

for the determination of the legal consequences of the act. For this purpose it may avail itself of the service of the court assistance agency.

(4) A measure shall be inadmissible where special provisions regulating its application, being provisions under Federal law or under the corresponding *Land* law, present an obstacle thereto.

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Section 160a **[Investigation Measures Where Person Has Right to Refuse Testimony]**

(1) An investigation measure directed at a person named in Section 53 subsection (1), first sentence, numbers 1, 2 or 4, an attorney, a person who has been admitted to a Bar Association pursuant to section 206 of the Federal Regulations for Practising Lawyers or a non-attorney provider of legal services who has been admitted to a Bar Association shall be inadmissible if it is expected to produce information in respect of which such person would have the right to refuse to testify. Any information which is obtained nonetheless may not be used. Any recording of such information is to be deleted without delay. The fact that the information was obtained and deleted shall be documented. Where information about a person referred to in the first sentence is obtained through an investigation measure that is not aimed at such person and in respect of which such person may refuse to testify, the second to fourth sentences shall apply *mutatis mutandis*.

(2) Insofar as a person named in Section 53 subsection (1), first sentence, numbers 3 to 3b or number 5, might be affected by an investigation measure and it is to be expected that information would thereby be obtained in respect of which the person would have the right to refuse to testify, this shall be given particular consideration in the context of examining proportionality; if the proceedings do not concern a criminal offence of substantial importance, then, in principle, no overriding interest in prosecuting the criminal offence should be presumed. Insofar as is expedient, the measure should be dispensed with or, to the extent possible for this type of measure, restricted. The first sentence shall apply *mutatis mutandis* to the use of information for evidential purposes. The first to third sentences shall not apply to attorneys, persons who have been admitted to a Bar Association pursuant to section 206 of the Federal Regulations for Practising Lawyers and non-attorney providers of legal services who have been admitted to a Bar Association.

(3) Subsections (1) and (2) are to be applied *mutatis mutandis*, insofar as the persons named in Section 53a would have the right to refuse to testify.

(4) Subsections (1) to (3) shall not apply where certain facts substantiate the suspicion that the person who is entitled to refuse to testify participated in the offence or in accessoryship after the fact, obstruction of justice or handling stolen goods. If the offence may only be prosecuted upon application or with authorization, the first sentence shall apply in the cases referred to in Section 53 subsection (1), first sentence, number 5, as soon as and insofar as the application for prosecution has been filed or the authorization granted.

(5) Section 97 and Section 100c subsection (6) shall remain unaffected.

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Section 160b **[Discussion of the Status of Proceedings]**

The public prosecution office may discuss the status of the proceedings with the participants, insofar as this appears suitable to expedite the proceedings. The essential content of this discussion shall be documented.

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Section 161 **[Information and Investigations]**

(1) For the purpose indicated in Section 160 subsections (1) to (3), the public prosecution office shall be entitled to request information from all authorities and to make investigations of any kind, either itself or through the authorities and officials in the police force provided there are no other statutory provisions specifically regulating their powers. The authorities and officials in the police force shall be obliged to comply with the request or order of the public prosecution office and shall be entitled, in such cases, to request information from all authorities.

(2) Where measures pursuant to this statute are only admissible where the commission of particular criminal offences is suspected, personal data that has been obtained as a result of a corresponding measure taken

pursuant to another statute may be used as evidence in criminal proceedings without the consent of the person affected by the measure only to clear up one of the criminal offences in respect of which such a measure could have been ordered to clear up the offence pursuant to this statute. Section 100d, subsection (5), number 3 shall remain unaffected.

(3) Personal data obtained in or from private premises by technical means for the purpose of personal protection during a clandestine investigation based on police law may be used as evidence, having regard to the principle of proportionality (Article 13 paragraph (5) of the Basic Law), only after determination of the lawfulness of the measure by the Local Court (Section 162 subsection (1)) in whose district the authority making the order is located; in exigent circumstances a judicial decision is to be sought without delay.

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Section 161a **[Witnesses and Experts Before the Public Prosecution Office]**

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

(2) If a witness or expert fails, or refuses, to appear without justification, the public prosecution office shall have the authority to take the measures provided in Sections 51, 70 and 77. However, the imposition of detention shall remain reserved for the court competent pursuant to Section 162.

(3) A decision by the court competent pursuant to Section 162 may be requested against decisions of the public prosecution office pursuant to subsection (2), first sentence. The same shall apply where the public prosecution office has taken decisions within the meaning of Section 68b. Sections 297 to 300, 302, 306 to 309, 311a and 473a shall each apply *mutatis mutandis*. Court decisions pursuant to the first and second sentences shall not be contestable.

(4) If the public prosecution office requests another public prosecution office to examine a witness or expert, the powers pursuant to subsection (2), first sentence, shall also be vested in the requested public prosecution office.

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Section 162 **[Court Investigations]**

(1) If the public prosecution office considers a court investigation to be necessary, it shall submit its applications prior to preferment of public charges to the Local Court in the district of which it is located or in which its branch submitting the application is located. If the public prosecution office additionally considers it necessary that an arrest or detention order be issued, it may also, without prejudice to Sections 125 and 126a, submit such an application before the court designated in the first sentence. The Local Court in the district of which the investigation procedures are to be carried out shall be competent to undertake court examinations and inspections if the public prosecution office submits its application to such court in order to speed up proceedings or to avoid inconvenience to the persons concerned.

(2) The court shall examine whether the investigation applied for is permitted by statute, given the circumstances of the case.

(3) After preferment of public charges, the court seized of the matter shall be the competent court. During appellate proceedings on law, the court whose judgment is contested shall be the competent court. After final conclusion of the proceedings, subsections (1) and (2) shall apply *mutatis mutandis*. Following an application for reopening of proceedings, the court competent to decide in the reopened proceedings shall be the competent court.

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Section 163 **[Duties of the Police]**

(1) The authorities and officials in the police force shall investigate criminal offences and shall take all measures that may not be deferred, in order to prevent concealment of facts. To this end they shall be entitled to request,