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148. Federal law: Hate on the Net Prevention Act – HiNBG

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148. Federal Act establishing civil legal and civil procedural measures to combat hate on the Internet (Hate on the Net Prevention Act [Hass-‑im‑-Netz-Bekämpfungs-Gesetz – HiNBG])

The National Council has decided the following:

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Article 1

Amendment to the Austrian Civil Code

The General civil code - ABGB, JGS No. 946/1811, last amended by the Federal Act published in Federal Law Gazette I No 16/2020, is amended as follows:

1. The following § 17a, including its heading, is inserted after § 17:

‘Exercise of personal rights

§ 17a. (1) Personal rights are essentially non-transferable.

(2) Interference with a personal right may be consented to only to the extent that it is not contrary to public morality. Consent to the interference on the core area of a personal right can only be given by the decision-making bearer of the personality right himself, unless otherwise stipulated by law.

(3) A person’s personal rights continue after death in his memory. Memory injuries can be claimed by the relatives and the surviving spouse, registered partner or partner of their lives with the deceased in the first degree, other relatives in the ascending or descending line only for 10 years after the end of the year of death. In any event, interventions in the public interest for archive, scientific and artistic purposes shall be permitted.’

2. § 20, including its heading, reads as follows:

‘Right to injunction and removal

§ 20. (1) Anyone whose personal rights have been violated or has reason to fear such a violation can bring an action for an injunction and for the removal of the illegal situation. The right to an injunction also includes the right to remedy any situation in conflict with the obligation to injunction. Under the conditions of § 17a(3), the persons referred to therein can also bring an action.

(2) If an employee’s reputation or privacy is violated in a medium in connection with an employee’s activities and this behaviour is likely to not insignificantly impair the employer’s ability to deploy the employee or seriously damage the employer’s reputation, regardless of the employee’s right, they have their own right to injunction and removal. The same applies to volunteers and bodies of a body. The assertion of the employer’s right is not linked to the employee’s consent. There is no obligation for the employer to assert a judicial claim with regard to the violation of personal rights affecting the employee, in particular due to the duty of care under labour law.

(3) If the person who has committed a violation of a personal right or who is threatened with such a violation uses the services of an intermediary, action can also be brought against them for injunction and removal. If the intermediary meets the requirements for exclusion from liability in accordance with E‑Commerce Act, action can only be brought against them after being issued a warning. Service providers under § 13 E‑Commerce Act shall not be regarded as intermediaries within the meaning of this provision.’

3. In § 1328a(2), the wording ‘is oriented’; is inserted in the second sentence after the wording ‘in case of intervening of a person responsible for media law’.

4. The following paragraph 16 is added to § 1503:

‘(16) § 17a, § 20, and § 1328a(2), as amended by the Federal Act published in Federal Law Gazette I No 148/2020, shall enter into force on 1 January 2021. § 20(2) and § 1328a(2) apply to cases in which the infringing act was made after 31 December 2020.’

Article 2  
Amendment to the Court Jurisdiction Act

The Court Jurisdiction Act, Imperial Law Gazette No 111/1895, last amended by the Federal Act published in Federal Law Gazette I No 61/2019, is amended as follows:

1. The following is amended to § 49(2) after points 5 and 6:

‘6. Disputes under § 549 of the ZPO;’

2. After § 59, the following § 59a is inserted:

‘§ 59a. In the case of actions for injunction pursuant to § 549 of the ZPO, the amount in dispute shall be EUR 5 000.’

3. The following Fourth Part is inserted after § 122:

‘Fourth Part

Entry into force, final and transitional provisions

§ 123. §§ 49 and 59a, as amended by the Federal Act published in Federal Law Gazette I No 148/2020, shall enter into force on 1 January 2021 and are to be applied in this version to actions that are brought after 31 December 2020.’

Article 3

Amendment to the Code of Civil Procedure

The Code of Civil Procedure [Zivilprozessordnung – ZPO], Imperial Law Gazette No 113/1895, last amended by the Federal Act published in Federal Law Gazette I No 109/2018, is amended as follows:

1. At the end of subparagraph 4 of § 502(5), the full stop shall be replaced with a semicolon and the following subparagraph 5 added:

‘5. for disputes under § 549.’

2. The following Section Two is inserted after § 548:

‘Section Two

Mandate procedure

Proceedings for substantial violation of personal rights in an electronic communications network

§ 549. (1) In legal disputes relating actions in which exclusively claims for injunctive relief are asserted due to a significant violation of personal rights in an electronic communications network that impairs a natural person's human dignity, the court shall, upon application of the plaintiff, issue an injunction without a prior oral hearing and without hearing the defendant if the claim asserted can be conclusively derived from the information in the complaint. Evidence from the electronic communication network that shows the infringing content or makes it visible must be included in the action.

(2) The cease-and-desist order shall contain the statement to cease and desist from the asserted infringement and the inscription ‘Cease-and-Desist Order’ and shall state that the defendant, if it disputes the asserted claim, shall raise objections to the order within fourteen days. It is to be instructed that the injunction order can only be opposed by raising objections and that in the case of raising objections, the ordinary proceedings regarding the action will take place.

(3) The injunction order is to be served on the defendant with the action. Objections to the injunction order can only be raised within a time limit of fourteen days from service of process. It is sufficient if the document shows the intent to raise objections. The decision on the apportionment of costs contained in the injunction order can be challenged with an appeal. §§ 556(5), 557(2)–(6) and 558 shall apply mutatis mutandis.

(4) At the request of the plaintiff, the court may grant the injunction order provisional enforceability if the continued effect of the alleged infringing act is unreasonable or associated with considerable disadvantages for the plaintiff or is incompatible with the fundamental values of the Austrian legal system. The provisional enforceability arises as soon as the decision on the awarding thereof has been served and continues to apply until the final decision of the proceedings. Appeals against this decision are not permitted.

(5) The Federal Minister for Justice is authorised to issue a form for the action and the application for an injunction order and to keep it available on the Internet on the website of the Ministry of Justice.’

3. The section name ‘Section Two’ prior to § 555 is removed.

4. The following Seventh Part is inserted after § 618:

‘Seventh Part

Entry into force, final and transitional provisions

§ 619. §§ 502, 549 and the amendments to the section names, as amended by the Federal Act published in Federal Law Gazette I No 148/2020, shall enter into force on 1 January 2021. §§ 502 and 549 shall be applied to actions that are brought after 31 December 2020. § 502(5)(5), as amended by the Federal Act of 148/2020, shall cease to be valid on 31 December 2030 and shall no longer be applied to proceedings in which the action is brought after 31 December 2030.’

Article 4  
Amendment to the Enforcement Code

The Enforcement Code, Imperial Law Gazette No 79/1896, last amended by the Federal Act published in Federal Law Gazette I No 16/2020, is amended as follows:

In § 1(2), the words ‘mandate and’ and the words ‘as well as in official liability proceedings’ are removed, and the phrase ‘, as well as injunction orders under § 549 of the ZPO against which objections were not raised in due time or which were granted provisional enforceability’ is inserted at the end before the semicolon.

Article 5  
Amendment to the Lawyers’ Fees Act

The Lawyers’ Fees Act [Rechtsanwaltstarifgesetz – RATG], Federal Law Gazette No 189/1969, last amended by the Federal Act published in Federal Law Gazette I No 19/2020, is amended as follows:

1. In § 10(6), the phrase ‘§ 20 and’ is inserted after the word ‘under’.

2. The following final sentence is inserted after § 10(6)(b):

‘in actions for an injunction pursuant to § 549 of the Code of Civil Procedure, the subject-matter shall be valued at EUR 5 000;’

3. The following paragraph 3 is added to § 26a:

‘(3) § 10, fee item 2 Section I(1)(b) and (c), fee item 3 A Section I(1)(b) and fee item 4 Section I(2), as amended by Federal Act, Federal Law Gazette I No 148/2020, shall enter into force on 1 January 2021.’

4. In fee item 2, Section I, point 1(b), the word ‘Mandate appeal’; is replaced by the phrase ‘Appeals and claims pursuant to § 549 ZPO’.

5. In fee item 2, Section I, point 1(c), first half-sentence, after the word ‘Payment orders’ the phrase ‘and against injunctions under § 549 ZPO’ are inserted and the word ‘Payment order’ is replaced by the phrase ‘Payment or Injunction Order’.

6. In fee item 2, Section I, point 1(c), the second half-sentence after the word ‘Payment orders’, the phrase ‘and against injunctions under § 549 ZPO’ is inserted.

6. In fee item 3 A, Section I, point 1(b), after the word ‘Payment orders’, the phrase ‘and against injunctions under § 549 ZPO’ is inserted.

7. In fee item 4, Section I(2), insert the phrase ‘, 33a’; after the quote ‘33(2)’.

Article 6  
Amendment to the e-Commerce Act

The e-Commerce Act [E‑Commerce-Gesetz – ECG], Federal Law Gazette I No 152/2001, last amended by the Federal Act published in Federal Law Gazette I No 34/2015, is amended as follows:

1. The following paragraph 4a is inserted after § 18(4):

‘(4a) The right in accordance with § 18(4) shall be asserted in proceedings, except in cases of dispute, before the court of first instance appointed to exercise jurisdiction in commercial matters.’

2. The following paragraph 3 is added to § 28:

‘(3) § 18(4a), as amended by the Federal Act published in Federal Law Gazette I No 148/2020, shall enter into force on 1 January 2021 and shall not apply to disputes that were pending before this Federal Act enters into force.’

Article 7  
Amendment to the Court Fees Act

The Court Fees Act (GGG), Federal Law Gazette No 501/1984, last amended by the Federal Act published in Federal Law Gazette I No ##/20##, is amended as follows:

1. In § 16(1)(1), the following point e is inserted after point d:

‘e) Mandate proceedings under § 549 of the ZPO;’

2. In fee item 12(c), the following subparagraph 1 is inserted before subparagraph 2:

|  |  |  |  |
| --- | --- | --- | --- |
| Fee item | Object | Standard for the assessment of fees | Amount of fees |
|  | ‘1. Proceedings for a right to information in accordance with § 18(4a) of the ECG, |  | EUR 82’ |

3. In tariff heading 13, point a reads as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | ‘a) | Private action and claims by the private prosecutor for the issue of capital injunctions pursuant to § 445 of the StPO | EUR 269’ |

4. To Article VI, the following subparagraph 71 is added:

‘71. § 16(1), tariff heading 12(c)(1) and tariff heading 13(a), as amended by the Federal Act published in Federal Law Gazette I No 148/2020, shall enter into force on 1 January 2021. § 31a shall be applied to the fees newly created with this Federal Act with the proviso that the starting point for the redefinition is the final index number published for March 2017 of the consumer price index published by Statistics Austria.’

Article 8

Amendment of the Criminal Code

The Criminal Code, Federal Law Gazette No 60/1974, as last amended by Federal Act Federal Law Gazette I No 111/2019, is amended as follows:

1. § 107c, including its heading, shall read:

‘Continual harassment by means of a telecommunication system or computer system

§ 107c. (1) Anyone who, by means of telecommunications or through the use of a computer system, in a manner likely to cause an unreasonable adverse impact on a person’s life,

1. perceivable a criminal act against a person’s honour for a greater number of people for a longer period of time; or

2. makes a fact or image of the person’s personal sphere of life perceptible for a longer period of time to a greater number of people without their consent,

shall be punished by imprisonment of up to one year or a fine of up to 720 daily rates.

(2) Where the offence results in the suicide or attempted suicide of the person injured within the meaning of paragraph 1, the offender shall continue to commit acts against the injured person within a period exceeding 1 year or exceed the duration of perceivability referred to in paragraph 1 of this Article for 1 year, the offender shall be punishable by imprisonment of up to 3 years.’

2. The following § 120a, including its heading, shall be inserted after § 120:

‘Unauthorised recording of images

§ 120a. (1) Anyone who intentionally takes a picture of the genitals, pubic area, buttocks, female breasts or underwear covering these parts of the body of another person who has protected these areas from sight or is located in a residence or in a space specially protected against sight, without their consent, shall be punished by imprisonment of up to 6 months or a fine of up to 360 daily rates.

(2) Any person who makes or publishes a photograph pursuant to paragraph 1 without the consent of the person depicted shall be punishable by imprisonment of up to 12 months or a fine of up to 720 daily rates if the offence is not punishable by another provision with the same or more stringent penalty.

(3) The offender shall be prosecuted only with the authorisation of the injured person.’

3. In § 283(1), point 1, the words ‘physical or mental’ shall be deleted before the word ‘disability’.

4. § 283(1)(2) is worded as follows:

‘2. insults a group referred to in subparagraph 1 or a person as a result of his or her affiliation to such a group, with the intention of violating the human dignity of the group or the person, in a manner that is likely to disparage or belittle the group or person in the public opinion, or’

Article 9

Amendment of the Media Act

The Federal Law on the Press and Other Publicist Media (Mediengesetz – MedienG), Federal Law Gazette No 314/1981, as last amended by Federal Act, Federal Law Gazette I No 32/2018, is amended as follows:

1. The following name and title shall be inserted before § 6:

‘Subsection One

Cases of compensation’

2. § 6(1) shall read:

‘(1) If objective facts pertaining to slander, insult, derision or defamation are produced in a medium, the person affected is entitled to compensation from the media owner with regard to the injury suffered (§ 8(1)).’

3. § 7(1) shall read:

‘(1) If a highly personal aspect of a person’s life is discussed or portrayed in a medium in a way that is likely to cause public shame to him or her, the person concerned is entitled to compensation from the media owner with regard to the injury suffered (§ 8(1)).’

4. § 7a(1) shall read:

‘(1) If the name, image or other details of a person are published in a medium, and this is likely to lead to the identity of the person becoming known to a larger circle of people not directly informed, and if this person

1. is a victim (§ 65(1) of the StPO) of an act punishable by a judicial penalty, or

2. is someone who is suspected of committing such an act or who has been convicted of such an act,

3. was heard as an informant before a committee of inquiry of the Austrian National Council,

and if the interests of this person who merits protection are thereby violated, the person affected is entitled to compensation from the media owner for the injury suffered (§ 8(1)), unless an overriding public interest in the publication of this information existed due to the person affected occupying a position in the public arena, due to another connection with public life, or due to other reasons.’

5. In § 7a, the following paragraph 1a shall be inserted after paragraph 1:

‘(1a) If the name or image of a person is published in a medium, and this person

1. a relative (§ 72 StGB) of a person referred to in paragraph 1(1) or (2), but is not himself a victim under § 65(1)(b) of the Code of Criminal Procedure, or

2. witnessed an act punishable by a judicial penalty,

and if the interests of this person who merits protection are thereby violated, the person affected is entitled to compensation from the media owner for the injury suffered (§ 8(1)), unless an overriding public interest existed in the publication of this information (paragraph 1).’

6. In Paragraph 7a(2), point 1 is worded as follows:

‘1. is liable, in the cases referred to in paragraph 1(1) or paragraph 1a, to interfere with the personal sphere of life or to impair the legitimate security interests of the victim, relative or witness;’

7. In § 7a(3)(3) a addendum is inserted after the word ‘concerns’.

8. § 7b(1) shall read:

‘(1) If an indication is given in a medium that a person who is suspected of an act punishable by a judicial penalty but who has not been convicted by a final court decision, has been convicted or found guilty, or if this person is described as the perpetrator of the punishable act and not merely as a suspect, the person affected is entitled to compensation from the media owner for the injury suffered (§ 8(1)).’

9. In § 7c(1), the word ‘insult’ shall be replaced with the words ‘personal detriment (§ 8(1))’; the second sentence shall be omitted.

10. The wording of Article 8(1) and (2) is as follows:

‘(1) The amount of compensation pursuant to §§ 6, 7, 7a, 7b or 7c shall be calculated in proportion to the scope, the publishing value and the impact of the publication, as well as the type and extent of the distribution of the medium in particular, and, in the case of websites, also the number of end users who have accessed the publication; The impact shall generally be deemed to be lesser if a publication has been issued subsequently to earlier comparable publications, but before the first instance of compensation having been awarded for this case, in accordance with this subsection. If a person is entitled to compensation as a result of a publication pursuant to several provisions of this subsection, a single amount of compensation shall be set which shall be correspondingly higher. Consideration shall be given to preserving the economic existence of the media owner. The amount of compensation shall be set at at least EUR 100 and the amount of EUR 40 000 may not, however, exceed the amount of EUR 100 000 in accordance with §§ 6, 7 or 7c in the event of particularly serious consequences of publication and gross negligence or intentional conduct of the media owner or his/her employee.

(2) The right to compensation pursuant to §§ 6, 7, 7a, 7b or 7c may be asserted by the affected party in the criminal proceedings in which the media owner is implicated as the accused, or pursuant to § 41(6) until the end of the main hearing. If such criminal proceedings do not take place, the claim may be asserted by filing an independent application (§ 8a). In its decision on a claim for compensation in accordance with §§ 6, 7, 7a, 7b or 7c, the court is not bound to the legal assessment of the person affected; However, the person affected may declare that he or she is not relying on any of the provisions in this subsection.’

11. In § 8a(2), after the words ‘ six months’ the words ‘however, if the applicant is a victim within the meaning of § 65(1)(a) and (b) StPO, then within one year,’ shall be inserted, and the word ‘hearing’ shall be replaced with the word ‘main hearing’.

12. The previous § 8a(4) shall be inserted after § 8(3); the following paragraph 4 shall be appended to Article 8a:

‘(4) § 8(4) shall apply.’

13. The following name and title shall be inserted before § 9:

‘Subsection Two

Counterstatement and subsequent notification of the outcome of criminal proceedings’

14. In § 10(1)(3), the word ‘main hearing’ shall be replaced with the words ‘criminal proceedings’.

15. In § 11(1)(10), the words ‘from the withdrawal of the complaint’ shall be replaced with the words ‘from the abandonment of prosecution’.

16. In § 13(7), the word ‘restrictions’ shall be replaced with the word ‘interventions’ .

17. In § 14(2), the words ‘of the Regional Court’ shall be inserted after the word ‘single judge’.

18. At the end of § 14(3) after the words ‘is permitted’, the following phrase shall be inserted: ‘and a clearly unfounded application may only be rejected after a public oral hearing, unless the applicant expressly waives such a hearing’

19. § 15(1) shall read:

‘(1) If no objections have been raised within the statutory time limits, the court shall decide by order within 5 working days of the expiry of that period. The request shall be granted without hearing; however, if the application is manifestly not justified, a decision shall be given after public oral proceedings, unless the applicant expressly waives it.’

20. In § 15(3), the words ‘public oral hearing’ shall be replaced with the words ‘conducting a main hearing’.

21. In § 16(1), the words ‘public oral hearing’ shall be replaced with the words ‘conducting a main hearing’.

22. In § 20(2), the word ‘Publication request’ ; is replaced by the word ‘Publication order’.

23. The following name and title shall be inserted before § 22:

‘Subsection Three

Image and sound recordings and transmissions’

24. The following name and title shall be inserted before § 23:

‘Subsection Four

Prohibited interference in criminal proceedings’

25. In § 30, the word ‘one’ ; is replaced by the word ‘one’.

26. In § 32, second sentence, after the word ‘threatened’, the phrase ‘or was committed by the content of a retrievable periodic electronic medium’ is inserted.

27. In § 33(2), the first sentence replaces the phrase ‘not possible for reasons excluding punishment’ by the phrase ‘for reasons which exclude punishment, for example because the criminality of the offence is time-barred’.

28. § 33(3) shall be deleted.

29. The following § 33a, including its heading, shall be inserted after § 33:

‘Seizure due to detrimental effect on the employer

§ 33a. (1) If, in a medium relating to the activity of a worker or employee, the objective facts of reproach, insulting, mocking or defamation are produced or threatened with danger (§ 74(1)(5) of the Criminal Code), and if such conduct is liable to significantly affect the employer’s or employer’s ability to use the employee or employee, or to seriously damage the image of the employer or employer, the latter shall be entitled to submit a request for the collection of media items intended for distribution or deletion of the relevant parts of the website. The same applies to volunteers and bodies of a body. The assertion of the employer’s right is not linked to the employee’s consent. There is no obligation for the employer to assert a judicial claim with regard to the violation of personal rights affecting the employee, in particular due to the duty of care under labour law.

(2) The right to confiscation does not exist in the case of a reproach if there is a ground for exclusion under § 6(2)(2) or (4). § 33(2), second sentence shall apply.

(3) The employer may request confiscation in criminal proceedings until the end of the main hearing or with an independent application. For the procedure concerning such a request, § 33(4) and (5) shall apply.

(4) The request may also be filed in independent proceedings conducted by means of an application from the person affected due to the same publication, and vice versa.’

30. In § 34(3), in the first sentence, the phrase ‘not possible for reasons excluding punishment’ is replaced by the phrase ‘for reasons which exclude punishment, such as the impunity of the offence is time-barred’; in the second sentence, the word ‘and paragraph 3 are’ are replaced by the word ‘is’.

31. In § 36(1), the citation ‘§ 33’ shall be replaced with the citation ‘§§ 33 or 33a’.

32. In § 36(2), the words ‘or in accordance with § 33a’ shall be inserted after the words ‘media content-related offences’.

33. The following § 36b including heading shall be added after § 36a:

‘Enforcement of seizure, confiscation and publication of the court decisions on websites against service providers

§ 36b. If the media owner has his registered office abroad or the media owner cannot be sued for other reasons, the court shall, at the request of the Prosecutor or the applicant, order the hosting service provider (§ 16 E‑Commerce Act – ECG, Federal Law Gazette I No 152/2001) to delete the relevant bodies of the website (confiscation or seizure – §§ 33, 33a, 36) or to publish the parts of the judgment (§ 34).’

34. In § 41(1), after the quote ‘33(2)’ , the quote ‘, 33a(3)’ ; is inserted in brackets.

35. § 41(5) shall read:

‘(5) § 71 of the StPO shall apply to proceedings based on private prosecution; similarly, the provisions established therein for independent proceedings concerning orders relating to proprietary rights shall apply accordingly to independent proceedings under § 8a, § 33(2), § 33a(3) and § 34(3). The court shall examine the charge or the application for independent proceedings pursuant to § 485 StPO, whereby in the cases of § 485(1)(3) in conjunction with § 212(1) and (2) StPO, it shall make its decision after a public oral hearing, unless the private prosecutor or applicant expressly waives such a hearing.’

36. In § 41, the current paragraph 7 is assigned the sales designation ‘(8)’ and is classified in accordance with paragraph 7; Section 7 is worded as follows:

‘(7) In the proceedings referred to in subsection 1, if enforcement of confiscation (§ 33) or the publication of the judgment (§ 34) is requested pursuant to § 36b, the hosting service provider shall be invited to the main hearing, but his failure to appear shall not impede the proceedings, the judgment and the decision on the application pursuant to § 36b. The hosting service provider has the right to be consulted on the requirements of § 36b. If the hosting service provider is ordered to enforce the seizure (§ 36) in accordance with § 36b, or if the enforcement of the confiscation or the publication of the judgment is requested and ordered only after the final decision on it, the order ordering the seizure or the decision on the confiscation or publication of the judgment and the order ordering the enforcement of the decision pursuant to § 36b shall be notified to the hosting service provider.’

37. In § 41 the following paragraph 9 is added after paragraph 8:

‘(9) Psychosocial and legal litigation support (§ 66b(2) StPO) shall be provided upon request to the persons listed in § 66b(1) StPO under the conditions specified therein, as well as for independent applications pursuant to § 8a, § 33(2) and § 34(3).’

38. In § 42, the word ‘legally’ shall be inserted before the words ‘punishable offence’.

39. In § 50(1), the words ‘media operator’ shall be replaced with ‘media owner’.

40. The following paragraph 11 shall be added to § 55:

‘(11) The names and headings of the first, second, third and fourth subsections of § 3, § 6(1), § 7(1), § 7(a)(1)(1)(a) and (2), § 7b(1), § 7c(1), § 8(1), (2) and (4), § 8a(2) and (4), § 10(1)(3), § 11(1)(10), § 13(7), § 14(2) and (3), § 15(1) and (3), § 16(1), § 20(2), § 30, § 32, § 33(2), § 33a, § 34(3), § 36(1) and (2), § 36(b), § 41(1), § 41(1), (5), (7), (8) and (9), § 42 and § 50(1) as amended by Federal Law Gazette I No 148/2020 enters into force on 1 January 2021; at the same time, § 33(3) shall cease to apply.’

41. The following paragraph 3 shall be added to § 56:

’(3) § 6(1), § 7(1), § 7a(1), § 7(1)(a) and (2), § 7b(1), § 7c(1), § 8(1, 2 and 4), § 8a(2 and 4) 10(1)(3), 11(1)(10), 13(7), 14(2) and (3), 15(1) and (3), § 16(1), § 20(2), § 30, § 32, § 33(2), § 33a, § 34(3), § 36(1) and (2), § 36b, § 41(1), (5), (7), (8) and (9), § 42 and § 50(1) as amended by Federal Law Gazette I No 148/2020 shall apply only to communications or performances disseminated after the entry into force of Federal Law Gazette I No 148/2020.’

42. The previous § 57 shall be given the designation **‘§ 58.’**; The following Article 57, including its heading, is inserted after Article 56:

‘Implementation of Directives of the European Union

§ 57. §§ 33, 33a, 36, 36a and 36b pertain to the implementation of

1. Article 21 of Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, OJ L 88, 31.3.2017, p. 6, and

2. Article 25 of Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, p. 1.’

Article 10

Amendment of the Criminal Procedure Code 1975

The Code of Criminal Procedure [Strafprozeßordnung – StPO] 1975, Federal Law Gazette I No 631/1975, last amended by the Federal Act published in Federal Law Gazette I No 24/2020, shall be amended as follows:

1. In the table of contents, the following entry is inserted after the entry for § 66a:

‘§ 66b Litigation support’

2. In § 30(1), point 3a, the word ‘continuous’ is replaced by the word ‘continuous’.

3. In § 31(1), the full stop at the end of point 5 is replaced by a comma and the following point 6 is added:

‘6. the procedure for deciding on applications for orders to investigate the accused person (§ 71(1), second sentence).’

4. The current § 49 is assigned the paragraph name ‘(1)’ and the following paragraph 2 is added:

‘(2) The accused shall have the right to grant access to the file (§ 68) to victims, private parties or private prosecutors only to the extent necessary to safeguard their interests.’

5. § 66(2) and (4) is deleted.

6. The following § 66b including heading shall be added after § 66a:

‘Litigation support

§ 66b. (1) At their request

a) victims within the meaning of § 65(1)(a) or (b),

b) victims (§ 65(1)) of terrorist offences (§ 278c StGB),

c) victims (§ 65(1)) of persistent persecution (§ 107a StGB), continual harassment by means of a telecommunication system or computer system (§ 107c StGB) and incitement to hatred (§ 283 StGB),

d) Victims (§ 65(1) of the Criminal Code), accusation of a criminal offence (§ 111 StGB) which has already been dismissed (§ 113 of the Criminal Code), insulting (§ 115 StGB) and defamation (§ 297 StGB), where it can be assumed, on the basis of certain evidence, that such an act was committed by telecommunications or using a computer system; and

e) minors who have witnessed violence in their immediate social proximity (domestic violence, violence against children),

to grant psychosocial and legal support to proceedings to the extent necessary to safeguard their procedural rights with the utmost consideration of their personal concern. Victims whose sexual integrity could have been violated and who have not yet reached the age of fourteen must in any case be granted psychosocial litigation support.

(2) Psychosocial litigation support includes preparing those affected for the procedures and any associated emotional stress as well as support for interrogations into the investigation and the main proceedings, legal litigation support, legal advice and representation by a lawyer.

(3) The Federal Minister for Justice shall be authorised to contract to grant the persons referred to in paragraph 1, after examination of the legal requirements, further detailed provisions on the conditions for commissioning such institutions and, in agreement with the Federal Minister for Women and Integration in the Federal Chancellery and the Federal Minister for Labour, Families and Youth, on quality standards of process monitoring, in particular on the training and further training of process attendants.’

7. In § 67(7) and in § 381(1)(9), the expression in brackets ‘(§ 66(2))’ shall be replaced with the expression in brackets ‘(§ 66b)’.

8. In § 70(2), the phrase ‘§ 65(1)(a) or (b) and Victims (§ 65(1)) of terrorist offences (§ 278c StGB)’ is replaced by the phrase ‘§ 66b(1)(a) to (d)’.

9. § 71 shall read:

‘§ 71. (1) Criminal acts the commission of which must be prosecuted only at the request of the victim, denotes the law. In order to investigate the accused of an offence on the basis of a criminal offence (§ 111 StGB), accusation of an offence which has already been dismissed (§ 113 StGB) or insult (§ 115 StGB) committed by means of telecommunications or using a computer system, the victim may submit an application to the court (§ 31(1)(6)) for orders under § 76a or § 135(2)(2), which must meet the requirements of an application for evidence (§ 55). The victim shall be entitled to submit an application, unless it is obvious, in the statement of reasons. The court is required to rule on the order of the requested investigative measures in accordance with the relevant provisions. The last sentence of § 104(1) and the second sentence of § 210(3) shall apply mutatis mutandis.

(2) In the event of his investigation, the court shall immediately notify the defendant of the decision referred to in paragraph 1 and inform him of his right to lodge a complaint (§ 87). As soon as the decision has become final in respect of the accused, the court must notify the victim of the investigated data pursuant to § 76a or the result transmitted in writing (§ 134(5)). Otherwise, the victim must be informed that the investigation of the accused was not possible or that the communication of the data is not permitted.

(3) The main proceedings for offences referred to in paragraph 1 shall be conducted on the basis of a private action which must comply with the requirements of an indictment (§ 211) or an independent application by the private prosecutor for the issue of capital injunctions pursuant to § 445. Private actions shall be brought before the competent court, in the case of an application under paragraph 1, within 6 weeks of the date on which information was provided in accordance with the second sentence of paragraph 2. The right to file an application and any claims under private law must be stated in the justification, unless they are readily apparent. The same applies to an independent application for the issue of capital injunctions pursuant to § 445.

(4) In the cases referred to in § 117(2) and (3) of the Criminal Code, the victim is entitled to bring a private action if he or his superior authority does not grant or withdraw the authorisation to prosecute (§ 92). Is not entitled to indict the person who expressly renounces it or has forgave the commission of the offence. §§ 57 and 58 of the Criminal Code remain unaffected.

(5) Late (paragraph 3) private actions and self-employed applications for the issuing of property injunctions pursuant to § 445 must be dismissed by order of the court and, moreover, the private action or the application for the issuing of capital injunctions pursuant to § 445 must be notified to the defendant or defendant and the parties to the liability with the information that they are entitled to submit their observations within 14 days. According to that provision, the court is required to arrange the main hearing unless it proceeds under § 451 or § 485.

(6) In the main proceedings, the private prosecutor has in principle the same rights as the public prosecutor; however, he is entitled to apply for coercive measures only in so far as this is necessary to secure evidence or property orders. He is not entitled to apply for the coercive measures regulated in the 9th section.

(7) If the private prosecutor does not attend the main hearing or does not make the necessary requests, it is presumed that he has dispensed with the persecution. In such cases, the proceedings shall be terminated by decision.’

10. In § 76a(1), after the words ‘communication services’, the words ‘and other service providers (§ 3(2) ECG)’ shall be inserted, and the words ‘or users of another service (§ 3(4) ECG) shall be inserted after the words ‘participants (§ 90(7) TKG)’.

11. In § 390(1), the following paragraph 1a is inserted after paragraph 1:

‘(1a) In criminal proceedings on the basis of criminal allegations (§ 111 StGB), accusation of an offence which has already been dismissed (§ 113 StGB), or insult (§ 115 of the Criminal Code) committed by means of telecommunications or using a computer system, the private prosecutor or applicant (§ 71(1)) shall only be obliged to reimburse costs if he knowingly wrongly raised the allegation.’

12. In § 393, the following paragraph 4a shall be inserted after paragraph 4:

‘(4a) If criminal proceedings are terminating in criminal proceedings on the basis of a criminal offence (§ 111 StGB), allegation of an offence which has already been dismissed (§ 113 StGB) or insult (§ 115 StGB) committed by means of telecommunications or using a computer system, the private prosecutor shall, in the main and appeal proceedings, reimburse the defendant for all costs of defence, unless there is no obligation to pay compensation under subsection 4.’

12a. In § 395(1), after the phrase ‘paragraph 4’ the phrase ‘paragraph 4a’ is inserted.

13. The following paragraph 46 shall be added to § 514:

‘(46) The entry of the title of § 66b in the table of contents and § 30(1)(3a), § 31(1), § 49, § 66b, § 67(7), § 70(2), § 71, § 76a(1), § 381(1)(9), § 390(1a), § 393a(4a), § 395(1) and § 516a(12), as amended by Federal Law Gazette I No 148/2020, shall enter into force on 1 January 2021; at the same time, § 66(2) and (4) are deleted. § 390(1a) and § 393(4a), as amended by Federal Law Gazette I No 148/2020, enter into force and is rescinded on 31 December 2023.’

14. In § 516a, the following paragraph 12 is be appended:

‘(12) § 66b as published in the Federal Law Gazette I No 148/2020, serves to implement Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57.’

Article 11

Entry into force

Article 8;as amended by Federal Act Federal Law Gazette I No 148/20120 enters into force on 1 January 2021.

Article 12

Notification

The content of this provision has been notified in accordance with the provisions of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services concerning notification numbers 2020/547/A and 2020/548/A.

Van der Bellen

Kurz