

court record,

2. it is not to be expected that as a result of the transfer the person's detention would be prolonged or that the purpose of the criminal proceedings would be jeopardised,
3. measures are in place to ensure that the person will not, during the period of his transfer, be punished or be subjected to any other sanction that cannot be issued in absentia, and that in the case of his release he may leave the requesting State, and
4. if measures are in place to ensure that the person will be returned immediately after the evidence has been taken unless this requirement has been waived.

The consent (1st sentence no. 1 above) cannot be revoked.

(2) The public prosecution service at the Oberlandesgericht shall prepare the transfer and shall execute it. The public prosecution service at the Oberlandesgericht in whose district the person is detained shall have jurisdiction.

(3) The detention served in the requesting State shall be credited towards the detention being enforced in Germany. S. 37(4) shall apply mutatis mutandis.

[table of contents](#)

Section 63 **Temporary Transfer from a Foreign Country for Foreign Proceedings**

(1) A person detained in pretrial detention or serving a prison sentence or detained under a custodial measure in a foreign State may, at the request of a competent authority of that State, be temporarily transferred to German territory to give evidence in proceedings pending in that State and after the evidence has been taken, be returned. In order to ensure his return the person shall be held in detention.

(2) Detention shall be ordered by means of a written arrest warrant. The written arrest warrant shall contain information concerning the following:

1. The person,
2. the request for taking evidence in the presence of the person and
3. the reason for the detention.

(3) The judge who is to provide the legal assistance or the judge of the Amtsgericht in whose district the executive authority that is to provide the legal assistance is located, shall have jurisdiction over the decision regarding the detention. The decision shall not be subject to appeal.

(4) Ss. 27, 45(4) and 62(2) 1st sentence shall apply mutatis mutandis.

[table of contents](#)

Section 64 **Transporting Witnesses in Transit**

(1) A foreigner detained in a foreign State in pretrial detention or serving a prison sentence or otherwise detained under a custodial measure may, at the request of a competent authority, be transported through German territory to a third State in order to give evidence as a witness, for identification or inspection and may after the evidence has been taken be returned.

(2) To ensure the transport in transit, the person shall be held in detention. Ss. 27, 30(1), 42, 44, 45(3) and (4), 47 and 63(2) shall apply mutatis mutandis.

[table of contents](#)

Section 65 **Transport in Transit to Enforce Sentence**

The transport in transit through German territory of a foreign citizen for the purpose of enforcing a sentence or

any other sanction, from the State where he was convicted to a foreign State that has taken over the enforcement, shall be governed by ss. 43(2) to (4), 44, 45 and 47 mutatis mutandis with the proviso that the request may also be submitted by a competent authority of the State of conviction.

[table of contents](#)

Section 66 Handing Over of Objects

(1) At the request of a competent authority of a foreign State objects may be handed over

1. which may serve as evidence in foreign proceedings or
2. which the person concerned or an accomplice have obtained for or through the offence on which the request is based,
3. which the person concerned or an accomplice have obtained through the sale of such object or as a replacement for its being destroyed, damaged or taken away or on the basis of a right accrued to them or as usufruct or
4. which were created by or used or meant to be used in the commission or preparation of the offence on which the request is based.

(2) Surrender shall not be admissible unless

1. the offence on which the request is based contains elements of the actus reus and mens rea of a criminal offence or of an offence permitting the imposition of a fine under German law or unless mutatis mutandis it would be such an offence under German law,
2. an order for seizure by a competent authority of the requesting State is submitted or a declaration of such an authority shows that the requirements for seizure would exist if the objects were located in the requesting State and
3. measures are in place to ensure that the rights of third parties will not be infringed and that objects handed over under a condition will be returned upon request without undue delay.

(3) The handing over under subsection (1) nos. 2 to 4 above shall be admissible only as long as no pertinent final and enforceable foreign decision exists with regard to the abovementioned objects.

(4) The public prosecution service at the Landgericht shall prepare the decision about the handing over and shall execute it if granted. The public prosecution service at the Landgericht in whose district the object is located shall have jurisdiction. S. 61(2) 2nd sentence shall apply mutatis mutandis.

[table of contents](#)

Section 67 Search and Seizure

(1) Objects that may be considered for handing over to a foreign State may be seized or otherwise secured even prior to the receipt of the request for surrender. To this end, a search may be conducted.

(2) If the conditions specified in s. 66(1) no. 1 and (2) no. 1 apply, objects may also be seized or otherwise secured if necessary for the enforcement of a request which is not directed at the handing over of the objects. Subsection (1) 2nd sentence above shall apply mutatis mutandis.

(3) The Amtsgericht in whose district they are to be performed shall have jurisdiction to order the search and seizure. S. 61(2) 2nd sentence shall apply mutatis mutandis.

(4) If cases of emergency the public prosecution service or its agents (s. 152 of the Gerichtsverfassungsgesetz) may order the search and seizure.

[table of contents](#)

Section 67 a Legal Assistance to International Criminal Courts, InterState and Supranational Institutions