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THE COMPETENCE OF THE POLICE IN INVESTIGATION PROCEEDINGS

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I. INTRODUCTION

Several years ago, a survey was conducted in Germany on the subject of security and protection against crime. The results – not surprisingly – indicated that the majority of the country's citizens want a stronger state. Approximately 70 percent of the people surveyed in Germany's eastern states were even willing to accept a restriction of their basic rights if this would lead to greater success in combating crime. Only roughly one in three persons over the age of 30 were of the opinion that there could be no absolute protection against criminal offences in a free society.

Precisely older citizens have a – usually unfounded – excessive fear of becoming the victim of a criminal offence. This fear and the desire among broad segments of the population for greater security in everyday life are reflected in the call for a strengthening and extension of the powers of the police. The Code of Criminal Procedure is thereby quickly exposed to the reproach that its unnecessary formalities serve solely to protect the perpetrator. Politicians who woo voters by championing an enlargement and strengthening of the police forces as well as an increase in the number and speed of arrests and a concomitant shortening of criminal proceedings can reckon with considerable support. Especially since the events of 11 September 2001 and the launch of the global campaign to combat terrorism, endeavours to strengthen and extend the powers of the police unquestionably have good prospects for success.

This development must be followed all the more closely in view of the fact that the previous expansion of the scope of the duties of the police is problematic from the standpoint of both criminological policy and constitutional law and more than ten years ago already gave German defence attorneys cause to warn against an “annexing of criminal proceedings by the police”.

In the following I would like to familiarise you with the current law in Germany and with the broad scope of police activity in criminal investigation proceedings. I would also like to discuss the subject of the extension of police powers and present models for successful co-operation in response to specific kinds of crime. And, finally, permit me to address the question of how constructive co-operation between the police and the judicial authorities could ideally be structured.

II. THE CURRENT LAW IN GERMANY

A. Overall Responsibility of the Public Prosecution Office in Investigation Proceedings

Pursuant to section 160 subsection (1) of the Code of Criminal Procedure (hereinafter also abbreviated as CCP), as soon as the public prosecution office obtains knowledge of a suspected criminal offence it must investigate the facts to decide whether public charges are to be preferred. For this purpose it is authorised to make investigations itself or through the authorities and officials in the police force (section 161 subsection (1), first sentence of the CCP). The officials in the police force are thereby obliged to comply with the request or order of the public prosecution office (section 161 subsection (1), second sentence of the CCP).

The police also have a duty to investigate criminal offences (section 163 subsection (1) of the CCP). To this extent they may – even without an application by the public prosecution office – “take all measures where there should be no delay, in order to prevent concealment of facts”. The duty of taking initial action is thus transferred to the police.

The aforementioned provision in section 161 of the CCP is thus the statutory foundation for the authorisation of investigations of all kinds, including investigatory acts involving interference with a basic right that are less intrusive and are therefore not encompassed by a specific authorisation of interference. These include short-term observation and the use of confidential informers or undercover buyers (in the case of drugs), for example, as well as simple search measures such as the procurement of information from authorities.

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With respect to the distribution of tasks between the public prosecution office and the police, account must also be taken of section 158 subsection (1) of the CCP, pursuant to which the information of a criminal offence or an application for criminal prosecution may be filed with the authorities and officials in the police force as well as with the public prosecution office and the Local Courts. This is a provision that for all practical purposes enables the police to take initial action to investigate and thus ascertain the facts of the case in the overwhelming majority of cases (approximately 80 percent).

Moreover, you find a multitude of rights of interference in the Code of Criminal Procedure that can be exercised in exigent circumstances either by all police officers or only by the so-called “officials assisting the public prosecution office”, who have greater authority to make orders than the other officials in the police force.

B. All Police Officers have the Following Coercive Powers:

- the right to make provisional arrests (section 127 subsection (1), first sentence; section 127 subsection (2); section 127b subsection (1); section 163b subsection (1), second sentence of the CCP),
- the right to carry out measures for identification purposes (section 81b and section 163b subsection (1), third sentence of the CCP; at checkpoints: section 111 subsection (3) of the CCP),
- the right to establish identity (section 163b of the CCP),
- the right to use technical means within the meaning of section 100c subsection (1), numbers 1a and 1b of the CCP (taking of photographs and making of visual recordings, use of technical means for the purposes of surveillance),
- the right to use an undercover investigator in exigent circumstances (section 110b subsection (1), second sentence of the CCP),
- the right to examine papers with the consent of the holder pursuant to section 110 subsection (2), first sentence of the CCP.

C. The Police Officials Assisting the Public Prosecution Office also have the Authority to Order the Following:

- seizure (section 98 subsection (1), first sentence, and section 111e subsection (1), second sentence of the CCP),
- search (section 105 subsection (1), first sentence of the CCP),
- physical examination of the accused (blood samples and other bodily intrusions; section 81a subsection (2) of the CCP),
- physical examination of persons other than the accused (section 81c subsection (5), first sentence of the CCP),
- establishment of identity through DNA analysis (section 81g subsection (3) of the CCP in conjunction with section 81a subsection (2) of the CCP),
- use of technical means within the meaning of section 100c subsection (1), number 2 of the CCP (listening to and recording of private speech outside private premises),
- establishment of checkpoints (section 111 subsection (2) of the CCP),
- emergency sale of objects that have been seized or attached (section 111l subsection (2), second sentence, and subsection (3), second sentence of the CCP),
- computer-assisted search (section 163d subsection (2), first sentence of the CCP).

D. Statutory Distribution of Tasks Between the Public Prosecution Office and the Police

As I mentioned at the beginning, the police admittedly have the right to take initial action; on the other hand, however, they are obliged to comply with requests and orders of the public prosecution office and – this is crucial – transmit the records of their investigations to the public prosecution office without delay (section 163 subsection 2, first sentence of the CCP).

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The public prosecution office is responsible for leading the investigation proceedings; it is in charge of the proceedings at this stage. The police criminal investigation department is thus (only) an investigatory body of the public prosecution office. As a matter of principle, the public prosecution office is hence responsible for substantive direction of the police investigations. It has legal control and bears basic responsibility for the proper procurement and the reliability of the evidence required for the criminal proceedings. Under the law there is thus neither any independent right of investigation on the part of the police nor any area of the investigation proceedings that is not subject to the control of the public prosecution office.

The Federal Administrative Court summarised this finding as follows (Federal Administrative Court decision volume 47, pages 255 et. seq., 262):

The measures taken by the police when taking initial action are criminal investigations just the same as the measures taken at the instruction of the public prosecution office and the actions of the public prosecution office itself. The Criminal Procedure Code makes no provision for a special investigation proceeding by the police criminal investigation department. The investigations to prosecute criminal acts form an integrated whole; the investigation proceeding is not split into a police proceeding and a public prosecution office proceeding.

From the sole responsibility of the public prosecution office for the conduct of the investigation proceedings it follows that the power of decision concerning the conclusion of the investigation – termination or preferment of charges – is likewise solely the responsibility of the public prosecution office.

If the investigations offer sufficient reason for preferring public charges, the public prosecution office prefers them by submitting a bill of indictment to the competent court (section 170 subsection (1) of the CCP). In all other cases it terminates the proceedings (section 170 subsection (2), first sentence of the CCP). The percentage of investigations that are terminated due to negligible guilt of the perpetrator and lack of public interest in criminal prosecution or upon compliance with conditions or instructions is relatively large, however. I already addressed these issues earlier in my lecture on the duties of the public prosecution office.

III. ACTUAL LEADERSHIP OF THE INVESTIGATION PROCEEDINGS

At least from crime thrillers, we are all familiar with the public prosecutor who leads the investigation at the scene of the crime, supervises the taking of evidence, participates in the examination of witnesses or the accused, or conducts such examination himself, and in all other respects co-operates closely in a spirit of mutual confidence and trust with the officials of the homicide squad. The public prosecution office also makes extensive use of its authority to lead the investigations in the prosecution of so-called government crime, politically motivated criminal offences and legally complex environmental or economic crime.

Precisely in the area of economic crime, the investigations are clearly concentrated at the public prosecution office, which thereby often avails itself of the specialist knowledge of experts in the fields of tax or banking law. Command of criminal investigation techniques is of lesser importance in cases involving these offences; for the most part, they turn on questions that can only be authoritatively answered by an expert trained in criminal or commercial law. It is thus especially in this area that the public prosecutor exercises the authority to lead the case that is vested in him for the entire investigation proceeding.

The guidelines for criminal proceedings – these are detailed instructions of the *Land* ministries of justice for the work of the public prosecution office – state the following in this regard:

In cases that are of considerable importance or are difficult in terms of fact or law, the public prosecutor should personally clarify the facts of the case from the very beginning, namely inspect the scene of the crime himself and personally examine the accused and the most important witnesses. The consequences ensuing from the offence can also be of importance for the decision as to whether he should personally examine the aggrieved person as a witness.

In all other cases, however, the authority of the public prosecutor to lead the investigations goes largely unexercised, although this is regulated in the aforementioned guidelines as well:

Even if the public prosecutor does not personally clarify the facts of the case but instead delegates this task to the officials assisting him, to the authorities and officials in the police force or to other agencies, he must lead the investigations or at least determine their direction and their scope. He can thereby also give specific individual instructions as to the way in which individual investigatory acts are to be carried out.

In fact, the legal position of the public prosecutor has been considerably watered down over the years. There are a number of reasons for this:

A. Greater Weight of Police Investigations

In practice, it is police officers who conduct the majority of all investigations and, namely, independently of a request or order of the public prosecution office. In the area of petty and fairly serious crime, they in fact usually investigate without the direction of the public prosecution office up to the point where a decision can be made. There is a relatively simple explanation for this. Criminal offences are largely reported to the police. Moreover, the police often become aware of an initial suspicion in the course of performance of their official duties and take action on the basis of this.

In such cases section 163 of the CCP grants the police the authority to investigate the facts of the case themselves and to take all measures where there should be no delay. As a rule, the public prosecution office initially knows nothing about this and thus cannot exercise its authority to lead the investigation at all.

In other words: For all practical purposes, it is up to the police whether and how the principle of mandatory prosecution (*Legalitätsprinzip*) is translated into action.

I would like to make a few brief remarks concerning the principle of mandatory prosecution:

A criminal proceeding is not a proceeding between parties like a civil proceeding. In contrast to the civil proceeding, which is governed by the parties' freedom of disposition and in which the decision is rendered on the basis of a formal truth dependent on the submissions of the parties, in the criminal proceeding the public prosecution office – and the police – are bound by the principle of mandatory prosecution. This principle ensures uniform and equal application of the law as opposed to arbitrary selection and instils confidence that criminal prosecution will be handled in an objective and just manner.

Exceptions to the principle of mandatory prosecution are usually lumped together under the term “principle of discretionary prosecution” (*Opportunitätsprinzip*). After all, the public does not have an interest in the prosecution of every single criminal offence. In cases involving minor and moderately serious crimes where only private legal interests have been infringed, the law therefore makes prosecution subject to further conditions.

Returning to the subject at hand: For all practical purposes, it is thus up to the police whether and how a matter is investigated, in other words, whether and how the principle of mandatory prosecution is translated into action. For the police by no means limit themselves to taking initial action but instead largely independently undertake investigatory action up to the point where a decision can be made. They thereby strive to deliver conclusive results to the public prosecution office. The public prosecution office and the judges are consequently only able to exercise their control in isolated cases.

Thus it is in fact the principle of discretionary prosecution that reigns in investigation proceedings – at least according to the criticism voiced in legal literature. For empirical studies indicate that the police can determine whether or not investigations will be instituted

- through the way in which the information of the offence is registered,
- through selective clarification work in the course of police squad activity, and
- through the offence-dependent intensity of police investigations.

Let me give you an example:

A few years ago a colleague from the United States stayed at our home. She did not speak German and still had some difficulty keeping the German banknotes apart. When she paid for a purchase one day, the salesperson slipped her a

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Czech 100-crown bill that was worth only a fraction of the German 100-mark bill she should have received in change. Our guest failed to notice this fraudulent trick because the 100-crown bill was roughly the same size and colour as the 100-mark bill. My wife and I accompanied her to the police station, where the officers listened to her complaint. They also confronted the salesperson with our guest's accusation but were unable to clarify the facts of the case. The police officer took the 100-crown bill for safekeeping and wrote down our address. When I inquired about the status of the investigations a few days later, I was surprised to learn that the police had neither filed a written report nor investigated the case any further. There was absolutely no documentation whatsoever of the incident; they merely offered to give me back the 100-crown bill.

This is a prime example of how sheer passivity on the part of the police authorities – in this case failure to file a report of a criminal offence – can result in a gross violation of the principle of mandatory prosecution. The fact that in this way it is also possible to control the workload of the police and keep cases that are difficult or impossible to solve out of the statistics is another critical point that one must bear in mind when contemplating an extension of the powers of the police.

As a rule, the question of whether coercive measures under the law of criminal procedure will be used in the further course of the investigation proceeding likewise hinges on a preliminary examination and decision by the police that is not stipulated by law. For except in cases involving financial and economic crime, where the public prosecution office generally takes the lead in the proceedings, it is the police who decide whether the files should be submitted to the public prosecution office in order for the latter to apply for the issue of a warrant of arrest. It is not unproblematic that this allows the police a certain amount of discretion that can unquestionably be exercised after the provisional arrest of a suspect to influence his willingness to make statements, in particular to make a confession, name accomplices or divulge the hiding places of loot or of objects used to commit the crime.

The police also often play a crucial role in determining the course of the proceedings through responsible examination of the accused. It is the police who can decide the question of whether – in cases where the facts are unclear – a certain person should no longer be examined as a witness but rather as an accused. For all practical purposes it is thus up to the police to determine the point at which certain rights of the accused become effective. This is a particularly delicate issue in light of the fact that the police officers often conduct an “informal preliminary talk” or an “informatory questioning” of the suspect in order to first ascertain whether they can reckon with a statement or perhaps even a confession or other information pertaining to the offence. Such conduct by the police has no foundation in law, but it is not expressly prohibited either. From the standpoint of respect for the rights of the accused, however, it is particularly problematic because the defendant is not usually formally advised of his rights beforehand. Hence the term “informal” preliminary talk.

Such kinds of talks or questioning are quite popular with the police because the knowledge acquired in this manner can ultimately find its way into the investigation proceedings. The investigating officer, for instance, can add a note to the file detailing the information he has obtained and later testify to this in court as a witness. It goes without saying that defence attorneys do not favour this practice.

While – at least under German procedural law – the defendant indeed has the right to call in and consult with defence counsel at any time, the defence counsel does not have any statutory right to be present when the defendant is examined. Thus in the final analysis the police examination can be structured at the discretion of the officer conducting the examination, for the public prosecutor is usually not present.

Anyone familiar with the subject matter knows that in most cases, mistakes made during the investigation proceedings cannot be eliminated later on in the main hearing; it is likewise common knowledge that once the defendant has made a comprehensive confession to the police he will hardly ever be able to distance himself from it. This alone makes it clear that in the majority of cases it is not likely to be the public prosecution office but rather the police investigatory authorities that take the steps determining the subsequent course of the investigation proceedings.

B. Head Start of the Police in the Investigations as a Consequence of Preventive Action

The police have an ambiguous position in criminal proceedings, as can clearly be seen from the following example:

A burglar has broken into a bank and taken a hostage. While the public prosecutor who has hurried to the scene of the crime can order the police officers to apprehend the suspect and preserve evidence at the scene of the crime, he cannot order them to free the hostage by firing a shot at the perpetrator. For the latter act would not be a criminal prosecution measure but rather a measure to safeguard public security.

The general clause laid down in the police acts of Germany's *Länder* stipulates that

In the context of action to avert danger, the police authorities must also prevent any foreseeable criminal offences (preventive suppression of crime).

It is thus the task of the police, as the law enforcement authority under the purview of the Minister of the Interior, to take preventive or responsive action to suppress disturbances of the peace. This also includes action taken against perpetrators, such as an assault to free hostages.

Here the police are subject to the instructions of the Minister of the Interior; as soon as investigations of persons suspected of having committed a criminal offence are on the agenda, however, the federal statutory regulations of the Code of Criminal Procedure and the Courts Constitution Act apply, with the result that the public prosecution office is authorised to give instructions to the officials assisting it. To the extent that the police are engaged in the prosecution of a criminal offence, one speaks of repressive action; to the extent that they are acting to prevent criminal offences, one speaks of preventive action. Occasionally, however, this distinction poses problems because the general duty (regulated by *Land* law) of the police to suppress crime overlaps with the duty (regulated by federal law) to clear up criminal offences pursuant to the provisions of the Code of Criminal Procedure.

It must, however, be noted that preventive action to suppress crime is an independent pillar in the area of action to avert danger and thus logically falls within the sole competence of the police. Given the use of computers to collect and process vast quantities of information, prevention as conceived above constitutes a considerable extension of the duties of the police. This can be seen from the example of a confidential informer – a small-time drug dealer, for instance – controlled by the police who regularly supplies the police with a wealth of information that – after evaluation and collation by the police – makes targeted investigatory action possible. Since the public prosecution office does not find out about this flow of information in most cases, it cannot exercise its authority to lead the investigations at all.

You will now ask me who has “supreme authority” at the scene of the crime in the case involving the hostage-taker: the senior public prosecutor or a senior police officer. The guidelines for criminal proceedings contain a wise provision for such a constellation:

In the event that criminal prosecution duties and duties to avert danger follow simultaneously and directly from one and the same situation, the public prosecution office and police shall be competent to take the measures necessary to fulfil their duties.

In such a case, close co-operation based on mutual trust between the public prosecution office and the police is particularly essential. Co-operation in a spirit of partnership dictates that when fulfilling its duties each agency also take into account the implications this will have for the fulfilment of the other duties following from the situation. If the public prosecution office becomes involved, the public prosecutor and the police shall take mutually agreed action if at all possible. This shall also apply in the event that the situation does not permit simultaneous appropriate fulfilment of both their duties. In this case it shall be decided, by weighing the merits of the duties and the legal interests involved, whether criminal prosecution or action to avert danger is the higher good under the given specific circumstances.

Up to this point there has only been an appeal to the police and the public prosecutor to agree on a mutually acceptable course of action at the scene of the crime; the question of whether the police may on its own responsibility fell the hostage-taker by firing a shot or must instead wait until the public prosecutor gives his instructions is answered by the following provision:

If the situation requires a decision concerning the use of direct force without delay and if agreement cannot be reached – even after consulting the superior agencies – as to which duty has priority under the specific circumstances, the police shall make the decision.

C. Professionalisation of Criminal Investigation Techniques

Last year, the police investigatory authorities dealt with approximately 6.5 million criminal offences. It goes without saying that not only in view of the multitude of investigation proceedings but also in view of its usual lack of specialisation, the public prosecution office is dependent on the specialist knowledge of the police criminal investigation officers. Furthermore, the police with their technical equipment are much more in the public limelight and hence more the focus

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of political attention; they thus enjoy not only greater goodwill but also greater financial support. As a consequence of the wide range of new techniques for establishing proof that have also been upheld in decisions of the highest courts (such as DNA analysis, fibre expertise, chemical analysis) and the frequently convincing command of these techniques by the police, the head start of the police in the investigation proceedings from the standpoint of information has become so pronounced that the public prosecution office must often limit itself to checking the plausibility of the results of the investigations submitted to it.

It is meanwhile often only the police who have specialists capable of accurately selecting, sequencing and assessing the prospects for success of individual investigatory methods. The public prosecution offices are thus only rarely able to control, influence or direct the investigations in substantive terms.

It must be pointed out in this context that the police forces – which are organized at *Land* level and have no central office where information can be accessed by all *Land* police authorities – are hardly in a position to effectively combat criminal offences committed on a national scale. This particularly hinders the prosecution of offenders who operate internationally. Against this background, the decision was taken to establish the Federal Criminal Police Office (BKA) in Wiesbaden. In addition to its information collection and co-ordination functions, the Federal Criminal Police Office maintains the facilities and equipment required for all kinds of criminal investigations and criminological research in order to assist the *Land* police authorities in their investigations.

D. Police Control of Data

Since 1972, the Federal Criminal Police Office has had the electronic information network “INPOL” at its disposal to assist the police in the fulfilment of their duties. INPOL is made available at federal and *Land* level for joint use by police agencies and contains the following data, among other things:

- wanted persons data file,
- wanted property data file,
- Criminal Records Index (CRI),
- prisoner file,
- Identification Service,
- Automated Fingerprint Identification System (AFIS),
- motor vehicle light identification file for hit-and-run accident queries,
- vehicle identification and analysis system,
- unidentified dead and missing persons data file,
- police crime statistics.

Of particular importance in this context is the wanted persons data file. It facilitates determination of the whereabouts of wanted persons, apprehension, detention, taking of fingerprints and photographs, and establishment of identity. Among other things, it contains data concerning persons who are wanted for arrest, whose whereabouts are unknown, whose permission to drive has been withdrawn or who are sought in matters falling within the competence of the border police. Just under one million persons are currently listed in this file.

The wanted property data file serves to conserve evidence and recover property. It contains, for example, the information needed for search measures concerning objects that were used to commit a criminal offence or surfaced in connection with the offence or are otherwise of significance to a criminal proceeding. It also contains information concerning vehicles that are under police surveillance. Among the approximately 6.5 million objects contained in this data file are 350,000 cars, 500,000 motor vehicle license plate numbers, 1.3 million personal identification documents, just under 600,000 blank documents – including personal identification documents, for instance – and more than 100,000 weapons.

Only the police authorities are entitled to use INPOL, Germany's most important collection of data. Only they may enter and access data. Thus far the judicial authorities have no right of their own to access INPOL.

The judicial authorities themselves have only relatively few information systems at their disposal. In addition to the programmes installed at the public prosecution offices, through which they compile and administer their own files, these systems include

- the Federal Central Criminal Register (here is where all criminal sanctions are registered),
- the Central Commercial Register (the purpose of which is to ensure uniform approval or denial of business licenses to weed out unsuitable persons), and
- the Central Register of Traffic Offenders (here is where all traffic infractions are registered).

In practice this means that when the police stop a person to check identification, they can access the INPOL data from the squad car by radio. The police officers on the scene thus have a considerable amount of highly sensitive data concerning the person in front of them at their fingertips, but the person being checked cannot discern or deduce the extent of this information.

If the public prosecution office wanted to comprehensively control the police in investigation proceedings, it would have to be able to access the current database at any time in order to also be able to judge the latter's lawfulness in the context of its control function. In fact, however, the judicial authorities have no access to police data because some of it is obtained on the basis of information acquired in the course of preventive action by the police. While consideration is being given to the possibility of granting the judicial authorities access to police databases in the future, at present the information advantage of the police essentially rules out the possibility of control by the public prosecution office in certain areas of investigation.

E. Information Advantage through EUROPOL

Through EUROPOL, police and other information and data from the European Union Member States and third countries are collected and analysed at a central facility for later use in investigations, control measures and executive operations.

The aim of EUROPOL is to bring to light the activities and structures of organized crime as well as data concerning the members and profits of criminal organizations with the aid of modern analysis techniques and to process this information for the use of the national police authorities. This includes defining focal areas for further technical investigatory measures, identifying connections with other investigation complexes and elaborating new investigatory approaches. Future threatening scenarios are generated and their impact assessed in order to enable decision-makers to carry out medium- and long-term planning and take preventive action. EUROPOL thus functions more or less as a clearinghouse for the collection and exchange of criminally relevant information. In addition to personal data of convicted individuals, suspects, potential witnesses and victims, contacts, companions and possible informants, information from virtually all national and European institutions can be accessed. This data is then processed to compile strategic analyses, among other things.

The judicial authorities do not (yet) have any influence on the activities of EUROPOL within the European area. The German public prosecution offices do not even have a right to obtain information directly from EUROPOL. The Federal Criminal Police Office, as the EUROPOL "national unit" for Germany, is merely obliged under the EUROPOL Convention to notify the criminal prosecution authorities of information concerning them and of any connections identified between criminal offences. It is currently not, however, under any obligation to forward requests for information by the public prosecution offices or the courts to EUROPOL.

One must thus conclude that police clearly have a crucial advantage in the case of EUROPOL as well, and that here, too, the public prosecution office cannot exercise its statutory right to control and lead the investigation proceedings.

F. The *de facto* Control of Matters by the Police in a Large Percentage of Investigation Proceedings is Based on the Following:

- Many investigatory acts are undertaken nearly exclusively by police officers on their sole responsibility (summons, examination, taking of fingerprints and photographs, search, arrest, evaluation of evidence, assessment of the status

of the parties to the proceedings as accused or as witnesses). The police maintain a presence day and night; in many cases they are therefore immediately at the scene of the crime and are thus able to determine the course of the future investigations.

- Since the police are also engaged in preventive activity, i.e. work to prevent criminal offences, they have a wealth of detailed knowledge that often enables them to take swift action without the public prosecution office becoming aware of this.
- Public attention and media coverage focus far more often on the work of the police than on the work of the public prosecution office. Thanks to the benevolence of political leaders, the police are better staffed and have more modern equipment and a more highly developed basic and further training system than the judicial authorities.
- The control of data by the police in the context of increasingly comprehensive computer-assisted investigatory methods gives them a distinct advantage over the public prosecution office.
- The same is true of the professionalisation of criminal investigation and intelligence techniques by the police.
- The police alone have taken organizational measures in response to the internationalisation of crime by establishing INTERPOL and EUROPOL. The public prosecution offices are still denied access to these databases.

IV. REFLECTIONS ON AN EXTENSION OF THE POWERS OF THE POLICE UNDER THE LAW OF CRIMINAL PROCEDURE

Given the increasingly important role of the police in criminal proceedings and their de facto advantage over the public prosecution office, it is not surprising that the police in Germany have begun to explore the possibility of amending provisions of the law of criminal procedure to reflect this growing importance. In the following I would like to examine a number of suggestions in greater detail:

A. Obligation of the Witness to Appear before the Police and Make Statements

Pursuant to section 161a of the CCP, witnesses are obliged to appear before the public prosecution office upon being summoned and to make statements on the subject matter. If witnesses fail or refuse to appear without justification, the public prosecutor may impose a coercive fine on them. The current law of criminal procedure does not, however, provide for an obligation of the witness to appear before the police and make statements. The police merely have the possibility of pointing out to the witness that if he refuses, they will see to it that he is examined by the public prosecutor or the judge, vis-a-vis whom the witness has an obligation to appear and make statements.

Time and again there have been calls by the police for legislation mandating an obligation to appear and make statements in the case of police examination of witnesses as well. A corresponding proposal is now the subject of a bill that has been submitted by the *Länder*.

Law enforcement practitioners believe that investigation proceedings could be conducted more efficiently if witnesses were under an obligation to appear before the police and make statements. In their opinion, an early initial examination by the police takes on particular importance when the public prosecution office leading the investigation does not yet have sufficient knowledge of the facts of the case and it would be useful to be able to draw on specific experience or knowledge of the police or on intelligence they have gathered from preventive work to combat crime that is not immediately available to the public prosecution office. Furthermore, they continue, in no small number of cases the investigatory authorities have to deal with ambivalent and intimidated witnesses whose willingness to testify must also be encouraged by the police. From the standpoint of the police, it is precisely the witnesses occasionally called upon to make statements concerning crime complexes of organized crime who should be examined promptly.

In the case of minor and moderately serious crimes, they continue, witnesses are often unwilling to appear before the police upon being summoned due to the inconvenience, cost or time commitment this entails. An obligation to appear before the police would at any rate be likely to accelerate the proceedings in such cases and reduce the time, cost and effort involved for the simple reason that once such witnesses have put in an appearance, they are generally willing to make statements. The proposed provision is to read as follows:

Witnesses shall be obliged to appear before the police authority upon being summoned and to make statements on the subject matter if the summons is based on an order or request of the public prosecution office.

In the opinion of the Federal Government, which commented on the proposed provision, this would merely lead to a shift of powers to the police. For according to the explanatory memorandum to the bill, an obligation of witnesses to appear before the police and make statements was to then take on particular importance when the public prosecution office did not yet have sufficient knowledge of the facts of the case but an early examination would nevertheless be useful. In the Government's view, however, an order or request by the public prosecution office to the police to summon a witness would – if it were to be more than just a formality – presuppose a prior comprehensive briefing on the status of the proceedings in each individual case. Thus no acceleration or increase in the efficiency of investigation proceedings would be associated with a provision such as the one proposed.

Furthermore, it is admissible under German law for witnesses to be accompanied by legal counsel when they appear at the examination. If witnesses were obliged to appear before the police, they would in any case bring legal counsel with them if they could themselves be subject to criminal prosecution and therefore have a right to refuse to make statements or if they belonged to the group of aggrieved persons or witnesses entitled to private accessory prosecution or, finally, if they were particularly in need of protection. In these cases it is possible under the law for an attorney to be assigned to the witness as counsel prior to examination by the public prosecutor or the judge.

In the event of the introduction of an obligation to appear before the police and make statements, the principle of fair proceedings would demand that legal counsel already be called in – at state cost, if necessary – during the examination by the police. This could not only lead to delays in the proceedings and addition expense for the police but also perhaps exceed their expertise. For it is certainly doubtful whether a police criminal investigation officer, who as a rule has only an intermediate-level school education, would be able to hold his own against an attorney with considerable court experience serving as legal counsel for the witness. In such cases the officer conducting the examination would be dependent on the assistance of the competent public prosecutor, insofar as he did not simply discontinue the examination session and leave the questioning of the witness accompanied by counsel to the public prosecutor.

This example shows that the police authorities should only be given additional powers if there is no doubt that they are fully capable of exercising them.

B. Independent Power of the Police to Terminate the Investigation when the Perpetrators are Unknown

More than 1.5 million cases of ordinary theft and just under 700,000 cases of damage to property – snapping off a car antenna, for example – are committed in Germany each year. In cases involving crimes committed on a mass scale in which the perpetrators are likely to remain unknown, the investigation proceedings have already been simplified to the point where no effort is generally made to procure evidence or examine witnesses.

As a rule, the file consists of just one sheet of paper on which the person harmed describes the criminal offence, a form with which the police notify the person harmed two or three weeks after the crime that they were unable to locate a perpetrator, and another form signed two or three weeks later by the public prosecutor with which he notifies the person harmed that the criminal proceedings had to be terminated because the perpetrator is unknown.

In view of this practice it is not surprising that consideration is being given in police circles to whether – at least in the case of unknown perpetrators – the final termination order could not also be signed by the investigating police officer. For this – according to the argumentation of the proponents of such a solution – would avoid unnecessary circulation of files and spare the public prosecutor a review of the case and the issue of a termination order.

The shifting of competence for termination of proceedings to the police appears very problematic to me not only in light of the statutory authority of the public prosecution office to lead the investigation proceedings but also in view of the following:

- The termination of proceedings against unknown perpetrators by the police on their own responsibility would call for more intense police review of the criminal investigation process especially in regard to the legal assessment of the offence; thus far, given the competence of the public prosecution office for final review, this question has not been a focus of review by the police investigation officials. A competence of the police to terminate proceedings on their own would therefore go hand in hand with an additional commitment of resources to review that cannot be made by the police in every case.

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- The termination of proceedings against unknown perpetrators by the police harbours a slew of potential objections by affected insurance companies, etc., who might perhaps demand further investigatory acts and insist on a decision by the public prosecution office.
- Such a shift would essentially result in the emergence of parallel competence of the police and the public prosecution office all the way up to the conclusion of criminal proceedings, which would in turn complicate queries concerning the outcome of criminal proceedings as well as the fulfilment of reporting requirements both for statistical purposes and for the Federal Central Criminal Register.
- The termination of investigations against unknown perpetrators is often only temporary or at least open-ended timewise. Since the police are not as centrally organized as the public prosecution office and the number of police authorities is significantly larger, it is not likely to be all that easy to promptly link subsequent incoming tips concerning perpetrators to the correct proceedings.
- Even investigation proceedings in which no accused persons have been identified or examined can involve interference that could make it appear wise on rule-of-law grounds to provide for review by another body – in this case the public prosecution office.
- And, finally, it is difficult to imagine that authority to lead the investigation could remain vested in the public prosecution office but at the same time be undermined by an independent power of the police to terminate the proceedings.

In short: Independent termination of certain investigation proceedings by the police is unlikely to lead to either a general reduction in public administration costs in the area of criminal prosecution or better co-operation between the public prosecution office and the police. The mere fact that the police largely take the lead in proceedings involving prosecution of minor and moderately serious crimes does not justify any changes to the law. Interests protected under the constitution such as the effectiveness of criminal prosecution and the separation of powers as well as the traditional distribution of functions between the investigatory and judicial bodies, to which the public prosecution office belongs, dare not be infringed. The idea of transferring an independent power of termination to the police in certain investigation proceedings should therefore be abandoned.

**V. IDEAS FOR OPTIMISING CO-OPERATION BETWEEN
THE PUBLIC PROSECUTION OFFICE AND THE POLICE**

My remarks are intended to make it clear that merely shifting competences from the public prosecution office to the police – in other words, increasing the latter's power – will not necessarily lead to simplification and acceleration of the proceedings and save costs and, moreover, that it can be questionable from the rule-of-law perspective.

There are, however, a number of areas in which an intensification of co-operation between the public prosecution office and the police could improve criminal prosecution and relieve the burden on the investigatory authorities as a whole, in other words, on both the public prosecution office and the police:

A. Co-ordination of Investigation Strategies

Insofar as the prosecution concepts and investigation strategies of the police can have an impact on criminal prosecution, involvement of the public prosecution office in the form of mutual consultation and co-ordination appears indispensable. There would otherwise be reason to fear that the measures taken by the police would not be followed up by the public prosecution offices and would thus prove fruitless. If, for instance, the police launch a long-term campaign aimed at busting an openly active drug scene by making a multitude of arrests, the public prosecution office must be involved beforehand so that it can take steps to ensure the availability of the personnel resources required to handle these arrests and their subsequent processing by the judicial authorities.

The arrangement spelled out in item No. 5 of Annex E to the Joint Guidelines of the Ministers of Justice and Ministers of the Interior relating to Co-operation between the Public Prosecution Offices and the Police in the Prosecution of organized Crime is a prime example of how to structure co-operation extending beyond individual cases between the public prosecution office and the police to combat organized crime:

Co-operation, extending beyond individual cases, between the public prosecution office and the police is intended to enable both authorities to obtain, jointly develop and use as the basis for their respective individual measures the same in-depth knowledge of the forms of manifestation of organized crime and of the specific problems relating to the cases involved.

Co-operation extending beyond individual cases is also to enable agreement to be reached on the local and temporal management of the investigation capacities of the public prosecution office and the police criminal investigation department through the creation of focal points corresponding to the actual situation in question.

The public prosecution office and the police criminal investigation department arrange regular official meetings at which there is special discussion of the

- actual situation, anticipated development and measures to combat organized crime within their sphere,*
- knowledge and experience gained from the course of investigations and of court proceedings, and also the effects of mistakes made during investigations,*
- knowledge and experience acquired from the use of undercover investigation methods and from the protection of witnesses, including ensuring the necessary secrecy,*
- knowledge and experience acquired from measures for siphoning off profits,*
- local practice with regard to international legal assistance and other forms of co-operation with foreign authorities,*
- general questions of co-operation,*
- public relations.*

Discussions should take place once a year, and where necessary more frequently. The customs investigation department should be given the opportunity of taking part. The departments participating decide on whether to call in other authorities. The respective superior authorities must be informed of the outcome of such discussions.

This “model” could be applied without any problem to other areas of crime (especially fairly serious and serious crime) and facilitate the elaboration of joint strategies to combat crime.

In several of Germany’s *Länder*, for instance, working groups consisting of both public prosecutors and police officers have been established at the public prosecution office to take concerted action to combat official corruption.

B. Steps to Combat Domestic Violence

Strategies for combating domestic violence have also been developed by the public prosecution office and the police in collaboration with other authorities in order to effectively protect women and children against violence, impose appropriate sanctions for offences and prevent recidivism.

Violence in the immediate social environment is a phenomenon that was long taboo and played down in importance. This form of crime, however, to which more than 10,000 women fall victim every year, constitutes a gross violation of the physical and emotional integrity of the individuals concerned.

As in the case of efforts to combat organized crime, intensive co-operation between public prosecution offices, police and other agencies leads to a concentration of knowledge and experience and thus not only to higher-quality investigations but also to more effective protection of the affected victims. The investigation work is complemented by measures designed to heighten the awareness of the individuals and agencies concerned. Among other things, these include;

- the elaboration of a handbook for criminal investigation officers to provide guidance for action at the scene, conservation of evidence and handling of cases,
- a broad range of basic and further training courses to teach police strategies for intervention in cases involving domestic violence,

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- an informational brochure for women frequently affected by domestic violence explaining how they can effectively protect and defend themselves with the assistance of the police and the judicial authorities.

C. Co-operation Models for Simplification of Proceedings

1. Juvenile Delinquency

In my opinion, there is a need for co-operation between the police and the public prosecution office not only in regard to co-ordination of police investigation measures; consideration should also be given to the question of whether closer co-operation between the public prosecution office and the police in the form of delegation of responsibilities or preliminary examinations could simplify and speed up the conclusive handling of criminal proceedings.

In a number of Germany's *Länder* there are guidelines for combating juvenile delinquency that assign a broad range of responsibilities to the police in order to relieve the burden on the judicial authorities without, however, encroaching on the authority of the public prosecution office to lead the investigation proceedings.

Behind this is the fact that in cases involving more minor criminal offences, the Juvenile Courts Act allows the public prosecutor at the juvenile court or the juvenile court judge to refrain from imposing formal sanctions at an early stage of the proceedings. The term "diversion" used in this context means a deviation in sanction practice from the classic formal procedure involving the judicial authorities in favour of an informal, swift and flexible response. Accordingly, preference of charges and conviction may – following the exercise of socio-educational influence or implementation of socio-educational measures – be replaced by termination of the proceedings.

The aim of these administrative provisions is thus;

- the promotion and improvement of co-operation between the police, the youth welfare authorities, the public prosecution office and the court,
- the guarantee of a real socio-educational response by the state in lieu of a formal court decision,
- the involvement of parents and other persons with the right of care and custody,
- the simplification and acceleration of juvenile criminal proceedings, not only in the interest of the judicial authorities but also in the interest of the young person concerned.

The prerequisite for such flexible handling of proceedings is that it apply only to criminal offences of a minor nature such as;

- theft, misappropriation and receiving stolen property of slight value (up to approximately fifty dollars),
- minor cases of fraud (involving damages of up to fifty dollars),
- unauthorised use of a vehicle,
- obtaining benefits by devious means, or travelling without paying for a ticket,
- minor cases of damage to property, especially damage that is the product of typically juvenile motivation or situations, such as graffiti,
- negligent bodily injury,
- insult,
- minor cases of driving without permission to drive.

In order to submit only really suitable cases to the public prosecutor or the court, the police must determine in their investigations whether the accused has already voluntarily rendered meaningful socio-educational accomplishments or voluntarily suggests or actually renders such accomplishments. These can consist of the following in particular;

- an apology to the person harmed,
- restitution of the harm caused (also partial restitution)
- payment of compensation for pain and suffering
- performance of work for the person harmed,
- community service work,
- participation in police road safety instruction,
- a socio-educational talk by the police with the young person in connection with his examination,
- a socio-educational talk by the public prosecutor with the young person.

Insofar as a socio-educational measure of this kind is suggested or implemented by the police after consulting with the public prosecution office, or by the public prosecution office itself, this presupposes three things;

- no earnest denial of the criminal accusation,
- consent of the young person to the measure,
- no objection by the person with the right of care and custody or by the statutory representative.

Final control of the implementation of a socio-educational measure involving the young person lies in the hands of the public prosecution office. It is responsible for ensuring that due account is taken of the idea of social education. Not until then is the proceeding terminated without leaving a blot on the accused juvenile's record.

The distribution of labour between the police and the public prosecution office is advantageous for all the parties involved, including the young person concerned;

- The proceeding is standardised and simplified in such a manner as to avoid unnecessary effort and expense,
- The waiver of intensive investigations – at the youth and social welfare authorities, for instance – ensures that the young person's private sphere remains largely untouched,
- The socio-educational option afforded the young person confronts him with the consequences of his act just the same way as a formal sanction,
- The regular consultations between the police and the public prosecution office guarantee that the police investigatory authorities remain aware of their limits.

2. Mediation between the Perpetrator and the Victim

Administrative provisions are in place that promote pragmatic and flexible co-operation on a case-by-case basis between the police and the public prosecution office in order to ensure uniform practice in the area of mediation between the perpetrator and the victim. Here, too, the police investigatory authorities are only conceded powers of their own to the extent that this does not dilute the supreme investigatory authority of the public prosecution office.

The statutory basis for mediation between the perpetrator and the victim is section 46a of the Criminal Code. Pursuant to section 46a, the court may mitigate or dispense with punishment if the perpetrator has completely or substantially made restitution for his act or has earnestly strived to make restitution. The same is true if the perpetrator has, in a case in which the restitution for the harm caused required substantial personal accomplishments or personal sacrifice on his part, completely or substantially compensated the victim.

The guidelines issued in most of Germany's *Länder* provide for the following action on the part of the police:

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- After clarifying the basic facts of the case, the police limit their investigations to verification of personal particulars and examination of the victim and the accused person,
- In suitable cases the police inform the victim or his attorney at the earliest opportunity of the possibility of mediation between the perpetrator and the victim; this can be done by handing out or sending an information sheet or by giving an oral explanation,
- To the extent that this appears expedient, the police seek to establish contact with the accused or his attorney and inform them of the possibility of mediation between the perpetrator and the victim and of the conceivable consequences under the law of criminal procedure. The standardised information sheet is to be handed out or sent for this purpose,
- The police submit a case they deem suitable for mediation between the perpetrator and the victim to the public prosecution office without delay,
- In cases of doubt, the police consult the public prosecution office either in person or by phone as to the procedure to be followed.

Similar guidelines exist for the procedure to be followed at the public prosecution office:

Insofar as the accused and the person harmed agree to such mediation, the public prosecution office requests a conflict mediation agency to carry it out. There the affected parties receive impartial assistance in regulating the consequences of the act that caused the harm.

Upon conclusion of mediation between the perpetrator and the victim, the files are submitted to the public prosecution office, which then decides – with the involvement of the court, if necessary – whether the proceeding should be terminated or whether the circumstances of the act nevertheless give cause for preferment of charges. In such a case, as I pointed out earlier, the conclusion of mediation between the perpetrator and the victim can lead the court to mitigate or even dispense with punishment.

As you have undoubtedly realised, in such cases it would probably be simpler for a public prosecutor to immediately prefer charges – i.e. without mediation between the perpetrator and the victim – or terminate the proceedings upon payment of a regulatory fine. In my opinion, however, this relatively time-consuming mediation procedure is worthwhile for all the parties concerned;

- Peaceful relations under the law are restored, and conflicts are settled,
- The victim obtains satisfaction from the perpetrator,
- Further disputes between perpetrators and victims under the law of civil procedure are usually unlikely to arise.

3. Models for more Efficient Efforts to Combat Shoplifting

The extent of petty crime in Germany gives cause for reflection on steps to optimise the state's response.

Approximately 700,000 cases of shoplifting are registered by the police every year. In more than half of the cases, the value of the shoplifted items is less than ten dollars; in another thirty percent the value is between ten and fifty dollars; and in only about one percent of the cases is the value more than five hundred dollars.

Even though the fault of the perpetrators in the majority of cases is extremely slight and the proceedings – at least in the case of first offenders – are very often terminated without imposition of any sanctions at all, the processing of such offences nevertheless places a considerable burden on the police and the judicial authorities. Furthermore, law enforcement practitioners are of the opinion that the previous sanctioning practice in this area of petty crime is inadequate.

A working group in the state of Saxony is now developing a model for efficient co-operation between the police and the public prosecution office. This model not only greatly simplifies the handling procedure but also leads to imposition of financial sanctions on the perpetrator in every case of shoplifting, even those involving loot of slight value.

The key features of this co-operation model are the following;

- In the case of loot with a value of less than fifty dollars, the police offer the accused the option of terminating the proceedings upon payment of a regulatory fine – subject, however, to the decision of the public prosecution office,
- Whenever possible, the offer to terminate the proceedings is made in the context of the personal hearing of the accused. In cases where small amounts are involved, a form with a standardised offer can already be enclosed with the summons sent to the accused to appear for examination,
- The form makes it clear that this offer is only applicable if the perpetrator does not already have a theft record. It then points out that the public prosecution office will most likely terminate the proceeding upon payment of the regulatory fine, that no entry will be made in the Federal Central Criminal Register, and that in the event that the public prosecutor decides otherwise any regulatory fine that may have been paid will be reimbursed or credited toward any other fine that may be payable,
- The consent of the accused should be declared on the form,
- The accused is informed that he can suggest a specific non-profit-making institution in the declaration of consent,
- In the interests of equal treatment, the assessment of the suggested sum of money to be paid is made on a standardised basis (a multiple of the value of the shoplifted goods, for instance).

In the city of Nuremberg there is a similar pilot project to effectively combat shoplifting:

If a shoplifter is caught in the act, the police arriving on the scene may offer him the option of immediately and voluntarily paying a specific sum of money to the police officer on the spot or to the public treasury within six days. The prerequisite, however, is that the person in question be a first-time offender and that the value of the stolen goods not exceed fifty dollars. The sum of money collected on the spot should be nine times the value of the goods. After payment has been made, the public prosecution office can usually conclude the proceeding immediately. The sanction thus follows hot on the heels of the act.

These two models clearly show that acceleration and simplification of the investigation proceedings are only possible through co-operation models providing for a distribution of labour that are jointly developed and translated into action by the police and the public prosecution office.

4. The “House of Juvenile Justice” in Stuttgart

This pilot project optimises co-operation between the police and the public prosecution office in a manner that can hardly be surpassed, namely by accommodating the youth welfare office, the police and the competent public prosecutor under one roof. This ensures constant and direct contact between the three most important institutions concerned with child and juvenile delinquency. Moreover, the nearby local court keeps time slots available for hearings so that main hearings can be conducted at short notice if necessary.

The key principles governing the work in the House of Juvenile Justice can be summarised as follows;

- Case conferences: All the institutions involved exchange their knowledge and co-ordinate assistance measures in the event of interventions or sanctions. Close daily co-operation and the personnel continuity marking this co-operation foster mutual trust and confidence in both the individuals involved and their skills. At the same time, they ensure a qualified multidisciplinary diagnosis as the prerequisite for an effective response to child or juvenile delinquency,
- Parallelism of case handling: Upon receipt by the police of a notice of a criminal offence, the public prosecution office is also promptly informed so that it can immediately bring its own set of instruments to bear in suitable cases. The officials of the youth welfare office function as intermediaries in this context, involving the necessary co-operation partners,
- Immediacy: There is no longer merely discussion about the young person concerned but discussion with him as well – and, if appropriate, also with his parents. The young person thus experiences the public prosecutor in action as a real person rather than just a faceless name contacting him through a form letter. Many young delinquents are impressed by the intensity of the adults’ concern for them. Not infrequently, this is the first time that the children and young people concerned sense that someone really cares about what they do and what becomes of them.

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This new form of co-operation has thus far shown in an impressive manner how proceedings can be made more effective and, in particular, how they can be handled more expeditiously. More high-quality pilot projects of this kind are to follow in Germany.

VI. SUMMARY

- a) For all practical purposes, it is the police who take the lead in the majority of investigation proceedings. Thanks to their constant presence and consequent ability to take initial action to apprehend suspects, their superior personnel and technical resources, their control of data, and their European network, they are in a position to decisively influence the course of the investigation proceedings. In most cases the steps paving the way for conviction or acquittal are thus already taken during the investigation proceedings, not later on in the courtroom.
- b) In order to meet rule-of-law standards, promote acceptance of court decisions by the accused, strengthen public confidence in the lawfulness of intervention by the judicial authorities and forestall critical reporting by the media, the investigation work of the police should be critically monitored, controlled and, in individual cases, managed by a competent, fully trained lawyer – the public prosecutor in Germany. This should at least be the case when criminal offences other than petty crimes or crimes committed on a mass scale are involved.
- c) Against this background, any attempts by the police to obtain even more latitude and even more freedom from the influence and control of the public prosecution office must be greeted with extreme caution. There should also be no further consideration of the idea of shifting powers of the public prosecution office to the police.
- d) Strong support should, however, be given to joint endeavours by the public prosecution office and the police to divide up the tasks arising in the course of the investigation proceedings in such a way as to increase the transparency of the investigation proceedings and more swiftly and efficiently bring them to a conclusion while at the same time preserving the competence of the public prosecution office to lead the proceedings. Close co-operation in close quarters between the police and the public prosecution office affords optimal conditions for this, as pilot projects prove.

ANNEX 1

Rates of various offences or offence groups

Population: 82 163 500 (01-01-2000)

Key	Offence or offence groups ¹	Cases recorded	%	Offence rate ²
—	Total offences	6 264 723	100.0	7 625
	Encompassing:			
4***	Theft under aggravating circumstances	1 519 475	24.3	1 849
3***	Theft without aggravating circumstances	1 463 794	23.4	1782
5100	Fraud	771 367	12.3	939
6740	Criminal damage to property	671 368	10.7	817
2240	Intentional bodily harm in less serious cases	261 894	4.2	319
7300	Drug offences	244 336	3.9	297
6730	Insult, assault and battery	152 282	2.4	185
2300	Crimes against personal freedom	146 198	2.3	178
2220	Dangerous bodily harm and serious bodily harm	116 912	1.9	142
6200	Resisting a public official in the execution of his duties and less serious criminal offences against public order	115 097	1.8	140
5300	Embezzlement	86 284	1.4	105
5400	Forgery of documents	71 796	1.1	87
2100	Robbery; extortion resembling robbery and assault of a motor vehicle driver resembling robbery	59 414	0.9	72
5200	Breach of trust (section 266 Criminal Code) Withholding and embezzlement of wages or salaries (section 266a Criminal Code) Misuse of cheque and credit cards (section 266b Criminal Code)	38 107	0.6	46
6760	Environmental offences	34 415	0.5	42
6300	Accessoryship before and after the fact	29 479	0.5	36
7100	Serious criminal offences and less serious criminal offences in secondary criminal law	28 308	0.5	34
6400	Arson	28 002	0.4	34
7260	Offences in violation of laws concerning weapons	23 607	0.4	29
6710	Non-payment of maintenance allowance	15 761	0.3	19
6500	Crimes in public office (Cases of bribery are included)	8 512	0.1	10
1110	Rape (attempts included) and aggravated sexual assault	7 499	0.1	9
0100	Murder and manslaughter (attempts included)	2 770	0.0	3
+0200				

¹ The list of keys is incomplete.² The offence rate is the number of cases, which have come to the attention of the police, calculated on the basis of 100 000 inhabitants.

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ANNEX 2

(Crest) (Stamp of the authority)

Ms/Mr

Date:
Tel.:
Case officer:
Ref. No.:
(Please quote when replying)

Investigation proceedings in respect of theft

Encls.: Reply letter
Transfer slip

Dear _____,

You stand accused of the following:

That on _____ (date) at around _____ (time) you did misappropriate in _____ (place) goods to the value of DM _____ in order to permanently retain these goods for yourself without payment (minor crime of theft in accordance with section 242 subsection 1 of the Criminal Code [StGB]).

In accordance with section 163a of the Code of Criminal Procedure (Strafprozessordnung - StPO) you are herewith afforded the opportunity to make a statement with regard to this accusation. You are furthermore afforded the possibility below of applying for simplified conclusion of proceedings on payment of a sum of money. If within two weeks of your receipt of this letter no notice quoting the above ref. No. and no statement returning the enclosed reply letter is received from you by the aboverferenced authority, it will be presumed that you do not wish to avail yourself of the possibility of simplified conclusion of proceedings or of your right to make a statement.

1. Possibility of simplified conclusion of proceedings

If you are a first offender³, it is possible in the case at hand in accordance with section 153 a subsection 1 of the Code of Criminal Procedure to refrain from filing a public charge if you

- consent to simplified conclusion of proceedings using the form enclosed by the date _____ of _____ **and**

-effect payment in respect of the amount of DM _____ (in words: Deutsche Mark)

by _____ at the latest.

³ A first offender in this context is whoever has not been previously punished for a property offence and in respect of whom no proceedings relating to such offences have been discontinued in the past five years in accordance with section 153 of the Code of Criminal Procedure (Non-Prosecution of Petty Offences) or section 153a of the Code of Criminal Procedure (Provisional Dispensing with Court Action).

Payment should be effected for the benefit of the Landesjustizkasse Chemnitz, a/c No. 87 001 500 at the Landeszentralbank Chemnitz (branch code [Bankleitzahl]: 870 000 00) expressly stating the ref. No. above.

Please find enclosed a transfer slip.

The public prosecution office will decide as to allocation to the sum of money to state funds or to a charitable establishment. You may propose a charity yourself.

If you agree to this treatment of the case in good time and effect payment in respect of the amount in good time and in full, the proceedings are very likely to be discontinued by the public prosecution office. This is conditional on you not having come to notice previously under criminal law. The final decision is to be taken by the public prosecution office. Documented payment of the sum of money in good time will be considered agreement. If the proceedings are discontinued by the public prosecution office, no entry will be made in the Federal Central Criminal Register ("criminal register"). You will be considered not to have a criminal record, and the event will not be entered in a certificate of good conduct.

If you do not agree to this treatment of the case, the public prosecution office will decide.

Please note in particular that there is no mechanism for the following:

- an extension of the period set for the submission of your agreement;
- a reminder to pay the sum of money;
- examination of the reasons for which you have not paid the sum of money, or have not paid it in good time.

In the event of a different decision being taken on the merits of the case by the public prosecution office, the sum of money paid may be refunded or set off against any criminal fine imposed by the court.

2. Information regarding the case

If you wish to provide information concerning the case, you may also use the enclosed reply letter.

Please note that you are free in accordance with the statutory provisions whether to make a statement on the case, and at any time to consult defence counsel to be chosen by yourself. Furthermore, you may apply for individual items of evidence to be taken to exonerate you.

Yours sincerely,

Signature of case officer

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ANNEX 3

(First name, last name of the accused, postcode, city, street, house No.)

To (Stamp of the police authority)

Reply

Investigation proceedings concerning myself in respect of theft

Re your letter of

Ref. No.

I would like to inform you of the following:

1. Application for simplified conclusion of proceedings (Please do not forget to sign!)

- I am a first offender.⁴ I consent to the treatment of the case as proposed and intended by the police and suggest discontinuation of the proceedings on payment of a sum of money,
- I will pay the sum of money in cash to the police.
 - I transferred the sum of money to the Landesjustizkasse Chemnitz on (date).
 - I will pay the money to the benefit of the Landesjustizkasse Chemnitz, a/c No. 87 001 500 at the Landeszentralbank Chemnitz (branch code [BLZ] 870 000 00).

I propose the following charity to receive the sum of money (optional):

In the event of a different decision on the merits being taken by the public prosecution office, I agree to the sum of money being set off.

If the sum of money is not used up by an instruction in accordance with section 153 a of the Code of Criminal Procedure or by setting off in the context of another decision on the merits of the case, I apply for repayment to a/c No.: Branch code (BLZ):

Name and address of the financial institution:

~ I do not consent to simplified conclusion of proceedings.

2. Information on the case (optional, see legal notice in covering letter, continue on another sheet if necessary)

_____ place, date _____ signature with first and last names _____ d.o.b. _____ date of birth

⁴ A first offender in this context is whoever has not been previously punished for a property offence and in respect of whom no proceedings relating to such offences have been discontinued in the past five years in accordance with section 153 of the Code of Criminal Procedure (Non-Prosecution of Petty Offences) or section 153a of the Code of Criminal Procedure (Provisional Dispensing with Court Action).