

Criminal Procedure Code (Strafprozeßordnung, StPO)

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Table of Contents

Part One, General Provisions

Chapter I Substantive Jurisdiction of The Courts

- Section 1. [Substantive Jurisdiction]
- Section 2. [Joinder and Severance of Connected Cases]
- Section 3. [Definition of Connection]
- Section 4. [Subsequent Joinder or Severance]
- Section 5. [Jurisdiction over Connected Cases]
- Section 6. [Examination Proprio Motu]
- Section 6a. [Jurisdiction of Particular Penal Chambers]

Chapter II Venue

- Section 7. [Place of the Commission of the Act]
- Section 8. [Domicile, Place of Residence]
- Section 9. [Place of Apprehension]
- Section 10. [Home Port]

Part Two Proceedings at First Instance

Chapter I Public Charges

Section 151. [Principle of Indictment]

The opening of a judicial investigation shall be conditional upon preferment of charges.

Section 152. [Indicting Authority; Principle of Mandatory Prosecution]

(1) The public prosecution office shall have the authority to prefer public charges.

(2) Except as otherwise provided by law, the public prosecution office shall be obliged to take action in the case of all criminal offenses which may be prosecuted, provided there are sufficient factual indications.

Section 152a. [Prosecution of Elected Public Representatives]

The law of a *Land* concerning the conditions under which criminal prosecution may be instituted or continued against members of a legislative body shall also be applicable to the other *Laender* of the Federal Republic of Germany and to the Federation.

Section 153. [Non-Prosecution of Petty Offenses]

(1) If a less serious criminal offense is the subject of the proceedings, the public prosecution office may dispense with prosecution with the approval of the court competent for the opening of the main proceedings if the perpetrator's culpability is considered to be of a minor nature and there is no public interest in the prosecution. The approval of the court shall be not required in the case of a less serious criminal offense which is not subject to an increased minimum penalty and where the consequences ensuing from the offense are minimal.

(2) If charges have already been preferred, the court, with the consent of the public prosecution office and the indicted accused, may terminate the proceedings at any stage thereof under the conditions in subsection (1). The consent of the indicted accused shall not be required if the main hearing cannot be conducted for the reasons stated in Section 205, or is conducted in the cases of Section 231 subsection (2) and Sections 232 and 233 in his absence. The decision shall be given in a ruling. The ruling shall not be contestable.

Section 153a. [Provisional Dispensing with Court Action; Provisional Termination of Proceedings]

(1) In a case involving a less serious criminal offense, the public prosecution office may, with the consent of the court competent to order the opening of the main proceedings and with the consent of the accused, dispense with preferment of public charges and concurrently impose a condition upon the accused:

1. to make a certain contribution towards reparation for damage caused by the offense,
2. to pay a sum of money to a non-profit-making institution or to the Treasury,
3. to perform some other service of a non-profit-making nature,
4. to comply with duties to pay maintenance at a certain level, or

5. to participate in a seminar pursuant to section 2b subsection (2), second sentence, or section 4 subsection (8), fourth sentence, of the Road Traffic Act,

if such conditions and instructions are of such nature as to eliminate the public interest in criminal prosecution and if the degree of culpability does not present an obstacle. The public prosecution office shall set a time limit within which the accused is to comply with such conditions and instructions, and which, in respect of the cases referred to in numbers 1 to 3 and 5 of the first sentence, shall be a maximum of six months and, in respect of the cases referred to in number 4 of the first sentence, a maximum of one year. The public prosecution office may subsequently revoke the conditions and instructions and may extend the time limit once for a period of three months; with the consent of the accused it may subsequently impose or change conditions and instructions. If the accused complies with the conditions and instructions, the offense can no longer be prosecuted as a less serious criminal offense. If the accused fails to comply with the conditions and instructions, there shall be no compensation for such contribution as he has made towards compliance. Section 153 subsection (1), second sentence, shall apply *mutatis mutandis* in the cases referred to in the first sentence, numbers 1 to 4.

(2) If the public charges have already been preferred, the court may, with the consent of the public prosecution office and of the indicted accused, provisionally terminate the proceedings up until the end of the main hearing in which the findings of fact can last be examined, and concurrently impose the conditions and instructions referred to in subsection (1), first sentence, on the indicted accused. Subsection (1), second to fifth sentences, shall apply *mutatis mutandis*. The decision pursuant to the first sentence shall be given in a ruling. The ruling shall not be contestable. The fourth sentence shall also apply to a finding that conditions and instructions imposed pursuant to the first sentence have been met.

(3) The running of the period of limitation shall be suspended for the duration of the time limit set for compliance with the conditions and instructions.

Section 153b. [Dispensing with Court Action; Termination]

(1) If the conditions exist under which the court may dispense with imposing a penalty, the public prosecution office may, with the consent of the court which would have jurisdiction over the main hearing, dispense with preferment of public charges.

(2) If charges have already been preferred the court may, with the consent of the public prosecution office and of the indicted accused, terminate proceedings prior to the beginning of the main hearing.

Section 153c. [Non-Prosecution of Offenses Committed Abroad]

(1) The public prosecution office may dispense with prosecuting criminal offenses:

1. which have been committed outside the territorial scope of this statute, or which an inciter or accessory to an act committed outside the territorial scope of this statute has committed within the territorial scope thereof;

2. which a foreigner committed in Germany on a foreign ship or aircraft;

3. if a sentence for the offense was already executed against the accused abroad, and the sentence which is to be expected in Germany would be negligible after taking the foreign sentence into account or if the accused has already been acquitted by final judgment abroad in respect of the offense.

(2) The public prosecution office may dispense with prosecuting criminal offenses committed

within, but through an act committed outside, the territorial scope of this statute, if the conduct of proceedings would pose the risk of serious detriment to the Federal Republic of Germany or if other predominant public interests present an obstacle to prosecution.

(3) If charges have already been preferred, the public prosecution office may in the cases of subsection (1), numbers 1 and 2, and of subsection (2) withdraw the charges at any stage of the proceedings and terminate the proceedings if the conduct of proceedings would pose the risk of serious detriment to the Federal Republic of Germany, or if other predominant public interests present an obstacle to prosecution.

(4) If criminal offenses of the nature designated under section 74a subsection (1), numbers 2 to 6, and under section 120 subsection (1), numbers 2 to 7, of the Courts Constitution Act are the subject of the proceedings, the Federal Prosecutor General shall have these powers.

Section 153d. [Dispensing with Court Action on Political Grounds]

(1) The Federal Prosecutor General may dispense with prosecuting criminal offenses of the nature designated under section 74a subsection (1), numbers 2 to 6, and under section 120 subsection (1), numbers 2 to 7, of the Courts Constitution Act, if the conduct of proceedings would pose a risk of serious detriment to the Federal Republic of Germany, or if other predominant public interests present an obstacle to prosecution.

(2) If charges have already been preferred, the Federal Prosecutor General may withdraw the charges under the conditions designated in subsection (1) at any stage of the proceedings and terminate the proceedings.

Section 153e. [Dispensing with Court Action in National Security Cases]

(1) If criminal offenses of the nature designated under section 74a subsection (1), numbers 2 to 4, and section 120 subsection (1), numbers 2 to 7, of the Courts Constitution Act are the subject of the proceedings, the Federal Prosecutor General, with the approval of the Higher Regional Court, competent pursuant to section 120 of the Courts Constitution Act, may dispense with prosecuting such an offense if the perpetrator, subsequently to the offense, and before he has learned of the discovery thereof, contributed towards averting a danger to the existence or the security of the Federal Republic of Germany or its constitutional order. The same shall apply if the perpetrator has made such contribution by disclosing to an agency after the offense such knowledge as he had with respect to endeavors involving high treason, endangering the democratic state based on the Rule of Law, treason, and endangering external security.

(2) If charges have already been preferred, the Higher Regional Court, competent pursuant to Section 120 of the Courts Constitution Act, may, with the approval of the Federal Prosecutor General, terminate the proceedings if the conditions designated under subsection (1) are met.

Section 154. [Insignificant Secondary Penalties]

(1) The public prosecution office may dispense with prosecuting an offense:

1. if the penalty or the measure of reform and prevention in which the prosecution might result is not particularly significant in addition to a penalty or measure of reform and prevention which was imposed with binding effect upon the accused for another offense, or which he has to expect for another offense, or

2. beyond that, if a judgment is not to be expected for such offense within reasonable time, and if a penalty or measure of reform and prevention which was imposed with binding effect upon the

accused, or which he has to expect for another offense, appears sufficient to have an influence on the perpetrator and to defend the legal order.

(2) If public charges have already been preferred, the court, upon the public prosecution office's application, may provisionally terminate the proceedings at any stage.

(3) If the proceedings were provisionally terminated on account of a penalty or measure of reform and prevention already imposed with binding effect for another offense, the proceedings may be resumed, unless barred by limitation in the meantime, if the penalty or measure of reform and prevention imposed with binding effect is subsequently not executed.

(4) If the proceedings were provisionally terminated on account of a penalty or measure of reform and prevention which is to be expected for another offense, the proceedings may be resumed, unless barred by limitation in the meantime, within three months after the judgment imposed for the other offense has entered into force.

(5) If the court has provisionally terminated the proceedings, a court order shall be required for their resumption.

Section 154a. [Limitation of Prosecution]

(1) If individual separable parts of an offense or some of several violations of law committed as a result of the same offense are not particularly significant

1. for the penalty or measure of reform and prevention to be expected, or
2. in addition to a penalty or measure of reform and prevention which has been imposed with binding effect upon the accused for another offense or which he has to expect for another offense,

prosecution may be limited to the other parts of the offense or the other violations of law. Section 154 subsection 1, number 2, shall apply *mutatis mutandis*. The limitation shall be included in the records.

(2) After filing of the bill of indictment, the court, with the consent of the public prosecution office, may make this limitation at any stage of the proceedings.

(3) At any stage of the proceedings the court may reintroduce into the proceedings those parts of the offense or violations of law which were not considered. An application by the public prosecution office for reintroduction shall be granted. If parts of an offense which were not considered are reintroduced, Section 265 subsection (4) shall apply *mutatis mutandis*.

Section 154b. [Extradition and Expulsion]

(1) Preferment of public charges may be dispensed with if the accused is extradited to a foreign government because of the offense.

(2) The same rule shall apply if he is to be extradited to a foreign government because of another offense and the penalty or the measure of reform and prevention in which the domestic prosecution might result is negligible in addition to the penalty or measure of reform and prevention which was imposed on him abroad with binding effect or which he is to expect abroad.

(3) Preferment of public charges may also be dispensed with if the accused is expelled from the territorial scope of this Federal statute.

(4) If in the cases of subsections (1) to (3) public charges have already been preferred, the court, upon application by the public prosecution office, shall provisionally terminate the proceedings. Section 154 subsections (3) to (5) shall apply *mutatis mutandis*, provided that the time limit in subsection (4) amounts to one year.

Section 154c. [Victim of Coercion or Extortion]

If coercion or extortion (sections 240 and 253 Penal Code) was committed by threats to reveal a criminal offense, the public prosecution office may dispense with prosecuting the offense, the disclosure of which was threatened, unless expiation is imperative because of the seriousness of the offense.

Section 154d. [Decision of a Prior Issue Involving Civil Law or Administrative Law]

If the preferring of public charges for a less serious criminal offense depends on the evaluation of a question which must be determined according to civil law or administrative law, the public prosecution office may set a time limit to decide the question in civil proceedings or in administrative court proceedings. The person who reported the criminal offense shall be notified thereof. After this time limit has expired without any result, the public prosecution office may terminate the proceedings.

Section 154e. [Criminal or Disciplinary Proceedings concerning Erroneous Suspicion or Insult]

(1) Public charges shall not be preferred for an erroneous suspicion or insult (sections 164, 185 to 188 Penal Code) as long as criminal or disciplinary proceedings are pending for the reported or alleged offense.

(2) If public charges have already been preferred or a private prosecution has been filed, the court shall terminate the proceedings until the criminal or disciplinary proceedings for the reported or alleged offense are concluded.

(3) Pending the conclusion of the criminal or disciplinary proceedings for the reported or alleged offense, the statute of limitation shall not run in respect of prosecution for the erroneous suspicion or insult.