

Confidential

Ex parte only available to
Prosecution

Annex 3

List of Authorities

European Court of Human Rights

Funke v. France, ECtHR, 25 February 1993, available at [http://hudoc.echr.coe.int/eng?i=001-57809#{"itemid":\["001-57809"\]}](http://hudoc.echr.coe.int/eng?i=001-57809#{) (last accessed 13 August 2015)

Saunders v. United Kingdom, ECtHR, 17 December 1996, available at [http://hudoc.echr.coe.int/eng?i=001-58009#{"itemid":\["001-58009"\]}](http://hudoc.echr.coe.int/eng?i=001-58009#{) (last accessed 13 August 2015)

Jalloh v. Germany, ECtHR, 11 July 2006, available at [http://hudoc.echr.coe.int/eng?i=001-76307#{"itemid":\["001-76307"\]}](http://hudoc.echr.coe.int/eng?i=001-76307#{). (last accessed 13 August 2015)

Heaney and McGuinness v Ireland, ECtHR, 21 December 2000, available at [http://hudoc.echr.coe.int/eng?i=001-59097#{"itemid":\["001-59097"\]}](http://hudoc.echr.coe.int/eng?i=001-59097#{) (last accessed 13 August 2015)

O'Halloran and Francis v. UK, ECtHR, 29 June 2007, available at [http://hudoc.echr.coe.int/eng?i=001-81359#{"itemid":\["001-81359"\]}](http://hudoc.echr.coe.int/eng?i=001-81359#{) (last accessed 13 August 2015)

United States of America

Schmerber v. California, 384 US 757 (1966), available at <https://supreme.justia.com/cases/federal/us/384/757/case.html> (last accessed 13 August 2015)

United States v. Reynard, 473 F.3d 1008 at 1021 (2007), available at <https://casetext.com/case/us-v-reynard-3> (last accessed 13 August 2015)

German Code of Criminal Procedure:

Section 81a

[Physical Examination; Blood Test]

(1) A physical examination of the accused may be ordered for the purposes of establishing facts which are of importance for the proceedings. For this purpose, the taking of blood samples and other bodily intrusions which are effected by a physician in accordance with the rules of medical science for the purpose of examination shall be admissible without the consent of the accused, provided no detriment to his health is to be expected.

(2) The authority to give such order shall be vested in the judge and, if a delay would endanger the success of the examination, also in the public prosecution office including the officials assisting it (section 152 of the Courts Constitution Act).

(3) Blood samples or other body cells taken from the accused may be used only for the purposes of the criminal proceedings for which they were taken or in other criminal proceedings pending; they shall be destroyed without delay as soon as they are no longer required for such purposes.

Section 81e

[Molecular and Genetic Examinations]

(1) Material obtained by measures pursuant to Section 81a subsection (1) may also be subjected to molecular and genetic examinations, insofar as such measures are necessary to establish descent or to ascertain whether traces found originate from the accused or the aggrieved person; in so doing the gender of the person may also be determined by examination. Examinations pursuant to the first sentence shall also be admissible to obtain similar findings on material obtained by measures pursuant to Section 81c. Findings on facts other than those referred to in the first sentence shall not be made; examinations designed to establish such facts shall be inadmissible.

(2) Examinations admissible pursuant to subsection (1) may also be carried out on trace materials which have been found, secured or seized. Subsection (1), third sentence, and Section 81a subsection (3), first part of the sentence, shall apply *mutatis mutandis*.

Section 81f

[Ordering and Carrying Out Molecular and Genetic Examinations]

(1) Without the written consent of the person concerned, examinations pursuant to Section 81e subsection (1) may be ordered only by the court and, in exigent circumstances, by the public prosecution office including the officials assisting it (section 152 of the Courts Constitution Act). A person who consents is to be instructed as to the purpose for which the data to be obtained will be used.

(2) In the written order only experts who are publicly appointed, who are obliged under the Obligations Act or who hold public office and who are not members of the authority conducting the investigation, or belong to an organizational unit of such authority which, both in terms of its organization and its area of work, is separate from the official agency conducting the investigation, shall be appointed to carry out the examinations pursuant to Section 81e. The experts shall take technical and organizational steps to ensure that no inadmissible molecular and genetic examinations can be carried out and that no unauthorized third parties have access to information concerning the examinations. The material to be examined shall be given to the expert with no indication of the name, address or date or month of birth of the individual concerned. Where the expert is not a public agency, section 38 of the Federal Data Protection Act shall apply subject to the proviso that the supervisory authority shall also monitor compliance with data protection rules even if it has no sufficient indication that such rules are being violated and the expert is not processing personal data in data files.

An English translation of the German Criminal Code of Criminal Procedure is available at http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p0340 (last accessed 13 August 2015)

The original German language version of the Code is available here: <http://www.gesetze-im-internet.de/stpo/index.html> (last accessed 13 August 2015)