

ภาคผนวก

DPUC

The German Criminal Procedure Code (Strafprozeßordnung, StPO)¹

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¹ <http://www.iuscomp.org/gla>

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Section 31. [Lay Judges and Registry Clerks]

(1) The provisions of this Chapter shall apply mutatis mutandis to lay judges as well as to registry clerks and to other persons assisting as recording clerks.

(2) The decision shall be given by the presiding judge. In the grand penal chamber and the penal division with lay judges the judicial members of the bench shall give a decision. If a recording clerk has been assigned to a judge, the latter shall decide on his challenge or disqualification.

Section 52. [Right to Refuse Testimony on Personal Grounds]

(1) The following persons may refuse to testify:

1. the fiancé(e) of the accused;
2. the spouse of the accused, even if the marriage no longer exists;
3. a person who is or was lineally related or related by marriage, collaterally related to the third degree, or related by marriage to the second degree, to the accused.

(2) If minors for want of intellectual maturity, or minors or persons placed in care due to mental illness or mental or emotional deficiency have no sufficient understanding of the importance of their right of refusal to testify, testimony may be taken from such persons only if they are willing to testify and if their statutory representative also agrees to their examination. If the statutory representative is accused himself he may not decide on the exercise of the right of refusal to testify; the same shall apply to the parent who is not accused, if both parents are entitled to act as statutory representative.

(3) Persons entitled to refuse to testify, in the cases of subsection (2) also their representatives authorized to decide on the exercise of the right of refusal to testify, shall be instructed concerning their right prior to each examination. They may revoke the waiver of this right during the examination.

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 statements 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 judge; the Local Court, in the district of which the public prosecution office applying for imposition of detention is located, shall have jurisdiction.

(3) A decision by the court may be requested against the decision of the public prosecution office pursuant to subsection (2), first sentence. The Regional Court in the district of which the public prosecution office is located shall decide on the application unless otherwise provided for in section 120 subsection (3), first sentence, and section 135 subsection (2) of the Courts Constitution Act. Sections 297 to 300, 302, 306 to 309 and 311a as well as the provisions on the imposition of costs in complaint proceedings shall apply mutatis mutandis. The decision of the court 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.

Section 162. [Judicial Investigations]

(1) If the public prosecution office considers a judicial investigation to be necessary, it shall make its applications to the Local Court in the district of which such investigation is to be made. If it considers judicial orders for making investigations in more than one district to be necessary, it shall make its applications to the Local Court in the district of which it is located. The second sentence shall not apply to examinations by the judge or if the public prosecution office considers the success of the investigation to be endangered by a delay which would be caused by an application to the competent Local Court pursuant to the second sentence.

(2) The jurisdiction of the Local Court shall not be affected by a change of the circumstances establishing such jurisdiction, occurring after the filing of the application.

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

Section 163. [Duties of the Police]

(1) The authorities and officials in the police force shall investigate criminal offenses and shall take all measures where there should be no delay, in order to prevent concealment of facts.

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

Section 163a. [Examination of the Accused]

(1) The accused shall be examined at the latest prior to conclusion of the investigations, unless the proceedings result in termination. In simple matters it shall be sufficient for him to be given the opportunity to respond in writing.

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

(3) The accused shall be obliged to appear before the public prosecution office upon being summoned. Sections 133 to 136a, 168c subsections (1) and (5) shall apply mutatis mutandis. On application by the accused, the court shall decide on the lawfulness of his being made to appear; Section 161a subsection (3), second to fourth sentences, shall apply.

(4) During the accused's first examination by officials in the police force, he shall be informed of the offense with which he is charged. Section 136 subsection (1), second to fourth sentences, subsections (2) and (3) and Section 136a shall otherwise apply to the examination of the accused by the police officials.

(5) Section 52 subsection (3), Section 55 subsection (2), Section 81c subsection (3), second sentence, in conjunction with Section 52 subsection (3) and Section 136a, shall apply mutatis mutandis to the examination of a witness or expert by officials in the police force.

Section 163b. [Establishing Identity]

(1) If somebody is suspected of an offense 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 in any other way 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 offense, the identity of a person who is not suspected of an offense 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.

Section 163c. [Duration of Custody. Judicial Review]

(1) A person affected by a measure pursuant to Section 163b may in no case be kept in custody longer than is necessary to establish his identity. The arrested person shall be brought without delay before the judge at the Local Court in the district of which he has been apprehended for the purpose of deciding on the admissibility and continuation of the deprivation of liberty, unless it would presumably take more time to obtain a decision by the judge than would be necessary to establish his identity.

(2) The arrested person shall be entitled to request that a relative or a person whom he trusts be notified without delay. He shall be given the opportunity to inform a relative or a person whom he trusts unless he is suspected of an offense and the purpose of the investigation would be endangered by the notification.

(3) A deprivation of liberty for the purpose of establishing identity shall not exceed a total period of twelve hours.

(4) If identity has been established the records prepared in connection with the establishment shall be destroyed in the cases of Section 163b subsection (2).

Section 163d. [Computer-Assisted Search]

(1) If certain facts substantiate the suspicion that:

1. one of the criminal offenses listed in Section 111, or
2. one of the criminal offenses listed in Section 100a, first sentence, numbers 3 and 4, has been committed, the data concerning the identity of persons obtained at a check by the border police, in the case of number 1 also obtained at checkpoints pursuant to Section 111, as well as the circumstances which may be important for clearing up the criminal offense or for apprehending the perpetrator, may be electronically stored if facts justify the assumption that the evaluation of the data may lead to the apprehension of the perpetrator, or to the clearing up of the criminal offense and the measure is not disproportionate to the importance of the matter. This

shall also apply if, in the case of the first sentence, passports and identity cards are read by machine. The data shall be transmitted to law enforcement authorities only.

(2) Measures of the nature designated in subsection (1) may be ordered only by the judge, in exigent circumstances also by the public prosecution office and the officials assisting it (section 152 Courts Constitution Act). If the public prosecution office or one of the officials assisting it has given the order, the public prosecution office shall request the judge's confirmation of the order without delay. The order shall become ineffective if not confirmed by the judge within three days.

(3) The order shall be given in writing. It must describe, by certain features or characteristics, the person whose data are to be stored, as precisely as possible in the light of the information about the suspect or suspects available at the time of the order. The kind and duration of the measure shall be determined. The order shall be limited to a special area and shall apply for a maximum of three months. One extension of not more than three further months shall be admissible if the conditions designated in subsection (1) continue to exist.

(4) If the conditions for the issuance of the order no longer exist, or if the purpose of the measures resulting from the order has been fulfilled, they shall be terminated without delay. The personal data obtained by the measures shall be erased without delay as soon as they are not, or no longer, required for the criminal proceedings; storage of the data exceeding the duration of the measures (subsection (3)) by more than three months, shall be inadmissible. The public prosecution office shall be notified about the erasure. The stored personal data may be used only for the criminal proceedings. Their use for other purposes shall be admissible only as far as an evaluation by the storing agency discloses any knowledge required to clear up another criminal offense, or to identify a person who is on the "wanted" list, or whose whereabouts must be determined for reasons of criminal prosecution or execution of sentence.

(5) The persons against whom further investigations have been conducted after evaluation of the data shall be informed of the measures designated in subsection (1), unless it is to be feared that the purpose of the investigation or public security would be endangered.

Section 163e. [Police Monitoring Notice]

(1) Notice may be ordered for monitoring to take place during police checks where personal particulars may be taken if there are sufficient factual indications to show that a criminal offense of considerable importance has been committed. The order may be made only against the accused person and only if establishing the facts or determining the perpetrator's whereabouts by

other means would offer much less prospect of success or would be made much more difficult. The measure shall be admissible against other individuals if it can be assumed, on the basis of specific facts, that they are linked to the perpetrator or if a link can be established and that the measure will make it possible to establish the facts or to determine the perpetrator's whereabouts and if other means would offer much less prospect of success or would be much more difficult.

(2) The vehicle license plate number may be included in the notice if the vehicle is registered for a person in respect of whom a notice has been issued pursuant to subsection (1) or is used by that person or another person whose name is so far unknown and who is suspected of committing a criminal offense of considerable importance.

(3) Should the person be encountered, personal information about an individual accompanying the person in the notice or about the person driving the vehicle in the notice may also be communicated.

(4) The order to issue a police monitoring notice may be made only by a judge. In exigent circumstances, it may be ordered by the public prosecution office. Where the public prosecution office has made the order, it shall apply for judicial confirmation without delay. The order shall become ineffective if it is not confirmed by the judge within three days. The order shall be limited to a maximum of one year. Section 100b subsection (2), fifth sentence, shall apply *mutatis mutandis*.

Section 164. [Apprehension of Persons Disrupting Official Activities]

The official directing official activities on the spot shall be authorized to apprehend persons who willfully disturb his official activity or oppose orders given by him within the scope of his authority, and to have them kept in custody until termination of his official tasks, but not beyond the next day.

Section 165. [Judicial Action in an Emergency.]

In exigent circumstances, the judge may, even without an application, undertake the necessary investigatory acts if a public prosecutor is not available.

Section 166. [Applications by the Accused to Obtain Evidence]

(1) If the accused is examined by the judge and if at this hearing he applies for the taking of certain exonerating evidence, the judge shall, so far as he considers it of importance, take such evidence if loss of evidence is to be feared or if the taking of the evidence may justify the release of the accused.

(2) If the evidence is to be taken in another district, the judge may request the judge in that district to take this evidence.

Section 167. [Further Directions by the Public Prosecution Office]

In the cases of Sections 165 and 166 the authority to give further directions shall lie with the public prosecution office.

Section 200. [Contents of the Bill of Indictment]

(1) The bill of indictment shall indicate the indicted accused, the criminal offense with which he is charged, the time and place of its commission, its statutory elements and the penal provisions which are to be applied (the charges). In addition, the evidence, the court before which the main hearing is to be held, and defense counsel shall be indicated. In cases under Section 68 subsection (1), second sentence, and subsection (2), first sentence, it shall be sufficient, as regards the designation of witnesses, to indicate an address at which documents can be served. Where a witness is mentioned whose identity is not to be revealed either wholly or in part, this fact shall be indicated; the same shall apply mutatis mutandis to the confidentiality of the witness's place of residence or whereabouts.

(2) The relevant result of the investigation shall also be presented in the bill of indictment. This may be dispensed with if the charges are preferred before the criminal court judge.

Section 201. [Communication of the Bill of Indictment]

(1) The presiding judge shall communicate the bill of indictment to the indicted accused and at the same time shall summon him to state, within a time limit to be set, whether he wants to apply for individual evidence to be taken before the decision on opening main proceedings, or whether he wants to raise objections to the opening of main proceedings.

(2) The court shall decide on the applications and objections. The decision shall be incontestable.

Section 202. [Supplementary Investigations]

Before the court decides on the opening of main proceedings, it may order individual evidence to be taken to help to clear up the case. The order shall be incontestable.

Section 203. [Condition for Opening Main Proceedings]

The court shall decide to open main proceedings if in the light of the results of the preparatory proceedings there appears to be sufficient suspicion of the indicted accused having committed a criminal offense.

Section 204. [Refusal to Open Main Proceedings]

(1) If the court decides not to open main proceedings, the order must show whether its decision is based on factual or on legal grounds.

(2) The indicted accused shall be notified of the order.

Section 205. [Provisional Termination]

The court may, by order, provisionally terminate the proceedings if the absence of the indicted accused or other personal impediment would prevent the holding of the main hearing for a considerable time. The presiding judge shall secure the evidence, so far as this is necessary.

Section 206. [Applications not Binding]

The court shall not be bound in giving its decision by the public prosecution office's application.

Section 206a. [Termination in the Case of Impediments]

(1) Where a procedural impediment arises after the main proceedings have been opened, the court may terminate the proceedings by an order made outside the main hearing.

(2) The order shall be contestable by immediate complaint.

Section 206b. [Termination on Amendment of the Law]

If a penal norm applicable at the time the offense was committed is amended prior to the decision and if pending criminal court proceedings concern an offense which was punishable under the former law but which is no longer punishable under the new law, the court shall terminate the proceedings by an order made outside the main hearing. The order shall be contestable by immediate complaint.

Section 207. [The Order Opening Main Proceedings]

(1) In the order opening main proceedings, the court shall admit the charges for the main hearing and designate the court before which the main hearing is to take place.

(2) The court shall specify in the order what changes are to be made to enable it to admit the charges for the main hearing, if:

1. charges have been preferred for more than one offense and for some of them the opening of the main proceedings is refused,

2. in accordance with Section 154a, prosecution is limited to individual severable parts of an offense, or such parts are reintroduced into the proceedings,

3. the act is legally evaluated differently from the bill of indictment, or,

4. in accordance with Section 154a, prosecution is limited to some of several violations of the law committed through the same criminal offense, or such violations of law are reintroduced into the proceedings.

(3) In the case of subsection (2), numbers 1 and 2, the public prosecution office shall submit a new bill of indictment corresponding to the order. The presentation of the relevant result of investigations may be dispensed with.

(4) At the same time the court shall decide proprio motu whether remand detention or provisional committal shall be ordered or continued.

Section 209. [Competent Court]

(1) If the court with which the bill of indictment has been filed considers that a court of lower rank in its district has jurisdiction, it shall open the main proceedings before such court.

(2) If the court with which the bill of indictment has been filed considers that a court of higher rank in its district has jurisdiction, it shall submit the files through the public prosecution office to this court for decision.

Section 209a. [Special Functional Jurisdictions]

Within the meaning of Section 4 subsection 2, section 209 as well as section 210 subsection 2

1. the special penal chambers, pursuant to section 74 subsection 2, section 74a, 74c of the Courts Constitution Act, shall, in relation to the general penal chambers and inter se, rank in their district in the order as designated in section 74e of the Courts Constitution Act, and

2. the youth courts, for the decision on whether cases

a) under section 33 subsection (1), section 103 subsection (2), first sentence, and section 107 of the Youth Court Act, or

b) as youth protection matters (section 26 subsection (1), first sentence, section 74b, first sentence, of the Courts Constitution Act)

are to be tried before the youth courts, shall be deemed equivalent to courts of a higher rank in relation to the courts of the same rank competent for general criminal cases.

Section 210. [Appellate Remedies]

(1) The order by which the main proceedings were opened cannot be contested by the defendant.

(2) The public prosecution office shall be entitled to lodge an immediate complaint against an order refusing the opening of the main proceedings or an order by which, in deviation

from the application of the public prosecution office, the proceedings have been referred to a court of lower rank.

(3) If the court hearing the complaint allows the complaint, it may at the same time decide that the main hearing is to be held before another chamber of the court which issued the order pursuant to subsection (2), or by a neighboring court of the same rank and in the same Land. In proceedings in which a Higher Regional Court has decided in the first instance the Federal Court of Justice may decide that the main hearing shall be held before another panel of the same court.

Section 211. [Effect of the Order Refusing to Open Main Proceedings]

If the opening of the main proceedings was refused by an order which is no longer contestable, the charges may be resumed only on the basis of new facts or evidence.

Section 213. [Setting the Date for the Main Hearing]

The date for the main hearing shall be set down by the presiding judge.

Section 214. [Summonses]

(1) The summonses required for the main hearing shall be ordered by the presiding judge. The registry shall ensure that the summonses are issued.

(2) If it is to be expected that the main hearing will last a long time, the presiding judge may decide that all or individual witnesses and experts be summoned on a date later than the beginning of the main hearing.

(3) The public prosecution office shall be entitled directly to summon additional persons.

(4) The public prosecution office shall cause the items serving as evidence to be produced. This can also be done by the court.

Section 215. [Service of the Order Opening the Main Proceedings]

The order concerning the opening of the main proceedings shall be served on the defendant at the latest with the summons. In the cases of Section 207 subsection (3) this shall apply mutatis mutandis to the bill of indictment subsequently submitted.

Section 216. [Summoning the Defendant]

(1) The summoning of a defendant who is at liberty shall be made in writing with the warning that he shall be arrested and brought before the court in the case of his unexcused failure to appear. The warning may be omitted in the cases of Section 232.

(2) A defendant who is not at liberty shall be summoned by being notified of the date of the main hearing pursuant to Section 35. The defendant shall then be asked what applications, if any, he wants to make for his defense at the main hearing.

Section 217. [Time Limit for Summons]

(1) A time limit of at least 1 week must elapse between service of the summons (Section 216) and the day of the main hearing.

(2) If this time limit has not been observed, the defendant may request suspension of the hearing at any time prior to the commencement of his examination on the charges.

(3) The defendant may waive observance of this time limit.

Section 218. [Summoning Defense Counsel]

In addition to the defendant, court-appointed defense counsel shall always be summoned; chosen defense counsel shall be summoned if the court was notified of such choice. Section 217 shall apply mutatis mutandis.

Section 219. [Defendant's Applications to Take Evidence]

(1) If the defendant requests that witnesses or experts be summoned or that other evidence be produced for the main hearing, he shall make his applications to the presiding judge, indicating the facts on which evidence is to be taken. He shall be notified of the direction made following this request.

(2) If the defendant's applications concerning evidence are granted, they shall be communicated to the public prosecution office.

Section 220. [Summons by the Defendant]

(1) If the presiding judge rejects the application for summoning a person, the defendant may have him summoned directly. He shall be authorized to do so even without a previous application.

(2) A person directly summoned shall be obliged to appear only if, at the time of the summons, statutory reimbursement for travel expenses and absence from work is offered him in cash or proven to have been deposited at the registry.

(3) If it appears at the main hearing that the examination of a directly summoned person was useful for the purpose of clearing up the case, the court shall, upon application, order that statutory reimbursement from the Treasury be granted to such person.

Section 221. [Taking of Evidence Ex Officio]

The presiding judge may also order ex officio the production of further items serving as evidence.

Section 222. [Naming Witnesses]

(1) The court shall, in due time, indicate to the public prosecution office and the defendant the summonsed witnesses and experts and indicate their place of residence or whereabouts. If the public prosecution office makes use of its right pursuant to Section 214 subsection (3) it shall, in due time, indicate to the court and to the defendant the names of the summonsed witnesses and experts and indicate their place of residence or whereabouts. Section 200 subsection (1), third and fourth sentences, shall apply mutatis mutandis.

(2) The defendant shall, in due time, indicate to the court and to the public prosecution office the names of the witnesses and experts directly summoned by him or to be brought to the main hearing, and indicate their place of residence or whereabouts.

Section 222a. [Information as to Composition of the Court]

(1) If the main hearing at first instance is held before the Regional Court or the Higher Regional Court, the composition of the court shall be communicated no later than on commencement of the main hearing, indicating the presiding judge and the additional judges and additional lay judges called in. The composition may, by order of the presiding judge, be communicated prior to the main hearing; for the defendant, such communication shall be made to his defense counsel. If the composition, as communicated, changes this shall be indicated no later than on commencement of the main hearing.

(2) If the communication about composition or about a change of composition has been received later than one week prior to the commencement of the main hearing the court may, upon application by the defendant, defense counsel or the public prosecution office, interrupt the main hearing to examine the composition, if this is requested at the latest prior to the commencement of the examination of the first defendant on the charges.

(3) For the defendant, only his defense counsel or an attorney-at-law may inspect the documents which are decisive for the composition; for the private accessory prosecutor only an attorney-at-law may make such inspection.

Section 222b. [Objections concerning Composition of the Court]

(1) If the composition of the court has been communicated pursuant to Section 222a, the objection that the court is composed contrary to the rules may be raised only prior to the

commencement of the examination of the first defendant on the charges at the main hearing. The facts which allegedly resulted in the composition contrary to the rules shall be indicated. All objections shall be raised at the same time. Outside the main hearing the objection shall be raised in writing; Section 345 subsection (2), and for the private accessory prosecutor Section 390 subsection (2), shall apply mutatis mutandis.

(2) The court being composed as required for decisions made outside the main hearing shall decide on the objection. If it considers the objection to be well-founded it shall declare that it is not composed according to the rules. If an objection results in a change of the composition, Section 222a shall not be applicable to the new composition.

Section 223. [Witness Examination on Commission or by Request]

(1) The court may order that a witness or expert be examined by a commissioned or a requested judge if illness or infirmity or other insurmountable impediments prevent him from appearing at the main hearing for a long or indefinite period of time.

(2) The same rule shall apply if a witness or an expert cannot reasonably be expected to appear because of the great distance involved.

(3) The witnesses shall be heard under oath unless exceptions are prescribed or admitted.

Section 224. [Notification of Participants]

(1) The public prosecution office, the defendant, and defense counsel shall be notified beforehand of the dates set down for the examination; their presence at the examination shall not be required. There shall be no notification if it would endanger the success of the investigation. The record made thereof shall be submitted to the public prosecution office and defense counsel.

(2) If a defendant, not being at liberty, has defense counsel, he shall be entitled to be present only at such hearings held at the place where he is in custody.

Section 225. [Judicial Inspection on Commission]

The provisions of Section 224 shall be applied if a judicial inspection is to be made for the preparation of the main hearing.

Section 225a. [Change of Jurisdiction Prior to the Main Hearing]

(1) If a court, prior to the commencement of a main hearing, considers the substantive jurisdiction of a court of higher rank to be established, it shall submit the files to this court through the public prosecution office; Section 209a, number 2a, shall apply mutatis mutandis.

The court to which the matter has been referred shall decide in a ruling whether it accepts the case.

(2) If the files are submitted to a court of higher rank by a criminal court judge or by a court with lay judges, the defendant may request the taking of specific evidence within a certain time limit to be determined with the submission. The presiding judge of the court to which the case has been referred shall decide on the application.

(3) The defendant and the court before which the main hearing is to be held shall be named in the ruling accepting the case. Section 207 subsection (2), numbers 2 to 4, subsections (3) and (4) shall apply mutatis mutandis. The contestability of the ruling shall be governed by Section 210.

(4) The procedure pursuant to subsections (1) to (3) shall also apply if the court, prior to the commencement of the main hearing, considers an objection of the defendant pursuant to Section 6a to be well-founded and a special penal chamber which has priority pursuant to section 74e of the Courts Constitution Act would be competent. If the court that considers the jurisdiction of another penal chamber to be established has priority over the latter pursuant to section 74e of the Courts Constitution Act, it shall refer the case to that chamber with binding effect; the contestability of the decision on the referral shall be governed by Section 210.

Section 226. [Uninterrupted Presence]

The main hearing shall be held during the uninterrupted presence of the persons called upon to reach a judgment and of the public prosecutor and of a registry clerk.

Section 227. [More than one Public Prosecutor and Defense Counsel]

More than one official of the public prosecution office and more than one defense counsel may participate in the main hearing and share their duties.

Section 228. [Suspension and Interruption]

(1) The court shall decide on the suspension of a main hearing and its interruption pursuant to Section 229 subsection (2). The presiding judge shall be competent to order short interruptions.

(2) An impediment to defense counsel's appearance shall, without prejudice to the provision in Section 145, not entitle to the defendant to request suspension of the hearing.

(3) If the time limit set in Section 217 subsection (1) has not been complied with, the presiding judge should inform the defendant of his right to request suspension of the hearing.

Section 229. [Maximum Duration of an Interruption]

(1) The main hearing may be interrupted for a period of up to ten days.

(2) If the main hearing has been conducted for at least ten days, it may then be interrupted once for up to thirty days, notwithstanding the provision in subsection (1). If, thereafter, the main hearing has been continued for at least ten days, it may be interrupted a second time pursuant to the first sentence. In addition to the interruptions pursuant to subsections (1) and (2), first and second sentences, the main hearing may, upon expiry of twelve months since its commencement, be interrupted once within each twelve month period for a maximum of thirty days, if the hearing has been conducted for at least ten days prior to the interruption.

(3) If a defendant, due to sickness, is unable to appear at the main hearing which has already been conducted for at least ten days, the running of the time limits referred to in subsections (1) and (2) shall be suspended for six weeks at the most; these time limits shall expire at the earliest ten days after the suspension has ended. The court shall, in an incontestable ruling, determine when the suspension begins and ends.

(4) If the main hearing has not been continued at the latest on the day following expiry of the time limit referred to in the previous subsections, the main hearing shall commence de novo. If the day following expiry of the time limit is a Sunday, a public holiday or a Saturday, the main hearing may be continued on the next working day.

Section 230. [Failure of the Defendant to Appear]

(1) No main hearing shall be held against a defendant who fails to appear.

(2) If there is no sufficient excuse for the defendant's failure to appear, an order shall be made to bring him before the court, or a warrant of arrest shall be issued.

Section 231. [Defendant's Duty to be Present]

(1) A defendant who has appeared may not absent himself from the hearing. The presiding judge may take proper measures to prevent him from absenting himself; he may also have the defendant kept in custody during an interruption of the hearing.

(2) If the defendant nevertheless absents himself, or fails to appear when an interrupted main hearing is continued, the main hearing may be concluded during his absence if he was already heard on the indictment and the court does not consider his further presence to be necessary.

Section 231a. [Unfitness to Stand Trial Caused with Intent]

(1) If the defendant intentionally and culpably placed himself in a condition precluding his fitness to stand trial, and if, as a result, he knowingly prevents the proper conduct or continuation of the main hearing in his presence, the main hearing shall, in a case where he has not yet been heard on the charges, be conducted or continued in his absence, unless the court considers his presence to be indispensable. The procedure pursuant to the first sentence shall only apply if the defendant, after the opening of main proceedings, had the opportunity to make statements concerning the charges before a court or a commissioned judge.

(2) As soon as the defendant is again fit to stand trial, the presiding judge shall inform him of the essential contents of the proceedings during his absence unless pronouncement of judgment has commenced.

(3) The court shall decide on the hearing to be held in the absence of the defendant pursuant to subsection (1) after having heard a physician as an expert. The decision may already be given prior to the beginning of the main hearing. An immediate complaint against the decision shall be admissible; it shall have a delaying effect. A main hearing which has already been commenced shall be interrupted until a decision on the immediate complaint is made; the interruption may last up to thirty days even if the conditions in Section 229 subsection (2) have not been fulfilled.

(4) Defense counsel shall be appointed for the defendant who is not represented by counsel where a hearing may be held without the defendant pursuant to subsection (1).

Section 231b. [Absence because of Disorderly Conduct]

(1) If the defendant, because of disorderly conduct, is removed from the courtroom or committed to prison (section 177 of the Courts Constitution Act), the hearing may be held in his absence, if the court considers his further presence not to be indispensable and as long as it is to be feared that the defendant's presence would be seriously detrimental to the course of the main hearing. In any case the defendant shall be given the opportunity to make a statement on the charges.

(2) As soon as the defendant is allowed back, the procedure pursuant to Section 231a subsection (2) shall apply.

Section 231c. [Absence During Parts of the Proceedings]

If the main hearing is held in respect of more than one defendant, the court may order that individual defendants -- in the case of mandatory defense also their defense counsel -- be

permitted, upon application, to absent themselves during individual parts of the hearing unless they are affected by these parts of the hearing. The order shall indicate those parts of the hearing for which permission is given. The permission may be revoked at any time.

Section 232. [Main Hearing Despite the Defendant's Failure to Appear]

(1) The main hearing may be held in the defendant's absence if he was properly summoned and the summons referred to the fact that the hearing may take place in his absence and if only a fine up to 180 daily units, a warning with sentence reserved, a driving ban, forfeiture, confiscation, destroying or making an item unusable, or a combination thereof, is to be expected. A higher penalty or a measure of reform and prevention may not be imposed in these proceedings. Withdrawal of permission to drive shall be admissible if the defendant has been made aware of this possibility in the summons.

(2) The main hearing shall not take place without the defendant if the summons was effected by publication.

(3) The record of a judicial examination of the defendant shall be read out at the main hearing.

(4) A judgment given in the defendant's absence must be served on him personally, together with reasons for the judgment, if it is not served on his defense counsel pursuant to Section 145a subsection (1).

Section 233. [Releasing the Defendant from the Duty to Appear]

(1) The defendant may, upon his application, be released from the obligation to appear at the main hearing, if only imprisonment up to six months, a fine up to 180 daily units, a warning with sentence reserved, a driving ban, forfeiture, confiscation, destroying or making an item unusable, or a combination thereof, is to be expected. A higher penalty or a measure of reform and prevention may not be imposed in his absence. Withdrawal of permission to drive shall be admissible.

(2) If the defendant is released from the obligation to appear at the main hearing, he may be heard on the indictment by a commissioned or a requested judge. In this connection he shall be advised of the legal consequences admissible at the hearing in his absence and be asked whether he maintains his application to be released from appearing at the main hearing.

(3) The public prosecution office and defense counsel shall be informed of the date set down for the examination at which the defendant is to be heard; their presence at the

examination shall not be required. The records of the examination shall be read out at the main hearing.

Section 234. [Representation of Absent Defendant]

If the main hearing may be held in the defendant's absence, he shall be entitled to be represented by defense counsel with a written power of attorney.

Section 234a. [Defense Counsel's Rights of Information and Consent]

If the main hearing is held in the defendant's absence, it shall be sufficient for the information required under Section 265 subsections (1) and (2) to be given to defense counsel; the defendant's waiver pursuant to Section 61, number 5 and his consent pursuant to Section 245 subsection (1), second sentence, and pursuant to Section 251 subsection (1), number 4, and subsection (2), shall not be required if defense counsel takes part at the main hearing.

Section 235. [Restoration of the Status quo ante]

If the main hearing was held without the defendant pursuant to Section 232, he may, in respect of the judgment and within one week of its service, apply for restoration of the status quo ante under the same conditions as in the case of failure to comply with a time limit; he may at any time request restoration of the status quo ante if he did not obtain knowledge of the summons to the main hearing. The defendant shall be instructed of this right when the judgment is served on him.

Section 236. [Ordering the Defendant's Personal Appearance]

The court shall always have the power to order the defendant's appearance in person and to enforce this by an order to bring him before the court or by a warrant of arrest.

Section 237. [Joinder of more than one Criminal Case]

If there is a connection between more than one criminal case pending at the same court, the court may order that they be joined for the purpose of being heard together, even if this connection is not the one specified in Section 3.

Section 238. [Conduct of Hearing]

(1) The presiding judge shall conduct the hearing, examine the defendant and take the evidence.

(2) The court shall give a decision on an objection by a participant in the proceedings that an order by the presiding judge relating to the conduct of the hearing is inadmissible.

Section 239. [Cross-Examination]

(1) The presiding judge shall leave the examination of witnesses and experts named by the public prosecution office and by the defendant to the public prosecution office and defense counsel upon concurring application by both. Witnesses and experts named by the public prosecution office shall first be examined by the public prosecution office, those named by the defendant shall first be examined by defense counsel.

(2) After this examination the presiding judge shall also ask the witnesses and experts such questions as he deems necessary for further clarification in the case.

Section 240. [Right to Ask Questions]

(1) The presiding judge shall permit the associate judges, upon request, to address questions to the defendant, witnesses and experts.

(2) The presiding judge shall give similar permission to the public prosecution office, to the defendant, and to defense counsel, as well as to the lay judges. Direct questioning of a defendant by a co-defendant shall be inadmissible.

Section 241. [Rejection of Questions]

(1) A person who in the case of Section 239 subsection (1) abuses his right of examination may be deprived of this right by the presiding judge.

(2) In the cases of Section 239 subsection (1) and Section 240 subsection (2) the presiding judge may reject inappropriate or irrelevant questions.

Section 241a. [Examination of Witnesses under 16 Years of Age]

(1) The examination of witnesses under 16 years of age shall be conducted solely by the presiding judge.

(2) The persons referred to in Section 240 subsections (1) and (2), first sentence, may request the presiding judge to ask the witnesses further questions. The presiding judge may permit these persons to put questions to witnesses directly if, according to his duty-bound discretion, prejudice to the well-being of the witness is not to be expected.

(3) Section 241 subsection (2) shall apply mutatis mutandis.

Section 242. [Doubts concerning Admissibility of Questions]

The court shall decide in all cases of doubt relating to the admissibility of a question.

Section 243. [Course of the Main Hearing]

(1) The main hearing shall begin when the case is called up. The presiding judge shall determine whether the defendant and defense counsel are present and whether the evidence has been produced, especially whether the summoned witnesses and experts have appeared.

(2) The witnesses shall leave the courtroom. The presiding judge shall examine the defendant on his personal situation.

(3) Thereupon the public prosecutor shall read the charges. In the cases of Section 207 subsection (3) he shall use the new bill of indictment for this purpose. In the cases of Section 207 subsection (2), number 3, the public prosecutor shall read out the charges and submit the legal assessment on which the order to open the main hearing has been based. In addition, he may express his own divergent legal opinion. In the cases of Section 207 subsection (2), number 4, he shall take into account the amendments made by the court when admitting the case for a main hearing.

(4) The defendant shall then be informed that he may choose to respond to the charges or not to make any statement on the charges. If the defendant is ready to respond, he shall be examined on the charges, having regard to Section 136 subsection (2). Any previous conviction of the defendant should be disclosed only insofar as it is relevant to the decision. The presiding judge shall decide when such condition is to be disclosed.

Section 244. [Taking of Evidence]

(1) Evidence shall be taken after the defendant's examination.

(2) In order to establish the truth, the court shall, proprio motu, extend the taking of evidence to all facts and means of proof relevant to the decision.

(3) An application to take evidence shall be rejected if the taking of such evidence is inadmissible. In all other cases, an application to take evidence may be rejected only if the taking of such evidence is superfluous because the matter is common knowledge, if the fact to be proved is irrelevant to the decision or has already been proved, if the evidence is wholly inappropriate or unobtainable, if the application is made to protract the proceedings, or if an important allegation which is intended to offer proof in exoneration of the defendant can be treated as if the alleged fact were true.

(4) Except as otherwise provided, an application to take evidence by examining an expert may also be rejected if the court itself possesses the necessary specialist knowledge. Hearing another expert may also be refused if the opposite of the alleged fact has already been

proved by the first expert opinion; this rule shall not apply to cases where the professional competence of the first expert is in doubt, where his opinion is based upon incorrect factual suppositions, where the opinion contains contradictions, or where the new expert has means of research at his disposal which seem to be superior to the ones of an earlier expert.

(5) An application to take evidence by inspection in loco may be rejected if the court, in the exercise of its duty-bound discretion, deems the inspection not to be necessary for establishing the truth. Under the same condition an application to take evidence by examining a witness may be rejected if the witness would have to be summoned from abroad.

(6) A court ruling shall be required for rejecting an application to take evidence.

Section 245. [Extent of Evidence Taken]

(1) The taking of evidence shall be extended to all witnesses and experts who were summoned by the court and who appeared, as well as to other evidence produced by the court or the public prosecution office pursuant to Section 214 subsection (4), unless the taking of evidence is inadmissible. The taking of certain evidence may be dispensed with if the public prosecution office, defense counsel and the defendant agree.

(2) The court shall be obliged to extend the taking of evidence to the witnesses and experts who appeared upon being summoned by the defendant or the public prosecution office, as well as to other evidence produced, only if an application to take evidence is submitted. The application shall be rejected if the taking of evidence is inadmissible. It may otherwise be rejected only if the fact for which evidence is to be furnished has already been proved or is common knowledge, if there is no connection between the fact and the matter being adjudicated, if the evidence is completely unsuitable, or if the application has been filed for the purpose of protracting the proceedings.

Section 246. [Belated Applications to Take Evidence]

(1) The taking of evidence may not be refused on the grounds that the evidence or the fact which is to be proved was submitted too late.

(2) Until such time as all evidence has been taken, the applicant's opponent may, however, apply for suspension of the main hearing for the purpose of collecting information if a witness or expert who is to be examined was named so late, or a fact which is to be proved was submitted so late that the opponent lacked the time needed to collect information.

(3) The public prosecution office and the defendant shall have the same right in respect of witnesses and experts summoned at the direction of the presiding judge or the court.

(4) The court shall decide on these applications in the exercise of its unfettered discretion.

Section 246a. [Medical Expert]

An expert shall be examined at the main hearing on defendant's condition and his treatment prospects if it is expected that the defendant's committal to a psychiatric hospital, an institution for withdrawal treatment or preventive detention will be ordered. If the expert has not previously examined the defendant, he is to be given the opportunity to do so before the main hearing.

Section 247. [Removal of the Defendant from Courtroom]

The court may order that the defendant leave the courtroom during an examination if it is to be feared that a co-defendant or a witness will not tell the truth when examined in the presence of the defendant. The same shall apply if, on examination of a person under sixteen years of age as a witness in the defendant's presence, considerable detriment to the well-being of such witness is to be feared or if an examination of another person as a witness in the defendant's presence poses an imminent risk of serious detriment to that person's health. The defendant's removal may be ordered for the duration of discussions concerning the defendant's condition and his treatment prospects, if substantial detriment to his health is to be feared. When the defendant is present again the presiding judge shall inform him of the essential contents of the proceedings, including the testimony, during his absence.

Section 247a. [Witness Examination in Another Place]

If there is an imminent risk of serious detriment to the well-being of the witness were he to be examined in the presence of those attending the main hearing and if that risk cannot be averted in some other way, namely by removing the defendant and by excluding the public, the court may order that the witness remain in another place during the examination; such order shall also be admissible under the conditions set out in Section 251 subsection (1), numbers 2, 3 or 4, insofar as this is necessary for establishing the truth. The decision shall be incontestable. A simultaneous audio-visual transmission of the testimony shall be provided in the courtroom. The testimony shall be recorded if there are grounds to fear that it will not be possible to examine the witness at a future main hearing and if the recording is necessary for establishing the truth. Section 58a subsection (2) shall apply mutatis mutandis.

Section 248. [Dismissal of Witnesses and Experts]

The witnesses and experts who have been examined may absent themselves from the place where the court is sitting, only with permission or upon instruction by the presiding judge. The public prosecution office and the defendant shall be heard beforehand.

Section 249. [Reading Out Documents]

(1) Certificates and other documents serving as evidence shall be read out at the main hearing. This rule shall apply in particular to previous criminal judgments, criminal records and extracts from parish registers and registers of births, deaths and marriages and to written records of a judicial inspection.

(2) Except in the cases of Sections 253 and 254, the reading may be dispensed with if the judge and the lay judges have taken cognizance themselves of the wording of the certificate or the document and the other participants had an opportunity to do so. If the public prosecutor, the defendant or defense counsel object without delay to the presiding judge's order to proceed in accordance with the first sentence, the court shall give a decision. A record shall be made of the presiding judge's order, the findings as to cognizance and opportunity, and of the objection.

Section 250. [Principle of Examination in Person]

If the proof of a fact is based on the observation of a person, such person shall be examined at the main hearing. The examination shall not be replaced by reading out the record of a previous examination or reading out a written statement.

Section 251. [Reading Out Records]

(1) Examination of a witness, expert, or co-accused may be replaced by reading out the written record of his previous examination by a judge if:

1. the witness, expert, or co-accused has died or become mentally ill, or if his whereabouts cannot be determined;
2. illness, infirmity, or other insurmountable impediments prevent the witness, expert or co-accused from appearing at the main hearing for a long or indefinite period;
3. the witness or expert cannot reasonably be expected to appear at the main hearing because of the great distance involved, having regard to the importance of his statement;
4. the public prosecutor, defense counsel and the defendant agree to the reading out.

(2) Where the defendant has defense counsel, the examination of a witness, expert or co-accused may be replaced by reading out a record of another examination or of a certificate

containing a written statement originating from him, if the public prosecutor, defense counsel and the defendant agree. In other cases, such reading shall be admissible only if the witness, expert or co-accused has died or cannot be examined by the court for another reason within a foreseeable period of time.

(3) Where the reading is to serve purposes other than specifically reaching a judgment, particularly the purpose of preparing the decision on whether an individual is to be summoned and examined, records of examinations, certificates and other documents serving as evidence may also be read out.

(4) In the cases of subsections (1) and (2), the court shall decide whether the reading shall be ordered. The reason for reading out shall be announced. If the record of a judicial examination is read out, it shall be stated whether the person concerned was examined under oath. If not, an oath shall be administered where the court deems this necessary and can still administer such oath.

Section 252. [Improper Reading out of Statement]

The statement of a witness examined prior to the main hearing, who makes use of his right to refuse to testify only at the main hearing, shall not be read out.

Section 253. [Reading out a Statement to Refresh Memory]

(1) If a witness or an expert states that he can no longer remember a fact, the pertinent part of the written record of his previous examination may be read out to refresh his memory.

(2) The same procedure may be followed if a contradiction to the previous statement arises during at the examination and cannot otherwise be established or eliminated without the main hearing being interrupted.

Section 254. [Reading out Confessions; Contradictions]

(1) Statements of the defendant which are contained in a judicial record may be read out for the purpose of taking evidence regarding a confession.

(2) The same procedure may be followed if a contradiction to the previous statement arises during the examination and cannot otherwise be established or eliminated without the main hearing being interrupted.

Section 255. [Recording of Statements Read out]

In the cases of Sections 253 and 254, upon application by the public prosecution office or by the defendant, the reading out and reason therefor shall be mentioned in the record.

Section 255a. [Showing Audio-Visual Recordings]

(1) The provisions on the reading out of a record of an examination pursuant to Sections 251, 252, 253 and 255 shall apply to showing an audio-visual recording of a witness examination mutatis mutandis.

(2) In proceedings relating to criminal offenses against sexual self-determination (sections 174 to 184c Penal Code) or against life (sections 211 to 222 Penal Code) or for ill-treatment of an individual placed in the charge of another (section 225 Penal Code), examination of witnesses under sixteen years of age may be replaced by showing an audio-visual recording of his previous judicial examination if the defendant and his defense counsel were able to participate in such examination. Supplementary witness examination shall be admissible.

Section 256. [Reading out Official and Medical Statements]

(1) Statements containing a certificate or an opinion from public authorities as well as from physicians of the court medical services -- excluding certificates of conduct -- as well as medical certificates concerning minor bodily injuries may be read out. The same shall apply to expert opinions with regard to the evaluation of a log book, the determination of the blood group or the blood alcohol content including its conversion as well as to medical reports on the taking of blood samples.

(2) If the opinion of a specialist authority was commissioned, the court may request the authority to appoint one of its staff to present the opinion at the main hearing, and to designate such person to the court.

Section 257. [Questioning the Defendant, the Public Prosecutor and Defense Counsel]

(1) After each co-defendant has been examined and after evidence has been taken in each individual case the defendant should be asked whether he has anything to add.

(2) Upon request, the public prosecutor and defense counsel shall also be given the opportunity to make their statements after the examination of the defendant and after evidence has been taken in each individual case.

(3) The statements shall not anticipate the closing speech.

Section 257a. [Written Form]

The court may require participants in the proceedings to file applications and proposals regarding questions of procedure in written form. This shall not apply to the applications referred to in Section 258. Section 249 shall apply mutatis mutandis.

Section 258. [Closing Speeches]

(1) After the taking of evidence has been concluded, the public prosecutor and subsequently the defendant shall be given the opportunity to present their arguments and to file applications.

(2) The public prosecutor shall have the right to reply; the defendant shall have the last word.

(3) The defendant shall be asked, even if defense counsel has spoken for him, whether he himself has anything to add to his defense.

Section 259. [Interpreter]

(1) A defendant who has no command of the language of the court shall be informed by an interpreter at least of the applications made in the closing speeches by the public prosecutor and by defense counsel.

(2) The same rule shall apply to a deaf defendant, unless there is written communication.

Section 260. [Judgment]

(1) The main hearing shall close with delivery of judgment following the deliberations.

(2) If there is an order prohibiting pursuit of an occupation, the judgment shall specify the occupation, profession or trade or branch thereof, the exercise of which is prohibited.

(3) Termination of the proceedings shall be pronounced in the judgment if there is a procedural impediment.

(4) The operative provisions of the judgment shall indicate the legal designation of the offense of which the defendant has been convicted. If a criminal offense has a statutory title, it should be used for the legal designation of the offense. If a fine is imposed, the number and the amount of daily units shall be included in the operative provisions of the judgment. If the sentence or the measure of reform and prevention is suspended on probation, or if the defendant has been warned with sentence reserved, or if imposition of a penalty is dispensed with, this shall be indicated in the operative provisions of the judgment. The wording of the operative provisions of the judgment shall otherwise be left to the discretion of the court.

(5) Following the operative provisions of the judgment, the provisions applied shall be listed according to section, subsection, number and letter together with the designation of the

statute. If, in the case of a conviction imposing a sentence of imprisonment or an aggregate sentence of imprisonment not exceeding two years, the offense or, where there is more than one offense, the predominant offense(s), having regard to their gravity, were committed on the basis of a drug addiction, reference shall also be made to section 17 subsection (2) of the Federal Central Criminal Register Act.

Section 261. [Free Evaluation of Evidence]

The court shall decide on the result of the evidence taken according to its free conviction gained from the hearing as a whole.

Section 262. [Preliminary Civil Law Questions]

(1) If the criminal liability for an act depends on the evaluation of a legal relationship under civil law, the criminal court shall also give a decision thereon according to the provisions applicable to procedure and evidence in criminal cases.

(2) The court, however, shall be entitled to suspend the investigation and to set a time limit within which one of the participants is to bring a civil action, or to await the judgment of the civil court.

Section 263. [Voting]

(1) A majority of two-thirds of the votes shall be required for any decision against a defendant which concerns the question of guilt and the legal consequences of the offense.

(2) The question of guilt shall also include such special circumstances provided by the penal norm which exclude, diminish, or increase criminal liability.

(3) The question of guilt shall not cover the conditions applying to the period of limitations.

Section 264. [Subject Matter of the Judgment]

(1) The subject of adjudication shall be the offense specified in the charges and apparent in the light of the outcome of the hearing.

(2) The court shall not be bound by the offense's evaluation which formed the basis of the order opening the main proceedings.

Section 265. [Change in Legal Reference]

(1) The defendant may not be sentenced on the basis of a penal norm other than the one referred to in the charges admitted by the court without first having his attention specifically drawn to the change in the legal reference and without having been afforded an opportunity to defend himself.

(2) The same procedure shall be followed if special circumstances appear only at the hearing which in accordance with the penal norm increase criminal liability or justify an order imposing a measure of reform and prevention.

(3) The main hearing shall be suspended upon the defendant's application if, alleging insufficient preparation for defense, he contests newly discovered circumstances which admit the application of a more severe penal norm against the defendant than the one referred to in the charges admitted by the court, or which forms part of the circumstances indicated in subsection (2).

(4) The court shall, in other cases as well, suspend the main hearing upon an application or proprio motu, if in consequence of the change in circumstances it appears reasonable for adequate preparation of the charges or of the defense.

Section 265a. [Conditions. Instructions]

If conditions or instructions (section 56b, 56c, 59a subsection (2) Penal Code) are conceivable, the defendant shall be asked in appropriate cases whether he will make efforts towards atonement for the wrong committed by him or make promises in respect of his future conduct. If an instruction is conceivable to the effect that the defendant is to undergo curative or withdrawal treatment or is to take up residence in a suitable home or institution, he shall be asked whether he consents to this.

Section 266. [Supplementary Charges]

(1) If the public prosecutor at the main hearing adds new charges of further criminal offenses committed by the defendant, the court may, in an order, include them in the proceedings, if it has jurisdiction and the defendant consents thereto.

(2) The supplementary charges may be preferred orally. Their contents shall correspond to Section 200 subsection (1). They shall be included in the record made at the sitting. The presiding judge shall give the defendant the opportunity to defend himself.

(3) The hearing shall be interrupted if the presiding judge considers it necessary or if the defendant so applies and the application is not clearly vexatious or solely dilatory. The defendant shall be instructed of his right to apply for an interruption.

Section 267. [Reasons for the Judgment]

(1) If the defendant is convicted, the reasons for the judgment must show the facts deemed to be proven and establishing the statutory elements of the criminal offense. So far as the

evidence is inferred from other facts, these facts should also be indicated. With regard to details reference may be made to pictures which are included in the files.

(2) If special circumstances specified by the penal norm were alleged at the hearing which exclude, diminish, or increase criminal liability, the reasons for the judgment must state whether these circumstances are deemed to have been established or not.

(3) The reasons for the criminal judgment must further specify the penal norm which was applied, and show the circumstances which were decisive in assessing the penalty. If the penal norm makes mitigation dependent on the existence of a less serious case, the reasons for the judgment must indicate why these circumstances are deemed to exist or are denied contrary to an application filed at the hearing; this shall apply *mutatis mutandis* to the imposition of a sentence of imprisonment in the cases under section 47 of the Penal Code. The reasons for the judgment must also indicate why an especially serious case is not deemed to exist when the prerequisites are met, according to which, as a rule, such a case shall exist pursuant to the penal norm; in a case where these prerequisites have not been met but where an especially serious case is nevertheless deemed to exist, the second sentence shall apply *mutatis mutandis*. The reasons for the judgment must further indicate why the penalty was suspended on probation, or was not suspended contrary to an application filed at the hearing; this shall apply *mutatis mutandis* to a warning with sentence reserved and to the dispensing with punishment.

(4) If all parties entitled to appellate remedy waive their right of appellate remedy or if no appellate remedy is sought within a certain time limit, the proven facts establishing the statutory elements of the criminal offense and the penal norm applied must be indicated; in the case of judgments imposing only a fine or a fine plus a driving ban or withdrawal of permission to drive and in connection therewith confiscation of the driver's license, reference can be made here to charges admitted, to the charges pursuant to Section 418 subsection (3), second sentence, or to the penal order as well as to the application for a penal order. The further content of the reasons for the judgment shall be determined by the court taking into consideration - at its discretion - the circumstances of the individual case. The reasons for the judgment may be supplemented within the time limit provided in Section 275 subsection (1), second sentence, if restoration of the status quo ante is granted in order to remedy the failure to observe the time limit for seeking an appellate remedy.

(5) If the defendant is acquitted, the reasons for the judgment shall show whether the defendant's guilt was deemed not proven or whether, and for what reasons, the act deemed proven

was considered not to give rise to criminal liability. If all parties entitled to appellate remedy waive their right of appellate remedy or if no appellate remedy is sought within a certain time limit, it shall only be necessary to state whether it was for factual or legal reasons that the criminal offense the defendant is charged with has not been established. Subsection (4), third sentence, shall apply.

(6) The reasons for the judgment must also indicate why a measure of reform and prevention was ordered, or was not ordered contrary to an application filed at the hearing. If permission to drive has not been withdrawn or a bar pursuant to Section 69a subsection (1), third sentence, of the Penal Code has not been ordered, although such measure was possible given the nature of the criminal offense, the reasons for the judgment must always indicate why such measure has not been ordered.

Section 268. [Pronouncement of the Judgment]

(1) The judgment shall be pronounced in the name of the people.

(2) The judgment shall be pronounced by reading out the operative provisions of the judgment and disclosing the reasons for the judgment. Reasons for the judgment shall be disclosed by their being read out or by oral communication of their essential content. Reading the operative provisions of the judgment shall in each case precede communication of the reasons for the judgment.

(3) The judgment should be pronounced at the end of the hearing. It must be pronounced at the latest on the eleventh day thereafter, or else the main hearing shall be recommenced. Section 229 subsection (3) and subsection (4), second sentence, shall apply *mutatis mutandis*.

(4) If pronouncement of judgment has been suspended, the reasons for the judgment shall, if possible, be stated in writing beforehand.

Section 268a. [Probationary Suspension of Sentence; Warning with Sentence Reserved]

(1) If a judgment provides for the suspension of sentence or if the defendant is warned with sentence reserved, the court shall give the decisions designated in sections 56a to 56d and 59a of the Penal Code in an order which shall be pronounced together with the judgment.

(2) Subsection (1) shall apply *mutatis mutandis* if, in the judgment, a measure of reform and prevention has been suspended on probation or if, in addition to the sentence

supervision of conduct is ordered, and the court gives decisions pursuant to sections 68a to 68c of the Penal Code.

(3) The presiding judge shall inform the defendant of the meaning of probationary suspension of sentence or of the measure, of a warning with sentence reserved or of supervision of conduct, of the duration of the probation period or of supervision of conduct, of conditions and instructions as well as of the possibility of revocation of suspension or of imposition of the sentence reserved (section 56f subsection (1), sections 59b, 67g subsection (1) Penal Code). If the court gives the defendant instructions pursuant to section 68b subsection (1) of the Penal Code, the presiding judge shall also inform him of the possibility of a penalty pursuant to section 145a of the Penal Code. The instruction shall, as a rule, be given following pronouncement of the order pursuant to subsection (1) or (2). If committal to a psychiatric hospital is suspended on probation, the presiding judge may dispense with giving information about the possibility of revoking suspension.

Section 268b. [Continuation of Remand Detention]

When passing judgment the court shall, proprio motu, decide on continuation of remand detention or provisional committal. The order shall be pronounced with the judgment.

Section 268c. [Information on a Driving Ban]

If a driving ban is ordered in the judgment, the presiding judge shall inform the defendant of the commencement of the duration of the ban (section 44 subsection (3), first sentence, Penal Code). This information shall be given following pronouncement of judgment. If the judgment is pronounced in the defendant's absence, he shall be informed in writing.

Section 269. [Lack of Substantive Jurisdiction]

The court may not decline jurisdiction on the grounds that the case should be brought before a court of lower rank.

Section 270. [Referral to a Higher Competent Court]

(1) If after the commencement of a main hearing a court deems a court of higher rank to have substantive jurisdiction, it shall, in an order, refer the case to the competent court; Section 209a, number 2a, shall apply mutatis mutandis. The same procedure shall apply if the court considers a timely objection by the defendant pursuant to Section 6a to be well-founded.

(2) In the order, the court shall name the defendant and the criminal offense pursuant to Section 200 subsection (1), first sentence.

(3) The order shall have the effect of an order opening the main proceedings. The possibility of contesting the order shall be governed by Section 210.

(4) If the order referring the case to a higher court was made by a criminal court judge or a court with lay judges, the defendant may apply, within a time limit to be determined when the order is pronounced, for certain evidence be taken prior to the main hearing. The judge presiding over the court to which the case has been referred shall decide on the application.

Section 271. [Record of Proceedings]

(1) A record shall be made of the main hearing, and be signed by the presiding judge and by the registry clerk. The date of its completion shall be stated therein.

(2) If the presiding judge is prevented from signing, the most senior associate judge shall sign for him. In a case where the presiding judge is the only judge of the court, the signature of the registry clerk shall suffice if the former is prevented from signing.

Section 272. [Content of the Record]

The record of the main hearing shall contain:

1. the place and the day of the hearing;
2. the names of the professional judges and lay judges, of the official of the public prosecution office, of the registry clerk of the court registry, and of the assisting interpreter;
3. the designation of the criminal offense in the charges;
4. the names of the defendants, of their defense counsel, of private prosecutors, of private accessory prosecutors, of aggrieved persons asserting claims arising from the criminal offense, of other persons involved, of statutory representatives, of legal representatives, and of persons rendering assistance;
5. an indication that the hearing is being held in public or that the public have been excluded.

Section 273. [Additional Contents of the Record]

(1) The record must indicate the course and the results of the main hearing in essence, and show that all essential formalities have been observed; it must also specify the documents read out or those documents the reading of which has been dispensed with pursuant to Section 249 subsection (2), as well as the applications filed during the course of the hearing, the decisions given, and the operative provisions of the judgment.

(2) The main outcome of examinations at the main hearing before the criminal court judge and in a court with lay judges shall also be included in the record; this shall not apply if all

those entitled to appellate remedy have waived their right of appellate remedy or if no appellate remedy has been sought within a certain time limit.

(3) If it is important that an occurrence at the main hearing or the wording of testimony or of a statement be registered, the presiding judge ex officio or upon application by a participant in the hearing shall order that a complete record be made and that it be read out. If the presiding judge refuses to make the order, the court shall, upon application by a participant in the hearing, give the decision. It shall be noted in the record that the reading took place and approval was given or whether, and if so, what objections were raised.

(4) The judgment may not be served until the record has been drawn up.

Section 274. [Probative Value of the Record]

Observance of the formalities required for the main hearing can only be proved by the record. Only proof of forgery shall be admissible in respect of the content of that part of the record relating to these formalities.

Section 275. [Written Judgment; Official Copy]

(1) If the judgment including reasons has not been fully incorporated in the record, it shall be placed on file without delay. This must be done five weeks at the latest after pronouncement; this time limit shall be extended by two weeks if the main hearing lasted longer than three days, and, if the main hearing lasted longer than ten days, by another two weeks for every ten days of the main hearing or part thereof. Upon expiry of the time limit the reasons for the judgment may no longer be amended. The time limit may be exceeded only if and as long as the court, due to a circumstance which cannot be anticipated or averted in an individual case, has been prevented from observing it. The date of receipt and any amendment of the reasons shall be noted by the registry.

(2) The judgment shall be signed by the judges who participated in the decision. If a judge is prevented from adding his signature, this fact, with the reason therefor, shall be noted under the judgment by the presiding judge and, if he is prevented from doing so, by the most senior associate judge. The signatures of the lay judges are not required.

(3) The day of the sitting and the names of the judges, of the lay judges, of the official of the public prosecution office, of defense counsel, and of the registry clerk who took part in the sitting shall be included in the judgment.

(4) Copies and extracts of judgments shall be signed by the registry clerk and shall be stamped with the court's seal.

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