constitution.

The Austrian Act on Corporate Criminal Liability forms part of judicial criminal law. In essence, legal entities may be held criminally liable, if either

- a person exerting relevant influence on the business conduct of the entity commits a crime for the benefit of this entity or violates laws which are, or
- an employee commits a crime whereby the commission of the crime has been facilitated by the entity.

The constitutional court argued, that the requirement of fault does not apply to entities.

According to the constitutional court, procedural guarantees pursuant to Art 6 ECHR do also apply to entities. These procedural guarantees are fulfilled by the Austrian Act on Corporate Criminal Liability, since the

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general provisions of the Austrian Criminal Procedures Code applies also with respect to investigations against entities.

Furthermore, the constitutional court also confirmed that the penalties provided for in the Act on Corporate Criminal Liability are appropriate and proportionate.

### 3. Constitutional court confirmed constitutionality of jury procedures

Jury procedures (*Geschworenengerichtsbarkeit*) are limited to particular serious forms of crime, such as murder, grievous rape, etc.

The constitutional court reiterated that according to case law of the European Court of Human Rights (see for example *Lhermitte v. Belgium* no. 34238/09) the convention does not require jurors to give reasons for their decision and that Article 6 does not preclude a defendant from being tried by a lay jury even where reasons are not given for the verdict. All criteria required by the ECtHR are fulfilled, in particular that sufficient safeguards are in place that avoid risks of arbitrariness and enable the accused to understand the reasons for his or her conviction.