APPENDIX I
GERMAN ADMINISTRATIVE OFFENSES ACT (*ORDNUNGSWIDRIGKEITENGESETZ*)

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PART I
GENERAL PROVISIONS

CHAPTER ONE
SCOPE OF APPLICATION

SECTION 1. DEFINITION

(1) An administrative offense is an unlawful act which is subject to reproof and consists of the factual elements set forth in a law which permits punishment by imposition of a fine.

(2) An act which is subject to a fine is unlawful and constitutes the factual element set forth in a law within the meaning of paragraph 1 above, even if it is not committed in a manner subject to reproof.

SECTION 2. SCOPE
This law applies to administrative offenses pursuant to Federal law and *Land* law.

SECTION 3. NO PUNISHMENT WITHOUT LAW
An act may be punished as an administrative offense only if the possibility of imposing a punishment was determined by law before the act was committed.

SECTION 4. TIME OF APPLICATION

(1) The fine is assessed pursuant to the law which is applicable at the time of the act.

(2) If the provision concerning fines is modified at the time the act is committed, that law which is valid at the time of the completion of the act shall apply.

(3) If the law in effect at the time of the completion of the act is modified prior to the decision, the less strict law shall apply.

(4) A law that is to apply for a certain period of time only shall be applied to acts that are committed during the time it is in effect even if it has become ineffective. This does only apply unless otherwise provided by a law.

(5) Paragraphs (1) through (4) apply accordingly to incidental legal consequences of an administrative offense.

SECTION 5. TERRITORIAL SCOPE
If not otherwise provided by law only those administrative offenses may be punished that are committed within the territorial scope of this law or outside this scope on board a vessel or airplane that is authorized to fly the Federal flag or to bear the nationality sign of the Federal Republic.

SECTION 6. TIME OF THE ACT
An act is committed at the time at which the perpetrator has acted or, in case of omission, ought to have acted. The time when the result occurs is irrelevant.

SECTION 7. PLACE OF THE ACT

(1) An act is committed at any place where the perpetrator has acted or, in case of omission, ought to have acted or where the result forming the factual elements of the act has occurred or should have occurred according to the expectations of the perpetrator.

(2) The act of a participant is also committed at that place where the factual elements set forth in a law providing for punishment by a fine have materialized or ought to have materialized according to the expectations of the participant.

CHAPTER TWO
BASIS FOR PUNISHABILITY

SECTION 8. COMMISSION OF AN ACT BY OMISSION
Whoever fails to avert a result, which if successful, would form the actual elements of an offense subject to a fine, commits an administrative offense according to this provision only if he is legally responsible for the failure of the result to occur and if the omission is tantamount to the realization of the legal elements of an offense by an action.

SECTION 9. ACTING FOR ANOTHER PERSON

(1) If a person acts as—

1. An agent authorized to represent a juristic person or as a member of such agency,

2. A partner authorized to represent a partnership with legal personality,

3. A legal representative of another person,

the provisions of a law according to which special personal qualities, conditions, or circumstances (special personal characteristics) may give reason for punishability will also be applied to the agent even if those characteristics pertain only to the principal.

(2) If a person has been entrusted by the owner of a business or by any other authorized person—

1. To run the business entirely or partly, or

2. Has been expressly instructed to perform at his own responsibility tasks which are incumbent upon the owner of the business

and if he acts on the basis of such an order, a law according to which special personal characteristics or circumstances may give reason for punishability will also be applied to the person entrusted, even if these characteristics pertain only to the owner of the firm. The enterprise is equal to the business within the meaning of sentence 1. If a person acts on the basis of an order for an agency that performs functions of the public administration, sentence 1 shall apply accordingly.

(3) Paragraphs (1) and (2) shall also apply to an ineffective legal act which was intended as the basis for the authorization to represent or for the relationship between principal and agent.

SECTION 10. INTENT AND NEGLIGENCE

Only intentional acts may be punished as administrative offenses unless the law expressly imposes a fine for negligent acts.

SECTION 11. ERROR

(1) Whoever, at the time an act is committed, is ignorant of a circumstance that is a statutory element of the act, does not act with intent. The option to impose a punishment for acting negligently remains unaffected.

(2) If the perpetrator, at the time the act is committed, is incapable of understanding its wrongfulness, because he is ignorant of the existence or applicability of a legal provision, he acts without guilt if he could not avoid this error.

SECTION 12. RESPONSIBILITY

(1) A person who is not yet 14 years of age at the time an act is committed is incapable of acting culpably. A juvenile only acts culpably under the prerequisites of section 3, sentence 1, of the Youth Court Law (*Jugendgerichtsgesetz*).

(2) Whoever, at the time the act is committed, is incapable of understanding the wrongfulness of his act or of acting according to such understanding due to a pathological disturbance of the mind, serious disturbance of consciousness or mental deficiency, or any other severe mental abnormality, will be considered to have acted without culpability.

SECTION 13. ATTEMPT

(1) Whoever, according to his conception of the act, immediately tries to realize its factual elements, attempts an administrative offense.

(2) The attempt may be punished only if expressly provided by law.

(3) If the perpetrator voluntarily abandons the further execution of an act or prevents its completion he will not be punished for attempt. If the act fails to be completed without any intervention by the person withdrawing from it, it is sufficient if he voluntarily and earnestly endeavored to prevent its completion.

(4) If several persons participate in the act, the one who voluntarily prevents the completion will not be punished for attempt. However, his voluntary and earnest endeavor to prevent the completion of the act is sufficient if the act fails completion without his intervention or is committed independently from his previous participation.

SECTION 14. PARTICIPATION

(1) If several persons participate in an administrative offense, each of them commits an administrative offense. This also applies if special personal characteristics (sec 9, para (1)), which substantiate the punishability pertain only to one person involved.

(2) Participation may be punished only if the factual elements of an act set forth in a law providing for punishment by a fine, are unlawfully realized, or if in cases in which also the attempt is punishable, the attempt has at least been made.

(3) If one of the persons involved has acted without guilt, punishment of the other persons is not precluded. If the law provides that special personal characteristics preclude punishment, this applies only to the person involved who shows such characteristics.

(4) If the law provides that an act which would be an administrative offense is considered a criminal offense in view of special personal characteristics of the perpetrator, this applies only to the person involved who shows such characteristics.

SECTION 15. SELF-DEFENSE

(1) Whoever commits an act that is necessary for his self-defense does not act unlawfully.

(2) Self-defense is the defense that is required to avert an imminent unlawful attack on oneself or another.

(3) If the perpetrator exceeds the limits of self-defense in confusion, fear, or alarm, he will not be punished.

SECTION 16. NECESSITY AS JUSTIFICATION
Whoever, in a present danger to life or limb, freedom, honor, property, or any other protected right that cannot be averted in any other way commits an act to avert danger from himself or another does not act unlawfully, if, considering the interests in conflict, particularly the protected rights concerned and the extent of danger by which they are jeopardized, the protected interest considerably outweighs the impaired interest. This applies only insofar as the act is a suitable means to avert the danger.

CHAPTER THREE
FINE

SECTION 17. AMOUNT OF FINE

(1) The amount of the fine shall not be less than 5 Euros and if not otherwise provided by law shall not exceed 1,000 Euros.

(2) If, pursuant to the law, a fine for intentionally and negligently committed acts is provided for without making a difference in the maximum scope, an act committed through negligence of the maximum scope may only be punished by imposition of half the amount assessed as maximum fine.

(3) The seriousness of the administrative offense and the charge of which the perpetrator is accused are the basis for the assessment of the fine. Also, the financial situation of the perpetrator is to be considered; however, the financial situation will normally not be taken into consideration in cases involving minor administrative offenses.

(4) The fine shall exceed the financial benefit which the perpetrator has gained by the administrative offense. If that cannot be achieved with the legally assessed maximum fine, the fine may exceed the maximum amount.

SECTION 18. EASIER TERMS OF PAYMENT
If, according to his financial situation, the person involved cannot be expected to make prompt payment of the fine, he will be granted a delay in payment or be permitted to pay the fine by installments. In this connection, the privilege to pay the fine by partial amounts may be canceled if the person concerned fails to pay an installment in due time.

CHAPTER FOUR
COINCIDENCE OF SEVERAL VIOLATIONS OF LAW

SECTION 19. JOINT OFFENSES

(1) If the same act violates several laws according to which it may be punished as an administrative offense, or if it violates such a law several times, only one fine will be assessed.

(2) If several laws have been violated, the fine will be assessed according to the law which provides for the highest fine. Additional consequences provided for in the other law may be imposed.

SECTION 20. MULTIPLE OFFENSES
If several fines are imposed, each one will be assessed separately.

SECTION 21. COINCIDENCE OF CRIMINAL OFFENSE AND ADMINISTRATIVE OFFENSE

(1) If an act is at the same time a criminal offense and an administrative offense, only criminal law is applicable. Incidental legal consequences provided for in the other law may be imposed.

(2) In cases arising under paragraph (1), however, the act may be punished as an administrative offense if no penalty is imposed.

CHAPTER FIVE
CONFISCATION

SECTION 22. PREREQUISITES FOR CONFISCATION

(1) As an additional consequence of an administrative offense, objects may be confiscated only if expressly permitted by law.

(2) Confiscation is permitted only if the objects—

1. Belong to the perpetrator, or he is entitled to them at the time of the decision, or

2. According to their nature and the circumstances, constitute jeopardy to the public, or if there is a danger that they will serve the committing of acts which are subject to punishment or a fine.

(3) Confiscation of objects is also permitted under the prerequisites of paragraph (2), number 2, if the offender has not acted culpably.

SECTION 23. ADDITIONAL PREREQUISITES FOR CONFISCATION
If the law refers to this provision, the objects may, in deviation of section 22, paragraph (2), number 1, also be confiscated if the person to whom they belong or who are entitled to them at the time of the decision—

1. Carelessly contributed that the object or the claim served as a means or subject of the act or its preparation, or

2. Acquired the objects in a reprehensible manner knowing of the circumstances which would have permitted the confiscation.

SECTION 24. PRINCIPLE OF PROPORTIONALITY

(1) Confiscation must not be ordered in the cases of section 22, paragraph (2), number 1, and section 23 if it is out of proportion to the importance of the committed act and to the charge of which the perpetrator involved in the confiscation, or in the cases of section 23 the third person concerned, is accused.

(2) In the cases of section 22 and section 23, it is ordered that confiscation be reserved and a less stringent measure be taken if the purpose of the confiscation may also be reached thereby. Particularly taken into consideration is the order to—

1. Make the objects unserviceable,

2. Remove certain equipment or characteristics from the objects or to change the objects in any other way, or

3. Dispose of the objects in a certain manner.

If the order is complied with, the reservation of confiscation is revoked; otherwise confiscation will be ordered subsequently.

(3) Confiscation may be limited to a part of the objects.

SECTION 25. FORFEITURE OF AN EQUIVALENT SUM OF MONEY

(1) If, prior to the ordered confiscation, the perpetrator used, i.e. sold or employed the object which belonged to him or which he was entitled to at the time of the act, where confiscation could have been ordered, or if he has prevented confiscation of the object in any other way, the collection of a sum of money from the perpetrator up to the amount which is equivalent to the value of the object may be ordered.

(2) Such an order may also be issued in addition to or in lieu of the confiscation of an object if the perpetrator has encumbered it with a third party's right before confiscation has been ordered, where the forfeiture may not be ordered without compensation, or, in the event of confiscation, could not be ordered (sec 26, para (2); sec 28); if the order is issued in addition to the confiscation, the equivalent sum of money is assessed according to the value of the encumbrance on the object.

(3) The value of the object and the encumbrance may be estimated.

(4) If the order to confiscate an object cannot be executed or is insufficient because one of the prerequisites designated in paragraph (1) or (2) has occurred or has become known after the issuance of the order, forfeiture of an equivalent sum of money may be ordered subsequently.

(5) Section 18 applies to the granting of easier terms for payment.

SECTION 26. EFFECT OF CONFISCATION

(1) If an object is confiscated, ownership of the object or the forfeited right in this object is conferred to the State once the decision becomes final, or if provided by law, it is conferred to the corporation or institution of public law whose agency or office has ordered the confiscation.

(2) Rights of third persons to the object will not be affected. However, the extinguishment of these rights will be ordered if the confiscation is based on the fact that the prerequisites of section 22, paragraph (2), number 2, exist. The extinguishment of the right of a third person may also be ordered if this person must not be granted compensation pursuant to section 28, paragraph (2), number 1 or 2.

(3) Before it becomes final, the order of confiscation has the effect of a prohibition to alienate within the meaning of section 136 of the German Civil Code (*Bürgerliches Gesetzbuch*); the prohibition also comprises orders other than alienation. The order reserving confiscation has the same effect even if it has not yet become final.

SECTION 27. SEPARATE ORDER

(1) If no particular person can be prosecuted for the administrative offense nor a fine be imposed on such a person for actual grounds, the confiscation of the object or the equivalent sum of money may be ordered separately if the other prerequisites, under which such measure is authorized, are met.

(2) Paragraph (1) is also applicable in the cases of section 22, paragraph (2), number 2, or paragraph (3), if—

1. Prosecution of the administrative offense is barred by the statute of limitations, or

2. No particular person can be prosecuted for legal reasons and the law does not provide otherwise.

However, confiscation may not be ordered in the absence of a request or authorization.

(3) Paragraph (1) above is also applicable if, pursuant to section 47, the prosecuting authority refrains from prosecuting the administrative offense, or if the court stays the proceedings.

SECTION 28. COMPENSATION

(1) If ownership of the object or the forfeited right was due to a third person at the time the decision concerning confiscation became final or if the object was encumbered with a third person's right which is forfeited or prejudiced by the decision, the person will receive an appropriate monetary compensation adequate to the market value. The State or corporation, or statutory body under public law to which ownership of the object or the forfeited right has been transferred, is obligated to pay such compensation.

(2) Compensation is not granted if—

1. The third person has carelessly contributed that the object or the claim served as a means or subject of the act or its preparation,

2. The third person, knowing of the circumstances which permit confiscation, has acquired the object or the right in the object in a reprehensible manner, or

3. According to the circumstances that substantiated the confiscation, it would be permissible on the basis of legal provisions other than those of the law concerning administrative offenses, to permanently withdraw the object from the third person without any compensation.

(3) In the cases of paragraph (2), compensation may be granted if it would be an undue hardship to deny it.

SECTION 29. SPECIAL PROVISION FOR INSTITUTIONS AND REPRESENTATIVES

(1) If a person as—

1. An institution authorized to represent a juristic person or as a member of such an institution,

2. The head of an association without legal capacity or as a member of an executive committee,

3. A partner of a partnership with legal personality authorized to representation,

4. Fully authorized representative or in a leading position holding a special statutory authority (*Prokura)*, or general agent of a juristic person or an association of persons stated in numbers 2 or 3, or

5. Any other person acting with liability for the management of the company or enterprise of a juristic person or of an association of persons designated in number 2 or 3, which also includes supervision of the managing director or exercising other control competence in an executive position,

has committed an act that would permit confiscation of an object or an equivalent sum of money or substantiate exclusion of compensation under the other prerequisites of sections 22 through 25 and 28, his act will be charged to the person represented in application of these provisions.

(2) Section 9, paragraph (3), applies accordingly.

CHAPTER SIX
FORFEITURE; FINE IMPOSED ON JURISTIC PERSONS AND ASSOCIATIONS

SECTION 29A. FORFEITURE

(1) If the perpetrator has gained a pecuniary advantage for an act or from an act which is subject to a fine, and if a fine has not been assessed against him for the act, forfeiture of a sum up to the amount of the pecuniary advantage gained may be ordered.

(2) If the perpetrator of an act punishable by a fine has acted for another person and that person has gained a pecuniary advantage thereby, forfeiture of a sum up to the amount designated in paragraph 1 may be ordered against him.

(3) The amount of the pecuniary advantage and its value may be estimated. Section 18 applies accordingly.

(4) If no administrative fining proceedings are initiated against the perpetrator, or if they are discontinued, forfeiture may be ordered independently.

SECTION 30. FINE IMPOSED ON JURISTIC PERSONS AND ASSOCIATIONS

(1) If a person—

1. In the capacity of a body authorized to represent a juristic person, or as a member of such a body,

2. As the head of an association without legal capacity, or as a member of the executive committee,

3. As a partner of a partnership with legal personality authorized to representation,

4. As a fully authorized representative or in a leading position holding a special statutory authority (*Prokurist)* or general agent of a juristic person or an association designated in number 2 or 3, or

5. As any other person acting with liability for the management of the company or enterprise of a juristic person or of an association of persons designated in number 2 or 3, which also includes supervision of the managing director or exercising other control competence in an executive position,

has committed an offense or an administrative offense by which the duties incumbent upon the juristic person or the association have been violated, or the juristic person or the association has gained or was supposed to gain a profit, a fine may be imposed on that juristic person or association.

(2) The fine will be—

1. Up to 1 million Euros in case of an intentionally committed offense;

2. Up to 500,000 Euros in case of a negligently committed offense.

In case of an administrative offense the maximum amount of the fine will be assessed according to the maximum fine provided for such violation. Sentence 2 also applies in case of an offense which is an administrative offense and a criminal act at the same time, if the maximum fine provided for the administrative offense exceeds the maximum amount pursuant to sentence 1.

(3) Section 17, paragraph (4), and section 18 apply accordingly.

(4) If criminal proceedings or administrative fining proceedings for the criminal act or administrative offense are not initiated or are discontinued, or if imposition of a punishment is refrained from, the fine may be assessed independently. It can be provided by law that a fine can be independently assessed also in other cases. Assessing a fine independently against the juristic person or association is excluded if the offense or administrative offense cannot be prosecuted for legal reasons; section 33, paragraph (1), sentence 2, remains unaffected.

(5) The assessment of a fine against the juristic person or association precludes that forfeiture pursuant to section 73 or 73a of the Criminal Code (*Strafgesetzbuch*) or pursuant to section 29a is ordered against them for the same act.

CHAPTER SEVEN
STATUTE OF LIMITATIONS

SECTION 31. STATUTE OF LIMITATIONS FOR PROSECUTION OF CRIMES

(1) Prosecution of administrative offenses and the ordering of additional consequences are precluded after the limitation period has expired. Section 27, paragraph (2), sentence 1, number 1, remains unaffected.

(2) If not otherwise provided by law, the limitation period for the prosecution of administrative offenses expires after—

1. Three years in case of administrative offenses for which a maximum fine of more than 15,000 Euros may be imposed;

2. Two years in case of administrative offenses for which a maximum fine of more than 2,500 Euros and up to 15,000 Euros may be imposed;

3. One year concerning administrative offenses for which a maximum fine of more than 1,000 Euros and up to 2,500 Euros may be imposed;

4. Six months in all other cases involving administrative offenses.

(3) The limitation period begins to run as soon as the act is completed. If a result pertaining to the elements of the act occurs at a later point in time, the period of limitation begins to run at that time.

SECTION 32. SUSPENSION OF THE STATUTE OF LIMITATIONS FOR PROSECUTION OF CRIMES

(1) The period of limitation does not run as long as prosecution cannot be commenced or continued pursuant to the law. This does not apply if the act cannot be prosecuted due to the absence of a request or authorization.

(2) If prior to the expiration of the period of limitation a judgment of the court of first instance or a decision pursuant to section 72 has been rendered, the period of limitation does not expire prior to the date at which the proceedings have been terminated by final judgment.

SECTION 33. INTERRUPTION OF THE STATUTE OF LIMITATIONS FOR PROSECUTION OF CRIMES

(1) The period of limitation is interrupted by—

1. The first interrogation of the person concerned, the notification that preliminary proceedings have been initiated against him, or by the order for such interrogation or notification;

2. Any judicial interrogation of the person concerned, or of a witness or by the order for such interrogation;

3. Any appointment of an expert by the prosecuting authority or the judge if prior to that the person concerned was interrogated or was informed of the initiation of the preliminary proceedings;

4. Any order of the prosecuting authority or of the judge for confiscation or search and decisions of the judge by which such order is maintained;

5. The temporary discontinuance of the proceedings due to absence of the person concerned by the prosecuting authority or the judge as well as by any order of the prosecuting authority or the judge issued after such discontinuance of the proceedings in order to determine the whereabouts of the offender or to secure evidence;

6. Any request of the prosecuting authority or the judge to undertake an investigation action in a foreign country;

7. The legally ordered hearing of another authority by the prosecuting authority prior to the termination of the investigations;

8. The transfer of the case to the administrative authority by the office of the public prosecutor pursuant to section 43;

9. The issuance of the administrative order imposing a fine if it is served within a period of 2 weeks, otherwise by the service itself;

10. The receipt of the files by the district court pursuant to section 69, paragraph (3), sentence 1, and paragraph (5), sentence 2, and the remittal of the action to the administrative authority pursuant to section 69, paragraph (5), sentence 1;

11. Any fixing of a trial date;

12. Indicating the possibility to render a decision without a trial (sec 72, para (1), sent 2);

13. Preferring public charges;

14. The opening of the trial;

15. An order imposing punishment (*Strafbefehl*) or any other decision equal to the judgment.

In independent proceedings involving the order for an additional consequence or assessment of a fine against a juristic person or association, the period of limitation will be interrupted by the actions in accordance with sentence 1 to conduct independent proceedings.

(2) In case of a written order or decision, the period of limitation is interrupted at the time the order or decision is signed. If the document has not been forwarded through channels immediately upon signature, the date on which it has actually been forwarded through channels is decisive.

(3) After each interruption the period of limitation begins to run again. Prosecution becomes statute-barred at the latest if since the date designated in section 31, paragraph (3), twice the length of the legal period of limitation, but at least 2 years, have passed. If a person is charged with an act in proceedings pending at a court, which at the same time is a criminal act and an administrative offense, the period which results from the threat of punishment is considered the legal period of limitation within the meaning of sentence 2. Section 32 remains unaffected.

(4) The interruption affects only that person to whom the action refers. In the cases of paragraph (1), sentence 1, numbers 1 through 7, 11, and 13 through 15, the interruption also takes effect if the action is directed to the prosecution of the act as a criminal offense.

SECTION 34. STATUTE OF LIMITATIONS OR THE EXECUTION OF CRIMINAL JUDGMENTS

(1) A finally assessed fine may no longer be executed after expiration of the period of limitation.

(2) The period of limitation is—

1. Five years in case of a fine exceeding 1,000 Euros.

2. Three years in case of a fine up to 1,000 Euros.

(3) The period of limitation starts to run when the decision becomes final.

(4) The period of limitation is suspended, as long as—

1. Execution cannot be commenced or continued according to the law,

2. Execution is suspended, or

3. Easier terms of payment have been granted.

(5) Paragraphs (1) through (4) apply accordingly to additional consequences resulting in an obligation for payment. If such additional consequences have been ordered in addition to a fine, execution of one legal consequence is not statute-barred any earlier than that of the others.

PART II
ADMINISTRATIVE FINING PROCEEDINGS

CHAPTER ONE
JURISDICTION CONCERNING PROSECUTION AND PUNISHMENT OF ADMINISTRATIVE OFFENSES

SECTION 35. PROSECUTION AND PUNISHMENT BY THE ADMINISTRATIVE AUTHORITY

(1) The administrative authority is responsible for the prosecution of administrative offenses unless the public prosecutor, or in his place, the judge has been designated pursuant to this law to exercise jurisdiction over specific acts subject to prosecution.

(2) The administrative authority is also competent to impose punishment for administrative offenses unless, according to this law, the court has been designated to take such action.

SECTION 36. COMPETENCE OF THE ADMINISTRATIVE AUTHORITY CONCERNING SUBJECT MATTER

(1) Competent with respect to the subject matter is—

1. The administrative authority determined by law;

2. In the absence of such determination, the—

(a) Highest technically competent *Land* authority, or

(b) Technically competent Federal ministry as far as the law is executed by Federal authorities.

(2) The *Land* government may delegate the competence pursuant to paragraph (1), number 2, letter a, to another authority or agency by statutory order. The *Land* government may delegate the authorization to the highest *Land* authority.

(3) The Federal ministry competent pursuant to paragraph (1), number 2, letter b, may delegate its competence to another authority or agency by statutory order which does not require the approval of the Federal Council (*Bundesrat*).

SECTION 37. LOCAL COMPETENCE OF THE ADMINISTRATIVE AUTHORITY

(1) The administrative authority of the district in which the—

1. Administrative offense has been committed or ascertained, or

2. Person concerned has his place of residence at the time the administrative fining proceedings were initiated

is locally competent.

(2) If the place of residence of the person concerned changes after the administrative fining proceedings have been initiated, the administrative authority in whose district the new place of residence is located is also locally competent.

(3) If the offender has no residence within the territorial scope of this law, competence is also determined by the place where he is ordinarily resident.

(4) If the administrative offense was committed outside the territorial scope of this law, on board a vessel authorized to fly the Federal flag, the administrative authority is also locally competent in whose district the home port is located or that port within the territorial scope of this law which is reached first after the commission of the act. Sentence 1 applies accordingly to aircraft authorized to bear the nationality sign of the Federal Republic.

SECTION 38. RELATED ADMINISTRATIVE OFFENSES

In case of related administrative offenses which according to section 37 would individually fall under the responsibility of different administrative authorities, each of these administrative authorities is competent. A connection between several administrative offenses exists if a person is charged with several administrative offenses or if, with regard to the same act, several persons are accused of an administrative offense.

SECTION 39. COMPETENCE OF SEVERAL AUTHORITIES

(1) If, pursuant to sections 36 through 38 several administrative authorities are competent preference will be given to that administrative authority which was the first to interrogate the person involved on account of the act, to have him interrogated by the police, or first received the files from the police after the interrogation of the person involved. This administrative authority may, in the cases of section 38, separate the proceedings again because of the related act.

(2) In the cases of paragraph (1), sentence 1, however, prosecution and punishment may be transferred to one of the other competent administrative authorities by an agreement of these administrative authorities, if this appears to be appropriate in order to expedite or simplify the proceedings or for any other reasons. If several administrative authorities are competent with regard to the subject matter, the administrative authority which is to be given preference pursuant to paragraph (1), sentence 1, shall hear the other administrative authorities which are competent with regard to the subject matter, at the latest prior to termination of the investigations.

(3) If agreement cannot be reached according to paragraph (2), sentence 1, a decision will be rendered—

1. By the next higher common administrative authority;

2. If there is no common higher administrative authority, by the common court competent pursuant to section 68, and

3. If different courts would be competent pursuant to section 68, by the common higher court

at the request of one of the administrative authorities involved.

(4) In the cases of paragraphs (2) and (3), the transfer may be canceled in the same way.

SECTION 40. PROSECUTION BY THE OFFICE OF THE PUBLIC PROSECUTOR
In criminal proceedings the office of the public prosecutor is responsible for the prosecution of the act also under the legal aspect of an administrative offense, unless provided otherwise by law.

SECTION 41. TRANSFER OF THE CASE TO THE OFFICE OF THE PUBLIC PROSECUTOR

(1) The administrative authority will transfer the case to the office of the public prosecutor if there is an indication that the act involves a criminal offense.

(2) If the prosecutor refrains from initiating criminal proceedings he will return the case to the administrative authority.

SECTION 42. TAKING OVER OF THE CASE BY THE OFFICE OF THE PUBLIC PROSECUTOR

(1) If the office of the public prosecutor prosecutes a criminal offense related to the administrative offense, it may take over prosecution of the administrative offense until an administrative order imposing a fine is issued. There is a connection between a criminal offense and an administrative offense if a person is charged with a criminal offense as well as with an administrative offense, or if with regard to the same act one person is charged with a criminal offense and another person with an administrative offense.

(2) The office of the public prosecutor shall take over prosecution only to expedite the proceedings or because of the relation of facts, or if for other reasons, this appears to be appropriate for the investigation or the decision.

SECTION 43. TRANSFER OF THE CASE TO THE ADMINISTRATIVE AUTHORITY

(1) If, in the cases under section 40, the office of the public prosecutor stays the proceedings only because of the criminal offense, or, in the cases under section 42, it does not take over prosecution, but there is an indication that the act may be prosecuted as an administrative offense, it will transfer the case to the administrative authority.

(2) If the office of the public prosecutor has assumed prosecution it may transfer the case to the administrative authority as long as the proceedings are not yet pending before the court; it must transfer the case if the proceedings are stayed only because of the related criminal offense.

SECTION 44. BINDING EFFECT ON THE ADMINISTRATIVE AUTHORITY
The administrative authority is bound by the decision of the office of the public prosecutor as to whether or not an act is to be prosecuted as a criminal offense.

SECTION 45. JURISDICTION OF THE COURT
If the office of the public prosecutor prosecutes the administrative offense with a related criminal offense, the court which has jurisdiction over the criminal case is competent for the punishment of the administrative offense.

CHAPTER TWO
GENERAL PROCEDURAL PROVISIONS

SECTION 46. APPLICATION OF THE PROVISIONS REGARDING CRIMINAL PROCEEDINGS

(1) If not otherwise provided by this law, the provisions of the general law on criminal proceedings, particularly those of the Code of Criminal Procedure (*Strafprozessordnung*), the Law Concerning the Constitution of Courts (*Gerichtsverfassungsgesetz*), and the Youth Court Law apply accordingly to the administrative fining proceedings.

(2) If not otherwise provided by this law, the prosecuting authority has the same rights and obligations in the administrative fining proceedings as the office of the public prosecutor when prosecuting criminal offenses.

(3) Placement in an institution, apprehension and temporary detention, confiscation of mail and telegrams, as well as requests for information regarding circumstances which are subject to the secrecy of mail and telecommunication are not permitted. Section 160, paragraph (3), sentence 2, of the Code of Criminal Procedure concerning assistance to the court is not applicable. Proceedings to enforce the preferring of charges will not take place. The provisions concerning the participation of the injured person in the proceedings and on the national register of proceedings maintained by the office of the public prosecutor are not applicable; this does not apply to section 406e of the Code of Criminal Procedure.

(4) Section 81a, paragraph (1), sentence 2, of the Code of Criminal Procedure shall be applied with the restriction that only the taking of blood samples and other minor interventions are permitted. Blood samples and other body cells taken within the scope of criminal proceedings, whose taking would have been authorized within the scope of administrative fine proceedings pursuant to sentence 1, may be used. Utilization of blood samples and other body cells for tests within the meaning of section 81e of the Code of Criminal Procedure is not authorized.

(5) The order to bring the person concerned and the witnesses, who fail to comply with a summons before the proper authority, is reserved to the judge. Detention to compel a witness to testify (sec 70, para (2), of the Code of Criminal Procedure) may not exceed 6 weeks.

(6) In proceedings against juveniles and adolescents consulting of representatives of the youth office and other agencies working for the welfare of young people providing assistance to the youth courts (sec 38 of the Youth Court Law) may be refrained from if their participation is not required for a proper conduct of the proceedings.

(7) In court proceedings decisions will be rendered by departments in charge of administrative fine matters at the district court, by chambers in charge of administrative fine matters at the State court, and by senates in charge of administrative fine matters at the superior State court and at the Federal Supreme Court.

(8) The regulations concerning the implementation of section 191a, paragraph (1), sentence 1, of the Law on the Constitution of Courts in administrative fining proceedings shall be determined in the statutory order pursuant to section 191a, paragraph (2), of the Law Concerning the Constitution of Courts.

SECTION 47. PROSECUTION OF ADMINISTRATIVE OFFENSES

(1) After due assessment of the circumstances the prosecuting authority shall decide on the prosecution of administrative offenses. As long as the proceedings are pending before the prosecuting authority they may be terminated by such authority.

(2) If proceedings are pending before the court and if punishment is not deemed appropriate by the court, it may, in agreement with the prosecutor, terminate the proceedings at any stage. The agreement is not required if a fine of up to 100 Euros is imposed by an administrative order and the prosecutor has stated that he will not participate in the hearing. The decision cannot be appealed.

(3) Discontinuance of the proceedings may not be made dependent on the payment of a sum of money to a charitable organization or any other agency or connected with such payment.

SECTION 48. (DELETED)

SECTION 49. REVIEW OF FILES BY THE PERSON CONCERNED AND THE ADMINISTRATIVE AUTHORITY

(1) The administrative authority may grant the person concerned review of the files under supervision if this is not in violation of more important interests of third persons which are worthy of protection.

(2) If the office of the public prosecutor is the prosecuting authority, the administrative authority which is otherwise competent is authorized to review the files which are available to the court or which would have to be submitted in the court proceedings, as well as to inspect secured and confiscated objects. The files will be sent to the administrative authority for review upon request.

SECTION 49A. EX OFFICIO TRANSFER OF DATA FOR OTHER PROCEEDINGS

(1) Courts, the office of the public prosecutor and administrative authorities may transfer personal data from administrative fining proceedings to the competent authorities and courts, if in the opinion of the agency transferring the data such transfer is required for—

1. The prosecution of criminal acts or other administrative offenses;

2. Decisions in other administrative fining matters, including decisions concerning the enforcement of decisions on the imposition of a fine, or in clemency cases.

3. Other decisions or measures pursuant to section 479, paragraph (2), of the Code of Criminal Procedure.

The same applies for authorities of the Police Service, if a respective application of section 478, paragraph (1), of the Code of Criminal Procedure so permits. Section 479, paragraph (3), of the Code of Criminal Procedure applies accordingly.

(2) Transfer is also authorized if special circumstances of an individual case require the transfer for the purposes stated in section 14, paragraph (1), numbers 4 through 9, of the Introductory Law of the Law Concerning the Constitution of Courts (*Einführungsgesetz zum Gerichtsverfassungsgesetz*) in conjunction with paragraph (2), sentences 2 and 4, of that regulation if applied accordingly.

(3) Transfer pursuant to paragraphs (1) and (2) will not be performed if it is obvious to the agency transferring the data that interests of the person concerned to exclude the transfer, which are worthy of protection, take priority.

(4) In addition, the following provisions shall be applied accordingly to the transfer by administrative authorities:

1. Sections 12, 13, 16, 17, numbers 2 through 5, and sections 18 through 21 of the Introductory Law of the Law on the Constitution of Courts, and

2. Section 22 of the Introductory Law of the Law Concerning the Constitution of Courts provided that the proceedings pursuant to section 62, paragraph (1), sentence 1, and paragraph (2) replaces the proceedings pursuant to sections 23 through 30 of this law and that the court designated in section 68 replaces the court designated in section 25 of the Introductory Law of the Law Concerning the Constitution of Courts.

The authority responsible for the administrative fine proceedings may, in addition, transfer the decision terminating these proceedings to that administrative authority which initiated the administrative fine proceedings or has otherwise participated in the proceedings, if such measure, in the view of the transferring agency, is necessary for the fulfillment of a duty within the competence of the recipient, which is connected to the merits of the proceedings; if an appeal was dismissed by the decision, the appealed decision may also be transferred. The Federal ministry which is responsible for Federal administrative fine regulations within its sphere of action may, subject to the consent of the Federal Council, issue general administrative regulations to that effect within the meaning of section 12, paragraph (5), of the Introductory Law of the Law Concerning the Constitution of Courts.

(5) In addition, sections 480 and 481 of the Code of Criminal Procedure shall be applied accordingly to ex officio transfers, with the special regulations on the transfer or use of personal data from criminal proceedings being replaced by those on the transfer of personal data from administrative fining proceedings. A transfer of data pursuant to section 481, paragraph (1), sentence 2, of the Code of Criminal Procedure will not be made under the prerequisites of paragraph (3). Only paragraph (1) of section 482 of the Code of Criminal Procedure shall be applied accordingly, however, statement of the file number shall also be made to another administrative authority which initiated the administrative fine proceedings or was otherwise involved with the proceedings.

SECTION 49B. PROVIDING OF INFORMATION FOR OTHER PROCEEDINGS UPON REQUEST; OTHER USE OF DATA FOR PURPOSES CONCERNING OTHER PROCEEDINGS

Sections 474 through 478, 480, and 481 of the Code of Criminal Procedure apply accordingly to providing of information and granting review of files upon request as well as to any other use of data from administrative fine proceedings for purposes concerning other proceedings, however—

1. In section 474, paragraph (2), sentence 1, number 1, of the Code of Criminal Procedure the administrative offense takes the place of the criminal offense,

2. In section 474, paragraph (2), sentence 1, numbers 2 and 3, section 480, and section 481 of the Code of Criminal Procedure the special regulations on the transfer or use of personal data from criminal procedures are replaced by those on the transfer or use of personal data from administrative fine proceedings,

3. In section 477, paragraph (2), sentence 1, of the Code of Criminal Procedure purposes of criminal proceedings are replaced by purposes of administrative fine proceedings,

4. In section 477, paragraph (3), number 2, of the Code of Criminal Procedure the period of two years is replaced by a period of one year, and

5. Section 478, paragraph (3), sentence 1, of the Code of Criminal Procedure shall be applied under the proviso that for a transmittal by administrative authorities the court designated in section 68 shall decide in a procedure pursuant to section 62, paragraph (1), sentence 1, and? paragraph (2) upon the request for a court decision.

SECTION 49C. REGULATIONS CONCERNING DATA FILES

(1) Notwithstanding special regulations in other laws, the provisions of chapter two of part eight of the Code of Criminal Procedure apply accordingly to the processing and use of personal data in data files subject to the following regulations.

(2) Notwithstanding paragraph (3), storage, modification and use may only be performed by courts, public prosecutors offices and administrative authorities, to include enforcement authorities as well as the authorities of the police service, to the extent this is authorized in accordance with section 483, section 484, paragraph (1), and section 485 of the Code of Criminal Procedure; in such a case the purposes of the administrative fine proceedings take the place of the purposes of the criminal proceedings. Personal data from administrative fine proceedings may also be used to the extent necessary for the purposes of criminal proceedings, clemency proceedings, or international mutual and administrative assistance in criminal matters and administrative fine matters. Storage of personal data of persons who were not criminally responsible at the time the act was committed for purposes of future administrative fine proceedings is prohibited.

(3) Establishment of a joint automated data base pursuant to section 486 of the Code of Criminal Procedure for the agencies stated in paragraph (2), which belong to the divisions of various Federal and *Land* ministries is only authorized if it is necessary for the proper performance of duty and if the interests of the persons concerned worthy of protection are appropriately considered.

(4) Section 487, paragraph (1), sentence 1, of the Code of Criminal Procedure shall be applied with the proviso that the data stored pursuant to paragraphs (1) through (3) may only be transferred to the competent agencies for the purposes stated in paragraph (2); section 49a, paragraph (3), applies accordingly to the ex officio transfer. Section 487, paragraph (2), of the Code of Criminal Procedure shall be applied under the proviso that the transfer can be performed to the same extent that it could be performed from the files in accordance with this law.

(5) If personal data are stored for the purpose of future prosecution of administrative offenses, the period within the meaning of section 489, paragraph (4), sentence 2, number 1, of the Code of Criminal Procedure may not exceed 5 years in case of a fine exceeding 250 Euros, in all other cases of section 489, paragraph (4), sentence 2, numbers 1 through 3, of the Code of Criminal Procedure 2 years.

SECTION 49D. NOTIFICATION IN CASE OF ARCHIVING BY MEANS OF VISUAL RECORDING OR OTHER DATA CARRIERS

If, after completion of proceedings, the files were transmitted to a visual recording device or other data carriers in accordance with proper principles in order to replace the original document, and if there is written proof that the transmitted files, as far as contents and image are concerned, are identical with the original, review of files may be granted by transmittal of a print-out from the visual recording or other data carrier; the same applies for the providing of information or other notifications from the files. Notes which must appear on the original shall in such a case be entered on the document certifying authenticity.

SECTION 50. PUBLICATION OF MEASURES TAKEN BY THE ADMINISTRATIVE AUTHORITY

(1) Orders, decrees, and other measures of the administrative authority are informally brought to the attention of the person to whom the measure refers. If a limited legal remedy is permitted against the measure, it will be made known in a notification by service.

(2) When a decision of the administrative authority which may be contested by a limited legal remedy is made known, the person to whom the measure refers must be informed of the possibility to file an objection as well as of the period of time and form prescribed for such action.

SECTION 51. PROCEDURE FOR SERVICE OF PROCESS EFFECTED BY THE ADMINISTRATIVE AUTHORITY

(1) The provisions of the Administrative Law Concerning Service of Documents (*Verwaltungszustellungsgesetz*) shall apply to the procedure concerning the service of documents by the administrative authority if a Federal administrative authority conducts the proceedings; otherwise the corresponding legal provisions of the *Länder* shall apply if not otherwise

provided by paragraphs (2) through (5). If a document is prepared by means of an automated system the document so prepared will be served.

(2) The notification (sec 50, para (1), sent 2) will be served upon the person concerned and be communicated to his legal representative, if any.

(3) The selected defense counsel, whose power of attorney is on file, as well as the appointed defense counsel are considered to be authorized to receive service and other notifications on behalf of the person concerned; this applies for the service concerning the summoning of the person concerned only if the defense counsel has been expressly authorized in the power of attorney to receive summonses. If a notification is served on the defense counsel according to sentence 1, 1st half, the person concerned will be informed of the service at the same time; he will receive an informal copy of the notification. If a notification is served upon the person concerned the defense counsel will be notified thereof at the same time even if there is no power of attorney on file; he will receive an informal copy of the notification.

(4) If service for the person concerned is effected on several persons authorized to receive it, the period is fixed according to the service last effected.

(5) Section 6, paragraph (1), of the Administrative Law Concerning Service of Documents, and the pertinent legal provisions of the *Länder* shall not be applied. Neither shall section 7, paragraph (1), sentences 1 and 2, and paragraph (2), of the Administrative Law Concerning Service of Documents, and the pertinent legal provisions of the *Länder* be applied if the person concerned has retained a defense counsel.

SECTION 52. RESTORATION TO THE PREVIOUS CONDITION

(1) Unless provided otherwise by paragraph (2), sections 44, 45, 46, paragraphs (2) and (3), and section 47 of the Code of Criminal Procedure concerning restoration to the previous condition apply to the limited legal remedy against the decision of the administrative authority.

(2) The administrative authority shall decide on the restoration to the previous condition and postponement of enforcement. If, in the case of a timely legal remedy, the court which would have been competent to render a decision on the merits is handling the legal remedy, it will also decide on the restoration to the previous condition and postponement of enforcement. If the administrative authority rejects the request for restoration to the previous condition, the request for a court decision pursuant to section 62 against the notification within 2 weeks upon service is permitted.

CHAPTER THREE
PRELIMINARY PROCEEDINGS

SUBCHAPTER I
GENERAL PROVISIONS

SECTION 53. RESPONSIBILITIES OF THE POLICE

(1) The authorities and the officers of the police force shall investigate administrative offenses at their official discretion and shall take all measures which may not be delayed to prevent the case from being covered up. Police officers investigating an administrative offense have the same rights and duties as pertain to the prosecution of criminal acts if not otherwise provided by this law. They shall forward their files to the administrative authority without delay; in case of related matters (sec 42), they shall forward them to the public prosecutor.

(2) Police officers who are appointed as investigating personnel to the office of the public prosecutor (sec 152 of the Law Concerning the Constitution of Courts) may order confiscations, searches, investigations and other measures according to the provisions of the Code of Criminal Procedure applicable to them.

SECTION 54. (RESCINDED)

SECTION 55. HEARING OF THE PERSON CONCERNED

(1) Section 163a, paragraph (1), of the Code of Criminal Procedure applies with the restriction that it is sufficient if the person concerned is given the opportunity to make his statements with regard to the charges.

(2) The person concerned need not be informed that he may consult a defense counsel of his choice already prior to his interrogation. Section 136, paragraph (1), sentence 3, of the Code of Criminal Procedure does not apply.

SUBCHAPTER II
WARNING PROCEDURE

SECTION 56. WARNING BY THE ADMINISTRATIVE AUTHORITY

(1) In cases of minor administrative offenses the administrative authority may give a warning to the person concerned and impose a warning fee from 5 to 35 Euros. It may also give a warning without imposing a warning fee.

(2) The warning pursuant to paragraph (1), sentence 1, is effective only if the person concerned, having been advised of his right to refuse, agrees to the warning and pays the warning fee according to the instructions of the administrative authority either immediately or within a maximum period of 1 week to the appropriate agency or at the post office for remittance to such agency. Such a period shall be granted if the person concerned is unable to pay the warning fee on the spot or if the amount exceeds 10 Euros.

(3) A certificate shall be issued on the warning pursuant to paragraph (1), sentence 1, the amount and payment of the warning fee, or any term fixed for payment. Costs (fees and expenses) shall not be charged.

(4) If the warning pursuant to paragraph (1), sentence 1, is effective, the act may no longer be prosecuted under the factual and legal aspects which resulted in the issuance of the warning.

SECTION 57. WARNING BY OFFICIALS OF THE FIELD SERVICE AND BY OFFICERS OF THE POLICE SERVICE

(1) Persons who are authorized to exercise the power of the administrative authority pursuant to section 56 as field service officers must prove their identity.

(2) The authority pursuant to section 56 may also be exercised by the officers of the police service who discover or prosecute in *flagrante delicto* an administrative offense and prove their identity by their uniform or in any other manner.

SECTION 58. AUTHORIZATION TO ISSUE WARNINGS

(1) The authorization pursuant to section 57, paragraph (2), is issued by the official's highest service authority or the agency designated by that authority. The highest service authority shall contact the competent authority to determine for which administrative offenses authorizations shall be issued. In case of administrative offenses whose prosecution and punishment falls under the responsibility of a Federal administrative authority the technically competent Federal ministry shall be responsible, otherwise, the technically competent highest *Land* authority shall be responsible.

(2) In cases of administrative offenses requiring uniform treatment due to frequency and similarity, general authorizations given to administrative officials and police officers for the issuance of a warning shall contain provisions specifying in which cases and under which prerequisites the warning shall be given and in which amounts the warning fees shall be assessed.

SUBCHAPTER III
PROCEDURES OF THE ADMINISTRATIVE AUTHORITY

SECTION 59. REMUNERATION OF EXPERTS, INTERPRETERS AND TRANSLATORS, COMPENSATION OF WITNESSES AND THIRD PARTIES
The Law on Remuneration and Compensation in Connection with Court Proceedings (*Justizvergütungs- und -entschädigungsgesetz*) shall be applied to the remuneration of experts, interpreters and translators as well as the compensation of witnesses and third parties (sec 23 of the Law on Remuneration and Compensation in Connection with Court Proceedings).

SECTION 60. APPOINTMENT OF A DEFENSE COUNSEL
If the participation of a defense counsel in the procedures of the administrative authority is required (sec 140, para (2), sent 1, of the Code of Criminal Procedure), the administrative authority is responsible for the appointment of a defense counsel. It may also decide on the admittance of other persons as defense counsels and the rejection of defense counsels (sec 138, para (2), and sec 146a, para 1, sentences 1 and 2, of the Code of Criminal Procedure).

SECTION 61. TERMINATION OF THE INVESTIGATIONS
Upon termination of its investigations, the administrative authority shall make a respective note in the file if it takes into consideration further prosecution of administrative offense.

SECTION 62. LEGAL REMEDY AGAINST MEASURES OF THE ADMINISTRATIVE AUTHORITY

(1) The person concerned and other persons against whom the measure is directed may file a request for a court decision against orders, decrees, and other measures taken by the administrative authority within the scope of administrative fining proceedings. This does not apply to measures which are taken only for the preparation of the decision as to whether an administrative order imposing a fine will be issued or whether the proceedings will be stayed and therefore have no relevance of their own.

(2) The court competent pursuant to section 68 will decide on the request. Sections 297 through 300, 302, 306 through 309, and 311a of the Code of Criminal Procedure, as well as the provisions regarding imposition of the costs for the appeal stipulated in the Code of Criminal Procedure shall apply accordingly. The decision of the court cannot be contested unless otherwise provided by law.

SUBCHAPTER IV
PROCEDURES OF THE PUBLIC PROSECUTOR'S OFFICE

SECTION 63. PARTICIPATION OF THE ADMINISTRATIVE AUTHORITY

(1) If the office of the public prosecutor has taken over prosecution of the administrative offense (sec 42), the members of the competent administrative authority entrusted with the investigation of administrative offenses have the same rights and obligations as police officers in the administrative fining proceedings. The otherwise competent administrative authority may order confiscations, emergency sales, searches, and investigations according to the provisions of the Code of Criminal Procedure applicable to investigating personnel of the office of the public prosecutor.

(2) The otherwise competent administrative authority shall be informed of the charge and the request for issuance of an order to impose punishment to the extent that they refer to an administrative offense.

(3) If the office of the public prosecutor considers staying the proceedings for an administrative offense in the cases of section 40 or 42, it shall hear the otherwise competent administrative authority. It may refrain from such action if special knowledge of the administrative authority is not required for the decision.

SECTION 64. PUBLIC CHARGES EXTENDED TO THE ADMINISTRATIVE OFFENSE
If, in the cases of section 42, the office of the public prosecutor prefers charges based on a criminal offense, those charges will extend to the administrative offense as far as the investigation provides sufficient reason for that.

CHAPTER FOUR
ADMINISTRATIVE ORDER IMPOSING A FINE

SECTION 65. GENERAL
Unless otherwise determined by this law, administrative offenses will be punished by an administrative order imposing a fine.

SECTION 66. CONTENTS OF THE ADMINISTRATIVE ORDER IMPOSING A FINE

(1) The administrative order imposing a fine must include the following information:

1. Personal data of the person concerned and other parties indirectly involved, if any;

2. Name and address of the defense counsel;

3. Nature of the act with which the person concerned is charged, time and place of its commission, the legal characteristics of the administrative offense and the applied administrative fine provisions;

4. Evidence;

5. Fine and incidental legal consequences.

(2) The administrative order imposing a fine further must also include—

1. The statement that—

(a) The administrative order imposing a fine becomes legally effective and enforceable if no objection is filed pursuant to section 67; or

(b) In case an objection is filed, a decision may be rendered which is more disadvantageous to the person concerned.

2. The request to the person concerned no later than 2 weeks after the order has become final or at a determined later due date (sec 18)—

(a) To pay the fine or the assessed installments to the competent fund, or

(b) In case of insolvency, to inform the enforcement authority (sec 92) in writing or state for the record why he cannot be reasonably expected to make payment within a specified period of time in view of his financial situation.

3. The instruction to the person concerned that arrest to enforce a court order (sec 96) may be ordered if he fails to comply with his obligation under number 2.

(3) The administrative order imposing a fine need not be substantiated by any information beyond that contained in paragraph (1), numbers 3 and 4.

CHAPTER FIVE
OBJECTION AND COURT PROCEEDINGS

SUBCHAPTER I
OBJECTION

SECTION 67. FORM AND TIME LIMIT

(1) The person concerned may file an objection against the administrative order imposing a fine within 2 weeks after service either in writing or by stating it for the record with the administrative authority that has issued such an order. Sections 297 through 300 and 302 of the Code of Criminal Procedure regarding legal remedies, apply accordingly.

(2) The objection may be limited to specific points.

SECTION 68. COURT OF JURISDICTION

(1) The district court in whose district the administrative authority is located decides on an objection to the administrative order imposing a fine. The judge of the district court renders the decision.

(2) In proceedings against juveniles and adolescents, the judge of the youth court is competent.

(3) If there are several district court districts or several parts of such districts within the district of the administrative authority of a *Land*, the government of the *Land* may, by statutory order, determine the competence of the district court in deviation from paragraph (1), based on the district where the—

1. Administrative offense or one of those violations has been committed (place of the act), or

2. Offender has his residence (place of residence)

to the extent that in consideration of the large number of proceedings or the large distance between the place of the act or the place of residence and the location of the district court competent pursuant to paragraph (1), it is appropriate to distribute the proceedings among several district courts; section 37, paragraph (3), applies accordingly. The district upon which jurisdiction of the district court is based pursuant to sentence 1, may comprise the districts of several district courts. The government of the *Land* may delegate the authority to the judicial administration of the *Land*.

SECTION 69. INTERLOCUTORY PROCEEDINGS

(1) If the objection has not been filed in due time, not in the prescribed form, or is otherwise ineffective, the administrative authority will reject it as inadmissible. A request for a court decision pursuant to section 62 may be filed against the notification within two weeks upon service.

(2) If the objection is permitted, the administrative authority shall review whether it will maintain or withdraw the administrative order imposing a fine. For this purpose, it may—

1. Order or make further investigations.

2. Request statements concerning official observations, examinations, and knowledge (sec 77a, para (2)) from authorities and other agencies.

The administrative authority may also give the person concerned the opportunity to make statements within a certain period of time if he wants to produce any facts and evidence in his defense in the course of the proceedings and what these facts are; he shall be informed that, provided by law, he has the choice to make statements regarding the charge or not to make statements on the subject matter.

(3) The administrative authority shall forward the files through the office of the public prosecutor to the district court if it does not withdraw the administrative order imposing a fine or proceed according to paragraph 1, sentence 1; it will note the reasons for this in the files as far as this is indicated by the facts and circumstances. The decision on a request for review of files and honoring of such request (sec 49, para (1), of this law and sec 147 of the Code of Criminal Procedure) shall take place prior to sending the files.

(4) Upon receipt of the files by the office of the public prosecutor, the tasks of the prosecuting authority will be assumed by the office of the public prosecutor. The office of the public prosecutor shall submit the files to the judge at the district court if it does not discontinue the proceedings and does not conduct further investigations.

(5) If the facts of the case are obviously not sufficiently clarified the judge at the district court may return the matter to the administrative authority by indicating the reasons and with the consent of the public prosecutor; upon receipt of the files the administrative authority will again be responsible for prosecution and punishment. If, in case of a new transferal, the judge at the district court denies sufficient evidence for an administrative offense he finally may decide to finally return the case to the administrative authority. The decision is not appealable.

SECTION 70. COURT DECISION ADMITTING AN OBJECTION

(1) Failure to comply with the provisions on filing an objection will lead to the court's rejection of the objection as being inadmissible.

(2) Immediate appeal from the decision is authorized.

SUBCHAPTER II
MAIN PROCEEDINGS

SECTION 71. TRIAL

(1) After a permissible objection and unless otherwise provided by this law, the proceedings are subject to the provisions of the Code of Criminal Procedure which are applicable after a permissible objection to an order imposing punishment.

(2) For clarification of the matter, the court may—

1. Order individual hearings of evidence, or

2. Request statements about official observations, examinations, and knowledge (sec 77a, para (2)) from authorities and other agencies.

In preparation of the trial the court may give the person concerned the opportunity to state within a certain period of time whether he wants to produce facts and evidence in his defense and what those facts are; section 69, paragraph (2), sentence 3, second half of the sentence, shall be applicable.

SECTION 72. DECISION BY ORDER

(1) If the court finds that a trial is not required, it may decide by issuing an order provided the person concerned and the office of the public prosecutor do not object to such procedure. Prior thereto the court shall advise them of the possibility of such procedure and objection and shall give them the opportunity to make a statement within 2 weeks upon service of the notification; section 145a, paragraphs (1) and (3), of the Code of Criminal Procedure, apply correspondingly. The court may refrain from advising the person concerned and may, even if he objects, decide by issuing an order if the person concerned is acquitted.

(2) If the objection is received after expiration of the period fixed it is irrelevant. However, in such a case restoration to the previous condition may be requested against the decision within one week upon service under the same conditions as against failure to observe a time limit; the person concerned shall be instructed accordingly when the decision is served.

(3) The court shall decide whether the person concerned will be acquitted, a fine will be imposed against him, any additional consequences will be ordered, or the proceedings will be discontinued. The court may not deviate from the decision in the administrative order imposing a fine to the detriment of the accused.

(4) If a fine is assessed, the administrative offense will be indicated in the order; if the act for which an administrative fine is imposed has a legal title, such title shall be used to designate the administrative offense. Section 260, paragraph (5), sentence 1, of the Code of Criminal Procedure applies correspondingly. The grounds for the order shall include the facts that are considered proved and that, in the court's opinion, constitute the legal criteria for the administrative offense. As far as evidence can be obtained from other facts, those facts shall also be indicated. Further, the circumstances which are decisive for the assessment of the fine and the ordering of an additional consequence shall be indicated.

(5) If the accused is acquitted, the reasons shall show whether the accused was considered not convicted or whether and for which reasons the act which is assumed to be proved was not considered to be an administrative offense. If the order cannot be contested by an appeal on points of law, it need only be stated whether non-determination of the administrative offense the person concerned was charged with is based on factual or on legal reasons.

(6) Stating of reasons may be refrained from if the parties involved in the proceedings refrain from it. In such a case it is sufficient to make reference to the contents of the administrative order imposing a fine; in consideration of the conditions in a special case the court may provide additional comments at its discretion. The complete reasons shall be stated in the files within five weeks if an appeal on a point of law is filed against the order.

SECTION 73. PRESENCE AT THE TRIAL OF THE PERSON CONCERNED

(1) The person concerned is obliged to appear at the trial.

(2) Upon his request the court shall release the person concerned from this obligation if he has made statements to the merits or if he has stated that he will not make any statements to the merits at the trial and if his presence is not necessary to clarify essential aspects of the facts of the case.

(3) If the court has released the person concerned from the obligation of personal appearance he may be represented by a defense counsel authorized by a written power of attorney.

SECTION 74. PROCEEDINGS IN CASE OF ABSENCE

(1) The trial will be conducted in the absence of the person concerned if he did not appear and was released from personal appearance. His previous examination and any written statements or statements for the record shall be incorporated in the trial by stating their essential content or reading them. It is sufficient to provide the information required pursuant to section 265, paragraphs (1) and (2), of the Code of Criminal Procedure to the defense counsel.

(2) If the person concerned fails to appear without sufficient excuse, although he had not been released from personal appearance, the court shall reject the objection by judgment without dealing with the merits.

(3) In the summons the person concerned shall be advised of paragraphs (1) and (2) and of sections 73 and 77b, paragraph (1), sentences 1 and 3.

(4) If the trial pursuant to paragraph (1) or (2) was held without the person concerned he may request restoration to the previous condition against the judgment within one week of service under the same prerequisites as against the failure to comply with a time limit. This fact shall be pointed out when the judgment is served.

SECTION 75. PARTICIPATION OF THE PUBLIC PROSECUTOR IN THE TRIAL

(1) The public prosecutor is not obligated to participate in the trial. The court will inform the office of the public prosecutor if it considers its participation to be appropriate.

(2) If the office of the public prosecutor does not participate in the trial, its approval to stay the proceedings (sec 47, para (2)) and withdraw the objection at the trial is not required.

SECTION 76. PARTICIPATION OF THE ADMINISTRATIVE AUTHORITY

(1) The court gives the administrative authority the opportunity to state those factors which, according to its opinion, are important for the decision. This also applies if the court considers to stay the proceedings pursuant to section 47, paragraph (2). The administrative authority will be informed of the trial date. Its representative will be allowed to make statements at the trial upon request.

(2) The court may refrain from involving the administrative authority pursuant to paragraph (1) if its special knowledge of the case is not necessary for the decision.

(3) If the public prosecutor considers the withdrawal of the complaint, section 63, paragraph (3), applies accordingly.

(4) The administrative authority shall be informed of the judgment and other decisions terminating the proceedings.

SECTION 77. EXTENT OF TAKING OF EVIDENCE

(1) Notwithstanding the duty to find out the truth ex officio, the court shall determine the extent of evidence to be taken. In this connection, it shall also take the importance of the matter into consideration.

(2) If, based on the result of evidence taken, the court considers the facts of the case to be clarified, it may, except in the cases of section 244, paragraph (3), of the Code of Criminal Procedure, also reject a request for taking evidence if, according to its—

1. Due assessment of the circumstances, the taking of evidence is not required to find the truth, or

2. Free evaluation, the evidence or the fact to be proved was produced so late without a reasonable cause that the taking of evidence would result in the suspension of the trial.

(3) The reasons for the rejection of a request to take evidence pursuant to paragraph (2), number 1, may, generally, be limited in the court decision (sec 244, para 6, of the Code of Criminal Procedure) to the statement that the taking of evidence is not required to find the truth.

SECTION 77A. SIMPLIFIED PROCEDURE FOR TAKING OF EVIDENCE

(1) The examination of a witness, an expert or another person concerned may be replaced by reading the records of a previous examination as well as by certificates which contain a written statement from them.

(2) Statements of authorities and other agencies concerning their official observations, investigations, and knowledge as well as those of their members may also be read if the prerequisites of section 256 of the German Code of Criminal Procedure do not prevail.

(3) The court may obtain a statement from an authority (para (2) above) also by telephone and announce its substantial contents at the trial. The contents of the statement made known shall be included in the minutes upon request.

(4) The procedure pursuant to paragraphs (1) through (3) require the approval of the person concerned, the defense counsel, and the office of the public prosecutor if they are present at the trial. Section 251, paragraph (1), numbers 2 and 3; paragraph (2), numbers 1 and 2; paragraphs (3) and (4); as well as sections 252 and 253 of the Code of Criminal Procedure shall remain unaffected.

SECTION 77B. REFRAINING FROM STATING REASONS FOR THE JUDGMENT

(1) A written statement of grounds for the judgment may be dispensed with if all persons authorized to file an appeal waive such appeal or if, within the fixed period, no appeal is filed. If the office of the public prosecutor has not participated in the trial, a declaration of their waiver is not needed, however, written statement of the grounds for the judgment is required if the office of the public prosecutor has requested this prior to the trial. The statement of waiver by the person concerned is not required if he was released from the obligation to appear at the trial but was represented by a defense counsel at the trial and a maximum fine of only 250 Euros was assessed in the judgment.

(2) The grounds for the judgment shall be included in the records within the period provided for in section 275, paragraph (1), sentence 2, of the Code of Criminal Procedure, if restoration to the previous condition is granted against the failure to observe the period fixed for filing an appeal or in the cases of paragraph (1), first half of sentence 2, an appeal is filed by the office of the public prosecutor or in the cases of paragraph (1), sentence 3, an appeal is filed by the person concerned.

SECTION 78. OTHER MEASURES SIMPLIFYING THE PROCEEDINGS

(1) In lieu of reading a document, the court may announce its substantial contents; however, this does not apply if the wording of the document is essential. If the person concerned, the defense counsel, and the representative of the office of the public prosecutor present at the trial took notice of the wording of the document or had the opportunity to do so, it will be sufficient to include this fact in the minutes. If the reading of documents is dependent on the approval of the persons participating in the proceedings this also applies to the proceedings pursuant to sentence 1 and 2.

(2) Section 243, paragraph (4), of the Code of Criminal Procedure applies only after a discussion has taken place. Section 273, paragraph (1a), sentence 3, and paragraph (2), of the Code of Criminal Procedure shall not apply.

(3) In the proceedings against juveniles section 78, paragraph (3), of the Youth Court Law applies accordingly.

(4) If a fine is assessed against a juvenile or an adolescent, the judge of the youth court may at the same time issue an enforcement order pursuant to section 98, paragraph (1).

SUBCHAPTER III
LEGAL REMEDIES

SECTION 79. APPEAL ON A POINT OF LAW

(1) Appeal is authorized from the judgment and the order pursuant to section 72 if—

1. A fine of more than 250 Euros has been assessed against the person concerned;

2. An additional consequence has been ordered unless such additional consequence involves property, the value of which has been established in the judgment or in the order pursuant to section 72, in an amount not exceeding 250 Euros;

3. The person concerned has been acquitted of an administrative offense or the proceedings have been stayed or imposition of a prohibition to drive was refrained from and for the act, a fine of more than 600 Euros had been assessed in the administrative order imposing a fine or in the order imposing punishment, a prohibition to drive had been imposed, or if the public prosecutor had moved that such a fine or prohibition to drive be imposed;

4. The objection has been rejected by judgment as not permissible, or

5. A decision has been rendered by order pursuant to section 72, although the complainant had objected to this procedure in due time or he had otherwise been denied his right to be heard before the court.

Appeals from the judgment are also authorized if they are admitted (sec 80).

(2) If the judgment or the order pursuant to section 72 concerns several acts and if the prerequisites of paragraph (1), sentence 1, numbers 1 through 3, or sentence 2, apply only with regard to individual acts, appeals may be taken to such extent only.

(3) Unless otherwise provided by this law, the provisions of the Code of Criminal Procedure and of the Law Concerning the Constitution of Courts on appeal on questions of law (*Revision)* apply accordingly to the appeal and subsequent proceedings. Section 342 of the Code of Criminal Procedure also applies accordingly to the request for restoration to the previous condition pursuant to section 72, paragraph (2), first half of sentence 2.

(4) The period allowed for filing an appeal on a point of law starts to run from the date of service of the order pursuant to section 72 or of the judgment in case it was announced in the absence of the complainant and he was neither represented by a defense counsel holding a written power of attorney in accordance with section 73, paragraph (3).

(5) The court of appeal decides by issuing an order. If the appeal has been taken from a judgment, the court of appeal may decide by judgment based on a hearing.

(6) If the court of appeal revokes the contested decision, it may, as an exception to section 354 of the Code of Criminal Procedure, render its own decision concerning the case or may remand it to the district court whose decision is revoked, or to another district court of the same *Land*.

SECTION 80. LEAVE TO APPEAL ON A POINT OF LAW

(1) The court of appeal will grant leave to appeal pursuant to section 79, paragraph (1), sentence 2, upon request if this is necessary to—

1. Review the judgment for the development of the law or to guarantee uniform court rulings, unless otherwise provided for by paragraph (2), or

2. Quash the judgment because due process of law was denied.

(2) An appeal will not be allowed because of the application of legal rules concerning the proceedings, and will be allowed because of the application of other legal rules only for the development of the law, if—

1. A fine not exceeding 100 Euros was assessed against the person concerned, or an additional consequence involving property has been ordered, the value of which assessed in the judgment is not more than 100 Euros, or

2. The person concerned was acquitted because of an administrative offense, or the proceedings were discontinued and a fine not exceeding 150 Euros had been assessed for the act in the administrative order imposing a fine or in an order imposing punishment, or such a fine had been requested by the office of the public prosecutor.

(3) The provisions concerning filing of an appeal apply accordingly to the request for leave to appeal. The request is considered to be an appeal filed as a precaution. The provisions concerning submission of requests for appeal and their substantiation (secs 344 and 345 of the Code of Criminal Procedure) shall be complied with. When stating the reasons for filing the appeal, the petitioner shall state at the same time why the prerequisites designated in paragraph (1) prevail. Section 35a of the Code of Criminal Procedure applies accordingly.

(4) The court of appeal will decide on the request by issuing an order. Sections 346 through 348 of the Code of Criminal Procedure apply accordingly. The order by which the request is rejected requires no substantiation. If the request is rejected, the appeal is deemed to be withdrawn.

(5) If it is found out prior to the decision on the request for admission that there is an impediment to the proceedings, the court of appeal will discontinue the proceedings only if the impediment to the proceedings has occurred after the pronouncement of the judgment.

SECTION 80A. COMPOSITION OF THE SUPERIOR STATE COURT PANELS IN CHARGE OF ADMINISTRATIVE FINE PROCEEDINGS

(1) Unless otherwise provided, the divisions of the superior State courts in charge of administrative fine proceedings are composed of one judge.

(2) The divisions of the Superior State courts in charge of administrative fine proceedings consist of three judges to include the presiding judge in proceedings on appeals in the cases designated in section 79, paragraph (1), sentence 1, if a fine exceeding 5,000 Euros or an additional consequence involving property at a value of more than 5,000 Euros was

assessed or requested. If necessary, the value of a fine shall be added to the value of an additional consequence involving property.

(3) In the cases designated in paragraph 1the judge shall transfer the case to the division in charge of administrative fines composed of three judges, if it is imperative to review the judgment or the decision pursuant to section 72 for the development of the law or to ensure uniform court rulings. This applies also to a granted appeal, however, not to the proceedings regarding its admission.

CHAPTER SIX
ADMINISTRATIVE FINING PROCEEDINGS AND CRIMINAL PROCEEDINGS

SECTION 81. TRANSITION FROM ADMINISTRATIVE FINING PROCEEDINGS TO CRIMINAL PROCEEDINGS

(1) In administrative fining proceedings, the court is not bound to assess the act as an administrative offense. However, it may only render a decision based on a criminal law provision if the person concerned was previously advised of the change in the legal aspect of the case and he was given the opportunity to defend himself.

(2) The person concerned will be advised of the change of legal aspect at the request of the office of the public prosecutor or ex officio. With this indication he obtains the legal status of an accused. The hearing will be interrupted if the court considers this to be necessary or if the accused so requests. The accused will be advised of his right to request an interruption in the proceedings.

(3) The special provisions of this law are no longer applicable for the ongoing proceedings. However, the taking of evidence, so far in the presence of the person concerned, may also be used if it has been conducted according to these provisions; but this does not apply to the taking of evidence pursuant to sections 77a and 78, paragraph (1).

SECTION 82. IMPOSITION OF A FINE IN CRIMINAL PROCEEDINGS

(1) In criminal proceedings the court judges the act designated in the indictment at the same time under the legal aspect of an administrative offense.

(2) If the court only admits the charge for trial under the legal aspect of an administrative offense, the special provisions of this law shall be applied in the further proceedings.

SECTION 83. PROCEEDINGS IN CASE OF ADMINISTRATIVE OFFENSES AND CRIMINAL ACTS

(1) If administrative offenses and criminal acts are the subject of the proceedings and if specific acts are prosecuted only as administrative offenses, section 46, paragraphs (3), (4), (5), sentence 2, and paragraph (7); sections 4; 49; 55; 76 through 78; 79, paragraphs (1) through (3); and section 80 also apply to the proceedings involving these acts.

(2) If in the cases of paragraph 1 an appeal on a point of law is filed against the judgment to the extent that it concerns administrative offenses only and otherwise an appeal on the facts is filed, a timely appeal on a point of law filed in the prescribed form will be treated as an appeal on the facts as long as the appeal on the facts has not been withdrawn or rejected as inadmissible. The motions for appeal and their substantiation shall nevertheless be submitted in the prescribed form and served on the opposing party (secs 344 through 347 of the Code of Criminal Procedure); however, granting of an appeal pursuant to section 79, paragraph (1), sentence 2, is not required. Further appeal on a point of law pursuant to section 79, paragraphs (1) and (2), and section 80 is permitted against the judgment on appeal.

(3) If the court of appeal sets the judgment aside, as far as it concerns the administrative offenses only, it may render a decision on the merits.

CHAPTER SEVEN
FINALITY OF A DECISION AND REOPENING OF THE PROCEEDINGS

SECTION 84. EFFECT OF FINALITY OF A DECISION

(1) If the administrative order imposing a fine has become final or if the court has rendered a final decision on the act as an administrative offense or as criminal act, the same act can no longer be prosecuted as an administrative offense.

(2) The final judgment on the act as an administrative offense also precludes its prosecution as a criminal act. The order pursuant to section 72 and the decision of the court of appeal on the act as an administrative offense are equivalent to the final judgment.

SECTION 85. REOPENING OF THE PROCEEDINGS

(1) Sections 359 through 373a of the German Code of Criminal Procedure apply accordingly to the reopening of proceedings terminated by a final administrative order imposing a fine, as far as not otherwise determined by the following provisions.

(2) Reopening of the proceedings in favor of the person concerned supported by new facts or evidence (sec 359, no. 5, of the Code of Criminal Procedure) is not permitted if—

1. Only a fine up to 250 Euros has been assessed against the person concerned, or

2. Three years have passed since the administrative order imposing a fine has become final.

Sentence 1, number 1, applies accordingly if an additional consequence regarding property has been ordered the value of which does not exceed 250 Euros.

(3) The reopening of the proceedings to the disadvantage of the person concerned is permitted under the prerequisites of section 362 of the Code of Criminal Procedure only for the purpose of obtaining a conviction on the basis of criminal law. For this purpose, the reopening of the proceedings is also permitted if new facts or evidence have been submitted which separately or in connection with previous evidence taken can be used to substantiate the conviction for a crime of the person concerned.

(4) In the reopened proceedings against the administrative order imposing a fine, the court competent pursuant to section 68 will render a decision. If such a reopening of the proceedings is requested by the person concerned or if circumstances become known to the administrative authority that permit a reopening of the proceedings, it will send the files to the office of the public prosecutor. Section 69, paragraph (4), sentence 1, applies accordingly.

SECTION 86. CANCELLATION OF THE ADMINISTRATIVE ORDER IMPOSING A FINE IN CRIMINAL PROCEEDINGS

(1) If an administrative order imposing a fine was issued against the person concerned and if he is sentenced in subsequent criminal proceedings for the same act, the administrative order imposing a fine will be canceled to that extent. The same applies if no sentence is imposed in the criminal proceedings; however, the findings of the court in the final decision oppose the administrative order imposing a fine.

(2) Amounts which have been paid or collected on the basis of the canceled administrative order imposing a fine will first be credited against an assessed fine, then against ordered additional consequences requiring to make a payment and last against the costs of the criminal proceedings.

(3) The decisions pursuant to paragraphs (1) and (2) are rendered in the judgment or in any other final decision.

CHAPTER EIGHT
PROCEDURE IN CASE OF ADDITIONAL CONSEQUENCES OR ASSESSMENT OF A FINE AGAINST A JURISTIC PERSON OR AN ASSOCIATION

SECTION 87. ORDER OF CONFISCATION AND FORFEITURE

(1) If the administrative authority in the administrative fining proceedings must decide on the confiscation of an object, it is also responsible for ordering the participation in the proceedings, the appointment of an attorney or any other person who may be retained as a defense counsel as well as for decision on the compensation (sec 431, sec 434, para (2), and sec 436, para (3), of the Code of Criminal Procedure).

(2) Upon issuance of the administrative order imposing a fine the person involved in the confiscation procedure has the same powers as a person affected, if not otherwise provided by law. The administrative order imposing a fine by which confiscation is ordered will be served on him. At the same time he will be advised that a decision concerning him in respect to the confiscation has also been made.

(3) In separate proceedings, confiscation is ordered by a separate confiscation order; section 66, paragraph (1), paragraph (2), number 1a, and paragraph (3), apply accordingly. The order of confiscation is equivalent to an administrative order imposing a fine. The administrative authority that would be competent in case of prosecution of a particular person is responsible; also locally competent is the administrative authority in whose district the object was secured.

(4) A motion for subsequent proceedings (sec 439, Code of Criminal Procedure) against an administrative order imposing a fine must be filed with the administrative authority which has ordered confiscation. The court competent pursuant to section 68 will render the decision. The administrative authority will send the files to the office of the public prosecutor, which submits them to the court; section 69, paragraph (4), sentence 1, applies accordingly.

(5) The decision of the court on the confiscation of an object whose value does not exceed 250 Euros cannot be contested.

(6) Paragraphs (1) and (2), sentences 1 and 2, paragraph (3), sentences 1 through 3, first half sentence, and paragraph (5) apply accordingly in proceedings where forfeiture is ordered.

SECTION 88. ASSESSMENT OF THE FINE AGAINST JURISTIC PERSONS AND ASSOCIATIONS

(1) If the administrative authority must decide on the assessment of a fine against a juristic person or an association (section 30) in the administrative fining proceedings, that authority is also competent to order participation in the proceedings and the appointment of an attorney or any other person who may be retained as a defense counsel (sec 444, para (1), and sec 434, para (2), of the Code of Criminal Procedure); section 60, sentence 2, applies accordingly.

(2) In separate proceedings the administrative authority shall assess the fine in a separate administrative order imposing a fine. The administrative authority which would be competent in case of prosecution of a specific person is responsible; the administrative authority in whose district the juristic person or association has its main place of business or branch office is also competent.

(3) Section 87, paragraph (2), sentences 1 and 2, and paragraph (5) apply accordingly.

CHAPTER NINE
ENFORCEMENT OF DECISIONS ON PAYMENT OF FINES

SECTION 89. ENFORCEABILITY OF DECISIONS TO PAY FINES

Decisions on the payment of fines are enforceable if they have become final.

SECTION 90. ENFORCEMENT OF AN ADMINISTRATIVE ORDER IMPOSING A FINE

(1) Unless otherwise provided by law, the administrative order imposing a fine will be executed according to the provisions of the Administrative Enforcement Act (*Verwaltungsvollstreckungsgesetz*) of 27 April 1953 (Federal Law Gazette I, p. 157) in its current version, if a Federal administrative authority has issued the administrative order imposing a fine; in other cases according to the pertinent *Land* provisions.

(2) Unless otherwise provided by law, the fines will fall to the Federal treasury if a Federal administrative authority has issued the administrative order imposing a fine, in other cases to the *Land* treasury. Sentence 1 applies accordingly to additional consequences requiring to make payment.

(3) If the confiscation or rendering unserviceable of an object has been ordered, the order will be enforced by taking the object away from the person concerned or the party to the confiscation. If the object is not found in the possession of these persons they must, upon the request of the administrative authority, make a statement in lieu of an oath before the district court on the whereabouts of the object. Section 883, paragraphs (2) and (3), of the Code of Civil Procedure applies accordingly.

(4) Paragraph (1) applies accordingly to the enforcement of a disciplinary fine assessed by the administrative authority.

SECTION 91. ENFORCEMENT OF THE COURT DECISION ON FINES
Sections 451, paragraphs (1) and (2), section 459, and section 459g, paragraph (1), as well as paragraph (2) in connection with section 459 of the Code of Criminal Procedure apply to the enforcement of the court's decision concerning fines; in

proceedings against juveniles and adolescents section 82, paragraph (1), section 83, paragraph (2), section 84, and section 85, paragraph (5), of the Youth Court Law also apply accordingly.

SECTION 92. ENFORCEMENT AUTHORITY
Within the meaning of the following provisions of this chapter the enforcement authority is the administrative authority which issued the administrative order imposing a fine in the cases of section 90, and in other cases, the office which is responsible for the enforcement pursuant to section 91.

SECTION 93. EASIER TERMS OF PAYMENT

(1) After the decision to impose a fine has become final, the enforcement authority shall decide on the granting of easier terms of payment (sec 18).

(2) The enforcement authority may subsequently change or cancel a decision on easier terms of payment pursuant to paragraph 1 or section 18. In doing so, it may deviate from a preceding decision to the disadvantage of the person concerned only on the basis of new facts or evidence.

(3) Section 66, paragraph (2), numbers 2 and 3, apply accordingly to decisions on easier terms of payment. The decision also extends to the costs of the proceedings, but it may be separately rendered with regard to the costs.

(4) If the privilege to pay the fine by installments determined pursuant to section 18, sentence 2, has been canceled, a respective note will be made in the records. The enforcement authority may again grant the person concerned easier terms of payment.

SECTION 94. CREDITING OF INSTALLMENTS
If the person concerned does not make an arrangement for payment, the installments will first be credited against the fine, then against additional consequences if any, and last against the costs of the proceedings.

SECTION 95. COLLECTION OF THE FINE

(1) The fine or the partial amount of a fine will be collected prior to the expiration of 2 weeks from the due date only if there are certain facts which show that the person concerned tries to evade payment.

(2) If it turns out that the person concerned cannot make the payment in the foreseeable future due to his financial situation, the enforcement authority may order to discontinue the enforcement.

SECTION 96. ARREST ORDERED TO ENFORCE A COURT ORDER

(1) After expiration of the period set in section 95, paragraph (1), the court may, either upon request of the enforcement authority, or, if the court itself is responsible for the enforcement, order ex officio arrest to enforce the court order if—

1. The fine or agreed installment of a fine is not paid;

2. The person concerned failed to give notice of his inability to pay (sec 66, para 2, no. 2, letter b);

3. He has been instructed pursuant to section 66, paragraph (2), number 3, and

4. No circumstances are known from which his insolvency could result.

(2) If it is determined that the person concerned cannot be expected to pay the amount of the fine immediately in view of his financial situation, the court will grant easier terms of payment or leave the decision on that to the enforcement authority. An order of arrest already issued to enforce payment will be revoked.

(3) The period of arrest to enforce a court order involving a fine must not exceed 6 months; for several fines assessed in one notification of an administrative fine it must not exceed 3 months. The period will be fixed by days in consideration of the amount of the fine to be paid and may not be extended subsequently, however, it may be reduced. Arrest to enforce a court order may not be repeated for the same amount.

SECTION 97. EXECUTION OF ARREST TO ENFORCE A COURT ORDER

(1) Section 451, paragraphs (1) and (2), of the German Code of Criminal Procedure apply to the execution of arrest to enforce a court order; in the proceedings against juveniles and adolescents section 82, paragraph (1), section 83, paragraph (2), as well as section 84 and section 85, paragraph (5), of the Youth Court Law apply accordingly.

(2) The person concerned may avert execution of arrest to enforce a court order at any time by paying the amount of the fine imposed.

(3) If, after arrest to enforce a court order was ordered, the person concerned claims that he cannot be expected to pay the amount of the fine immediately in view of his financial situation, execution of the order will not be stopped. However, the court may suspend execution.

SECTION 98. ENFORCEMENT AGAINST JUVENILES AND ADOLESCENTS

(1) If the fine assessed against a juvenile has not been paid after the expiration of the period fixed in section 95, paragraph (1), the judge of the youth court may, upon request of the enforcement authority, or if he is responsible for the enforcement, ex officio, adjudge that in lieu of the fine the juvenile—

1. Performs work services;

2. Makes restitution to the best of his ability for damage caused by the act;

3. Attends motor vehicle driver's training in case of a violation of traffic regulations, or

4. Performs another specific service

if granting easier terms of payment, collection of the fine, or ordering of arrest is not deemed possible or appropriate. The judge of the youth court may give the orders pursuant to sentence 1 in combination with each other and subsequently change them.

(2) If the juvenile fails to comply with an order pursuant to paragraph 1 through his own fault and also fails to pay the fine, youth detention (sec 16 of the Youth Court Law) may be imposed on him if he has been instructed accordingly; section 11, paragraph (3), sentences 2 and 3, of the Youth Court Law apply accordingly. If, based on this, youth detention is imposed in case of a decision on payment of a fine it may not exceed 1 week. Prior to the imposition of youth detention the juvenile shall be given the opportunity to make an oral statement before the court.

(3) Youth detention may not be repeatedly ordered for the same amount. The judge shall refrain from execution of youth detention if the juvenile complies with the order after imposition of the arrest or if he pays the fine. If youth detention was executed the judge at the youth court may declare enforcement to pay the fine in part or completely complied with.

(4) Paragraphs (1) through (3) also apply to the execution of the fine assessed against an adolescent.

SECTION 99. ENFORCEMENT OF ADDITIONAL CONSEQUENCES OBLIGATING TO MAKE PAYMENT

(1) Sections 93 and 95 apply accordingly to the enforcement of additional consequences requiring the payment of an amount of money; sections 94, 96, and 97 also apply to the enforcement of the fine against a juristic person or association.

(2) If forfeiture of a sum of money (sec 29a) was ordered and has become final and if the person concerned or the person involved in forfeiture submits a final decision by which a claim of the injured person has been established against him for the act punishable by a fine, the enforcement authority orders that the order for forfeiture is no longer executed to this extent. If the sum of money declared to be forfeited has already been paid or collected and proof of payment to the injured person on the basis of the final decision is furnished, the enforcement authority shall order reimbursement to the person concerned or the person involved in forfeiture.

SECTION 100. SUBSEQUENT DECISIONS ON THE CONFISCATION

(1) A decision on the cancellation of the reservation of confiscation and the subsequent order to confiscate an object or an equivalent sum of money (sec 24, para (2), sent 3, and sec 25, para (4)) is rendered by the—

1. Administrative authority that has issued the administrative order imposing a fine;

2. Court, if the decision to impose a fine has been issued by the court.

(2) Within 2 weeks after service of the order imposing a fine, the request for a decision by the court pursuant to section 62 against the subsequent ordering of confiscation is permitted in the cases of paragraph (1), number 1. Immediate complaint against the court decision is permitted if the value of the object in controversy exceeds 250 Euros.

SECTION 101. EXECUTION AGAINST THE ESTATE
A fine may not be executed against the estate of the person concerned.

SECTION 102. SUBSEQUENT CRIMINAL PROCEEDINGS

(1) If charges are preferred for the same act after the administrative order imposing a fine has become final, the enforcement authority shall suspend enforcement of the administrative order imposing a fine.

(2) If no decisions pursuant to section 86, paragraphs (1) and (2), have been made in the criminal proceedings, they must be rendered subsequently by the court.

SECTION 103. DECISION OF THE COURT

(1) The court decides on objections against:

1. The permissibility of enforcement;

2. Orders issued by the enforcement authority pursuant to section 93, section 99, paragraph (2), and section 102, paragraph (1);

3. Other measures taken for the enforcement of an administrative order imposing a fine.

(2) Enforcement is not stopped by objections filed pursuant to paragraph 1. However, the court may suspend enforcement.

SECTION 104. PROCEDURE IN CASE OF A COURT DECISION

(1) The decisions of the court which become necessary in connection with enforcement are issued by the—

1. Court that is competent pursuant to section 68 if an administrative order imposing a fine must be enforced;

2. Court of first instance if a court decision on a fine rendered must be enforced;

3. Youth court judge responsible for the enforcement of a court decision on a fine, unless a decision pursuant to section 100, paragraph (1), number 2, must be made;

4. Court of first instance in criminal proceedings if a decision pursuant to section 102, paragraph (2), must be rendered.

(2) The decision will be rendered without a hearing. Prior to the decision, the persons concerned shall be given the opportunity to file motions and to substantiate them.

(3) Immediate appeal is permitted against the—

1. Order of arrest to enforce a court order and the imposition of youth detention,

2. Subsequent decision on confiscation (sec 100, para (1), no. 2),

3. Court decision in the cases of section 103, paragraph (1), number 2, in connection with section 99, paragraph (2),

this is applicable in the cases of numbers 2 and 3, however, only if the value of the matter in dispute exceeds 250 Euros. In the other cases the decision cannot be contested.

CHAPTER TEN
COSTS

SUBCHAPTER I
PROCEEDINGS OF THE ADMINISTRATIVE AUTHORITY

SECTION 105. DECISION ON COSTS

(1) In proceedings of the administrative authority, section 464, paragraphs (1) and (2); section 464a; section 464c, if the costs for an interpreter for sign language are concerned; section 464d; section 465; section 466; section 467a, paragraphs (1) and (2); section 469, paragraphs (1) and (2); section 470; section 472b; and section 473, paragraph (7), of the Code of Criminal Procedure apply accordingly; in proceedings against juveniles and adolescents section 74 of the Youth Court Law also applies.

(2) Unless otherwise provided by law, the necessary expenses which the treasury shall bear pursuant to paragraph (1) in conjunction with section 465, paragraph (2), section 467a, paragraphs (1) and (2), as well as sections 470 and 472b of the Code of Criminal Procedure are imposed on the Federal treasury if a Federal administrative authority conducts the proceedings, otherwise the treasury of the *Land* shall bear the costs.

SECTION 106. ASSESSMENT OF COSTS

(1) Costs and expenses, which a person involved must reimburse another person, will be assessed by the administrative authority upon request. Upon request it shall be stated that from the date the request for assessment is submitted, interest shall be paid on the assessed costs and expenses according to section 104, paragraph (1), sentence 2, of the Code of Civil Procedure. A computation of costs incurred by the applicant, a copy of the computation for the other person concerned, and the receipts to verify the individual items shall be added to the request for assessment. For taking into consideration an assessed amount it is sufficient that it has been made credible. With regard to the expenses incurred by an attorney for postal and telecommunications services, the statement of the attorney that the expenses were incurred is sufficient.

(2) With respect to the execution of a cost assessing decision the provisions of the Code of Civil Procedure concerning the execution of a cost assessing decision shall apply accordingly. Execution is not permitted before the administrative cost assessing decision has become incontestable. The enforceable certified copy will be issued by the court clerk of registry of the court competent pursuant to section 68.

SECTION 107. FEES AND EXPENSES

(1) In the proceedings of the administrative authority, the fee is set according to the fine which has been assessed against the person concerned in the administrative order imposing a fine. If a fine is assessed against a juristic person or an association pursuant to section 30 a fee shall be collected from the juristic person or association which is determined on the basis of the imposed fine. In assessing a fine, 5 percent of the amount of the assessed fine will be levied as a fee; however, at least 20 Euros and no more than 7,500 Euros.

(2) If in the case of section 25a of the Road Traffic Law (*Straßenverkehrsgesetz*), the administrative authority has rendered a final decision, the fee will be 15 Euros.

(3) The following expenses will be charged:

1. Payment for telegrams

2. Payment for each service of documents with certificate of service, registered mail with return receipt requested, or service by personnel of the administrative authority with a lump sum amount of 3.50 Euros.

3. (Deleted).

4. Costs for public notices—

a) In case of publication in an electronic information and communication system if no payment must be made or payment is not charged for the individual action, a lump sum of 1 euro per notice,

b) In other cases the actual payments to be made.

5. The amounts to be paid pursuant to the Law on Remuneration and Compensation in Connection with Court Proceedings, even if, for reasons of reciprocity, in order to simplify administrative matters, or for similar reasons, no payments are required; if based on section 1, paragraph (2), sentence 2, of the Law on Remuneration and Compensation in Connection with Court Proceedings no remuneration is required, the amount which would have to be paid without this provision shall be charged; if the expenses are caused by various legal matters, they will be appropriately apportioned to the individual legal matters; expenses for translators who are engaged in order to ensure the rights of blind persons or persons with an impairment of vision (sec 191a, para (1), of the Law Concerning the Constitution of Courts) will not be charged, expenses for interpreters for sign language will only be charged in accordance with sections 464c, 467a, paragraph (1), sentence 2, in conjunction with section 467, paragraph (2), sentence 1, of the Code of Criminal Procedure.

6. In case of transactions outside the agency—

a) The remuneration granted to administrative personnel on the basis of legal provisions (travel expenses, reimbursement of expenses)

b) Costs for the making available of rooms,

c) An amount of 30 cents per kilometer traveled for the use of official motor vehicles;

if the expenses were caused by various legal transactions they will be appropriately apportioned to the individual legal matters.

7. Amounts to be paid to attorneys,

8. Expenses for the transportation of persons,

9. The amounts paid to destitute persons for traveling to the place of a hearing, interrogation, or examination and back, up to the amounts to be paid to witnesses pursuant to the Law on Remuneration and Compensation in Connection with Court Proceedings,

10. Amounts to be paid to third persons for—

a) Transporting animals and items with the exception of payments for postal services, safekeeping animals and items as well as feeding of animals.

b) Searching or examining rooms and objects as well as taking measures in preparation of a search or examination.

c) Guarding of vessels and aircraft.

11. The costs for arrest ordered to enforce a court order.

12. Amounts to be paid pursuant to the) within the scope of administrative assistance.

13. Amounts due to domestic authorities, public institutions, or officials as compensation for expenses of the type designated under numbers 1 through 11, even if, for reasons of reciprocity, in order to simplify administrative matters or for similar reasons, no payments are required; these amounts are limited by the maximum rates for the designated expenses.

14. Amounts due to foreign authorities, institutions, or persons abroad, as well as costs for rendering administrative and legal aid to a foreign country, even if, for reasons of reciprocity, or in order to simplify administrative matters or for similar reasons, no payments are required.

(4) If a Federal administrative authority has issued the administrative order imposing a fine, section 14, paragraph (2), as well as sections 19 through 21 of the Law Concerning Administrative Costs (*Verwaltungskostengesetz*) of 23 June 1970 (Federal Law Gazette I, page 821)) shall be applicable to the cancellation of costs in case of improper handling of subject matter, as well as to the cancellation, remittance, the limitation and reimbursement of costs; otherwise the respective legal provisions of the *Länder* apply.

(5) The person requesting the shipment of files will be charged a lump sum of 12 Euros per shipment, including return shipment by the authorities, for expenses. If the file is kept electronically and transmittal is made electronically, the lump sum shall be 5 Euros.

SECTION 108. LEGAL REMEDY AND EXECUTION

(1) In the proceedings of the administrative authority, the request for a court decision pursuant to section 62 against the—

1. Separate administrative cost demand,

2. Notification of assessment of costs (sec 106), and

3. Assessed amount of fees and expenses

is permitted. In the cases of numbers 1 and 2 the request must be submitted within 2 weeks after service of the notification; immediate recourse against the decision of the court is permitted in the cases of number 2, if the value of the matter in controversy exceeds 200 Euros.

(2) Sections 89 and 90, paragraph (1), apply accordingly to the execution of costs in administrative fining proceedings.

SUBCHAPTER II
PROCEEDINGS OF THE OFFICE OF THE PUBLIC PROSECUTOR

SECTION 108A. (UNTITLED)

(1) If, upon the objection against the administrative order imposing a fine, the office of the public prosecutor discontinues the proceedings before submitting the files to the court, it will render decisions pursuant to section 467a, paragraphs (1) and (2), of the Code of Criminal Procedure.

(2) Within 2 weeks after service, a decision by the court may be requested against the decision of the office of the public prosecutor; section 50, paragraph (2), as well as sections 52 and 62, paragraph (2), apply accordingly.

(3) The decision on the request for assessment (sec 464b, sent 1, of the Code of Criminal Procedure) will be rendered by the record officer of the office of the public prosecutor. The court competent pursuant to section 68 will decide on the objection to the assessment order of the record officer of the office of the public prosecutor.

SUBCHAPTER III
PROCEEDINGS CONCERNING PERMISSIBILITY OF OBJECTION

SECTION 109. (UNTITLED)

(1) If the order of the administrative authority concerning the dismissal of the—

1. Objection (sec 69, para(1)), or

2. Request for restoration to the previous condition because of failure to observe the period for filing an objection

is canceled in the proceedings pursuant to section 62, the final decision pursuant to section 464, paragraphs (1) and (2), of the Code of Criminal Procedure also applies to the costs and expenses of these proceedings.

(2) If the objection of the person concerned to the administrative order imposing a fine is dismissed (secs 70 and 74, para (2)), he will also bear the costs of the court proceedings.

SUBCHAPTER IV
EXPENSES OF THE PERSON CONCERNED

SECTION 109A. (UNTITLED)

(1) If the fine imposed on the person concerned by an administrative order for an offense only amounts to 10 Euros, attorney's fees and expenses will be considered as necessary expenses (sec 464a, para (2), no. 2, of the Code of Criminal

Procedure) only if, due to the difficult factual and legal situation or the importance of the matter for the person concerned, it was necessary to retain an attorney.

(2) As far as the person concerned has incurred expenses which could have been avoided if he had presented mitigating circumstances in time, it may be refrained from charging the treasury with such costs.

CHAPTER ELEVEN
COMPENSATION FOR PROSECUTION MEASURES

SECTION 110. (UNTITLED)

(1) The decision on the obligation to pay compensation for a financial loss which was caused by a prosecution measure in administrative fining proceedings (sec 8 of the Law Concerning Compensation for Criminal Prosecution Measures (Gesetz über die Entschädigung für Strafverfolgungsmaßnahmen) is rendered by the administrative authority by a separate order when the proceedings are concluded.

(2) Within two weeks upon service a request for a court decision on the order pursuant to section 62 may be filed. Immediate appeal is permitted against the court decision.

(3) In the cases of paragraph (1), the administrative authority shall decide on the entitlement to compensation (sec 10 of the Law Concerning Compensation for Criminal Prosecution Measures).

(4) Unless otherwise provided by law, the Federal Government is liable to pay compensation (sec 15 of the Law Concerning Compensation for Criminal Prosecution Measures) in the cases of paragraph (1), if a Federal administrative authority conducts the proceedings, otherwise the *Land* will be liable.

CHAPTER TWELVE
ELECTRONIC DOCUMENTS AND ELECTRONIC FILE MANAGEMENT

SECTION 110A. PREPARATION AND SUBMITTAL OF FORMATTED AND OTHER ELECTRONIC DOCUMENTS TO AUTHORITIES AND COURTS

(1) Statements, requests or their reasons addressed to the authority or the court which, according to this law, must specifically be prepared in writing or must be signed, may be submitted as electronic documents if they are provided with a qualified electronic signature pursuant to the Signature Law and if they can be processed by the authority or the court. Beside the qualified electronic signature, the statutory order pursuant to paragraph (2) may also permit another secure procedure ensuring the authenticity and integrity of the transferred document. An electronic document has been received as soon as the receiving device of the authority or court has recorded it. If a document cannot be processed, the sender shall immediately be informed accordingly and given the general technical conditions which apply. If electronic file management pursuant to section 110b is not authorized a file copy shall be made immediately from the electronic document.

(2) The Federal Government and the governments of the *Länder* shall determine each for their area of responsibility by statutory order the point in time from which the submittal of electronic documents to authorities and courts is possible, as well as the appropriate format for processing of the documents. The Federal Government and the governments of the *Länder* may confer the authority to the competent Federal or *Land* ministries by statutory order. Acceptance of documents in electronic format may be limited to individual authorities, courts or proceedings.

(3) Authorities within the meaning of this Chapter are the public prosecutors offices and administrative authorities to include enforcement authorities as well as authorities of the police service to the extent they perform duties in connection with administrative fine proceedings.

SECTION 110B. ELECTRONIC FILE MANAGEMENT

(1) Files of the proceedings may be managed electronically. The Federal Government and the governments of the *Länder* shall determine for their area of responsibility by statutory order the point in time from which files are managed electronically or may be managed electronically in official proceedings, as well as the applicable organizational and technical general conditions for the preparation, management and storage of electronically managed files. The Federal Government and the governments of the *Länder* may confer the authority by statutory order to the competent Federal or *Land* ministries. Permit to manage files electronically may be limited to individual authorities, courts or proceedings.

(2) Documents and objects of inspection (original texts) which are suitable for conversion and are submitted for the electronically managed files shall be converted into an electronic document to replace the original text, unless otherwise provided by the statutory order pursuant to paragraph (1). The electronic document shall contain a note stating the time when and the person by whom the original was converted. Original texts shall be stored until completion of the proceedings in such a manner that they can be submitted within one week upon request.

(3) Electronic documents prepared pursuant to paragraph (2) shall be taken as the basis of the proceedings if there is no reason to doubt that they are identical with the original text.

(4) If, in addition to the note pursuant to paragraph (2), sentence 2, the electronic document prepared pursuant to paragraph (2) contains a note provided with a qualified signature in accordance with the Signature Law (*Signaturgesetz*) stating—

1. That the copy on the monitor is identical with the original text with regard to contents and image, as well as

2. Whether for the conversion the original text or a copy of the original was used,

the original text may already be destroyed prior to completion of the proceedings. This does not apply to original texts which must be taken into custody or must be secured in any other way as important evidence, or which are subject to confiscation or forfeiture (secs 22 through 29a, and 46 of this Law in conjunction with secs 94, 111b through 111n of the Code of Criminal Procedure). Statements by the person concerned and third parties regarding internal matters of the proceedings as well as single copies attached to them may be destroyed under the prerequisites of sentence 1. In deviation from sentences 1 and 3, it may be determined in the statutory order that the original texts must be kept.

SECTION 110C. PREPARATION OF ELECTRONIC DOCUMENTS BY AUTHORITIES AND COURTS AND SERVICE TO THE PUBLIC PROSECUTOR'S OFFICE

(1) Official or court documents requiring handwritten signature pursuant to this law may be prepared as electronic documents if the responsible persons add their name at the end of the document and a qualified electronic signature in accordance with the Signature Law. Sentence 1 also applies to administrative fine notices, other notices, as well as decisions issued outside a hearing. If an electronic document requiring signature is prepared by automated procedure, the accompanying order shall be signed in its stead. A judgment is considered part of the file if it has been stored on the respective data carrier.

(2) Service to the public prosecutor's office in accordance with section 41 of the Code of Criminal Procedure may also be executed by transmittal of the electronically managed file.

SECTION 110D. PRINTING OF FILES, REVIEW OF FILES AND TRANSMITTAL OF FILES

(1) A file copy can be printed from an electronic document. Section 298, paragraph (2), of the Code of Civil Procedure shall apply accordingly. Existing notes pursuant to section 110b, paragraph (2), sentence 2, and paragraph (4), sentence 1, shall be reflected. In case of a judgment which is available as an electronic document, copies and excerpts may be made in accordance with section 275, paragraph (4), of the Code of Criminal Procedure by printing the file and in case of a judgment available as a hard copy in accordance with section 317, paragraph (5), of the Code of Civil Procedure as electronic document or telefax.

(2) Review of files may be granted by transmittal of electronic documents, their display on a monitor, or by making file print-outs. For the transmittal all the documents shall be provided with a qualified electronic signature pursuant to the Signature Law; they shall be protected against unauthorized taking of notice. After completion of the investigation the defense counsel may, upon request also be granted review of files by authorized automated retrieval of the electronically managed file; sentence 2, first half sentence shall not apply. Section 488, paragraph (3), sentences 1 through 4, of the Code of Criminal Procedure shall apply under the proviso that time, data retrieved, and identity code of the retrieving agency shall be recorded at each retrieval and that the recording of a file number of the recipient is not required.

(3) Forwarding of the file between the agencies conducting the proceedings shall be done by transmittal of electronic documents or file print-outs. If file print-outs are transmitted, section 110b, paragraph (3), shall apply accordingly to them and section 110b, paragraph (2), sentence 3, shall apply accordingly to the storing of electronic documents.

SECTION 110E. TAKING OF EVIDENCE

(1) If an electronic document represents a certificate or another document or if it was prepared instead of such a document, it shall be treated as a document in connection with the taking of evidence. Interrogation of the person responsible for a note pursuant to section 110b, paragraph (2), sentence 2, or paragraph (4), sentence 1, is not required.

(2) After due assessment of the circumstances, the court shall decide if it wants to have the stored original text in addition to the electronic document for the taking of evidence. Sentence 1 shall apply accordingly if forwarding of the file pursuant to section 110d, paragraph (3), sentence 1, was performed by transmittal of file print-outs.

PART III
SPECIFIC ADMINISTRATIVE OFFENSES

CHAPTER ONE
VIOLATION OF GOVERNMENTAL ORDERS

SECTION 111. STATING FALSE NAMES

(1) Whoever makes a false statement or refuses to make a statement at all to a competent authority, to a competent bearer of an office, or to a competent soldier of the Federal armed forces concerning his first name, family or birth name, place or date of birth, marital status, profession, place of residence, address, or nationality, commits an administrative offense.

(2) Whoever through negligence fails to recognize the competence of the authority, of the bearer of an office, or of the soldier, likewise commits an administrative offense.

(3) The administrative offense may be punished by a fine up to 1,000 Euros in the cases of paragraph (1) and by a fine up to 500 Euros in the cases of paragraph (2), unless the act is punishable according to other provisions.

SECTION 112. VIOLATING THE RULES OF THE HOUSE OF A LEGISLATIVE ORGAN

(1) Whoever acts contrary to orders issued by a Federal or *Land* legislative organ or by its president concerning access to legislative buildings or premises, or concerning length of stay, or order and security in the building, or on the premises in general, or in a specific case, commits an administrative offense.

(2) The administrative offense may be punished by a fine up to 5,000 Euros.

(3) In case of orders issued by a Federal legislative organ or its president, paragraphs (1) and (2) do neither apply to members of the Federal Parliament (*Bundestag)* nor to members of the Federal Council and the Federal Government (*Bundesregierung*) and their agents; in case of orders of a legislative organ of a *Land* or its president, neither to members of the legislative organ, of that *Land* nor to members of the *Land* government and its agents.

SECTION 113. UNAUTHORIZED GATHERINGS

(1) Whoever joins a public gathering or fails to leave it in cases where a person exercising governmental authority has lawfully requested the participants to disperse three times, commits an administrative offense.

(2) The perpetrator who negligently fails to recognize that the request is lawful, likewise commits an administrative offense.

(3) In cases of paragraph (1), a fine up to 1,000 Euros and in cases of paragraph (2), a fine not exceeding 500 Euros may be imposed for the administrative offense.

SECTION 114. ENTERING MILITARY INSTALLATIONS

(1) Whoever, intentionally or negligently, contrary to a prohibition by the competent agency, enters a military installation or facility or a locality that is off limits for security reasons, and for the fulfillment of official duties of the Federal armed forces, commits an administrative offense.

(2) The administrative offense may be punished by a fine.

SECTION 115. CONTACT WITH PRISONERS

(1) Whoever, without authorization—

1. Transmits objects or information to a prisoner or receives objects or information from him, or

2. Establishes contact with a prisoner who is inside a penal institution, by words or signs from outside,

commits an administrative offense.

(2) A prisoner is whoever, on the basis of a decision rendered by a criminal court or as a temporarily arrested person, is in the custody of a judicial authority.

(3) The administrative offense and the attempt to commit an administrative offense may be punished by a fine.

CHAPTER TWO
VIOLATION OF PUBLIC ORDER

SECTION 116. PUBLIC INSTIGATION TO COMMIT ADMINISTRATIVE OFFENSES

(1) Whoever in public, at a meeting, or by dissemination of writings, sound carriers or video recordings, stored data, pictures, or representations instigates an act punishable by a fine, commits an administrative offense.

(2) The administrative offense may be punished by a fine. The maximum amount of the fine is assessed according to the maximum amount of the fine imposed for the act to which the perpetrator has instigated.

SECTION 117. INADMISSIBLE NOISE

(1) Whoever, without a justified reason, or to an inadmissible extent, or to an extent avoidable under the circumstances causes noise which is suitable to create considerable annoyance to the general public or the neighborhood or to inflict harm upon the health of others, commits an administrative offense.

(2) The administrative offense may be punished with a fine of up to 5,000 Euros unless the offense can be punished based on other provisions.

SECTION 118. MOLESTATION OF THE PUBLIC

(1) Whoever commits a grossly offensive act that is apt to disturb or endanger the public and to prejudice public order, commits an administrative offense.

(2) The administrative offense may be punished by a fine, unless the act is punishable pursuant to other provisions.

SECTION 119. GROSSLY OFFENSIVE AND DISTURBING ACTS

(1) Whoever—

1. In public, in a manner that is apt to disturb others, or

2. In a grossly offensive manner by dissemination of writings, sound carriers or video recordings, pictures, or representations, or by making stored data available to the public,

offers, announces, or recommends a possibility for the performance of sexual acts or publishes statements of such contents, commits an administrative offense.

(2) Whoever offers, announces, recommends, or publishes, in the manner designated in paragraph (1), means or objects serving sexual use or publishes statements of such contents likewise commits an administrative offense.

(3) Whoever, in public exhibits, posts, demonstrates, or makes accessible in any other manner writings, sound carriers or video recordings, stored data, pictures, and representations of sexual contents at places where this is grossly offensive, likewise commits an administrative offense.

(4) In the cases of paragraph (1), number 1, the administrative offense may be punished by a fine up to 1,000 Euros; in the other cases, by a fine up to 10,000 Euros.

SECTION 120. PROHIBITION TO ENGAGE IN PROSTITUTION; SOLICITING PROSTITUTION

(1) Whoever—

1. Acts contrary to a prohibition issued by statutory order to engage in prostitution at certain places or at certain times during the day, or

2. Offers, announces, recommends by dissemination of writings, sound carriers or video recordings, stored data, representations, or illustrations an opportunity to perform sexual acts for payment or publishes statements of such contents,

commits an administrative offense; equal to the dissemination is the exhibiting, posting, displaying, or otherwise making accessible in public.

(2) The administrative offense may be punished by a fine.

SECTION 121. KEEPING DANGEROUS ANIMALS

(1) Whoever intentionally or negligently—

1. Allows free movement to a dangerous animal of a wild living species or a vicious animal, or

2. Has responsibility for the supervision of such animal and fails to take the necessary measures of precaution to avoid damage which may be caused by the animal

commits an administrative offense.

(2) The administrative offense may be punished by a fine.

SECTION 122. TOTAL INTOXICATION

(1) Whoever intentionally or negligently puts himself in a state of intoxication by the consumption of alcoholic beverages or other intoxicants commits an administrative offense if, in such a state, he commits an act punishable by a fine and a fine cannot be assessed against him for such an act because, due to intoxication, he has not acted culpably or because it cannot be precluded that he has not acted culpably.

(2) The administrative offense may be punished by a fine. The fine may not exceed the amount of the fine which is imposed for the act committed while being in a state of intoxication.

SECTION 123. CONFISCATION, RENDERING UNSERVICEABLE

(1) Objects used in connection with administrative offenses pursuant to section 119 or section 120, paragraph (1), number 2, may be confiscated.

(2) When confiscating writings, sound carriers and video recordings, data storage devices, representations or illustrations, it may be ordered in the cases of section 119, paragraphs (1) and (2), and section 120, paragraph (1), number 2, that—

1. Confiscation be extended to all objects, and

2. Devices such as plates, molds, printing devices, printing blocks, negatives, or stencils used or designed for production be rendered unserviceable,

if the objects and items designated in number 2 are in the possession of the perpetrator or of another person on whose behalf the perpetrator has acted, or are designed for dissemination by these persons. However, such order is given only as required to prevent acts punishable by a fine pursuant to section 119, paragraphs (1) and (2), or section 120, paragraph (1), number 2. Section 27, paragraph (2), applies accordingly to the confiscation; sections 27 and 28 applies accordingly to rendering objects unserviceable.

(3) Paragraphs (1) and (2) are applicable in the cases of section 119, paragraph (2), only to advertising material and to the devices used or designed for its production.

CHAPTER THREE
ABUSE OF STATE INSIGNIA OR INSIGNIA PROTECTED BY THE STATE

SECTION 124. USE OF COATS OF ARMS OR OFFICIAL FLAGS

(1) Whoever, without authorization, uses—

1. The coat of arms of the Federal Republic or of a *Land* or the Federal Eagle or the respective part of a coat of arms of a *Land*, or

2. An official flag of the Federal Republic or of a *Land*

commits an administrative offense.

(2) Coats of arms, parts of coats of arms, and flags that resemble those designated in paragraph (1) so much that they may be mistaken for them shall be deemed equal.

(3) The administrative offense may be punished by a fine.

SECTION 125. USE OF THE RED CROSS OR THE SWISS COAT OF ARMS

(1) Whoever, without authorization, uses the insignia of a red cross on a white field or the designation "Red Cross" or "Geneva Cross" commits an administrative offense.

(2) Whoever, without authorization, uses the coat of arms of the Swiss Confederation also commits an administrative offense.

(3) Insignia, designations, and coats of arms that resemble those designated in paragraphs (1) and (2) so much that they may be mistaken for them, shall be deemed equal.

(4) Paragraphs (1) and (3) apply accordingly to such insignia or designations that, according to international law, are equal to the insignia of the red cross on white field or to the designation "Red Cross."

(5) The administrative offense may be punished by a fine.

SECTION 126. ABUSE OF PROFESSIONAL DRESS OR BADGES

(1) Whoever, without authorization, wears a professional dress or a badge —

1. For persons engaged in nursing or welfare work which are state recognized and approved in the Federal Republic, or

2. Of a religious association recognized by a church or any other religious association of public law

commits an administrative offense.

(2) Professional dress and badges which resemble those designated in paragraph (1) so much that they may be mistaken for them shall be deemed equal.

(3) The administrative offense may be punished by a fine.

SECTION 127. PRODUCTION OR UTILIZATION OF ITEMS WHICH MAY BE USED TO COUNTERFEIT MONEY OR DOCUMENTS

(1) Whoever, without a written permission of the competent office or the persons authorized to give such permission, produces or procures for himself or for another person, offers, keeps, makes available to another, or imports or exports:

1. Plates, molds, printing devices, printing blocks, negatives, stencils, computer programs, or similar devices which due to their type are suited for the production of—

(a) Money, securities equal to money (sec 151 of the Criminal Code), official stamps, payment cards within the meaning of section 152a, paragraph (4), of the Criminal Code, checks, bills of exchange, payment cards with guarantee function within the meaning of section 152b, paragraph (4), of the Criminal Code, or blanks for euro checks;

(b) Public documents or stamps for certification;

2. Blank forms for official documents or stamps for certification,

3. Paper that is similar to a type of paper or resembles it so that it can be mistaken for it, which is used for the production of the documents designated in numbers 1 or 2, and which is especially prepared against counterfeiting, or

4. Holograms or other components used to ensure that the items designated in number 1, letter a are protected against counterfeiting,

commits an administrative offense.

(2) The offender who negligently fails to recognize that there is no written permission from the competent office or the person authorized to give such permission also commits an administrative offense.

(3) Paragraph (1) also applies to money, securities, stamps, documents, stamps for certification, payment cards within the meaning of section 152a, paragraph (4), of the Criminal Code, checks, bills of exchange, payment cards with guarantee function within the meaning of section 152b, paragraph (4), of the Criminal Code, and blanks for euro checks of a foreign currency area.

(4) The administrative offense may, in the cases of paragraph (1), be punished by a fine up to 10,000 Euros; in the cases of paragraph (2), by a fine up to 5,000 Euros.

SECTION 128. PRODUCTION OR DISSEMINATION OF PRINTS SIMILAR TO PAPER MONEY OR ILLUSTRATIONS

(1) Whoever—

1. Produces or disseminates prints or illustrations that, according to their type are suited, to be—

a) Confused with paper money or securities similar to paper money (sec 151 of the Criminal Code) in payment transactions, or

(b) Used to produce such papers which may be confused with others, or

2. Produces, procures for himself or for another, offers, keeps, makes available to another, or imports or exports plates, molds, printing devices, printing blocks, negatives, stencils, computer programs, or similar devices which are suited for the production of prints or illustrations designated in number 1,

commits an administrative offense.

(2) The perpetrator who negligently fails to recognize the possibility for confusion or production within the meaning of paragraph (1), number 1, also commits an administrative offense.

(3) Paragraph (1) also applies to paper money and securities of a foreign currency area.

(4) The administrative offense may, in the cases of paragraph (1), be punished by a fine up to 10,000 Euros; in the case of paragraph (2), by a fine up to 5,000 Euros.

SECTION 129. CONFISCATION

Objects used in connection with an administrative offense pursuant to sections 124 and 126 through 128 may be confiscated.

CHAPTER FOUR
BREACH OF DUTY OF SUPERVISION IN FIRMS AND ENTERPRISES

SECTION 130. (UNTITLED)

(1) Whoever, as the owner of a firm or an enterprise, intentionally or negligently fails to take the supervisory measures required to prevent contraventions of duties in the firm or the enterprise which affect the owner, and the violation of which is subject to punishment or a fine, commits an administrative offense if such a contravention is committed which could have been prevented or made much more difficult by proper supervision. The required supervisory measures also comprise appointment, careful selection, and monitoring of supervisory personnel.

(2) Firm or enterprise within the meaning of paragraph (1) includes a public enterprise.

(3) If the violation of duty is subject to punishment the administrative offense may be punished by a fine up to 1 million Euros. If the violation of duty is subject to a fine, the maximum amount of the fine for a breach of duty of supervision is dependent on the maximum amount of the fine provided for a violation of duty. Sentence 2 also applies in case of a violation of duty which is subject to punishment and a fine at the same time, if the maximum amount of fine for the violation of duty exceeds the maximum amount pursuant to sentence 1.

CHAPTER FIVE
JOINT PROVISIONS

SECTION 131. (UNTITLED)

(1) Administrative authority within the meaning of section 36, paragraph (1), number 1, is—

1. In case of administrative offenses pursuant to section 112 concerning violations of orders issued by the—

a) Federal Parliament or its president, the director at the German Federal Parliament;

b) Federal Council or its president, the director of the Federal Council;

2. In case of administrative offenses pursuant to section 114, the military district administration;

3. In case of administrative offenses pursuant to section 124, concerning a coat of arms or an official flag of the Federal Republic, the Federal Ministry of the Interior (*Bundesministerium des Innern*);

4. In case of administrative offenses pursuant to sections 127 and 128, concerning—

a) Federal securities or Federal special funds, the Federal Agency for Financial Services Supervision (*Bundesanstalt für Finanzdienstleistungsaufsicht*);

b) Money or paper for the production of money, the German Federal Bank (*Deutsche Bundesbank)*;

c) Official stamps, the Federal ministry responsible for the area in which the stamps are produced or issued.

Sentence 1, number 4, letters a and c also apply in case of administrative offenses concerning corresponding securities or stamps of a foreign currency area. Section 36, paragraph (3), applies accordingly in the cases of sentence 1, number 3 and number 4 letter c.

(2) In the cases of sections 122 and 130, the administrative offense is prosecuted only upon request or by authorization if the act committed in a state of intoxication or the violation of duty could be prosecuted only upon request or by authorization.

(3) The procedural provisions applicable to the prosecution of acts committed upon instigation, acts committed in a state of intoxication, or violations of duty, or which would be applicable in the case of section 130 if the violation of duty subject to punishment would be subject to a fine only, apply accordingly to the prosecution for administrative offenses pursuant to sections 116, 122, and 130.

PART IV
FINAL PROVISIONS

SECTION 132. RESTRICTION OF BASIC RIGHTS
The basic rights of bodily inviolability (Art 2, para (2), sent 1, of the Basic Law (*Grundgesetz*)), the freedom of the individual (Art 2, para (2), sent 2, of the Basic Law) and the inviolability of the home (Art 13 of the Basic Law) are restricted under the provisions of this Law.

SECTION 133. TRANSITIONAL REGULATIONS

(1) The presence of the person concerned at the main trial and the procedure in case of his absence are subject to the law effective at the point in time the first summons of the person concerned to appear at the trial is mailed.

(2) Permissibility and admitting of an appeal is subject to the law in effect at the time a judgment is pronounced or a decision is received by the court registry.

(3) Resumption of proceedings is subject to the law in effect at the point in time the court receives a motion.

(4) In the course of proceedings fees and expenses are levied in accordance with the law effective at the time the administrative order imposing a fine is issued.

(5) Section 49c shall be applied from 1 November 2003 to data files existing on 1 November 2002.

SECTION 134. (DELETED)

SECTION 135.
(ENTRY INTO FORCE)