



**Rechtsbelehrung für Auskunftspersonen,  
die sich als Privatklägerschaft konstituiert haben (Untersuchung)**

**ENGLISCH**

**Extract from the Swiss Criminal Proceedings Order (StPO)**

**Art. 178 Definition**

A person shall be interrogated as informant, who:

- a. establishes himself as a private prosecutor;
- b. has not attained the age of 15 years at the time of the interrogation;
- c. is not in a position to understand the subject matter of the interrogation on account of limited powers of judgement;
- d. without himself being accused, may not be excluded as offender or accomplice in the crime under investigation or another criminal offence associated with it;
- e. is to be interrogated about a criminal offence for which he himself is not charged as co-accused person;
- f. is charged in other proceedings on account of an offence connected with the crime under investigation;
- g. has been designated or could be designated as representative of the undertaking in a prosecution conducted against an undertaking, as well as his or her employees.

**Art. 180 (2) Status**

The private prosecutor (Art. 178 (a)) is under a duty to make a statement to the Public Prosecutor, to the courts as well as to the police which shall interrogate them on behalf of the Private Prosecutor. Furthermore, the provisions relating to witnesses are applicable analogously with the exception of Article 176.

**Art. 168 Right to refuse to give evidence by reason of personal relationship**

<sup>1</sup> The following may refuse to give evidence:

- a. the husband or wife of the accused person or whoever maintains in material respects a long-term relationship;
- b. whoever has natural children from the accused person;
- c. those related in direct line or by marriage to the accused person;
- d. brothers and sisters and step brothers and step sisters of the accused person as well as the husband or wife of a brother or sister or a step brother or step sister;
- e. brothers and sisters and step brothers and step sisters of a person connected to the accused person by marriage as well as the husband or wife of a brother or sister or step brother or step sister;
- f. foster-parents, foster-children and foster-brothers and sisters of the accused person;
- g. the person appointed as guardian, financial protector or adviser to the accused person.

<sup>2</sup> The right to refuse to give evidence according to paragraph 1 a. and f. continues if the marriage is dissolved or if the foster relationship no longer exists with a foster family.

<sup>3</sup> A registered personal partnership is given equal treatment to marriage.

<sup>4</sup> The right to refuse to give evidence does not apply if:

- a. the criminal proceedings relate to a crime pursuant to Articles 111-113, 122, 140, 184, 185, 187, 189, 190 or 191 StGB; and
- b. the crime is committed against a person to whom the witness is related according to paragraphs 1-3.

**Art. 169 Right to refuse to give evidence for the protection of oneself or the protection of a connected person**

<sup>1</sup> A person may refuse to give evidence if he or she would so incriminate themselves with their statement that they:

- a. could be made liable under criminal law;
- b. could be made liable under civil law and if the interest in protection outweighs the interest in criminal prosecution

<sup>2</sup> The right to refuse to give evidence also exists if the person would incriminate with their statement a person connected to them within the meaning of Article 168 paragraphs 1-3; Article 168 paragraph 4 remains reserved.

<sup>3</sup> A person may refuse to give evidence if through their statement a substantial risk to life and health or another serious disadvantage threatens to him or her or a person connected to them within the meaning of Article 168 paragraphs 1-3 which may not be prevented with protective measures.

<sup>4</sup> A victim of a crime against sexual integrity may in all cases refuse to make a statement which concerns his or her privacy.

#### **Art. 170 Right to refuse to give evidence by reason of official secrecy**

<sup>1</sup> Civil servants and local government officers within the meaning of Article 110 (3) StGB as well as members of official authorities may refuse to give evidence about secrets which have been entrusted to them in their official capacity or of which they have become aware in the exercise of their office.

<sup>2</sup> They are required to testify if they have been authorised in writing by their immediately superior authority to make a statement.

<sup>3</sup> The immediately superior authority grants authorisation to make a statement if the interest in establishing the truth outweighs the interest in maintaining secrecy.

#### **Art. 171 Right to refuse to give evidence by reason of professional secrecy**

<sup>1</sup> Clergymen, legal attorneys, counsel for the defence, notaries public, medical practitioners, dental surgeons, pharmacists, midwives as well as their assistants may refuse to give evidence in respect of secrets which have been entrusted to them by reason of their professions.

<sup>2</sup> They are required to testify if they:

a. are required by law to make notification; or

b. have been released from the duty to maintain secrecy pursuant to Article 321 (2) StGB by the person entitled to confidentiality or by the authority concerned.

<sup>3</sup> The prosecuting authority also takes account of professional secrecy on release from the duty to maintain secrecy, if the person required to maintain confidentiality substantiates that the interest in maintaining secrecy of the person entitled to confidentiality predominates.

<sup>4</sup> The law concerning legal attorneys dated the 23<sup>rd</sup> June 2000 remains reserved.

#### **Art. 172 Protection of sources of persons engaged in the media**

<sup>1</sup> Persons who are vocationally concerned with publication of information in the editorial part of a medium of information appearing periodically as well as their assistants may refuse to give evidence in respect of the identity of the author or in respect of the contents and sources of their information.

<sup>2</sup> They are required to testify if:

a. evidence is required in order to save a person from an immediate risk to life and health;

b. one of the following crimes cannot be solved without the testimony:

1. culpable homicide within the meaning of Articles 111-113 StGB,

2. crimes which carry a term of imprisonment of at least 3 years,

3. criminal offences pursuant to Articles 187, 189, 190, 191, 197 (3), 260<sup>ter</sup>, 260<sup>quinquies</sup>, 305<sup>bis</sup>, 305<sup>ter</sup> and 322<sup>ter</sup>-322<sup>septies</sup> StGB,

4. criminal offences pursuant to Article 19 (2) of the law concerning narcotics dated the 3<sup>rd</sup> October 1951.

#### **Art. 173 Right to refuse to give evidence for further duties to maintain secrecy**

<sup>1</sup> Whoever according to the following conditions is required to safeguard professional secrets, is required to give evidence if the interest in establishing the truth outweighs the interest in maintaining secrecy:

a. Article 321<sup>bis</sup> StGB;

b. Article 139 (3) of the Swiss Civil Code;

c. Article 2 of the federal law dated the 9<sup>th</sup> October 1981 concerning motherhood advice centres;

d. Article 11 of the law concerning assistance for victims dated the 23<sup>rd</sup> March 2007;

e. Article 15 (2) of the law concerning narcotics dated the 3<sup>rd</sup> October 1951.

<sup>2</sup> Persons holding other secrets protected by law are required to give evidence. The presiding judge may release them from the duty to give evidence if they are able to substantiate that the interest in maintaining secrecy outweighs the interest in establishing the truth.

#### **Art. 174 Decision on acceptance of refusal to give evidence**

<sup>1</sup> The following decide on acceptability of refusal to give evidence:

a. in preliminary proceedings: the interrogating authority;

b. after institution of proceedings: the court.

<sup>2</sup> The witness may demand the judgement of the appeal instance immediately after pronouncement of the decision.

<sup>3</sup> The witness has the right to refuse to give evidence until the decision of the appeal instance.

#### **Art. 175 Exercise of the right to refuse to give evidence**

<sup>1</sup> The witness may at any time invoke the right to refuse to give evidence or revoke a waiver.

<sup>2</sup> Statements which a witness has made after receiving information on the right to refuse to give evidence may be used as evidence including if the witness invokes the right to refuse to give evidence or revokes a waiver of the right of refusal at a later date.

#### **Art. 427 Duty to bear costs of the private prosecutor and the person entering a petition**

<sup>1</sup> Court costs may be ordered against the private prosecutor which shall have been occasioned as a result of their petitions for civil remedy, if

- a. if proceedings are abandoned or the accused person is acquitted;
- b. the private prosecutor withdraws the civil action before the end of the trial at first instance;
- c. the civil action is dismissed or referred to the civil court.

<sup>2</sup> The court costs for wrongful petitions may be ordered against the person entering the petition, to the extent that he or she has brought about institution of proceedings wantonly or with gross negligence or hampered their conduct, or the private prosecutor:

- a. if proceedings are abandoned or the accused person is acquitted; and
- b. to such an extent as the accused person is not liable to pay costs pursuant to Article 426 (2).

<sup>3</sup> The court costs shall normally borne by the Federation or the Canton if the person entering a petition withdraws the charge within the scope of a settlement negotiated by the Public Prosecutor.

<sup>4</sup> An agreement between the person entering a petition and the accused person concerning payment of costs on withdrawal of the charge shall require approval from the authority ordering the stay in proceedings. The agreement shall not result in a disadvantage to the Federation or the Canton.

## **Extract from the Swiss Penal Code (StGB)**

### **Art. 303 False accusation**

1. Whosoever shall accuse an innocent person before the Administration of a felony or misdemeanour contrary to better judgement with the intent to bring about a criminal prosecution against him,

whosoever shall in another manner make malicious arrangements with the intent to bring about a criminal prosecution against an innocent person,

shall be punished by imprisonment or a fine.

2. The punishment shall be a term of imprisonment of up to three years or a fine if the false accusation shall concern a misdemeanour.

### **Art. 304 Misguidance of the administration of justice**

1. Whosoever contrary to better judgement shall report to the Administration that a criminal act has been committed,

whosoever shall himself falsely admit commission of an offence to the Administration,

shall be punished by imprisonment of up to three years or a fine.

2. The judge may circumvent a punishment in particularly trivial cases.

### **Art. 305 Aiding and abetting**

<sup>1</sup> Whosoever shall assist another in evading prosecution, execution of sentence or execution of the measures provided for in Articles 59-61, 63 and 64, shall be punished by imprisonment of up to three years or a fine.

<sup>1bis</sup> Whoever shall assist another who is being prosecuted or shall have been sentenced abroad on account of a crime pursuant to Article 101 in evading prosecution there, or implementation of a custodial sentence there, or a measure within the meaning of Articles 59-61, 63 or 64, shall likewise be punished.

<sup>2</sup> The judge may circumvent a punishment if the offender shall be so closely in a relationship to the accomplice that his conduct shall be pardonable.