

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,

and in exigent circumstances to demand, information from all authorities, as well as to conduct investigations of any kind insofar as there are no other statutory provisions specifically regulating their powers.

(2) The authorities and officials in the police force shall transmit their records to the public prosecution office without delay. Where it appears necessary that a judicial investigation be performed promptly, transmission directly to the Local Court shall be possible.

(3) Section 52 subsection (3), Section 55 subsection (2), Section 57 subsection (1) and Sections 58, 58a, 58b and 68 to 69 shall apply *mutatis mutandis* to the examination of a witness by officials in the police force. The decision on permission pursuant to Section 68 subsection (3), first sentence, and on the assignment of counsel to a witness shall be taken by the public prosecution office; in all other cases the necessary decisions shall be taken by the person in charge of the examination. Section 161a subsection (3), second to fourth sentences, shall apply *mutatis mutandis* to decisions by officials in the police force pursuant to Section 68b subsection (1), third sentence. Section 52 subsection (3) and Section 55 subsection (2) shall apply *mutatis mutandis* to the instruction of an expert by officials in the police force. In the cases referred to in Section 81c subsection (3), first and second sentences, Section 52 subsection (3) shall also apply *mutatis mutandis* to examinations by officials in the police force.

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Section 163a **[Examination of the Accused]**

(1) The accused shall be examined prior to conclusion of the investigations, unless the proceedings result in termination. Section 58a subsection (1), first sentence, subsections (2) and (3) and Section 58b shall apply *mutatis mutandis*. In simple matters it shall be sufficient to give him the opportunity to respond in writing.

(2) If the accused applies for evidence to be taken in his defence, such evidence shall be taken if it is of importance.

(3) The accused shall be obliged to appear before the public prosecution office if summoned. Sections 133 to 136a and Section 168c subsections (1) and (5) shall apply *mutatis mutandis*. On application by the accused, the court competent pursuant to Section 162 shall decide on the lawfulness of his being made to appear. Sections 297 to 300, 302, 306 to 309, 311a and 473a shall apply *mutatis mutandis*. The decision of the court shall be incontestable.

(4) The accused shall be informed of the offence with which he is charged when he is first examined by officials in the police force. In all other cases Section 136 subsection (1), second to fourth sentences, subsections (2) and (3) and Section 136a shall apply to the examination of the accused by officials in the police force.

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Section 163b **[Establishing Identity]**

(1) If somebody is suspected of a criminal 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.

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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