Criminal Procedure Code (Strafprozeßordnung, StPO)

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Part One General Provisions

Chapter I Substantive Jurisdiction of the Courts

Section 1. [Substantive Jurisdiction]

Substantive jurisdiction of the courts shall be determined by the Courts Constitution Act.

Section 2. [Joinder and Severance of Connected Cases]

(1) Connected criminal cases, which individually would be under the jurisdiction of courts of different rank, may be tried jointly by the court of superior jurisdiction. Connected criminal cases of which individual cases would be under the jurisdiction of particular penal chambers pursuant to Section 74 subsection 2, Section 74a and Section 74c of the Courts Constitution Act, may be tried jointly by the penal chamber which enjoys precedence pursuant to Section 74e of the Courts Constitution Act.

(2) Such court may, by order, sever connected criminal cases on grounds of expediency.

Section 3. [Definition of Connection]

Cases shall be deemed to be connected when a person is accused of more than one criminal offense or if, in the case of one act, more than one person is charged as perpetrator, inciter or accessory or charged with obstruction of justice or handling stolen goods.

Section 4. [Subsequent Joinder or Severance]

(1) The court may, by order, direct the joinder of connected, or the severance of joint, criminal cases even after the opening of the main proceedings, upon application by the public prosecution office, the defendant or *proprio motu*.

(2) The court of higher rank to whose district the other courts belong shall be competent to give such order. If there is no such court, the common superior court shall give a decision.

Section 5. [Jurisdiction over Connected Cases]

For the duration of joinder the proceedings shall be governed by the criminal case within the jurisdiction of the court of higher rank.

Section 6. [Examination *Proprio motu*]

At all stages of the proceedings the court shall, *proprio motu*, review its substantive jurisdiction.

Section 6a. [Jurisdiction of Particular Penal Chambers]

The court shall, *proprio motu*, review the jurisdiction of particular penal chambers pursuant to the provisions of the Courts Constitution Act (Section 74 subsection 2 and Sections 74a and 74c of the Courts Constitution Act) prior to the opening of the main proceedings.

Thereafter it may take account of its lack of jurisdiction only upon an objection being filed by the defendant. The defendant may file such objection during the main hearing only prior to the commencement of his examination on the charge.

Chapter II Venue

Section 7. [Place of the Commission of the Act]

(1) Venue shall be deemed to be established in the court in whose district the criminal offense was committed.

(2) If essential elements of an offense are established by the contents of a publication appearing within the territorial scope of this Federal statute, only the court in whose district the publication appeared shall be deemed to have jurisdiction pursuant to subsection 1. However, in defamation cases, where initiated by private prosecution, the court in whose district the publication was distributed shall also have jurisdiction if the defamed person has his domicile or ordinary place of residence in that district.

Section 8. [Domicile, Place of Residence]

(1) Venue shall also be deemed to be established in the court in whose district the indicted accused has his domicile at the time the charges are preferred.

(2) If the indicted accused has no domicile within the territorial scope of this Federal statute, venue shall also be determined by his ordinary place of residence and, if such place of residence is not known, by his last domicile.

Section 9. [Place of Apprehension]

Venue shall also be deemed to be established in the court in whose district the accused was apprehended.

Section 10. [Home Port]

(1) If the criminal offense was committed on a ship authorized to fly the Federal flag outside the territorial scope of this statute, the competent court shall be the court in whose district the ship's home port is located, or the port within the territorial scope of this statute first reached by the ship after commission of the offense.

(2) Subsection (1) shall apply *mutatis mutandis* to aircraft authorized to bear the nationality sign of the Federal Republic of Germany.

Section 10a. [Environmental Criminal Offenses]

If no venue is established for an offense committed at sea outside the territorial scope of this statute, the venue shall be Hamburg; the competent Local Court shall be Hamburg Local Court.

Section 11. [German Officials Abroad]

(1) In the case of Germans who enjoy the right of extraterritoriality, as well as of officials of the Federation or of a German *Land*, employed abroad, venue shall be determined by the domicile which they had in Germany. If they had no such domicile, the seat of the Federal Government shall be considered their domicile.

(2) These provisions shall not be applied to honorary consuls.

Section 12. [Concurrence of More than One Venue]

(1) If more than one court has jurisdiction pursuant to the provisions of Sections 7 to 11, the court which first opened the investigation shall take precedence.

(2) The investigation and decision may, however, be transferred to one of the other competent courts by the common superior court.

Section 13. [Venue for Connected Cases]

(1) For connected criminal cases each of which, pursuant to the provisions of Sections 7 to 11, would be under the jurisdiction of different courts, venue shall be deemed to be established in each court having jurisdiction over one of the criminal cases.

(2) If more than one connected criminal case is pending in different courts, they may be joined in whole or in part in one of the courts, where such courts so agree upon application of the public prosecution office. If such agreement is not reached, the common superior court, upon application by the public prosecution office or an indicted accused, shall decide whether and in which court the cases shall be joined.

(3) Cases which have been joined may be severed in the same manner.

Section 13a. [Determination of the Competent Court by the Federal Court of Justice]

If venue cannot be established in any court within the territorial scope of this Federal statute, or if such court cannot be ascertained, the Federal Court of Justice shall decide which court shall be competent.

Section 14. [Dispute regarding Jurisdiction]

If a dispute arises between courts as regards jurisdiction, the common superior court shall decide which court is to conduct the investigations and give the decision.

Section 15. [Impediment of the Competent Court]

If a competent court is, in an individual case, legally or factually hindered from exercising its judicial authority, or if it is feared that a hearing before such a court might endanger public security, the next superior court shall assign the investigation and decision to an equivalent court of another district.

Section 16. [Objection of Lack of Jurisdiction]

Prior to the opening of the main proceedings, the court shall, *proprio motu*, review its local jurisdiction. Thereafter it may declare its lack of jurisdiction only upon an objection being filed by the defendant. The defendant may file such objection during the main hearing only prior to the commencement of his examination on the charge.

Section 17. Deleted

Section 18. Deleted

Section 19. [Dispute regarding Lack of Jurisdiction]

Where more than one court one of which is competent, has stated in decisions that are no longer contestable that it lacks jurisdiction, the common superior court shall designate the competent court.

Section 20. [Individual Acts of a Court Lacking Jurisdiction]

Individual acts of investigation by a court lacking jurisdiction shall not be ineffective by virtue of that lack of jurisdiction alone.

Section 21. [Exigent Circumstances]

A court lacking jurisdiction shall, in exigent circumstances, conduct acts of investigation in its district.

Chapter III Exclusion and Challenge of Court Personnel

Section 22. [Disqualification of a Judge]

(1) A judge shall be barred by law from exercising his judicial office:

1. if he himself was aggrieved by the criminal offense;

2. if he is or was the spouse or the guardian of the accused or of the aggrieved party;

3. if he is or was lineally related or related by marriage, collaterally related to the third degree or related by marriage to the second degree to the accused or the aggrieved party;

4. if he acted in the case as an official of the public prosecution office, as a police officer, as attorney-at-law of the aggrieved party, or as defense counsel;

5. if he was heard in the case as a witness or expert.

Section 23. [Disqualification of Judges Who Participated in Previous Proceedings]

(1) A judge who participated in a decision which has been contested by way of appellate remedy shall be barred by law from participating in the decision of a higher instance.

(2) A judge who has participated in a decision contested by application for reopening of the proceedings shall be barred by law from participating in decisions in the proceedings to reopen the case. If the contested decision has been given at a higher instance, a judge who has participated in an original decision at a lower instance shall be barred. The first and second sentences shall apply *mutatis mutandis* to the participation in decisions to prepare the reopening of the proceedings.

Section 24. [Challenge of a Judge]

(1) A judge may be challenged both where he has been barred by law from exercising judicial office and for fear of bias.

(2) Challenge for fear of bias shall be justified if there is reason to doubt the impartiality of a judge.

(3) The public prosecution office, the private prosecutor, and the accused may exercise the right of challenge. The court personnel appointed to participate in the decision shall be named upon the request of the party entitled to challenge.

Section 25. [Final Date for Challenge]

(1) A judge hearing the case may be challenged for fear of bias until commencement of examination of the first defendant as to the defendant's personal circumstances or, in the main hearing on the appeal on fact and law or the appeal on law, until commencement of the rapporteur's statement. All reasons for the challenge shall be stated at the same time.

(2) Thereafter a judge may be challenged only if:

1. the circumstances on which the challenge is based have occurred later or have become known to the person entitled to challenge at a later date and

2. the challenge is claimed without delay.

After the defendant's last word a challenge shall no longer be admissible.

Section 26. [Procedure concerning Challenge]

(1) The motion for challenge shall be filed with the court of which the judge is a member; it may be made orally to be recorded by the court registry. Section 257a shall not be applicable.

(2) The ground for challenge, and in the cases of Section 25 subsection (2) the conditions for submitting the request in time must be substantiated. The taking of an oath to substantiate a challenge shall not be admissible. To substantiate a challenge, reference may be made to the testimony of the challenged judge.

(3) The challenged judge shall make an official statement on the grounds for challenge.

Section 26a. [Inadmissible Challenge]

(1) The challenge of a judge shall be rejected by the court as being inadmissible if:

1. the challenge is not made in time;

2. there is no disclosure of the ground for the challenge or of the means by which the challenge could be substantiated; or

3. it is obvious that the challenge is made just to delay the proceedings or for purposes which are irrelevant to the proceedings.

(2) The court shall give the decision with respect to a rejection pursuant to subsection (1) without the challenged judge being excluded from the bench. In a case under subsection (1) number 3, a unanimous decision and a disclosure of the circumstances which constitute the ground for the rejection shall be required. If a commissioned or a requested judge, a judge in preparatory proceedings, or a criminal court judge sitting alone is challenged, he shall himself decide the question whether the challenge shall be rejected as inadmissible.

Section 27. [Decision on the Challenge]

(1) If the challenge is not rejected as inadmissible the court of which the challenged person is a member shall decide on the motion of challenge without the challenged person's participation.

(2) If a judge of the adjudicating penal chamber is challenged, the penal chamber, in its required composition for decisions made outside the main hearing, shall decide the issue.

(3) If a judge at the Local Court is challenged, another judge of this court shall give a decision. A decision shall not be required if the person challenged considers the motion of challenge to be well-founded.

(4) If the court which is to give a decision lacks a quorum after exclusion of the challenged judge, the next superior court shall give a decision.

Section 28. [Appellate Remedy]

(1) A ruling declaring a challenge well-founded shall not be contestable.

(2) An immediate complaint may be lodged against a ruling rejecting the challenge as inadmissible or unfounded. If the ruling concerns an adjudicating judge, it can be contested only together with the judgment.

Section 29. [Non-deferable Acts of the Challenged Person]

(1) A challenged judge shall, prior to the decision on the motion for challenge, perform only such acts which may not be deferred.

(2) If a judge is challenged at the main hearing and if the decision on the challenge (Sections 26a and 27) would require an interruption of the main hearing, the main hearing may be continued until a decision on the challenge is possible without delaying the main hearing; a decision on the challenge shall be made at the latest by the commencement of the day following the next day of the hearing, and always prior to the commencement of the closing speeches. If the challenge is declared well-founded and if the main hearing need not be suspended for this reason, that part of the hearing completed after submission of the motion for challenge shall be repeated. This shall not apply to such acts which may not be deferred. After submission of the motion for challenge decisions which may also be made separately from the main hearing may be given with the participation of the challenged person only if they may not be deferred.

Section 30. [Self-disqualification; Ex Officio Challenge]

The court competent for the decision on a motion for challenge shall decide also in cases in which, although a motion for challenge has not been filed, a judge reports circumstances which might justify his being challenged, or when for other reasons doubts arise as to whether a judge is barred by law.

Section 31. [Lay Judges and Registry Clerks]

(1) The provisions of this Chapter shall apply *mutatis mutandis* to lay judges as well as to registry clerks and to other persons assisting as recording clerks.

(2) The decision shall be given by the presiding judge. In the grand penal chamber and the penal division with lay judges the judicial members of the bench shall give a decision. If a recording clerk has been assigned to a judge, the latter shall decide on his challenge or disqualification.

Section 32. Deleted

Chapter IV Court Decisions and their Notification

Section 33. [Hearing the Participants]

(1) A decision of the court rendered in the course of the main hearing shall be given after hearing the participants.

(2) A decision of the court rendered outside a main hearing shall be given after a written or oral declaration by the public prosecution office.

(3) If a decision has been given pursuant to subsection (2), another participant shall be heard before facts or evidentiary conclusions in respect of which he has not yet been heard are used to his detriment.

(4) If remand detention, seizure or other measures have been ordered, subsection (3) shall not be applicable if the prior hearing would endanger the purpose of such an order. Special provisions governing the hearing of the participants shall not be affected by subsection (3).

Section 33a. [Subsequent Hearing]

If the court, in a decision detrimental to a participant, used facts or evidentiary conclusions in respect of which he has not yet been heard and if he is not entitled to lodge a complaint against this decision or to any other legal remedy, the court shall give this participant a subsequent hearing, as far as the detriment still exists, either of *proprio motu* or upon an application, and decide upon an application. The court may amend its decision without an application.

Section 34. [Reasons for the Decision]

Decisions which may be contested by appellate remedy, as well as those refusing an application, shall include the reasons therefor.

Section 34a. [Entry into Force by virtue of an Order]

If, after an appellate remedy has been sought in time, the contested decision immediately enters into force by virtue of an order, it shall be deemed to have entered into force at the end of the day on which the order was given.

Section 35. [Notification of the Decision]

(1) Decisions which are given in the presence of the person to whom they refer shall be notified to him orally. Upon request a copy shall be given to him.

(2) Other decisions shall be notified by service thereof. Where notification of the decision does not cause commencement of a time limit, the decision may be notified informally.

(3) Documents served on individuals deprived of their liberty shall be read out to them upon request.

Section 35a. [Instructions on Appellate Remedy]

Upon notification of a decision which is contestable by way of appellate remedy within a given time limit, the person concerned shall be informed of the options for contesting such decision and of the relevant prescribed time limits and forms. Where an appeal on fact and law may be filed against the judgment, the defendant shall also be informed of the legal consequences arising out of Section 40 subsection (2) and Sections 329 and 330.

Section 36. [Service and Execution of Decisions]

(1) The service of decisions shall be ordered by the presiding judge. The court registry shall take care that the service is effected.

(2) Decisions requiring execution shall be submitted to the public prosecution office which shall take necessary action. This shall not apply to decisions concerning order at the sittings.

Section 37. [Procedure concerning Service]

(1) The provisions of the Civil Procedure Code shall apply *mutatis mutandis* to the procedure for service. The statutory time limits shall be considered to be time limits within the meaning of Section 187, second sentence, of the Civil Procedure Code.

(2) Service of documents abroad may also be effected by means of recorded delivery post with acknowledgment of receipt, provided international agreements permit the direct sending of documents via the postal system.

(3) Where documents addressed to a participant are served on several persons authorized to receive them, time limits shall be calculated from the date of the service last effected.

Section 38. [Direct Summons]

Persons participating in criminal proceedings who have the authority to summon witnesses and experts directly shall charge the court bailiff with service of the summons.

Section 39. Deleted

Section 40. [Service by Publication]

(1) If service on an accused, upon whom a summons for the main hearing has not yet been served, cannot be effected in Germany in the prescribed manner, and if compliance with the provisions for service abroad appears impracticable or will presumably be unsuccessful, the service shall be considered effected if the contents of the document to be served have been notified in a German or foreign publication and two weeks have elapsed after publication, or if the document to be served has been affixed for two weeks on the bulletin board of the

court of first instance. The official who orders the service shall have the right to choose the publication.

(2) If the summons for the main hearing was previously served upon the defendant, further service on him, if it cannot be effected in Germany in the prescribed manner, shall be considered effected when the document to be served has been affixed for two weeks on the bulletin board of the court of first instance. Only those parts of judgments and rulings containing the operative provisions shall be affixed.

(3) Service by publication shall be admissible in proceedings concerning an appeal on fact and law filed by the defendant if it is not possible to serve documents at an address at which documents were last served or which the defendant last provided.

Section 41. [Service on the Public Prosecution Office]

Service on the public prosecution office shall be made by producing the original copy of the document to be served. Where a time limit begins to run upon service, the public prosecution office shall note the day of production on the original.

Chapter V Time Limits and Restoration of the *Status Quo Ante*

Section 42. [Time Limits Determined in Days]

In calculating a time limit determined in days, the day of the time or the event determining the beginning of the time limit shall not be counted.

Section 43. [Time Limits Determined in Weeks and Months]

(1) A time limit determined in weeks or months shall expire at the end of the day of the last week or the last month, whose name or number, corresponds to the day on which the time limit began; where the last month lacks such day, the time limit shall expire at the end of the last day of that month.

(2) If the end of a time limit falls on a Sunday, a public holiday or a Saturday, the time limit shall expire at the end of the next workday.

Section 44. [Restoration of the *Status quo ante*]

If a person was prevented from observing a time limit through no fault of his own, he shall be granted restoration of the *status quo ante* upon application. Failure to observe the time limit for filing an appellate remedy shall not be considered a fault if instructions pursuant to Section 35a, Section 319 subsection 2, third sentence, or Section 346 subsection 2, third sentence, have not been given.

Section 45. [Application for Restoration of the *Status quo ante*]

(1) The application for restoration of the *status quo ante* shall be filed with the court where the time limit should have been observed, within one week after the reason for non-compliance no longer applies. If the time limit is observed, it shall be sufficient for the application to be filed in time with the court which is to decide on the application.

(2) The facts justifying the application shall be substantiated at the time the application is filed or during the proceedings on the application. The omitted act shall subsequently be undertaken within the time limit for filing the application. Where this is done, restoration may also be granted without an application being filed.

Section 46. [Decision and Appellate Remedy]

(1) The decision on the application shall be taken by the court which would have been competent to decide on the facts of the case if the act concerned had been completed on time.

(2) A decision in favor of the application shall not be contestable.

(3) An immediate complaint may be lodged against a decision refusing an application.

Section 47. [No Suspension of Execution]

(1) The application for restoration of the *status quo ante* shall not suspend execution of a court decision.

(2) The court may, however, order postponement of execution.

Chapter VI Witnesses

Section 48. [Summons of Witnesses]

A witness summons shall denote the legal consequences of non-appearance.

Section 49. [Examination of the Federal President]

The Federal President shall be examined in his residence. He shall not be summoned to the main hearing. The record of his examination by the court shall be read out at the main hearing.

Section 50. [Examination of Members of Parliament or Government Ministers]

(1) Members of the Federal Parliament, of the Federal Council, of a *Land* Parliament or second chamber shall be examined at their place of assembly while present.

(2) Members of the Federal Government or of a *Land* government shall be examined at their government office or, if they are not there, at the place where they are.

(3) Any deviation from the foregoing provisions shall, in the case of members of a body mentioned in subsection (1), require the approval of that body,

in the case of members of the Federal Government, the approval of the Federal Government,

in the case of members of a *Land* government, the approval of the *Land* government.

(4) Members of the legislative bodies in subsection (1), and members of the Federal Government or of a *Land* government, if examined outside the main hearing, shall not be summoned to it. The record of their judicial examination shall be read out at the main hearing.

Section 51. [Consequences of Non-Appearance]

(1) A witness who fails to appear although he was properly summoned, shall be charged with the costs attributable to his failure to appear. At the same time, a coercive fine shall be imposed on him and if the coercive fine cannot be collected, coercive detention shall be ordered. A witness may also be brought before the court by force. Section 135 shall apply *mutatis mutandis*. In the case of repeated non-appearance the coercive measure may be imposed a second time.

(2) Costs shall not be charged and a coercive measure shall not be imposed if the witness provides a sufficient and timely excuse for his non-appearance. If such excuse is not made in time pursuant to the first sentence, the charging of the costs and the imposition of a coercive measure shall, be dispensed with only if it is demonstrated that the delayed excuse is not the witness' fault. If the witness is sufficiently excused thereafter, the orders made shall be revoked under the conditions set out in the second sentence.

(3) Authority to order such measures shall also be vested in the judge in the preliminary proceedings as well as in a commissioned and a requested judge.

Section 52. [Right to Refuse Testimony on Personal Grounds]

(1) The following persons may refuse to testify:

1. the fiancé(e) of the accused;

2. the spouse of the accused, even if the marriage no longer exists;

3. a person who is or was lineally related or related by marriage, collaterally related to the third degree, or related by marriage to the second degree, to the accused.

(2) If minors for want of intellectual maturity, or minors or persons placed in care due to mental illness or mental or emotional deficiency have no sufficient understanding of the importance of their right of refusal to testify, testimony may be taken from such persons only

if they are willing to testify and if their statutory representative also agrees to their examination. If the statutory representative is accused himself he may not decide on the exercise of the right of refusal to testify; the same shall apply to the parent who is not accused, if both parents are entitled to act as statutory representative.

(3) Persons entitled to refuse to testify, in the cases of subsection (2) also their representatives authorized to decide on the exercise of the right of refusal to testify, shall be instructed concerning their right prior to each examination. They may revoke the waiver of this right during the examination.

Section 53. [Right to Refuse Testimony on Professional Grounds]

(1) The following persons may also refuse to testify:

1. clergymen, concerning the information that was entrusted to them or became known to them in their capacity as spiritual advisers;

2. defense counsel of the accused, concerning the information that was entrusted to them or became known to them in this capacity;

3. attorneys-at-law, patent attorneys, notaries, auditors, sworn certified accountants, tax consultants and tax representatives, doctors, dentists, psychological psychotherapists, psychotherapists specializing in the treatment of children and juveniles, pharmacists and midwives, concerning information entrusted to them or which became known to them in their professional capacity;

3a. members or representatives of a recognized counseling agency pursuant to sections 3 and 8 of the Act on Pregnancies in Conflict Situations, concerning the information that was entrusted to them or became known to them in this capacity;

3b. drugs dependency counselors in a counseling agency recognized or set up by an authority, a body, institution or foundation under public law, concerning the information that was entrusted to them or became known to them in this capacity;

4. members of the Federal Parliament, of a *Land* Parliament or a second chamber, concerning persons who confided to them facts in their capacity as members of these bodies, or to whom they confided facts in this particular capacity, as well as the facts themselves;

5. individuals who are or were professionally involved in the preparation, production or dissemination of periodically printed matter or radio broadcasts concerning the author, contributor or informant providing contributions and documentation and concerning information received by them in their professional capacity insofar as this concerns contributions, documentation and information for the editorial element of their activity.

(2) The persons specified in subsection (1), numbers 2 to 3b, may not refuse to testify if they have been released from their obligation of secrecy.

Section 53a. [Right of Professional Assistants to Refuse Testimony]

(1) Assistants and persons being trained for their profession who participate in their respective professional activities shall be considered equivalent to the persons specified in Section 53 subsection (1), numbers 1 to 4. The persons specified in Section 53 subsection (1), numbers 1 to 4, shall decide whether these assistants should exercise their right to refuse to testify, except if such a decision cannot be obtained within a foreseeable period.

(2) Release from the obligation of secrecy (Section 53 subsection (2)) shall also apply to the assistants.

Section 54. [Authorization for Judges and Officials to Testify]

(1) The special provisions of the law concerning public officials shall apply to the examination of judges, officials, and other persons in the public service as witnesses concerning circumstances covered by their official obligation of secrecy, as well as to permission to testify.

(2) Members of the Federal Parliament, of the *Land* Parliaments, of the Federal Government or a *Land* Government and the employees of a Federal or *Land* parliamentary group shall be subject to the special provisions applicable to them.

(3) The Federal President may refuse to testify if his testimony would be disadvantageous to the welfare of the Federation or of a German *Land*.

(4) These provisions shall also apply if the persons referred to above are no longer members of the public service or employees of a parliamentary group or if their terms of office have expired insofar as matters are involved which occurred during their terms of service, employment or office or which became known to them during their terms of service, employment or office.

Section 55. [Refusal of Information]

(1) Any witness may refuse to answer any questions the reply to which would subject him, or one of the relatives specified in Section 52 subsection (1), to the risk of being prosecuted for a criminal offense or a regulatory offense.

(2) The witness shall be informed of his right to refuse to answer.

Section 56. [Substantiation of the Grounds for Refusal to Testify]

The reason for which the witness in the cases of Sections 52, 53 and 55 refuses to testify shall be substantiated upon request. A sworn affirmation by the witness shall be sufficient.

Section 57. [Instruction regarding Oath]

Before examination, witnesses shall be admonished to tell the truth and shall be informed that their statements must be made under oath, except as otherwise provided or permitted by law. At the same time instruction shall be given on the importance of the oath, on the possibility to choose between the oath with religious affirmation or without religious affirmation, and on the criminal law consequences of incorrect or incomplete statements.

Section 58. [Examination; Confrontation]

(1) Witnesses shall be examined individually and in the absence of those witnesses who shall be heard later.

(2) A confrontation with other witnesses or with the accused in the preliminary proceedings shall be admissible if this is required for the further proceedings.

Section 58a. [Examination by Audio-Visual Medium]

(1) The examination of a witness may be recorded on an audio-visual medium. The examination shall be recorded:

1. in the case of persons of less than sixteen years of age who have suffered injury as result of the criminal offense; or

2. if there is a fear that the person cannot be examined during the main hearing and if the recording is required in order to establish the truth.

(2) Use of the audio-visual recording shall be admissible only for the purposes of criminal prosecution and only to the extent that it is required in order to establish the truth. Section 100b subsection (6) and Sections 147 and 406e shall apply *mutatis mutandis*.

Section 59. [Oath]

Witnesses shall be placed under oath individually after they have been examined. Except as otherwise provided, the oath shall be taken at the main hearing.

Section 60. [Prohibition of Oath]

An oath shall not be administered:

1. to persons who at the time of the examination are still under the age of sixteen, or who have no sufficient understanding of the nature and importance of the oath due to their deficient intellectual maturity or mental illness or mental or emotional deficiency;

2. to persons who are suspected of having committed the offense which forms the subject of the investigation, of having participated in it, or who are suspected of accessoryship, obstruction of justice or handling stolen goods or who were already sentenced therefor.

Section 61. [Dispensing with the Oath]

The court in its discretion may dispense with administering an oath:

1. to persons who at the time of the examination have reached the age of sixteen, but are still under the age of eighteen;

2. to the aggrieved person, as well as to persons who within the meaning of Section 52 subsection (1) are relatives of the aggrieved person or of the accused;

3. if the court does not attribute special importance to the statement, and is of the opinion that an essential statement cannot be expected even under oath;

4. in the case of persons who have been sentenced for perjury (Sections 154 and 155 of the Penal Code);

5. if the public prosecution office, defense counsel and the defendant dispense with administration of the oath.

Section 62. [Oath in Proceedings for Petty Offenses]

Witnesses shall be sworn in private prosecution proceedings only if it is deemed necessary by the court because of the decisive importance of the statement, or in order to obtain a true statement.

Section 63. [Privilege of Refusing to Take the Oath]

The relatives of the accused specified in Section 52 subsection (1) shall have the right to refuse to give testimony under oath; they shall be informed of this right.

Section 64. [Recording Reason for not Administering an Oath]

The reason for not having administered an oath to a witness shall be indicated in the record.

Section 65. [Oath in Preparatory Proceedings]

Administration of an oath shall only be admissible in the preparatory proceedings:

1. in exigent circumstances;

2. if the oath seems to be necessary for obtaining a true statement on a question of importance for the further proceedings; or

3. if it is be expected that the witness will be unavailable at the main hearing.

Section 66. Deleted

Section 66a. [Recording Reason for Administering an Oath]

The reason for administering an oath to a witness outside the main hearing shall be indicated in the record.

Section 66b. [Oath on Examination by Commission]

(1) If the witness is examined by a commissioned or requested judge, this judge shall initially decide whether to administer the oath.

(2) An oath shall be administered, where admissible, if so demanded in the commission or request from the court. The examining judge may suspend the administration of an oath and reserve it for a new decision of the commissioning or requesting court, if facts appear in the examination which would justify an unsworn examination. These facts shall be noted in the record.

(3) An oath shall not be administered if an unsworn examination is requested.

Section 66c. [Form of Oath]

(1) An oath with religious affirmation shall be administered in such a way that the judge addresses the following words to the witness:

"You swear by God the Almighty and Omniscient that, to the best of your knowledge, you have told the pure truth and have not concealed anything",

whereupon the witness says the words:

"I swear, so help me God".

(2) The oath without religious affirmation shall be administered in such a way that the judge addresses the following words to the witness:

"You swear that, to the best of your knowledge, you have told the pure truth and have not concealed anything",

whereupon the witness says the words:

"I swear".

(3) If a witness indicates that as a member of a religious denomination or of a community professing a creed he wants to use a formula of affirmation used by such denomination or community, he may add it to the oath.

(4) The person swearing the oath shall raise his right hand when taking the oath.

Section 66d. [Affirmation Equivalent to an Oath]

(1) If a witness states that he does not wish to swear an oath for reasons of faith or conscience he shall affirm the truth of his testimony. The affirmation shall be equivalent to an oath; the witness shall be informed of this fact.

(2) The truth of the statement shall be affirmed in such a way that the judge addresses the following words to the witness:

"You are aware of your responsibility before the court and affirm that, to the best of your knowledge, you have told the pure truth and have not concealed anything",

whereupon the witness says: "Yes".

(3) Section 66c subsection (3) shall apply *mutatis mutandis*.

Section 66e. [Form of Oath for Mute Witnesses]

(1) Mute persons shall take the oath in such a way that they write down and sign the following words:

"I swear by God the Almighty and Omniscient that, to the best of my knowledge, I have told the pure truth and have not concealed anything".

Mute persons who cannot write shall take the oath by signs with the help of an interpreter.

(2) The provisions of Section 66c subsection (2) and (3) and Section 66d shall apply *mutatis mutandis*.

Section 67. [Reliance on the Prior Oath]

If a witness, after having been examined under oath, is examined a second time in the same preliminary proceedings or main proceedings, the judge, instead of administering a second oath, may have the witness confirm the correctness of his statement by reference to the oath previously taken.

Section 68. [Examination as to Witness' Identity and Personal Particulars]

(1) The hearing begins with the witness being asked to state his first name and family name, age, position or trade and place of residence. Witnesses who have made observations in their official capacity may state their place of work instead of their place of residence.

(2) If there is reason to fear that the witness or another person might be endangered by the witness stating his place of residence, the witness may be permitted to state his business address or place of work or another address at which documents can be served instead of stating his place of residence. Under the condition set out in the first sentence, the presiding judge may permit the witness not to state his place of residence during the main hearing.

(3) If there is reason to fear that revealing the identity or the place of residence or whereabouts of the witness would endanger the witness' or another person's life, limb or liberty, the witness may be permitted not to state personal particulars or to state particulars only of an earlier identity. However, if so asked at the main hearing, he shall be required to state in what capacity the facts he is indicating became known to him. Documents establishing the witness' identity shall be kept by the public prosecution office. They shall only be included in the files when the danger ceases.

(4) Where necessary, questions relating to circumstances justifying the witness' credibility in the case at hand, particularly concerning his relationship with the accused or the aggrieved party, shall be submitted to him.

Section 68a. [Questions concerning Degrading Facts and Previous Convictions]

(1) Questions concerning facts which might dishonor the witness or a person who is his relative within the meaning of Section 52 subsection (1) or which concern their personal sphere of life are to be asked only if essential.

(2) A witness is to be asked about his previous convictions only if their ascertainment is required for a decision on the existence of the conditions of Section 60, number 2, or Section 61, number 4, or to judge his credibility.

Section 68b. [Assignment of an Attorney-at-Law]

With the consent of the public prosecution office a lawyer may be assigned for the duration of the examination to witnesses who previously had no legal counsel if it is evident that they are unable to exercise their rights themselves during the examination and if any of their interests that are worthy of protection cannot be taken into account in another way. Where the examination concerns

1. a serious criminal offense,

2. a less serious criminal offense pursuant to Sections 174 to 174c, 176, 179 subsections (1) to (3), Sections 180, 180b, 182, or Section 225 subsections (1) or (2) of the Penal Code, or

3. another less serious criminal offense of substantial significance committed on a commercial or habitual basis, or by a member of a gang, or in some other way committed in an organized fashion,

assignment of counsel shall be ordered upon application by the witness or the public prosecution office provided the conditions of the first sentence have been fulfilled. Section 141 subsection (4) and Section 142 subsection (1) shall apply *mutatis mutandis* to the assignment. The decision shall not be contestable.

Section 69. [Examination as to Subject Matter]

(1) The witness shall be directed to state coherently all he knows about the subject of his examination. The subject of the investigation and the name of the accused, if there is an accused, shall be indicated to the witness before the examination.

(2) If so required, further questions shall be asked in order to clarify and complete the statement, as well as to establish the grounds on which the witness' knowledge is based.

(3) The provisions in Section 136a shall apply *mutatis mutandis* to the examination of a witness.

Section 70. [Refusal without Reason to Testify or Take the Oath]

(1) A witness who without a legal reason refuses to testify, or to take an oath, shall be charged with the costs caused by this refusal. At the same time a coercive fine shall be imposed on him and if the fine cannot be collected, coercive detention shall be ordered.

(2) Detention may also be ordered to force a witness to testify; such detention shall not, however, extend beyond the termination of those particular proceedings, nor beyond a period of six months.

(3) The judge in the preliminary proceedings and any commissioned or requested judge shall also have the authority to take these measures.

(4) Where these measures have been taken they may not be repeated in the same proceedings or in other proceedings, if the same offense is the subject of these proceedings.

Section 71. [Witness' Expenses]

The witness shall be compensated pursuant to the Act on Compensation of Witnesses and Experts.

Chapter VII Experts and Inspection

Section 72. [Application of Provisions concerning Witnesses]

Chapter VI concerning witnesses shall apply *mutatis mutandis* to experts, except as otherwise provided by the following sections.

Section 73. [Selection of Experts]

(1) The judge shall select the experts to be consulted, and shall determine their number. He shall agree with them on a time limit within which their opinions may be rendered.

(2) If experts are publicly appointed for certain kinds of opinions, other persons are to be selected only if this is required by special circumstances.

Section 74. [Challenge]

(1) An expert may be challenged for the same reasons that justify the challenging of a judge. The fact, however, that the expert was examined as a witness shall not be a reason for challenge.

(2) The public prosecution office, the private prosecutor and the accused shall have the right of challenge. The appointed experts shall be made known to the person entitled to challenge if there are no special circumstances to the contrary.

(3) The ground for challenge shall be substantiated; taking an oath to substantiate a challenge shall be precluded.

Section 75. [Duty to Render Opinion]

(1) The person appointed as an expert must comply with the appointment, if he has been publicly appointed to render opinions of the required kind, or if he publicly and commercially practices the science, art, or trade, the knowledge of which is a prerequisite for rendering an opinion, or if he has been publicly appointed or authorized to practice such profession.

(2) The obligation to render an opinion shall also be incumbent upon a person who has stated his willingness to do so before the court.

Section 76. [Privilege to Refuse to Render Opinion]

(1) An expert may refuse to render an opinion for the same reasons for which a witness may refuse to testify. An expert may also be released for other reasons from his obligation to render an opinion.

(2) The provisions applying to public officials in particular shall apply to the examination of judges, officials and other persons in the public service as experts. Members of the Federal Government or of a *Land* government shall be subject to the special provisions relating to them.

Section 77. [Consequences of Non-Appearance or Refusal]

(1) In the case of non-appearance or refusal of an expert obliged to render an opinion he shall be charged with the costs caused by his non-appearance or refusal. At the same time a coercive fine shall be imposed on him. In the case of repeated disobedience the coercive fine may be assessed a second time in addition to the costs.

(2) If an expert obliged to render the opinion refuses to agree upon a reasonable time limit pursuant to Section 73 subsection (1), second sentence, or if he fails to observe the time limit agreed upon, a coercive fine may be imposed on him. The assessment of a coercive fine must be preceded by an admonition setting an extension of the time limit. In the case of repeated failure to observe the time limit the coercive fine may be assessed again.

Section 78. [Judicial Direction]

The judge shall guide the experts' participation, so far as he deems this necessary.

Section 79. [Oath Administered to an Expert]

(1) Administration of an oath to the expert shall be left to the discretion of the court. An oath shall be administered to the expert upon application by the public prosecution office, by the defendant, or by defense counsel.

(2) The oath shall be taken after the opinion is rendered; it shall contain the assurance that the expert rendered his opinion impartially and to the best of his knowledge and belief.

(3) If the expert has been sworn generally to render opinions of the kind concerned, a reference to his oath shall be sufficient.

Section 80. [Preparation of an Opinion]

(1) The expert may, at his request, be given further details for the preparation of his opinion by examining witnesses or the accused.

(2) For the same purpose, he may be allowed to examine the file, to be present at the examination of the witnesses or of the accused, and to address questions to them directly.

Section 80a. [Consultations During the Preparatory Proceedings]

An expert is to be given the opportunity, during the course of the preliminary proceedings, to prepare the opinion that he is to render at the main hearing, if it is expected that the committal of the accused to a psychiatric hospital, to an institution for withdrawal treatment or to preventive detention will be ordered.

Section 81. [Committal for Observation of the Accused]

(1) For the preparation of an opinion on the accused's mental condition the court may, after hearing an expert and defense counsel, order that the accused be brought to a public psychiatric hospital and be held under observation there.

(2) The court shall make the order pursuant to subsection (1) only if the accused is strongly suspected of the offense. The court may not make this order if it is out of relation to the importance of the matter or to the penalty or to the measure of reform and prevention to be expected.

(3) In the preparatory proceedings the court which would be competent for the opening of the main proceedings shall give a decision.

(4) An immediate complaint against the decision shall be admissible. It shall have a delaying effect.

(5) Committal to a psychiatric hospital pursuant to subsection (1) may not exceed a total period of six weeks.

Section 81a. [Physical Examination; Blood Test]

(1) A physical examination of the accused may be ordered for the establishment of facts which are of importance for the proceedings. For this purpose, the taking of blood samples and other bodily intrusions which are effected by a physician in accordance with the rules of medical science for the purpose of examination shall be admissible without the accused's consent, provided no detriment to his health is to be expected.

(2) The authority to give such order shall be vested in the judge and, if delay were to endanger the success of the examination, also in the public prosecution office including officials assisting it (Section 152 of the Courts Constitution Act).

(3) Blood samples or other body cells taken from the accused may be used only for the purposes of the criminal proceedings for which they are taken or in other criminal proceedings pending; they shall be destroyed without delay as soon as they are no longer required for those uses.

Section 81b. [Photographs and Fingerprints]

Photographs and fingerprints of the accused may be taken, even against his will, and measurements may be made of him and other similar measures taken with regard to him insofar as is required for the purposes of conducting the criminal proceedings or of the police records department.

Section 81c. [Examination of Other Persons]

(1) Persons other than the accused may, if they might be considered witnesses, be examined without giving their consent only insofar as establishing the truth involves

ascertaining whether their body shows a particular trace or consequence of a criminal offense.

(2) Examinations to ascertain descent and the taking of blood samples from persons other than the accused shall be admissible without such persons' consent provided no detriment to their health is to be expected and if the measure is indispensable for establishing the truth. The examination and the taking of blood samples may only ever be carried out by a physician.

(3) Examinations or the taking of blood samples may be refused for the same reasons as testimony may be refused. Where minors lack intellectual maturity or where minors or persons placed in care due to mental illness or mental or emotional deficiency have no sufficient understanding of the importance of their right of refusal, their statutory representative shall give the decision; Section 52 subsection (2), second sentence, and subsection (3) shall apply *mutatis mutandis*. If the statutory representative is precluded from giving a decision (Section 52 subsection (2), second sentence) or is prevented from giving a decision in time for other reasons, and the immediate investigation or taking of blood samples for securing evidence seems necessary, these measures shall be admissible only upon special order by the judge. The decision ordering the measures shall not be contestable. The evidence furnished pursuant to the third sentence may be used in further proceedings only with the consent of the statutory representative authorized to do so.

(4) Measures pursuant to subsections (1) and (2) shall be inadmissible if on evaluation of all circumstances the person concerned cannot reasonably be expected to undergo such measures.

(5) The authority to give such order shall be vested in the judge and, if a delay were to endanger the success of the investigation - apart from the cases of subsection (3), third sentence - also in the public prosecution office and officials assisting it (Section 152 of the Courts Constitution Act). Section 81a subsection (3) shall apply *mutatis mutandis*.

(6) The provision in Section 70 shall apply *mutatis mutandis* to cases where the person concerned refuses to undergo an examination. Direct force may be used only upon special order of the judge. The order shall presuppose either that the person concerned insists upon the refusal despite the imposition of a coercive fine or that there are exigent circumstances.

Section 81d. [Physical Examination of Women]

(1) If the physical examination of a woman may violate her sense of shame, it shall be made by a woman or by a physician. Upon the request of the woman who is to be examined, another woman or a relative is to be admitted.

(2) This provision shall also be applicable to cases where the woman who is to be examined consents to the examination.

Section 81e. [Molecular and Genetic Examinations]

(1) Material obtained by measures pursuant to Section 81a subsection (1) may also be subjected to molecular and genetic examinations, insofar as such measures are necessary to establish descent or to ascertain whether traces found originate from the accused or the aggrieved party. Examinations pursuant to the first sentence shall also be admissible to obtain similar findings on material obtained by measures pursuant to Section 81c. Findings on facts other than those referred to in the first sentence shall not be made; examinations designed to establish such facts shall be inadmissible.

(2) Examinations admissible pursuant to subsection (1) may also be carried out on trace materials which have been found, secured or seized. Subsection (1), third sentence, and Section 81a subsection (3), first part of the first sentence, shall apply *mutatis mutandis*.

Section 81f. [Ordering and Carrying Out Molecular and Genetic Examinations]

(1) Examinations pursuant to Section 81e may be ordered only by the judge. The written order shall state which expert is to carry out the examination.

(2) The examinations pursuant to Section 81e shall be carried out by experts who are publicly appointed, who are obliged under the Obligations Act or who hold public office and who are not members of the authority conducting the investigation or who belong to an organizational unit of such authority which is separate from the service conducting the investigation both in terms of its organization and its area of work. The experts shall take technical and organizational measures to ensure that inadmissible molecular and genetic examinations cannot be carried out and that unauthorized third parties cannot obtain knowledge of the examinations. The material to be examined shall be given to the expert with no indication of the name, address or day or month of birth of the individual concerned. Where the expert is not a public agency, Section 38 of the Federal Data Protection Act shall apply with the condition that the supervisory authority shall also monitor compliance with data protection rules even if it has no sufficient indication that such rules are being violated and if the expert is not processing personal data in computer files.

Section 81g. [DNA Analysis]

(1) For the purposes of establishing identity in future criminal proceedings cell tissue may be collected from an accused person suspected of a criminal offense of substantial significance, particularly a serious or less serious criminal offense against sexual self-determination, serious bodily injury, theft in a particularly serious case or blackmail and subjected to molecular and genetic examination for the purposes of identifying the DNA code if the nature of the offense or its means of commission, the accused's personality or other information provide grounds for assuming that new criminal proceedings shall have to be conducted against the accused person for one of the aforementioned criminal offenses.

(2) The cell tissue collected may be used only for the molecular and genetic examination referred to in subsection (1); it shall be destroyed without delay once it is no longer required for that purpose. Information other than that required to establish the DNA code may not be

ascertained during the examination; tests to establish such information shall be inadmissible.

(3) Section 81a subsection (2) and Section 81f shall apply *mutatis mutandis*.

Section 82. [Rendering Opinion in Preliminary Proceedings]

In preliminary proceedings the judge shall decide whether the experts shall render their opinion in writing or orally.

Section 83. [Rendering a New Opinion]

(1) The judge may order that a new opinion be rendered by the same or by other experts if he considers the opinion insufficient.

(2) The judge may order that an opinion be rendered by another expert if the first expert was successfully challenged after rendering his opinion.

(3) In important cases the opinion of a specialist authority may be obtained.

Section 84. [Fees for Experts]

The expert shall be compensated pursuant to the Act on Compensation of Witnesses and Experts.

Section 85. [Expert Witnesses]

The provisions concerning evidence by witnesses shall apply if experienced persons have to be examined to prove past facts or conditions the observation of which required special professional knowledge.

Section 86. [Judicial Inspection]

If a judicial inspection takes place, the facts as found shall be stated in the record and such record shall reflect what traces or signs were missing, although their presence could have been presumed according to the special nature of the case.

Section 87. [Post Mortem Examination; Autopsy]

(1) The post mortem examination shall be made by the public prosecution office and, upon application by the public prosecution office, also by the judge with the assistance of a physician. The physician shall not be called in if this is obviously not necessary for clarification of the facts.

(2) The autopsy shall be performed by two physicians. One of them must be a court physician or the head of a public forensic or pathology institute or a physician of the institute

entrusted with this task and having specialist knowledge of forensic medicine. The autopsy shall not be performed by the physician who treated the deceased person during his illness directly preceding his death. However, that physician may be asked to attend the autopsy to give information relating to the medical history. The public prosecution office may attend the autopsy. Upon application by the public prosecution office the autopsy shall be carried out in the judge's presence.

(3) For the purpose of examination or autopsy it shall be admissible to exhume a corpse that has been interred.

(4) The autopsy and exhumation of an interred corpse shall be ordered by the judge; the public prosecution office shall be authorized to order such action if the success of the investigation were to be endangered by a delay. Where exhumation is ordered, notification of a relative of the deceased person has to be ordered at the same time, if the relative can be located without special difficulty and the purpose of the investigation is not endangered by such notification.

Section 88. [Identification]

Unless there are particular impediments, the identity of the deceased person shall be established before the autopsy specifically by questioning persons who knew the deceased person. If there is an accused, the corpse should be shown to him for the purpose of identification.

Section 89. [Extent of Autopsies]

The autopsy shall extend, if the condition of the corpse permits, to the opening of the head, of the chest cavity and of the abdomen.

Section 90. [Autopsies of New-born Children]

When opening the corpse of a new-born child, the examination shall be directed in particular to the question whether it was alive after or during birth, and whether it was mature or at least capable of continuing its life outside the womb.

Section 91. [Suspected Poisoning]

(1) If there is suspicion of poisoning, the examination of the suspicious substance found in the corpse, or elsewhere, shall be made by a chemist or by a specialist authority appointed for such examination.

(2) It may be ordered that this examination be made with the assistance, or under the direction, of a physician.

Section 92. [Opinions in Counterfeiting Cases]

(1) If there is a suspicion of counterfeiting money or official stamps, the money or official stamps, if so required, shall be submitted to the authority which brings the genuine money or genuine official stamps of that kind into circulation. The opinion of this agency shall be obtained concerning falsity or adulteration as well as concerning the probable method of counterfeiting.

(2) If money or official stamps of a foreign currency are involved, the opinion of a German authority may be requested in lieu of an opinion by the respective foreign authority.

Section 93. [Comparison of Handwriting]

To ascertain the authenticity or falsity of a document, as well as to ascertain the author of a script, a handwriting comparison may be conducted with the assistance of experts.

Chapter VIII Seizure, Interception of telecommunications, Computer-Assisted Search, Use of Technical Devices, Use of Undercover Investigators and Search

Section 94. [Objects Which May Be Seized]

(1) Objects which may have importance as evidence for the investigation shall be impounded or be secured in another manner.

(2) Such objects shall be seized if in the custody of a person and not surrendered voluntarily.

(3) Subsections (1) and (2) shall also apply to driver's licenses which are subject to confiscation.

Section 95. [Obligation to Surrender]

(1) A person who has an object of the above-mentioned kind in his custody shall be obliged to produce and to deliver it upon request.

(2) In the case of non-compliance, the coercive measures provided by Section 70 may be used against such person. This shall not apply to persons entitled to refuse to testify.

Section 96. [Official Documents]

Submission or delivery of files or of other documents officially impounded by authorities or public officials shall not be requested if their superior authority declares that the publication of these files or documents would be detrimental to the welfare of the Federation or of a German *Land*. The first sentence shall apply *mutatis mutandis* to files and other documents held in the custody of a Member of the Federal Parliament or of a Land Parliament or of an employee of a Federal or *Land* parliamentary group where the agency responsible for authorizing testimony has made a corresponding declaration.

Section 97. [Objects Not Subject to Seizure]

(1) The following objects shall not be subject to seizure:

1. written communications between the accused and the persons who, according to Section 52 or Section 53 subsection (1), numbers 1 to 3b, may refuse to testify,

2. notes by persons specified in Section 53 subsection (1), numbers 1 to 3b, concerning confidential information entrusted to them by the accused or concerning other circumstances covered by the right of refusal to testify,

3. other objects, including the findings of medical examinations, covered by the right of the persons specified in Section 53 subsection (1), numbers 1 to 3b, of refusal to testify.

(2) These restrictions shall apply only if these objects are in the custody of a person entitled to refuse to testify. Objects covered by the right of physicians, dentists, psychological psychotherapists, psychotherapists specializing in the treatment of children and juveniles, pharmacists and midwives to refuse to testify shall also not be subject to seizure if they are in the custody of a hospital, nor are objects to which the right of the person to refuse to testify mentioned in Section 53 subsection (1), numbers 3a and 3b, extends if they are in the custody of the counseling agency referred to in that provision. The restrictions of seizure shall not apply if the persons entitled to refuse to testify are suspected of incitement or accessoryship, obstruction of justice or handling stolen goods or where the objects concerned have been obtained by a criminal offense or have been used or are intended for use in perpetrating a criminal offense or where they emanate from a criminal offense.

(3) The seizure of documents shall be inadmissible, insofar as they are covered by the right of Members of the Federal Parliament, or a *Land* Parliament or second chamber (Section 53 subsection (1), number 4) to refuse to testify.

(4) Subsections (1) to (3) shall apply *mutatis mutandis* to the cases where persons mentioned in Section 53a may refuse to testify.

(5) The seizure of documents, audio, visual and data recording media, illustrations and other images in the custody of persons referred to in Section 53 subsection (1), number 5, or of the editorial office, the publishing house, the printing works or the broadcasting company shall be inadmissible insofar as they are covered by the right of such persons to refuse to testify. The third sentence of subsection (2) shall apply *mutatis mutandis*.

Section 98. [Order of Seizure]

(1) Seizures shall be ordered only by the judge and, in exigent circumstances, by the public prosecution office and officials assisting it (section 152 of the Courts Constitution Act). Seizure pursuant to Section 97 subsection (5), second sentence, in the premises of an editorial office, publishing house, printing works or broadcasting company may be ordered only by the judge.

(2) An official who seized an object without judicial order shall within 3 days apply for judicial approval if neither the person concerned nor an adult relative was present at the seizure, or if the person concerned and, if he was absent, an adult relative of that person raised express objection to the seizure. The person concerned may at any time apply for a judicial decision. As long as public charges are not preferred, the decision shall be made by the Local Court in whose district the seizure took place. If a seizure, seizure of mail or a search has already been made in another district, the Local Court in the district of which the public prosecution office conducting the preliminary proceedings has its seat, shall give a decision. The person concerned may also in this case submit the application to the Local Court in whose district the seizure took place. If this Local Court is not competent pursuant to the fourth sentence the judge shall forward the application to the competent Local Court. The person concerned shall be informed of his rights.

(3) The judge shall be notified of the seizure within 3 days if it was made by the public prosecution office or by one of the officials assisting it after the public charges were preferred; the objects seized shall be put at his disposal.

(4) If it is necessary to make a seizure in an official building or an installation of the Federal Armed Forces which is not open to the general public, the superior official agency of the Federal Armed Forces shall be requested to carry out such seizure. The requesting agency shall be entitled to participate. No such request shall be necessary if the seizure is to be made in places which are inhabited exclusively by persons other than members of the Federal Armed Forces.

Section 98a. [Automated Comparison and Transmission of Personal Data]

(1) Notwithstanding Sections 94, 110 and 161, where there are sufficient factual indications to show that a criminal offense of considerable importance has been committed:

1. relating to the illegal trade in narcotics or weapons or counterfeiting money or official stamps,

2. relating to national security (sections 74a, 120 of the Courts Constitution Act),

3. relating to offenses which pose a danger to the general public,

4. relating to endangerment of life and limb, sexual self-determination or personal liberty,

5. on a commercial or habitual basis, or

6. by a member of a gang or organized in some other way,

personal data relating to individuals fulfilling certain presumed characteristics of the perpetrator may be compared by machine with other data in order to exclude individuals not under suspicion or to identify individuals who meet other characteristics significant to the investigations. This measure may be ordered only if other means of establishing the facts or

determining the perpetrator's whereabouts would be considerably less promising or would be much more difficult.

(2) For the purposes of subsection (1), the storing agency shall isolate the data in the database required for the comparison and transmit them to the law enforcement authorities.

(3) Insofar as isolating the data for transmission from other data would require disproportionate effort, the other data shall, upon order, also be transmitted. Their use shall not be admissible.

(4) Upon request by the public prosecution office, the storing agency shall assist the agency effecting the comparison.

(5) Section 95 subsection (2) shall apply *mutatis mutandis*.

Section 98b. [Competence. Return and Deletion of Data]

(1) The comparison and transmission of the data may be ordered only by the judge and, in exigent circumstances, also by the public prosecution office. Where the public prosecution office has made the order, it shall request its confirmation by the judge without delay. The order shall become ineffective if it is not confirmed by the judge within three days. The order shall be made in writing. It must name the person obliged to transmit the data and shall be limited to the data and comparison characteristics required for the individual case. The transmission of data whose use runs counter to special Federal, or the corresponding *Land*, rules on use of data, may not be ordered. Sections 96, 97, 98 subsection (1), second sentence, shall apply *mutatis mutandis*.

(2) Coercive measures (Section 95 subsection (2)) may be ordered only by the judge and, in exigent circumstances, also by the public prosecution office; the imposition of detention shall be reserved for the judge.

(3) Where data have been transmitted on data carriers these shall be returned without delay upon completion of the comparison. Personal data transferred to other data carriers shall be erased without delay as soon as they are no longer required for the criminal proceedings. Personal data obtained by dint of the comparison may be used as evidence in other criminal proceedings only insofar as during their evaluation information was obtained which is required to clear up a criminal offense referred to in Section 98a subsection (1).

(4) Section 163d subsection (5) shall apply *mutatis mutandis*. Upon completion of a measure pursuant to Section 98a, the agency responsible for monitoring compliance with data protection rules by public bodies shall be informed.

Section 98c. [Comparison of Data to Clear Up a Criminal Offense]

In order to clear up a criminal offense or to determine the whereabouts of a person sought in connection with criminal proceedings, personal data from criminal proceedings may be

compared by machine with other data stored for the purposes of criminal prosecution or execution of sentence, or in order to avert danger. Opposing special Federal or *Land* rules on use of data shall remain unaffected.

Section 99. [Seizure of Mail]

Seizure of mail and telegrams addressed to the accused held in the custody of persons or enterprises providing, or collaborating in the provision of, postal or telecommunications services on a commercial basis shall be admissible. It shall also be admissible to seize mail and telegrams in relation to which facts exist from which it can be concluded that they originate from the accused or are intended for him and that their content is important for the investigation.

Section 100. [Jurisdiction]

(1) Only the judge shall be authorized to order seizure (Section 99) and, in exigent circumstances, also the public prosecution office.

(2) A seizure ordered by the public prosecution office, even if it has not yet resulted in a delivery, shall become ineffective if not approved by the judge within 3 days.

(3) The judge shall be entitled to open the delivered items. He may transfer this authority to the public prosecution office as far as this is required in order not to endanger the success of the investigation by a delay. The transfer shall not be contestable; it may be revoked at any time. As long as an order has not been made pursuant to the second sentence, the public prosecution office shall immediately submit to the judge the delivered items, i.e. closed mail, unopened.

(4) The judge competent pursuant to Section 98 shall decide on a seizure ordered by the public prosecution office. The judge who ordered or confirmed the seizure shall decide whether to open a delivered item.

Section 100a. [Conditions regarding Interception of Telecommunications]

Interception and recording of telecommunications may be ordered if certain facts substantiate the suspicion that a person was the perpetrator or inciter of, or accessory to

1a. criminal offenses against peace, of high treason, of endangering the democratic state based on the Rule of Law, or of treason and of endangering external security (Section 80 to 82, 84 to 86, 87 to 89, 94 to 100a, Penal Code, section 20 subsection (1), numbers 1 to 4, Associations Act);

1b. criminal offenses against national defense (sections 109d to 109h, Penal Code);

1c. criminal offenses against public order (sections 129 to 130, Penal Code, section 92 subsection (1), number 7, Aliens Act),

1d. incitement or accessoryship to desertion or incitement to disobedience (sections 16, 19 in conjunction with section 1 subsection (3) of the Military Penal Act) without being a member of the Federal Armed Forces;

1e. criminal offenses against the security of the troops of the non-German contracting parties to the North Atlantic Treaty stationed in the Federal Republic of Germany or of the troops of one of the Three Powers present in *Land* Berlin (sections 89, 94 to 97, 98 to 100, 109d to 109g, Penal Code, sections 16, 19 of the Military Penal Act, in conjunction with Article 7 of the Fourth Criminal Law Amendment Act);

2. counterfeiting money or shares or bonds (sections 146, 151, 152, Penal Code),

aggravated trafficking in human beings pursuant to section 181, numbers 2 and 3 of the Penal Code,

murder, manslaughter or genocide (sections 211, 212, 220a, Penal Code),

a criminal offense against personal liberty (sections 234, 234a, 239a, 239b, Penal Code),

gang theft (section 244 subsection (1), number 3, Penal Code) or aggravated gang theft (section 244a, Penal Code),

robbery or extortion resembling robbery (sections 249 to 251, 255, Penal Code),

extortion (section 253, Penal Code),

commercial handling of stolen goods or gang handling of stolen goods (section 260, Penal Code) or commercial gang handling (section 260a, Penal Code),

money laundering or concealment of unlawfully obtained assets pursuant to section 261 subsection (1), (2) or (4) of the Penal Code,

a criminal offense endangering the general public in the cases of sections 306 to 306c, or section 307 subsection (1) to (3), section 308 subsections (1) to (3), section 309 subsections (1) to (4), section 310 subsection (1), sections 313, 314 or section 315 subsection (3), section 315b subsection (3) or sections 316a or 316c of the Penal Code,

3. a criminal offense pursuant to section 52a subsections (1) to (3), section 53 subsection (1), first sentence, numbers 1, 2, second sentence, Weapons Act, section 34 subsections (1) to (6), Foreign Trade and Payments Act or pursuant to section 19 subsections (1) to (3), section 20 subsection (1) or (2), each also in conjunction with section 21 or section 22a subsections (1) to (3) of the Act on the Control of Weapons of War,

4. a criminal offense pursuant to one of the provisions referred to in section 29 subsection (3), second sentence, number 1, of the Narcotics Act under the conditions set out therein or

a criminal offense pursuant to sections 29a, 30 subsection (1), numbers 1, 2, 4, section 30a or section 30b of the Narcotics Act, or

5. a criminal offense pursuant to section 92a subsection (2) or section 92b of the Aliens Act or pursuant to section 84 subsection (3) or section 84a of the Asylum Procedure Act

or, in cases in which the attempt is punishable, has attempted to perpetrate or participate in those acts or has prepared such acts by committing a criminal offense and if other means of establishing the facts or determining the accused's whereabouts would offer no prospects of success or would be much more difficult. The order may be made only against the accused or against persons about whom it can be assumed, on the basis of particular facts, that they are receiving messages intended for the accused or receiving or transmitting messages from the accused or that the accused is using their connection.

Section 100b. [Order to Intercept Telecommunications]

(1) The interception and recording of telecommunications (Section 100a) may be ordered only by a judge. In exigent circumstances, the order may also be given by the public prosecution office. The order of the public prosecution office shall become ineffective if it is not confirmed by the judge within 3 days.

(2) The order shall be given in writing. It must indicate the name and address of the person against whom it is directed as well as the telephone number or other identification of the person's telecommunications connection. The type, extent and time of the measures shall be specified in the order. The order shall be limited to a maximum of 3 months. An extension of not more than 3 months shall be admissible if the prerequisites designated under Section 100a continue to exist.

(3) On the basis of this order all persons providing, or collaborating in the provision of, telecommunications services on a commercial basis shall enable the judge, the public prosecution office and officials assisting it working in the police force (section 152, Courts Constitution Act) to intercept and record telephone calls. Whether and to what extent measures are to be taken in this respect shall follow from section 88 of the Telecommunications Act and from the Ordinance issued thereunder for the technical and organizational implementation of intercepting measures. Section 95 subsection (2) shall apply *mutatis mutandis*.

(4) If the prerequisites of Section 100a no longer prevail, the measures resulting from the order shall be terminated without delay. The judge and the person bound by subsection (3) shall be informed of the termination.

(5) The personal information obtained by the measure may be used as evidence in other criminal proceedings only insofar as during its evaluation information was obtained which is required to clear up one of the criminal offenses listed in Section 100a.

(6) If the records obtained by the measures are no longer required for criminal prosecution purposes they shall be destroyed without delay under the control of the public prosecution office. The destruction shall be recorded in writing.

Section 100c. [Measures Implemented Without the Knowledge of the Person Concerned]

(1) Without the knowledge of the person concerned:

1a. photographs may be taken and visual recordings made,

1b. other special technical means intended for the purposes of surveillance may be used to establish the facts of the case or to determine the whereabouts of the perpetrator provided the investigation concerns a criminal offense of considerable importance, and

if other means of establishing the facts or determining the perpetrator's whereabouts would be considerably less promising or would be more difficult,

2. private speech may be listened to and recorded using technical means if certain facts substantiate the suspicion that a person has committed a criminal offense pursuant to Section 100a and if other means of establishing the facts or determining the perpetrator's whereabouts would offer no prospects of success or would be much more difficult.

3. private speech of the accused on private premises may be listened to and recorded using technical means if certain facts substantiate the suspicion that a person has

(a) counterfeited money or securities (sections 146, 151 or 152, Penal Code), counterfeited payment cards and Eurocheck blank checks (section 152a, Penal Code), engaged in aggravated trafficking in human beings pursuant to section 181 subsection (1), numbers 2 and 3, of the Penal Code;

committed murder, manslaughter or genocide (sections 211, 212 and 220a Penal Code);

committed a criminal offense against personal liberty (section 234, 234a, 239a or 239b, Penal Code);

committed gang theft (section 244 subsection 1, number 2, Penal Code) or aggravated gang theft (section 244a, Penal Code);

committed aggravated robbery (section 250 subsection (1) or subsection (2), Penal Code);

committed robbery resulting in death (section 251, Penal Code) or extortion resembling robbery (section 255, Penal Code);

committed extortion (section 253, Penal Code) under the conditions set out in section 253 subsection (4), second sentence, of the Penal Code;

committed commercial handling of stolen goods, gang handling of stolen goods (section 260, Penal Code) or gang handling of stolen goods on a commercial basis (section 260a, Penal Code);

committed money laundering, concealment of unlawfully obtained assets pursuant to section 261 subsections (1) to (4) of the Penal Code;

taken a bribe for performance of an official act in breach of official duties (section 332, Penal Code) or offered a bribe for performance of an official act in breach of official duties (section 334, Penal Code);

(b) committed a criminal offense pursuant to section 52a subsections (1) to (3), section 53 subsection (1), first sentence, numbers 1, 2, second sentence of the Weapons Act, section 34 subsections (1) to (6) of the Foreign Trade and Payments Act or pursuant to section 19 subsections (1) to (3), section 20 subsection (1) or (2), each in conjunction with section 21 or section 22a subsections (1) to (3) of the Act on the Control of Weapons of War;

(c) committed a criminal offense pursuant to one of the provisions referred to in section 29 subsection (3), second sentence, number 1, of the Narcotics Act under the conditions set out therein or a criminal offense pursuant to sections 29a or 30 subsection (1), numbers 1, 2 or 4, section 30a or section 30b of the Narcotics Act;

(d) committed criminal offenses against peace, of high treason, of endangering the democratic state based on the Rule of Law, or of treason and of endangering external security (sections 80 to 82, 85, 87, 88, 94 to 96, also in conjunction with section 97b, sections 97a, 98 to 100a, Penal Code);

(e) committed a criminal offense pursuant to section 129 subsection (4) in conjunction with subsection (1), section 129a of the Penal Code; or

(f) committed a criminal offense pursuant to section 92a subsection (2) or section 92b of the Aliens Act or pursuant to section 84 subsection (3) or section 84a of the Asylum Procedure Act

and if other means of establishing the facts or determining the perpetrator's whereabouts would be disproportionately more difficult or offer no prospects of success.

(2) Measures pursuant to subsection (1) may be taken only against the accused. Measures pursuant to subsection (1), number 1a, shall be admissible against other persons if other means of establishing the facts or determining the perpetrator's whereabouts would offer considerably fewer prospects of success or be much more difficult. Measures pursuant to subsection (1), number 1b and number 2, may be ordered against other persons only if it can be assumed, on the basis of specific facts, that they are linked to the perpetrator or if a link can be established and that the measure shall make it possible to establish the facts or to determine the perpetrator's whereabouts and if other means would offer no prospects of success or would be much more difficult. Measures pursuant to subsections (1) to (3) may

be effected only on the accused's private premises. Measures pursuant to subsection (1), number 3, shall be admissible on other person's private premises only if it can be assumed on the basis of certain facts that the accused is present on those premises, if applying the measure on the accused's premises alone would not enable the facts to be established or the perpetrator's whereabouts to be determined and if other means of establishing the facts or determining his whereabouts would be disproportionately more difficult or offer no prospects of success.

(3) The measures may be implemented even if they unavoidably involve third persons.

Section 100d. [Jurisdiction]

(1) Measures pursuant to Section 100c subsection (1), number 2, may be ordered only by the judge and, in exigent circumstances, also by the public prosecution office and officials assisting it (section 152, Courts Constitution Act). Section 98b subsection (1), second sentence, Section 100b subsection (1), third sentence, subsections (2), (4) and (6) shall apply *mutatis mutandis*.

(2) Measures pursuant to Section 100c subsection (1), number 3, may be ordered only by the penal chamber of the Regional Court stipulated in Section 74a of the Courts Constitution Act in the district where the public prosecution office is located. In exigent circumstances the order may also be issued by the presiding judge. His order shall become ineffective unless confirmed by the penal chamber within three days. Section 100b subsection (2), first to third sentences, shall apply *mutatis mutandis*.

(3) A measure pursuant to Section 100c subsection (1), number 3, shall be inadmissible in the cases referred to in Section 53 subsection (1). This shall also apply if it is to be expected that all the information to be gained by the measure shall be subject to a prohibition on use. In the cases referred to in Sections 52 and 53a information gained from a measure pursuant to Section 100c subsection (1), number 3, may be used only if, taking into consideration the significance of the underlying relationship of trust, this is not disproportionate to the interest in establishing the facts or determining the perpetrator's whereabouts. Where the persons entitled to refuse testimony are suspected of incitement or accessoryship, obstruction of justice or of handling stolen goods, the first sentence shall not apply; moreover, this circumstance must be taken into consideration when proportionality is assessed. A decision on the admissibility of using information shall be given during the preparatory proceedings by the court designated in the first sentence of subsection (2).

(4) An order pursuant to Section 100c subsection (1), number 3, shall be restricted to a maximum time limit of four weeks. Extensions of not more than four weeks each time shall be admissible providing the conditions for the measure continue to exist. Section 100b subsections (4) and (6) shall apply *mutatis mutandis*.

(5) Personal data obtained by the use of technical means pursuant to Section 100c subsection (1), number 2, may be used for the purposes of evidence in other criminal proceedings only insofar as during their evaluation information emerges which is required to

clear up a criminal offense referred to in Section 100a. Personal data obtained by a measure pursuant to Section 100c subsection (1), number 3, may be used for the purposes of evidence in other criminal proceedings only insofar as during their evaluation information emerges which is required to clear up a criminal offense referred to in Section 100c subsection (1), number 3.

(6) Even after a measure pursuant to Section 100c subsection (1), number 3, has been completed the accused and, in the cases referred to in Section 100c subsection (2), fifth sentence, the occupant of the private premises, may apply for examination of the lawfulness of the order and of the way in which it was effected. Prior to preferment of public charges the court designated in subsection (2), first sentence, shall decide; thereafter, the court seized of the case. The latter may express an opinion on the question of lawfulness in the decision concluding the proceedings.

Section 100e. [Duty to Report]

(1) No later than three months after conclusion of a measure pursuant to Section 100c subsection (1), number 3, the public prosecution office shall report to the relevant competent highest judicial authority the reason, extent, duration, result and costs of the measure and report that the participants have been notified of the measure or give the reasons why such persons have so far not been notified of the measures and the time when notification is expected to take place. The report shall be supplemented as appropriate after the proceedings have been concluded. If notification has not taken place within four years following conclusion of the measure, the public prosecution office shall be required to file a new report to that effect each year.

(2) The Federal Government shall, on the basis of notifications from the *Laender*, each year inform the Federal Parliament of measures effected pursuant to Section 100c subsection (1), number 3.

Section 100f. [Use of Personal Data]

(1) Personal data obtained by dint of a measure pursuant to Section 100c subsection (1), number 3, may be used only for the purposes of criminal proceedings (Section 100d subsection (5), second sentence) and in specific cases to avert an actual danger to the life, limb or liberty of another or to substantial property or assets.

(2) Where personal data have been obtained by a measure pursuant to police law corresponding to the measure pursuant to Section 100c subsection (1), number 3, such data may be used in evidence only insofar as during their evaluation information emerges which is required to clear up a criminal offense referred to in Section 100c subsection (1), number 3.

Section 101. [Notification]

(1) The participants shall be notified of the measures taken (Sections 81e, 99, 100a, 100b, 100c subsection (1), number 1b, numbers 2 and 3, Section 100d) as soon as this can be done without endangering the purpose of the investigation, public security, life or limb of another or endangering the possible continued use of an undercover investigator. Where, in the cases falling under Section 100c subsection (1), number 3, notification does not take place within six months after the measure has been completed, further deferral of notification shall require the consent of a judge. Prior to preferment of public charges the court designated in the first sentence of subsection (2) shall decide; thereafter, the court seized of the case.

(2) Mail which is not ordered to be opened shall be immediately returned to the participant. The same rule shall be followed if, after it was opened, its retention is not required.

(3) A copy of such parts of a retained letter which need not be withheld for the purpose of the investigation shall be forwarded to the addressee.

(4) Decisions and other documents relating to measures pursuant to Section 100c subsection (1), number 1b or numbers 2 and 3, shall be kept by the public prosecution office. They shall only be included in the files if the preconditions set out in subsection (1) have been fulfilled.

Section 102. [Search in Respect of the Suspect]

A body search, a search of the property and of the private and other premises of a person who, as a perpetrator or as an inciter or accessory before the fact, is suspected of committing a criminal offense, or is suspected of accessoryship after the fact or of obstruction of justice or of handling stolen goods, may be made for the purpose of his apprehension and in the cases where it may be presumed that the search will lead to the discovery of evidence.

Section 103. [Searches in Respect of Other Persons]

(1) Searches in respect of other persons shall only be admissible for the purpose of apprehending the accused or to follow up the traces of a criminal offense or to seize certain objects, and only if facts are present which support the conclusion that the person, trace, or object looked for is in the premises which are to be searched. For the purpose of apprehending an accused who is strongly suspected of having committed an offense pursuant to section 129a of the Penal Code, or one of the offenses designated in this provision, a search of private and other premises shall also be admissible if they are in a building where, on the basis of certain facts, the accused is presumed to be.

(2) The restrictions of subsection 1, first sentence, do not apply to premises where the accused was apprehended or which he entered during the pursuit.

Section 104. [Searches During the Night]

(1) Private premises, business premises and fenced-in property may be searched during the night only in pursuit of a person caught in the act, in exigent circumstances, or for the purpose of reapprehending an escaped prisoner.

(2) This restriction shall not apply to premises which are accessible at night to anyone, or which are known to the police as shelters or gathering places of offenders, as depots of property obtained through criminal offenses, or as hiding places for gambling, illegal trafficking in narcotics or weapons, or prostitution.

(3) Night shall include, during the period from 1 April to 30 September, the hours from nine o'clock in the evening to four o'clock in the morning and during the period from 1 October to 31 March, the hours from nine o'clock in the evening to six o'clock in the morning.

Section 105. [Search Order; Execution]

(1) Searches shall be ordered by the judge only and, in exigent circumstances, also by the public prosecution office and officials assisting it (section 152, Courts Constitution Act). Searches pursuant to Section 103 subsection 1, second sentence, shall be ordered by the judge; the public prosecution office shall be authorized to order searches in exigent circumstances.

(2) A municipal official or two members of the community in the district where the search is made shall be called in, if possible, to assist, if private premises, business premises, or fenced-in property are to be searched without the judge or the public prosecutor being present. The persons called in as members of the community shall not be police officers or officials assisting the public prosecution office.

(3) If it is necessary to make a search in an official building or in an installation or establishment of the Federal Armed Forces which is not open to the general public, the superior agency of the Federal Armed Forces shall be requested to carry out such search. The requesting agency shall be entitled to participate. No such request shall be necessary if the search is to be made in places which are inhabited exclusively by persons other than members of the Federal Armed Forces.

Section 106. [Calling in the Occupant]

(1) The occupant of the premises or the possessor of the objects to be searched may be present at the search. If he is absent, his representative or an adult relative, or a person living in his household, or a neighbor shall, if possible, be called in to assist.

(2) In the cases of Section 103 subsection (1), before the search begins, its purpose shall be made known to the occupant or possessor or to the person called in in his absence. This provision shall not apply to the occupants of the premises indicated in Section 104 subsection (2).

Section 107. [Notification; Inventory]

Upon conclusion of the search, the person affected by the search shall, upon his request, be given a written notification in which the reason for the search (Sections 102, 103) and, in the case of Section 102, the criminal offense must be specified. Upon request, he shall also be given a list of the objects which were impounded or seized; if nothing suspicious was found, a certificate indicating this fact shall be given to him.

Section 108. [Seizure of Other Objects]

(1) Objects found by a search which, though not connected with the investigation, indicate the commission of another criminal offense, shall be provisionally seized. The public prosecution office shall be informed thereof. The first sentence shall not be applicable as far as a search is made pursuant to Section 103 subsection (1), second sentence.

(2) Where, on the premises of a physician, objects within the meaning of subsection (1), first sentence, are found in connection with the termination of a patient's pregnancy, their use in criminal proceedings against the patient for a criminal offense pursuant to section 218 of the Penal Code shall be excluded.

Section 109. [Marking Seized Objects]

Objects impounded or seized shall be exactly listed and, in order to prevent an exchange, shall be marked with an official seal or in another proper manner.

Section 110. [Examination of Papers]

(1) The public prosecution office shall have the authority to examine the papers of the person with respect to whom the search was made.

(2) Other officials shall be authorized to examine papers found by them only if the holder allows such examination. In all other cases they shall deliver any papers, the examination of which they deem necessary, to the public prosecution office in an envelope which shall be closed with the official seal in the presence of the holder.

(3) The holder of the papers, or his representative, shall be allowed to affix his seal; he shall also be requested to attend, if possible, if the seals are subsequently opened and the papers examined.

Section 110a. [Undercover investigators]

(1) Undercover investigators may be used to clear up criminal offenses where there are sufficient factual indications showing that a criminal offense of considerable importance has been committed:

1. in the sphere of illegal trade in drugs or weapons, of counterfeiting money or official stamps,

2. in the sphere of national security (sections 74 a, 120 Courts Constitution Act),

3. on a commercial or habitual basis or

4. by a member of a gang or in some other organized way.

Undercover investigators may also be used to clear up serious criminal offenses where there is a risk of repetition in view of certain facts. Their use shall only be admissible if clearing up the serious criminal offense using some other means would offer no prospects of success or be much more difficult. Undercover investigators may also be used to clear up serious criminal offenses where the special significance of the offense makes the operation necessary and other measures would offer no prospects of success.

(2) Undercover investigators shall be officials in the police force who carry out investigations with a changed and lasting identity (legend) being conferred on them. They shall be entitled to take part in legal transactions using their legend.

(3) Where it is indispensable for building up or maintaining a legend, relevant documents may be drawn up, altered and used.

Section 110b. [Consent of the Public Prosecution Office; Consent of the Judge; Non-Disclosure of Identity]

(1) Use of undercover investigators shall be admissible only after the consent of the public prosecution office has been obtained. In exigent circumstances and if the public prosecution office's decision cannot be obtained in time, such decision shall be obtained without delay; the measure shall be ended if the public prosecution office does not give its consent within three days. Consent shall be given in writing and for a specified period. Extensions shall be admissible providing the conditions for use of undercover investigators are still fulfilled.

(2) Use of undercover investigators:

1. concerning a specific accused, or

2. which involve the undercover investigator entering private premises which are not generally accessible

shall require the consent of a judge. In exigent circumstances consent of the public prosecution office shall suffice. Where the public prosecution office's decision cannot be obtained in time, it shall be obtained without delay. The measure shall be ended if the judge does not give his consent within three days. Subsection (1), third and fourth sentences, shall apply *mutatis mutandis*.

(3) The identity of the undercover investigator may be kept secret even after the operation has ended. The public prosecutor and the judge responsible for the decision whether to give consent may require the identity to be revealed to them. In all other cases, maintaining the

secrecy of the identity in criminal proceedings shall be admissible under the terms of Section 96, particularly if there is cause for concern that revealing the identity will endanger the life, limb or liberty of the undercover investigator or of another person or endanger the continued use of the undercover investigator.

Section 110c. [Entering Private Premises]

Undercover investigators may use their legend and enter private premises with the consent of the entitled person. Such consent may not be obtained by any pretense of a right of access extending beyond the use of the legend. The undercover investigator's powers shall otherwise be determined by this statute and by other legal provisions.

Section 110d. [Notification]

(1) Persons whose private premises, not being generally accessible, have been entered by the undercover investigator, shall be notified of the operation as soon as this can be done without endangering the purpose of the investigation, public security, life or limb of another or the possible continued use of the undercover investigator.

(2) Decisions and other documents relating to use of the undercover investigators shall be kept by the public prosecution office. They shall only be included in the files if the preconditions set out in subsection (1) have been fulfilled.

Section 110e. [Use of Information Obtained]

Personal data obtained by use of undercover investigators may be used as evidence in other criminal proceedings only insofar as during their evaluation information was obtained which is required to clear up one of the criminal offenses listed in Section 110a subsection (1); Section 110d subsection (2) shall remain unaffected.

Section 111. [Road Traffic Controls]

(1) If certain facts substantiate the suspicion that an offense pursuant to section 129a of the Penal Code, one of the offenses designated in this provision or an offense pursuant to section 250 subsection (1), number 1, of the Penal Code has been committed, checkpoints may be established on public roads, squares and at other publicly accessible places, if facts justify the assumption that this measure may lead to the perpetrator's apprehension or to the securing of evidence which may serve to clear up the offense. At a checkpoint all persons shall be obliged to establish their identity and to subject themselves or objects found on them to a search.

(2) The order to establish a checkpoint shall be made by the judge; the public prosecution office and the officials assisting it (section 152 Courts Constitution Act) shall be authorized to make such order in exigent circumstances.

(3) Section 106 subsection (2), first sentence, Section 107, first half of the second sentence, Sections 108, 109, 110 subsections (1) and (2) shall be applicable to the search and establishment of the identity pursuant to subsection 1; Sections 163b, 163c shall apply *mutatis mutandis*.

Section 111a. [Provisional Withdrawal of Permission to Drive]

(1) If there are cogent reasons for the assumption that permission to drive will be withdrawn (section 69 Penal Code), the judge may, by order, provisionally withdraw the accused's permission to drive. Certain types of motor vehicles may be exempted from the provisional withdrawal of permission to drive if special circumstances justify the assumption that the purpose of the measure will not be jeopardized thereby.

(2) The provisional withdrawal of permission to drive shall be set aside if the reason for it no longer applies or if the court does not withdraw permission to drive in the judgment.

(3) Provisional withdrawal of permission to drive shall have the effect of an order or confirmation of the seizure of the driver's license issued by a German authority. This shall also apply if the driver's license was issued by an authority of a Member State of the European Union or of another contracting party to the Agreement on the European Economic Area insofar as the license holder's place of ordinary residence is located in Germany.

(4) If a driver's license has been seized because it may be confiscated pursuant to section 69 subsection (3), second sentence, of the Penal Code, and if a judicial decision concerning seizure is required, the latter shall be replaced by the decision on the provisional withdrawal of permission to drive.

(5) A driver's license which has been impounded, secured or seized because it may be confiscated pursuant to section 69 subsection (3), second sentence, of the Penal Code, shall be returned to the accused if the judge refuses to provisionally withdraw permission to drive due to the absence of the prerequisites designated under subsection (1) or revokes the withdrawal, or if the court does not withdraw permission to drive in the judgment. However, where a driving ban is imposed in the judgment pursuant to section 44 of the Penal Code, the return of the driver's license may be postponed if the accused does not protest.

(6) Provisional withdrawal of permission to drive shall be endorsed on foreign driver's licenses other than those referred to in subsection (3), second sentence. Pending this endorsement the driver's license may be seized (Section 94 subsection (3) and Section 98).

Section 111b. [Securing of Objects]

(1) Objects may be secured by seizure pursuant to Section 111c if there are reasons for assuming that the conditions have been fulfilled for their forfeiture or for their confiscation. Section 94 subsection (3) shall remain unaffected.

(2) If there are reasons for assuming that the conditions have been fulfilled for forfeiture of equivalent value or for confiscation of equivalent value attachment in rem may be ordered pursuant to Section 111 d in order to secure such equivalent value.

(3) If there are no cogent reasons for such assumption the judge shall revoke the measures referred to in the first sentence of subsection (1) and in subsection (2) after a maximum period of six months. Where the time limit referred to in the first sentence is not sufficient, given the special difficulties or special extent of the investigations or for another important reason, the judge may, upon application by the public prosecution office, extend the measures by a maximum of three months provided the grounds referred to justify their continuation.

(4) Sections 102 to 110 shall apply *mutatis mutandis*.

(5) Subsections (1) to (4) shall apply *mutatis mutandis* so far as forfeiture may not be ordered only for the reason that the conditions under section 73 subsection (1), second sentence, of the Penal Code have been fulfilled.

Section 111c. [Securing Seizure]

(1) Seizure of a movable asset shall be effected in the cases referred to under Section 111 b by impounding the asset or by indicating the seizure by seal or in some other way.

(2) Seizure of a plot of land or of a right subject to the provisions on compulsory execution in respect of immovable property shall be effected by making an entry on the seizure in the Land Register. The provisions of the Act on Compulsory Sale by Public Auction and Compulsory Administration in respect of the extent of seizure on compulsory sale by public auction shall apply *mutatis mutandis*.

(3) Seizure of a claim or any other property right not subject to the provisions on compulsory execution in respect of immovable property shall be effected by attachment. The provisions of the Civil Procedure Code on compulsory execution in respect of claims and other property rights shall apply *mutatis mutandis*. The request to make the declarations referred to in section 840 subsection (1) of the Civil Procedure Code shall be linked to seizure.

(4) Seizure of ships, ship constructions and aircraft shall be effected pursuant to subsection (1). The seizure shall be entered in the Register in respect of those ships, ship constructions and aircraft that are entered in the Register of Ships, in the Register of Ship Constructions or in the Register of Liens on Aircraft. Application for such entry may be made in respect of ship constructions or aircraft that have not been entered, but are capable of being entered, in the Register; the provisions governing an application by a person who is entitled to request entry in the Register by virtue of an executory title shall apply *mutatis mutandis*.

(5) Seizure of an object pursuant to subsections (1) to (4) shall have the effect of a prohibition of alienation within the meaning of section 136 of the Civil Code; the prohibition shall also cover other directions besides alienation.

(6) A movable asset that has been seized may:

1. be handed over to the person concerned against immediate payment of its value or

2. be retained by the person concerned, subject to revocation at any time, for further use in the interim until conclusion of the proceedings.

The sum paid pursuant to the first sentence, number 1, shall be substituted for the asset. The measure pursuant to the first sentence, number 2, may be made dependent on the person concerned providing security or fulfilling certain conditions.

Section 111d. [Attachment for Equivalent Value; Fine or Costs]

(1) Attachment in rem may be ordered by virtue of forfeiture or of confiscation of equivalent value, by virtue of a fine or of the anticipated costs of criminal proceedings. Attachment may only be ordered by virtue of a fine or of the anticipated costs if judgment has been passed against the defendant imposing punishment. Attachment shall not be ordered to secure execution costs or negligible amounts.

(2) Sections 917 and 920 subsection (1) as well as sections 923, 928, 930 to 932, and 934 subsection (1) of the Civil Procedure Code shall apply *mutatis mutandis*.

(3) If attachment has been ordered by virtue of a fine or of the anticipated costs, an enforcement measure shall be revoked upon application by the defendant if the defendant needs the object of attachment to pay the costs of his defense, his maintenance or the maintenance of his family.

Section 111e. [Order for Seizure or Attachment]

(1) Only the judge, and in exigent circumstances also the public prosecution office, shall be competent to order seizure (Section 111 c) and attachment (Section 111 d). Officials assisting the public prosecution office (section 152 Courts Constitution Act) shall also be competent to order seizure of a movable asset (Section 111 c subsection (1)) in exigent circumstances.

(2) If the public prosecution office has ordered seizure or attachment, it shall apply for judicial confirmation of the order within one week. This shall not apply when seizure of a movable asset has been ordered. In all cases the person concerned may apply for a judicial decision at any time.

(3) The order for seizure or attachment shall be communicated without delay to the person who is aggrieved as a result of the act, insofar as he is known or becomes known during the course of proceedings.

(4) If it is assumed that other aggrieved persons have claims arising from the act, notice shall be given of the seizure or attachment by insertion once in the Federal Gazette or in some other suitable manner.

Section 111f. [Effecting Seizure and Enforcing Attachment]

(1) Effecting seizure (Section 111 c) shall be incumbent on the public prosecution office, in the case of movable assets (Section 111 c subsection (1)) also on the officials assisting them. Section 98 subsection (4) shall apply *mutatis mutandis*.

(2) The required entries in the Land Register as well as in the registers referred to in Section 111 c subsection (4) shall be made upon application by the public prosecution office or by the court that ordered seizure. The same shall apply *mutatis mutandis* to the applications referred to in Section 111 c subsection (4).

(3) If enforcement of attachment is to be effected pursuant to the provisions on attachment of movable assets, the authority designated in section 2 of the Ordinance on the Collection of Court Fees shall have jurisdiction. Subsection (2) shall apply *mutatis mutandis*. The judge, and in exigent circumstances also the public prosecution office, shall be competent to order attachment of a registered ship or ship construction and to order attachment of a claim.

Section 111g. [Compulsory Execution; Enforcement of Attachment by the Aggrieved Person]

(1) Seizure of an object pursuant to Section 111 c shall not take effect against a disposition made by the aggrieved person, by way of compulsory execution or of enforcement of attachment, on the basis of a claim arising from the criminal offense.

(2) Compulsory execution or enforcement of attachment pursuant to subsection (1) shall require the approval of the judge who is competent to order seizure (Section 111 c). The decision shall be given in an order that may be contested by the public prosecution office, the accused and the aggrieved person by means of an immediate complaint. Approval shall be refused if the aggrieved person cannot furnish prima facie evidence that the claim has arisen from the criminal offense. Section 294 of the Civil Procedure Code shall be applied.

(3) The prohibition of alienation pursuant to Section 111 c subsection (5) shall apply from the moment of seizure also for the benefit of aggrieved persons who, during seizure, pursue compulsory execution in respect of the object seized or who enforce attachment. Entry of the prohibition of alienation in the Land Register, for the benefit of the state, shall also apply, in respect of the application of section 892 subsection (2), second sentence, of the Civil Code, as an entry for the benefit of those aggrieved persons who, during seizure, are entered in the Land Register as beneficiaries of the prohibition of alienation. Proof that the claim arose from the criminal offense can be furnished to the Land Registry by submission of the order granting approval. The second and third sentences shall apply *mutatis mutandis* to the prohibition of alienation in the case of ships, ship constructions and aircraft referred to

in Section 111 c subsection (4). The legal force of the prohibition of alienation for the benefit of the aggrieved person shall not be affected by revocation of seizure.

(4) If the object seized is not subject to forfeiture on grounds other than those referred to in section 73 subsection (1), second sentence, of the Criminal Code or if approval was wrongfully granted, the aggrieved person shall be obliged to compensate third persons for the damage caused to them due to the fact that the prohibition of alienation applies for his benefit pursuant to subsection (3).

(5) Subsections (1) to (4) shall apply *mutatis mutandis* if forfeiture of an object has been ordered but the order has not yet entered into force. They shall not apply if the object is subject to confiscation.

Section 111h. [Prior Satisfaction of Claims of the Aggrieved Person on Attachment]

(1) If the aggrieved person applies for compulsory execution in respect of a claim arising from the criminal offense or if he enforces attachment in respect of a plot of land where attachment has been enforced pursuant to Section 111 d, he may demand that his right shall have priority over the collateral mortgage established by enforcement of that attachment. The priority of such right shall not be lost by virtue of revocation of the attachment. Consent by the owner shall not be required for the change of priority. In all other respects section 880 of the Civil Code shall be applied *mutatis mutandis*.

(2) The change of priority shall require approval by the judge who is competent to order attachment. Section 111 g subsection (2), second to fourth sentences, and subsection (3), third sentence, shall apply *mutatis mutandis*.

(3) If approval was wrongfully granted, the aggrieved person shall be obliged to compensate third persons for the damage caused to them due to the change of priority.

Section 111i. [Maintenance of Seizure]

If the judgment does not order forfeiture or forfeiture of equivalent value simply because claims of an aggrieved person within the meaning of section 73 subsection (1), second sentence, of the Criminal Code negate this, or because the proceedings pursuant to Sections 430 and 442 are confined to the other legal consequences, seizure pursuant to Section 111 c may be maintained for a period of not more than three months so far as immediate revocation would be unjust in respect of the aggrieved person.

Section 111k. [Return of Movable Assets to the Aggrieved Person]

Movable assets which have been seized or otherwise secured pursuant to Section 94 or which have been seized pursuant to Section 111 c subsection (1) should be handed over to the aggrieved person, from whom they have been taken as a result of the criminal offense, if he is known, if the claims of third persons are not an obstacle and if the assets are no longer required for the purposes of the criminal proceedings.

Section 111l. [Emergency Sale]

(1) Objects which have been seized pursuant to Section 111c as well as objects which have been attached (Section 111d) may be sold prior to the entering into force of the judgment, if they are subject to deterioration or substantial reduction of their value, or if their preservation, care or maintenance results in disproportionately high costs or difficulties. The proceeds shall be substituted for the objects.

(2) The emergency sale shall be ordered by the public prosecution office in the preparatory proceedings. The officials assisting it (section 152 Courts Constitution Act) shall have the authority to order such sale if the object is subject to deterioration before the decision of the public prosecution office can be obtained.

(3) Upon preferring public charges the order shall be made by the court seized of the case. The public prosecution office shall have the authority to make such order if the object is subject to deterioration before the decision of the court can be obtained; subsection (2), second sentence, shall apply *mutatis mutandis*.

(4) The accused, the owner and other persons who have rights in relation to the object shall be heard prior to the order. The order, as well as time and place of the sale, shall be made known to them as far as this appears to be practicable.

(5) The emergency sale shall be made according to the provisions of the Civil Procedure Code concerning the use of an attached object. The public prosecution office shall take the place of the court responsible for execution (Section 764 Civil Procedure Code) in the cases of subsections (2) and (3), second sentence; in the cases of subsection (3), first sentence, the court seized of the case. The use admissible pursuant to section 825 of the Civil Procedure Code may be ordered at the same time as the emergency sale or subsequently, either propio motu or upon application of the persons designated in subsection (4), or in the case of subsection (3), first sentence, also upon application of the public prosecution office.

(6) The person concerned may request a court decision pursuant to Section 161a subsection (3) regarding orders of the public prosecution office or the officials assisting it in the preparatory proceedings (subsections (2) and (5)). In respect of orders by the public prosecution office or the officials assisting it after preferring public charges (subsection (3), second sentence, subsection (5)) the person concerned may request the decision of the court seized of the case (subsection (3), first sentence). The court -- in urgent cases the presiding judge -- may order suspension of the sale.

Section 111m. [Writings and Printing Devices]

(1) Seizure of printed material, of any other writing or object within the meaning of section 74d of the Penal Code, may not be ordered pursuant to Section 111b subsection (1), if its prejudicial consequences, especially the endangering of the public interest in immediate dissemination, is obviously disproportionate to the importance of the matter.

(2) Severable parts of the writing which do not contain anything of a criminal nature shall be excluded from seizure. Seizure may be further restricted in the order.

(3) Those passages of the writing giving rise to seizure shall be designated in the order for seizure.

(4) Seizure may be averted if the person concerned excludes that part of the writing giving rise to seizure from reproduction or dissemination.

Section 111n. [Seizure Order; Time Restriction]

(1) Seizure of periodically printed material or of another object within the meaning of section 74d of the Penal Code, may be ordered by the judge only. Seizure of other printed material or of another object within the meaning of section 74d of the Penal Code may, in exigent circumstances, also be ordered by the public prosecution office. The order of the public prosecution office shall become ineffective if it is not confirmed by the judge within three days.

(2) Seizure shall be revoked if public charges have not been preferred or independent confiscation has not been applied for within two months. If the time limit set in the first sentence is not sufficient due to the particular scale of the investigations the court may, upon application by the public prosecution office, extend the time limit by another two months. The application may be repeated once.

(3) As long as public charges have not been preferred or independent confiscation not been applied for, seizure shall be revoked if the public prosecution office so requests.

Section 111o. [Attachment in Rem for a Property Fine]

(1) If there are reasons for assuming that the prerequisites for imposition of a property fine have been fulfilled, attachment in rem may be ordered in respect thereof.

(2) Sections 917, 928, 930 to 932, and 934 subsection (1) of the Civil Procedure Code shall apply *mutatis mutandis*. In the attachment order a sum of money shall be specified whose deposit shall have the effect of hindering enforcement of attachment and of entitling the debtor to apply for revocation of enforced attachment. The amount concerned shall be governed by the circumstances of the case in question, namely by the anticipated amount of the property fine. This may be assessed. The request for discharge of attachment should contain the facts required for specifying the sum of money.

(3) Only the judge, and in exigent circumstances also the public prosecution office, shall be competent to order attachment for a property fine. If the public prosecution office has made the order, it shall apply for judicial confirmation of the order within one week. The accused may apply for a judicial decision at any time.

(4) If for a property fine enforcement of attachment is to be effected in respect of movable assets Section 111 f subsection (1) shall apply *mutatis mutandis*.

(5) Section 111b subsection (3), Section 111e subsections (3) and (4), Section 111f subsections (2) and (3), second and third sentences, and Sections 111g and 111h shall otherwise apply.

Section 111p. [Seizure of Property]

(1) Under the conditions referred to in Section 111o subsection (1) the property of the accused may be seized if execution of the anticipated property fine does not seem secure, having regard to the type and scale of the property concerned or for other reasons, by means of an attachment order pursuant to Section 111o.

(2) Seizure shall be confined to individual property components if this is sufficient in the light of circumstances, namely of the anticipated amount of the property fine, to ensure its execution.

(3) With the order for seizure of property the accused shall lose the right to administer the seized property and to dispose thereof inter vivos. The time of seizure shall be indicated in the order.

(4) Section 111o subsection (3), Sections 291, 292 subsection (2) and Section 293 shall apply *mutatis mutandis*.

(5) The administrator of the property shall notify the public prosecution office and the court of all information acquired during the course of administering the property that may serve the purpose of seizure.

Chapter IX Arrest and Provisional Apprehension

Section 112. [Admissibility of Remand Detention; Grounds for Arrest]

(1) Remand detention may be ordered against the accused if he is strongly suspected of the offense and if there is a ground for arrest. It may not be ordered if it is disproportionate to the significance of the case or to the penalty or measure of reform and prevention likely to be imposed.

(2) A ground for arrest shall exist if on the basis of certain facts:

1. it is established that the accused has fled or is hiding;

2. considering the circumstances of the individual case, there is a risk that the accused will evade the criminal proceedings (risk of flight); or

3. the accused's conduct gives rise to the strong suspicion that he will

a) destroy, alter, remove, suppress, or falsify evidence,

b) improperly influence co-accused, witnesses, or experts, or

c) cause others to do so,

and if, therefore, the danger exists that establishment of the truth will be made more difficult (risk of tampering with evidence).

(3) Remand detention may be ordered against an accused strongly suspected of an offense pursuant to section 129a subsection (1) or pursuant to sections 211, 212, 220a subsection (1), number 1, sections 226, 306b or 306c of the Penal Code, or insofar as life and limb of another have been endangered by an offense pursuant to section 308 subsections (1) to (3) of the Penal Code, even if there is no ground for arrest pursuant to subsection (2).

Section 112a. [Further Grounds for Arrest]

(1) A ground for arrest shall also exist if the accused is strongly suspected of:

1. having committed a criminal offense pursuant to sections 174, 174a, 176 to 179 of the Penal Code, or

2. having repeatedly or continually committed a criminal offense which seriously undermines legal order pursuant to section 125a, pursuant to sections 224 to 227, pursuant to sections 243, 244, 249 to 255, 260, pursuant to section 263, pursuant to sections 306 to 306c or section 316a of the Penal Code or pursuant to section 29 subsection (1), numbers 1, 4 or 10, or subsection (3), section 29a subsection (1), section 30 subsection (1), section 30a subsection (1) of the Narcotics Act

and certain facts substantiate the risk that prior to final conviction he will commit further serious criminal offenses of the same nature or will continue the criminal offense, if detention is required to avert the imminent danger, and in the cases of number 2, imprisonment exceeding one year is expected to be imposed.

(2) Subsection (1) shall not be applicable if the prerequisites for issuing a warrant of arrest prevail pursuant to Section 112 and the prerequisites for the suspension of execution of the warrant of arrest pursuant to Section 116 subsections (1) and (2) do not prevail.

Section 113. [Prerequisites Applicable to Less Serious Offenses]

(1) If the offense is punishable only by imprisonment up to 6 months, or by a fine up to one hundred and eighty daily units, remand detention may not be ordered on the ground of a risk of evidence being tampered with.

(2) In such cases, remand detention may be imposed on the ground of a risk of flight only if the accused:

1. has previously evaded the proceedings against him or has made preparations for flight;

2. has no permanent domicile or place of residence within the territorial scope of this statute, or

3. cannot identify himself.

Section 114. [Warrant of Arrest]

(1) Remand detention shall be imposed by the judge in a written warrant of arrest.

(2) The warrant of arrest shall indicate:

1. the accused;

2. the offense of which he is strongly suspected, the time and place of its commission, the statutory elements of the criminal offense and the penal provisions to be applied;

3. the ground for arrest, as well as

4. the facts disclosing the strong suspicion of the offense and the ground for arrest, unless national security is thereby endangered.

(3) If it appears that Section 112 subsection (1), second sentence, is applicable, or if the accused invokes that provision, the grounds for not applying it shall be stated.

Section 114a. [Notification of Accused]

(1) The accused shall be informed of the content of the warrant of arrest at the time of his arrest. If this is not possible he must be provisionally informed of the offense of which he is strongly suspected. In that case he shall subsequently be informed of the content of the warrant of arrest without delay.

(2) The accused shall be provided with a copy of the warrant of arrest.

Section 114b. [Notification of Relatives]

(1) A relative of the arrested person or a person trusted by him shall be notified without delay of the arrest and of every further decision concerning the continuation of detention. The judge shall be competent to make the order.

(2) Moreover, the arrested person himself shall be given an opportunity to notify a relative or a person trusted by him of the arrest, provided the purpose of the investigation is not endangered thereby.

Section 115. [Examination by a Judge]

(1) If the accused is apprehended on the basis of the warrant of arrest, he shall be brought before the competent judge without delay.

(2) The judge shall examine the accused concerning the subject of the accusation without delay following the arrest and not later than on the following day.

(3) During the examination, the incriminating circumstances shall be pointed out to the accused and he shall be informed of his right to reply to the accusation or to remain silent. He shall be given an opportunity to remove grounds for suspicion and arrest and to present those facts which speak in his favor.

(4) If remand detention is continued, the accused shall be informed of the right of complaint as well as of other legal remedies (Section 117 subsections (1) and (2), Section 118 subsections (1) and (2)).

Section 115a. [Examination by the Judge of the Nearest Local Court]

(1) If the accused cannot be brought before the competent judge at the latest on the day after his apprehension, he shall be brought before the judge of the nearest Local Court without delay, not later than on the day after his apprehension.

(2) The judge shall examine the accused without delay, not later than on the following day. At this examination, as far as possible, Section 115 subsection (3) shall be applicable. If the examination shows that the warrant of arrest has been revoked or that the person apprehended is not the person designated in the warrant of arrest, the apprehended person shall be released. If he otherwise makes objections against the warrant of arrest or against its execution which are not manifestly unfounded, or if the judge has doubts regarding the continuation of detention, he shall inform the competent judge accordingly without delay, using the fastest means available in the circumstances.

(3) If the accused is not released, he shall, at his request, be brought before the competent judge for examination in accordance with Section 115. The accused shall be informed of this right and shall be instructed pursuant to Section 115 subsection (4).

Section 116. [Suspension of Execution of the Warrant of Arrest]

(1) The judge shall suspend execution of a warrant of arrest which had been issued only for risk of flight if less incisive measures sufficiently substantiate the expectation that the purpose of remand detention can be achieved thereby. In particular, the following measures may be considered:

1. an instruction to report at certain times to the office of the judge, the prosecuting authority, or to a specific office to be designated by them;

2. an instruction not to leave his place of residence, or wherever he happens to be, or a certain area, without permission of the judge or the prosecuting authority;

3. an instruction not to leave his private premises except under the supervision of a designated person;

4. the furnishing of an adequate security by the accused or another person.

(2) The judge may also suspend execution of a warrant of arrest which is justified for risk of tampering with evidence, if less incisive measures sufficiently substantiate the expectation that they will considerably reduce the risk of tampering with evidence. In particular, an instruction not to have contact with co-accused, witnesses, or experts may be considered.

(3) The judge may suspend execution of a warrant of arrest issued in accordance with Section 112a provided there is sufficient substantiation of the expectation that the accused will comply with certain instructions and that the purpose of detention will be achieved thereby.

(4) In the cases of subsections (1) to (3), the judge shall order execution of the warrant of arrest if:

1. the accused grossly violates the duties and restrictions imposed upon him;

2. the accused makes preparations for flight, remains absent without sufficient excuse upon proper summons to appear, or shows in any other manner that the trust reposed in him was not justified; or

3. new circumstances make the arrest necessary.

Section 116a. [Suspension on Bail]

(1) Bail shall be furnished by depositing cash or securities, by pledging property or in the form of surety by suitable persons.

(2) The judge shall determine the amount and type of bail at his discretion.

(3) The accused who applies for the suspension of execution of the warrant of arrest upon furnishing bail and who does not reside within the territorial scope of this statute shall be obliged to authorize a person residing in the district of the competent court to receive service on his behalf.

Section 117. [Review of Detention]

(1) As long as the accused is in remand detention, he may at any time apply for a court hearing as to whether the warrant of arrest is to be revoked or whether its execution is to be suspended in accordance with Section 116 (review of detention).

(2) A complaint shall be inadmissible where an application has been made for a review of detention. The right of complaint against the decision following the application shall remain unaffected.

(3) The judge may order specific investigations which may be important for the subsequent decision about the continuation of remand detention, and he may make a further review after the completion of such investigations.

(4) If the accused does not yet have defense counsel, he shall be assigned defense counsel for the duration of remand detention, if its execution has lasted for at least 3 months and the public prosecution office or the accused or his statutory representative has requested it. The accused shall be informed about his right to submit a request. Sections 142, 143 and 145 shall apply *mutatis mutandis*.

(5) If remand detention has lasted for 3 months and the accused has not applied for review of detention or has not lodged a complaint against the remand detention, the review of detention shall be conducted upon the court's own motion, unless the accused has defense counsel.

Section 118. [Oral Hearing]

(1) In the case of review of detention, a decision shall be given after an oral hearing upon application by the accused, or at the court's discretion *proprio motu*.

(2) If a complaint has been lodged against the warrant of arrest, in the proceedings on a complaint a decision may also be given after an oral hearing upon application by the accused or on the court's own motion.

(3) If after an oral hearing it has been ordered that remand detention be continued, the accused shall have a right to another oral hearing only if remand detention has lasted for at least 3 months and at least 2 months of remand detention have elapsed since the last oral hearing.

(4) A right to an oral hearing shall not exist as long as the main hearing is in process, or after a judgment has been pronounced which imposes imprisonment or a custodial measure of reform and prevention.

(5) The oral hearing shall be held without delay; in the absence of the accused's consent, it may not be scheduled more than 2 weeks after receipt of the application.

Section 118a. [Conducting the Oral Hearing]

(1) The public prosecution office, as well as the accused and defense counsel, shall be notified of the place and time of the oral hearing.

(2) The accused shall be brought to the hearing unless he has waived his right to be present at the hearing or unless great distance or sickness of the accused or other irremovable impediments prevent his being brought to the hearing. If the accused is not brought to the oral hearing, defense counsel shall safeguard his rights at the hearing. In that case, defense counsel shall be assigned for the oral hearing if the accused does not yet have such counsel. Section 142, 143 and 145 shall apply *mutatis mutandis*.

(3) The participants present shall be heard during the oral hearing. The court shall determine the type and extent of evidence to be taken. A record shall be made of the hearing; the provisions of Sections 271 to 273 shall apply *mutatis mutandis*.

(4) The decision shall be pronounced at the end of the oral hearing. If this is not possible, the decision shall be given at the latest within one week.

Section 118b. [Persons Entitled to File Applications]

Sections 297 to 300 and 302 subsection (2) shall apply *mutatis mutandis* to the application for review of detention (Section 117 subsection (1)) and to the application for an oral hearing.

Section 119. [Serving Remand Detention]

(1) The arrested person shall not be placed in one and the same room with other prisoners. In other respects as well he shall, as far as possible, be kept separate from convicted prisoners.

(2) Upon his express written request he may be placed in the same room with other arrested persons in remand detention. This request may be withdrawn at any time in the same manner. The arrested person may also be placed in one and the same room with other prisoners if his physical or mental condition so requires.

(3) Only such restrictions may be imposed on the arrested person as are required by the purpose of remand detention or by the need for order in the prison.

(4) He may provide for his own comfort and occupation, at his own expense, insofar as this is consistent with the purpose of detention and does not disturb order in the prison.

(5) The arrested person may be shackled if:

1. there is a risk that he will use force against persons or property, or if he offers resistance;

2. he attempts to flee or if, considering the circumstances of the individual case, especially the situation of the accused and the factors hindering flight, there is a risk that he will free himself from custody;

3. there is a risk of suicide or of self-inflicted injury;

and if the risk cannot be averted by some other less incisive measures. He should not be shackled during the main hearing.

(6) Measures required pursuant to the foregoing provisions shall be ordered by the judge. In urgent cases, the public prosecutor, the director of the prison, or another official under whose supervision the arrested person is detained may impose interim measures. These shall require the approval of the judge.

Section 120. [Revocation of the Warrant of Arrest]

(1) The warrant of arrest shall be revoked as soon as the conditions for remand detention no longer exist, or if the continued remand detention would be disproportionate to the importance of the case or to the anticipated penalty or measure of reform and prevention. In particular, it is to be revoked if the accused is acquitted or if the opening of the main proceedings is refused, or if the proceedings are terminated other than provisionally.

(2) The release of the accused shall not be delayed by the fact that an appellate remedy is being sought.

(3) The warrant of arrest shall also be revoked if the public prosecution office makes the relevant application before the public charges have been preferred. Simultaneously with this application, the public prosecution office may order the release of the accused.

Section 121. [Remand Detention Exceeding Six Months]

(1) As long as a judgment has not been given imposing imprisonment or a custodial measure of reform and prevention, remand detention for one and the same offense exceeding a period of six months shall be executed only if the particular difficulty or the unusual extent of the investigation or some other important reason do not yet admit pronouncement of judgment and justify continuation of remand detention.

(2) In the cases of subsection (1), the warrant of arrest shall be revoked upon expiry of the six-month period unless execution of the warrant of arrest is suspended pursuant to Section 116 or the Higher Regional Court orders remand detention to continue.

(3) If the case file is submitted to the Higher Regional Court prior to the expiry of the time limit referred to in subsection (2) the running of the time limit shall be suspended pending that court's decision. If the main proceedings commenced prior to the expiry of the time limit, the running of the time limit shall be suspended until pronouncement of the judgment. If the main proceedings are suspended and the case file is forwarded to the Higher Regional Court without delay upon suspension of the proceedings, the running of the time limit shall likewise be suspended pending that court's decision.

(4) In cases over which a penal chamber has jurisdiction pursuant to section 74a of the Courts Constitution Act, the decision shall be given by the Higher Regional Court competent pursuant to section 120 of the Courts Constitution Act. In cases over which a Higher

Regional Court has jurisdiction pursuant to section 120 of the Courts Constitution Act, the Federal Court of Justice shall give a decision instead.

Section 122. [Special Review of Detention by the Higher Regional Court]

(1) In the cases of Section 121 the competent court shall submit the files through the public prosecution office to the Higher Regional Court for decision if it deems the continuation of remand detention necessary or if the public prosecution office so requests.

(2) The accused and his defense counsel shall be heard prior to the decision. The Higher Regional Court may decide on the continuation of remand detention after the oral hearing; in that case, Section 118a shall apply *mutatis mutandis*.

(3) If the Higher Regional Court orders continuation of remand detention, Section 114 subsection (2), number 4, shall apply *mutatis mutandis*. For the further review of remand detention (Section 117 subsection (1)) the Higher Regional Court shall have jurisdiction until a judgment is given imposing imprisonment or a custodial measure of reform and prevention. It may refer the review of remand detention to the court having jurisdiction according to the general provisions for a period not exceeding three months. In the cases of Section 118 subsection (1) the Higher Regional Court shall decide on an application for an oral hearing at its discretion.

(4) During further proceedings as well the review of the prerequisites pursuant to Section 121 subsection (1) shall be reserved for the Higher Regional Court. This review must be repeated after three months at the latest.

(5) The Higher Regional Court may suspend execution of the warrant of arrest in accordance with Section 116.

(6) If in the same case more than one accused person is in remand detention the Higher Regional Court may decide on the continuation of remand detention even of those accused persons for whom it would not yet be competent pursuant to Section 121 and to the aforementioned provisions.

(7) If the Federal Court of Justice has jurisdiction it shall give a decision instead of the Higher Regional Court.

Section 122a. [Maximum Detention Period Pursuant to Article 112a]

In the cases of Section 121 subsection (1), execution of detention may not be maintained longer than one year, if it is based on the grounds for arrest under Section 112a.

Section 123. [Revoking Less Incisive Measures]

(1) A measure serving to suspend execution of detention (Section 116) shall be revoked if:

1. the warrant of arrest has been withdrawn; or

2. remand detention or imprisonment or the custodial measure of reform and prevention is being executed.

(2) Under the same conditions, a security not yet forfeited shall be discharged.

(3) Anybody who has furnished security for the accused may bring about its discharge either by causing the accused to appear within a time limit to be set by the court or by reporting facts which warrant a suspicion that the accused intends to flee, in time for the accused to be arrested.

Section 124. [Forfeiture of Security]

(1) A security not yet discharged shall be forfeited to the Treasury if the accused evades the investigation or the commencement of imprisonment or custodial measure of reform and prevention.

(2) Prior to the decision, the accused as well as the person who has furnished security for the accused shall be requested to make a statement. They shall be entitled only to lodge an immediate complaint against the decision. Before a decision is given concerning the complaint, those persons and the public prosecution office shall be given an opportunity to support their applications orally and to discuss the investigations which were made.

(3) Regarding the person who has furnished security for the accused, the decision declaring forfeiture shall have the effect of a final judgment passed by a civil court judge and declared provisionally enforceable. After expiry of the time limit for lodging a complaint the decision shall take binding effect as a final civil judgment.

Section 125. [Competence for Issuing the Arrest Warrant]

(1) Before preferring public charges, the judge at the Local Court within whose district venue is vested, or where the accused is residing shall issue the warrant of arrest upon application of the public prosecution office or if a public prosecutor cannot be reached, or in exigent circumstances, ex officio.

(2) After the public charges have been preferred, the warrant of arrest shall be issued by the court seized of the case and, if an appeal on law has been filed, by the court whose judgment is being contested. In urgent cases the presiding judge may issue the warrant of arrest.

Section 126. [Competence for Subsequent Decisions]

(1) Before preferring public charges the judge who has issued the warrant of arrest shall be competent as to further judicial decisions and measures which concern remand detention or the suspension of execution of the warrant of arrest (Section 116). If the warrant of arrest

has been issued by a court hearing the complaint, the jurisdiction shall rest with the judge who issued the preceding decision. If the preparatory proceedings are conducted at another place, or if remand detention is executed at another place, the judge may transfer jurisdiction to the judge of the Local Court of that other place, provided the public prosecution office so applies. If that place is divided into more than one court district, the *Land* government shall issue an ordinance determining which Local Court is to be competent. The *Land* government may transfer this authorization to the *Land* department of justice.

(2) After the public charges have been preferred, the court seized of the case shall have jurisdiction. After the filing of an appeal on law, the court whose judgment is contested shall have jurisdiction. Individual measures, particularly those under Section 119, shall be ordered by the presiding judge. In urgent cases he may revoke the warrant of arrest or suspend its execution (Section 116) if the public prosecution office consents; otherwise the decision of the court shall be obtained without delay.

(3) The court hearing the appeal on law may revoke the warrant of arrest if it quashes the contested judgment and if it follows from this decision, without more, that the prerequisites of Section 120 subsection (1) have been fulfilled.

(4) Sections 121 and 122 shall remain unaffected.

Section 126a. [Provisional Committal]

(1) If there are strong grounds to assume that while lacking criminal responsibility or in a state of diminished responsibility (sections 20 and 21 Penal Code) someone has committed an unlawful act and that his committal to a psychiatric hospital or to an institution for withdrawal treatment will be ordered, the court may, in a committal order, direct that he be provisionally committed to one of these institutions, if public security so requires.

(2) Sections 114 to 115a, 117 to 119, 125 and 126 shall apply *mutatis mutandis* with respect to provisional committal. If the person to be committed has a statutory representative, the latter shall also be informed of the decision.

(3) The committal order shall be revoked if the conditions for provisional committal no longer exist or if the court does not order committal to a psychiatric hospital or to an institution for withdrawal treatment in its judgment. The release shall not be delayed by the fact that appellate remedies have been sought. Section 120 subsection (3) shall apply *mutatis mutandis*.

Section 127. [Provisional Arrest]

(1) If a person is caught in the act or is being pursued, any person shall be authorized to arrest him provisionally, even without judicial order, if there is reason to suspect flight or if his identity cannot be immediately established. The establishment of the identity of a person

by the public prosecution office or by officials in the police force shall be determined by Section 163b subsection (1).

(2) Furthermore, in exigent circumstances, the public prosecution office and officials in the police force shall be authorized to make a provisional arrest if the prerequisites for the issuance of a warrant of arrest or of a committal order have been fulfilled.

(3) In the case of a criminal offense which can only be prosecuted upon application, provisional arrest shall also be admissible if an application has not yet been filed. This shall apply *mutatis mutandis* if a criminal offense may be prosecuted only with authorization or upon request for prosecution.

Section 127a. [Dispensing with Arrest]

(1) If the accused has no permanent domicile or place of residence within the territorial scope of this statute and if the prerequisites for a warrant of arrest are fulfilled only because of risk of flight, the court may dispense with ordering or maintaining his arrest if:

1. it is not expected that imprisonment or a custodial measure of reform and prevention will be ordered on account of the offense and

2. the accused furnishes adequate security for the fine to be expected and the costs of the proceedings.

(2) Section 116a subsections (1) and (3) shall apply *mutatis mutandis*.

Section 127b. [Arrest in Connection with the Main Hearing]

(1) The public prosecution office and officials in the police force shall also be authorized to arrest provisionally a person caught in the act or being pursued:

1. if it is probable that an immediate decision will be taken in accelerated proceedings and

2. if, on the basis of certain facts, it is to be feared that the person arrested will fail to appear at the main hearing.

(2) A warrant of arrest (Section 128 subsection (2), second sentence) may be issued on the grounds set out in subsection (1) against the individual strongly suspected of the offense only if it can be expected that the main hearing will be held within one week of the arrest. The warrant of arrest shall be limited to a maximum period of one week running from the day of the arrest.

(3) The decision to issue the warrant of arrest shall be given by the judge responsible for conducting the accelerated proceedings.

Section 128. [Appearance Before the Judge]

(1) The arrested person shall, without delay, be brought before the judge of the Local Court in whose district he was arrested at the latest on the day after his arrest, unless he has been released. The judge shall examine the person brought before him in accordance with Section 115 subsection (3).

(2) If the judge does not consider the arrest justified, or if he considers that the reasons therefor no longer apply, he shall order release. Otherwise he shall issue a warrant of arrest or a committal order upon application by the public prosecution office or, if the public prosecutor cannot be reached, ex officio. Section 115 subsection (4) shall apply *mutatis mutandis*.

Section 129. [Appearance After Preferring Public Charges]

If public charges have already been preferred against the arrested person, he shall be brought before the competent court either immediately or upon the direction of the judge before whom he was first brought; this court shall, at the latest on the day after the arrest, give a decision on release, detention, or provisional committal of the arrested person.

Section 130. [Arrest Warrant for Offenses Prosecuted on Application]

If, because of a suspected criminal offense which can only be prosecuted upon application, a warrant of arrest is issued before the application is filed, the person entitled to file such application or, if there is more than one such person, then at least one of them shall be immediately informed of the issuance of the warrant of arrest and be notified that the warrant of arrest will be revoked if the application is not filed within a time limit to be determined by the judge, not to exceed one week. If no application for prosecution is filed within this time limit, the warrant of arrest shall be revoked. This shall apply *mutatis mutandis* if a criminal offense may be prosecuted only with authorization or upon request for prosecution. Section 120 subsection (3) shall be applied.

Section 131. [Wanted Notice]

(1) On the basis of a warrant of arrest or a committal order, the public prosecution office or the judge may issue a wanted notice if the accused has fled or is hiding.

(2) Pursuit on the basis of a wanted notice without a warrant of arrest or without a committal order shall be admissible only if an arrested person escapes or otherwise evades custody. In these cases the police authorities may also issue a wanted notice.

(3) The person pursued shall be designated in the wanted notice and be described as far as this is possible. The offense of which he is suspected as well as the place and time of its commission shall be stated.

(4) Sections 115 and 115a shall apply *mutatis mutandis*.

Chapter IXa Other Measures to Secure Criminal Prosecution and Execution of Sentence

Section 132.

(1) If an accused who is strongly suspected of a criminal offense has no permanent domicile or place of residence within the territorial scope of this statute and the prerequisites for a warrant of arrest are not fulfilled, an order may be made to ensure that criminal proceedings are conducted to the effect that the accused:

1. provides an adequate security for the fine to be expected and the costs of the proceedings, and

2. authorizes a person residing in the district of the competent court to receive service of documents. Section 116a subsection (1) shall apply *mutatis mutandis*.

(2) This order may be issued only by the judge and, in exigent circumstances, also by the public prosecution office and the officials assisting it (section 152 Courts Constitution Act).

(3) If the accused fails to comply with the order, means of transportation and other objects which the accused brings along and which belong to him may be seized. The provisions of Sections 94 and 98 shall apply *mutatis mutandis*.

Chapter IXb Provisional Prohibition of Persuit of an Occupation

Section 132a.

(1) If there are cogent reasons for the assumption that a prohibition of pursuit of an occupation will be ordered (section 70 Penal Code), the judge may, by order, prohibit the accused, on a provisional basis, from practicing his occupation, profession, trade or branch thereof. Section 70 subsection (3) of the Penal Code shall apply *mutatis mutandis*.

(2) The provisional prohibition of pursuit of an occupation shall be revoked if the reason therefor no longer exists or if the court does not order in the judgment the prohibition of pursuit of an occupation.

Chapter X Examination of the Accused

Section 133. [Written Summons]

(1) The accused shall be summoned in writing to the examination.

(2) The summons may provide that the accused shall be brought before the court in the case of non-compliance.

Section 134. [Bringing the Accused Before the Court]

(1) It may be ordered that the accused be brought before the court immediately if reasons exist which would justify the issuance of a warrant of arrest.

(2) The accused and the criminal offense with which he is charged shall be exactly specified in this order; the reason for his being brought before the court shall be indicated.

Section 135. [Immediate Examination]

An accused shall be brought before the judge without delay and be examined by him. He shall not be kept in custody by virtue of the order for longer than until the end of the day following the time when he was first brought before the court.

Section 136. [First Examination]

(1) At the commencement of the first examination, the accused shall be informed of the offense with which he is charged and of the applicable penal provisions. He shall be advised that the law grants him the right to respond to the accusation, or not to make any statements on the charges and, even prior to his examination, to consult with defense counsel of his choice. He shall further be instructed that he may request evidence to be taken in his defense. In appropriate cases the accused shall be informed that he may respond in writing.

(2) The examination should give the accused an opportunity to dispel the reasons for suspicion against him and to assert the facts which are in his favor.

(3) At the first examination of the accused, his personal situation should also be ascertained.

Section 136a. [Prohibited Methods of Examination]

(1) The accused's freedom to make up his mind and to manifest his will shall not be impaired by ill-treatment, induced fatigue, physical interference, administration of drugs, torment, deception or hypnosis. Coercion may be used only as far as this is permitted by criminal procedure law. Threatening the accused with measures not permitted under its provisions or holding out the prospect of an advantage not envisaged by statute shall be prohibited.

(2) Measures which impair the accused's memory or his ability to understand shall not be permitted.

(3) The prohibition under subsections (1) and (2) shall apply irrespective of the accused's consent. Statements which were obtained in breach of this prohibition shall not be used, even if the accused agrees to their use.

Chapter XI Defense

Section 137. [Defense Counsel]

(1) The accused may have the assistance of defense counsel at any stage of the proceedings. Not more than three defense counsel may be chosen.

(2) If the accused has a statutory representative, the latter may also engage defense counsel independently. Subsection (1), second sentence, shall apply *mutatis mutandis*.

Section 138. [Choice of Defense Counsel]

(1) Attorneys-at-law admitted to practice before a German court as well as professors of law at German universities may be engaged as defense counsel.

(2) Other persons may be admitted only with the approval of the court and, in the cases where the assistance of defense counsel is mandatory and the person chosen is not among the persons who may be appointed as defense counsel, such person may be admitted as counsel of the accused's own choice only together with one who may be so appointed.

Section 138a. [Exclusion of Defense Counsel]

(1) Defense counsel shall be excluded from participation in proceedings if he is strongly suspected, or suspected to a degree justifying the opening of the main proceedings,

1. of being involved in the offense which constitutes the subject of investigation,

2. of abusing communication with an accused not at liberty for the purpose of committing criminal offenses or substantially endangering the security of a prison, or

3. of having committed an offense which in the case of the conviction of the accused would constitute accessoryship, obstruction of justice, or handling stolen goods.

(2) Defense counsel shall also be excluded from participation in proceedings the subject of which is an offense pursuant to section 129a of the Penal Code, if certain facts substantiate the suspicion that he committed or is committing one of the acts designated in subsection (1), numbers 1 and 2.

(3) Exclusion shall be revoked

1. as soon as its prerequisites no longer exist, but not only on the ground that the accused has been set free;

2. if defense counsel is acquitted in the main proceedings opened on account of the facts leading to exclusion, or if a culpable breach of official duties in relation to these facts is not determined in a judgment of the disciplinary court;

3. if, within one year after exclusion, main criminal proceedings or disciplinary proceedings have not been opened, or a penal order issued, on account of the facts leading to exclusion.

An exclusion which is to be revoked in accordance with number 3 may be maintained for a limited time, at the most however for one more year, if the particular difficulty or the particular scope of the case or another important reason do not yet permit a decision to be taken on the opening of the main proceedings.

(4) Where defense counsel is excluded, he shall not be able to defend the accused in other proceedings regulated by statute as well. In relation to other matters he shall not visit the accused, if the latter is not at liberty.

(5) Where defense counsel is excluded, he shall also not be able to defend other accused persons in the same proceedings or in other proceedings where such proceedings are based on a criminal offense pursuant to section 129a of the Penal Code and where exclusion relates to proceedings which were also based on such a criminal offense. Subsection (4) shall apply *mutatis mutandis*.

Section 138b. [Exclusion of Defense Counsel for Endangering National Security]

Defense counsel shall also be excluded from participating in proceedings the subject of which is one of the criminal offenses designated under section 74a subsection (1), number 3, section 120 subsection (1), number 3, of the Courts Constitution Act or non-performance of the duties pursuant to section 138 of the Penal Code concerning criminal offenses of high treason or endangering external security pursuant to sections 94 to 96, 97a, 100 of the Penal Code, if in view of certain facts there is reason to assume that his participation would endanger the security of the Federal Republic of Germany. Section 138a subsection (3), first sentence, number 1, shall apply *mutatis mutandis*.

Section 138c. [Procedure for Excluding Defense Counsel]

(1) Decisions pursuant to Sections 138a and 138b shall be given by the Higher Regional Court. If in the preparatory proceedings the investigations are conducted by the Federal Prosecutor General, or if the proceedings are pending before the Federal Court of Justice, the Federal Court of Justice shall give the decision. If the proceedings are pending before a panel of the Higher Regional Court or the Federal Court of Justice, another panel shall decide.

(2) The court competent pursuant to subsection (1) shall decide after preferment of public charges until final conclusion of the proceedings upon submission by the court before which the proceedings are pending, otherwise upon application by the public prosecution office. The submission shall be made upon application by the public prosecution office or ex officio through intervention of the public prosecution office. If defense counsel who is an attorney-at-law is to be excluded, a copy of the public prosecution office's application pursuant to the first sentence or the submission by the court shall be communicated to the president of the competent Bar Association of which the attorney-at-law is a member. He may make submissions in the proceedings.

(3) The court before which the proceedings are pending may order the rights of defense counsel under Sections 147 and 148 to be suspended until a decision on exclusion is made by the court competent under subsection (1); it may order the suspension of these rights also with respect to the cases designated under Section 138a subsections (4) and (5). Prior to preferment of public charges and subsequent to final conclusion of the proceedings the order pursuant to the first sentence shall be given by the court that has to decide on exclusion of defense counsel. The order shall be given in a decision which is incontestable. The court shall appoint another defense counsel for the duration of the order to safeguard the rights under Sections 147 and 148. Section 142 shall apply *mutatis mutandis*.

(4) If the court before which the proceedings are pending makes a submission during the main hearing pursuant to subsection (2), it shall at the same time as the submission interrupt or suspend the main hearing until a decision is given by the court competent pursuant to subsection (1). The main hearing may be interrupted for up to thirty days.

(5) If defense counsel, on his own initiative, or at the request of the accused withdraws from participation in the proceedings after, pursuant to subsection (2), an application for his exclusion has been filed or the matter has been submitted to the court competent to give a decision, this court may continue the exclusion proceedings with the aim of determining whether the participation of defense counsel who has withdrawn is admissible in the proceedings. The determination of inadmissibility shall be equal to exclusion within the meaning of Sections 138a, 138b and 138d.

(6) If defense counsel has been excluded from participation in the proceedings, costs caused by suspension can be imposed on him. The decision on this shall be taken by the court before which the proceedings are pending.

Section 138d. [Oral Hearing; Immediate Complaint]

(1) A decision on the exclusion of defense counsel shall be given after an oral hearing.

(2) Defense counsel shall be summoned to the oral hearing. The time limit for summoning a person shall be one week; it may be reduced to three days. The public prosecution office, the accused and in the cases of Section 138c subsection (2), third sentence, the president of the Bar Association shall be notified of the date of the oral hearing.

(3) The oral hearing may be held without defense counsel if he has been properly summoned and referred to the fact in the summons that the oral hearing may be held in his absence.

(4) At the oral hearing those participants who are present shall be heard. The extent to which evidence is taken shall be determined by the court in the exercise of its duty-bound discretion. Records of the hearing shall be made; Sections 271 to 273 shall apply *mutatis mutandis*.

(5) The decision shall be pronounced at the end of the oral hearing. If this is not possible the decision shall be given no later than within one week.

(6) An immediate complaint shall be admissible against a decision excluding defense counsel for the reasons designated in Section 138a, or concerning a case of Section 138b. The president of the Bar Association shall not be entitled to lodge a complaint. A decision rejecting the exclusion of defense counsel pursuant to Section 138a shall not be contestable.

Section 139. [Trainee Jurist as Defense Counsel]

The attorney-at-law engaged as defense counsel may, with the consent of the person who selected him, entrust the defense to a jurist who has passed the first examination for the judicial service and has been employed there for at least one year and three months.

Section 140. [Mandatory Defense]

(1) The assistance of defense counsel shall be mandatory if:

1. the main hearing is held at first instance at the Higher Regional Court or at the Regional Court;

2. the accused is charged with a serious criminal offense;

3. the proceedings may result in an order prohibiting pursuit of an occupation;

4. Repealed

5. the accused has been in an institution for at least three months based on judicial order or with the approval of the judge and will not be released from such institution at least two weeks prior to the commencement of the main hearing;

6. committal of the accused pursuant to Section 81 is being considered for the purpose of preparing an opinion on his mental condition;

7. proceedings for preventive detention are conducted;

8. the former defense counsel is excluded from participation in the proceedings by a decision.

(2) In other cases the presiding judge shall appoint defense counsel upon application or ex officio if the assistance of defense counsel appears necessary because of the seriousness of the offense, or because of the difficult factual or legal situation, or if it is evident that the accused cannot defend himself, particularly where an attorney-at-law has been assigned to the aggrieved person pursuant to Sections 397a and 406g subsections (3) and (4). Applications filed by accused persons who are deaf or dumb shall be granted.

(3) The appointment of defense counsel pursuant to subsection (1), number 5, may be revoked if the accused is released from the institution at least two weeks prior to commencement of the main hearing. The appointment of defense counsel pursuant to Section 117 subsection (4) shall remain effective for the further proceedings under the prerequisites designated in subsection (1), number 5, unless another defense counsel is appointed.

Section 141. [Appointment of Defense Counsel]

(1) In the cases of Section 140 subsections (1) and (2), as soon as an indicted accused without defense counsel has been requested according to Section 201 to reply to the bill of indictment, defense counsel shall be appointed.

(2) If it only subsequently appears that defense counsel is needed, he shall be appointed immediately.

(3) Defense counsel may also be appointed during the preliminary proceedings. The public prosecution office shall request such appointment if in its opinion the assistance of defense counsel pursuant to Section 140 subsection (1) or (2) will be necessary. Upon conclusion of the investigations (Section 169a) he shall be appointed upon application by the public prosecution office.

(4) The judge presiding over the court competent for the main proceedings or over the court seized of the case shall decide on the appointment.

Section 142. [Choice of Defense Counsel]

(1) Defense counsel to be appointed shall be chosen by the presiding judge, if possible from the group of attorneys-at-law admitted to practice before a court within the court district. The accused is to be given the opportunity of naming an attorney-at-law within a time limit to be specified. The presiding judge shall appoint defense counsel named by the accused unless there are significant grounds for not doing so.

(2) In the cases of Section 140 subsection (1), numbers 2 and 5, as well as Section 140 subsection (2) jurists who have passed the prescribed first examination for the judicial service and have been employed there for at least one year and three months may also be appointed as defense counsel in proceedings at first instance, but not before the court to whose judges they have been assigned for training.

Section 143. [Revocation of appointment]

The appointment shall be revoked if another defense counsel is soon to be chosen and such counsel accepts the mandate.

Section 144. [Deleted]

Section 145. [Absence of Defense Counsel]

(1) If, in a case where defense is mandatory, defense counsel fails to appear at the main hearing, leaves at an inappropriate time, or refuses to carry on the defense, the presiding judge shall immediately appoint another defense counsel for the defendant. However, the court may also decide to suspend the hearing.

(2) If mandatory defense counsel pursuant to Section 141 subsection (2) is appointed only during the course of the main hearing the court may decide to suspend the main hearing.

(3) The hearing shall be interrupted or suspended if the newly appointed defense counsel declares that he does not have the time needed to prepare the defense.

(4) If a suspension becomes necessary through the fault of defense counsel, he shall be charged with the costs caused thereby.

Section 145a. [Service of Documents on Defense Counsel]

(1) The chosen defense counsel whose power of attorney is recorded in the files, as well as the appointed counsel are considered authorized to receive service of documents and other communications on behalf of the accused.

(2) A summons for the accused may be served on defense counsel only if he is expressly authorized to receive summonses by power of attorney recorded in the files. Section 116a subsection (3) shall remain unaffected.

(3) If pursuant to subsection (1) a decision is served on defense counsel, the accused shall be informed thereof; at the same time he shall be provided with a copy of the decision. If a decision is served on the accused, defense counsel shall be informed thereof even if a written power of attorney is not contained in the file; he shall also be provided with a copy of the decision.

Section 146. [Joint Defense Counsel]

Defense counsel may not appear for more than one person accused of the same offense. In a single proceeding he may also not appear for more than one person accused of different offenses.

Section 146a. [Rejection of Defense Counsel of the Accused's Own Choice]

(1) Where a person has been chosen as defense counsel although the prerequisites of Section 137 subsection (1), second sentence, or Section 146 have been fulfilled, he shall be rejected as defense counsel as soon as this becomes evident; the same shall apply if the prerequisites of Section 146 are fulfilled after he has been chosen. If, in the cases of Section 137 subsection (1), second sentence, more than one defense counsel give notification of their mandate, and if this means that the maximum number of counsel has been exceeded,

they shall all be rejected. The decision to reject shall be taken by the court before which the proceedings are pending or which would be competent to hear the main proceedings.

(2) Acts of defense counsel prior to his rejection shall not be ineffective merely because the prerequisites of Section 137 subsection (1), second sentence, or of Section 146 have been fulfilled.

Section 147. [Inspection of the Files]

(1) Defense counsel shall be entitled to inspect those files which are available to the court, those which would have to be submitted to the court if charges have been preferred, and to inspect officially impounded pieces of evidence.

(2) If the termination of the investigations has not yet been noted in the file, defense counsel may be refused inspection of the files or of individual documents in the files, as well as the inspection of officially impounded pieces of evidence, if this may endanger the purpose of the investigation.

(3) At no stage of the proceedings may defense counsel be refused inspection of records concerning the examination of the accused or concerning such judicial acts of investigation to which defense counsel has been or should have been admitted, nor may he be refused inspection of expert opinions.

(4) Upon application, defense counsel may be permitted to take the files, with the exception of pieces of evidence, to his office or to his private premises for inspection, unless there are significant reasons to the contrary. The decision shall not be contestable.

(5) Regarding permission to inspect the files, the public prosecution office shall decide during the preparatory proceedings; in other cases, the judge presiding over the court seized of the case shall be competent to decide.

(6) If the reason for refusing the inspection of the files has not already ceased to exist, the public prosecution office shall revoke the order no later than upon completion of the investigation. Defense counsel shall be notified as soon as the right to inspect the files exists again without restriction.

Section 148. [Defense Counsel-Client Communication]

(1) The accused, also when he is not at liberty, shall be entitled to communicate with defense counsel in writing as well as orally.

(2) If an accused is not at liberty and if the subject of the investigation is a criminal offense pursuant to section 129a of the Penal Code, documents or other items shall be rejected if the sender does not agree to their being first submitted to a judge. The same shall apply under the conditions set out in the first sentence to written communications between the accused and defense counsel in other proceedings governed by statute. Where written

communication pursuant to the first or second sentences is subject to monitoring, devices shall be put in place for conversations between the accused and defense counsel which prevent documents and other items from being handed over.

Section 148a. [Implementing Monitoring Measures]

(1) The judge of the Local Court in the district of which the prison is located shall be competent to implement monitoring measures pursuant to Section 148 subsection (2). Where a criminal information is to be laid pursuant to section 138 of the Penal Code, documents or other items in respect of which there is an obligation to lay a criminal information shall be provisionally impounded. The provisions concerning seizure shall remain unaffected.

(2) The judge who is entrusted with implementing monitoring measures shall not be seized of the subject of the investigation. The judge shall keep secret any knowledge which he obtains during monitoring. Section 138 of the Penal Code shall remain unaffected.

Section 149. [Admission of Assistance]

(1) The spouse of a defendant shall be admitted to the main hearing to give assistance in the defense and shall be heard upon his or her request. Time and place of the main hearing shall be communicated to him or her in time.

(2) The same rule shall apply to the defendant's statutory representative.

(3) In preliminary proceedings the admission of such assistance shall be left to judicial discretion.

Section 150. Deleted

Part Two Proceedings at First Instance

Chapter I Public Charges

Section 151. [Principle of Indictment]

The opening of a judicial investigation shall be conditional upon preferment of charges.

Section 152. [Indicting Authority; Principle of Mandatory Prosecution]

(1) The public prosecution office shall have the authority to prefer public charges.

(2) Except as otherwise provided by law, the public prosecution office shall be obliged to take action in the case of all criminal offenses which may be prosecuted, provided there are sufficient factual indications.

Section 152a. [Prosecution of Elected Public Representatives]

The law of a *Land* concerning the conditions under which criminal prosecution may be instituted or continued against members of a legislative body shall also be applicable to the other *Laender* of the Federal Republic of Germany and to the Federation.

Section 153. [Non-Prosecution of Petty Offenses]

(1) If a less serious criminal offense is the subject of the proceedings, the public prosecution office may dispense with prosecution with the approval of the court competent for the opening of the main proceedings if the perpetrator's culpability is considered to be of a minor nature and there is no public interest in the prosecution. The approval of the court shall be not required in the case of a less serious criminal offense which is not subject to an increased minimum penalty and where the consequences ensuing from the offense are minimal.

(2) If charges have already been preferred, the court, with the consent of the public prosecution office and the indicted accused, may terminate the proceedings at any stage thereof under the conditions in subsection (1). The consent of the indicted accused shall not be required if the main hearing cannot be conducted for the reasons stated in Section 205, or is conducted in the cases of Section 231 subsection (2) and Sections 232 and 233 in his absence. The decision shall be given in a ruling. The ruling shall not be contestable.

Section 153a. [Provisional Dispensing with Court Action; Provisional Termination of Proceedings]

(1) In a case involving a less serious criminal offense, the public prosecution office may, with the consent of the court competent to order the opening of the main proceedings and with the consent of the accused, dispense with preferment of public charges and concurrently impose a condition upon the accused:

1. to make a certain contribution towards reparation for damage caused by the offense,

2. to pay a sum of money to a non-profit-making institution or to the Treasury,

3. to perform some other service of a non-profit-making nature,

4. to comply with duties to pay maintenance at a certain level, or

5. to participate in a seminar pursuant to section 2b subsection (2), second sentence, or section 4 subsection (8), fourth sentence, of the Road Traffic Act,

if such conditions and instructions are of such nature as to eliminate the public interest in criminal prosecution and if the degree of culpability does not present an obstacle. The public prosecution office shall set a time limit within which the accused is to comply with such conditions and instructions, and which, in respect of the cases referred to in numbers 1 to 3 and 5 of the first sentence, shall be a maximum of six months and, in respect of the cases referred to in number 4 of the first sentence, a maximum of one year. The public prosecution office may subsequently revoke the conditions and instructions and may extend the time limit once for a period of three months; with the consent of the accused it may subsequently impose or change conditions and instructions. If the accused complies with the conditions and instructions, the offense can no longer be prosecuted as a less serious criminal offense. If the accused fails to comply with the conditions and instructions, there shall be no compensation for such contribution as he has made towards compliance. Section 153 subsection (1), second sentence, shall apply *mutatis mutandis* in the cases referred to in the first sentence, numbers 1 to 4.

(2) If the public charges have already been preferred, the court may, with the consent of the public prosecution office and of the indicted accused, provisionally terminate the proceedings up until the end of the main hearing in which the findings of fact can last be examined, and concurrently impose the conditions and instructions referred to in subsection (1), first sentence, on the indicted accused. Subsection (1), second to fifth sentences, shall apply *mutatis mutandis*. The decision pursuant to the first sentence shall be given in a ruling. The ruling shall not be contestable. The fourth sentence shall also apply to a finding that conditions and instructions imposed pursuant to the first sentence have been met.

(3) The running of the period of limitation shall be suspended for the duration of the time limit set for compliance with the conditions and instructions.

Section 153b. [Dispensing with Court Action; Termination]

(1) If the conditions exist under which the court may dispense with imposing a penalty, the public prosecution office may, with the consent of the court which would have jurisdiction over the main hearing, dispense with preferment of public charges.

(2) If charges have already been preferred the court may, with the consent of the public prosecution office and of the indicted accused, terminate proceedings prior to the beginning of the main hearing.

Section 153c. [Non-Prosecution of Offenses Committed Abroad]

(1) The public prosecution office may dispense with prosecuting criminal offenses:

1. which have been committed outside the territorial scope of this statute, or which an inciter or accessory to an act committed outside the territorial scope of this statute has committed within the territorial scope thereof;

2. which a foreigner committed in Germany on a foreign ship or aircraft;

3. if a sentence for the offense was already executed against the accused abroad, and the sentence which is to be expected in Germany would be negligible after taking the foreign sentence into account or if the accused has already been acquitted by final judgment abroad in respect of the offense.

(2) The public prosecution office may dispense with prosecuting criminal offenses committed within, but through an act committed outside, the territorial scope of this statute, if the conduct of proceedings would pose the risk of serious detriment to the Federal Republic of Germany or if other predominant public interests present an obstacle to prosecution.

(3) If charges have already been preferred, the public prosecution office may in the cases of subsection (1), numbers 1 and 2, and of subsection (2) withdraw the charges at any stage of the proceedings and terminate the proceedings if the conduct of proceedings would pose the risk of serious detriment to the Federal Republic of Germany, or if other predominant public interests present an obstacle to prosecution.

(4) If criminal offenses of the nature designated under section 74a subsection (1), numbers 2 to 6, and under section 120 subsection (1), numbers 2 to 7, of the Courts Constitution Act are the subject of the proceedings, the Federal Prosecutor General shall have these powers.

Section 153d. [Dispensing with Court Action on Political Grounds]

(1) The Federal Prosecutor General may dispense with prosecuting criminal offenses of the nature designated under section 74a subsection (1), numbers 2 to 6, and under section 120 subsection (1), numbers 2 to 7, of the Courts Constitution Act, if the conduct of proceedings would pose a risk of serious detriment to the Federal Republic of Germany, or if other predominant public interests present an obstacle to prosecution.

(2) If charges have already been preferred, the Federal Prosecutor General may withdraw the charges under the conditions designated in subsection (1) at any stage of the proceedings and terminate the proceedings.

Section 153e. [Dispensing with Court Action in National Security Cases]

(1) If criminal offenses of the nature designated under section 74a subsection (1), numbers 2 to 4, and section 120 subsection (1), numbers 2 to 7, of the Courts Constitution Act are the subject of the proceedings, the Federal Prosecutor General, with the approval of the Higher Regional Court, competent pursuant to section 120 of the Courts Constitution Act, may dispense with prosecuting such an offense if the perpetrator, subsequently to the offense, and before he has learned of the discovery thereof, contributed towards averting a danger to the existence or the security of the Federal Republic of Germany or its constitutional order. The same shall apply if the perpetrator has made such contribution by disclosing to an agency after the offense such knowledge as he had with respect to endeavors involving high treason, endangering the democratic state based on the Rule of Law, treason, and endangering external security.

(2) If charges have already been preferred, the Higher Regional Court, competent pursuant to Section 120 of the Courts Constitution Act, may, with the approval of the Federal Prosecutor General, terminate the proceedings if the conditions designated under subsection (1) are met.

Section 154. [Insignificant Secondary Penalties]

(1) The public prosecution office may dispense with prosecuting an offense:

1. if the penalty or the measure of reform and prevention in which the prosecution might result is not particularly significant in addition to a penalty or measure of reform and prevention which was imposed with binding effect upon the accused for another offense, or which he has to expect for another offense, or

2. beyond that, if a judgment is not to be expected for such offense within reasonable time, and if a penalty or measure of reform and prevention which was imposed with binding effect upon the accused, or which he has to expect for another offense, appears sufficient to have an influence on the perpetrator and to defend the legal order.

(2) If public charges have already been preferred, the court, upon the public prosecution office's application, may provisionally terminate the proceedings at any stage.

(3) If the proceedings were provisionally terminated on account of a penalty or measure of reform and prevention already imposed with binding effect for another offense, the proceedings may be resumed, unless barred by limitation in the meantime, if the penalty or measure of reform and prevention imposed with binding effect is subsequently not executed.

(4) If the proceedings were provisionally terminated on account of a penalty or measure of reform and prevention which is to be expected for another offense, the proceedings may be resumed, unless barred by limitation in the meantime, within three months after the judgment imposed for the other offense has entered into force.

(5) If the court has provisionally terminated the proceedings, a court order shall be required for their resumption.

Section 154a. [Limitation of Prosecution]

(1) If individual separable parts of an offense or some of several violations of law committed as a result of the same offense are not particularly significant

1. for the penalty or measure of reform and prevention to be expected, or

2. in addition to a penalty or measure of reform and prevention which has been imposed with binding effect upon the accused for another offense or which he has to expect for another offense,

prosecution may be limited to the other parts of the offense or the other violations of law. Section 154 subsection 1, number 2, shall apply *mutatis mutandis*. The limitation shall be included in the records.

(2) After filing of the bill of indictment, the court, with the consent of the public prosecution office, may make this limitation at any stage of the proceedings.

(3) At any stage of the proceedings the court may reintroduce into the proceedings those parts of the offense or violations of law which were not considered. An application by the public prosecution office for reintroduction shall be granted. If parts of an offense which were not considered are reintroduced, Section 265 subsection (4) shall apply *mutatis mutandis*.

Section 154b. [Extradition and Expulsion]

(1) Preferment of public charges may be dispensed with if the accused is extradited to a foreign government because of the offense.

(2) The same rule shall apply if he is to be extradited to a foreign government because of another offense and the penalty or the measure of reform and prevention in which the domestic prosecution might result is negligible in addition to the penalty or measure of reform and prevention which was imposed on him abroad with binding effect or which he is to expect abroad.

(3) Preferment of public charges may also be dispensed with if the accused is expelled from the territorial scope of this Federal statute.

(4) If in the cases of subsections (1) to (3) public charges have already been preferred, the court, upon application by the public prosecution office, shall provisionally terminate the proceedings. Section 154 subsections (3) to (5) shall apply *mutatis mutandis*, provided that the time limit in subsection (4) amounts to one year.

Section 154c. [Victim of Coercion or Extortion]

If coercion or extortion (sections 240 and 253 Penal Code) was committed by threats to reveal a criminal offense, the public prosecution office may dispense with prosecuting the offense, the disclosure of which was threatened, unless expiation is imperative because of the seriousness of the offense.

Section 154d. [Decision of a Prior Issue Involving Civil Law or Administrative Law]

If the preferring of public charges for a less serious criminal offense depends on the evaluation of a question which must be determined according to civil law or administrative law, the public prosecution office may set a time limit to decide the question in civil proceedings or in administrative court proceedings. The person who reported the criminal offense shall be notified thereof. After this time limit has expired without any result, the public prosecution office may terminate the proceedings.

Section 154e. [Criminal or Disciplinary Proceedings concerning Erroneous Suspicion or Insult]

(1) Public charges shall not be preferred for an erroneous suspicion or insult (sections 164, 185 to 188 Penal Code) as long as criminal or disciplinary proceedings are pending for the reported or alleged offense.

(2) If public charges have already been preferred or a private prosecution has been filed, the court shall terminate the proceedings until the criminal or disciplinary proceedings for the reported or alleged offense are concluded.

(3) Pending the conclusion of the criminal or disciplinary proceedings for the reported or alleged offense, the statute of limitation shall not run in respect of prosecution for the erroneous suspicion or insult.

Section 155. [Scope of the Investigation]

(1) The investigation and decision shall extend only to the offense specified, and to the persons accused, in the charges.

(2) Within these limits, the courts shall be authorized and obliged to act independently; in particular, they shall not be bound by the parties' applications when applying a penal norm.

Section 156. [No Withdrawal of the Indictment]

The public charges may not be withdrawn after the opening of the main proceedings.

Section 157. [Definition of the Terms "Indicted Accused" and "Defendant"]

Within the meaning of this statute,

the indicted accused shall be an accused person against whom public charges have been preferred,

the defendant shall be an accused person or indicted accused in respect of whom there has been a decision to open the main proceedings.

Chapter II Preparation of the Public Charges

Section 158. [Criminal Informations; Applications for Prosecution]

(1) Information of a criminal offense or an application for criminal prosecution may be filed orally or in writing with the public prosecution office, with authorities and officials in the police force, and with the Local Courts. An oral information shall be recorded in writing.

(2) In the case of criminal offenses which may be prosecuted only upon application, the application shall be made in writing or orally for the records to a court or to the public prosecution office; where the application is made to another authority, it shall be made in writing.

Section 159. [Unnatural Death; Discovery of a Corpse]

(1) If there are indications that a person has died an unnatural death, or if the corpse of an unknown person is found, the police and municipal authorities shall be obliged to inform the public prosecution office or the Local Court immediately.

(2) The written permission of the public prosecution office is required for the burial.

Section 160. [Investigation Proceedings]

(1) As soon as the public prosecution office obtains knowledge of a suspected criminal offense either through a criminal information or by other means it shall investigate the facts to decide whether public charges are to be preferred.

(2) The public prosecution office shall ascertain not only incriminating but also exonerating circumstances, and shall ensure that such evidence is taken the loss of which is to be feared.

(3) The investigations of the public prosecution office should extend also to the circumstances which are important for the determination of the legal consequences. For this purpose it may avail itself of the service of the court assistance agency.

Section 161. [Information and Investigations]

For the purpose indicated in the foregoing section the public prosecution office may request information from all public authorities and may make investigations of any kind, either itself or through the authorities and officials in the police force. The authorities and officials in the police force shall be obliged to comply with the request or order of the public prosecution office.

Section 161a. [Witnesses and Experts before the Public Prosecution Office]

(1) Witnesses and experts shall be obliged to appear before the public prosecution office upon being summoned and to make statements on the subject matter or to render their opinion. Unless otherwise provided, the provisions of Chapters VI and VII of Part One concerning Witnesses and Experts shall apply *mutatis mutandis*. Examination under oath shall be reserved for the judge.

(2) If a witness or expert fails or refuses to appear without justification, the public prosecution office shall have the authority to take the measures provided in Sections 51, 70 and 77. However, the imposition of detention shall remain reserved for the judge; the Local

Court, in the district of which the public prosecution office applying for imposition of detention is located, shall have jurisdiction.

(3) A decision by the court may be requested against the decision of the public prosecution office pursuant to subsection (2), first sentence. The Regional Court in the district of which the public prosecution office is located shall decide on the application unless otherwise provided for in section 120 subsection (3), first sentence, and section 135 subsection (2) of the Courts Constitution Act. Sections 297 to 300, 302, 306 to 309 and 311a as well as the provisions on the imposition of costs in complaint proceedings shall apply *mutatis mutandis*. The decision of the court shall not be contestable.

(4) If the public prosecution office requests another public prosecution office to examine a witness or expert, the powers pursuant to subsection (2), first sentence, shall also be vested in the requested public prosecution office.

Section 162. [Judicial Investigations]

(1) If the public prosecution office considers a judicial investigation to be necessary, it shall make its applications to the Local Court in the district of which such investigation is to be made. If it considers judicial orders for making investigations in more than one district to be necessary, it shall make its applications to the Local Court in the district of which it is located. The second sentence shall not apply to examinations by the judge or if the public prosecution office considers the success of the investigation to be endangered by a delay which would be caused by an application to the competent Local Court pursuant to the second sentence.

(2) The jurisdiction of the Local Court shall not be affected by a change of the circumstances establishing such jurisdiction, occurring after the filing of the application.

(3) The judge shall examine whether the investigation applied for is permitted by statute, given the circumstances of the case.

Section 163. [Duties of the Police]

(1) The authorities and officials in the police force shall investigate criminal offenses and shall take all measures where there should be no delay, in order to prevent concealment of facts.

(2) The authorities and officials in the police force shall transmit, without delay, their records to the public prosecution office. Direct transmission to the Local Court shall be possible if it appears that a judicial investigation needs to be performed promptly.

Section 163a. [Examination of the Accused]

(1) The accused shall be examined at the latest prior to conclusion of the investigations, unless the proceedings result in termination. In simple matters it shall be sufficient for him to be given the opportunity to respond in writing.

(2) If the accused applies for the taking of evidence in his defense, such evidence shall be taken if it is of importance.

(3) The accused shall be obliged to appear before the public prosecution office upon being summoned. Sections 133 to 136a, 168c subsections (1) and (5) shall apply *mutatis mutandis*. On application by the accused, the court shall decide on the lawfulness of his being made to appear; Section 161a subsection (3), second to fourth sentences, shall apply.

(4) During the accused's first examination by officials in the police force, he shall be informed of the offense with which he is charged. Section 136 subsection (1), second to fourth sentences, subsections (2) and (3) and Section 136a shall otherwise apply to the examination of the accused by the police officials.

(5) Section 52 subsection (3), Section 55 subsection (2), Section 81c subsection (3), second sentence, in conjunction with Section 52 subsection (3) and Section 136a, shall apply *mutatis mutandis* to the examination of a witness or expert by officials in the police force.

Section 163b. [Establishing Identity]

(1) If somebody is suspected of an offense the public prosecution office and the officials in the police force may take the measures which are necessary to establish his identity; Section 163a subsection 4, first sentence, shall apply *mutatis mutandis*. The suspect may be kept in custody if the identity cannot be established in any other way or only with considerable difficulty. Under the prerequisites of the second sentence, it shall be admissible to search the suspect and the objects found on him as well as to carry out measures for identification purposes.

(2) If and so far as this is necessary to clear up a criminal offense, the identity of a person who is not suspected of an offense may also be established; Section 69 subsection (1), second sentence, shall apply *mutatis mutandis*. Measures of the kind designated in subsection (1), second sentence, may not be taken if they are disproportionate to the importance of the matter; measures of the kind designated in subsection (1), third sentence, may not be taken against the will of the person concerned.

Section 163c. [Duration of Custody. Judicial Review]

(1) A person affected by a measure pursuant to Section 163b may in no case be kept in custody longer than is necessary to establish his identity. The arrested person shall be brought without delay before the judge at the Local Court in the district of which he has been apprehended for the purpose of deciding on the admissibility and continuation of the deprivation of liberty, unless it would presumably take more time to obtain a decision by the judge than would be necessary to establish his identity.

(2) The arrested person shall be entitled to request that a relative or a person whom he trusts be notified without delay. He shall be given the opportunity to inform a relative or a person whom he trusts unless he is suspected of an offense and the purpose of the investigation would be endangered by the notification.

(3) A deprivation of liberty for the purpose of establishing identity shall not exceed a total period of twelve hours.

(4) If identity has been established the records prepared in connection with the establishment shall be destroyed in the cases of Section 163b subsection (2).

Section 163d. [Computer-Assisted Search]

(1) If certain facts substantiate the suspicion that:

1. one of the criminal offenses listed in Section 111, or

2. one of the criminal offenses listed in Section 100a, first sentence, numbers 3 and 4,

has been committed, the data concerning the identity of persons obtained at a check by the border police, in the case of number 1 also obtained at checkpoints pursuant to Section 111, as well as the circumstances which may be important for clearing up the criminal offense or for apprehending the perpetrator, may be electronically stored if facts justify the assumption that the evaluation of the data may lead to the apprehension of the perpetrator, or to the clearing up of the criminal offense and the measure is not disproportionate to the importance of the matter. This shall also apply if, in the case of the first sentence, passports and identity cards are read by machine. The data shall be transmitted to law enforcement authorities only.

(2) Measures of the nature designated in subsection (1) may be ordered only by the judge, in exigent circumstances also by the public prosecution office and the officials assisting it (section 152 Courts Constitution Act). If the public prosecution office or one of the officials assisting it has given the order, the public prosecution office shall request the judge's confirmation of the order without delay. The order shall become ineffective if not confirmed by the judge within three days.

(3) The order shall be given in writing. It must describe, by certain features or characteristics, the person whose data are to be stored, as precisely as possible in the light of the information about the suspect or suspects available at the time of the order. The kind and duration of the measure shall be determined. The order shall be limited to a special area and shall apply for a maximum of three months. One extension of not more than three further months shall be admissible if the conditions designated in subsection (1) continue to exist.

(4) If the conditions for the issuance of the order no longer exist, or if the purpose of the measures resulting from the order has been fulfilled, they shall be terminated without delay.

The personal data obtained by the measures shall be erased without delay as soon as they are not, or no longer, required for the criminal proceedings; storage of the data exceeding the duration of the measures (subsection (3)) by more than three months, shall be inadmissible. The public prosecution office shall be notified about the erasure. The stored personal data may be used only for the criminal proceedings. Their use for other purposes shall be admissible only as far as an evaluation by the storing agency discloses any knowledge required to clear up another criminal offense, or to identify a person who is on the "wanted" list, or whose whereabouts must be determined for reasons of criminal prosecution or execution of sentence.

(5) The persons against whom further investigations have been conducted after evaluation of the data shall be informed of the measures designated in subsection (1), unless it is to be feared that the purpose of the investigation or public security would be endangered.

Section 163e. [Police Monitoring Notice]

(1) Notice may be ordered for monitoring to take place during police checks where personal particulars may be taken if there are sufficient factual indications to show that a criminal offense of considerable importance has been committed. The order may be made only against the accused person and only if establishing the facts or determining the perpetrator's whereabouts by other means would offer much less prospect of success or would be made much more difficult. The measure shall be admissible against other individuals if it can be assumed, on the basis of specific facts, that they are linked to the perpetrator or if a link can be established and that the measure will make it possible to establish the facts or to determine the perpetrator's whereabouts and if other means would offer much less prospect of success or would be much more difficult.

(2) The vehicle license plate number may be included in the notice if the vehicle is registered for a person in respect of whom a notice has been issued pursuant to subsection (1) or is used by that person or another person whose name is so far unknown and who is suspected of committing a criminal offense of considerable importance.

(3) Should the person be encountered, personal information about an individual accompanying the person in the notice or about the person driving the vehicle in the notice may also be communicated.

(4) The order to issue a police monitoring notice may be made only by a judge. In exigent circumstances, it may be ordered by the public prosecution office. Where the public prosecution office has made the order, it shall apply for judicial confirmation without delay. The order shall become ineffective if it is not confirmed by the judge within three days. The order shall be limited to a maximum of one year. Section 100b subsection (2), fifth sentence, shall apply *mutatis mutandis*.

Section 164. [Apprehension of Persons Disrupting Official Activities]

The official directing official activities on the spot shall be authorized to apprehend persons who willfully disturb his official activity or oppose orders given by him within the scope of his authority, and to have them kept in custody until termination of his official tasks, but not beyond the next day.

Section 165. [Judicial Action in an Emergency.]

In exigent circumstances, the judge may, even without an application, undertake the necessary investigatory acts if a public prosecutor is not available.

Section 166. [Applications by the Accused to Obtain Evidence]

(1) If the accused is examined by the judge and if at this hearing he applies for the taking of certain exonerating evidence, the judge shall, so far as he considers it of importance, take such evidence if loss of evidence is to be feared or if the taking of the evidence may justify the release of the accused.

(2) If the evidence is to be taken in another district, the judge may request the judge in that district to take this evidence.

Section 167. [Further Directions by the Public Prosecution Office]

In the cases of Sections 165 and 166 the authority to give further directions shall lie with the public prosecution office.

Section 168. [Recording Clerk]

A record shall be made of each judicial investigatory act. A registry clerk shall be called in to make such records; the judge may dispense with this, if he considers the presence of a recording clerk not to be necessary. In urgent cases the judge may call in a person to be sworn in by him as recording clerk.

Section 168a. [Recording of Judicial Investigatory Acts]

(1) The record must indicate the place and date of the hearing as well as the names of the persons involved and must state whether the essential formalities of the proceedings have been observed. Section 68 subsections (2) and (3) shall remain unaffected.

(2) The contents of the record may be provisionally recorded in regular shorthand, by stenotype or tape recorder or by comprehensible abbreviations. In this case the record shall be made without delay after the hearing. The provisional records shall be placed on file or, if they are not suitable for such purpose, they shall be kept together with the files, at the registry. Tape recordings may be erased when the proceedings have been concluded with binding effect or have otherwise ended.

(3) The record shall be read for approval to the persons participating in the hearing or be submitted to them for inspection. Their approval shall be recorded. The record shall be signed by the participants or it shall be noted therein why it has not been signed. If the contents of the record have been recorded only provisionally, it shall be sufficient for the records to be read out or played back. The record shall indicate that this happened and that approval was given, or which objections have been raised. The reading or submission for inspection or the playing back may be omitted if the participating persons, as far as they are concerned, dispense with it after the recording; the record shall indicate that such waiver has been pronounced.

(4) The record shall be signed by the judge as well as by the recording clerk. If the contents of the record have been recorded in whole or in part by tape recorder without the presence of a recording clerk, the judge and the person who made the record shall sign it. The latter shall sign with the addendum that he confirms the accuracy of the transcript. Proof of inaccuracy of the transcript shall be admissible.

Section 168b. [Recording of Investigatory Acts of the Public Prosecution Office]

(1) The result of investigatory acts of the public prosecution office shall be made part of the file.

(2) The examination of the accused, the witnesses and experts shall be recorded pursuant to Sections 168 and 168a as far as this can be done without considerably delaying the investigations.

Section 168c. [Presence During Judicial Examination]

(1) The prosecutor and defense counsel shall be permitted to be present during the judicial examination of the accused.

(2) The prosecutor, the accused and defense counsel shall be permitted to be present during the judicial examination of a witness or expert.

(3) The judge may exclude an accused from being present at the hearing if his presence would endanger the purpose of the investigation. This shall apply in particular if it is to be feared that a witness will not tell the truth in the presence of the accused.

(4) If an accused, not being at liberty, has defense counsel he shall be entitled to be present only at such hearings held at the place where he is in custody.

(5) The persons entitled to be present shall be given prior notice of the dates set down for the hearings. The notification shall be dispensed with if it would endanger the success of the investigation. Persons entitled to be present shall not have the right to request a change of the date set down for a hearing when prevented from being present.

Section 168d. [Presence During Judicial Inspection]

(1) The prosecutor, the accused and defense counsel shall be permitted to be present at the hearing when a judicial inspection is made. Section 168c subsection (3), first sentence, subsections (4) and (5) shall apply *mutatis mutandis*.

(2) If at the judicial inspection experts are consulted, the accused may request that the experts to be proposed by him for the main hearing be summoned to the hearing and if the judge rejects the application, the accused may have them summoned himself. The experts named by the accused shall be permitted to participate in the inspection and the required investigation to the extent that the activity of the experts appointed by the judge is not impeded thereby.

Section 168e. [Separate Examination]

If there is an imminent danger of serious detriment to the well-being of the witness in the event of his being examined in the presence of persons entitled to be present and if that risk cannot be averted in some other way, the judge shall carry out the examination separately from those entitled to be present. There shall be simultaneous audio-visual transmission of the examination to the latter. Their rights of participation shall otherwise remain unaffected. Sections 58a and 241a shall apply *mutatis mutandis*. The decision pursuant to the first sentence shall be incontestable.

Section 169. [Investigating Judges of the Higher Regional Courts and the Federal Court of Justice]

(1) In cases under the jurisdiction of the Higher Regional Court as the court of first instance pursuant to section 120 of the Courts Constitution Act the duties incumbent upon the judge at the Local Court in preparatory proceedings may also be performed by investigating judges of the Higher Regional Court concerned. If the Federal Prosecutor General conducts the investigations, the investigating judges of the Federal Court of Justice shall take their place.

(2) The investigating judge of the Higher Regional Court competent for a case may also order investigatory acts although they are not to be performed in the district of this court.

Section 169a. [Conclusion of Investigation]

If the public prosecution office is considering preferment of public charges, it shall make a note of the conclusion of the investigation in the files.

Section 170. [Conclusion of the Investigation Proceedings]

(1) If the investigations offer sufficient reason for preferring public charges, the public prosecution office shall prefer them by submitting a bill of indictment to the competent court.

(2) In all other cases the public prosecution office shall terminate the proceedings. The accused shall be notified thereof if he was examined as such or a warrant of arrest was

issued against him; the same shall apply if he requested such notice or if there is a particular interest in the notification.

Section 171. [Notification of the Applicant]

If the public prosecution office does not grant an application for preferring public charges, or after conclusion of the investigation it orders the proceedings to be terminated, it shall notify the applicant, indicating the reasons. The decision shall inform the applicant, if he is at the same time the aggrieved party, of the possibility of contesting the decision and of the time limit provided therefor (Section 172 subsection (1)).

Section 172. [Proceeding to Compel Public Charges]

(1) If the applicant is at the same time the aggrieved party, he shall be entitled to lodge a complaint against the notification made pursuant to Section 171 to the official superior of the public prosecution office within two weeks after receipt of such notification. On the filing of the complaint with the public prosecution office the time limit shall be deemed to have been observed. The time limit shall not run if no information has been given pursuant to Section 171, second sentence.

(2) The applicant may, within one month of receipt of notification, apply for a court decision in respect of the dismissal of the complaint by the superior official of the public prosecution office. He shall be informed of this right and of the form provided for such application; the time limit shall not run if no information has been given. The application shall not be admissible when the subject of the proceedings is solely a criminal offense which may be prosecuted by the aggrieved party by way of a private prosecution, or if the public prosecution office dispensed with preferring public charges in accordance with Section 153 subsection (1), Section 153a subsection (1), first and sixth sentences, or Section 153b subsection (1); the same shall apply in cases under Sections 153 c to 154 subsection (1), as well as under Sections 154b and 154c.

(3) The application for a court decision shall indicate the facts which are intended to substantiate preferment of public charges as well as the evidence. The application must be signed by an attorney-at-law; legal aid shall be governed by the same provisions as in civil litigation. The application shall be submitted to the court competent for the decision.

(4) The Higher Regional Court shall be competent to decide on the application. Section 120 of the Courts Constitution Act shall apply *mutatis mutandis*.

Section 173. [Procedure by the Court]

(1) Upon request of the court the public prosecution office shall submit to the court the records of the hearings conducted so far.

(2) The court may inform the accused of the application and set a time limit for making a statement in reply.

(3) The court may order investigations to prepare its decision and may entrust such investigations to a commissioned or requested judge.

Section 174. [Dismissal of Application]

(1) The court shall dismiss the application if there is no sufficient reason for preferring public charges and shall notify the applicant, the public prosecution office and the accused of the dismissal.

(2) If the application has been dismissed, the public charges may be preferred only on the basis of new facts or evidence.

Section 175. [Order to Prefer Public Charges]

If after hearing the accused, the court considers the application to be well-founded, it shall order preferment of public charges. This order shall be carried out by the public prosecution office.

Section 176. [Furnishing Security]

(1) Prior to a decision on the application, the court may, by order, request the applicant to furnish security for the costs which, due to the proceedings on the application, will presumably be incurred by the Treasury and the accused. Security is to be furnished by depositing cash, shares or bonds. The court, at its free discretion, shall determine the amount of security to be furnished. At the same time the court shall set the time limit within which the security must be furnished.

(2) If the security is not furnished within the time limit set, the court shall declare the application withdrawn.

Section 177. [Costs]

The costs resulting from the proceedings on the application shall be imposed on the applicant in cases under Section 174 and Section 176 subsection (2).

Chapter III Deleted

Sections 178 to 197. Deleted

Chapter IV Decision Concerning the Opening of the Main Proceedings

Section 198. Deleted

Section 199. [Decision to Open the Main Proceedings]

(1) The court which is competent for the main hearing shall decide whether main proceedings are to be opened or whether proceedings are to be provisionally terminated.

(2) The bill of indictment shall contain the application to open the main proceedings. The file shall be submitted to the court with the bill of indictment.

Section 200. [Contents of the Bill of Indictment]

(1) The bill of indictment shall indicate the indicted accused, the criminal offense with which he is charged, the time and place of its commission, its statutory elements and the penal provisions which are to be applied (the charges). In addition, the evidence, the court before which the main hearing is to be held, and defense counsel shall be indicated. In cases under Section 68 subsection (1), second sentence, and subsection (2), first sentence, it shall be sufficient, as regards the designation of witnesses, to indicate an address at which documents can be served. Where a witness is mentioned whose identity is not to be revealed either wholly or in part, this fact shall be indicated; the same shall apply *mutatis mutandis* to the confidentiality of the witness's place of residence or whereabouts.

(2) The relevant result of the investigation shall also be presented in the bill of indictment. This may be dispensed with if the charges are preferred before the criminal court judge.

Section 201. [Communication of the Bill of Indictment]

(1) The presiding judge shall communicate the bill of indictment to the indicted accused and at the same time shall summon him to state, within a time limit to be set, whether he wants to apply for individual evidence to be taken before the decision on opening main proceedings, or whether he wants to raise objections to the opening of main proceedings.

(2) The court shall decide on the applications and objections. The decision shall be incontestable.

Section 202. [Supplementary Investigations]

Before the court decides on the opening of main proceedings, it may order individual evidence to be taken to help to clear up the case. The order shall be incontestable.

Section 203. [Condition for Opening Main Proceedings]

The court shall decide to open main proceedings if in the light of the results of the preparatory proceedings there appears to be sufficient suspicion of the indicted accused having committed a criminal offense.

Section 204. [Refusal to Open Main Proceedings]

(1) If the court decides not to open main proceedings, the order must show whether its decision is based on factual or on legal grounds.

(2) The indicted accused shall be notified of the order.

Section 205. [Provisional Termination]

The court may, by order, provisionally terminate the proceedings if the absence of the indicted accused or other personal impediment would prevent the holding of the main hearing for a considerable time. The presiding judge shall secure the evidence, so far as this is necessary.

Section 206. [Applications not Binding]

The court shall not be bound in giving its decision by the public prosecution office's application.

Section 206a. [Termination in the Case of Impediments]

(1) Where a procedural impediment arises after the main proceedings have been opened, the court may terminate the proceedings by an order made outside the main hearing.

(2) The order shall be contestable by immediate complaint.

Section 206b. [Termination on Amendment of the Law]

If a penal norm applicable at the time the offense was committed is amended prior to the decision and if pending criminal court proceedings concern an offense which was punishable under the former law but which is no longer punishable under the new law, the court shall terminate the proceedings by an order made outside the main hearing. The order shall be contestable by immediate complaint.

Section 207. [The Order Opening Main Proceedings]

(1) In the order opening main proceedings, the court shall admit the charges for the main hearing and designate the court before which the main hearing is to take place.

(2) The court shall specify in the order what changes are to be made to enable it to admit the charges for the main hearing, if:

1. charges have been preferred for more than one offense and for some of them the opening of the main proceedings is refused,

2. in accordance with Section 154a, prosecution is limited to individual severable parts of an offense, or such parts are reintroduced into the proceedings,

3. the act is legally evaluated differently from the bill of indictment, or,

4. in accordance with Section 154a, prosecution is limited to some of several violations of the law committed through the same criminal offense, or such violations of law are reintroduced into the proceedings.

(3) In the case of subsection (2), numbers 1 and 2, the public prosecution office shall submit a new bill of indictment corresponding to the order. The presentation of the relevant result of investigations may be dispensed with.

(4) At the same time the court shall decide *proprio motu* whether remand detention or provisional committal shall be ordered or continued.

Section 208. Deleted

Section 209. [Competent Court]

(1) If the court with which the bill of indictment has been filed considers that a court of lower rank in its district has jurisdiction, it shall open the main proceedings before such court.

(2) If the court with which the bill of indictment has been filed considers that a court of higher rank in its district has jurisdiction, it shall submit the files through the public prosecution office to this court for decision.

Section 209a. [Special Functional Jurisdictions]

Within the meaning of Section 4 subsection 2, section 209 as well as section 210 subsection 2

1. the special penal chambers, pursuant to section 74 subsection 2, section 74a, 74c of the Courts Constitution Act, shall, in relation to the general penal chambers and inter se, rank in their district in the order as designated in section 74e of the Courts Constitution Act, and

2. the youth courts, for the decision on whether cases

a) under section 33 subsection (1), section 103 subsection (2), first sentence, and section 107 of the Youth Court Act, or

b) as youth protection matters (section 26 subsection (1), first sentence, section 74b, first sentence, of the Courts Constitution Act)

are to be tried before the youth courts, shall be deemed equivalent to courts of a higher rank in relation to the courts of the same rank competent for general criminal cases.

Section 210. [Appellate Remedies]

(1) The order by which the main proceedings were opened cannot be contested by the defendant.

(2) The public prosecution office shall be entitled to lodge an immediate complaint against an order refusing the opening of the main proceedings or an order by which, in deviation from the application of the public prosecution office, the proceedings have been referred to a court of lower rank.

(3) If the court hearing the complaint allows the complaint, it may at the same time decide that the main hearing is to be held before another chamber of the court which issued the order pursuant to subsection (2), or by a neighboring court of the same rank and in the same *Land*. In proceedings in which a Higher Regional Court has decided in the first instance the Federal Court of Justice may decide that the main hearing shall be held before another panel of the same court.

Section 211. [Effect of the Order Refusing to Open Main Proceedings]

If the opening of the main proceedings was refused by an order which is no longer contestable, the charges may be resumed only on the basis of new facts or evidence.

Sections 212 to 212b. Repealed

Chapter V Preparation of the Main Hearing

Section 213. [Setting the Date for the Main Hearing]

The date for the main hearing shall be set down by the presiding judge.

Section 214. [Summonses]

(1) The summonses required for the main hearing shall be ordered by the presiding judge. The registry shall ensure that the summonses are issued.

(2) If it is to be expected that the main hearing will last a long time, the presiding judge may decide that all or individual witnesses and experts be summoned on a date later than the beginning of the main hearing.

(3) The public prosecution office shall be entitled directly to summon additional persons.

(4) The public prosecution office shall cause the items serving as evidence to be produced. This can also be done by the court.

Section 215. [Service of the Order Opening the Main Proceedings]

The order concerning the opening of the main proceedings shall be served on the defendant at the latest with the summons. In the cases of Section 207 subsection (3) this shall apply *mutatis mutandis* to the bill of indictment subsequently submitted.

Section 216. [Summoning the Defendant]

(1) The summoning of a defendant who is at liberty shall be made in writing with the warning that he shall be arrested and brought before the court in the case of his unexcused failure to appear. The warning may be omitted in the cases of Section 232.

(2) A defendant who is not at liberty shall be summoned by being notified of the date of the main hearing pursuant to Section 35. The defendant shall then be asked what applications, if any, he wants to make for his defense at the main hearing.

Section 217. [Time Limit for Summons]

(1) A time limit of at least 1 week must elapse between service of the summons (Section 216) and the day of the main hearing.

(2) If this time limit has not been observed, the defendant may request suspension of the hearing at any time prior to the commencement of his examination on the charges.

(3) The defendant may waive observance of this time limit.

Section 218. [Summoning Defense Counsel]

In addition to the defendant, court-appointed defense counsel shall always be summoned; chosen defense counsel shall be summoned if the court was notified of such choice. Section 217 shall apply *mutatis mutandis*.

Section 219. [Defendant's Applications to Take Evidence]

(1) If the defendant requests that witnesses or experts be summoned or that other evidence be produced for the main hearing, he shall make his applications to the presiding judge, indicating the facts on which evidence is to be taken. He shall be notified of the direction made following this request.

(2) If the defendant's applications concerning evidence are granted, they shall be communicated to the public prosecution office.

Section 220. [Summons by the Defendant]

(1) If the presiding judge rejects the application for summoning a person, the defendant may have him summoned directly. He shall be authorized to do so even without a previous application.

(2) A person directly summoned shall be obliged to appear only if, at the time of the summons, statutory reimbursement for travel expenses and absence from work is offered him in cash or proven to have been deposited at the registry.

(3) If it appears at the main hearing that the examination of a directly summoned person was useful for the purpose of clearing up the case, the court shall, upon application, order that statutory reimbursement from the Treasury be granted to such person.

Section 221. [Taking of Evidence Ex Officio]

The presiding judge may also order ex officio the production of further items serving as evidence.

Section 222. [Naming Witnesses]

(1) The court shall, in due time, indicate to the public prosecution office and the defendant the summonsed witnesses and experts and indicate their place of residence or whereabouts. If the public prosecution office makes use of its right pursuant to Section 214 subsection (3) it shall, in due time, indicate to the court and to the defendant the names of the summonsed witnesses and experts and indicate their place of residence or whereabouts. Section 200 subsection (1), third and fourth sentences, shall apply *mutatis mutandis*.

(2) The defendant shall, in due time, indicate to the court and to the public prosecution office the names of the witnesses and experts directly summoned by him or to be brought to the main hearing, and indicate their place of residence or whereabouts.

Section 222a. [Information as to Composition of the Court]

(1) If the main hearing at first instance is held before the Regional Court or the Higher Regional Court, the composition of the court shall be communicated no later than on commencement of the main hearing, indicating the presiding judge and the additional judges and additional lay judges called in. The composition may, by order of the presiding judge, be communicated prior to the main hearing; for the defendant, such communication shall be made to his defense counsel. If the composition, as communicated, changes this shall be indicated no later than on commencement of the main hearing.

(2) If the communication about composition or about a change of composition has been received later than one week prior to the commencement of the main hearing the court may, upon application by the defendant, defense counsel or the public prosecution office, interrupt the main hearing to examine the composition, if this is requested at the latest prior to the commencement of the examination of the first defendant on the charges.

(3) For the defendant, only his defense counsel or an attorney-at-law may inspect the documents which are decisive for the composition; for the private accessory prosecutor only an attorney-at-law may make such inspection.

Section 222b. [Objections concerning Composition of the Court]

(1) If the composition of the court has been communicated pursuant to Section 222a, the objection that the court is composed contrary to the rules may be raised only prior to the commencement of the examination of the first defendant on the charges at the main hearing. The facts which allegedly resulted in the composition contrary to the rules shall be indicated. All objections shall be raised at the same time. Outside the main hearing the objection shall be raised in writing; Section 345 subsection (2), and for the private accessory prosecutor Section 390 subsection (2), shall apply *mutatis mutandis*.

(2) The court being composed as required for decisions made outside the main hearing shall decide on the objection. If it considers the objection to be well-founded it shall declare that it is not composed according to the rules. If an objection results in a change of the composition, Section 222a shall not be applicable to the new composition.

Section 223. [Witness Examination on Commission or by Request]

(1) The court may order that a witness or expert be examined by a commissioned or a requested judge if illness or infirmity or other insurmountable impediments prevent him from appearing at the main hearing for a long or indefinite period of time.

(2) The same rule shall apply if a witness or an expert cannot reasonably be expected to appear because of the great distance involved.

(3) The witnesses shall be heard under oath unless exceptions are prescribed or admitted.

Section 224. [Notification of Participants]

(1) The public prosecution office, the defendant, and defense counsel shall be notified beforehand of the dates set down for the examination; their presence at the examination shall not be required. There shall be no notification if it would endanger the success of the investigation. The record made thereof shall be submitted to the public prosecution office and defense counsel.

(2) If a defendant, not being at liberty, has defense counsel, he shall be entitled to be present only at such hearings held at the place where he is in custody.

Section 225. [Judicial Inspection on Commission]

The provisions of Section 224 shall be applied if a judicial inspection is to be made for the preparation of the main hearing.

Section 225a. [Change of Jurisdiction Prior to the Main Hearing]

(1) If a court, prior to the commencement of a main hearing, considers the substantive jurisdiction of a court of higher rank to be established, it shall submit the files to this court through the public prosecution office; Section 209a, number 2a, shall apply *mutatis*

mutandis. The court to which the matter has been referred shall decide in a ruling whether it accepts the case.

(2) If the files are submitted to a court of higher rank by a criminal court judge or by a court with lay judges, the defendant may request the taking of specific evidence within a certain time limit to be determined with the submission. The presiding judge of the court to which the case has been referred shall decide on the application.

(3) The defendant and the court before which the main hearing is to be held shall be named in the ruling accepting the case. Section 207 subsection (2), numbers 2 to 4, subsections (3) and (4) shall apply *mutatis mutandis*. The contestability of the ruling shall be governed by Section 210.

(4) The procedure pursuant to subsections (1) to (3) shall also apply if the court, prior to the commencement of the main hearing, considers an objection of the defendant pursuant to Section 6a to be well-founded and a special penal chamber which has priority pursuant to section 74e of the Courts Constitution Act would be competent. If the court that considers the jurisdiction of another penal chamber to be established has priority over the latter pursuant to section 74e of the Courts Constitution Act, it shall refer the case to that chamber with binding effect; the contestability of the decision on the referral shall be governed by Section 210.

Chapter VI Main Hearing

Section 226. [Uninterrupted Presence]

The main hearing shall be held during the uninterrupted presence of the persons called upon to reach a judgment and of the public prosecutor and of a registry clerk.

Section 227. [More than one Public Prosecutor and Defense Counsel]

More than one official of the public prosecution office and more than one defense counsel may participate in the main hearing and share their duties.

Section 228. [Suspension and Interruption]

(1) The court shall decide on the suspension of a main hearing and its interruption pursuant to Section 229 subsection (2). The presiding judge shall be competent to order short interruptions.

(2) An impediment to defense counsel's appearance shall, without prejudice to the provision in Section 145, not entitle to the defendant to request suspension of the hearing.

(3) If the time limit set in Section 217 subsection (1) has not been complied with, the presiding judge should inform the defendant of his right to request suspension of the hearing.

Section 229. [Maximum Duration of an Interruption]

(1) The main hearing may be interrupted for a period of up to ten days.

(2) If the main hearing has been conducted for at least ten days, it may then be interrupted once for up to thirty days, notwithstanding the provision in subsection (1). If, thereafter, the main hearing has been continued for at least ten days, it may be interrupted a second time pursuant to the first sentence. In addition to the interruptions pursuant to subsections (1) and (2), first and second sentences, the main hearing may, upon expiry of twelve months since its commencement, be interrupted once within each twelve month period for a maximum of thirty days, if the hearing has been conducted for at least ten days prior to the interruption.

(3) If a defendant, due to sickness, is unable to appear at the main hearing which has already been conducted for at least ten days, the running of the time limits referred to in subsections (1) and (2) shall be suspended for six weeks at the most; these time limits shall expire at the earliest ten days after the suspension has ended. The court shall, in an incontestable ruling, determine when the suspension begins and ends.

(4) If the main hearing has not been continued at the latest on the day following expiry of the time limit referred to in the previous subsections, the main hearing shall commence de novo. If the day following expiry of the time limit is a Sunday, a public holiday or a Saturday, the main hearing may be continued on the next working day.

Section 230. [Failure of the Defendant to Appear]

(1) No main hearing shall be held against a defendant who fails to appear.

(2) If there is no sufficient excuse for the defendant's failure to appear, an order shall be made to bring him before the court, or a warrant of arrest shall be issued.

Section 231. [Defendant's Duty to be Present]

(1) A defendant who has appeared may not absent himself from the hearing. The presiding judge may take proper measures to prevent him from absenting himself; he may also have the defendant kept in custody during an interruption of the hearing.

(2) If the defendant nevertheless absents himself, or fails to appear when an interrupted main hearing is continued, the main hearing may be concluded during his absence if he was already heard on the indictment and the court does not consider his further presence to be necessary.

Section 231a. [Unfitness to Stand Trial Caused with Intent]

(1) If the defendant intentionally and culpably placed himself in a condition precluding his fitness to stand trial, and if, as a result, he knowingly prevents the proper conduct or

continuation of the main hearing in his presence, the main hearing shall, in a case where he has not yet been heard on the charges, be conducted or continued in his absence, unless the court considers his presence to be indispensable. The procedure pursuant to the first sentence shall only apply if the defendant, after the opening of main proceedings, had the opportunity to make statements concerning the charges before a court or a commissioned judge.

(2) As soon as the defendant is again fit to stand trial, the presiding judge shall inform him of the essential contents of the proceedings during his absence unless pronouncement of judgment has commenced.

(3) The court shall decide on the hearing to be held in the absence of the defendant pursuant to subsection (1) after having heard a physician as an expert. The decision may already be given prior to the beginning of the main hearing. An immediate complaint against the decision shall be admissible; it shall have a delaying effect. A main hearing which has already been commenced shall be interrupted until a decision on the immediate complaint is made; the interruption may last up to thirty days even if the conditions in Section 229 subsection (2) have not been fulfilled.

(4) Defense counsel shall be appointed for the defendant who is not represented by counsel where a hearing may be held without the defendant pursuant to subsection (1).

Section 231b. [Absence because of Disorderly Conduct]

(1) If the defendant, because of disorderly conduct, is removed from the courtroom or committed to prison (section 177 of the Courts Constitution Act), the hearing may be held in his absence, if the court considers his further presence not to be indispensable and as long as it is to be feared that the defendant's presence would be seriously detrimental to the course of the main hearing. In any case the defendant shall be given the opportunity to make a statement on the charges.

(2) As soon as the defendant is allowed back, the procedure pursuant to Section 231a subsection (2) shall apply.

Section 231c. [Absence During Parts of the Proceedings]

If the main hearing is held in respect of more than one defendant, the court may order that individual defendants -- in the case of mandatory defense also their defense counsel -- be permitted, upon application, to absent themselves during individual parts of the hearing unless they are affected by these parts of the hearing. The order shall indicate those parts of the hearing for which permission is given. The permission may be revoked at any time.

Section 232. [Main Hearing Despite the Defendant's Failure to Appear]

(1) The main hearing may be held in the defendant's absence if he was properly summoned and the summons referred to the fact that the hearing may take place in his absence and if

only a fine up to 180 daily units, a warning with sentence reserved, a driving ban, forfeiture, confiscation, destroying or making an item unusable, or a combination thereof, is to be expected. A higher penalty or a measure of reform and prevention may not be imposed in these proceedings. Withdrawal of permission to drive shall be admissible if the defendant has been made aware of this possibility in the summons.

(2) The main hearing shall not take place without the defendant if the summons was effected by publication.

(3) The record of a judicial examination of the defendant shall be read out at the main hearing.

(4) A judgment given in the defendant's absence must be served on him personally, together with reasons for the judgment, if it is not served on his defense counsel pursuant to Section 145a subsection (1).

Section 233. [Releasing the Defendant from the Duty to Appear]

(1) The defendant may, upon his application, be released from the obligation to appear at the main hearing, if only imprisonment up to six months, a fine up to 180 daily units, a warning with sentence reserved, a driving ban, forfeiture, confiscation, destroying or making an item unusable, or a combination thereof, is to be expected. A higher penalty or a measure of reform and prevention may not be imposed in his absence. Withdrawal of permission to drive shall be admissible.

(2) If the defendant is released from the obligation to appear at the main hearing, he may be heard on the indictment by a commissioned or a requested judge. In this connection he shall be advised of the legal consequences admissible at the hearing in his absence and be asked whether he maintains his application to be released from appearing at the main hearing.

(3) The public prosecution office and defense counsel shall be informed of the date set down for the examination at which the defendant is to be heard; their presence at the examination shall not be required. The records of the examination shall be read out at the main hearing.

Section 234. [Representation of Absent Defendant]

If the main hearing may be held in the defendant's absence, he shall be entitled to be represented by defense counsel with a written power of attorney.

Section 234a. [Defense Counsel's Rights of Information and Consent]

If the main hearing is held in the defendant's absence, it shall be sufficient for the information required under Section 265 subsections (1) and (2) to be given to defense counsel; the defendant's waiver pursuant to Section 61, number 5 and his consent pursuant

to Section 245 subsection (1), second sentence, and pursuant to Section 251 subsection (1), number 4, and subsection (2), shall not be required if defense counsel takes part at the main hearing.

Section 235. [Restoration of the *Status quo ante*]

If the main hearing was held without the defendant pursuant to Section 232, he may, in respect of the judgment and within one week of its service, apply for restoration of the *status quo ante* under the same conditions as in the case of failure to comply with a time limit; he may at any time request restoration of the *status quo ante* if he did not obtain knowledge of the summons to the main hearing. The defendant shall be instructed of this right when the judgment is served on him.

Section 236. [Ordering the Defendant's Personal Appearance]

The court shall always have the power to order the defendant's appearance in person and to enforce this by an order to bring him before the court or by a warrant of arrest.

Section 237. [Joinder of more than one Criminal Case]

If there is a connection between more than one criminal case pending at the same court, the court may order that they be joined for the purpose of being heard together, even if this connection is not the one specified in Section 3.

Section 238. [Conduct of Hearing]

(1) The presiding judge shall conduct the hearing, examine the defendant and take the evidence.

(2) The court shall give a decision on an objection by a participant in the proceedings that an order by the presiding judge relating to the conduct of the hearing is inadmissible.

Section 239. [Cross-Examination]

(1) The presiding judge shall leave the examination of witnesses and experts named by the public prosecution office and by the defendant to the public prosecution office and defense counsel upon concurring application by both. Witnesses and experts named by the public prosecution office shall first be examined by the public prosecution office, those named by the defendant shall first be examined by defense counsel.

(2) After this examination the presiding judge shall also ask the witnesses and experts such questions as he deems necessary for further clarification in the case.

Section 240. [Right to Ask Questions]

(1) The presiding judge shall permit the associate judges, upon request, to address questions to the defendant, witnesses and experts.

(2) The presiding judge shall give similar permission to the public prosecution office, to the defendant, and to defense counsel, as well as to the lay judges. Direct questioning of a defendant by a co-defendant shall be inadmissible.

Section 241. [Rejection of Questions]

(1) A person who in the case of Section 239 subsection (1) abuses his right of examination may be deprived of this right by the presiding judge.

(2) In the cases of Section 239 subsection (1) and Section 240 subsection (2) the presiding judge may reject inappropriate or irrelevant questions.

Section 241a. [Examination of Witnesses under 16 Years of Age]

(1) The examination of witnesses under 16 years of age shall be conducted solely by the presiding judge.

(2) The persons referred to in Section 240 subsections (1) and (2), first sentence, may request the presiding judge to ask the witnesses further questions. The presiding judge may permit these persons to put questions to witnesses directly if, according to his duty-bound discretion, prejudice to the well-being of the witness is not to be expected.

(3) Section 241 subsection (2) shall apply *mutatis mutandis*.

Section 242. [Doubts concerning Admissibility of Questions]

The court shall decide in all cases of doubt relating to the admissibility of a question.

Section 243. [Course of the Main Hearing]

(1) The main hearing shall begin when the case is called up. The presiding judge shall determine whether the defendant and defense counsel are present and whether the evidence has been produced, especially whether the summoned witnesses and experts have appeared.

(2) The witnesses shall leave the courtroom. The presiding judge shall examine the defendant on his personal situation.

(3) Thereupon the public prosecutor shall read the charges. In the cases of Section 207 subsection (3) he shall use the new bill of indictment for this purpose. In the cases of Section 207 subsection (2), number 3, the public prosecutor shall read out the charges and submit the legal assessment on which the order to open the main hearing has been based. In addition, he may express his own divergent legal opinion. In the cases of Section 207

subsection (2), number 4, he shall take into account the amendments made by the court when admitting the case for a main hearing.

(4) The defendant shall then be informed that he may choose to respond to the charges or not to make any statement on the charges. If the defendant is ready to respond, he shall be examined on the charges, having regard to Section 136 subsection (2). Any previous conviction of the defendant should be disclosed only insofar as it is relevant to the decision. The presiding judge shall decide when such condition is to be disclosed.

Section 244. [Taking of Evidence]

(1) Evidence shall be taken after the defendant's examination.

(2) In order to establish the truth, the court shall, *proprio motu*, extend the taking of evidence to all facts and means of proof relevant to the decision.

(3) An application to take evidence shall be rejected if the taking of such evidence is inadmissible. In all other cases, an application to take evidence may be rejected only if the taking of such evidence is superfluous because the matter is common knowledge, if the fact to be proved is irrelevant to the decision or has already been proved, if the evidence is wholly inappropriate or unobtainable, if the application is made to protract the proceedings, or if an important allegation which is intended to offer proof in exoneration of the defendant can be treated as if the alleged fact were true.

(4) Except as otherwise provided, an application to take evidence by examining an expert may also be rejected if the court itself possesses the necessary specialist knowledge. Hearing another expert may also be refused if the opposite of the alleged fact has already been proved by the first expert opinion; this rule shall not apply to cases where the professional competence of the first expert is in doubt, where his opinion is based upon incorrect factual suppositions, where the opinion contains contradictions, or where the new expert has means of research at his disposal which seem to be superior to the ones of an earlier expert.

(5) An application to take evidence by inspection in loco may be rejected if the court, in the exercise of its duty-bound discretion, deems the inspection not to be necessary for establishing the truth. Under the same condition an application to take evidence by examining a witness may be rejected if the witness would have to be summoned from abroad.

(6) A court ruling shall be required for rejecting an application to take evidence.

Section 245. [Extent of Evidence Taken]

(1) The taking of evidence shall be extended to all witnesses and experts who were summoned by the court and who appeared, as well as to other evidence produced by the court or the public prosecution office pursuant to Section 214 subsection (4), unless the

taking of evidence is inadmissible. The taking of certain evidence may be dispensed with if the public prosecution office, defense counsel and the defendant agree.

(2) The court shall be obliged to extend the taking of evidence to the witnesses and experts who appeared upon being summoned by the defendant or the public prosecution office, as well as to other evidence produced, only if an application to take evidence is submitted. The application shall be rejected if the taking of evidence is inadmissible. It may otherwise be rejected only if the fact for which evidence is to be furnished has already been proved or is common knowledge, if there is no connection between the fact and the matter being adjudicated, if the evidence is completely unsuitable, or if the application has been filed for the purpose of protracting the proceedings.

Section 246. [Belated Applications to Take Evidence]

(1) The taking of evidence may not be refused on the grounds that the evidence or the fact which is to be proved was submitted too late.

(2) Until such time as all evidence has been taken, the applicant's opponent may, however, apply for suspension of the main hearing for the purpose of collecting information if a witness or expert who is to be examined was named so late, or a fact which is to be proved was submitted so late that the opponent lacked the time needed to collect information.

(3) The public prosecution office and the defendant shall have the same right in respect of witnesses and experts summoned at the direction of the presiding judge or the court.

(4) The court shall decide on these applications in the exercise of its unfettered discretion.

Section 246a. [Medical Expert]

An expert shall be examined at the main hearing on defendant's condition and his treatment prospects if it is expected that the defendant's committal to a psychiatric hospital, an institution for withdrawal treatment or preventive detention will be ordered. If the expert has not previously examined the defendant, he is to be given the opportunity to do so before the main hearing.

Section 247. [Removal of the Defendant from Courtroom]

The court may order that the defendant leave the courtroom during an examination if it is to be feared that a co-defendant or a witness will not tell the truth when examined in the presence of the defendant. The same shall apply if, on examination of a person under sixteen years of age as a witness in the defendant's presence, considerable detriment to the well-being of such witness is to be feared or if an examination of another person as a witness in the defendant's presence poses an imminent risk of serious detriment to that person's health. The defendant's removal may be ordered for the duration of discussions concerning the defendant's condition and his treatment prospects, if substantial detriment to his health is to be feared. When the defendant is present again the presiding judge shall

inform him of the essential contents of the proceedings, including the testimony, during his absence.

Section 247a. [Witness Examination in Another Place]

If there is an imminent risk of serious detriment to the well-being of the witness were he to be examined in the presence of those attending the main hearing and if that risk cannot be averted in some other way, namely by removing the defendant and by excluding the public, the court may order that the witness remain in another place during the examination; such order shall also be admissible under the conditions set out in Section 251 subsection (1), numbers 2, 3 or 4, insofar as this is necessary for establishing the truth. The decision shall be incontestable. A simultaneous audio-visual transmission of the testimony shall be provided in the courtroom. The testimony shall be recorded if there are grounds to fear that it will not be possible to examine the witness at a future main hearing and if the recording is necessary for establishing the truth. Section 58a subsection (2) shall apply *mutatis mutandis*.

Section 248. [Dismissal of Witnesses and Experts]

The witnesses and experts who have been examined may absent themselves from the place where the court is sitting, only with permission or upon instruction by the presiding judge. The public prosecution office and the defendant shall be heard beforehand.

Section 249. [Reading Out Documents]

(1) Certificates and other documents serving as evidence shall be read out at the main hearing. This rule shall apply in particular to previous criminal judgments, criminal records and extracts from parish registers and registers of births, deaths and marriages and to written records of a judicial inspection.

(2) Except in the cases of Sections 253 and 254, the reading may be dispensed with if the judge and the lay judges have taken cognizance themselves of the wording of the certificate or the document and the other participants had an opportunity to do so. If the public prosecutor, the defendant or defense counsel object without delay to the presiding judge's order to proceed in accordance with the first sentence, the court shall give a decision. A record shall be made of the presiding judge's order, the findings as to cognizance and opportunity, and of the objection.

Section 250. [Principle of Examination in Person]

If the proof of a fact is based on the observation of a person, such person shall be examined at the main hearing. The examination shall not be replaced by reading out the record of a previous examination or reading out a written statement.

Section 251. [Reading Out Records]

(1) Examination of a witness, expert, or co-accused may be replaced by reading out the written record of his previous examination by a judge if:

1. the witness, expert, or co-accused has died or become mentally ill, or if his whereabouts cannot be determined;

2. illness, infirmity, or other insurmountable impediments prevent the witness, expert or co-accused from appearing at the main hearing for a long or indefinite period;

3. the witness or expert cannot reasonably be expected to appear at the main hearing because of the great distance involved, having regard to the importance of his statement;

4. the public prosecutor, defense counsel and the defendant agree to the reading out.

(2) Where the defendant has defense counsel, the examination of a witness, expert or co-accused may be replaced by reading out a record of another examination or of a certificate containing a written statement originating from him, if the public prosecutor, defense counsel and the defendant agree. In other cases, such reading shall be admissible only if the witness, expert or co-accused has died or cannot be examined by the court for another reason within a foreseeable period of time.

(3) Where the reading is to serve purposes other than specifically reaching a judgment, particularly the purpose of preparing the decision on whether an individual is to be summoned and examined, records of examinations, certificates and other documents serving as evidence may also be read out.

(4) In the cases of subsections (1) and (2), the court shall decide whether the reading shall be ordered. The reason for reading out shall be announced. If the record of a judicial examination is read out, it shall be stated whether the person concerned was examined under oath. If not, an oath shall be administered where the court deems this necessary and can still administer such oath.

Section 252. [Improper Reading out of Statement]

The statement of a witness examined prior to the main hearing, who makes use of his right to refuse to testify only at the main hearing, shall not be read out.

Section 253. [Reading out a Statement to Refresh Memory]

(1) If a witness or an expert states that he can no longer remember a fact, the pertinent part of the written record of his previous examination may be read out to refresh his memory.

(2) The same procedure may be followed if a contradiction to the previous statement arises during at the examination and cannot otherwise be established or eliminated without the main hearing being interrupted.

Section 254. [Reading out Confessions; Contradictions]

(1) Statements of the defendant which are contained in a judicial record may be read out for the purpose of taking evidence regarding a confession.

(2) The same procedure may be followed if a contradiction to the previous statement arises during the examination and cannot otherwise be established or eliminated without the main hearing being interrupted.

Section 255. [Recording of Statements Read out]

In the cases of Sections 253 and 254, upon application by the public prosecution office or by the defendant, the reading out and reason therefor shall be mentioned in the record.

Section 255a. [Showing Audio-Visual Recordings]

(1) The provisions on the reading out of a record of an examination pursuant to Sections 251, 252, 253 and 255 shall apply to showing an audio-visual recording of a witness examination *mutatis mutandis*.

(2) In proceedings relating to criminal offenses against sexual self-determination (sections 174 to 184c Penal Code) or against life (sections 211 to 222 Penal Code) or for ill-treatment of an individual placed in the charge of another (section 225 Penal Code), examination of witnesses under sixteen years of age may be replaced by showing an audio-visual recording of his previous judicial examination if the defendant and his defense counsel were able to participate in such examination. Supplementary witness examination shall be admissible.

Section 256. [Reading out Official and Medical Statements]

(1) Statements containing a certificate or an opinion from public authorities as well as from physicians of the court medical services -- excluding certificates of conduct -- as well as medical certificates concerning minor bodily injuries may be read out. The same shall apply to expert opinions with regard to the evaluation of a log book, the determination of the blood group or the blood alcohol content including its conversion as well as to medical reports on the taking of blood samples.

(2) If the opinion of a specialist authority was commissioned, the court may request the authority to appoint one of its staff to present the opinion at the main hearing, and to designate such person to the court.

Section 257. [Questioning the Defendant, the Public Prosecutor and Defense Counsel]

(1) After each co-defendant has been examined and after evidence has been taken in each individual case the defendant should be asked whether he has anything to add.

(2) Upon request, the public prosecutor and defense counsel shall also be given the opportunity to make their statements after the examination of the defendant and after evidence has been taken in each individual case.

(3) The statements shall not anticipate the closing speech.

Section 257a. [Written Form]

The court may require participants in the proceedings to file applications and proposals regarding questions of procedure in written form. This shall not apply to the applications referred to in Section 258. Section 249 shall apply *mutatis mutandis*.

Section 258. [Closing Speeches]

(1) After the taking of evidence has been concluded, the public prosecutor and subsequently the defendant shall be given the opportunity to present their arguments and to file applications.

(2) The public prosecutor shall have the right to reply; the defendant shall have the last word.

(3) The defendant shall be asked, even if defense counsel has spoken for him, whether he himself has anything to add to his defense.

Section 259. [Interpreter]

(1) A defendant who has no command of the language of the court shall be informed by an interpreter at least of the applications made in the closing speeches by the public prosecutor and by defense counsel.

(2) The same rule shall apply to a deaf defendant, unless there is written communication.

Section 260. [Judgment]

(1) The main hearing shall close with delivery of judgment following the deliberations.

(2) If there is an order prohibiting pursuit of an occupation, the judgment shall specify the occupation, profession or trade or branch thereof, the exercise of which is prohibited.

(3) Termination of the proceedings shall be pronounced in the judgment if there is a procedural impediment.

(4) The operative provisions of the judgment shall indicate the legal designation of the offense of which the defendant has been convicted. If a criminal offense has a statutory title, it should be used for the legal designation of the offense. If a fine is imposed, the number and the amount of daily units shall be included in the operative provisions of the judgment. If

the sentence or the measure of reform and prevention is suspended on probation, or if the defendant has been warned with sentence reserved, or if imposition of a penalty is dispensed with, this shall be indicated in the operative provisions of the judgment. The wording of the operative provisions of the judgment shall otherwise be left to the discretion of the court.

(5) Following the operative provisions of the judgment, the provisions applied shall be listed according to section, subsection, number and letter together with the designation of the statute. If, in the case of a conviction imposing a sentence of imprisonment or an aggregate sentence of imprisonment not exceeding two years, the offense or, where there is more than one offense, the predominant offense(s), having regard to their gravity, were committed on the basis of a drug addiction, reference shall also be made to section 17 subsection (2) of the Federal Central Criminal Register Act.

Section 261. [Free Evaluation of Evidence]

The court shall decide on the result of the evidence taken according to its free conviction gained from the hearing as a whole.

Section 262. [Preliminary Civil Law Questions]

(1) If the criminal liability for an act depends on the evaluation of a legal relationship under civil law, the criminal court shall also give a decision thereon according to the provisions applicable to procedure and evidence in criminal cases.

(2) The court, however, shall be entitled to suspend the investigation and to set a time limit within which one of the participants is to bring a civil action, or to await the judgment of the civil court.

Section 263. [Voting]

(1) A majority of two-thirds of the votes shall be required for any decision against a defendant which concerns the question of guilt and the legal consequences of the offense.

(2) The question of guilt shall also include such special circumstances provided by the penal norm which exclude, diminish, or increase criminal liability.

(3) The question of guilt shall not cover the conditions applying to the period of limitations.

Section 264. [Subject Matter of the Judgment]

(1) The subject of adjudication shall be the offense specified in the charges and apparent in the light of the outcome of the hearing.

(2) The court shall not be bound by the offense's evaluation which formed the basis of the order opening the main proceedings.

Section 265. [Change in Legal Reference]

(1) The defendant may not be sentenced on the basis of a penal norm other than the one referred to in the charges admitted by the court without first having his attention specifically drawn to the change in the legal reference and without having been afforded an opportunity to defend himself.

(2) The same procedure shall be followed if special circumstances appear only at the hearing which in accordance with the penal norm increase criminal liability or justify an order imposing a measure of reform and prevention.

(3) The main hearing shall be suspended upon the defendant's application if, alleging insufficient preparation for defense, he contests newly discovered circumstances which admit the application of a more severe penal norm against the defendant than the one referred to in the charges admitted by the court, or which forms part of the circumstances indicated in subsection (2).

(4) The court shall, in other cases as well, suspend the main hearing upon an application or *proprio motu*, if in consequence of the change in circumstances it appears reasonable for adequate preparation of the charges or of the defense.

Section 265a. [Conditions. Instructions]

If conditions or instructions (section 56b, 56c, 59a subsection (2) Penal Code) are conceivable, the defendant shall be asked in appropriate cases whether he will make efforts towards atonement for the wrong committed by him or make promises in respect of his future conduct. If an instruction is conceivable to the effect that the defendant is to undergo curative or withdrawal treatment or is to take up residence in a suitable home or institution, he shall be asked whether he consents to this.

Section 266. [Supplementary Charges]

(1) If the public prosecutor at the main hearing adds new charges of further criminal offenses committed by the defendant, the court may, in an order, include them in the proceedings, if it has jurisdiction and the defendant consents thereto.

(2) The supplementary charges may be preferred orally. Their contents shall correspond to Section 200 subsection (1). They shall be included in the record made at the sitting. The presiding judge shall give the defendant the opportunity to defend himself.

(3) The hearing shall be interrupted if the presiding judge considers it necessary or if the defendant so applies and the application is not clearly vexatious or solely dilatory. The defendant shall be instructed of his right to apply for an interruption.

Section 267. [Reasons for the Judgment]

(1) If the defendant is convicted, the reasons for the judgment must show the facts deemed to be proven and establishing the statutory elements of the criminal offense. So far as the evidence is inferred from other facts, these facts should also be indicated. With regard to details reference may be made to pictures which are included in the files.

(2) If special circumstances specified by the penal norm were alleged at the hearing which exclude, diminish, or increase criminal liability, the reasons for the judgment must state whether these circumstances are deemed to have been established or not.

(3) The reasons for the criminal judgment must further specify the penal norm which was applied, and show the circumstances which were decisive in assessing the penalty. If the penal norm makes mitigation dependent on the existence of a less serious case, the reasons for the judgment must indicate why these circumstances are deemed to exist or are denied contrary to an application filed at the hearing; this shall apply *mutatis mutandis* to the imposition of a sentence of imprisonment in the cases under section 47 of the Penal Code. The reasons for the judgment must also indicate why an especially serious case is not deemed to exist when the prerequisites are met, according to which, as a rule, such a case shall exist pursuant to the penal norm; in a case where these prerequisites have not been met but where an especially serious case is nevertheless deemed to exist, the second sentence shall apply *mutatis mutandis*. The reasons for the judgment must further indicate why the penalty was suspended on probation, or was not suspended contrary to an application filed at the hearing; this shall apply *mutatis mutandis* to a warning with sentence reserved and to the dispensing with punishment.

(4) If all parties entitled to appellate remedy waive their right of appellate remedy or if no appellate remedy is sought within a certain time limit, the proven facts establishing the statutory elements of the criminal offense and the penal norm applied must be indicated; in the case of judgments imposing only a fine or a fine plus a driving ban or withdrawal of permission to drive and in connection therewith confiscation of the driver's license, reference can be made here to charges admitted, to the charges pursuant to Section 418 subsection (3), second sentence, or to the penal order as well as to the application for a penal order. The further content of the reasons for the judgment shall be determined by the court taking into consideration - at its discretion - the circumstances of the individual case. The reasons for the judgment may be supplemented within the time limit provided in Section 275 subsection (1), second sentence, if restoration of the *status quo ante* is granted in order to remedy the failure to observe the time limit for seeking an appellate remedy.

(5) If the defendant is acquitted, the reasons for the judgment shall show whether the defendant's guilt was deemed not proven or whether, and for what reasons, the act deemed proven was considered not to give rise to criminal liability. If all parties entitled to appellate remedy waive their right of appellate remedy or if no appellate remedy is sought within a certain time limit, it shall only be necessary to state whether it was for factual or legal reasons that the criminal offense the defendant is charged with has not been established. Subsection (4), third sentence, shall apply.

(6) The reasons for the judgment must also indicate why a measure of reform and prevention was ordered, or was not ordered contrary to an application filed at the hearing. If permission to drive has not been withdrawn or a bar pursuant to Section 69a subsection (1), third sentence, of the Penal Code has not been ordered, although such measure was possible given the nature of the criminal offense, the reasons for the judgment must always indicate why such measure has not been ordered.

Section 268. [Pronouncement of the Judgment]

(1) The judgment shall be pronounced in the name of the people.

(2) The judgment shall be pronounced by reading out the operative provisions of the judgment and disclosing the reasons for the judgment. Reasons for the judgment shall be disclosed by their being read out or by oral communication of their essential content. Reading the operative provisions of the judgment shall in each case precede communication of the reasons for the judgment.

(3) The judgment should be pronounced at the end of the hearing. It must be pronounced at the latest on the eleventh day thereafter, or else the main hearing shall be recommenced. Section 229 subsection (3) and subsection (4), second sentence, shall apply *mutatis mutandis*.

(4) If pronouncement of judgment has been suspended, the reasons for the judgment shall, if possible, be stated in writing beforehand.

Section 268a. [Probationary Suspension of Sentence; Warning with Sentence Reserved]

(1) If a judgment provides for the suspension of sentence or if the defendant is warned with sentence reserved, the court shall give the decisions designated in sections 56a to 56d and 59a of the Penal Code in an order which shall be pronounced together with the judgment.

(2) Subsection (1) shall apply *mutatis mutandis* if, in the judgment, a measure of reform and prevention has been suspended on probation or if, in addition to the sentence supervision of conduct is ordered, and the court gives decisions pursuant to sections 68a to 68c of the Penal Code.

(3) The presiding judge shall inform the defendant of the meaning of probationary suspension of sentence or of the measure, of a warning with sentence reserved or of supervision of conduct, of the duration of the probation period or of supervision of conduct, of conditions and instructions as well as of the possibility of revocation of suspension or of imposition of the sentence reserved (section 56f subsection (1), sections 59b, 67g subsection (1) Penal Code). If the court gives the defendant instructions pursuant to section 68b subsection (1) of the Penal Code, the presiding judge shall also inform him of the possibility of a penalty pursuant to section 145a of the Penal Code. The instruction shall, as a rule, be given following pronouncement of the order pursuant to subsection (1) or (2). If

committal to a psychiatric hospital is suspended on probation, the presiding judge may dispense with giving information about the possibility of revoking suspension.

Section 268b. [Continuation of Remand Detention]

When passing judgment the court shall, *proprio motu*, decide on continuation of remand detention or provisional committal. The order shall be pronounced with the judgment.

Section 268c. [Information on a Driving Ban]

If a driving ban is ordered in the judgment, the presiding judge shall inform the defendant of the commencement of the duration of the ban (section 44 subsection (3), first sentence, Penal Code). This information shall be given following pronouncement of judgment. If the judgment is pronounced in the defendant's absence, he shall be informed in writing.

Section 269. [Lack of Substantive Jurisdiction]

The court may not decline jurisdiction on the grounds that the case should be brought before a court of lower rank.

Section 270. [Referral to a Higher Competent Court]

(1) If after the commencement of a main hearing a court deems a court of higher rank to have substantive jurisdiction, it shall, in an order, refer the case to the competent court; Section 209a, number 2a, shall apply *mutatis mutandis*. The same procedure shall apply if the court considers a timely objection by the defendant pursuant to Section 6a to be well-founded.

(2) In the order, the court shall name the defendant and the criminal offense pursuant to Section 200 subsection (1), first sentence.

(3) The order shall have the effect of an order opening the main proceedings. The possibility of contesting the order shall be governed by Section 210.

(4) If the order referring the case to a higher court was made by a criminal court judge or a court with lay judges, the defendant may apply, within a time limit to be determined when the order is pronounced, for certain evidence be taken prior to the main hearing. The judge presiding over the court to which the case has been referred shall decide on the application.

Section 271. [Record of Proceedings]

(1) A record shall be made of the main hearing, and be signed by the presiding judge and by the registry clerk. The date of its completion shall be stated therein.

(2) If the presiding judge is prevented from signing, the most senior associate judge shall sign for him. In a case where the presiding judge is the only judge of the court, the signature of the registry clerk shall suffice if the former is prevented from signing.

Section 272. [Content of the Record]

The record of the main hearing shall contain:

1. the place and the day of the hearing;

2. the names of the professional judges and lay judges, of the official of the public prosecution office, of the registry clerk of the court registry, and of the assisting interpreter;

3. the designation of the criminal offense in the charges;

4. the names of the defendants, of their defense counsel, of private prosecutors, of private accessory prosecutors, of aggrieved persons asserting claims arising from the criminal offense, of other persons involved, of statutory representatives, of legal representatives, and of persons rendering assistance;

5. an indication that the hearing is being held in public or that the public have been excluded.

Section 273. [Additional Contents of the Record]

(1) The record must indicate the course and the results of the main hearing in essence, and show that all essential formalities have been observed; it must also specify the documents read out or those documents the reading of which has been dispensed with pursuant to Section 249 subsection (2), as well as the applications filed during the course of the hearing, the decisions given, and the operative provisions of the judgment.

(2) The main outcome of examinations at the main hearing before the criminal court judge and in a court with lay judges shall also be included in the record; this shall not apply if all those entitled to appellate remedy have waived their right of appellate remedy or if no appellate remedy has been sought within a certain time limit.

(3) If it is important that an occurrence at the main hearing or the wording of testimony or of a statement be registered, the presiding judge ex officio or upon application by a participant in the hearing shall order that a complete record be made and that it be read out. If the presiding judge refuses to make the order, the court shall, upon application by a participant in the hearing, give the decision. It shall be noted in the record that the reading took place and approval was given or whether, and if so, what objections were raised.

(4) The judgment may not be served until the record has been drawn up.

Section 274. [Probative Value of the Record]

Observance of the formalities required for the main hearing can only be proved by the record. Only proof of forgery shall be admissible in respect of the content of that part of the record relating to these formalities.

Section 275. [Written Judgment; Official Copy]

(1) If the judgment including reasons has not been fully incorporated in the record, it shall be placed on file without delay. This must be done five weeks at the latest after pronouncement; this time limit shall be extended by two weeks if the main hearing lasted longer than three days, and, if the main hearing lasted longer than ten days, by another two weeks for every ten days of the main hearing or part thereof. Upon expiry of the time limit the reasons for the judgment may no longer be amended. The time limit may be exceeded only if and as long as the court, due to a circumstance which cannot be anticipated or averted in an individual case, has been prevented from observing it. The date of receipt and any amendment of the reasons shall be noted by the registry.

(2) The judgment shall be signed by the judges who participated in the decision. If a judge is prevented from adding his signature, this fact, with the reason therefor, shall be noted under the judgment by the presiding judge and, if he is prevented from doing so, by the most senior associate judge. The signatures of the lay judges are not required.

(3) The day of the sitting and the names of the judges, of the lay judges, of the official of the public prosecution office, of defense counsel, and of the registry clerk who took part in the sitting shall be included in the judgment.

(4) Copies and extracts of judgments shall be signed by the registry clerk and shall be stamped with the court's seal.

Chapter VII Proceedings against Absent Accused

Section 276. [Definition]

An accused shall be deemed to be absent if his whereabouts are unknown, or if he is abroad and his presence before the competent court does not appear to be feasible or reasonable.

Section 277 to 284. Deleted

Section 285. [Securing Evidence]

(1) No main hearing shall be held in respect of a person who is absent. Proceedings instituted against an absent accused shall serve the purpose of securing evidence in anticipation of his future presence in court.

(2) The provisions of Sections 286 to 294 shall apply to these proceedings.

Section 286. [Defense Counsel]

(1) Defense counsel may act for the defendant. Relatives of the defendant shall also be permitted to act as representatives, even without a power of attorney.

(2) Witnesses shall be examined under oath, unless exceptions are provided or admitted.

Section 287. [Notification of the Absent Accused]

(1) The absent accused shall not be entitled to notifications about the course of the proceedings.

(2) The judge shall, however, be authorized to have notifications sent to an absent accused whose whereabouts are known.

Section 288. [Request to Appear]

An absent accused whose whereabouts are unknown may, through one or more newspapers, be requested to appear before the court or to report his whereabouts.

Section 289. [Reception of Evidence]

If the defendant appears to be absent only after the main proceedings have been opened, the evidence that still needs to be taken shall be taken by a commissioned or a requested judge.

Section 290. [Seizure Instead of Warrant of Arrest]

(1) The property of an absent defendant against whom charges were preferred, which is located within the territorial scope of this Federal statute, may be seized by order of the court if there are grounds for suspicion against him which would justify issuing a warrant of arrest.

(2) There shall be no seizure of property for criminal offenses carrying imprisonment not exceeding six months or a fine not exceeding one hundred and eighty daily units.

Section 291. [Publication of Seizure Order]

The seizure order shall be published in the Federal Gazette and, at the discretion of the court, may also be published in newspapers.

Section 292. [Effect of Publication]

(1) The indicted accused shall lose the right to dispose of the seized property inter vivos on the date of first publication in the Federal Gazette.

(2) The seizure order shall be communicated to the authority competent to establish a curatorship over absent persons. This authority shall establish a curatorship.

Section 293. [Revocation of Seizure]

(1) Seizure shall be revoked if the reasons therefor no longer apply.

(2) Revocation of seizure shall be made public through the Federal Gazette or the same newspapers in which the seizure was published.

Section 294. [Proceedings After Preferment of Charges]

(1) The provisions on the opening of the main proceedings shall apply *mutatis mutandis* to the proceedings following preferment of the public charges.

(2) In the order made after these proceedings have ended (Section 199), a decision shall at the same time be given on continuation or revocation of seizure.

Section 295. [Safe Conduct]

(1) The court may grant safe conduct to an absent accused; it may attach conditions to such grant.

(2) Safe conduct shall entail exemption from remand detention, however, only in respect of the criminal offense for which it is granted.

(3) It shall expire if a sentence of imprisonment is imposed, or if the accused is getting ready to flee, or if he does not fulfill the conditions under which the safe conduct was granted.

Part Three Appellate Remedies

Chapter I General Provisions

Section 296. [Persons Entitled to Appellate Remedy]

(1) Both the public prosecution office and the accused shall be entitled to file the remedies admissible against court decisions.

(2) The public prosecution office may also make use of them for the accused's benefit.

Section 297. [Defense Counsel]

Defense counsel may file an appellate remedy on behalf of the accused, but not against the latter's express will.

Section 298. [Statutory Representative]

(1) The statutory representative of an accused may independently make use of the admissible appellate remedies within the time limit applying to the accused.

(2) The provisions applicable to the appellate remedies available to the accused shall apply *mutatis mutandis* to such appellate remedies and to the proceedings.

Section 299. [Arrested Accused]

(1) An accused who is not at liberty may make oral statements relating to appellate remedies to be recorded by the registry of the Local Court in whose district the institution where he is detained upon official order is located.

(2) For observance of a time limit it shall be sufficient for the record to be made within the time limit.

Section 300. [Incorrect Designation]

An error in the designation of the admissible appellate remedy shall not be prejudicial.

Section 301. [Public Prosecution Offices' Power of Appellate Remedy]

Any appellate remedy filed by the public prosecution office shall have the effect that the contested decision may be amended or revoked, also for the accused's benefit.

Section 302. [Withdrawal; Waiver]

(1) Withdrawal of an appellate remedy as well as waiver of the right to file such appellate remedy may also take effect before expiry of the time limit for filing. An appellate remedy filed by the public prosecution office for the benefit of the accused cannot, however, be withdrawn without his consent.

(2) Defense counsel shall have express authorization for such withdrawal.

Section 303. [Opponent's Consent]

If the decision on the appellate remedy has to be given on the basis of an oral hearing, withdrawal after the beginning of the main hearing may be effected only with the consent of the opposing party. Withdrawal of the defendant's appellate remedy shall not, however, require the private accessory prosecutor's consent.

Chapter II Complaint

Section 304. [Admissibility]

(1) A complaint shall be admissible against all orders made by the courts at first instance or in appellate proceedings on fact and law and against directions given by the presiding judge, by the judge in preliminary proceedings, and by a commissioned or a requested judge, unless expressly exempted from appellate remedy by law.

(2) Witnesses, experts, and other persons may also lodge a complaint against orders and directions by which they are affected.

(3) A complaint against decisions concerning the obligation to bear costs or necessary expenses shall be admissible only if the value of the subject matter of the complaint exceeds two hundred Deutsche Mark. A complaint against other decisions on costs and necessary expenses shall be admissible only if the value of the subject matter of the complaint exceeds one hundred Deutsche Mark.

(4) No complaint shall be admissible against orders and directions given by the Federal Court of Justice. The same shall apply to orders and directions given by the Higher Regional Courts; in cases in which the Higher Regional Courts have jurisdiction at first instance, a complaint shall, however, be admissible against orders and directions:

1. concerning arrest, provisional committal, committal for observation, seizure or search;

2. declining to open the main proceedings or terminating the proceedings because of an impediment;

3. ordering the main hearing in the defendant's absence (Section 231a) or referring a case to a court of lower rank;

4. concerning inspection of files; or

5. concerning revocation of suspension of sentence, revocation of remission of sentence and imposition of the reserved sentence (Section 453 subsection (2), third sentence), an order for interim measures to secure revocation (Section 453c), suspension of the remainder of sentence and its revocation (Section 454 subsections (3) and (4)), the reopening of the proceedings (Section 372, first sentence), or forfeiture, confiscation or making an item unusable pursuant to Sections 440, 441 subsection (2), Section 442.

Section 138 d subsection (6) shall remain unaffected.

(5) A complaint against the directions of the investigating judge at the Federal Court of Justice or the Higher Regional Court (Section 169 subsection (1)) shall be admissible only if it concerns arrest, provisional committal, seizure or search.

Section 305. [Inadmissibility]

Decisions of the adjudicating courts prior to judgment shall not be subject to complaint. Excepted herefrom shall be decisions concerning arrest, provisional committal, seizures,

interim withdrawal of permission to drive, interim prohibition of pursuit of an occupation, or imposition of regulatory or coercive measures, as well as all decisions by which third parties are affected.

Section 305a. [Complaint Against Order Suspending Sentence]

(1) A complaint shall be admissible against an order given pursuant to Section 268a subsections (1) and (2). It may only be based on the ground that the order made was illegal.

(2) If a complaint is lodged against an order and an admissible appeal on law is filed against the judgment, the court hearing the appeal on law shall also be competent to decide on the complaint.

Section 306. [Filing; Redress or Submission]

(1) The complaint shall be lodged at the court which, or the presiding judge of which, gave the contested decision, either orally to be recorded by the registry or in writing.

(2) If the court or the presiding judge who gave the contested decision considers the complaint to be well-founded, they shall redress it; in all other cases the complaint shall be submitted immediately, at the latest within three days, to the court hearing the complaint.

(3) These provisions shall also be applicable to the decisions of the judge in the preliminary proceedings and of the commissioned or the requested judge.

Section 307. [No Obstacle to Enforcement]

(1) Lodging a complaint shall not constitute an obstacle to enforcement of the contested decision.

(2) The court, the presiding judge, or the judge whose decision is contested, as well as the court hearing the complaint, may, however, order that enforcement of the contested decision be suspended.

Section 308. [Powers of the Court Hearing the Complaint]

(1) The court hearing the complaint may not amend the contested decision to the detriment of the complainant's opponent without having communicated the complaint to him for submissions in response. This shall not apply in the cases of Section 33 subsection (4), first sentence.

(2) The court hearing the complaint may order investigations or conduct them itself.

Section 309. [Decision]

(1) The decision on the complaint shall be made without an oral hearing, in appropriate cases after hearing the public prosecution office.

(2) If the complaint is considered to be well-founded, the court hearing the complaint shall at the same time make the decision on the merits.

Section 310. [Further Complaint]

(1) Orders made upon a complaint by a Regional Court or by the Higher Regional Court competent pursuant to section 120 subsection (3) of the Courts Constitution Act may be contested by further complaint so far as they concern arrests or provisional committal.

(2) In all other cases the decisions given upon a complaint shall not be contestable.

Section 311. [Immediate Complaint]

(1) The following special provisions shall apply to cases of immediate complaint.

(2) The complaint shall be lodged within one week; the time limit shall begin to run upon notification (Section 35) of the decision.

(3) The court shall not be competent to amend its decision contested by a complaint. It shall, however, redress the complaint if, to the detriment of the complainant, it has used facts or evidentiary conclusions in respect of which the complainant has not yet been heard and if, as a result of subsequent submissions, it considers the complaint to be well-founded.

Section 311a. [Subsequent Hearing of the Opponent]

(1) If the court hearing the complaint has granted redress without having heard the complainant's opponent, and if its decision is not contestable and the resulting detriment to the opponent still exists, the court shall *proprio motu*, or upon application, give him a subsequent hearing and give a decision upon application. The court hearing the complaint may amend its decision even if no application has been made.

(2) Section 307, Section 308 subsection (2) and Section 309 subsection (2) shall apply to the proceedings *mutatis mutandis*.

Chapter III Appeal on Points of Fact and Law

Section 312. [Admissibility]

An appeal on fact and law shall be admissible against judgments of the criminal court judge and of the court with lay judges.

Section 313. [Acceptance of Appeal on Fact and Law]

(1) Where the defendant has been sentenced to a fine not exceeding fifteen daily units, where in the case of a warning the reserved fine does not exceed fifteen daily units or a regulatory fine has been imposed, an appeal on fact and law shall be admissible only if accepted for adjudication. The same shall apply where the defendant has been acquitted or the proceedings terminated and the public prosecution office has applied for a fine not exceeding thirty daily units.

(2) The appeal on fact and law shall be accepted for adjudication if it is not manifestly ill-founded. In other cases it shall be rejected as inadmissible.

(3) An appeal on fact and law against a judgment imposing a regulatory fine, acquitting the defendant or terminating the proceedings in respect of a regulatory offense shall always be accepted for adjudication if a legal complaint were admissible pursuant to section 79 subsection (1) of the Regulatory Offenses Act or would have to be admitted pursuant to section 80 subsections (1) and (2) of the Regulatory Offenses Act. In other cases subsection (2) shall apply.

Section 314. [Form and Time Limit]

(1) The appeal on fact and law shall be filed with the court of first instance, either orally to be recorded by the registry or in writing, within one week after the pronouncement of the judgment.

(2) If judgment was not pronounced in the defendant's presence, the time limit shall begin to run for him upon service thereof.

Section 315. [Appeal on Fact and Law and Application for Restoration of the *Status quo ante*]

(1) Commencement of the time limit for filing an appeal on fact and law shall not be excluded by the fact that an application for restoration of the *status quo ante* may be made in respect of a judgment pronounced in the defendant's absence.

(2) If the defendant files an application for restoration of the *status quo ante*, the appeal on fact and law shall be available if immediately filed in time in the event of this application being rejected. Further disposition in regard to the appeal on fact and law shall then be suspended until the decision has been given on the application for restoration of the *status quo ante*.

(3) Filing an appeal on fact and law not in conjunction with an application for restoration of the *status quo ante* shall be deemed to be a waiver of the latter.

Section 316. [Obstacle to Entry in Force]

(1) Where an appeal on fact and law is filed in time, the judgment shall not enter into force so far as it is contested.

(2) If the judgment including reasons has not yet been served on the complainant, it shall immediately be served on him after he has filed an appeal on fact and law.

Section 317. [Grounds for an Appeal on Fact and Law]

The grounds for appeal on fact and law may be given at the court of first instance orally to be recorded by the registry or in a notice of complaint within a further week after expiry of the time limit for seeking an appellate remedy or, if at that time the judgment has not yet been served, after the service thereof.

Section 318. [Restriction of Appeal on Fact and Law]

An appeal on fact and law may be restricted to certain points of complaint. If this was not done, or no grounds were given, the entire judgment shall be deemed to be contested.

Section 319. [Filing Too Late]

(1) If an appeal on fact and law is filed too late, the court of first instance shall dismiss the appeal as inadmissible.

(2) Within a week after service of the ruling, the complainant may apply for a decision of the court hearing the appeal. In this case, the file shall be sent to the court hearing the appeal; this, however, shall form no obstacle to execution of judgment. The provision in Section 35a shall apply *mutatis mutandis*.

Section 320. [Submitting Files to the Public Prosecution Office]

If the appeal on fact and law was filed in time, the court registry, after expiry of the time limit for giving the grounds, shall submit the files to the public prosecution office regardless of whether grounds were given or not. If the appeal on fact and law was filed by the public prosecution office, it shall serve upon the defendant the documents concerning the filing of the appeal and the grounds therefor.

Section 321. [Transmission of Files to the Court Hearing the Appeal]

The public prosecution office shall transmit the files to the public prosecution office at the court hearing the appeal. The latter shall pass the files to the presiding judge within one week.

Section 322. [Dismissal Without Main Hearing]

(1) Where the court hearing the appeal considers that the provisions on filing an appeal on fact and law have not been observed it may, in a ruling, dismiss the appeal as inadmissible. In all other cases it shall decide in the form of a judgment; Section 322a shall remain unaffected.

(2) The ruling may be contested by immediate complaint.

Section 322a. [Ruling by the Court Hearing the Appeal]

The court hearing the appeal shall decide in a ruling whether to accept the appeal on fact and law (Section 313). The decision shall be incontestable. No reasons need to be given for the ruling accepting the appeal on fact and law.

Section 323. [Preparation of the Main Hearing]

(1) The provisions of Sections 214 and 216 to 225 shall be applicable to the preparation of the main hearing. The summons shall expressly inform the defendant of the consequences of non-appearance.

(2) Summoning the witnesses and experts examined at first instance may be omitted only if their repeated examination does not seem to be necessary for clearing up the case.

(3) New evidence shall be admissible.

(4) When selecting the witnesses and experts who are to be summoned, consideration shall be given to those persons named by the defendant in the grounds for his appeal on fact and law.

Section 324. [Course of the Main Hearing]

(1) After the beginning of the main hearing pursuant to the provision in Section 243 subsection (1), a rapporteur shall, in the absence of the witnesses, give a report on the results of the previous proceedings. The judgment of the court of first instance shall be read out as far as it is of importance for the appeal on fact and law; the reasons for the judgment need not be read out if the public prosecution office, defense counsel and the defendant dispense with it.

(2) Thereafter, the defendant shall be examined and evidence be taken.

Section 325. [Reading out Documents]

(1) Documents may be read out when the rapporteur is giving his report and when evidence is being taken; records concerning statements of the witnesses and experts examined at the main hearing at first instance, apart from the cases of Sections 251 and 253, may not be read out without the consent of the public prosecution office and of the defendant, provided the witnesses or experts were summoned again or an application to do so was made by the defendant in time prior to the main hearing.

Section 326. [Closing Speeches]

After concluding the taking of evidence, the arguments and applications of the public prosecution office as well as of the defendant and his defense counsel shall be heard, with the complainant being heard first. The defendant shall have the last word.

Section 327. [Extent of Review of the Judgment]

The judgment shall be subject to the court's review only to the extent contested.

Section 328. [Content of the Appellate Decision]

(1) If the appeal on fact and law is held to be well-founded, the court hearing the appeal shall give its own decision on the merits and shall quash the judgment.

(2) If the court of first instance erroneously assumed jurisdiction, the court hearing the appeal shall refer the case to the competent court and shall quash the judgment.

Section 329. [Defendant's Non-Appearance]

(1) If at the beginning of a main hearing neither the defendant nor, in cases where this is admissible, a representative of the defendant appeared, and if there is no sufficient excuse for their failure to appear, the court shall dismiss an appeal by the defendant on fact and law without hearing the merits. This shall not apply if the court hearing the appeal on fact and law holds a new hearing after the case has been referred back to it by the court hearing the appeal on law. If a conviction for an individual offense has been overturned, the content of that part of the judgment that has been upheld shall be clearly identified when the appeal on fact and law is dismissed; the penalties imposed may be combined into a new aggregate sentence by the court hearing the appeal on fact and law.

(2) Under the conditions in subsection (1), first sentence, a hearing may also be held without the defendant, upon appeal on fact and law by the public prosecution office. An appeal on fact and law by the public prosecution office may in these cases also be withdrawn without the defendant's consent unless the conditions in subsection (1), second sentence, prevail.

(3) Within one week after service of the judgment, the defendant may request restoration of the *status quo ante* under the conditions specified in Sections 44 and 45.

(4) If the procedure pursuant to subsection (1) or (2) is not followed, an order shall be made for the defendant to be brought before the court or to be arrested. This shall be dispensed with if it is to be expected that he will appear at the new main hearing without coercive measures having to be taken.

Section 330. [Appeal on fact and law by Statutory Representative]

(1) If the appeal on fact and law was filed by a statutory representative, the court shall also summon the defendant to the main hearing and may have him forcibly brought before the court in the event of his non-appearance.

(2) If it is only the statutory representative who fails to appear at the main hearing, the main hearing shall be conducted without him. If at the beginning of a hearing neither the statutory representative nor the defendant appeared, Section 329 subsection (1) shall apply *mutatis mutandis*; if it is only the defendant who has not appeared, Section 329 subsection (2), first sentence, shall apply *mutatis mutandis*.

Section 331. [Prohibition of Reformatio in Peius]

(1) The judgment, insofar as it relates to the type and degree of the legal consequences of the offense, shall not be amended to the defendant's detriment only in those cases where the defendant or his statutory representative filed the appeal on fact and law or the public prosecution office appealed on fact and law in his favor.

(2) This provision shall not prevent an order committing the defendant to a psychiatric hospital or an institution for withdrawal treatment.

Section 332. [Procedural Provisions]

The provisions concerning the main hearing, set forth in Chapter VI of Part Two, shall otherwise apply.

Chapter IV Appeal on Points of Law Only

Section 333. [Admissibility]

An appeal on law may be filed against judgments of the penal chambers and of the penal divisions with lay judges and against judgments of the Higher Regional Courts pronounced at first instance.

Section 334. Deleted

Section 335. [Immediate Appeal on Law in lieu of an Appeal on Fact and Law]

(1) A judgment against which an appeal on fact and law is admissible, may be contested by an appeal on law in lieu of an appeal on fact and law.

(2) The court which would be competent to decide if an appeal on law were filed after an appeal on fact and law had been heard shall decide on the appeal on law.

(3) If one of the participants files an appeal on law against the judgment, and another participant files an appeal on fact and law, the appeal on law, if filed in time and in the prescribed form, shall be treated as an appeal on fact and law as long as the appeal on fact and law is not withdrawn or dismissed as inadmissible. Notices of appeal on law including the grounds therefor shall nevertheless be submitted in the form and within the time limit provided and be served on the opponent (Sections 344 to 347). An appeal on law against a

judgment given in an appeal on fact and law shall be admissible pursuant to the provisions generally applicable.

Section 336. [Review of Decisions Preceding the Judgment]

Decisions preceding the judgment, insofar as the judgment is based on them, shall also be subject to review by the court hearing the appeal on law. This shall not apply to decisions which were expressly declared to be incontestable, or which may be contested by immediate complaint.

Section 337. [Grounds for Appeal on Law]

(1) An appeal on law may only be filed on the ground that the judgment was based upon a violation of the law.

(2) The law shall have been violated if a legal norm was not applied, or was erroneously applied.

Section 338. [Absolute Grounds for Appeal on Law]

A judgment shall always be considered to be based on a violation of the law:

1. if the adjudicating court was not composed in the prescribed form; where pursuant to Section 227 notification of composition is required, the appeal on law may be based on composition not being in the prescribed form only so far as

a. the provisions governing notification have been violated,

b. an objection, made in time and in the proper form, to a composition not being in the prescribed form has been disregarded or rejected,

c. the main hearing has not been interrupted pursuant to Section 222a subsection (2) for an examination of composition, or

d. the court gave its decision while not composed in the prescribed form and has determined, pursuant to Section 222b subsection (2), second sentence, that it was not composed in the prescribed form;

2. if a professional judge or lay judge barred from exercising judicial office by operation of law participated in drafting the judgment;

3. if a professional judge or lay judge participated in drafting the judgment after he was challenged for bias and the motion for challenge was either declared to be well-founded or erroneously rejected;

4. if the court erroneously assumed jurisdiction;

5. if the main hearing was held in the absence of the public prosecutor or of a person whose presence is required by law;

6. if the judgment was given on the basis of an oral hearing and the provisions concerning the public nature of the proceedings were violated;

7. if the judgment does not contain the reasons for the decision or the reasons have not been placed on file within a period pursuant to Section 275 subsection (1), second and fourth sentences.

8. if the defense was inadmissibly restricted by an order of the court on a question important for the decision.

Section 339. [Legal Norms for the Defendant's Benefit]

The violation of legal norms existing solely for the defendant's benefit may not be invoked by the public prosecution office for the purpose of quashing the judgment to the defendant's detriment.

Section 340. Deleted

Section 341. [Form and Time Limit]

(1) The appeal on law shall be filed with the court whose judgment is being contested either orally to be recorded by the registry or in writing within one week after pronouncement of judgment.

(2) If pronouncement of judgment did not take place in the defendant's presence, the time limit in respect of the defendant shall begin to run upon service of the judgment.

Section 342. [Appeal on Law and Application for Restoration of the *Status quo ante*]

(1) Commencement of the time limit for filing an appeal on law shall not be excluded by the fact that an application for restoration of the *status quo ante* may be made in respect of a judgment pronounced in the defendant's absence.

(2) If the defendant files an application for restoration of the *status quo ante*, the appeal on law shall be available if immediately filed in time in the event of this application being rejected. Further disposition in regard to the appeal on law shall then be suspended until the decision has been given on the application for restoration of the *status quo ante*.

(3) Filing an appeal on law not in conjunction with an application for restoration of the *status quo ante* shall be deemed to be a waiver of the latter.

Section 343. [Obstacle to Entry into Force]

(1) Where an appeal on law is filed in time, the judgment shall not enter into force so far as it is contested.

(2) If the judgment including reasons has not yet been served on the complainant it shall be served on him after he has filed an appeal on law.

Section 344. [Grounds for an Appeal on Law]

(1) The complainant shall make a statement on the extent to which he contests the judgment and is applying for it to be quashed (notices of appeal on law) and he shall state the grounds for such applications.

(2) The grounds must show whether the judgment is contested because of a violation of a legal norm concerning the proceedings or because of a violation of another legal norm. In the former case the facts containing the defect must be indicated.

Section 345. [Time Limit for Stating Grounds]

(1) Notices of appeal on law together with the grounds therefor shall be submitted to the court whose judgment is being contested no later than one month after expiry of the time limit for seeking the appellate remedy. If the judgment has not been served by then, the time limit shall commence upon service thereof.

(2) In the case of the defendant this may only be done in the form of a notice signed by defense counsel or by an attorney-at-law, or orally to be recorded by the court registry.

Section 346. [Late and Improper Filing]

(1) The court whose judgment is being contested shall, in an order, dismiss the appellate remedy as inadmissible if the appeal on law was filed too late or the notices of appeal on law were not submitted in time or not in the form prescribed in Section 345 subsection (2).

(2) The complainant may, within one week after service of the order, apply for a decision of the court hearing the appeal on law. In this case the files shall be sent to the court hearing the appeal on law; this, however, shall not constitute an obstacle to execution of the judgment. The provision in Section 35a shall apply *mutatis mutandis*.

Section 347. [Service; Response; Submission of Files]

(1) The notice of appeal on law including the grounds therefor shall be served on the complainant's opponent if the appeal on law and the notices of appeal on law were submitted in time and in the prescribed form. The opponent may submit a written response within one week. The defendant may also submit his response orally to be recorded by the court registry.

(2) The public prosecution office shall send the file to the court hearing the appeal on law after receipt of the response or after expiry of the time limit.

Section 348. [Lack of Jurisdiction]

(1) If the court to which the files were sent finds that a hearing and decision on the appellate remedy fall under the jurisdiction of another court, it shall declare, in an order, that it lacks jurisdiction.

(2) This order, which shall indicate the competent appellate court, shall not be contestable and shall be binding on the court specified therein.

(3) Transmission of the files shall be effected by the public prosecution office.

Section 349. [Dismissal Without Main Hearing]

(1) The court hearing the appeal on law may, in an order, dismiss the appellate remedy as inadmissible, if it is of the opinion that the provisions on filing an appeal on law or on submission of the notices of appeal on law were not complied with.

(2) Upon the public prosecution office's application, for which grounds have to be given, the court hearing the appeal on law may also give its decision in an order if it unanimously deems the appeal on law to be manifestly ill-founded.

(3) The public prosecution office shall inform the complainant of the application pursuant to subsection (2) and of the grounds therefor. The complainant may submit a written response to the court hearing the appeal on law within two weeks.

(4) If the court hearing the appeal on law unanimously deems an appeal on law filed for the defendant's benefit to be well-founded, it may set aside the contested judgment in an order.

(5) If the court hearing the appeal on law does not apply subsection (1), (2) or (4) it shall decide on the appellate remedy in a judgment.

Section 350. [Main Hearing]

(1) The place and time of the main hearing shall be communicated to the defendant and to defense counsel. If communication to the defendant is not feasible, notification of defense counsel shall be sufficient.

(2) The defendant may appear at the main hearing or may be represented by defense counsel who has been provided with a written power of attorney. A defendant not at liberty shall not be entitled to be present.

(3) If the defendant who is not at liberty and who is not brought to the main hearing has not chosen defense counsel, the presiding judge, upon the defendant's application, shall appoint

defense counsel for the main hearing. The application shall be filed within one week after the defendant has been notified of the date and time of the main hearing, such notification including information regarding his right to have defense counsel appointed.

Section 351. [Course of the Main Hearing]

(1) The main hearing shall begin with submissions by a rapporteur.

(2) Thereafter, the arguments and applications of the public prosecution office as well as of the defendant and his defense counsel shall be heard, with the complainant being heard first. The defendant shall have the last word.

Section 352. [Extent of Review]

(1) Only the notices of appeal on law shall be subject to review by the court hearing the appeal and, if the appeal on law is based on defects in the proceedings, only the facts which were specified when submitting the notices of appeal on law.

(2) Substantiation of the notices of appeal on law going beyond what is required by Section 344 subsection (2) shall not be necessary and, if incorrect, shall not be prejudicial.

Section 353. [Content of the Appellate Judgment on Law]

(1) The contested judgment shall be quashed insofar as the appeal on law is considered well-founded.

(2) At the same time, the findings on which the judgment is based shall be quashed insofar as they are affected by the violation of law by virtue of which the judgment is quashed.

Section 354. [Decision on the Merits; Referral to a Lower Court]

(1) Where the judgment is quashed solely because of a violation of the law occurring on its application to the findings on which the judgment was based, the court hearing the appeal on law shall itself give a decision on the merits if, without further discussion of the facts, the judgment is to take the form of an acquittal or termination of proceedings or imposition of a mandatory penalty, or if, in accordance with the public prosecution office's application, the court hearing the appeal on law deems the statutory minimum penalty or dispensing with punishment to be reasonable.

(2) Otherwise the case shall be referred back to the division or chamber of the court whose judgment is being quashed or to another court of the same rank located in the same *Land*. In proceedings where the decision at first instance was given by a Higher Regional Court, the case shall be referred back to a different panel of the same court.

(3) The case may be referred back to a court of a lower rank if such court has jurisdiction over the criminal offense still to be dealt with.

Section 354a. [Decision in the Event of Amendment of the Law]

The court hearing the appeal on law shall also proceed pursuant to Section 354 when quashing the judgment on the ground that at the time of its decision a legal norm applies which is different from the one applying at the time of the contested decision.

Section 355. [Referral to the Competent Court]

If a judgment is quashed because the court of the previous instance erroneously assumed jurisdiction, the court hearing the appeal on law shall refer the case to the competent court.

Section 356. [Pronouncement of Judgment]

Judgment shall be pronounced pursuant to the provisions of Section 268.

Section 357. [Effect on Persons Convicted in the Same Proceedings]

Where the judgment is quashed in favor of one defendant because of a violation of law occurring on application of a penal norm and where that part of the judgment which has been quashed also covers other defendants who have not filed an appeal on law, the court shall give its decision as if these persons had also filed an appeal on law.

Section 358. [Binding Effect on Lower Court; Prohibition of Reformatio in Peius]

(1) The court to which the case was referred for another hearing and decision shall also base its decision on the legal assessment which formed the basis for quashing of judgment.

(2) The contested judgment, in so far as it relates to the type and degree of the legal consequences of the offense, may not be amended to the defendant's detriment only in those cases where the defendant or his statutory representative filed the appeal on law or the public prosecution office appealed on law in his favor. This provision shall not prevent an order committing the defendant to a psychiatric hospital or an institution for withdrawal treatment.

Part Four Re-opening of Proceedings Concluded by a Final Judgment

Section 359. [Reopening for the Convicted Person's Benefit]

Reopening of the proceedings concluded by a final judgment shall be admissible for the convicted person's benefit:

1. if a document produced as genuine, to his detriment, at the main hearing was false or forged;

2. if a witness or expert, when giving testimony or an opinion to the convicted person's detriment, was guilty of willful or negligent violation of the duty imposed by the oath, or of willfully making a false, unsworn statement;

3. if a judge or lay judge participated in drafting the judgment who was guilty of a criminal violation of his official duties in relation to the case, unless the violation was caused by the convicted person himself;

4. if a civil court judgment on which the criminal judgment is based is quashed by another judgment which has entered into force;

5. if new facts or evidence were produced, which, independently or in connection with the evidence previously taken, tend to support the defendant's acquittal, or, upon application of a less severe penal norm, a lower penalty or an essentially different decision on a measure of reform and prevention;

6. if the European Court of Human Rights has found that there was a violation of the European Convention on the Protection of Human Rights and Fundamental Freedoms or of its Protocols and if the judgment was based on that violation.

Section 360. [No Obstacle to Execution]

(1) An application for reopening the proceedings shall not constitute an obstacle to execution of the judgment.

(2) The court may, however, order postponement or interruption of execution.

Section 361. [Execution or Death No Bar to Reopening]

(1) An application for reopening the proceedings shall not be barred either by execution of sentence or by the convicted person's death.

(2) In the event of death, the spouse, relatives in ascending and descending line, as well as the brothers and sisters of the deceased person shall be entitled to file the application.

Section 362. [Reopening to the Defendant's Detriment]

Reopening of proceedings concluded by a final judgment shall be admissible to the defendant's detriment:

1. if a document produced as genuine, for his benefit, at the main hearing was false or forged;

2. if a witness or expert, when giving testimony or an opinion for the defendant's benefit, was guilty of willful or negligent violation of the duty imposed by the oath, or of willfully making a false, unsworn statement;

3. if a judge or lay judge participated in drafting the judgment who was guilty of a criminal violation of his official duties in relation to the case;

4. if the person acquitted made a credible confession, in or outside the court, that he committed the criminal offense.

Section 363. [Inadmissibility]

(1) Reopening the proceedings shall not be admissible for the purpose of imposing another sentence on the basis of the same penal norm.

(2) Reopening of the proceedings for the purpose of mitigating sentence on account of diminished criminal responsibility (section 21 Penal Code) shall also be excluded.

Section 364. [Allegation of a Criminal Offense]

An application to reopen the proceedings which is to be based upon an allegation of a criminal offense shall only be admissible if a final conviction has been imposed for this offense, or if criminal proceedings cannot be commenced or conducted for reasons other than lack of evidence. This shall not apply in the case of Section 359, number 5.

Section 364a. [Appointment of Defense Counsel]

The court competent to give decisions in the reopened proceedings shall, upon application, appoint defense counsel for the reopened proceedings to represent a convicted person who has no defense counsel, if due to the complexity of the factual or legal position the participation of defense counsel appears to be necessary.

Section 364b. [Appointment of Defense Counsel to Prepare Proceedings]

(1) The court competent to give decisions in the reopened proceedings shall, upon application, appoint defense counsel for the convicted person who has no defense counsel, also for the purpose of preparing the proceedings to be reopened, if:

1. there are sufficient factual indications that certain investigations will result in facts or evidence which may substantiate the admissibility of an application to reopen the proceedings;

2. due to the complexity of the factual or legal position the participation of defense counsel appears to be necessary and

3. the convicted person is unable to engage defense counsel at his own expense without detriment to his and his family's necessary maintenance.

If defense counsel has already been appointed for the convicted person, the court shall, upon application, determine, in an order, that the conditions in numbers 1 to 3 of the first sentence have been fulfilled.

(2) Section 117 subsections (2) to (4) and section 118 subsection (2), first sentence, and subsections (2) and (4) of the Civil Procedure Code shall apply *mutatis mutandis* to the procedure to determine whether the conditions in subsection (1), first sentence, number 3, have been fulfilled.

Section 365. [General Provisions on the Application]

The general provisions on appellate remedies shall also be applicable to the application to reopen proceedings.

Section 366. [Content and Form of the Application]

(1) The application must show the statutory ground for reopening proceedings, as well as the evidence.

(2) The defendant and the persons specified in Section 361 subsection (2) may submit the application for reopening only in the form of a document signed by defense counsel or by an attorney-at-law, or orally to be recorded by the court registry.

Section 367. [Court Jurisdiction; Procedure]

(1) Jurisdiction of the court to give decisions in the reopened proceedings and on the application to prepare the proceedings to be reopened shall be governed by the special provisions of the Courts Constitution Act. The convicted person may submit applications pursuant to Sections 364a and 364b or an application for leave to reopen of the proceedings also to the court whose judgment is contested; it shall forward the application to the competent court.

(2) The decisions on applications pursuant to Sections 364a and 364b and the application for leave to reopen proceedings shall be given without an oral hearing.

Section 368. [Dismissal for Inadmissibility]

(1) The application shall be dismissed as inadmissible if it is not submitted in the prescribed form or does not invoke a statutory ground for reopening proceedings or does not adduce appropriate evidence.

(2) In all other cases it shall be served on the applicant's opponent with a time limit being set for a response.

Section 369. [Taking Evidence]

(1) If the application is found to be admissible, the court shall, where necessary, commission a judge to take the evidence adduced.

(2) It shall be left to the court's discretion whether the witnesses and experts are to be examined under oath.

(3) The public prosecution office, the defendant, and defense counsel shall be allowed to be present at the examination of a witness or expert and at a judicial inspection. Section 168c subsection (3), Section 224 subsection (1) and Section 225 shall apply *mutatis mutandis*. If the defendant is not at liberty, he shall not be entitled to be present if the hearing is not held at the place where he is in custody and if his assistance will not serve to clarify the matter for which evidence is being taken.

(4) After the taking of evidence has been concluded, the public prosecution office and the defendant shall be called upon to make further statements with a time limit being set.

Section 370. [Decision on Well-Foundedness]

(1) The application to reopen proceedings shall be dismissed as unfounded, without an oral hearing, if the allegations made therein are not sufficiently substantiated, or if in the cases of Section 359, numbers 1 and 2, or Section 362, numbers 1 and 2, the assumption that the act specified in these provisions had an influence on the decision is precluded in the circumstances that pertain.

(2) In all other cases the court shall order the reopening of the proceedings and recommencement of the main hearing.

Section 371. [Acquittal With No Main Hearing]

(1) If the convicted person dies, the court shall, without recommencing the main hearing and after taking any evidence that may still be needed, either enter an acquittal or dismiss the application for reopening the proceedings.

(2) In other cases, too, the court may acquit the convicted person immediately if there already is sufficient evidence therefor; where public charges are preferred, however, it may only do so with the consent of the public prosecution office.

(3) The acquittal shall be combined with the quashing of the original judgment. If there was solely a decision imposing a measure of reform and prevention, the original judgment shall be quashed instead of entry of an acquittal.

(4) Upon request by the applicant the quashing of the judgment shall be published in the Federal Gazette and may, at the court's discretion, also be published in newspapers.

Section 372. [Immediate Complaint]

All decisions given by the court at first instance in connection with an application to reopen the proceedings may be contested by immediate complaint. The decision of the court ordering the reopening of the proceedings and recommencement of the main hearing may not be contested by the public prosecution office.

Section 373. [Judgment After New Main Hearing; No Reformatio in Peius]

(1) In the new main hearing, the original judgment shall be either upheld or quashed with a new decision being given on the merits.

(2) The original judgment, in so far as it relates to the type and degree of the legal consequences of the offense, may not be amended to the convicted person's detriment only in those cases where the defendant or his statutory representative applied to reopen the proceedings or the public prosecution office so applied. This provision shall not prevent an order committing the defendant to a psychiatric hospital or an institution for withdrawal treatment.

Section 373a. [Procedure for a Penal Order]

(1) Reopening of proceedings concluded by final penal order to the convicted person's detriment shall also be admissible if new facts or evidence were produced which, either alone or in conjunction with earlier evidence, tend to substantiate conviction for a serious criminal offense.

(2) In other cases Sections 359 to 373 shall apply *mutatis mutandis* to the reopening of the proceedings concluded by a final penal order.

Part Five Participation of the Aggrieved Person in the Proceedings

Chapter I Private Prosecution

Section 374. [Admissibility; Persons Entitled to Prosecute]

(1) An aggrieved party may bring a private prosecution in respect of the following offenses without needing to have recourse to the public prosecution office first:

1. trespass (section 123 Penal Code);

2. defamation (section 185 to 189 Penal Code) unless it is directed against one of the political bodies specified in section 194 subsection (4) of the Penal Code;

3. violation of the privacy of correspondence (section 202 Penal Code);

4. bodily injury (sections 223 and 229 Penal Code);

5. threat (section 241 Penal Code);

5a. taking or offering a bribe in business transactions (section 299 Penal Code);

6. criminal damage to property (section 303 Penal Code);

7. criminal offenses pursuant to sections 4, 6c, 15, 17, 18 and 20 of the Act against Unfair Competition;

8. criminal offenses pursuant to section 142 subsection (1) of the Patent Act, section 25 subsection (1) of the Utility Models Act, section 10 subsection (1) of the Semi-Conductor Protection Act, section 39 subsection (1) of the Plant Variety Protection Act, section 143 subsections (1) and (1a) and section 144 subsections (1) and (2) of the Trade Mark Act, section 14 subsection (1) of the Designs Act, sections 106 to 108 of the Copyright Act and section 33 of the Act on the Copyright of Works of Fine Art and Photography.

(2) A person who in addition to the aggrieved person or on his behalf is entitled to file an application for criminal prosecution may also file a private prosecution. The persons designated in section 77 subsection (2) of the Penal Code may also bring a private prosecution if the person with prior entitlement has filed the application for criminal prosecution.

(3) If the aggrieved person has a statutory representative, the right to bring a private prosecution shall be exercised by the latter or, if the aggrieved party is a corporation, a company, or another association which as such may sue in civil litigation, by those persons who represent them in civil litigation.

Section 375. [More then One Person Entitled]

(1) If more than one person is entitled to bring a private prosecution in respect of the same criminal offense, each such person shall be independent of the others when exercising this right.

(2) If, however, one of those entitled has brought a private prosecution, the others shall be entitled to join the initiated proceedings at the stage they have reached at the time the declaration of joinder is made.

(3) Any decision on the merits shall, for the accused's benefit, also take effect in respect of entitled persons who did not bring a private prosecution.

Section 376. [Preferring Public Charges]

In respect of the criminal offenses specified in Section 374 the public prosecution office shall prefer public charges only if it is in the public interest.

Section 377. [Participation of the Public Prosecutor; Taking Over the Proceedings]

(1) The public prosecutor shall not be obliged to participate in private prosecution proceedings. The court shall submit the files to him if it is of the opinion that he should take over the prosecution.

(2) The public prosecution office may take over the prosecution by an express statement at any stage of the proceedings before the judgment enters into force. Seeking an appellate remedy shall entail taking over the prosecution.

Section 378. [Assistance and Representation of the Private Prosecutor]

The private prosecutor may be assisted by an attorney-at-law or may be represented by an attorney-at-law provided with a written power of attorney. In the latter case, service on the private prosecutor may legally be effected on the attorney-at-law.

Section 379. [Furnishing Security; Legal Aid]

(1) The private prosecutor shall furnish security for the costs expected to arise for the accused under the same conditions applying to the plaintiff in civil litigation who, at the defendant's request, is required to furnish security for the costs of litigation.

(2) Security shall be furnished by a deposit of cash, shares or bonds.

(3) The same provisions as in civil litigation shall apply to the amount of security and the time limit for furnishing security, as well as to legal aid.

Section 379a. [Advance for Fees]

(1) The court is to set a time limit for payment of the advance for fees pursuant to section 67 subsection (1) of the Court Costs Act, unless the private prosecutor has been granted legal aid or is exempted from payment of fees; reference shall be made here to the consequences under subsection (3).

(2) No court action is to be taken before the advance payment is made, unless it is substantiated that the delay would cause the private prosecutor a disadvantage which cannot be undone or can only be undone with difficulty.

(3) The private prosecution shall be dismissed after the time limit set under subsection (1) has expired with no result. The order may be contested by immediate complaint. The court which made the order shall quash it *proprio motu* if it turns out that the payment was received within the time limit set.

Section 380. [Conciliation Attempt]

(1) Prosecution for trespass, defamation, violation of privacy of correspondence, bodily injury (sections 223 and 229 Penal Code), threats and criminal damage to property may be brought only after a conciliation was unsuccessfully attempted by a conciliation board which

is to be designated by the *Land* department of justice. When bringing his private prosecution, the plaintiff shall submit a certificate showing that conciliation has been attempted.

(2) The *Land* department of justice may stipulate that the conciliation board may make its involvement dependent upon payment of a reasonable advance on costs.

(3) The provisions of subsections (1) and (2) shall not apply where an official superior has the authority to apply for criminal prosecution pursuant to section 194 subsection (3) or section 230 subsection (2) of the Penal Code.

(4) If the parties do not live in the same municipal district, a conciliation attempt may be dispensed with in a specific order by the *Land* department of justice.

Section 381. [Preferring the Charges]

The charges shall be preferred orally to be recorded by the court registry or by submitting a bill of indictment. The charges must comply with the requirements specified in Section 200 subsection (1). The bill of indictment shall be submitted with two copies.

Section 382. [Communication of the Charges]

If the charges were properly preferred, the court shall communicate them to the accused with a time limit being set for a response.

Section 383. [Order Opening the Main Hearing; Dismissal; Termination]

(1) After receiving the accused's response, or after expiry of the time limit, the court shall decide whether to open the main proceedings or to dismiss the charges, in accordance with the provisions which are applicable when charges are directly preferred by the public prosecution office. In an order opening the main proceedings the court shall specify the defendant and the offense in accordance with Section 200 subsection (1), first sentence.

(2) The court may terminate the proceedings if the perpetrator's guilt is negligible. The proceedings may be terminated even during the main hearing. The order may be contested by immediate complaint.

Section 384. [Further Procedure]

(1) The further procedure shall be governed by the provisions on the procedure for preferred public charges. Measures of reform and prevention, however, may not be ordered.

(2) Section 243 shall be applied with the proviso that the presiding judge reads out the order opening the main proceedings.

(3) The court shall determine the extent to which evidence shall be taken notwithstanding Section 244 subsection (2).

(4) The provision in Section 265 subsection (3) on the right to request a suspension of the main hearing shall not be applicable.

(5) A private prosecution cannot be heard at the same time as a public prosecution before a penal division with lay judges.

Section 385. [Status of the Private Prosecutor; Summonses; Inspection of the Files]

(1) To the same extent as the public prosecution office shall participate and be heard in the proceedings on preferred public charges, the private prosecutor shall participate and be heard in the proceedings on the private charges brought. All decisions which are brought to the attention of the public prosecution office in the former case shall be brought to the attention of the private prosecutor in the latter case.

(2) A period of at least one week must elapse between service of the summons on the private prosecutor to attend the main hearing and the day of the main hearing.

(3) The private prosecutor may exercise the right to inspect the files through an attorney-at-law only.

(4) In the cases under Sections 154a and 430 the second sentence of subsection (3) of those Sections shall not apply.

(5) In an appeal on law an application by the private prosecutor pursuant to Section 349 subsection (2) shall not be necessary. Section 349 subsection (3) shall not apply.

Section 386. [Summoning Witnesses and Experts]

(1) The presiding judge shall decide which persons are to be summoned to the hearing as witnesses or experts.

(2) The private prosecutor and the defendant shall have the right to summon such persons directly.

Section 387. [Representation at the Main Hearing]

(1) At the main hearing the defendant may also be assisted by an attorney-at-law or may be represented by an attorney-at-law on the basis of a written power of attorney.

(2) The provision in Section 139 shall apply to the private prosecutor's attorney-at-law as well as to the defendant's attorney-at-law.

(3) The court shall have the authority to order private prosecutor's personal appearance as well as the defendant's and shall also have the authority to have the defendant brought before the court.

Section 388. [Countercharges]

(1) Where the private prosecution was brought by the aggrieved person, the accused may, before completion of the last word (Section 258 subsection (2), second part of the sentence) at first instance, bring countercharges requesting imposition of a penalty on the prosecutor, if the accused is aggrieved by the latter's commission of a criminal offense which may be the subject of private prosecution and is connected with the criminal offense giving rise to the charges.

(2) Where the prosecutor is not the aggrieved person (Section 374 subsection (2)), the accused may bring countercharges against the aggrieved person. In that case the countercharges shall be served on the aggrieved person and he shall be summoned to the main hearing if the countercharges are not preferred at the main hearing in the aggrieved person's presence.

(3) The decision on the countercharges shall be given at the same time as the decision on the charges.

(4) Withdrawal of the charges shall have no influence on the proceedings on the countercharges .

Section 389. [Judgment Terminating Proceedings]

(1) If after hearing the case the court finds that the facts to be deemed as having been established constitute a criminal offense to which the procedure provided in this Chapter shall not be applicable, it shall terminate the proceedings in a judgment in which these facts must be clearly indicated.

(2) The public prosecution office shall be informed of the hearings in such cases.

Section 390. [Appellate Remedy for Private Prosecutor]

(1) The private prosecutor may avail himself of the same appellate remedies as the public prosecution office in proceedings on preferred public charges. The same shall apply to the application to reopen the proceedings in the cases under Section 362. The provision in Section 301 shall be applied to the private prosecutor's appellate remedy.

(2) Notices of appeal on law and applications to reopen proceedings concluded by a final judgment may be filed by the private prosecutor only in a document signed by an attorney-at-law.

(3) Submission and transmission of the files in accordance with Sections 320, 321, and 347 shall be made to and by the public prosecution office as in the proceedings on preferred public charges. Service of the notices of appeal on fact and law and of appeal on law on the complainant's opponent shall be effected by the court registry.

(4) The provision in Section 379a on payment of an advance for fees and the consequences of late payment shall apply *mutatis mutandis*.

(5) The provision in Section 383 subsection (2), first and second sentences, on termination of proceedings in view of negligibility shall also apply to appellate proceedings on fact and law. The order shall not be contestable.

Section 391. [Withdrawal of Charges; Restoration]

(1) The private prosecution may be withdrawn at any stage of the proceedings. The defendant's consent shall be required for the withdrawal after his examination has begun at the main hearing at first instance.

(2) The private prosecutor shall be deemed to have withdrawn the charges if in proceedings at first instance and, where the defendant filed an appeal on fact and law, in proceedings at second instance he fails to appear at the main hearing or is not represented by an attorney-at-law, or, although the court has ordered his personal appearance, fails to appear at the main hearing or at another hearing, or fails to comply with a time limit set for him, non-compliance with which shall result in termination of proceedings.

(3) If the appeal on fact and law was filed by the private prosecutor it shall immediately be dismissed in the event of the defaults referred to above notwithstanding the provision in Section 301.

(4) The private prosecutor may demand restoration of the *status quo ante* within one week after the default under the conditions specified in Sections 44 and 45.

Section 392. [Effect of Withdrawal]

A private prosecution once withdrawn may not be brought a second time.

Section 393. [Death of the Private Prosecutor]

(1) The private prosecutor's death shall result in termination of the proceedings.

(2) A private prosecution may, however, be continued after the private prosecutor's death by the persons entitled to bring a private prosecution pursuant to Section 374 subsection (2).

(3) The court shall be notified of a continuation by the person entitled within two months after the private prosecutor's death, and if no such notification is made this right shall be lost.

Section 394. [Notification to the Accused]

The accused shall be notified of the withdrawal of the private prosecution, of the private prosecutor's death, and of continuation of the private prosecution.

Chapter II Private Accessory Prosecution

Section 395. [Right to Join as a Private Accessory Prosecutor]

(1) Whoever

1. by an unlawful act

a) pursuant to sections 174 to 174c, 176 to 180, 180b, 181 and 182 of the Penal Code,

b) pursuant to sections 185 to 189 of the Penal Code,

c) pursuant to sections 221, 223 to 226 and 340 of the Penal Code,

d) pursuant to sections 234 to 235 and 239 subsections (3) and (4), section 239a and 239b of the Penal Code,

2. by an attempted unlawful act pursuant to section 211 and 212 of the Penal Code

is aggrieved or

3. through an application for a court decision (Section 172) gave rise to preferment of public charges

may join a public prosecution as a private accessory prosecutor.

(2) The same right shall vest in:

1. the parents, children, siblings, and the spouse of a person killed through an unlawful act,

2. the Federal President in the case of section 90 of the Penal Code, and the person concerned in the case of section 90b of the Penal Code,

3. the person who, pursuant to Section 374 in the cases designated in Section 374 subsection (1), numbers 7 and 8, is entitled to act as a private prosecutor and persons aggrieved by an unlawful act pursuant to section 142 subsection (2) of the Patent Act, section 25 subsection (2) of the Utility Models Act, section 10 subsection (2) of the Semi-Conductor Protection Act, section 39 subsection (2) of the Plant Variety Protection Act, section 143 subsection (2) of the Trade Mark Act, section 14 subsection (2) of the Designs Act and section 108a of the Copyright Act.

(3) Whoever is aggrieved by an unlawful act pursuant to section 229 of the Penal Code may join the public prosecution as a private accessory prosecutor if for special reasons, especially because of the serious consequences of the act, this appears to be imperative to safeguard his interests.

(4) Joinder shall be admissible at any stage of the proceedings. It may also be effected for the purpose of seeking appellate remedy after judgment has been given.

Section 396. [Declaration of Joinder]

(1) The declaration of joinder shall be submitted to the court in writing. A declaration of joinder received by the public prosecution office or the court prior to preferment of public charges shall take effect on preferment of public charges. In the proceedings involving penal orders the joinder shall take effect when a date for the main hearing has been set down (Section 408 subsection (3), second sentence, Section 411 subsection (1)) or the application for issuance of a penal order has been refused.

(2) After hearing the public prosecution office the court shall decide whether a person is entitled to join as a private accessory prosecutor. In the cases under Section 395 subsection (3) it shall decide, after also hearing the indicted accused, whether joinder is imperative on the grounds referred to there; this decision shall be incontestable.

(3) If the court considers termination of the proceedings pursuant to Section 153 subsection (2), Section 153a subsection (2), Section 153b subsection (2), or Section 154 subsection (2), it shall first decide on entitlement to joinder.

Section 397. [Rights of the Private Accessory Prosecutor]

(1) The private accessory prosecutor shall, after joinder, be entitled to be present at the main hearing even if he is to be examined as a witness. In other respects Sections 378 and 385 subsections (1) to (3) shall apply *mutatis mutandis*. The private accessory prosecutor shall also be entitled to challenge a judge (Sections 24 and 31) or an expert (Section 74), to ask questions (Section 240 subsection (2)), to object to orders by the presiding judge (Section 238 subsection (2)) and to object to questions (Section 242), to apply for evidence to be taken (Section 244 subsections (3) to (6)), and to make statements (Sections 257 and 258).

(2) If prosecution is limited pursuant to Section 154a, the right to join the public prosecution as a private accessory prosecutor shall remain unaffected. If the private accessory prosecutor is admitted to the proceedings, a limitation pursuant to Section 154a subsection (1) or (2) shall no longer apply insofar as it concerns the private accessory prosecution.

Section 397a. [Appointment of an Attorney-at-law as Counsel]

(1) Upon application of the private accessory prosecutor an attorney-at-law shall be appointed as his counsel if his right to join the proceedings as a private accessory

prosecutor is based on Section 395 subsection (1), number 1a or number 2, and if the act which gave rise to the right to join the proceedings was a serious criminal offense. If, at the time of his application, the private accessory prosecutor is under the age of sixteen, an attorney-at-law shall be appointed as his counsel even if the act within the meaning of the first sentence is a less serious offense or if the private accessory prosecutor is aggrieved by an unlawful act pursuant to section 225 of the Penal Code. The application may be made even before the declaration of joinder is issued. Section 142 subsection (1) shall apply *mutatis mutandis* to the appointment of the attorney-at-law.

(2) Where the conditions for an appointment pursuant to subsection (1) have not been fulfilled, the private accessory prosecutor shall, upon application, be granted legal aid for calling in an attorney-at-law under the same provisions as those applicable in civil litigation if the legal and factual situation is complex, if the aggrieved person cannot sufficiently safeguard his own interests, or if this cannot reasonably be expected of him. Subsection (1), third and fourth sentences, shall apply *mutatis mutandis*. Section 114, second part of the sentence, and section 121 subsections (1) to (3) of the Civil Procedure Code shall not be applicable.

(3) The court seized of the case shall decide on the appointment of the attorney-at-law and on the granting of legal aid. In cases referred to in subsection (2) the decision shall be incontestable.

Section 398. [Procedure]

(1) The course of the proceedings shall not be held up by joinder.

(2) A main hearing which has already been scheduled, as well as other scheduled hearings, shall be held on the dates set down, even if the private accessory prosecutor could not be summoned or notified at short notice.

Section 399. [Notification of Previous Decisions]

(1) Notification to the private accessory prosecutor of the decisions made and brought to the attention of the public prosecution office prior to joinder shall not be required except in the cases of Section 401 subsection (1), second sentence.

(2) Once the time limit has expired for the public prosecution office to contest such decisions, the private accessory prosecutor shall also not be entitled to contest them.

Section 400. [Private Accessory Prosecutor's Right to Appellate Remedy]

(1) The private accessory prosecutor may not contest the judgment with the objective of another legal consequence of the offense being imposed, or of the defendant being sentenced for a violation of the law which does not justify joinder by the private accessory prosecutor.

(2) The private accessory prosecutor shall have the right to lodge an immediate complaint against the order refusing to open the main proceedings or terminating the proceedings pursuant to Sections 206a and 206b, insofar as the order concerns the offense on the basis of which the private accessory prosecutor is entitled to joinder. In other respects the decision by which the proceedings are terminated cannot be contested by the private accessory prosecutor.

Section 401. [Appellate Remedy for Private Accessory Prosecutor]

(1) The private accessory prosecutor may avail himself of an appellate remedy independently of the public prosecution office. If joinder for the purpose of appellate remedy occurs after judgment, the contested judgment shall immediately be served upon the private accessory prosecutor. The time limit for stating the grounds for an appellate remedy shall begin to run on expiry of the time limit to be observed by the public prosecution office for filing an appellate remedy or, if the judgment has not yet been served upon the private accessory prosecutor, on service of the judgment upon him even if a decision has not yet been given on the private accessory prosecutor's entitlement to joinder.

(2) If the private accessory prosecutor was present at the main hearing or was represented by an attorney-at-law the time limit for filing an appellate remedy shall begin to run for him on pronouncement of judgment even if he was no longer present or represented when judgment was pronounced; he may not claim restoration of the *status quo ante* in respect of non-observance of the time limit on the ground that he was not instructed on his right to appellate remedy. If the private accessory prosecutor was not present or represented at all at the main hearing the time limit shall begin to run when the operative provisions of the judgment are served on him.

(3) Where only the private accessory prosecutor has filed an appeal on fact and law, such appeal shall immediately be dismissed, notwithstanding the provision in Section 301, if at the beginning of a main hearing neither the private accessory prosecutor nor an attorney-at-law representing him appeared. The private accessory prosecutor may, within one week after non-appearance, demand restoration of the *status quo ante* under the conditions of Sections 44 and 45.

(4) Further action in the case shall be incumbent on the public prosecution office if the contested decision is quashed by virtue of an appellate remedy filed by the private accessory prosecutor alone.

Section 402. [Revocation; Death of Private Accessory Prosecutor]

A declaration of joinder shall become ineffective through revocation and upon the death of the private accessory prosecutor.

Chapter III Compensation for the Aggrieved Person

Section 403. [Conditions]

(1) The aggrieved person or his heir may, in criminal proceedings, bring a property claim against the accused arising out of the criminal offense if the claim falls under the jurisdiction of the ordinary courts and is not yet pending before another court, in proceedings before the Local Court irrespective of the value of the matter in dispute.

(2) The aggrieved person or his heir is to be notified of the criminal proceedings as early as possible; at the same time he is to be informed that he may also of bring his claim in the criminal proceedings.

Section 404. [Application by the Aggrieved Person]

(1) The application asserting the claim may be made in writing or orally to be recorded by the registry clerk, or orally at the main hearing before the closing speeches begin. The application must specify the subject of, and the grounds for, the claim and should set forth the evidence. If the application is not made at the main hearing, it shall be served on the accused.

(2) Making an application shall have the same effects as bringing an action in civil litigation.

(3) The applicant shall be notified of the place and time of the main hearing if the application is made before the main hearing begins. The applicant, his statutory representative, and the spouse of the person entitled to make the application may take part in the main hearing.

(4) The application may be withdrawn prior to pronouncement of the judgment.

(5) The applicant and the indicted accused shall, upon application, be granted legal aid under the same provisions as in civil litigation as soon as public charges have been preferred. Section 121 subsection (2), first sentence, of the Civil Procedure Code shall be applicable with the proviso that, if the indicted accused has defense counsel, the latter shall be assigned to him; if the applicant avails himself of the assistance of an attorney-at-law in the main proceedings, the latter shall be assigned to him. The court seized of the case shall be competent to decide; the decision shall not be contestable.

Section 405. [Dispensing with a Decision]

The court shall dispense with a decision on the application in the judgment if the defendant is not found guilty of a criminal offense and no measure of reform and prevention is ordered against him, or if the application appears unfounded. The court shall also dispense with a decision if the application is not suitable to be dealt with in criminal proceedings, particularly if its examination would protract the proceedings or if the application is inadmissible; this may also be done in an order at any stage of the proceedings.

Section 406. [Decision]

(1) If the result of the main hearing shows that the application is well-founded, the court shall grant it in the judgment. The decision may be limited to the ground for, and part of, the asserted claim; section 318 of the Civil Procedure Code shall apply *mutatis mutandis*.

(2) The court may declare the decision to be enforceable executable. It may make provisional enforcement subject to the furnishing of security; it may also allow the defendant to avoid provisional enforcement by furnishing security. These measures may be taken subsequently or may be amended or revoked in an order which shall be incontestable.

(3) The decision on the application shall be equivalent to a judgment in civil litigation. If the claim has not been awarded, it may be asserted elsewhere. If a final decision has been given on the ground for the claim, the hearing concerning the amount shall be held before the competent civil court pursuant to section 304 subsection (2) of the Civil Procedure Code.

(4) The applicant shall be provided with a copy of the judgment with reasons, or with an excerpt therefrom.

Section 406a. [Appellate Remedy]

(1) The applicant shall not be entitled to an appellate remedy also where the court dispenses with a decision.

(2) If the court grants the application, the defendant may contest the decision by an appellate remedy which would otherwise be admissible, also without contesting that part of the judgment which concerns the criminal offense. In this case the decision on the appellate remedy may be given in an order at a sitting held in camera.

(3) If, following an appeal, the conviction is quashed and the defendant is found not guilty of a criminal offense, and no measure of reform and prevention is ordered against him, the decision granting the application shall be quashed, even if the judgment has not been contested in this respect.

Section 406b. [Execution]

Execution shall be governed by the provisions which apply to the execution of judgments in civil litigation. The court of civil jurisdiction in whose district the criminal court of first instance is located shall have jurisdiction over proceedings pursuant to sections 731, 767, 768, and 887 to 890 of the Civil Procedure Code. Objections which concern the claim itself shall only be admissible to the extent that the reasons on which they are based arose after conclusion of the main hearing at first instance and, if the court hearing the appeal on fact and law has given its decision, after conclusion of the appellate hearing on fact and law.

Section 406c. [Reopening]

(1) The application to reopen the proceedings may be limited by the defendant for the purpose of obtaining an essentially different decision on the claim. The court shall then give a decision in an order without a new main hearing.

(2) Section 406a subsection (3) shall apply *mutatis mutandis* if the application to reopen the proceedings is directed only against that part of the judgment which concerns the criminal offense.

Chapter IV Others Rights of the Aggrieved Person

Section 406d. [Notification of the Aggrieved Person]

(1) The aggrieved person shall, upon application, be notified of the outcome of the court proceedings to the extent that they relate to him.

(2) Notification need not be furnished if delivery is not possible at the address which the aggrieved person indicated. If the aggrieved person has selected an attorney-at-law as counsel, if counsel has been assigned to him or if he is legally represented by counsel, Section 145a shall apply *mutatis mutandis*.

(3) Repealed

Section 406e. [Inspection of Files]

(1) An attorney-at-law may inspect for the aggrieved person the files which are available to the court or, if public charges were preferred, would have to be submitted to it, and may inspect officially impounded pieces of evidence, if he shows a legitimate interest. In the cases mentioned in Section 395 such legitimate interest need not be shown.

(2) Inspection of the files shall be refused if overriding interests worthy of protection, either of the accused or of other persons, constitute an obstacle thereto. It may be refused if the purpose of the investigation appears to be jeopardized or if the proceedings would be considerably delayed thereby.

(3) Upon application and unless important reasons constitute an obstacle, the attorney-at-law may be handed the files, but not the pieces of evidence, to take to his office or private premises.

(4) The public prosecution office shall decide whether to grant inspection of the files in preparatory proceedings and after final conclusion of the proceedings, or otherwise the presiding judge of the court seized of the case. If the public prosecution office refuses inspection of the files, a court decision pursuant to Section 161a subsection (3), second to fourth sentences, may be applied for; the presiding judge's decision shall be incontestable.

(5) Under the conditions in subsection (1) the aggrieved person may be given information and copies from the files; subsections (2) and (4), first sentence, shall apply *mutatis mutandis*.

Section 406f. [Assistance and Representation of the Aggrieved Person]

(1) The aggrieved person may avail himself of the assistance of an attorney-at-law or be represented by such attorney in criminal proceedings.

(2) The attorney-at-law shall be permitted to be present at the aggrieved person's examination by the court or by the public prosecution office. He may exercise the aggrieved person's right to object to questions (Section 238 subsection (2), Section 242) and may submit an application to exclude the public pursuant to section 171b of the Courts Constitution Act, but not if the aggrieved person objects thereto.

(3) If the aggrieved person is examined as a witness, a person whom he trusts may, at his request, be permitted to be present. The decision shall be made by the person conducting the examination; it shall not be contestable.

Section 406g. [Assistance for an Aggrieved Person Entitled to Private Accessory Prosecution]

(1) Whoever is entitled to join the proceedings as a private accessory prosecutor pursuant to Section 395 may, also prior to preferment of public charges, avail himself of the assistance of an attorney-at-law or be represented by such attorney, also where joinder as a private accessory prosecutor is not declared.

(2) In addition to the rights of the attorney-at-law designated in Section 406f subsection (2), he shall be entitled to be present at the main hearing, also if the main hearing is not held in public. He shall be permitted to be present at judicial examinations and judicial inspections if the purpose of the investigation is not jeopardized thereby; the decision shall be incontestable. Section 168c subsection (5) and Section 224 subsection (1) shall apply *mutatis mutandis* to the notification.

(3) Section 397a shall apply *mutatis mutandis* to:

1. the appointment of an attorney-at-law and

2. the granting of legal aid for calling in an attorney-at-law.

In preparatory proceedings the court which would be competent to open the main proceedings shall give a decision.

(4) Upon application by the person entitled to join the proceedings as a private accessory prosecutor an attorney-at-law may, in the cases under Section 397a subsection (2), be appointed as counsel provisionally if:

1. this is imperative for special reasons,

2. the assistance of counsel is urgently required and

3. the granting of legal aid appears to be possible, but a decision cannot be expected on it in time.

Section 142 subsection (1) and Section 162 shall apply *mutatis mutandis* to the appointment. The appointment shall end unless an application for granting legal aid is filed within a time limit to be set by the judge, or if the granting of legal aid is refused.

Section 406h. [Information as to Rights]

The aggrieved person shall be informed of his rights pursuant to Sections 406d, 406e, 406f and 406g, as well as of his right to join the public prosecution as a private accessory prosecutor (Section 395) and to apply for an attorney-at-law to be appointed or called in as counsel (Section 397a).

Part Six Special Types of Procedure

Chapter I Procedure for Penal Orders

Section 407. [Admissibility]

(1) In proceedings before the criminal court judge and in proceedings under the jurisdiction of a court with lay judges, the legal consequences of the offense may, in the case of less serious offenses, be imposed, upon written application by the public prosecution office, in a written penal order without a main hearing. The public prosecution office shall file such application if it does not consider a main hearing to be necessary given the outcome of the investigations. The application shall refer to specific legal consequences. The application shall constitute preferment of the public charges.

(2) A penal order may impose only the following legal consequences of the offense, either on their own or in combination:

1. fine, warning with sentence reserved, driving ban, forfeiture, confiscation, destruction, making something unusable, announcement of the decision, and imposition of a regulatory fine against a legal person or an association,

2. withdrawal of permission to drive, where the bar does not exceed two years, as well as

3. dispensing with punishment.

Where the indicted accused has defense counsel, imprisonment not exceeding one year may also be imposed, provided its execution is suspended on probation.

(3) The court shall not be required to give the indicted accused a prior hearing (Section 33 subsection (3)).

Section 408. [Judicial Decisions]

(1) If the presiding judge of the court with lay judges considers the criminal court judge to have jurisdiction, he shall refer the case to the latter through the public prosecution office; the ruling shall be binding on the criminal court judge, and the public prosecution office shall be entitled to lodge an immediate complaint. If the criminal court judge considers the court with lay judges to have jurisdiction, he shall, through the public prosecution office, submit the files to the presiding judge for a decision.

(2) If the judge does not consider that there are sufficient grounds for suspecting the indicted accused, he shall refuse to issue a penal order. The decision shall be equivalent to the ruling declining to open to the main proceedings (Section 204, Section 210 subsection (2), Section 211).

(3) The judge shall comply with the public prosecution office's application if there are no objections to issuing the penal order. He shall set down a date for the main hearing if he has objections to deciding the case without a main hearing, if he wishes to deviate from the legal assessment in the application to issue the penal order, or if he wishes to impose a legal consequence other than that applied for and the public prosecution office insists on its application. In addition to the summons, the defendant shall be provided with a copy of the application to issue a penal order, not including the legal consequence applied for.

Section 408a. [Application for Penal Order After Opening of the Main Proceedings]

(1) Where the main proceedings have already been opened, the public prosecution office may, in proceedings before the criminal court judge and before the court with lay judges, apply for issuance of a penal order if the conditions in Section 407 subsection (1), first and second sentences, obtain, and if the defendant's failure to appear or his absence or another important reason constitutes an obstacle to the main hearing being conducted. Section 407 subsection (1), fourth sentence, and Section 408 shall not apply.

(2) The judge shall grant the application if the conditions in Section 408 subsection (3), first sentence, obtain. In other cases he shall refuse the application in an incontestable ruling and continue the main proceedings.

Section 408b. [Appointment of Defense Counsel]

Where the judge is considering granting the public prosecution office's application to issue a penal order with the legal consequence set out in Section 407 subsection (2), second sentence, he shall appoint defense counsel for an indicted accused who does not yet have defense counsel. Section 141 subsection (3), shall apply *mutatis mutandis*.

Section 409. [Content of the Penal Order]

(1) The penal order shall contain:

1. the personal data of the defendant and of any other persons involved;

2. the defense counsel's name;

3. the designation of the offense the defendant is charged with, time and place of commission and designation of the statutory elements of the criminal offense;

4. the applicable provisions by section, subsection, number, letter and designation of the statute;

5. the evidence;

6. the legal consequences imposed;

7. information on the possibility of objection and the relevant time limit and form of the objection as well as an indication that the penal order shall become effective and executable unless an objection is lodged against it pursuant to Section 410.

If a sentence of imprisonment is imposed on the defendant, or if he is given a warning with sentence reserved or if a driving ban is imposed on him, he shall be given the information referred to in Section 268a subsection 3 or Section 268c, first sentence. Section 267 subsection 6, second sentence, shall apply *mutatis mutandis*.

(2) The penal order shall also be communicated to the defendant's statutory representative.

Section 410. [Time Limit for Lodging Objections; Entry into Force]

(1) Within two weeks following service of the penal order the defendant may lodge an objection against the penal order at the court which issued it, either in writing or orally to be recorded by the registry. Sections 297 to 300 and Section 302 subsection (1), first sentence, and subsection (2) shall apply *mutatis mutandis*.

(2) The objection may be limited to certain points of complaint.

(3) Where objections to the penal order are not lodged in time the order shall be equivalent to a judgment that has entered into force.

Section 411. [Dismissal for Inadmissibility; Date of Main Hearing]

(1) Where the objection was lodged too late or is otherwise inadmissible it shall be dismissed in an order with no main hearing; an immediate complaint shall be admissible against the order. In other cases a date shall be set down for the main hearing.

(2) The defendant may be represented at the main hearing by defense counsel provided with a written power of attorney. Section 420 shall apply.

(3) The complaint and the objection may be withdrawn prior to pronouncement of the judgment by the court of first instance. Section 303 shall apply *mutatis mutandis*. Where the penal order has been issued in proceedings pursuant to Section 408a, the complaint cannot be withdrawn.

(4) Where an objection has been lodged, the court when giving judgment shall not be bound by the decision contained in the penal order.

Section 412. [Non-Appearance of the Defendant]

If at the beginning of the main hearing the defendant has not appeared and is not represented by defense counsel and has no sufficient excuse for the non-appearance, Section 329 subsections (1), (3) and (4) shall apply *mutatis mutandis*. If the statutory representative has lodged an objection, Section 330 shall also apply *mutatis mutandis*.

Chapter II Procedure for Preventative Detention

Section 413. [Conditions]

If the public prosecution office does not conduct criminal proceedings because of the perpetrator's lack of criminal responsibility or his unfitness to stand trial, it may file an application for an order imposing measures of reform and prevention on their own, if this is admissible by virtue of a statute and the order is to be anticipated in the light of the result of the investigations (procedure for preventive detention).

Section 414. [Proceedings]

(1) The provisions governing criminal proceedings shall apply to preventive detention proceedings *mutatis mutandis* unless otherwise provided.

(2) The application shall be equivalent to public charges. Instead of an indictment a written application shall be submitted complying with the requirements for an indictment. The application shall indicate the measure of reform and prevention applied for by the public prosecution office. If the judgment does not impose a measure of reform and prevention the application shall be refused.

(3) An expert shall be given the opportunity in the preliminary proceedings to prepare the opinion to be rendered at the main hearing.

Section 415. [Main Hearing Without the Accused]

(1) If in the preventive detention proceedings the appearance of the accused in court is impossible due to his condition or is inappropriate for reasons of public order or security, the court may conduct the main hearing without the accused being present.

(2) In this case the accused shall be examined prior to the main hearing by a commissioned judge with the assistance of an expert. The public prosecution office, the accused, defense counsel and the statutory representative shall be informed of the date for the examination. It shall not be necessary for the public prosecutor, defense counsel and the statutory representative to be present.

(3) If the condition of the accused so requires or if the proper conduct of the main hearing is otherwise not possible, the court may conduct the main hearing in the preventive detention proceedings after examination of the accused on the charges, also in a case where the accused is not, or is only temporarily, present.

(4) If a main hearing takes place without the accused, his previous statements contained in a judicial record may be read out. The record of his prior examination pursuant to subsection (2), first sentence, shall be read out.

(5) An expert shall be examined at the main hearing concerning the accused's condition. If the expert has not previously examined the accused he shall be given the opportunity for an examination prior to the main hearing.

Section 416. [Transition to Criminal Proceedings]

(1) If, in the preventive detention proceedings, the accused's criminal responsibility becomes apparent after main proceedings were opened and if the court has no jurisdiction over the criminal proceedings, it shall declare, in an order, that it lacks jurisdiction and shall refer the matter to the competent court. Section 270 subsections (2) and (3) shall apply *mutatis mutandis*.

(2) If, in the preventive detention proceedings the accused's criminal responsibility becomes apparent after the main proceedings were opened and if the court also has jurisdiction over the criminal proceedings, the accused shall be informed of the new legal situation and shall be given the opportunity to defend himself. If he states that he has not sufficiently prepared his defense, the main hearing shall be suspended upon his application. If pursuant to Section 415 the main hearing has been held in the accused's absence, those parts of the main hearing shall be repeated during which the accused was not present.

(3) Subsections (1) and (2) shall apply *mutatis mutandis* if, in the preventive detention proceedings, it becomes apparent after the main proceedings were opened that the accused is fit to stand trial and that the preventive detention proceedings are being conducted because of his unfitness to stand trial.

Chapter IIa Accelerated Procedure

Section 417. [Application by the Public Prosecution Office]

In proceedings before the criminal court judge and the court with lay judges the public prosecution office shall file an application, in writing or orally, for a decision to be taken in an accelerated procedure if, given the simple factual situation or the clarity of the evidence, the case is appropriate for an immediate hearing.

Section 418. [Main Hearing]

(1) Where the public prosecution office files the application, the main hearing shall be held immediately or at short notice, without a decision to open main proceedings being required.

(2) The accused shall be summoned only if he does not appear at the main hearing of his own volition or is not brought before the court. He shall be informed in the summons of the charges against him. The time limit set in the summons shall be twenty-four hours.

(3) It shall not be necessary to file a bill of indictment. Where such bill is not filed, the charges shall be preferred orally at the beginning of the main hearing and their essential content shall be included in the record made at the sitting.

(4) Where imprisonment of at least six months is to be anticipated, defense counsel shall be appointed for an accused who does not yet have defense counsel for the accelerated proceedings before the Local Court.

Section 419. [Maximum Sentence; Decision]

(1) The criminal court judge or the court with lay judges shall grant the application if the case is appropriate for a hearing using this procedure. A custodial sentence exceeding imprisonment of one year or a measure of reform and prevention shall not be imposed in such proceedings. Withdrawal of permission to drive shall be admissible.

(2) Adjudication using the accelerated procedure may be refused in the main hearing until such time as judgment is pronounced. The ruling shall not be contestable.

(3) Where adjudication using the accelerated procedure is refused, the court shall decide to open main proceedings if there are sufficient grounds for suspecting the indicted accused of having committed a criminal offense (Section 203); where main proceedings are not opened and adjudication using the accelerated procedure is refused, submission of a new bill of indictment may be dispensed with.

Section 420. [Taking of Evidence]

(1) Examination of a witness, expert or co-accused may be replaced by reading out records of an earlier examination as well as of documents containing written statements originating from them.

(2) Statements from public authorities and other agencies about their own observations, investigations and findings made in an official context and about those made by their staff may be read out, also in cases where the conditions of Section 256 are not fulfilled.

(3) The procedure pursuant to subsections (1) and (2) shall require the consent of the defendant, his defense counsel and the public prosecution office if they are present at the main hearing.

(4) In proceedings before the criminal court judge, the latter shall, notwithstanding Section 244 subsection (2), determine the extent to which evidence shall be taken.

Sections 421 to 429. Deleted

Chapter III Procedure Concerning Confiscation and Seizure of Property

Section 430. [Waiver of Confiscation]

(1) If confiscation is deemed insignificant in addition to the anticipated penalty or measure of reform and prevention, and if the proceedings so far as they relate to confiscation are considered to be disproportionate or to make a decision on the other legal consequences of the offense unreasonably difficult, the court may, with the public prosecution office's consent, limit prosecution of the offense to the other legal consequences at any stage of the proceedings.

(2) The public prosecution office may make such limitation in the preparatory proceedings. The limitation shall be recorded in the files.

(3) The court may revoke the limitation at any stage of the proceedings. An application to this effect by the public prosecution office shall be granted. If the limitation is revoked again, Section 265 shall apply *mutatis mutandis*.

Section 431. [Participation of Third Persons in Proceedings]

(1) If in the criminal proceedings a decision has to be made on confiscation of an object and it appears to be credible that:

1. the object is owned by a person who is not the indicted accused, or to which such person is entitled, or

2. another person has some other right to the object, the extinguishment of which could be ordered in the event of confiscation (section 74e subsection (2), second and third sentences, Penal Code),

the court shall order that the other person shall participate in the proceedings as far as confiscation is concerned (person with an interest in the confiscation). The court may dispense with the order if due to certain facts it is to be assumed that participation is not

feasible. The court may also dispense with the order if a party, association, or institution outside the territorial scope of this statute pursuing action against the existence or security of the Federal Republic of Germany or any constitutional principles designated in section 92 subsection (2) of the Penal Code would have to participate, and if it is to be assumed according to the circumstances such party, association or institution, or one of its agents, made available the object to promote their action; in this case it shall be sufficient to hear the owner of the object or the person authorized to exercise the right prior to the decision on confiscation of the object, if this is feasible.

(2) The court may order that participation shall not extend to the question of the indicted accused's guilt if:

1. confiscation in the case of subsection (1), number 1, is possible only on the condition that the indicted accused owns, or is entitled to, the object, or

2. the object according to the circumstances which may substantiate confiscation can be taken away permanently, without compensation, from the person with an interest in the confiscation also by virtue of legal provisions outside the criminal law.

(3) If a decision has to be given against a legal person or an association (section 75, in conjunction with section 74c Penal Code) on confiscation of an equivalent sum of money, the court shall order their participation.

(4) Participation in the proceedings may be ordered prior to pronouncement of confiscation and, if an admissible appeal on fact and law has been filed, before the closing speeches have been completed in such appellate proceedings.

(5) The decision ordering participation in the proceedings cannot be contested. If participation in the proceedings is refused or an order is made pursuant to subsection (2), an immediate complaint shall be admissible.

(6) If a person states before the court or the public prosecution office, either in writing or orally for the record, or before any other authority in writing that he does not want to object to the confiscation of the object, his participation in the proceedings shall not be ordered or the order shall be revoked.

(7) The course of the proceedings shall not be delayed by participation in the proceedings.

Section 432. [Hearing the Person with an Interest in Confiscation]

(1) If there are indications in the preparatory proceedings that somebody might have an interest in the confiscation, he shall be heard if this appears feasible. Section 431 subsection (1), third sentence, shall apply *mutatis mutandis*.

(2) If the person who might have an interest in the confiscation states that he wants to object to the confiscation and if it appears credible that he has a right to the object, the provisions

on the examination of the accused shall, in the event of his examination, apply *mutatis mutandis* to the extent that he could become a participant in the proceedings.

Section 433. [Rights and Duties of the Person with an Interest in Confiscation]

(1) With the opening of the main proceedings, a person with an interest in the confiscation shall have the rights which a defendant enjoys unless otherwise provided by this statue. In accelerated proceedings this shall apply from the beginning of the main hearing, and in proceedings for a penal order, from the issuance of the penal order.

(2) The court may order the personal appearance of a person with an interest in the confiscation for the purpose of clarifying the facts. If such person's personal appearance has been ordered and he fails to appear without sufficient excuse, the court may order that he be brought before it if a summons has been served upon him also drawing his attention to this possibility.

Section 434. [Representation by Defense Counsel]

(1) A person with an interest in the confiscation may at any stage of the proceedings be represented, on the basis of a written power of attorney, by an attorney-at-law or any other person who may be chosen as defense counsel. The provisions in Sections 137 to 139, 145a to 149, and 218 applying to the defense shall apply *mutatis mutandis*.

(2) The court may assign to a person with an interest in the confiscation an attorney-at-law or any other person who may be appointed as defense counsel if the factual or legal situation is complex or if he cannot exercise his rights himself.

Section 435. [Summons to Main Hearing]

(1) Notification of the date set down for the main hearing shall be served on the person with an interest in the confiscation; Section 40 shall apply *mutatis mutandis*.

(2) On notification of the date of the hearing he shall, as far as he is a participant in the proceedings, be furnished with the bill of indictment and, in the cases under Section 207 subsection (2), with the order opening proceedings.

(3) At the same time, the person with an interest in the confiscation shall be advised of the fact that:

1. the hearing may be conducted in his absence; and

2. a decision shall be given on the confiscation in relation to him as well.

Section 436. [Non-Appearance at the Main Hearing]

(1) If a person with an interest in the confiscation fails to appear at the main hearing despite being properly informed of the date of the hearing, the hearing may be conducted in his absence; Section 235 shall not be applicable.

(2) Section 244 subsection (3), second sentence, and subsections (4) to (6) shall not apply to applications made by the person with an interest in the confiscation for evidence to be taken regarding the question of the defendant's guilt.

(3) If the court orders confiscation on the basis of circumstances constituting an obstacle to compensation of the person with an interest in the confiscation, it shall also declare that such person shall not be entitled to compensation. This shall not apply if the court considers compensation of such person to be necessary because it would be an undue hardship to refuse such compensation; in this case the court shall also determine the amount of compensation (section 74f subsection (3) Penal Code). The court shall, in advance, advise persons with an interest in the confiscation of the possibility of such a decision and shall give them the opportunity to make submissions.

(4) If a person with an interest in the confiscation was neither present nor represented when the judgment was pronounced, the judgment shall be served on him. The court may order parts of the judgment not concerning the confiscation to be struck out.

Section 437. [Appellate Proceedings]

(1) In appellate proceedings the examination as to whether confiscation is justified with respect to a person with an interest in the confiscation shall extend to the verdict of guilt in the contested judgment only if such person makes objections in this respect and, through no fault of his own, was not heard concerning the question of guilt earlier in the proceedings. If the examination also extends to the question of guilt, the court shall refer to the findings of guilt unless such person's submissions require renewed examination.

(2) Subsection (1) shall not apply to appellate proceedings on fact and law if at the same time a decision has to be given with respect to the verdict of guilt upon an appellate remedy filed by another participant.

(3) In appellate proceedings on law, objections to the verdict of guilt shall be made within the time limit set for the submission of grounds of appeal.

(4) Where it is only the decision on the amount of compensation that is contested, a decision can be given on the appellate remedy in a ruling unless the participants object. The court shall, in advance, advise them of the possibility of such procedure and of making an objection, and shall give them the opportunity to make submissions.

Section 438. [Confiscation by Penal Order]

(1) If confiscation is ordered by penal order, the penal order shall also be served upon persons with an interest in the confiscation; Section 435 subsection (3), number 2, shall apply *mutatis mutandis*.

(2) If a decision is required only on the objection made by a person with an interest in the confiscation, Section 439 subsection (3), first sentence, and Section 441 subsections (2) and (3) shall apply *mutatis mutandis*.

Section 439. [Subsequent Proceedings]

(1) If confiscation of an object has been ordered with binding effect and if someone substantiates:

1. that at the time when the decision entered into force he had a right to the object, which right is negatively affected by the decision or no longer exists, and

2. that he could not exercise the rights of a person with an interest in the confiscation through no fault of his own, either in the proceedings at first instance or in the appellate proceedings on fact and law,

he may claim in subsequent proceedings that the confiscation, insofar as it relates to him, was not justified; Section 360 shall apply *mutatis mutandis*.

(2) The subsequent proceedings shall be applied for within a month after the day on which the applicant obtained knowledge of the final decision. The application shall be inadmissible if two years have elapsed since the decision entered into force and its execution has been effected.

(3) The court shall not examine the verdict of guilt if, according to the circumstances that substantiated the confiscation, an order pursuant to Section 431 subsection (2) would have been admissible in criminal proceedings. In all other cases Section 437 subsection (1) shall apply *mutatis mutandis*.

(4) If the right claimed by the applicant is not proved, the application shall be unfounded.

(5) Prior to the decision, the court may revoke the confiscation order with the public prosecution office's consent, if the subsequent proceedings are considered disproportionate.

(6) Reopening of the proceedings pursuant to Section 359, number 5, for the purpose of making objections pursuant to subsection (1) shall be precluded.

Section 440. [Independent Confiscation Proceedings]

(1) The public prosecution office and the private prosecutor may file the application to order confiscation independently if this is admissible by virtue of a statue and the order is to be anticipated in the light of the result of the investigations.

(2) The object must be designated in the application. The facts substantiating the admissibility of the independent confiscation shall also be stated. Otherwise Section 200 shall apply *mutatis mutandis*.

(3) Sections 431 to 436 and 439 shall apply *mutatis mutandis*.

Section 441. [Jurisdiction in Subsequent and in Independent Confiscation Proceedings]

(1) The decision on confiscation in subsequent proceedings (Section 439) shall be given by the court of first instance; the decision on independent confiscation (Section 440) shall be given by the court which would be competent in the case of criminal prosecution of a particular person. For the decision on independent confiscation, the court in whose district the object has been secured shall also have local jurisdiction.

(2) The court shall give its decision in a ruling, against which an immediate complaint shall be admissible.

(3) A decision on an admissible application shall, however, be given in a judgment after an oral hearing if the public prosecution office or any other participant so applies, or if the court so orders; the provisions governing the main hearing shall apply *mutatis mutandis*. Whoever filed an admissible appeal on fact and law against the judgment may no longer file an appeal on law against the appellate judgment on fact and law.

(4) If the decision has been given in a judgment, Section 437 subsection (4) shall apply *mutatis mutandis*.

Section 442. [Forfeiture; Destruction; Rendering Unusable]

(1) Forfeiture, destruction, rendering something unusable and eliminating a situation that is illegal shall be equivalent to confiscation within the meaning of Sections 430 to 441.

(2) If forfeiture pursuant to section 73 subsection (3) or section 73a of the Penal Code is directed against a person other than the indicted accused the court shall order that such person shall participate in the proceedings. He may state his objections to the order of forfeiture in subsequent proceedings, if through no fault of his own he was not in a position, either in proceedings at first instance or in appellate proceedings on fact and law, to exercise the rights of a participant in the proceedings. If under these conditions subsequent proceedings are applied for, execution measures shall not be taken against the applicant prior to the conclusion of such proceedings.

Section 443. [Seizure of Property]

(1) Property or individual items of property may be seized, if located in the territorial scope of this statute and if they belong to an accused against whom public charges were preferred or a warrant of arrest was issued for a criminal offense pursuant to:

1. sections 81 to 83 subsection (1), sections 94 or 96 subsection (1), section 97a or 100 of the Penal Code,

2. one of the provisions referred to in section 330 subsection (1), first sentence, of the Penal Code, provided that the accused is suspected of intentionally endangering life or limb of another or another person's property of considerable value, or under the conditions in section 330 subsection (1), second sentence, numbers 1 to 3, of the Penal Code, or pursuant to section 330 subsection (2) or section 330a subsections (1) or (2) of the Penal Code,

3. section 52a subsections (1) to (3), section 53 subsection (1), first sentence, numbers 1 and 2, second sentence, of the Weapons Act, section 34 subsections (1) to (6) of the Foreign Trade and Payments Act or pursuant to section 19 subsections (1) to (3), section 20 subsections (1) or (2), each also in conjunction with section 21 or section 22a subsections (1) to (3) of the Act on the Control of Weapons of War, or

4. a provision referred to in section 29 subsection (3), second sentence, number 1, of the Narcotics Act under the conditions set out therein or a criminal offense pursuant to sections 29a, section 30 subsection (1), numbers 1, 2, 4, section 30a or Section 30b of the Narcotics Act.

The seizure shall also include any property subsequently acquired by the accused. The seizure shall be revoked after conclusion of the main hearing at first instance at the latest.

(2) Seizure shall be ordered by the judge. In exigent circumstances, the public prosecution office can make a provisional order for seizure; the provisional order shall become ineffective if it is not confirmed by the judge within three days.

(3) The provisions in Sections 291 to 293 shall apply *mutatis mutandis*.

Chapter IV Procedure for Imposing a Regulatory Fine against Legal Persons and against Associations

Section 444.

(1) If in criminal proceedings a decision has to be given on imposition of a regulatory fine against a legal person or an association (section 30 of the Regulatory Offenses Act), the court shall order their participation in the proceedings in respect of the offense; Section 431 subsections (4) and (5) shall apply *mutatis mutandis*.

(2) The legal person or the association shall be summoned to the main hearing; if their representative fails to appear with no sufficient excuse, the hearing may be conducted in their absence. Sections 432 to 434, Section 435 subsections (2) and (3), number 1, Section 436 subsections (2) and (4), Section 437 subsections (1) to (3), Section 438 subsection (1) shall apply to their participation in the proceedings and, insofar as a decision has to be given on their objection, Section 441 subsections (2) and (3), shall apply *mutatis mutandis*.

(3) Sections 440 and 441 subsections (1) to (3) shall apply to the independent proceedings *mutatis mutandis*. The court in whose district the legal person or the association has its seat or a branch office shall also have local jurisdiction.

Sections 445 to 448. Deleted

Part Seven Execution of Sentence and Costs of Proceedings

Chapter I Execution of Sentence

Section 449. [Execution]

Criminal judgments shall not be enforceable before they have entered into force.

Section 450. [Crediting Remand Detention and Withdrawal of Driver's License]

(1) Where a defendant has undergone remand detention after he waived the right to seek an appellate remedy or after he has withdrawn an appellate remedy, or after the time limit for seeking an appellate remedy has expired without the defendant having made a statement, the period of such detention shall be deducted in full from an enforceable prison sentence.

(2) If, pursuant to the judgment, the impounding, securing, or seizure of the driver's license pursuant to Section 111a subsection (5), second sentence, has continued, such period shall be deducted in full from the duration of the driving ban (section 44 Penal Code).

Section 450a. [Crediting Detention Pending Extradition]

(1) The deprivation of liberty undergone by the convicted person abroad in extradition proceedings for the purpose of execution of sentence shall also be credited against the enforceable prison sentence. This shall also apply if the convicted person has been extradited also for the purpose of criminal prosecution.

(2) In the case of extradition for the purpose of execution of more than one sentence, the deprivation of liberty undergone abroad shall be credited against the highest sentence, in the case of sentences of equal severity against the sentence which, after the convicted person's committal, was executed first.

(3) The court may, upon application by the public prosecution office, order that no, or only partial, credit shall be given, where such credit is not justified in view of the convicted person's conduct after pronouncement of the judgment in which the underlying findings of fact were last examined. If the court gives such an order, credit shall not be given in any other proceedings, for deprivation of liberty undergone abroad, so far as its duration does not exceed the sentence.

Section 451. [Executing Authorities]

(1) The sentence shall be executed by the public prosecution office as the executing authority on the basis of a certified copy of the operative provisions of the judgment containing an endorsement of enforceability, to be issued by the registry clerk.

(2) The prosecutors at the Local Courts shall be authorized to execute the sentence only insofar as such authority has been conferred on them by the *Land* department of justice.

(3) The public prosecution office which is the executing authority shall exercise the duties incumbent on the public prosecution office also vis-à-vis the penal chamber responsible for execution of sentences at another Regional Court. It may assign its duties to the public prosecution office competent at that court if this appears to be imperative in the interest of the convicted person and if that public prosecution office gives its consent.

Section 452. [Pardoning Power]

The power of pardoning shall be vested in the Federation in cases decided at first instance in the exercise of jurisdiction by the Federation; in all other cases it shall be vested in the *Laender*.

Section 453. [Subsequent Decision on Probationary Suspension of Sentence or on Warning with Sentence Reserved]

(1) The subsequent decisions relating to the suspension of a sentence on probation or a warning with sentence reserved (sections 56a to 56g, 58, 59a, 59b Penal Code) shall be given by the court, with no oral hearing, in an order. The public prosecution office and the defendant shall be heard. If the court has to decide on a revocation of suspension of sentence because of a violation of conditions or instructions, it shall give the convicted person an opportunity to be heard orally. Where a probation officer has been appointed the court shall inform him if a decision on the revocation of suspension of sentence or of remission of sentence is being considered; the court should give him information obtained from other criminal proceedings if the objective of probationary supervision makes this seem appropriate.

(2) A complaint shall be admissible against decisions pursuant to subsection (1). The complaint may be based only on the ground that an order made is unlawful or that the probation period has been subsequently prolonged. Revocation of suspension, remission of sentence, revocation of remission, conviction with sentence reserved and a ruling that a warning shall be sufficient (sections 56f, 56g, 59b Penal Code) may be contested by immediate complaint.

Section 453a. [Instruction on Suspension of Sentence or Warning with Sentence Reserved]

(1) If the defendant was not instructed pursuant to Section 268a subsection (3), such instruction shall be given by the court competent to give the decision pursuant to Section 453. The presiding judge may entrust a commissioned or a requested judge with giving the instruction.

(2) The instruction shall be given orally except in cases of minor significance.

(3) The defendant should also be instructed in respect of the subsequent decisions. Subsection (1) shall apply *mutatis mutandis*.

Section 453b. [Supervision of the Convicted Person]

(1) The court shall supervise the conduct of the convicted person during the probation period and especially compliance with conditions and instructions as well as with offers made and assurances given.

(2) Supervision shall be the responsibility of the court competent to give the decisions pursuant to Section 453.

Section 453c. [Warrant of Arrest on Revocation]

(1) If there are sufficient reasons for assuming that the suspension will be revoked, the court may, until the revocation order enters into force, take provisional measures to ensure that the convicted person will not abscond, and, if necessary, issue a warrant of arrest under the prerequisites of Section 112 subsection (2), number 1 or 2, or if certain facts substantiate the risk that the convicted person will commit offenses of considerable importance.

(2) The detention served on the basis of a warrant of arrest pursuant to subsection (1) shall be credited against the sentence of imprisonment to be executed. Section 33 subsection (4), first sentence, Sections 114 to 115a, Section 119 shall apply *mutatis mutandis*.

Section 454. [Suspension of Remainder of Sentence]

(1) The decision whether execution of the remainder of a prison sentence is to be suspended on probation (sections 57 to 58 Penal Code) as well as the decision that prior to expiry of a certain time limit an application by the convicted person to this effect shall be inadmissible, shall be given by the court with no oral hearing, in an order. The public prosecution office, the convicted person and the penal institution shall be heard. The convicted person shall be heard orally. The oral hearing of the convicted person may be dispensed with if:

1. the public prosecution office and the penal institution support suspension of a determinate prison sentence and the court proposes suspension;

2. the convicted person has applied for suspension and at the time of the application has served

a) less than half, or less than two months, of a determinate prison sentence,

b) less than thirteen years of a sentence of life imprisonment

and the court refuses the application because it has been submitted prematurely, or

3. the application by the convicted person is inadmissible (section 57 subsection (6), section 57a subsection (4) Penal Code).

(2) The court shall obtain the opinion of an expert concerning the convicted person if it is considering suspending execution of the remainder of:

1. a sentence of life imprisonment, or

2. a determinate prison sentence of more than two years for a criminal offense of the type referred to in Section 66 subsection (3), first sentence, of the Penal Code and it cannot be ruled out that reasons of public security might preclude the convicted person's early release.

The opinion shall, in particular, express a view as to whether a risk that the convicted person is still posing the danger apparent from his offense no longer exists. The expert shall be heard orally. The convicted person, his defense counsel, the public prosecution office and the penal institution shall be informed of the date set down for the hearing. They shall not be entitled to request the date of the hearing to be changed on the ground that they are unable to attend. At the hearing they shall be given the opportunity to put questions to the expert and to make statements. The court may dispense with the oral hearing of the expert if the convicted person, his defense counsel and the public prosecution office waive such hearing.

(3) An immediate complaint shall be admissible against the decisions pursuant to subsection (1). A complaint lodged by the public prosecution office against the decision ordering suspension of the remainder of sentence shall have suspensive effect.

(4) In all other cases, the provisions in Section 453, Section 453a subsections (1) and (3) as well as in Sections 453b, 453c and 268a subsection (3) shall apply *mutatis mutandis*. Instruction on suspension of remainder of sentence shall be given orally; the duty to give such instruction may also be assigned to the penal institution. The instruction should be given immediately prior to release.

Section 454a. [Extension of Probation Period; Revocation of Suspension of Remainder of Sentence]

(1) If the court orders suspension of execution of the remainder of a prison sentence at least three months before the date of release, the probation period shall be extended by the period lasting from entry into force of the decision on suspension until release.

(2) The court may revoke suspension of execution of the remainder of a prison sentence up until the convicted person's release if, by virtue of new facts or facts that have subsequently

come to light, responsibility can no longer be taken for suspension, having due regard to the security interests of the general public; Section 454 subsection (1), first and second sentences, and subsection (3), first sentence, shall apply *mutatis mutandis*. Section 57 subsection (3), first sentence, in conjunction with section 56f of the Penal Code shall remain unaffected.

Section 454b. [Execution of Prison Sentences and of Default Imprisonment]

(1) Prison sentences and default imprisonment for failure to pay a fine should be executed consecutively.

(2) Where more than one prison sentence, or a prison sentence and default imprisonment for failure to pay a fine are to be executed consecutively, the executing authority shall interrupt execution of the first prison sentence to be executed, if:

1. under the conditions of section 57 subsection (2), number 1, of the Penal Code one half, but at least six months of the sentence,

2. in the case of a determinate prison sentence two-thirds, but at least two months of the sentence, or

3. in the case of a sentence of life imprisonment fifteen years of the sentence

have been served. This shall not apply to a remainder of sentence executed because its suspension has been revoked.

(3) Where the executing authority has interrupted execution pursuant to subsection (2), the court shall give the decisions pursuant to section 57 and section 57a of the Penal Code only if a decision can be given at the same time on suspension of execution of the remainder of all sentences.

Section 455. [Postponement of Execution of a Prison Sentence]

(1) Execution of a prison sentence shall be postponed if the convicted person becomes insane.

(2) The same shall apply with respect to any other illness if imminent risk to the convicted person's life is to be feared in the case of execution.

(3) Execution may also be postponed if the convicted person is in such a physical condition as would make immediate execution incompatible with the facilities of the penal institution.

(4) The executing authority may interrupt execution of a prison sentence if:

1. the convicted person becomes insane,

2. due to an illness imminent risk to the convicted person's life is to be feared in the case of execution, or

3. the convicted person falls seriously ill and the illness cannot be diagnosed or treated in a penal institution or in the hospital of such institution,

and if it is to be expected that the illness will presumably continue to exist for a considerable time. Execution shall not be interrupted if overriding reasons, especially reasons of public security, so dictate.

Section 455a. [Postponement or Interruption on Grounds of Institutional Organization]

(1) The executing authority may postpone execution of a prison sentence or a custodial measure of reform and prevention or interrupt it without the prisoner's agreement if this is necessary on grounds of institutional organization and if overriding reasons of public security do not run counter to this.

(2) If the decision of the executing authority cannot be obtained in time, the director of the institution may provisionally interrupt execution under the conditions referred to in subsection (1) without the prisoner's agreement.

Section 456. [Temporary Postponement]

(1) Execution may be postponed upon application by the convicted person if immediate execution would cause substantial detriment, unintended by the penalty, to himself or his family.

(2) Postponement of sentence shall not exceed a period of four months.

(3) Approval may be made contingent on the furnishing of security or on other conditions.

Section 456a. [Dispensing With Execution in the Case of Extradition or Expulsion]

(1) The executing authority may dispense with executing a prison sentence, default imprisonment or a measure of reform and prevention if the convicted person is to be extradited to a foreign government for another offense or if he is expelled from the territorial scope of this Federal statute.

(2) Execution may subsequently take place if the extradited or expelled person returns. Section 67c subsection (2) of the Penal Code shall apply *mutatis mutandis* to subsequent execution of a measure of reform and prevention. On dispensing with execution the executing authority may, at the same time, order subsequent execution in the event of the extradited or expelled person's return, and it may issue a warrant of arrest or a committal order for such purpose. The convicted person shall be so informed.

Section 456b. Deleted

Section 456c. [Postponement and Suspension of Prohibition of Permit of an Occupation]

(1) When giving judgment, the court may, upon the convicted person's application or with his agreement, postpone, in an order, entry into force of the prohibition of pursuit of an occupation if immediate entry into force would mean a considerable hardship to the convicted person or his relatives, unintended by the prohibition and avoidable by postponed entry into force. If the convicted person has a statutory representative, the latter's consent shall be required. Section 462 subsection (3) shall apply *mutatis mutandis*.

(2) The executing authority may suspend the prohibition of pursuit of an occupation under the same conditions.

(3) Postponement and suspension may made contingent on the furnishing of security or on other conditions. Postponement and suspension shall not exceed a period of six months.

(4) The period of postponement and of suspension shall not be deducted from the period specified for the prohibition of pursuit of an occupation.

Section 457. [Arrest Warrant]

(1) Section 161 shall apply *mutatis mutandis* for the purposes of this Chapter.

(2) The executing authority shall be authorized to issue an order for the convicted person to be brought before it or a warrant of arrest for execution of a prison sentence if the convicted person, after being summoned to commence his sentence, has not appeared or is suspected of having absconded. It may also issue an order that the convicted person be brought before it or issue a warrant of arrest if a prisoner escapes or otherwise evades serving the sentence.

(3) In the cases of subsection (2) the executing authority shall have the same powers as the law enforcement authority insofar as the measures are intended and appropriate for the purpose of arresting the convicted person. In assessing the proportionality of measures, special consideration shall be given to the length of the prison sentence still to be served. Court decisions that may become necessary shall be given by the court of first instance.

Section 458. [Court Decisions on Execution of Sentence]

(1) A court decision shall be obtained if doubts arise concerning the interpretation of a criminal judgment or the calculation of the sentence imposed, or if objections are raised against the admissibility of executing the sentence.

(2) The court shall also decide, in the cases under Section 454b subsections (1) and (2) and under Sections 455, 456 and 456c subsection (2), on objections raised against the

executing authority's decision or on objections raised against the executing authority's order that a sentence or a measure of reform and prevention shall subsequently be executed against an extradited or expelled person.

(3) The course of execution shall not be hindered as a result of this; the court may, however, order postponement or suspension of execution. In the cases under Section 456c subsection (2), the court may make a provisional order.

Section 459. [Execution of Fine]

The provisions of the Ordinance on Recovery of Claims of the Judicial Authorities shall apply to the execution of a fine unless otherwise provided under this statute.

Section 459a. [Facilitating for Payment]

(1) After the judgment has entered into force the executing authority shall decide whether to grant relaxation of conditions of payment of a fine (section 42 Penal Code). It may also grant relaxation of conditions of payment if, without such grant, reparation by the convicted person for damage caused as a result of the offense would be considerably jeopardized; the convicted person may be required to furnish proof of reparation.

(2) The executing authority may subsequently amend or revoke a decision concerning relaxation of payment conditions pursuant to subsection (1) or section 42 of the Penal Code. Here it may deviate from a preceding decision to the convicted person's detriment only on the basis of new facts or evidence.

(3) Where relaxation in the form of payment in specified installments is revoked pursuant to section 42, second sentence, of the Penal Code, this shall be noted in the files. The executing authority may grant relaxation of conditions of payment again.

(4) The decision concerning relaxation of conditions of payment shall also extend to the costs of the proceedings. It may also be given with regard to costs alone.

Section 459b. [Setting off Installments]

Installments shall be first set off against the fine, then against possible incidental consequences requiring payment of money and finally against the costs of the proceedings, unless the convicted person makes other dispositions regarding payment.

Section 459c. [Recovery of Fine]

(1) The fine or part thereof shall be recovered within two weeks after the amount became due only if, on the basis of certain facts, it is apparent that the convicted person wishes to evade payment.

(2) Execution may be disposed with if it is to be expected that it will not lead to any success in the foreseeable future.

(3) The fine may not be executed in respect of the convicted person's estate.

Section 459d. [No Execution]

(1) The court may order that there shall be no execution of the full fine or of part thereof, if:

1. in the same proceedings a prison sentence has been executed or suspended on probation, or

2. a prison sentence has been imposed in other proceedings and the conditions in section 55 of the Penal Code have not been fulfilled and execution of the fine may make the convicted person's reintegration more difficult.

(2) The court may give a decision pursuant to subsection (1) also with regard to the costs of the proceedings.

Section 459e. [Execution of Default Imprisonment]

(1) Default imprisonment shall be executed on the basis of an order made by the executing authority.

(2) The execution order shall be contigent on the fine not being recoverable or on execution being dispensed with pursuant to Section 459c subsection (2).

(3) Execution of default imprisonment may not be ordered for part of a fine not corresponding to a full day of imprisonment.

(4) Default imprisonment shall not be executed to the extent that the fine is paid or recovered or execution is dispensed with pursuant to Section 459d. Subsection (3) shall apply *mutatis mutandis*.

Section 459f. [Dispensing with Execution of Default Imprisonment]

The court shall order that there shall be no execution of default imprisonment, if execution would constitute an undue hardship for the convicted person.

Section 459g. [Execution of Incidental Consequences]

(1) If there is an order for forfeiture, confiscation or the rendering unusable of an object, it shall be executed by taking the object away from the convicted person or from a person with an interest in the forfeiture or confiscation. The provisions of the Ordinance on Recovery of Claims of the Judicial Authorities shall apply to execution.

(2) Sections 459, 459a, 459c subsections (1) and (2) and Section 459d shall apply *mutatis mutandis* to execution of incidental consequences requiring payment of money.

Section 459h. [Legal Remedy]

The court shall decide on objections against the decisions of the executing authority pursuant to Sections 459a, 459c, 459e and 459g.

Section 459i. [Execution of Property Fine]

(1) Sections 459, 459a, 459b, 459c, 459e, 459f and 459h shall apply *mutatis mutandis* to execution of a property fine (section 43a Penal Code).

(2) In the cases under Sections 111o and 111p the measure shall only be revoked after conclusion of execution.

Section 460. [Subsequent Aggregate Penalty]

Where a person has been sentenced in different final judgments and the provisions concerning an aggregate sentence (section 55 Penal Code) were not taken into account, the sentences imposed shall be combined into an aggregate sentence in a subsequent court decision. Where several property fines are combined into an aggregate property fine, the latter shall not be lower than the amount of the highest single fine imposed even if that amount exceeds the value of the convicted person's property at the time of the subsequent court decision.

Section 461. [Credit for Confinement in Hospital]

(1) If, after beginning to serve his sentence, the convicted person was brought to a hospital outside the penal institution on account of illness, the duration of his stay in such hospital shall be included in the time served, unless the convicted person caused the illness with the intention of interrupting execution of sentence.

(2) The public prosecution office shall obtain a decision from the court in the latter case.

Section 462. [Procedure in the Case of Court Decision]

(1) The decisions required pursuant to Section 450a subsection (3), first sentence, and Sections 458 to 461 shall be given in a court order with no an oral hearing. This shall also apply to the restoration of eligibility and rights previously enjoyed (section 45b Penal Code), to revocation of the reservation of confiscation and to the subsequent order of confiscation of an object (section 74b subsection (2), third sentence, Penal Code), to the subsequent order of forfeiture or confiscation of the equivalent sum of money (section 76 Penal Code) as well as to the extension of the limitation period (section 79b Penal Code).

(2) Prior to the decision, the public prosecution office and the convicted person shall be heard. The court may dispense with hearing the convicted person in the case of a decision pursuant to section 79b of the Penal Code, if due to certain facts it is to be assumed that the hearing will not be feasible.

(3) The court order shall be contestable by immediate complaint. An immediate complaint lodged by the public prosecution office against the order imposing interruption of execution shall have suspensive effect.

Section 462a. [Jurisdiction]

(1) Where a prison sentence is executed in respect of a convicted person, the penal chamber responsible for execution of sentences, in whose district the penal institution is located where the convicted person is being held at the time the court is seized of the case, shall be competent to give the decisions pursuant to Sections 453, 454, 454a, and 462. Such penal chamber shall also remain competent for decisions which have to be given after execution of a prison sentence has been interrupted or execution of the remainder of a prison sentence has been suspended on probation. The penal chamber may refer individual decisions pursuant to Section 462 in conjunction with Section 458 subsection (1) to the court of first instance; referral shall be binding.

(2) In cases other than those designated in subsection (1), the court of first instance shall be competent. The court may entirely or partially refer the decisions to be given pursuant to Section 453 to the Local Court in whose district the convicted person has his domicile or, if he has no domicile, his ordinary place of residence; referral shall be binding.

(3) In the cases under Section 460 the court of first instance shall give a decision. If judgments were pronounced by different courts, the decision shall be given by the court which imposed the severest type of penalty or in the case of penalties of the same type, the highest sentence, and if more than one court were then competent, the decision shall be given by the last court to pronounce judgment. If the relevant judgment was pronounced by a court of higher instance, the court of first instance shall determine the aggregate sentence; if one of the judgments was pronounced by a Higher Regional Court at first instance, the Higher Regional Court assesses the aggregate penalty. If a Local Court were competent to determine the aggregate sentence and if its sentencing power does not suffice, the penal chamber of its superior Regional Court shall give a decision.

(4) If different courts imposed a final sentence on the convicted person in cases other than those designated in Section 460 or if they gave him a warning with sentence reserved, only one such court shall be competent for the decisions to be given pursuant to Sections 453, 454, 454a and 462. Subsection (3), second and third sentences, shall apply *mutatis mutandis*. In cases under subsection (1) the penal chamber responsible for execution of sentences shall give a decision; subsection (1), third sentence, shall remain unaffected.

(5) In lieu of the penal chamber responsible for execution of sentences the court of first instance shall give a decision if the judgment was pronounced by a Higher Regional Court at

first instance. The Higher Regional Court may entirely or partially refer the decision to be given pursuant to subsections (1) and (3) to the penal chamber responsible for execution of sentences. Referral shall be binding; it may, however, be revoked by the Higher Regional Court.

(6) The court of first instance in the cases under Section 354 subsection (2) and Section 355 shall be the court to which the case has been referred back, and in the cases in which a decision was given in reopened proceedings pursuant to Section 373, the court which gave that decision.

Section 463. [Execution of Measures of Reform and Prevention]

(1) The provisions on execution of sentence shall be applicable to the execution of measures of reform and prevention *mutatis mutandis* unless otherwise provided.

(2) Section 453 shall also be applicable to decisions to be given pursuant to Section 68a to 68d of the Penal Code.

(3) Section 454 subsections (1), (3) and (4) shall also be applicable to decisions to be given pursuant to section 67c subsection (1), section 67d subsections (2) and (3), section 67e subsection (3), section 68e, section 68f subsection (2) and section 72 subsection (3) of the Penal Code. In the cases under section 68e of the Penal Code there shall be no need for an oral hearing of the convicted person. Irrespective of the criminal offenses referred to therein, Section 454 subsection (2) shall be applicable *mutatis mutandis* in the cases referred to in section 67d subsections (2) and (3), section 67c subsection (1) and section 72 subsection (3) of the Penal Code. In preparing the decision pursuant to section 67d subsection (3) of the Penal Code and the subsequent decisions pursuant to section 67d subsection (2) of the Penal Code the court shall obtain an opinion from an expert focusing in particular on the question of whether it is to be expected that the convicted person will continue, given his inclinations, to commit serious unlawful acts. If the convicted person has no defense counsel, such counsel shall be appointed by the court for the proceedings pursuant to the preceding sentence.

(4) Section 455 subsection (1) shall not be applicable if committal to a psychiatric hospital has been ordered. If committal to an institution for withdrawal treatment or preventive detention has been ordered and if the convicted person becomes insane, execution of the measure may be postponed. Section 456 shall not be applicable if an order has been made committing the convicted person to preventive detention.

(5) Section 462 shall also be applicable to decisions to be given pursuant to section 67 subsection (3) and subsection (5), second sentence, sections 67a and 67c subsection (2), section 67d subsection (5), sections 67g and 69a subsection (7) and sections 70a and 70b of the Penal Code.

(6) Supervision of conduct in the cases under section 67c subsection (1), section 67d subsections (2) and (4) and section 68f of the Penal Code shall be equivalent to the

suspension of the remainder of a sentence for the purposes of the application of Section 462a subsection (1).

Section 463a. [Powers and Jurisdiction of the Supervisory Agencies]

(1) The supervisory agencies (section 68a Penal Code) may request information from all public authorities for the supervision of the convicted person's conduct and of his compliance with instructions and may make investigations of any kind, excluding examinations under oath, or have them made by other agencies within the framework of their competence.

(2) The supervisory agency may order, for the duration of supervision or for a shorter period, that the convicted person be identified for the purpose of observation during police checks where personal particulars may be verified. Section 163e subsection (2) shall apply *mutatis mutandis*. The order shall be made by the head of the supervisory agency. The need for continuation of the measure shall be reviewed at least once a year.

(3) The supervisory agency in whose district the convicted person has his domicile shall have local jurisdiction. If the convicted person has no domicile within the territorial scope of this statute, local jurisdiction shall lie with the supervisory agency in whose district he has his ordinary place of residence or, if this is not known, had his last domicile or ordinary place of residence.

Section 463b. [Seizure of Driver's License]

(1) If a driver's license has to be officially impounded pursuant to Section 44 subsection (2), second and third sentences, of the Penal Code, and if it is not voluntarily surrendered it shall be seized.

(2) Foreign driver's licenses may be seized so that the driving ban, or the withdrawal of permission to drive and the bar, can be endorsed thereon (section 44 subsection (2), fourth sentence, section 69b subsection (2) Penal Code).

(3) Where the convicted person does not have his driver's license with him, he shall, upon application of the executing authority, make an affirmation in lieu of an oath to the Local Court regarding its whereabouts. Section 883 subsections (2) to (4), section 899, section 900 subsections (1) and (4), and Sections 901, 902, and 904 to 910 and 913 of the Civil Procedure Code shall apply *mutatis mutandis*.

Section 463c. [Public Announcement]

(1) Where there is an order for public announcement of the conviction and sentence the decision shall be served on the person entitled.

(2) The order pursuant to subsection (1) shall be executed only if the applicant or a person entitled to file an application in his place so requests within one month after service of the final decision.

(3) If the publisher or responsible editor of a periodical publication fails to comply with his obligation to include such an announcement in his publication, the court shall, upon application by the executing authority, induce him to do so by imposing a coercive fine not exceeding fifty thousand Deutsche Mark or imposing coercive detention not exceeding six weeks. A coercive fine may be imposed more than once. Section 462 shall apply *mutatis mutandis*.

(4) Subsection (3) shall apply *mutatis mutandis* to public announcement by broadcasting if the person responsible for the program fails to comply with his obligation.

Section 463d. [Court Assistance Agency]

To prepare the decisions to be given pursuant to Sections 453 to 461 the court or the executing authority may avail itself of the services of the court assistance agency; this shall apply in particular before a decision is given on revocation of suspension of sentence or of suspension of the remainder of a sentence, unless a probation officer has been appointed.

Chapter II Costs of the Proceedings

Section 464. [Decision on Costs]

(1) Every judgment, every penal order and every decision terminating an investigation must indicate the person who is to bear the costs of the proceedings.

(2) The decision as to who shall bear the necessary expenses shall be made by the court in the judgment or in the order concluding the proceedings.

(3) An immediate complaint shall be admissible against the decision regarding costs and necessary expenses; it shall not be admissible if the main decision referred to in subsection (1) cannot be contested by the complainant. The court hearing the complaint shall be bound by the findings of fact on which the decision is based. If an immediate complaint, in addition to an appeal on fact and law, or an appeal on law, is lodged against the judgment as far as it relates to the decision on costs and necessary expenses, the appellate court, while seized of the appeal on fact and law or the appeal on law, shall also be competent to give the decision on the immediate complaint.

Section 464a. [Definition of Costs]

(1) Costs of the proceedings shall include fees and Treasury expenditure. They shall also include the costs arising for the preparation of public charges as well as the costs of executing a legal consequence of the offense. The costs of an application to reopen proceedings concluded by final judgment shall also include the costs arising for the

preparation of the proceedings to be reopened (Section 364a and 364b) so as far as they are caused by an application by the convicted person.

(2) Necessary expenses of a participant shall also include:

1. compensation for inevitable loss of time pursuant to the provisions applying to the compensation of witnesses, and

2. fees and expenses of an attorney-at-law so far as they are to be reimbursed pursuant to section 91 subsection (2) of the Civil Procedure Code.

Section 464b. [Assessment of Costs]

The amount of the costs and expenses for which one participant must reimburse another participant shall, upon application by a participant, be assessed by the court of first instance. Upon application the court shall declare that 4% interest shall be paid on the assessed costs and expenses from the time the application for assessment was made. The provisions of the Civil Procedure Code shall apply *mutatis mutandis* to the proceedings and to execution of the decision.

Section 464c. [Costs of Interpreters]

Where an interpreter or translator has been called in for an indicted accused who does not speak German or who is deaf or dumb, the expenditure incurred thereby shall be charged to the indicted accused insofar as he has unnecessarily given rise to such expenditure by culpable omission or culpably in some other way; this shall be stated expressly except in the case of Section 467 subsection (2).

Section 464d. [Distribution of Expenses]

Treasury expenditure and necessary expenses of the participants may be apportioned in percentages.

Section 465. [Duty of Convicted Person to Pay Costs]

(1) The defendant shall bear the costs of the proceedings insofar as they were caused by the trial for an offense of which he has been convicted or for which a measure of reform and prevention has been ordered. A conviction for the purposes of this provision shall also be deemed to have been pronounced where the defendant has been warned with sentence reserved or where the court has dispensed with punishment.

(2) If particular expenses have been caused by investigations conducted to clear up certain incriminating or exonerating circumstances and if the outcome of such investigations was in the defendant's favor, the court shall charge the expenses in part or in full to the Treasury if it would be inequitable to charge them to the defendant. This shall apply in particular where the defendant is not convicted for individual serverable parts of an offense or is not

convicted of one or more of a number of violations of the law. The preceding sentences shall apply *mutatis mutandis* to the defendant's necessary expenses.

(3) If a convicted person dies before the judgment enters into force his estate shall not be liable for the costs.

Section 466. [Liability of Co-Offenders]

Co-defendants who have been sentenced or in respect of whom a measure of reform and prevention has been ordered for the same offense shall be jointly and severally liable for the expenses. This rule shall not apply to the costs caused by the services of appointed defense counsel or of an interpreter and to the costs for execution, provisional committal or remand detention as well as to expenses which were caused by investigations directed exclusively against a co-defendant.

Section 467. [Costs on Acquittal]

(1) If the indicted accused is acquitted or if the opening of the main proceedings against him is refused or if the proceedings against him are terminated, Treasury expenditure and the indicted accused's necessary expenses shall be borne by the Treasury.

(2) The costs of the proceedings caused by the indicted accused's culpable default shall be borne by him. To that extent, the expenses he has caused shall not be charged to the Treasury.

(3) The indicted accused's necessary expenses shall not be charged to the Treasury if the indicted accused caused the preferring of public charges by filing a criminal information in which he pretended to have committed the offense he was charged with. The court may dispense with charging the indicted accused's necessary expenses to the Treasury if:

1. he caused the preferring of public charges by falsely incriminating himself with regard to material points or in contraction to his later statement or by concealing material exonerating circumstances despite having made a statement in response to the accusation, or

2. he is not sentenced for a criminal offense only because there is a procedural impediment.

(4) If the court terminates the proceedings pursuant to a provision permitting this at the court's discretion, it may dispense with charging the indicted accused's necessary expenses to the Treasury.

(5) The indicted accused's necessary expenses shall not be charged to the Treasury if the proceedings are terminated with final effect after previous provisional termination (Section 153a).

Section 467a. [Withdrawal of Charges or Termination by the Public Prosecution Office]

(1) If the public prosecution office withdraws the public charges and terminates the proceedings, the court where the public charges have been preferred shall charge to the Treasury the necessary expenses incurred by the indicted accused upon application by the public prosecution office or by the indicted accused. Section 467 subsections (2) to (5) shall apply *mutatis mutandis*.

(2) In the cases under subsection (1), first sentence, the court may charge the necessary expenses incurred by a person involved (Section 431 subsection (1), first sentence, Section 442, Section 444 subsection (1), first sentence) to the Treasury or to another participant upon application by the public prosecution office or by the person involved.

(3) The decision pursuant to subsections (1) and (2) shall be incontestable.

Section 468. [Defendants Not Liable to Punishment]

In the cases of mutual insults or bodily injury, charging the costs to one or both defendants shall not be precluded by one or both of them being declared not liable to punishment.

Section 469. [Costs Charged to Person Laying Criminal Information]

(1) If proceedings, even if conducted out of court, were caused by an untrue criminal information laid intentionally or recklessly, the court shall, after hearing the person who laid the criminal information, charge to such person the costs of the proceedings and the accused's necessary expenses. The court may charge the necessary expenses of a person involved (Section 431 subsection (1), first sentence, Section 442, Section 444 subsection (1), first sentence) to the person who laid the criminal information.

(2) If no court has been seized of the case yet, the decision shall, upon application by the public prosecution office, be given by the court which would have been competent for opening the main proceedings.

(3) The decision pursuant to subsections (1) and (2) shall be incontestable.

Section 470. [Costs on Withdrawal of Application for Prosecution]

If the proceedings are terminated due to the withdrawal of the application upon which they were contingent, the applicant shall bear the costs as well as the necessary expenses of the accused and of a person involved (Section 431 subsection (1), first sentence, Section 442, Section 444 subsection (1), first sentence). They may be charged to the defendant or to a person involved as far as he declares himself willing to pay such costs, or to the Treasury if it would be inequitable to charge these costs to the participants.

Section 471. [Costs of Private Prosecution]

(1) The convicted person in proceedings conducted by private prosecution shall reimburse the private prosecutor for necessary expenses incurred.

(2) If the charges against the accused are dismissed or if the accused is acquitted or the proceedings terminated, the costs of the proceedings and the accused's necessary expenses shall be charged to the private prosecutor.

(3) The court may appropriately apportion the costs of the proceedings and the participants' necessary expenses or, in the exercise of its duty-bound discretion, charge such costs to one of the participants if:

1. the court only partly granted the private prosecutor's applications,

2. it terminated the proceedings pursuing to Section 383 subsection (2) (Section 390 subsection (5)) on account of negligibility, or

3. countercharges were preferred.

(4) Several private prosecutors shall be jointly and severally liable. The same shall apply in respect of the liability of several accused for the private prosecutor's necessary expenses.

Section 472. [Costs of Private Accessory Prosecution]

(1) The private accessory prosecutor's necessary expenses shall be charged to the defendant if he is sentenced for an offense affecting the private accessory prosecutor. This may be wholly or partly dispensed with if it would be inequitable to charge these expenses to the defendant.

(2) If the court terminates the proceedings pursuant to a provision permitting this at the court's discretion, it may wholly or partly charge the necessary expenses referred to in subsection (1) to the indicted accused as far as this is equitable for special reasons. If the court finally terminates the proceedings after a previous provisional termination (Section 153a) subsection (1) shall apply *mutatis mutandis*.

(3) Subsections (1) and (2) shall apply *mutatis mutandis* to the necessary expenses which have arisen for a person entitled to join proceedings as a private accessory prosecutor in exercising his rights pursuant to Section 406g. The same shall apply to a private prosecutor's necessary expenses if the public prosecution office has taken over prosecution pursuant to Section 377 subsection (2).

(4) Section 471 subsection (4), second sentence, shall apply *mutatis mutandis*.

Section 472a. [Aggrieved Person's Expenses]

(1) Where an application for awarding a claim arising from the criminal offense is granted, the defendant shall also bear the special costs incurred thereby and the aggrieved person's necessary expenses.

(2) Where the court dispenses with a decision on the application or where part of the aggrieved person's claim is not awarded or where the aggrieved person withdraws his application, the court shall give a decision in the exercise of its duty-bound discretion as to who is to bear the relevant court expenditure and the relevant necessary expenses of the participants. Court expenditure may be charged to the Treasury if it would be inequitable to charge such expenditure to the participants.

Section 472b. [Costs of Other Persons Involved]

(1) Where there is an order for forfeiture, confiscation, reservation of confiscation, destruction, rendering unusable or eliminating of a situation that is illegal, the special costs arising from involvement of another person may be charged to such person. That person's necessary expenses may, if this is equitable, be charged to the defendant, and in independent proceedings, also to another person involved.

(2) Where a regulatory fine is imposed on a legal person or an association, the latter shall bear the costs of the proceedings pursuant to Sections 465 and 466.

(3) Where an order for one of the incidental consequences pursuant to subsection (1), first sentence, or imposition of a regulatory fine on a legal person or an association is dispensed with, the necessary expenses of other persons involved may be charged to the Treasury or to another participant.

Section 473. [Unsuccessful Appellate Remedy]

(1) The costs of an appellate remedy which has been withdrawn or which proved to be unsuccessful shall be borne by the person who filed such appellate remedy. If the appellate remedy filed by the accused has proved to be unsuccessful or has been withdrawn, the necessary expenses incurred by the private accessory prosecutor or the person entitled to join the proceedings as a private accessory prosecutor in exercising his rights pursuant to Section 406g shall be charged to that person. If, in the case of the first sentence, the private accessory prosecutor has filed or pursued the appellate remedy alone, the accused's necessary expenses shall be charged to him.

(2) If, in the case of subsection (1), the public prosecution office files the appellate remedy to the detriment of the accused or of a person involved (Section 431 subsection (1), first sentence, Section 442, Section 444 subsection (1), first sentence), his necessary expenses shall be charged to the Treasury. The same shall apply if the appellate remedy filed by the public prosecution office for the benefit of the accused or of a person involved proves to be successful.

(3) If the accused or any other participant limited the appellate remedy to certain points of complaint and if such appellate remedy is successful, the participant's necessary expenses shall be charged to the Treasury.

(4) If the appellate remedy is partly successful, the court shall reduce the fees and charge the costs wholly or partly to the Treasury if it would be inequitable to charge such costs to the participants. This shall apply *mutatis mutandis* to the participants' necessary expenses.

(5) An appellate remedy shall be deemed unsuccessful if an order pursuant to section 69 subsection (1) or section 69b subsection (1) of the Penal Code is not upheld solely because its preconditions are no longer fulfilled on account of the duration of a provisional withdrawal of permission to drive (Section 111a subsection (1)) or of a measure to impound, secure, or seize the driver's license (section 69a subsection (6) Penal Code).

(6) Subsections (1) to (4) shall apply *mutatis mutandis* to the costs and necessary expenses caused by an application:

1. to reopen the proceedings concluded by final judgment, or

2. for subsequent proceedings (Section 439).

(7) The costs for restoration of the *status quo ante* shall be borne by the applicant unless they were caused by an unfounded objection by the opponent.

Part Eight National Register of Proceedings Conducted by the Public Procesucion Offices

Section 474. [Content and Maintenance of the Register]

(1) A central register of proceedings conducted by the public prosecution offices shall be maintained at the Federal Central Criminal Registry.

(2) The following shall be entered in the register:

1. the accused's personal data and, where necessary, other distinguishing characteristics,

2. the competent agency and the file reference number,

3. the time(s) of commission of the offense(s),

4. the charges including reference to the statutory provisions and detailed specification of the criminal offenses,

5. the initiation of the proceedings as well as the outcome of proceedings dealt with at the public prosecution office and in court, including reference to the statutory provisions.

The data may be stored and modified only in respect of criminal proceedings.

(3) The public prosecution office shall communicate the registrable data to the Registry for the purpose referred to in subsection (2), second sentence. Information from the register of proceedings shall only be given to the law enforcement authorities for the purposes of criminal proceedings.

(4) Upon request, the data referred to in subsection (2), first sentence, numbers 1 and 2, may -in accordance with section 18 subsection (3) of the Federal Act on Protection of the Constitution, also in conjunction with section 10 subsection (2) of the Act on the Armed Forces Counterintelligence Service and section 8 subsection (3) of the Federal Intelligence Service Act - also be transmitted to the Federal and *Land* authorities for the protection of the constitution, to the Federal Armed Forces Counterintelligence Office and the Federal Intelligence Service. Section 18 subsection (5), second sentence, of the Federal Act on Protection of the Constitution shall apply *mutatis mutandis*.

(5) Responsibility for the admissibility of transmission shall lie with the recipient. The Registry shall examine the admissibility of transmission only if there is a special reason for doing so.

(6) Without prejudice to subsection (4), the data may be used only in criminal proceedings.

Section 475. [Automated Procedure]

(1) The establishment of an automated procedure enabling transmission of personal data by retrieval shall be admissible for transmissions to public prosecution offices pursuant to Section 474 subsection (3), second sentence, provided that this form of data transmission is appropriate, having due regard to affected persons' interests meriting protection, given the large number of transmissions or their special urgency, and if it is ensured that the data can effectively be protected against unauthorized access by third persons during transmission.

(2) Section 10 subsection (2) of the Federal Data Protection Act shall apply regarding the specifications for setting up the automated retrieval procedure. The Registry shall transmit the specifications to the Federal Commissioner for Data Protection.

(3) Responsibility for the admissibility of each automated retrieval shall lie with the recipient. The Registry shall examine the admissibility of retrievals only where there is cause for doing so. For every tenth retrieval a record shall be made of at least the time, the data retrieved, the retrieving agency's code and the recipient's file reference. The data recorded may be used only to monitor admissibility of the retrievals and are to be erased after six months.

(4) Section 474 subsection (6) shall not apply.

Section 476. [Correction; Erasure]

(1) If incorrect, the data shall be corrected. The competent agency shall inform the Registry without delay of inaccuracies; it shall bear responsibility for data being correct and up-to-date.

(2) The data shall be erased:

1. if their storage is inadmissible, or

2. as soon as it is evident from the Federal Central Criminal Register that a court decision or directive of the law enforcement authority which is notifiable pursuant to section 20 of the Federal Central Criminal Register Act has been given in the criminal proceedings from which the data were transmitted.

If the accused is finally acquitted or if the opening of main proceedings against him has been refused with incontestable effect or if the proceedings have not been only provisionally terminated, the data shall be erased two years after the proceedings were concluded, unless there is notification of further registrable proceedings before the time limit for erasure begins to run. In this event the data shall remain stored until the erasure requirements have been fulfilled in respect of all entries. The public prosecution office shall inform the Registry without delay of the fulfillment of the erasure requirements or of the beginning of the time limit for erasure pursuant to the second sentence above.

(3) Instead of erasure data shall be blocked if:

1. there are grounds for believing that detriment would be caused to an affected person's interest meriting protection,

2. the data are needed for on-going research, or

3. given the special storage method, erasure would not be possible, or only with disproportionate effort.

Personal data shall also be blocked insofar as they are stored only for the purposes of securing or monitoring data protection. Blocked data may be used only for the purpose for which they were blocked or insofar as their use is indispensable for remedying an existing lack of evidence.

(4) Where the Registry establishes that personal data have been transmitted which are incorrect or are to be erased or blocked, the recipient is to be informed of the correction, erasure or block, if such action is necessary to safeguard the affected person's interests meriting protection.

(5) Further details, in particular:

1. the type of data to be processed,

2. the supply of the data to be processed,

3. the conditions under which data processed in the file will be transmitted to recipients who are to be determined by a procedure to be determined as well,

4. the establishment of an automated retrieval procedure,

5. the technical and organizational measures required pursuant to section 9 of the Federal Data Protection Act,

shall be determined by the Federal Ministry of Justice, with the approval of the Federal Council, and set out in an order establishing the register.

Section 477. [Information]

The Registry, in agreement with the public prosecution office which notified the data for entry in the register, shall decide on whether information from the register of proceedings pursuant to section 19 of the Federal Data Protection Act can be provided.

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