

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 court 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 court 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.

[table of contents](#)

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.

[table of contents](#)

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 a criminal offence pursuant to section 89a of the Criminal Code or pursuant to section 129a, also in conjunction with section 129b subsection (1), of the Criminal Code, or one of the criminal 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.

[table of contents](#)

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.

[table of contents](#)

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.

[table of contents](#)

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).

[table of contents](#)

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.

[table of contents](#)

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.

[table of contents](#)

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.

[table of contents](#)