

1. written correspondence between the accused and the persons who, according to Section 52 or Section 53 subsection (1), first sentence, numbers 1 to 3b, may refuse to testify;
2. notes made by the persons specified in Section 53 subsection (1), first sentence, 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, which are covered by the right of the persons mentioned in Section 53 subsection (1), first sentence, numbers 1 to 3b, to refuse to testify.

(2) These restrictions shall apply only if these objects are in the custody of a person entitled to refuse to testify unless the object concerned is an electronic health card as defined in section 291a of Part Five of the Social Code. 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 not be subject to seizure either if they are in the custody of a hospital or a service provider which collects, processes or uses personal data for the persons listed, nor shall objects to which the right of the persons mentioned in Section 53 subsection (1), first sentence, numbers 3a and 3b, to refuse to testify extends, be subject to seizure if they are in the custody of the counselling agency referred to in that provision. The restrictions on seizure shall not apply if certain facts substantiate the suspicion that the person entitled to refuse to testify participated in the criminal offence, or in accessoryship after the fact, obstruction of justice or handling stolen goods, or where the objects concerned have been obtained by means of a criminal offence or have been used or are intended for use in perpetrating a criminal offence, or where they emanate from a criminal offence.

(3) Insofar as the assistants (Section 53a) of the persons mentioned in Section 53a subsection (1), first sentence, numbers 1 to 3b, have a right to refuse to testify, subsections (1) and (2) shall apply *mutatis mutandis*.

(4) The seizure of objects shall be inadmissible insofar as they are covered by the right of the persons mentioned in Section 53 subsection (1), first sentence, number 4, to refuse to testify. This protection from seizure shall also extend to objects which the persons mentioned in Section 53 subsection (1), first sentence, number 4, have entrusted to their assistants (Section 53a). The first sentence shall apply *mutatis mutandis* insofar as the assistants (Section 53a) of the persons mentioned in Section 53 subsection (1), first sentence, number 4, have a right to refuse to testify.

(5) The seizure of documents, sound, image and data media, illustrations and other images in the custody of persons referred to in Section 53 subsection (1), first sentence, 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. Subsection (2), third sentence, and Section 160a subsection (4), second sentence, shall apply *mutatis mutandis*, the participation provision of subsection (2), third sentence, however, only where the particular facts substantiate strong suspicion of participation; in these cases, too, seizure shall only be admissible, however, where it is not disproportionate to the importance of the case having regard to the basic rights arising out of Article 5 paragraph (1), second sentence, of the Basic Law, and the investigation of the factual circumstances or the establishment of the whereabouts of the perpetrator would otherwise offer no prospect of success or be much more difficult.

[table of contents](#)

Section 98 **[Order of Seizure]**

(1) Seizure may be ordered only by the court and, in exigent circumstances, by the public prosecution office and the 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 court.

(2) An official who has seized an object without a court order shall apply for court confirmation within three days if neither the person concerned nor an adult relative was present at the time of seizure, or if the person concerned and, if he was absent, an adult relative of that person expressly objected to the seizure. The person concerned may at any time apply for a court decision. The competence of the court shall be determined by Section 162. The person concerned may also submit the application to the Local Court in whose district the seizure took place, which shall then forward the application to the competent court. The person concerned shall be instructed as to his rights.

(3) Where after public charges have been preferred, the public prosecution office or one of the officials assisting has effected seizure, the court shall be notified of the seizure within three days; the objects seized shall be put at its disposal.

(4) If it is necessary to effect 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 agency making the request 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.

[table of contents](#)

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 the counterfeiting of 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 in some other organized way,

personal data relating to individuals who manifest certain significant features which may be presumed to apply to the perpetrator 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*.

[table of contents](#)

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 court 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.