

German Code of Criminal Procedure

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[...]

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 offence of substantial significance 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 offences 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 persons who manifest certain significant features which may be presumed to apply to the accused may be automatically matched against other data in order to exclude individuals who are not under suspicion or to identify individuals who manifest other significant characteristics relevant to the investigations. This measure may be ordered only where other means of establishing the facts or determining the perpetrator's whereabouts would offer much less prospect of success or be much more difficult.

(2) For the purposes of subsection (1), the storing agency shall extract from the database the data required for matching purposes and transmit it to the criminal prosecuting authorities.

(3) Insofar as isolating the data for transmission from other data requires 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) Matching and transmission of data may be ordered only by the court and, in exigent circumstances, also by the public prosecution office. Where the public prosecution office has made the order, it shall request judicial confirmation without delay. The order shall become ineffective if it is not confirmed by the court within three working days. The order shall be made in writing. It shall name the person obliged to transmit the data and shall be limited to the data and comparison characteristics required for the particular case. The transmission of data may not be ordered where special rules on use, being provisions under Federal law or under the corresponding Land law, present an obstacle to their use. Sections 96 and 97, and Section 98 subsection (1), second sentence, shall apply mutatis mutandis.

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

(3) Where data was transmitted on data media these shall be returned without delay once matching has been completed. Personal data transferred to other data media shall be deleted without delay once it is no longer required for the criminal proceedings.

(4) Upon completion of a measure pursuant to Section 98a, the agency responsible for monitoring compliance with data protection rules by public bodies shall be notified.

Section 98c

[Comparison of Data to Clear Up a Criminal offence]

In order to clear up a criminal offence or to determine the whereabouts of a person sought in connection with criminal proceedings, personal data from criminal proceedings may be automatically matched with other data stored for the purposes of criminal prosecution or execution of sentence, or in order to avert danger. Special rules on use presenting an obstacle thereto, being provisions under Federal law or under the corresponding Land law, shall remain unaffected.

[...]

Section 100a

[Conditions regarding Interception of Telecommunications]

(1) Telecommunications may be intercepted and recorded also without the knowledge of the persons concerned if

1. certain facts give rise to the suspicion that a person, either as perpetrator or as inciter or accessory, has committed a serious criminal offence referred to in subsection (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence or has prepared such an offence by committing a criminal offence, and
2. the offence is one of particular gravity in the individual case as well and
3. other means of establishing the facts or determining the accused's whereabouts would be much more difficult or offer no prospect of success.

(2) Serious criminal offences for the purposes of subsection (1), number 1, are:

1. pursuant to the Criminal Code:

a)
crimes against peace, high treason, endangering the democratic Rule of Law, treason and endangering external security pursuant to sections 80 to 82, 84 to 86, 87 to 89 and 94 to 100a;

b)
bribery of a member of parliament pursuant to section 108e;

c)
crimes against the national defence pursuant to sections 109d to 109h;

d)
crimes against public order pursuant to sections 129 to 130;

e)
counterfeiting money and official stamps pursuant to sections 146 and 151, in each case in conjunction with section 152, as well as section 152a subsection (3) and section 152b subsections (1) to (4);

f)
crimes against sexual self-determination in the cases referred to in sections 176a, 176b, 177 subsection (2), number 2, and section 179 subsection (5), number 2;

g)
dissemination, purchase and possession of pornographic writings involving children and involving juveniles, pursuant to section 184b subsections (1) to (3), section 184c subsection (3);

h)
murder and manslaughter pursuant to sections 211 and 212;

i)
crimes against personal liberty pursuant to sections 232 to 233a, 234, 234a, 239a and 239b;

j)
gang theft pursuant to section 244 subsection (1), number 2, and aggravated gang theft pursuant to section 244a;

k)
crimes of robbery or extortion pursuant to sections 249 to 255;

l)
commercial handling of stolen goods, gang handling of stolen goods and commercial gang handling of stolen goods pursuant to sections 260 and 260a;

m)
money laundering or concealment of unlawfully acquired assets pursuant to section 261 subsections (1), (2) and (4);

n)
fraud and computer fraud subject to the conditions set out in section 263 subsection (3), second sentence, and in the case of section 263 subsection (5), each in connection with section 263a subsection (2);

o)
subsidy fraud subject to the conditions set out in section 264 subsection (2), second sentence, and in the case of section 264 subsection (3), in conjunction with section 263 subsection (5);

p)
criminal offences involving falsification of documents under the conditions mentioned in section 267 subsection (3), second sentence, and in the case of section 267 subsection (4), in each case also in conjunction with section 268 subsection (5) or section 269 subsection (3), as well as pursuant to sections 275 subsection (2) and section 276 subsection (2);

q)
bankruptcy subject to the conditions set out in section 283a, second sentence;

r)
crimes against competition pursuant to section 298 and, subject to the conditions set out in section 300, second sentence, pursuant to section 299;

s)
crimes endangering public safety in the cases referred to in sections 306 to 306c, 307 subsections (1) to (3), section 308 subsections (1) to (3), section 309 subsections (1) to (4), section 310 subsection (1), sections 313, 314, 315 subsection (3), section 315b subsection (3), as well

as sections 361a and 361c;

t)
taking and offering a bribe pursuant to sections 332 and 334;

2. pursuant to the Fiscal Code

a)
tax evasion under the conditions listed in section 370 subsection (3), second sentence, number 5;

b)
commercial, violent and gang smuggling pursuant to section 373;

c)
handling tax-evaded property as defined in section 374 subsection (2);

3. pursuant to the Pharmaceutical Products Act:
criminal offences pursuant to section 95 subsection (1), number 2a, subject to the conditions listed in section 95 subsection (3), second sentence, number 2b;

4. pursuant to the Asylum Procedure Act:

a)
inducing an abusive application for asylum pursuant to section 84 subsection (3);

b)
commercial and gang inducement to make an abusive application for asylum pursuant to section 84a;

5. pursuant to the Residence Act:

a)
smuggling of aliens pursuant to section 96 subsection (2);

b)
smuggling resulting in death and commercial and gang smuggling pursuant to section 97;

6. pursuant to the Foreign Trade and Payments Act:
criminal offences pursuant to section 34 subsections (1) to (6);

7. pursuant to the Narcotics Act:

a)
criminal offences pursuant to one of the provisions referred to in section 29 subsection (3), second sentence, number 1, subject to the conditions set out therein;

b)
criminal offences pursuant to sections 29a, 30 subsection (1), numbers 1, 2 and 4, as well as sections 30a and 30b;

8. pursuant to the Precursors Control Act:
criminal offences pursuant to section 19 subsection (1), subject to the conditions set out in section 19 subsection (3), second sentence;

9. pursuant to the War Weapons Control Act:

a)
criminal offences pursuant to section 19 subsections (1) to (3) and section 20 subsections (1) and (2), as well as section 20a subsections (1) to (3), each also in conjunction with section 21;

b)
criminal offences pursuant to section 22a subsections (1) to (3);

10. pursuant to the Code of Crimes against International Law:

a)
genocide pursuant to section 6;

b)
crimes against humanity pursuant to section 7;

c)
war crimes pursuant to sections 8 to 12;

11. pursuant to the Weapons Act:

a)
criminal offences pursuant to section 51 subsections (1) to (3);

b)
criminal offences pursuant to section 52 subsection (1) numbers 1, 2c and 2d, as well as section 52 subsections (5) and (6).

(3) Such order may be made only against the accused or against persons in respect of whom it may be assumed, on the basis of certain facts, that they are receiving or transmitting messages intended for, or transmitted by, the accused, or that the accused is using their telephone connection.

(4) If there are factual indications for assuming that only information concerning the core area of the private conduct of life would be acquired through a measure pursuant to subsection (1), the measure shall be inadmissible. Information concerning the core area of the private conduct of life which is acquired during a measure pursuant to subsection (1) shall not be used. Any records thereof shall be deleted without delay. The fact that they were obtained and deleted shall be documented.

Section 100b

[Order to Intercept Telecommunications]

(1) Measures pursuant to Section 100a may be ordered by the court only upon application by the public prosecution office. In exigent circumstances, the public prosecution office may also issue an order. An order issued by the public prosecution office shall become ineffective if it is not confirmed by the court within 3 working days. The order shall be limited to a maximum duration of 3 months. An extension by not more than 3 months each time shall be admissible if the conditions for the order continue to apply taking into account the existing findings of the enquiry.

(2) The order shall be given in writing. The operative part of the order shall indicate:

1. where known, the name and address of the person against whom the measure is directed,
2. the telephone number or other code of the telephone connection or terminal equipment to be intercepted, insofar as there are no particular facts indicating that they are not at the same time assigned to another piece of terminal equipment.
3. the type, extent and duration of the measure specifying the time at which it will be concluded.

(3) On the basis of this order all persons providing, or contributing to the provision of, telecommunications services on a commercial basis shall enable the court, the public prosecution office and officials working in the police force to assist it (section 152 of the Courts Constitution Act), to implement measures pursuant to Section 100a and shall provide the required information without delay. Whether and to what extent measures are to be taken in this respect shall follow from the Telecommunications Act and from the Telecommunications Interception Ordinance issued thereunder. Section 95 subsection (2) shall apply mutatis mutandis.

(4) If the conditions for making the order no longer prevail, the measures implemented on the basis of the order shall be terminated without delay. Upon termination of the measure, the court which issued the order shall be notified of the results thereof.

(5) The Länder and the Federal Public Prosecutor General shall submit a report to the Federal Office of Justice every calendar year by the 30th June of the year following the reporting year, concerning measures ordered pursuant to Section 100a within their area of competence. The Federal Office of Justice shall produce a summary of the measures ordered nationwide during the reporting year and shall publish it on the Internet.

(6) The reports pursuant to subsection (5) shall indicate:

1. the number of proceedings in which measures were ordered pursuant to Section 100a subsection (1);
2. the number of orders to intercept telecommunications pursuant to Section 100a subsection (1), distinguishing between
 - a) initial and follow-up orders, as well as
 - b) fixed, mobile and Internet telecommunication;
3. in each case the underlying criminal offence by reference to the categories listed in Section 100a subsection (2).

Section 100c

[Measures Implemented Without the Knowledge of the Person Concerned]

(1) Private speech on private premises may be intercepted and recorded using technical means also without the knowledge of the person concerned if

1. certain facts give rise to the suspicion that a person, either as perpetrator, or as inciter or accessory, has committed a particularly serious criminal offence referred to in subsection (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence, and
2. the offence is one of particular gravity in the individual case as well and
3. on the basis of factual indications it may be assumed that the surveillance will result in the recording of statements by the accused which would be of significance in establishing the facts or determining the whereabouts of a co-accused, and
4. other means of establishing the facts or determining a co-accused's whereabouts would be disproportionately more difficult or offer no prospect of success.

(2) Particularly serious criminal offences for the purposes of subsection (1), number 1, are:

1. pursuant to the Criminal Code:

- a) crimes against peace, high treason, endangering the democratic state based on the Rule of Law, treason, and endangering external security pursuant to sections 80, 81, 82, pursuant to sections 94, 95 subsection (3) and section 96 subsection (1), in each case also in conjunction with section 97b, as well as pursuant to sections 97a, 98 subsection (1), second sentence, section 99 subsection (2), and sections 100 and 100a subsection (4),
- b) formation of criminal groups pursuant to section 129 subsection (1) in conjunction with subsection (4), second part of the sentence, and formation of terrorist groups pursuant to section 129a subsections (1), (2), (4), (5) first sentence, first alternative, in each case in conjunction with section 129b subsection (1);
- c) counterfeiting money and official stamps pursuant to sections 146 and 151, in each case also in conjunction with section 152, as well as

pursuant to section 152a subsection (3) and section 152b subsections (1) to (4);

d)

crimes against sexual self-determination in the cases referred to in section 176a subsection (2), number 2, or subsection (3), section 177 subsection (2), number 2, or section 179 subsection (5), number 2;

e)

distribution, acquisition and possession of pornographic writings involving children and involving juveniles, pursuant to section 184b subsections (1) to (3)[, section 184c subsection (3)];

f)

murder and manslaughter pursuant to sections 211 and 212;

g)

crimes against personal liberty pursuant to sections 234, 234a subsections (1) and (2), sections 239a and 239b, and trafficking in human beings for the purpose of sexual exploitation and for the purpose of exploitation of labour pursuant to section 232 subsection (3), subsection (4) or subsection (5), section 233 subsection (3), in each case to the extent that it concerns a felony;

h)

gang theft pursuant to section 244 subsection (1), number 2, and aggravated gang theft pursuant to section 244a;

i)

aggravated robbery and robbery resulting in death pursuant to section 250 subsection (1) or subsection (2), section 251;

j)

extortion resembling robbery pursuant to section 255 and a particularly serious case of extortion pursuant to section 253 under the conditions set out in section 253 subsection (4), second sentence;

k)

commercial handling of stolen goods or gang handling of stolen goods or commercial gang handling of stolen goods pursuant to sections 260 and 260a;

l)

a particularly serious case of money laundering or concealment of unlawfully acquired assets pursuant to section 261 under the conditions set out in section 261 subsection (4), second sentence;

m)

a particularly serious case of taking and offering bribes pursuant to section 335 subsection (1) under the conditions set out in section 335 subsection (2), numbers 1 to 3;

2. pursuant to the Asylum Procedure Act:

a)

inducing an abusive application for asylum pursuant to section 84 subsection (3);

b)

commercial or gang inducement of an abusive application for asylum pursuant to section 84a subsection (1);

3. pursuant to the Residence Act:

a)

smuggling of aliens pursuant to section 96 subsection (2);

b)

smuggling resulting in death and commercial and gang smuggling pursuant to section 97;

4. pursuant to the Narcotics Act:

a)

a particularly serious case of a criminal offence pursuant to sections 29 subsection (1), first sentence, numbers 1, 5, 6, 10, 11 or 13, subsection (3) subject to the requirements of section 29 subsection (3), second sentence, number 1;

b)

a criminal offence pursuant to sections 29a, 30 subsection (1) numbers 1, 2, and 4, or section 30a;

5. pursuant to the War Weapons Control Act:

a)

a criminal offence pursuant to section 19 subsection (2), or to section 20 subsection (1), in each case also in conjunction with section 21;

b)

a particularly serious case of a criminal offence pursuant to section 22a subsection (1) in conjunction with subsection (2);

6. pursuant to the Code of Crimes against International Law:

a)

genocide pursuant to section 6;

b)

crimes against humanity pursuant to section 7;

c)

war crimes pursuant to sections 8 to 12;

7. pursuant to the Weapons Act:

a)

a particularly serious case of a criminal offence pursuant to section 51 subsection (1) in conjunction with subsection (2)

b)

a particularly serious case of a criminal offence pursuant to section 52 subsection (1), number 1, in conjunction with subsection (5).

(3) The measure may be directed only against the accused and may be implemented only on the private premises of the accused. The measure shall be admissible on the private premises of other persons only if it can be assumed on the basis of certain facts that

1. the accused named in the order pursuant to Section 100d subsection (2) is present on those premises; and that

2. applying the measure on the accused's premises alone will not lead to the establishment of the facts or the determination of a co-accused person's whereabouts.

The measures may be implemented even if they unavoidably affect third persons.

(4) The measure may be ordered only if on the basis of factual indications, in particular concerning the type of premises to be kept under surveillance and the relationship between the persons to be kept under surveillance, it may be assumed that statements concerning the core area of the private conduct of life will not be covered by the surveillance. Conversations on operational or commercial premises are not generally to be considered part of the core area of the private conduct of life. The same shall apply to conversations concerning criminal offences which have been committed and statements by means of which a criminal offence is committed.

(5) The interception and recording is to be interrupted without delay if during the surveillance indications arise that statements concerning the

core area of the private conduct of life are being recorded. Recordings of such statements are to be deleted without delay. Information acquired by means of such statements may not be used. The fact that the data was obtained and deleted is to be documented. If a measure pursuant to the first sentence has been interrupted, it may be re-continued subject to the conditions listed in subsection (4). If in doubt, a court decision on the interruption or continuation of the measures should be sought without delay; Section 100d subsection (4) shall apply mutatis mutandis.

(6) In the cases referred to in Section 53 a measure pursuant to subsection (1) shall be inadmissible; if during or after implementation of the measure, it becomes apparent that a case referred to in Section 53 is applicable, subsection (5), second to fourth sentences, shall apply mutatis mutandis. In the cases referred to in Sections 52 and 53a, information acquired through a measure pursuant to subsection (1) may only be used 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 whereabouts of an accused person. Section 160a subsection (4) shall apply mutatis mutandis.

(7) Insofar as a prohibition on use pursuant to subsection (5) is conceivable, the public prosecution office shall obtain a decision without delay from the court which made the order, as to whether the information acquired may be used. Insofar as the court does not approve such use, the decision shall be binding for the further proceedings.

Section 100d

[Jurisdiction]

(1) Measures pursuant to Section 100c may be ordered only upon the application of the public prosecution office by the division of the Regional Court stipulated in section 74a subsection (4) 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 criminal division within three working days. The order shall be limited to a maximum duration of one month. An extension of the measure for subsequent periods of up to one month shall be admissible providing the conditions for the measure continue to exist, taking into account the information acquired during the investigation acquired. If the duration of the order has been extended for a total period of six months, the Higher Regional Court shall decide on any further extension orders.

(2) The order shall be in writing specifying:

1. where known, the name and address of the accused against whom the measure is directed;
2. the alleged offence, on the basis of which the measure is being ordered;
3. the premises or rooms to be kept under surveillance;
4. the type, extent and duration of the measure;
5. the manner of information to be acquired by the measures and their significance for the proceedings.

(3) In its reasons the order or extension order shall specify the requirements and main considerations underlying the decision. In particular, it shall state in relation to each individual case:

1. the particular facts on which the suspicion is based;
2. the essential considerations concerning the necessity and proportionality of the measure;
3. the factual indications as stated in section 100c subsection (4), first sentence.

(4) The court making the order shall be informed as to the progress and results of the measure. If the conditions for the order no longer exist, the court shall order the termination of the measures, unless termination has already been initiated by the public prosecution office. Termination of the measure may also be ordered by the presiding judge.

(5) Personal data obtained by means of acoustic surveillance of private premises may be used for other purposes subject to the following conditions:

1. The usable personal data obtained through a measure pursuant to Section 100c, may be used in other criminal proceedings without the consent of the persons being monitored only for the purposes of resolving a criminal offence in respect of which measures pursuant to Section 100c could have been ordered, or to establish the whereabouts of a person accused of such a criminal offence.
2. The use of personal data obtained through measures pursuant to Section 100c, even such data as is acquired pursuant to Section 100c subsection (6), first sentence, second part of the sentence, for the purposes of averting danger is only admissible to avert an existing danger of death in an individual case or an imminent danger to the life or liberty of a person or to objects of significant value, which [serve to] supply the population, are of culturally outstanding value, or are referred to in section 305 of the Criminal Code. The usable personal data obtained through a measure pursuant to Section 100c may also be used to avert an imminent danger to other significant assets in individual cases. If the data is no longer required for the purposes of averting the danger or for a pre-judicial or judicial examination of the measures implemented to avert the danger, recordings of such data are to be deleted without delay by the institution responsible for averting the danger. The fact of deletion is to be documented. Insofar as deletion is postponed merely for an eventual pre-judicial or judicial examination, the data may be used solely for this purpose; access is to be denied for any use for other purposes.
3. Insofar as usable personal data has been obtained by means of a respective police measure, such data may not be used in criminal proceedings without the consent of the person under surveillance by virtue of such measure, except for the purpose of clearing up a criminal offence in respect of which the measure pursuant to Section 100c could have been ordered, or to determine the whereabouts of a person accused of such criminal offence.

Section 100e

[Duty to Report]

(1) Section 100b subsection (5) shall apply mutatis mutandis to measures ordered pursuant to Section 100c. Prior to publication on the Internet the Federal Government shall inform the Federal Parliament each year of measures ordered pursuant to Section 100c in the preceding calendar year.

(2) The reports pursuant to subsection (1) shall specify:

1. the number of proceedings in which measures pursuant to Section 100c subsection (1) were ordered;
2. in each case the underlying criminal offence in the categories referred to in Section 100c subsection (2);
3. whether the proceedings are related to the prosecution of organized crime;
4. the number of premises under surveillance in each of the proceedings, distinguishing between private premises and other premises, as well as between premises belonging to the accused and premises belonging to third parties;
5. the number of persons under surveillance in the respective proceedings, indicating whether or not they were accused persons;
6. the duration of each individual surveillance measure indicating the duration of the order, the duration of the extension of the order, and the duration of the interception;
7. how frequently a measure pursuant to Section 100c subsection (5) and Section 100d subsection (4) was interrupted or terminated;

8. whether the persons concerned were informed (Section 101 subsections (4) to (6)) or if not, the grounds for refraining from informing such persons;
9. whether the surveillance produced results that are, or may be expected to be, of relevance to the proceedings;
10. whether the surveillance produced results that are, or may be expected to be, of relevance to other criminal proceedings;
11. where the surveillance failed to produce any relevant results: the reason for this, distinguishing between technical and other grounds;
12. the costs of the measure, distinguishing between costs in respect of translation services and other costs.

Section 100f

[Use of Technical Means]

(1) Words spoken in a non-public context outside private premises may be intercepted and recorded by technical means also without the knowledge of the persons concerned if certain facts give rise to the suspicion that a person, either as perpetrator, or as inciter or accessory has committed a criminal offence referred to in Section 100a subsection (2), being a criminal offence of particular gravity in the individual case as well, or, in cases where there is criminal liability for attempt, has attempted to commit such an offence, and other means of establishing the facts or determining the accused's whereabouts would offer no prospect of success or be much more difficult.

(2) The measure may only be directed against an accused person. Such a measure may only be ordered against other persons if it is to be assumed, on the basis of certain facts, that they are in contact with an accused or that such contact will be established, the measure will result in the establishment of the facts or the determination of an accused's whereabouts, and other means of establishing the facts or determining an accused's whereabouts would offer no prospect of success or be much more difficult.

(3) The measure may be implemented even if it unavoidably affects third persons.

(4) Section 100b subsection (1) and subsection (4), first sentence, as well as Section 100d subsection (2) shall apply mutatis mutandis.

Section 100g

[Information on Telecommunications Connections]

(1) If certain facts give rise to the suspicion that a person, either as perpetrator, or as inciter or accessory,

1. has committed a criminal offence of substantial significance in the individual case as well, particularly one of the offences referred to in Section 100a subsection (2), or, in cases where there is criminal liability for attempt, has attempted to commit such an offence or has prepared such an offence by committing a criminal offence or

2. has committed a criminal offence by means of telecommunication;

then, to the extent that this is necessary to establish the facts or determine the accused's whereabouts, traffic data (section 96 subsection (1), section 113a of the Telecommunications Act) may be obtained also without the knowledge of the person concerned. In the case referred to in the first sentence, number 2, the measure shall be admissible only where other means of establishing the facts or determining the accused's whereabouts would offer no prospect of success and if the acquisition of the data is proportionate to the importance of the case. The acquisition of location data in real time shall be admissible only in the case of the first sentence, number 1.

(2) Section 100a subsection (3) and Section 100b subsections (1) to (4), first sentence, shall apply mutatis mutandis. Unlike Section 100b subsection (2), second sentence, number 2, in the case of a criminal offence of substantial significance, a sufficiently precise spatial and temporal description of the telecommunication shall suffice where other means of establishing the facts or determining the accused's whereabouts would offer no prospect of success or be much more difficult.

(3) If the telecommunications traffic data is not acquired by the telecommunications services provider, the general provisions shall apply after conclusion of the communication process.

(4) In accordance with Section 100b subsection (5) an annual report shall be produced in respect of measures pursuant to subsection (1), specifying:

1. the number of proceedings during which measures were implemented pursuant to subsection (1);
2. the number of measures ordered pursuant to subsection (1) distinguishing between initial orders and subsequent extension orders;
3. in each case the underlying criminal offence, distinguishing between numbers 1 and 2 of subsection (1), first sentence;
4. the number of months elapsed during which telecommunications call data was intercepted, measured from the time the order was made;
5. the number of measures which produced no results because the data intercepted was wholly or partially unavailable.

Section 100h

[Taking of Photographs; Technical Devices for Surveillance]

(1) Also without the knowledge of the persons concerned

1. photographs may be taken, or

2. other special technical devices intended specifically for surveillance purposes, may be used

where other means of establishing the facts or determining an accused's whereabouts would offer less prospect of success or be more difficult. A measure pursuant to the first sentence, number 2, shall be admissible only if the object of the enquiry is a criminal offence of substantial significance.

(2) The measures may only be directed against an accused person. In respect of other persons,

1. measures pursuant to subsection (1), number 1, shall be admissible only where other means of establishing the facts or determining an accused's whereabouts would offer much less prospect of success or be much more difficult;

2. measures pursuant to subsection (1), number 2, shall only be admissible if it is to be assumed, on the basis of certain facts, that they are in contact with an accused person or that such contact will be established, the measure will result in the establishment of the facts or the determination of an accused's whereabouts, and other means would offer no prospect of success or be much more difficult.

(3) The measure may be implemented even if it unavoidably affects third persons.

Section 100i

[IMS I-Catcher]

(1) If certain facts give rise to the suspicion that a person, either as perpetrator, or as accessory, has committed a criminal offence of substantial significance, in the individual case as well, particularly one of the offences referred to in Section 100a subsection (2), or, in cases where there is criminal liability for attempt has attempted to commit such an offence or has prepared such an offence by committing a criminal offence, then technical means may be used to determine:

1. the device ID of a mobile end terminal and the card number of the card used therein, as well as

2. the location of a mobile end terminal, insofar as this is necessary to establish the facts or determine the whereabouts of the accused person.

(2) Personal data concerning third persons may be acquired in the course of such measures only if, for technical reasons, this is unavoidable to fulfill the objectives of subsection (1). Such data may not be used for any purpose beyond the comparison of data in order to locate the device ID and card number sought, and the data is to be deleted without delay once the measure has been completed.

(3) Section 100a subsection (3) and Section 100b subsection (1), first to third sentences, as well as subsection (2), first sentence and subsection (4), first sentence, shall apply mutatis mutandis. The order shall be limited to a maximum period of six months. An extension of not more than six months in each case shall be admissible if the conditions set out in subsection (1) continue to exist.

Section 101**[Notification]**

(1) Unless otherwise provided, measures pursuant to Sections 98a, 99, 100a, 100c to 100i, 110a, 163d to 163f, shall be subject to the following conditions.

(2) Decisions and other documents concerning measures pursuant to Sections 100c, 100f, 100h, subsection (1), number 2, and Section 110a shall be deposited at the public prosecution office. They shall be added to the files only if the requirements for a notification pursuant to subsection (5) have been met.

(3) Personal data which was acquired by means of measures pursuant to subsection (1) is to be labelled accordingly. Following a transfer of the data to another agency, the labelling is to be maintained by such agency.

(4) The following persons shall be notified of measures pursuant to subsection (1):

1. in the case of Section 98a, the persons concerned, in respect of whom further investigations were carried out following evaluation of the data;

2. in the case of Section 99, the sender and the addressee of the postal item;

3. in the case of Section 100a, the participants in the telecommunication under surveillance;

4. in the case of Section 100c,

a) the accused person, against whom the measure was directed;

b) other persons under surveillance;

c) persons who owned or lived in the private premises under surveillance at the time the measure was effected;

5. in the case of Section 100f, the person targeted and other persons significantly affected thereby;

6. in the case of Section 100g, the participants in the telecommunication concerned;

7. in the case of Section 100h subsection (1), the person targeted and other persons significantly affected thereby;

8. in the case of Section 100i, the person targeted;

9. in the case of Section 110a,

a) the person targeted,

b) persons significantly affected thereby

c) persons whose private premises which are not generally accessible to the public were entered by the undercover investigator;

10. in the case of Section 163d, the persons concerned, in respect of whom further investigations were carried out following evaluation of the data;

11. in the case of Section 163e, the person targeted and the person whose personal data was reported;

12. in the case of Section 163f, the person targeted and other persons significantly affected thereby.

In the notification, mention should be made of the option of subsequent court relief pursuant to subsection (7) and the applicable time limit. Notification shall be dispensed with where overriding interests of an affected person that merit protection constitute an obstacle thereto. Furthermore, notification of a person listed in numbers 2, 3 and 6, of the first sentence, who was not the target of the measure, may be dispensed with if such person was only tangentially affected by the measure and it may be assumed that the person has no interest in being notified. Investigations to determine the identity of a person listed in the first sentence are to be carried out only if this appears necessary taking into account the degree of invasiveness of the measure in respect of the person concerned, the effort associated with establishing their identity, as well as the resulting detriment for such person or other persons.

(5) Notification shall take place as soon as it can be effected without endangering the purpose of the investigation, the life, physical integrity and personal liberty of another, or significant assets, in the case of Section 110a including the possibility of continued use of the undercover investigator. Where notification is deferred pursuant to the first sentence, the reasons shall be documented on the file.

(6) Where notification is deferred pursuant to subsection (5) and has not taken place within twelve months after completion of the measure, any further deferral of notification shall be subject to the approval of the court. The court shall decide upon the duration of any further deferrals. The court may approve the permanent dispensation with notification where there is a probability bordering on certainty that the requirements for notification will not be fulfilled, even in future. If several measures have been implemented within a short period of time, the time limit mentioned in the first sentence shall begin upon conclusion of the last measure. In the case of Section 100c the time period

mentioned in the first sentence shall be six months.

(7) Judicial decisions pursuant to subsection (6) shall be taken by the court competent to order the measure. In all other cases the court situated where the competent public prosecution office is located shall be competent. Even after completion of the measure and for up to two weeks following their notification, the persons named in subsection (4), first sentence, may apply to the court competent pursuant to the first sentence for a review of the lawfulness of the measure, as well as of the manner and means of its implementation. An immediate complaint against the decision shall be admissible. Where public charges have been preferred and the accused has been notified, the court seized of the matter shall decide upon the application in its concluding decision.

(8) Personal data acquired by means of the measure which is no longer necessary for the purposes of criminal prosecution or a possible judicial review of the measure shall be deleted without delay. The fact of the deletion is to be documented. Insofar as deletion of the data has been deferred merely for the purposes of a possible judicial review of the measure, the data shall not be used for any other purpose without the consent of the persons concerned; access to the data is to be restricted accordingly.

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 offence, 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, as well as in 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 be admissible only for the purpose of apprehending the accused or to follow up the traces of a criminal offence or to seize certain objects, and only if certain facts support the conclusion that the person, trace, or object sought is located on the premises to be searched. For the purposes of apprehending an accused who is strongly suspected of having committed an offence pursuant to section 129a, also in conjunction with section 129b subsection (1), of the Criminal Code, or one of the offences designated in this provision, a search of private and other premises shall also be admissible if they are located in a building in which it may be assumed, on the basis of certain facts, that the accused is located.

(2) The restrictions of subsection (1), first sentence, shall 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 enclosed 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 re-apprehending 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 offences, 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 may be ordered only by the judge and, in exigent circumstances, also by the public prosecution office and the officials assisting it (section 152 of the Courts Constitution Act). Searches pursuant to Section 103 subsection (1), second sentence, shall be ordered by the judge; in exigent circumstances the public prosecution office shall be authorized to order such searches.

(2) Where private premises, business premises, or enclosed property are to be searched in the absence of the judge or the public prosecutor, a municipal official or two members of the community in the district of which the search is carried out shall be called in, if possible, to assist. The persons called in as members of the community may not be police officers or officials assisting the public prosecution office.

(3) If it is necessary to carry out 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 official 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 carried out on premises 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 neighbour shall, if possible, be called in to assist.

(2) In the cases referred to in Section 103 subsection (1), the purpose of the search shall be made known to the occupant or possessor or to the person called in in his absence, before the search begins. 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 thereby shall, upon his request, be given a written notification indicating the reason for the search (Sections 102, 103) and, in the case of Section 102, the criminal offence. Upon request, he shall also be given a list of the objects which were impounded or seized; if nothing suspicious was found, he shall be given a certificate to this effect.

Section 108**[Seizure of Other Objects]**

(1) Where objects which indicate the commission of another criminal offence are found during a search, they shall be provisionally seized even though they are not connected with the ongoing investigation. The public prosecution office shall be informed thereof. The first sentence shall not apply to searches carried out pursuant to Section 103 subsection (1), second sentence.

(2) Where objects as defined in subsection (1), first sentence, which relate to the termination of a patient's pregnancy, are found on the premises of a physician, their use for evidential purposes in criminal proceedings against the patient shall be inadmissible in respect of a criminal offence pursuant to section 218 of the Criminal Code.

(3) Where objects as defined in subsection (1), first sentence, are found on the premises of a person named in Section 53 subsection (1), first sentence, number 5, such objects being, covered by the right of the person named to refuse to testify, the object shall only be admissible as evidence in criminal proceedings insofar as the subject of these criminal proceedings is a criminal offence which is punishable by a minimum sentence of five years' imprisonment and is not a criminal offence pursuant to section 353b of the Criminal Code.

Section 109**[Marking Seized Objects]**

Objects impounded or seized shall be listed exactly and, in order to prevent mistakes, shall be marked with an official seal or in some other appropriate manner.

Section 110**[Examination of Papers]**

(1) The public prosecution office and, if it so orders, the officials assisting it (section 152 of the Courts Constitution Act), shall have the authority to examine documents belonging to the person affected by the search.

(2) In all other cases, officials shall be authorized to examine papers found by them only if the holder permits 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 sealed with the official seal in the presence of the holder.

(3) The examination of an electronic storage medium at the premises of the person affected by the search may be extended to cover also physically separate storage media insofar as they are accessible from the storage medium if there is a concern that the data sought would otherwise be lost. Data which may be of significance for the investigation may be secured; Section 98 subsection (2) shall apply mutatis mutandis.

Section 110a**[Undercover investigators]**

(1) Undercover investigators may be used to clear up criminal offences where there are sufficient factual indications showing that a criminal offence of substantial significance 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 74a and 120 of the 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 felonies where certain facts substantiate the risk of a repetition. Their use shall only be admissible where other means of clearing up the serious criminal offence would offer no prospect of success or be much more difficult.

Undercover investigators may also be used to clear up felonies where the special significance of the offence makes the operation necessary and other measures offer no prospect of success.

(2) Undercover investigators shall be officials in the police force who carry out investigations using a changed and lasting identity (legend) which is conferred on them. They may 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) The use of an undercover investigator shall be admissible only after the consent of the public prosecution office has been obtained. In exigent circumstances and if the decision of the public prosecution office cannot be obtained in time, such decision shall be obtained without delay; the measure shall be terminated if the public prosecution office does not give its consent within three working days. Consent shall be given in writing and for a specified period. Extensions shall be admissible providing the conditions for the use of undercover investigators continue to apply.

(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 the court. In exigent circumstances consent of the public prosecution office shall suffice. Where the decision of the public prosecution office cannot be obtained in time, such decision shall be obtained without delay. The measure shall be terminated if the

court does not give its consent within three working 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 prosecution office and the court responsible for the decision whether to consent to the use of the undercover investigator 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 pursuant to Section 96, particularly if there is reason to fear that revealing the identity would endanger the life, limb or liberty of the undercover investigator or of another person, or would jeopardize the continued use of the undercover investigator.

Section 110c

[Entering Private Premises]

Undercover investigators may enter private premises using their legend with the consent of the entitled person. Such consent may not be obtained by any pretence of a right of access extending beyond the use of the legend. In all other respects, the undercover investigator's powers shall be governed by this statute and by other legal provisions.

Section 110d (Deleted)

Section 110e (Deleted)

Section 111

[Road Traffic Controls]

(1) If certain facts substantiate the suspicion that an offence pursuant to section 129a, also in conjunction with section 129b subsection (1), of the Criminal Code, one of the offences designated in this provision, or an offence pursuant to section 250 subsection (1), number 1, of the Criminal 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 apprehension of the perpetrator or to the securing of evidence which may serve to clear up the offence. 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 issued by the judge; in exigent circumstances, the public prosecution office and the officials assisting it (section 152 of the Courts Constitution Act) shall be authorized to make such an order.

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

[...]

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 offence 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 the 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 also be ordered against an accused strongly suspected pursuant to section 308 subsections (1) to (3) of the Criminal Code, of having committed a criminal offence pursuant to section 6 subsection (1), number 1, of the Code of Crimes against International Law or section 129a subsections (1) or (2), also in conjunction with section 129b subsection (1), or pursuant to sections 211, 212, 226, 306b or 306c of the Criminal Code, or insofar as life and limb of another have been endangered by the offence, even if there are no grounds for arrest pursuant to subsection (2).

[...]

Section 136

[First Examination]

(1) At the commencement of the first examination, the accused shall be informed of the offence with which he is charged and of the applicable criminal law provisions. He shall be advised that the law grants him the right to respond to the charges, or not to make any statement on the charges, and the right, at any stage, even prior to his examination, to consult with defence counsel of his choice. He shall further be advised that he may request evidence to be taken in his defence. In appropriate cases the accused shall also be informed that he may make a written statement, and of the possibility of offender-victim mediation.

(2) The examination should give the accused an opportunity to dispel the grounds for suspecting him and to assert the facts which speak in his favour.

(3) At the first examination of the accused, consideration shall also be given to ascertaining his personal situation.

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 consents to their use.

CHAPTER XI

DEFENCE

Section 137

[Defence counsel]

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

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

[...]

Section 138a

[Exclusion of Defence counsel]

(1) Defence 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 offence which constitutes the subject of investigation,
2. of abusing communication with an accused who is not at liberty for the purpose of committing criminal offences or substantially endangering the security of a prison, or
3. of having committed an offence which in the event of the conviction of the accused would constitute accessoryship after the fact, obstruction of justice, or handling stolen goods.

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

(3) The exclusion shall be revoked

1. as soon as its prerequisites no longer exist, not, however, for the sole reason that the accused has been released;
2. if defence counsel is acquitted in the main proceedings opened on account of the facts leading to exclusion, 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 professional 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 defence counsel is excluded, he may not defend the accused in other proceedings governed by statute either. In relation to other matters he shall not visit the accused if the latter is not at liberty.

(5) Where defence counsel is excluded, he may not defend other accused persons in the same proceedings either or in other proceedings where such proceedings are based on a criminal offence pursuant to section 129a, also in conjunction with section 129b subsection (1) of the Criminal Code and where exclusion was ordered during proceedings which were also based on such a criminal offence. Subsection (4) shall apply *mutatis mutandis*.

Section 138b

[Exclusion of Defence counsel for Endangering National Security]

Defence counsel shall also be excluded from participating in proceedings the subject of which is one of the criminal offences designated under section 74a subsection (1), number 3 and section 120 subsection (1), number 3, of the Courts Constitution Act, or non-performance of the duties pursuant to section 138 of the Criminal Code concerning criminal offences of high treason or endangering external security pursuant to sections 94 to 96, 97a and 100 of the Criminal 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 Defence counsel]

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

(2) After public charges have been preferred and until final conclusion of the proceedings the court of competency pursuant to subsection (1) shall decide, upon submission by the court before which the proceedings are pending and 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 defence counsel, being a member of a Bar Association, 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. He may make submissions in the proceedings.

(3) The court before which the proceedings are pending may order the rights of defence counsel under Sections 147 and 148 to be suspended pending a ruling on exclusion by the court competent under subsection (1); it may also order suspension of such rights 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 defence counsel. The ruling shall take the form of an incontestable order. For the duration of the order the court shall appoint another defence counsel to exercise 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 pursuant to subsection (2) during the main hearing, it shall simultaneously 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 defence counsel, on his own initiative or at the request of the accused, withdraws from participation in the proceedings after an application for his exclusion has been filed pursuant to subsection (2) or the matter has been submitted to the court competent to decide, this court may continue the exclusion proceedings with the aim of determining whether the participation of defence counsel who has withdrawn is admissible in the proceedings. The determination of inadmissibility shall be equivalent to exclusion within the meaning of Sections 138a, 138b and 138d.

(6) If defence 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 defence counsel shall be given after an oral hearing.

(2) Defence counsel shall be summoned to the oral hearing. The time limit for the summons shall be one week; it may be reduced to three days. The public prosecution office, the accused and, in the cases referred to in 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 defence counsel if he has been properly summoned and has had his attention drawn in the summons to the fact that the oral hearing may be conducted 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 defence counsel for the reasons designated in Section 138a, or concerning a case referred to in Section 138b. The President of the Bar Association shall not be entitled to lodge a complaint. A decision rejecting the exclusion of defence counsel pursuant to Section 138a shall not be contestable.

[...]

Section 146

[Joint Defence counsel]

Defence counsel may not appear for more than one person accused of the same offence. Nor may he appear in a single proceeding for more than one person accused of different offences.

Section 146a

[Rejection of Defence counsel of the Accused's Own Choice]

(1) Where a person has been chosen as defence counsel although the prerequisites of Section 137 subsection (1), second sentence, or of Section 146 have been fulfilled, he shall be rejected as defence 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 referred to in Section 137 subsection (1), second sentence, more than one defence 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 defence 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) Defence counsel shall have authority to inspect those files which are available to the court or which will have to be submitted to the court if charges are preferred, as well as to inspect officially impounded pieces of evidence.

(2) If investigations have not yet been designated as concluded on the file, defence 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 defence counsel be refused inspection of records concerning the examination of the accused or concerning such judicial acts of investigation to which defence counsel was or should have been admitted, nor may he be refused inspection of expert opinions.

(4) Upon application, defence counsel shall be permitted to take the files, with the exception of pieces of evidence, to his office or to his private premises for inspection, unless significant grounds present an obstacle thereto. The decision shall not be contestable.

(5) The public prosecution office shall decide whether to grant inspection of the files in preparatory proceedings and after final conclusion of the proceedings; in other cases the presiding judge of the court seized of the case shall be competent to decide. If the public prosecution office refuses inspection of the files after noting the termination of the investigations in the file, or if it refuses inspection pursuant to subsection (3), or if the accused is not at liberty, a court decision pursuant to Section 161a subsection (3), second to fourth sentences, may be applied for. These decisions shall be given without reasons if their disclosure might endanger the purpose of the investigation.

(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 conclusion of the investigation. Defence counsel shall be notified as soon as he once again has the unrestricted right to inspect the files.

(7) Where an accused has no defence counsel, information and copies from the files may be given to the accused, provided that this does not endanger the purpose of the investigation and that overriding interests of third persons meriting protection do not present an obstacle thereto. Subsection (5) and Section 477 subsection (5) shall apply *mutatis mutandis*.

Section 148

[Defence Counsel-Client Communication]

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

(2) If an accused is not at liberty and if the subject of the investigation is a criminal offence pursuant to section 129a, also in conjunction with section 129b subsection (1) of the Criminal 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 defence counsel in any other proceedings governed by statute. Where written correspondence is subject to monitoring pursuant to the first or second sentence, devices which exclude the possibility of handing over documents and other items shall be put in place for conversations between the accused and defence counsel.

Section 148a

[Implementing Monitoring Measures]

(1) The judge of the Local Court in whose district 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 Criminal 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 may not be or become seized of the subject of the investigation. The judge shall keep secret any knowledge which he obtains during monitoring. Section 138 of the Criminal Code shall remain unaffected. [...]

Section 163b

[Establishing Identity]

(1) If somebody is suspected of an offence 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 by other means 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 offence, the identity of a person who is not suspected of an offence 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 not under any circumstances 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 longer 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 offence and the purpose of the investigation is endangered by the notification.

(3) 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 referred to in Section 163b subsection (2).

Section 163d

[Computer-Assisted Search]

(1) Where certain facts give rise to the suspicion that:

1. a criminal offence referred to in Section 111, or

2. a criminal offence referred to in Section 100a, subsection (2), numbers 6 to 9 and 11,

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 offence 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 offence, 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 automatically machine-read. The data may be transmitted to criminal prosecuting 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 of the Courts Constitution Act). If the public prosecution office or one of the officials assisting it has made the order, the public prosecution office shall apply for judicial confirmation of the order without delay. Section 100b subsection (1), third sentence shall apply accordingly.

(3) The order shall be given in writing. It shall describe the person whose data are to be stored as precisely as possible, by reference to particular features or characteristics, in the light of the information available about the suspect or suspects at the time of the order. The order shall specify the nature and duration of the measures. It shall be limited to a particular area and to a maximum period of three months. One extension of not more than three further months shall be admissible if the conditions designated in subsection (1) continue to apply.

(4) If the conditions for issuance of the order no longer exist, or if the purpose of the measures resulting from the order has been fulfilled, the measures shall be terminated without delay. The personal data obtained by the measures shall be deleted without delay as soon as they are not, or are 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 deletion.

(5) (Deleted)

Section 163e

[Police Observation]

(1) An order may be made for police observation during police checks, allowing personal identification data to be taken if there are sufficient factual indications to show that a criminal offence of substantial significance has been committed. The order may be directed only against the accused person and only where other means of establishing the facts or determining the perpetrator's whereabouts would offer much less prospect of success or be much more difficult. The measure shall be admissible against other persons if it can be assumed on the basis of certain facts that they are linked to the perpetrator or that such a link is being established, that the measure will lead to establishment of the facts or to determination of the perpetrator's whereabouts, and that using other means would offer much less prospect of success or be much more difficult.

(2) The vehicle license plate number may be included in the notice if the vehicle is registered to a person in respect of whom a notice has been issued pursuant to subsection (1), or is being used by that person or by another person whose identity is yet unknown and who is suspected of having committed a criminal offence of substantial significance.

(3) Should such a person be encountered, personal data about an individual accompanying the person in the notice or about a person driving a vehicle in the notice may also be communicated.

(4) The order for police observation may be given 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. Section 100b subsection (1), third sentence, shall apply mutatis mutandis. The order shall be limited to a maximum of one year. It may be extended by not more than three months in each case, insofar as the conditions for making the order continue to apply.

Section 163f

[Longer-Term Observation]

(1) Where there are sufficient factual indications showing that a criminal offence of substantial significance has been committed, an order may be made for planned observation of the accused

1. to last for a continuous period exceeding twenty-four hours or

2. to take place on more than two days.

The measure may be ordered only where other means of establishing the facts or determining the perpetrator's whereabouts offer much less prospect of success or be much more difficult. The measure shall be admissible against other persons if it can be assumed on the basis of certain facts that they are linked to the perpetrator or that such a link is being established, that the measure will lead to establishment of the facts or to determination of the perpetrator's whereabouts, and that using other means would offer much less prospect of success or be much more difficult.

(2) The measure may be implemented even if it unavoidably affects third persons.

(3) Such measures may be ordered only by the court, and in exigent circumstances also by the public prosecution office or the officials assisting it (section 152 of the Courts Constitution Act). An order issued by the public prosecution office or the officials assisting it shall become ineffective if not confirmed by the court within three working days. Section 100b subsection (1), fourth and fifth sentences, and subsection (2), second sentence shall apply mutatis mutandis.

(4) (Deleted)

[...]

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 appropriate measures to prevent the defendant 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 in his absence if he has already been examined 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 wilfully 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, has had the opportunity to make a statement on the charges before the 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 whether to hold the hearing in the absence of the defendant pursuant to subsection (1) after hearing 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 suspensive 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 requirements of Section 229 subsection (2) have not been fulfilled.
- (4) Defence counsel shall be appointed for any defendant who is not represented by defence counsel as soon as a hearing in the absence of the defendant is being considered pursuant to subsection (1).

Section 231b

[Absence because of Disorderly Conduct]

- (1) If the defendant is removed from the courtroom or committed to prison because of disorderly conduct (section 177 of the Courts Constitution Act), the hearing may be conducted in his absence if the court does not consider his further presence to be indispensable and as long as it is to be feared that the defendant's presence would be seriously detrimental to the progress of the main hearing. In any event, 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 defence also their defence 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 443

[Seizure of Property]

- (1) Property or individual items of property may be seized, if located within 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 offence pursuant to:
 1. sections 81 to 83 subsection (1), sections 94 or 96 subsection (1), sections 97a or 100, sections 129 or 129a, also in conjunction with section 129b subsection (1), of the Criminal Code,
 2. one of the provisions referred to in section 330 subsection (1), first sentence, of the Criminal 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 Criminal Code, or pursuant to section 330 subsection (2) or section 330a subsections (1) and
- (2) of the Criminal Code,
3. Sections 51, 52 subsection (1), numbers 1 and 2, letters c and d, or subsections (5) and (6) 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 War Weapons Control Act, 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 offence pursuant to sections 29a, section 30 subsection (1), numbers 1, 2 and 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 before conclusion of the main hearing at first instance.

(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 working days.

(3) The provisions in Sections 291 to 293 shall apply mutatis mutandis.