

**XR GERMANY**

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**LEGAL  
ADVICE AND TIPS  
FOR XR ACTIONS  
IN BERLIN**

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*(SEPTEMBER 2020)*



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# PREFACE

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This is a collection of legal information intended to prepare you for participating in XR Actions. It was written by the Legal Team Berlin - other federal states in Germany have their own assembly and police laws. Please inform yourself in advance about actions in other states by contacting the local Legal Team, as some details may differ. Take the time to read this brochure, especially if you are not familiar with the subject matter.

Civil disobedience - the deliberate transgression of state rules - can be a very effective tool to bring about political change. However, it can lead to a series of unpleasant reactions from the state, for which you should be prepared. Think about what you want to do, where your limits are and how you can prepare yourself. But don't let this intimidate you. The following state measures can, but do not have to occur.

Contact the Legal Team with questions or problems before and after actions.

**You can contact the national legal team:**

- on Wire (encrypted Messenger, available free of charge for desktop and smartphone) at @xrlegalde
- via e-mail legalteam@extinctionrebellion.de  
(PGP Key unter [www.extinctionrebellion.de/legal](http://www.extinctionrebellion.de/legal),  
Fingerprint: 0xDC11 8F0D ED3D 1CE4)

**The Berlin Legal Team can be contacted:**

- on Wire at @XR\_Legal\_Team\_Berlin
- via e-mail legalteamberlin@extinctionrebellion.de  
(PGP Key unter [www.extinctionrebellion.de/legal](http://www.extinctionrebellion.de/legal),  
Fingerprint: B283 F690 C27A 853A B0F6 CE81 2E50 5989 3E3E 1BA5)

In short, the most important advice when dealing with the police is:

**KEEP CALM!  
STAY POLITE!  
SILENCE IS KEY!  
DON'T SIGN ANYTHING!**

In principle, civil disobedience may be associated with criminal offences or misdemeanours. Additionally, there can be administrative or civil consequences.

**A criminal offence (eine Straftat)** is an unlawful act that can be categorized as a criminal offence under the applicable criminal law. The penalty may be a fine and/or imprisonment. In such cases a court must take action, which does not mean, however, that in every instance there will be a court procedure (refer to the example below: penalty order).

**Administrative offences (Ordnungswidrigkeiten)** are unlawful acts which do not amount to a criminal offence. In particular, they are only subject to a fine and do not have to involve judicial proceedings, but can be dealt with by an administrative authority.

It may also be the case that rebels are asked to pay for the measures applied against them (e.g. eviction, see 5.1.4) on the basis of **administrative law** (see also: 6.5 - Legal costs).

In addition, if XR actions cause property damage or economic loss, those affected may, under certain circumstances, take civil action against rebels and claim compensation for damages.

# II.

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# GENERAL BEHAVIOURAL GUIDELINES

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## ***2.1 Affinity Groups***

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Participating in an action with rebels whom you know and can trust facilitates the best and safest behaviour during the action. Therefore, we recommend forming affinity groups. Always consider your fellow rebels and remember that you are not alone. This includes after the action!

During action training and in our handout for affinity groups we provide further useful tips. You can find this handout on the XR website.

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## ***2.2 What to do if someone gets hurt during the action?***

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Be sure to take care of injured people immediately and help with transportation. Contact local paramedics at the scene, call 112 and ask bystanders for help.

If you are injured and need help, be sure to make no statement regarding the action to the emergency services or the hospital that could incriminate yourself or others. Do otherwise only if it is necessary from a health perspective. Just state your personal details and make sure you get a medical certificate!

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## ***2.3 If someone is arrested: GeSaFon and Gesasupport***

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(GeSa = Prisoners' Collection Point. The place where arrested activists are taken for short-term custody).

For larger actions in Berlin there is a GeSaFon organised by the Berlin team. Up until Wave 2019 the Berlin Investigation Committee (EA) of the left/left-wing radical scene has been providing this telephone service for us. Unfortunately, this is no longer the case. The GeSaFon number of XR is always provided on short notice.

Our GeSaFon service is primarily intended to enable lawyers who work with us to be called to court if arrested people are to be brought before a judge. A judge must be appointed to determine who should be brought into remand custody (Untersuchungshaft, or U-Haft) in addition to the short-term custody in the Gesa. The GeSaFon is to ensure that people do not simply disappear into

custody without our knowledge. The risk of being taken into custody during XR actions is particularly high in the case of ID refusal, repeated offences, residence abroad or generally in the case of an unsettled residence and domicile status. Please contact the Legal Team before the action if ID denial is considered.

Even if a summary trial is to be conducted against you, we want to make sure that you have legal support.

If you are at the police station or at the GeSa, you have the right to make two successful calls. Claim them and use one of your calls to inform the GeSaFon - this means that you must have written down the relevant numbers somewhere on your body in advance or memorised them. (Notes on paper or in your mobile phone can be taken from you so that you do not have them available at the crucial moment).

In your conversation with GeSaFon, restrict yourself to the essential and uncritical information (if the police know this): your name, date of birth and place of residence. Tell them where you are being held, what the charge against you is and what the police intend to do with you. Under no circumstances say what you or others have done or have not done. Also call GeSaFon again after your release, so that in the end it is clear to us whether everyone is out again. You may also leave a message on the answering machine, in which case leave your information on the machine.

Another advantage of calling GeSaFon is that we can inform GeSaSupport (even if it's clear that you'll be out soon), who will, in the best case, welcome you with some biscuits, tea and, if necessary, some change for the public transport if you come from GeSa or the police station. Since the police are not always so cooperative and tell us where the prisoners are being taken, your call is a great advantage for us.

If you would like to organise a GeSa(Fon)-Support for a smaller action in your town yourself, contact your legal team in time and with confidence. We will gladly help you! If time is too short, please contact the local legal emergency service.

## ***2.4 Contact with the police***

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It is always advisable to be polite and friendly towards the police. It is XR's DNA and culture to win the hearts of all and to be open to all rebels with respect and friendliness – this includes the police, government officials\* and employees in criticised institutions.

XR strictly excludes any form of violence, aggression or provocation of a physical or psychological nature against the police. Please remind other rebels of this as well.

Nevertheless, the most important point to bear in mind is that you should **not make any statements** to the police or other government agencies. It is not a problem to talk to the police about the climate crisis or to address them about their responsibility. But don't get involved in trivial „chit-chat“ about yourself as a person, your fellow rebels or the action - not in the street, not during ID checks and not during interrogations at the station. In the worst-case scenario, you may help to incriminate yourself or others. Don't say anything about what you didn't do, because those are also statements that can be used against you. It may be the case that the police promise that the consequences for you will be less severe if you „cooperate“, i.e. make statements or sign something. That's not true, so don't let it influence you.

Be aware that the police does not always act in accordance with the law and may do things that can later be appealed against and for which they can be sued. So always pay close attention to the behaviour of the policemen. The non-violent approach, enshrined in our consensus on action, also reduces legal dangers, especially if this is maintained when the police uses force.

Dealing with the police can also lead to situations in which you can be accused of criminal offences. This is particularly the matter in the following situations:

#### **2.4.1 Resisting against enforcement officers (§113 StGB)**

Active resistance through the use of force or threat of force against enforcement officers is punishable by law. This means that purely passive resistance (e.g. letting the person carry you away) is not a criminal act. However, violence is defined very broadly in this context. Holding onto anything (whether other rebels or objects) or chaining/gluing yourself to something can be considered as resistance, as the police must actively use force to overcome resistance<sup>1</sup>.

#### **2.4.2 Assaulting enforcement officers (§114 StGB)**

If in the heat of the situation, despite the fundamental non-violence tactic of XR, actions occur, which can be defined as kicking, punching or pushing against police officers (even if no one is actually caught/injured), this can be considered as assault. It is particularly important to prevent this through sensible behaviour, also because the consequences is a minimum sentence of three months (probation or imprisonment).

#### **2.4.3. Violation of the public peace (§125 StGB)**

Violation of the public peace (Landfriedensbruch) is the legal term for something like a „riot“. To uphold this accusation, the court has to be able to prove that you either behaved violently against people or objects, for example during a blockade or a demonstration, or that you supported such behaviour in others.

#### **2.4.4 Photos & pictures of police officers:**

Pictures of demonstrations in which the depicted persons have taken part are permitted. This also applies to police operations, because it is a so-called "event of contemporary history". Filming of police officers is generally permitted.

BUT: Focusing on individual persons is punishable by law. So-called "portrait photos" in which individual persons are in the foreground should be pixelated or the faces otherwise made unrecognisable before you publish them. (Police identification numbers can of course remain recognisable).

Otherwise you may face legal proceedings because of § 33 Art Copyright Act (Kunsturhebergesetz). The crime will only be prosecuted upon request, but police officers are also active on social media. We even know of orders of punishment against rebels. But the police are not allowed to force you to delete recordings or demand your personal data, unless they have concrete evidence that you are publishing recordings that are illegal. (BVerfG – Federal Constitutional Court – decision of 24 July 2015, ref. 1 BvR 2501/13)

#### **Attention with sound recordings!**

In the case of sound recordings of the non-publicly spoken word - even if they are only mobile phone videos - you are threatened with proceedings for breach of confidentiality of the word according to §201 StGB (German Criminal Code), regardless of whether you want to publish the recording. According to case law, this also applies to police measures. The assumption that the measure is illegal does not lead to the exclusion of the offence. Public announcements, e.g. to the entire assembly, can of course be recorded.

<sup>1</sup> Examples of case-law regarding the use of force: Force is involved if the person who is to be detained defends himself/herself actively and energetically against detention (see RG 2 411, Köln VRS 71 185, M-Schroeder II 71/17; zw. RG 28 1), uses bodily movements to resist the grab of a police officer (see Hamburg NJW 76, 2174; Dresden NJW 01, 3643), holds him/herself onto objects and presses their feet against the ground (BVerfG NJW 06, 136).

By contrast, demonstrators who run towards the police or a police block with the aim to prevent those officers from attacking and detaining all demonstrators, do not fall into this category (see Hamm BeckRS 08 Nr. 20995)

These are examples of jurisprudence which may change over time. In principle, however, it is helpful - especially in the right of assembly - to concretize the laws. Here the law describes the term „violence“.

### **Documents from ongoing criminal and fine proceedings**

Charges, orders or other official documents relating to criminal proceedings, proceedings for the imposition of fines or disciplinary proceedings (in whole or in part) may not be published in text form before the conclusion of the proceedings or judgment at first instance. § 353 d) StGB is a criminal offence. But once the judgement has been pronounced, you do not have to wait for the written copy. In general: Data protection also applies to police officers and administrative officials. So please always make names unrecognisable.

### **2.5 Straftatbestände zum Ehrenschutz**

- The German legal system does not recognise any special protection of honour for public officials or special offences for "insulting a public official" (exception: denigration of the Federal President).
- Honour protection is only valid from a certain minimum level of concretisation. General job titles such as "all politicians" & "all police officers" are not sufficient. (Attention: "German police officers" is considered to be sufficiently concrete).

#### **2.5.1 Insult (§185 StGB)**

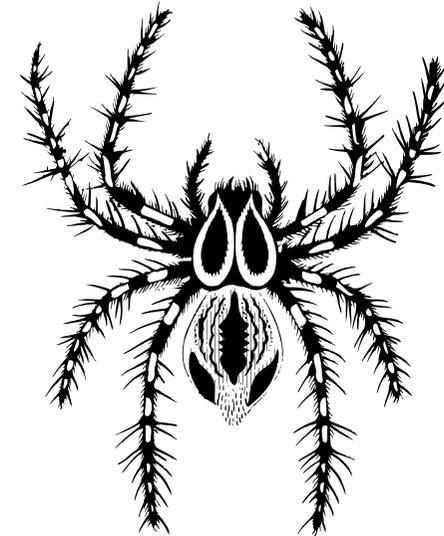
Insulting civil servants can have serious legal consequences, as insulting them can be a criminal offence. Be careful: it can be an insult if you are on first-name terms with the police. Statements to a police officer who are not subjective in character but criticise the police measure itself are usually permissible. Non-violent communication and respectful interaction with each other are important in this context, do not let yourself be provoked, remain calm but determined.

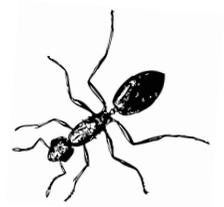
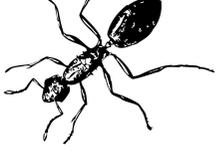
#### **2.5.2 Defamation (§ 186 StGB)**

This refers to degrading factual allegations, such as the allegation of bribery. A fact is a statement that is objectively verifiable, i.e. accessible to evidence. Freedom of expression does not apply to factual claims. The offence is can already be given if you cannot prove that the alleged facts are true.

#### **2.5.3 Deliberate defamation (libel) according to (§ 187 StGB)**

Anyone who deliberately makes untrue, disparaging factual statements must expect to be punished for libel.





# III.

# RIGHT TO ASSEMBLY

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extinction  
rebellion



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## 3.1 Basics

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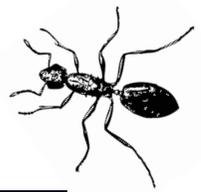
An assembly in the legal sense exists when at least two people do something that is aimed at forming the public opinion - whether registered or not. **Therefore, the right of assembly is relevant for all XR actions.** The right to assemble peacefully is a constitutional right (Article 8 of the German Basic Law), which is why according to the Federal Constitutional Court, assemblies (including those which are unregistered) can only be dissolved by the police if they present a „danger to public safety“ (more on this below).

Contrary to the widespread understanding that assemblies must be „approved“, there is only an obligation to register, i.e. the authorities must be informed but not asked for permission. However, certain conditions may be imposed after notification, which then must be complied with. These conditions must be justified by the authority responsible for handling assemblies and under certain circumstances an objection may be lodged.

Participants and organisers of an assembly have certain rights as well as duties. This is regulated in the Assembly Act. Bavaria, Lower Saxony, Saxony, Saxony-Anhalt and Schleswig-Holstein have passed their own assembly laws. In all other states, the Federal Assembly Act applies.

**The statements made in this brochure are based on the Federal Assembly Act (BVersG) – thus, regarding actions in the aforementioned states, it is crucial that you check whether there are any differences! Special rules also apply in the so-called „pacified districts“ around legislative bodies (e.g. parliaments) of the Federation and of the federal states.**

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## 3.2 Rights and duties of participants

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### 3.2.1 Protection against police measures

The fundamental right to freedom of assembly is a valuable asset. Therefore, police measures such as searches, bans from premises by police order or detention during a meeting - including if they are unannounced as well as on the way to and from the assembly - may only be carried out under certain conditions.

During an ongoing, unresolved or forbidden assembly, the police may take action against participants in three situations:

- if there is an immediate danger to public order and safety and the police would have to dissolve the meeting, without taking action against individual participants. However, note that the term „public order and safety“ is broadly interpreted; it includes all laws and state rules of conduct as well as the rights of others.
- if individual participants „grossly disturb“ the course of a meeting, the police can exclude them from the assembly (and afterwards, in accordance with the situation, take action against them).
- if criminal offences or administrative offences are committed, the police may prosecute and take necessary measures against those persons about whom an initial suspicion exists

In principle, before an assembly takes place the police can act in accordance with general police and regulatory law, i.e. they may take measures to prevent dangers, e.g. searches or identity checks. However, these measures may not result in preventing those who are affected from participating in the assembly.

### 3.2.2 Dissolution of assemblies by the police, forbidden meetings and conditions

A meeting can be dissolved by the assembly authority or the police if it is unpeaceful, conditions are violated or if it is not registered. According to the Federal Constitutional Court there must be a danger to public safety for a dissolution to be lawful - however, this term is very broad (see above).

The dissolution must be clear and unambiguous. The participants are then obliged to leave the place of assembly immediately. Not to do so is an administrative offence (§ 29 BVerfGG).

In the event of non-compliance, bans from the premises may be issued and the police may take people into custody (in *Gewahrsam nehmen*). Since the purpose of the dissolution is to disperse the assembly, encirclement is only permissible in exceptional cases. If you don't comply with a police order banning you from the premises, the police can use physical coercion against you, i.e. carry you away. In some federal states such non-compliance is also a separate administrative offence, but not in Berlin. However, take note of the general information on dealing with the police (see 2.3).

Participating in an assembly, which has been banned in advance or violating the conditions set are administrative offences. It is a criminal offence for the leaders of the assembly to carry out the assembly in spite of a ban or to hold it in a manner substantially different as stated in the registration or to fail to comply with issued conditions.

### 3.2.3 Spontaneous and urgent assemblies

Under certain instances, bans from premises or detentions can be taken as an opportunity to register an urgent assembly. Additionally, spontaneous assemblies may also be conducted. The participants of these meetings are protected from detention, according to the right of assembly.

The difference between spontaneous (Spontanversammlungen) and urgent assemblies (Eilversammlungen) is that although urgent assemblies occur on short notice there is still enough time to inform the assembly authorities or the police. Like regular assemblies, urgent assemblies require a leader. In contrast, spontaneous assemblies are the direct result of an unforeseen situation and have no leader.

For more information on spontaneous and urgent meetings, please visit the XR website where a handout is to be found in the Legal section ([www.extinctionrebellion.de/legal](http://www.extinctionrebellion.de/legal)).

### **3.2.4 Prohibited items and ban on masking and disguise**

The carrying of weapons and so-called „protective weapons“ (objects used for defence against police measures) as well as the concealment of one’s identity through disguise are criminal offences (§27 BVersG). Everyday objects such as pocket knives or screwdrivers can also be considered weapons. Therefore, think carefully about what you take with you. Carrying objects which are suitable and intended for disguise is solely an administrative offence (§29 BversG).

The ban on protective weapons and disguise is rather vague and is sometimes used by the police if nothing else can be found. In both cases, potentially all kinds of everyday objects can be included - the decisive factor is whether the will to use them as a defence against enforcement measures or as a disguise can be identified. For example, a bicycle helmet can also be carried simply because the person came by bike or a scarf and sunglasses because of the weather.

Regarding disguise, an exception applies for example to masks or make up, if they are related to the subject of the meeting. For instance, persons demonstrating against mass extinction, may dress up with a mask of an endangered species.

### **3.2.5 Filming by the police**

According to the Federal Assembly Act, the police may only film participants of assemblies, if there are existing indications that they pose a considerable threat to public safety and order (§ 19a BVersG). In addition to that, Berlin has a special regulation on the „Recording of images and sound at open-air meetings and marches“, which allows the police to make “recordings for a general overview” for the management and steering of the police operation if the assembly is so large or confusing that this is necessary for risk assessment.

### ***3.3 Unregistered assemblies***

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The mere participation in unregistered assemblies has no legal consequences, except within the pacified districts around the legislative bodies on a national and state level, as well as around the Federal Constitutional Court in Karlsruhe. It is considered neither a crime nor an administrative offence, as long as the assembly has not been dissolved by the police.

However, leading an unannounced assembly is a criminal offence (§26 BVersG). It is therefore very important to ensure that no person can be identified as a leader. In general, the police will try to find one or more persons whom they can investigate for managing an unannounced assembly. Therefore, it makes sense to avoid one person repeatedly making announcements, walking at the front of the action or in any other way presenting themselves as a leader. It may also be useful to alternate who is carrying out communication with the police. Anyone who speaks to the police as a contact person for the group should make clear that they are not a leader, should consult with the group repeatedly and not make decisions alone. There is no reason for these people to give their personal details to the police, unless the police explicitly asks for them.

**Note: Pacified areas**

Pacified areas, also known as banned areas, are located around the Bundestag, Bundesrat, Federal Constitutional Court and the state parliaments. No open-air demonstrations may be held there unless they have been approved in advance by the respective president. Additional costs may be incurred by the federal bodies in addition to the usual administrative irregularities relating to the law on assemblies.

***3.4 Organization of registered meetings***

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The organisers of meetings have further rights and obligations and certain rules and recommendations should be complied with when registering. If you are planning an action and want to register an assembly or if you are considering using urgent or spontaneous assemblies strategically, the Legal Team can provide you with information.

***3.5 Practical information on registration***

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What actions can I register and what can I do if the police see things differently?

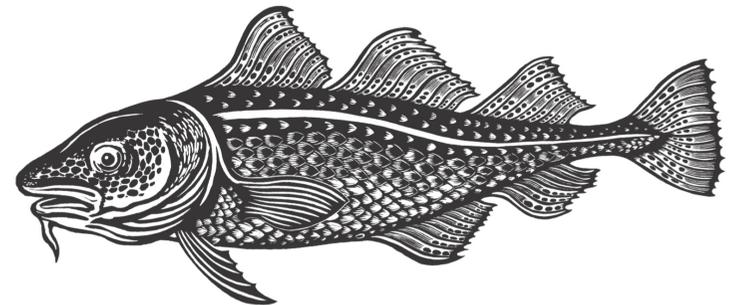
Freedom of assembly goes further than most people think. You have the freedom to determine the place, time and content of your action in order to achieve the greatest possible success in attracting attention. Swarmings, for example, are in most cases eligible for registration if the people concerned are only held up for a few minutes (e.g. for a green phase at the traffic lights). You will find further information on this under point 4.1.

You do not have to be relegated to any suburb or a traffic-calmed street. Temporary obstructions of traffic are to be accepted. Authorities and police have a duty to cooperate in a way that is conducive to the assembly. (BVerfGE 69, 315/355 ff.)

The most promising approach is to explain in the registration form why it is precisely this particular place and this particular form of action that is needed, e.g. "We want to point out the failure of local transport policy to reduce CO2. There is still no proper cycle path on the X-road. That is why we want to hold a so-called Swarming at the traffic lights there. For this purpose we want to block the X-street there during every second green phase for cars by stopping and putting up signs to stop cars, in order to talk to the stopped car drivers about traffic policy and the climate emergency, if they so wish. Freedom of assembly is particularly important in public street space, which not only has a traffic function, but above all a communication function. (BVerfGE 128, 226, 251).

It is important to always make it clear that your main concern is communication and visible expression of opinion, not just preventing and blocking.

Most cities offer an e-mail form to register for meetings. There you can usually also tick which tools you want to use. It is important to note that if you want to use something other than what is indicated there, this is not prohibited. You have to register and explain what you need it for. Masks are also allowed if you have a good argumentation. (e.g. as a necessary part of a role play)



Don't be surprised if your mobile phone rings shortly after sending your e-mail to the assembly authority. Take it as an invitation to informal cooperation talks and confidence-building measures. Of course, the assembly authority has the right to set limits on your freedom of action to prevent danger. But only if it can also name concrete dangers. For this purpose, comprehensible, actual points of reference are required. Mere assumptions are not sufficient for this purpose (cf. BVerfG, B.v. 20.12.2012). So it is worthwhile to follow up and insist on your freedom of assembly in a friendly but firm manner.

### ***3.6 Demonstrations at airports***

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Airports may be designated as public places. If this is the case, meetings can be registered there. However, care should always be taken to ensure that an airport is a security sensitive area. This means that there may be more restrictions and the police may take more sensitive measures.

#### **1. The airport is largely publicly owned**

According to the Fraport ruling of the Federal Constitutional Court of 22 February 2011, freedom of assembly at Frankfurt Airport is guaranteed in particular because the company that runs it (the operating company) is publicly owned. Companies in public ownership are in principle accountable to the citizen and are bound by basic rights. Assemblies at airports which are largely or entirely publicly owned are therefore protected by freedom of assembly.

#### **2. The airport is private but at the same time an area for general communication and meetings**

If the airport is in private hands, there may nevertheless be an indirect effect of fundamental rights. This is the case where the airport site is designated as a place of public transport. The airport is then considered to be a place of general communicative traffic, similarly to public roads, paths and squares, as well as shopping centres, shopping arcades, etc. Freedom of assembly must be granted in such places. However, it should be noted that freedom of assembly does not grant the right of access to places which are not generally accessible to the public or to which access is only granted for a specific purpose recognizable/judging by external circumstances. Often, especially at large airports close to cities, people wish to enter them for other purposes, such as shopping or visiting exhibitions, which justifies the opening to public transport. It is best to research in detail on the airport's website and on site. Think carefully about what the airport advertises and what its image is.





# IV.

# FORMS OF ACTION



Die Infos in dieser Broschüre zum Versammlungsrecht, zu den Voraussetzungen der Auflösung einer Versammlung und zu den möglichen polizeilichen Maßnahmen nach einer Auflösung gelten für alle hier aufgeführten Aktionsformen. In den hier folgenden Absätzen geht es vor allem darum, welche rechtlichen Konsequenzen verschiedene Aktionsformen **zusätzlich** haben können.

## *4.1 Blockades and swarming*

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**Situation:** rebels block for example a bridge, a road, rails or another place either through sitting down or swarming, for example by (briefly) hindering traffic at a pedestrian crossing after the green light turned red. This is intended to disrupt everyday life or planned processes.

Unfortunately, car drivers often react aggressively to Swarmings. In some cases, rebels even had to save themselves by jumping away quickly, because cars had driven directly towards them at high speed.

For your safety, we therefore recommend the registration of Swarmings where you only want to stop the cars for a short time (e.g. only for a green phase at the traffic lights) as a meeting. Registered Swarmings are protected by the police. Your persuasion work will be much more promising, because you can approach the drivers and talk to them in peace, instead of having to stand on the sidelines to protect the rebels on the street. Tips for registration can be found under point 3.5.

As political assemblies, even unannounced blockades or swarming enjoy protection under the constitutional right to freedom of assembly, as long as the blockade serves the purpose of expressing an opinion (and not only to achieve a concrete goal, e.g. to prevent a certain place from being reached).

If you participate in a blockade or swarming, you can be accused of the following crimes:

#### **4.1.1 Coercion (Nötigung), § 240 StGB**

To coerce is defined as forcing a person to behave against their will with actual force or by threatening them with a „sensitive evil“. Since drivers may not, according to the law, leave their car unattended in a traffic jam, they are ‘forced’ by a blockade to remain in their spot.

If coercion is committed within the framework of an assembly protected by Article 8 of the German Constitution and this coercion can be brought in connection with the assembly, the disturbance caused (duration of the blockade, urgency of the continuation of the journey e.g. ambulance transport, possibilities of bypassing, prior notification of the assembly, endangerment of road users) is weighed against the constitutional right to assembly. On the one hand, there is the duration of the blockade, the danger to road users, the possibilities of bypassing or the option of a prior announcement. On the other hand, it is examined whether there was a connection between the political statement of the assembly and the place and time of the blockade. The coercion is only „reprehensible“ (§ 240 II StGB) and thus punishable if according to the court’s opinion the disturbance outweighs the right to assembly.

If the blockade is only short-term, there may be alternative routes for drivers to consider and if there is no danger, coercion during an assembly is not reprehensible and therefore not punishable. By contrast, if the blockade lasts several hours and there is no alternative possibility for drivers to take, an accusation as well as a fine for coercion must be expected (see also: 6.5 - Legal costs). Emergency transport and fire brigade must always be allowed to pass.

#### **4.1.2 Dangerous interference with road traffic, § 315b StGB (GCC)**

Obstructing road traffic by blocking the road and thus endangering a person’s life or risking injury, or endangering personal property of a significant value (from approx. 750 €), constitutes a punishable and dangerous intervention into road traffic. There must be a near-accident, i.e. an event in which an uninvolved observer comes to the conclusion that „it was only by chance than an accident was avoided, but it just as easily could have ended badly“.

In the case of blockades or swarming this can be avoided, for example by walking over the street when the traffic light is green as well as making sure that rebels are always clearly visible. Furthermore, it should always be considered how accidents can be avoided in each particular traffic situation. It should also be borne in mind that accidents between others parties using the road can occur, which might have been triggered by the blockade or swarming.

#### **4.2 Chaining, pasting, stickers and occupations**

**Situation:** Rebels chain themselves for example with bike locks or other chain locks, or glue themselves to a fence or other public place, or to a private place such as a shopping centre or company headquarters. Alternatively, simply by being present they may occupy a property, building, place, tree or otherwise.

Possible criminal charges in this context beside Coercion are:

#### **4.2.1 Trespassing (Hausfriedensbruch), § 123 StGB (German Penal Code)**

If the action takes place on private property or in a public building, which is but locked and intended „for government service or traffic“ building (e.g. town hall), it might result in the accusation of trespassing. However, trespassing only happens if either a clear barrier (fence, gates, closed doors...) has been overcome or, if one does not leave the house at the request of the landlord. The landlord must first file a complaint before the police can come and possibly evict (§123 Abs. 2 StGB). In addition to criminal proceedings for trespassing, there may also be house bans.

#### **4.2.2 Resistance to enforcement officers, § 113 StGB**

When the police arrive, they will assess the situation and probably ask you to undo the chain or whatever you use. If you do not comply with this request, they will usually undo you after some time with their tools (bolt cutters, solvents etc.). Unfortunately, this often leads to situations that can be painful for the person concerned, or to the police threatening to inflict great pain or the risk of serious injury. Therefore, and also to be prepared for emergencies, you should always be able to release yourself from the lock-on at any time. It is not enough for rebels to stay around who can help you out, because during the evacuation all those present are usually pushed away by the police.

By disregarding the call you are resisting the police and can be prosecuted for "resisting enforcement officers". Although the wording of the law provides for imprisonment of up to three years or a fine, a prison sentence is only possible if you have a criminal record or are undergoing a suspended sentence. In the vast majority of cases, suspensions against monetary restrictions or orders to pay a fine would be made.

According to §113 Abs. 2 StGB, however, the so-called common state of knowledge (e.g. if you are chained to several people) or resistance with dangerous tools such as knives, scissors or screwdrivers (in individual cases, courts have allowed this to be sufficient if they were stowed in a rucksack) is punished with a minimum sentence of 6 months and up to 5 years maximum. As far as we know, the sentences have so far been suspended on probation in such cases.

If the police take extensive measures to enforce the eviction (see also 5.1.4 - Eviction), administrative costs for these measures may be demanded from you (see also: 6.5 - Legal costs). For example, in the case of tree occupations, climbing police, cranes and lifting platforms are used to remove the tree houses and tree occupants from the trees.

#### **4.2.3 Disruption of (not only) public enterprises, § 316b StGB**

If you use technical aids to disrupt the operations of a company, you must also expect to be accused of disrupting public services. This applies not only to public enterprises. This includes all businesses that serve to supply the public with an important good (e.g. energy) or public transport. Slaughterhouses are also qualified as "public enterprises". (Fischer, Kommentar zum StGB, § 316b, para. 4) Although the text of the law does mention as a precondition that installations are destroyed, damaged, removed, altered or rendered unusable or that electrical power is withdrawn from them, it is not clear whether this is the case. However, as a rule, courts already take the use of lock-ons on rails as a given.

#### **Damage to property, § 303 StGB**

If anything is damaged during the action, (for example through glue or when entering a property) one can be accused of damage to property. In addition, there may be civil claims for compensation or to cease and desist demands on part of the owners.

#### **Civil law consequences**

If private property or other rights of private companies or persons are violated, there is a risk of claims for damages. In addition, there may be house prohibitions and/or cease and desist orders with declarations of obligation to pay high contractual penalties in case of violation. (see also 6.6)

#### **4.2.4 Unauthorised access, §§ 10 and 18 LuftSiG**

If you gain access to the areas behind the security controls ("airside" or security area) for an unauthorised action at an airport, a fine may be imposed under the Aviation Security Act. Such an act can also be considered as trespassing (see above).

#### 4.2.5 Prohibited items, § 11 and 19 LuftSiG

The introduction of prohibited articles into an area beyond security check that is also a security restricted area is a criminal offence and can be punished with up to two years imprisonment. Such objects include, for example, weapons and weapon-like items. The introduction of such items into airside without a security restricted area is also a criminal offence.

#### 4.3 Critical mass

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Situation: After a demo or an assembly, several rebels gather at a certain location with their bikes and decide to take a tour through the city. Since a lot of people are joining and there are too few cycle paths, the group decides to ride together on the road.

The established Critical Mass events, which are held in many cities often base themselves on association regulations in the Road Traffic Regulation.<sup>2</sup> However, these events must be explicitly non-political, and this must be visible externally. As soon as posters or flags are visible or a political message is communicated otherwise, the police will treat the Critical Mass more like an unannounced assembly (see also 3.3.).

Of course it is also possible to register a bicycle demonstration.

**If roads or intersections are blocked in by a Critical Mass (e.g. by driving in a circle in a roundabout), the same advice applies here as for blockades and swarming.**

<sup>2</sup> According to § 27 of the Road Traffic Regulations (StVO), „associations“ of cyclists of at least 15 persons may ride next to each other on the carriageway in pairs. Depending on how much the rest of the traffic is disturbed by this, such a convoy may stay together, even if the first cyclists cross the traffic light when it is green and then it turns red before everyone is on the other side.

#### 4.4 Chalk, graffiti, posters, stickers etc.

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##### 4.4.1 Damage to property (Sachbeschädigung), §303 StGB

Painting with chalk which can be washed off without much effort so it is not considered damage to property. The damage to property law presupposes a „substance violation“, which goes further than merely insignificant and temporary changes to the external appearance of property (§ 303 paragraph 2 StGB). If the paint, poster or sticker cannot be removed without leaving a residue or if the laminated or painted surface is damaged, you may be accused of damage to property. The same applies if the poster, sticker or colour can only be removed with considerable effort.

##### Civil law

The owner of the surface can demand compensation for not only the removal of the posters / stickers / paint, but also for the costs of removal, cleaning and repair.

In addition, the owner may issue a warning aimed at preventing future „wild billposting“ on their property. If one agrees in writing to stop, legal costs incurred by the owner may have to be paid for in order to prevent a trial.

##### Administrative offences (Ordnungswidrigkeiten)

**Municipalities punish billposting with fines - please check the legal situation in your municipality!**

In recent years, cities and municipalities have been increasingly taking action against billposting on public land, e.g. at traffic lights and walls, on traffic signs or on building fences. Therefore, many police or administrative regulations now prohibit the use of stickers and posters on municipal facilities without a permit. Anyone, who contravenes this commits an administrative offence and risks a fine. This applies to those who stick the posters as well as to the organizers behind the posters. In addition, the regulations usually provide for the possibility of issuing a disposal order, subject to a fee. Those who fail to comply, will also have to bear the costs of urban waste disposal (see also: 6.5 - Legal costs).

## 4.5 Adbusting

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Adbusting is a form of action in which advertising posters are creatively modified to give them a new political message. Experience has shown that the police and politicians react to this with excessive repression, which has no basis in criminal law.

Therefore, first and foremost the recommendation: Be prepared for repressive overreactions such as house searches and criminal charges of insult, even if you choose a variant that goes unpunished.

### 4.5.1 Theft (242 StGB) & grand theft (242 I No. 2 StGB)

You can avoid the accusation of theft by leaving the original poster in the glass display case. If you do take the poster out of the glass case, it can unfortunately be considered a particularly serious case of theft because you have opened a container that the owners of the poster have decided to keep it in.

### Damage to property (§ 303 StGB)

You can be absolutely sure to avoid this accusation if you bring your own poster. All other variants such as stickers can go wrong, because any permanent change in the visual appearance that cannot be remedied immediately & easily is considered damage to property.

### To the contents of the poster:

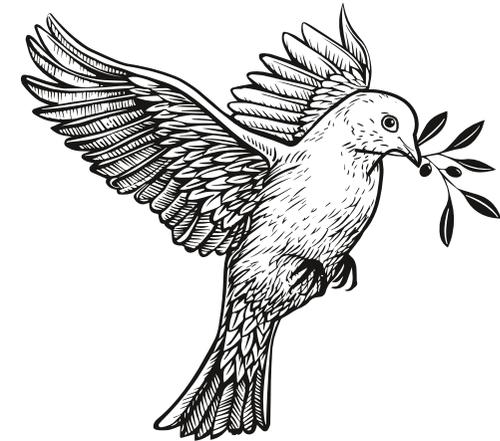
§ 90a StGB Abs. 1, v.a. Nr.2 StGB (denigration of the state and its symbols) can be blamed on you if you handle coats of arms and similar symbols creatively. However, denigration is defined as severe defamation or disparagement of the symbols and is, in light of freedom of expression, only accepted in very serious cases.

For § 132 StGB (presumption of office) it is sufficient that the act - "according to the circumstances, gives the appearance of an official act to an objective observer and can therefore be confused with such an act". This accusation is brought into play, for example, when the city calls a citizens' meeting on your poster and the whole thing comes across as "real" and official on a cursory glance.

The same applies to § 132a StGB (misuse of titles, professional titles and badges). What is immediately recognisable as fake does not fulfil the definition of the offence.

Otherwise, § 124 OwiG (use of coats of arms and service flags) comes into consideration. Here again: What is recognisable as a fake even at a cursory glance is not covered.

For everything else, please have a look at the information on "Limits of freedom of expression" on the next page. Rule of thumb: Factual claims must be provable, value judgements and satire which is easily recognisable as such are protected by freedom of expression.



## 4.6 Call for boycott

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Calls for a consumer boycott are a permissible exercise of freedom of speech under Article 5 of the German Basic Law, unless a competitor calls for a boycott of a competitor. (Lüth judgement of the Federal Constitutional Court, BVerfGE 7.198 ff.)

### Limits to freedom of expression

It is important to distinguish between factual claims (e.g. "This product will blow up when you use it") and value judgements (e.g. "I don't think anyone needs this product and for that reason alone it is an attack on the climate to buy it"). False facts can be punishable as libel or slander. (see also 2.5 - Offences for the protection of honour)

Value judgments can be punished as insults. However, your value judgments are covered by the freedom of expression as long as they do not drift off into abusive criticism. Polemical or exaggerated criticism is generally permissible; it is only punishable if the focus is on belittling or defaming the person or if it is a classic formal insult (e.g. also "idiot"). In order to get a feeling for how far freedom of expression goes and as an encouragement, we recommend the fundamental decision "Soldiers are murderers" of the Federal Constitutional Court ("Soldaten sind Mörder", BVerfGE 1 BvR 1476/91).

Little effort is needed for a claimant to sue or claim you to give a declaration of discontinuance ("cease-and-desist declaration") under civil law. But it would not be justified, as long as you were within the boundaries of freedom of expression. In this case it would only help to remain steadfast and not to sign a declaration of discontinuance for the sake of peace, especially since the signature and the associated recognition of the claim could have negative consequences for you later on.

## 4.7 Protest camp

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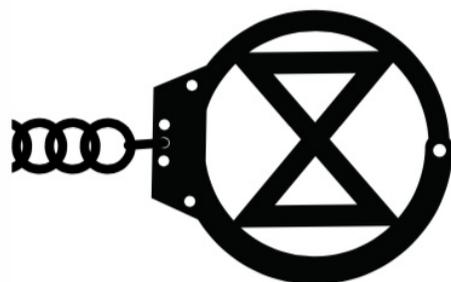
Protest camps are in general also covered by the right to freedom of assembly if the content of the programme is aimed at contributing to the formation of public opinion on a particular event. This was decided by the Federal Constitutional Court as part of a dispute concerning the G-20 protest camp Hamburg in 2017. However, important individual questions are legally ambiguous, e.g. whether infrastructure facilities (e.g. kitchen tents, toilets) also have to be approved. The We4Future Camp in Berlin successfully secured this in June 2019 before the Berlin-Brandenburg Higher Administrative Court.

Before you participate in an XR protest camp, make sure you inform yourself whether it is registered or not. It may be the case that a court makes a definite decision only a few days prior on whether it is permitted and which conditions are to be fulfilled.

From a legal perspective, the participation in a registered protest camp is comparable to the participation in a normal, registered demonstration - completely unproblematic. Remember that carrying weapons at an assembly is a criminal offence. A pocket knife can be considered a weapon. However, the police may only carry out checks in, before or on the way to the camp if they have concrete indications that you may have prohibited items with you. If you are checked, make it clear (politely but firmly) that you disagree, ask for the legal basis on which you are being checked and state that you feel that your constitutional right to freedom of assembly has been violated.

For an unregistered protest camp or one that violates conditions, the information on the right of assembly applies (see also 3).

If you are involved in the planning of a protest camp, please contact the Berlin Legal Team beforehand to get tips on how to register the camp.



**V.**

# **POLICE MEASURES**



This information refers in part to Berlin state law (as of August 2019), so inform yourself locally about any differences before taking action in other federal states, especially with regard to the recent changes police laws in many federal states.

Remember that the right to freedom of assembly means that the police may carry out the following measures only under certain conditions (see 3.2.1). That's the law, but that doesn't mean they'll stick to it every time. It can be advantageous after an action to recall the events of the day and take note of instances where the police acted illegally.

## ***5.1 On the street / On the way to actions***

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### **5.1.1 Determination of identity & refusal to disclose identity**

According to § 163b of the German Code of Criminal Procedure (StPO), if you are accused of a criminal offence or an administrative offence, but also to avert danger (e.g. according to § 12 of the NRW Police Act, PolG NRW), the police may establish your identity. You should therefore first ask about the legal basis for the determination of personal data. By the way, the police are not allowed to determine personal data during an undissolved demonstration according to the Police Act. Peaceful demonstrations are "police-proof".

To establish identity, a person may be searched, taken into custody and brought to the police station. The maximum period for this varies from one federal state to another. In North Rhine-Westphalia, the new police law allows up to 7 days (Berlin up to 2 days) for the pure purpose of establishing your identity if you make it difficult to establish your identity (e.g. by treating your fingertips).

The following information will be gathered when establishing your identity: Name, place of residence, date/place of birth and nationality, marital status, profession. The police may ask you more, but you do not have to answer, especially if you are suspected of a crime or misdemeanour. You should also only reveal your marital status and profession if you are expressly asked about it.

### **Refusal to disclose personal details**

Denial of personal data can be used strategically to exceed the capacity limits of the police force and thus enable activists to hold the action longer and to avoid impunity. Especially if you and your reference group have to expect high civil law claims because your action directly interferes with the production, dismantling or marketing of companies, refusal to give personal details can become an issue in planning. Denial of identity is also used to avoid entry bans that make it impossible to participate in protests against certain power plants or against the destruction of villages.

Denial of identity can work if the action takes place in an area where the police have little capacity (e.g. in rural areas) and if a critical mass of the action participants collectively deny their identity. But also, only if the public prosecutor's office does not succeed in ordering you to be held in remand custody (U-Haft) because of the accusation that you have committed a crime. The accusation of resisting law enforcement officers may be sufficient for this. In one case, a rebel was held in pre-trial detention for 57 days for a lock-on.

In large cities such as Berlin, the police have the necessary infrastructure to take you into custody if you refuse to provide personal details and to carry out identity checks to establish your identity (see 5.3.2).

A judge decides about remand custody, but unfortunately some judges let a very generic text application be sufficient and disregard any proportionality.

Long term preventive detention is traumatic. You will be separated from the others because you will be spread over several Gesas in different cities. You are alone in a cell with an estimated size of 6 square metres with a toilet and a washbasin, without shower facilities, fresh air and daylight. Rebels told us about permanent light and hourly checks. Identification treatment can be applied more than once.

Even if you are released, the matter is not over yet. The police can use the photos of you to get your personal details from "vehicle checks" around climate protests. If you have refused to give your personal details and they have taken your fingerprints, it is possible that older procedures will be resumed if they are able to match you up later, e.g. through photo comparisons or the like, and the combination of name and fingerprint is possible. There is no guarantee that the police will not find your data anyway.

If the identity is nevertheless established or suspected, an additional fine may be imposed for refusing to identify you. (Section 111 of the Administrative Offences Act).

If you are considering denial of identity, please speak openly with your reference group about the advantages and disadvantages, including possible traumatic experiences, and how you can support each other afterwards. If you decide to do so, talk to EA and GeSa- Support early on, if only to prevent people who know you from accidentally giving out your personal details. Please also contact the Legal Team.

### 5.1.2 Searches (Durchsuchungen)

Every now and then the police come up with the idea of carrying out bag or even body checks. Think carefully about what you take with you and check all your bags before you leave home! Do not take any dangerous or incriminating things with you, such as pocket knives, pepper spray or drugs. Personal records (letters, notes etc.) and data carriers as well as mobile phones can also be of interest to the police.

Pocket checks in public are permitted, but body checks are not. If you are asked to undress completely, you should appeal and demand that it be noted in writing that this request was made. The police may only demand a body check if they have concrete reasons to believe that you are carrying prohibited articles which they cannot otherwise find. The check may only be carried out by a person of the same sex in a place of privacy. Request that the police provide the reasons for the requested body check and protest against it.

### 5.1.3 Bans from premises (Platzverweise)

... are issued so that people do not stay in a certain area during a certain period of time. A ban is very often communicated orally, but sometimes in writing as well.

Banning someone from premises is sometimes illegal. As with any administrative act, you can take retroactive action against it. Since you also have to comply with the illegal expulsion during the action it is better to avoid it if possible e.g. by avoiding the police and choosing a different route. In general, the following also applies here: file an objection, demand that this be recorded and make no statement! In the best case, don't give the police any reason to ban you from a space, for example by withdrawing for a moment and coming back later.

If you do not comply with a ban, the police may take physical measures against you, i.e. they may carry you away or even take you into custody. In some federal states, a violation of a ban is also an administrative offence and can result in a fine. In Berlin this is not the case (However, please note the information on dealing with the police under 2.3 and on evictions under 5.1.4).

### 5.1.4 Eviction (Räumung)

If an assembly is dissolved, not leaving is an administrative offence. Being carried away does not in itself constitute a criminal offence, but resistance, kicking or defending oneself can be considered assault (see 2.3.2), which can result in a suspended sentence after the tightening of the penal law (§114 StGB)! So be prudent, don't let yourself be provoked, insist on respecting your rights and don't forget the knowledge acquired in action training.

In some cases an eviction is relatively calm, but it can't be ruled out that the police will proceed with disproportionate brutality (clubs, painful grips, etc.). Try not to panic and stick together. Don't let the police provoke you! Watch out for wounded people and people being taken away.

When you're evacuated, sometimes you're just taken to the edge of the area. However, identification may also be requested (see also 5.1.1) and you may be detained (see also 5.2.1).

It can happen that you have to pay the costs for the evacuation (in case of being simply carried away approx. 50-150€, in case of more complex measures possibly more). This will not always be the case, but cannot be ruled out.

### 5.1.5. Encirclement (Einkesseln)

In order to prevent or prosecute administrative offences or criminal offences, the police may encircle an assembly or parts thereof. Depending on the situation, you may have to reckon with the rebels inside the circle of police being obliged to give their personal details, possibly a so-called recognition process (see also 5.3.2) will also be carried out. It may also be the case that the encircled persons are taken into custody in order to establish their identity or to prevent further violations of the law.

## **5.2 Contact with the police: Custody, arrest, remand etc.**

### **5.2.1. Detention and arrest**

To prevent administrative offences or crimes, the police can take you into preventive detention. However, a release should take place no later than midnight on the following day.

If you are suspected of having committed a crime, you will be arrested, but you must still be released after maximum 48 hours (exception: pre-trial detention or summary proceedings, see also 5.2.2). In rare cases, a judge can order up to four days of detention. In the case of a larger rebellion wave, an even longer detention cannot be ruled out. However, also this must be decided then by a judge.

#### **You have the following rights:**

- The police must tell you the reason for the detention/arrest.
- You have the right to two successful calls. Should the police refuse to allow this, threaten to make a complaint about the police officer to the police supervision authority (Dienstaufsicht), or a complaint and a criminal complaint. In extreme cases, request the name and job title of the official.
- In case of a longer detention, the police must provide you with necessary medication/medical treatment, food and drink and let you go to the toilet.
- You have the right to refuse to testify. A refusal to testify cannot be interpreted to your detriment. The police have to tell you that you don't have to testify.

For larger actions there is an investigative committee (Ermittlungsausschuss or 'EA'). The EA is a collects information about detentions during actions (who is in custody where, who is out again...) and sends lawyers inside the prison collection point if necessary. The EA phone number will be announced before the action. In **Berlin the GeSaFon** is provided by us and fulfils all tasks that an EA takes over (see 2.3 - GeSafon and Gesasupport).

### **5.2.2 Remand and fast-track procedure**

You can be remanded in custody after a criminal offence if there is a danger of obfuscation or escape. Danger of obfuscation means that the authorities have a strong suspicion that the person could destroy, alter or influence evidence. This must be ordered by a judge and can take several months. This is not to be expected in mass actions of civil disobedience unless your identity cannot be determined.

A so-called fast-track procedure is a simplified, fast criminal procedure. It was introduced in the 1990s in order to it possible to give „travelling violent offenders“, i.e. demonstrators, a „short trial“ even for smaller offences. A judge can order imprisonment for up to one week until the start of the proceedings. This is unlikely for an XR action, but it is nevertheless a serious risk - above all for people without a German passport or without a residence in Berlin. Make sure you contact the EA. It may be possible to avert the fast-track procedure and obtain your release. Don't make any statement! Don't be intimidated! You can appeal within one week and prepare a regular process with your solidarity structures (the XR Legal Team, the EA, the Roten Hilfe and solidarity lawyers).



## 5.3 Measures used by the police

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### 5.3.1 Interrogation (Vernehmung)

During an interrogation the police will probably try to learn more about the course of the action or to get information about XR structures. Be aware that the policewomen were trained to receive such statements from you. So be polite and friendly, but don't make any statements about what's going on or about you as a person or other rebel. Anything can be used against you and others.

**It is your right to refuse to testify.** Don't get involved in seemingly harmless conversations (see also 2.4) In addition to this, don't say what you didn't do. **Don't sign anything, object to any measures and file a protest.** For example, an objection may look like this: „I file an objection against [measure] and insist that you document it in writing and add it to your records. I also demand a copy of my objection“. Don't be intimidated.

During the interrogation you can always answer for example with facts about the climate crisis, sing a song or ask counter-questions. But if you have the feeling that you are just not able to differentiate between what you can say and what you can't, it may make sense to consistently maintain silence or answer with „I refuse to make a statement“. This is usually also better if the policewomen are tense or annoyed.

Interrogation doesn't always take place in the interrogation room. Even supposedly informal conversations can be considered interrogations. In principle, the police must point out to you that a statement is voluntary<sup>3</sup>, but that does not mean that they will adhere to it in every case. Be aware of these kind of situations.

It may be that you decide later that you want to make a statement, for example to make your political goal clear. However, it is always better not to do this directly on the spot, but to think about it in peace and to seek legal advice beforehand. A well thought-out statement brings you, your fellow rebels and the world much more!

### 5.3.2 Identification treatment (Erkennungsdienstliche Behandlung, "ED")

During an identification (ED) treatment, your fingerprints and palm prints are taken, physical characteristics are noted (scars, tattoos, etc.) and photos are taken. This is usually done in the GESA but can also happen on the street and can lead to humiliating situations. Make sure you object to the ED treatment and have it recorded. Do not sign anything!

Physical examinations (e.g. taking a blood sample, x-rays) are not allowed. The latter are only allowed according to § 81a StPO (Code of Criminal Procedure), they are subject to a judge's reservation. In individual, rare cases, further refusal to provide personal data has already resulted in DNA samples being taken, although this is not permitted without a court order.

An ED treatment is the rule in the case of refusal to provide personal data but can also be carried out if you have provided your personal data.

### 5.3.3 Retaining personal items

In some cases, the police will want to withhold items from you. They may do so only if they could be relevant as evidence of a criminal offence or if there is „imminent danger“. If things are seized from you, you can insist that a record be made of which items have been seized. In addition, you should always file an explicit objection so that afterwards it cannot be claimed that you have given your consent to the retention of the items. Only then can it be checked afterwards whether the police acted legally or not. You usually get your things back when either the danger is over or, in the case of prosecution, after the trial has ended.

Mobile phones are often a source of data and therefore particularly interesting for the police. In the case of direct participation in actions of civil disobedience, we generally advise against bringing a mobile phone. If you have your mobile phone with you make sure that you do not hand in your mobile

<sup>3</sup> §114b Code of Criminal Procedure for Arrests, § 32 Para. 1 ASOG (Berlin) for Detentions

phone voluntarily. The police needs permission from a judge to retain a mobile phone or it must be „imminent danger“. If the police want your pin code: forcing the release of the code and thus the data is forbidden. The principle of not having to incriminate oneself means that no one is obliged to release one's code. Note: it is best to deactivate the possibility of unlocking the mobile phone by fingerprint or similar means (for example irisscan) before the action, since police use of fingerprints or similar methods for unlocking phones is debated and is sometimes done.

Be aware that in the event of unlawful seizure or insufficient instruction about your rights, chats or contacts obtained through the seizure of the items may not be used. This is known as Beweisverwertungsverbot – the prohibition of the use of evidence. Should this become relevant, be sure to file an objection against the use of evidence and contact the legal team to discuss the further procedure.

#### 5.3.4 House searches

House searches become more likely if actions with a higher penalty are planned/implemented. It does not have to be the rule, but you should know your rights and be emotionally prepared for it to happen. For example, house searches have already been carried out after adbusting actions.

If the police search your home, you should first **keep calm**. The police officers are usually demanding and brisk. Do not let this make you feel insecure. As you will see below, you have certain rights which you should definitely exercise. The more you make it clear that you know your rights and insist on them, the better you will be treated.

You have the right to have a **neutral observer** present during police actions. In practice, the police often bring this person directly with them. However, this does not deprive you of the right to bring in a trusted person yourself if he or she can come immediately. Do this first so that she is there quickly enough.

Read the search warrant carefully. **Take your time**. The officers must wait outside until then. You have the right to call your lawyer in any case! In many cities there is a lawyer's emergency service for criminal cases, which can be reached around the clock. It makes sense to have their telephone number handy.

#### These points are particularly important:

- Which rooms may be searched?
- What is the charge?
- What is to be searched?

If there is no written search warrant, have the accusation explained to you orally! Don't forget to ask what they are looking for! Then ask for the service ID and service number of the head of operations and all names and functions of those present. Write everything down peacefully.

If there is **imminent danger** (Gefahr im Verzug), there will be no search warrant. This reasoning can be used to break into your flat without a court order. Insist on a search warrant and appeal against the negative decision of the local police officers! In most cases this will not succeed but try it anyway! Insist that even without a search warrant, you are given the charge and the reasons for the search. Also get the reasons for any confiscation and, if necessary, the assumption of imminent danger.

Also, **object to searches** and seizures as a whole and have them recorded. The police are then not allowed to read personal items such as diaries (but the public prosecutor's office is). This can also be helpful for the later proceedings.

Demand that rooms are **only searched under your supervision** and/or your confidant. One room at a time, so that you and the witnesses can see everything and be present at all times. If you live in a shared flat, the officers may only search your room and the common rooms. The rooms of your flatmates may not be searched unless they are mentioned on the search warrant.

You do not have to actively support the search or answer questions! Police officers often give this impression with their demanding behaviour and ask for passwords for computers and smartphones. You don't have to answer this, and you should not do so under any circumstances!

But do not try to hide objects. This will attract attention and put you in danger of being put in custody. According to §112 StPO (German Code of Criminal Procedure), the danger of concealment is a reason for imprisonment. It can also get you a trial for resisting enforcement officers.

Everything you say on the side-lines of the police action will later find its way into the investigation file. It is best **not to engage in small talk** and say at the beginning that you will not answer any questions about the accusation. This will make it easier for you to keep it up and, in case of doubt, always answer that you don't want to say anything about it. You don't have to justify yourself.

Police officers often leaf through your personal papers during the search. They are only entitled to do this if the search warrant explicitly states this. If this is not the case, **insist that the documents are packed and sealed unread** and have this recorded in the minutes. If a subsequent appeal against the search is successful, the documents may have to be returned unread.

At the end of the search, a **search report** is written. All objects that are taken along must be described as precisely as possible. Check this so that nothing can be exchanged or added. The report should also state that you do not agree with all this and that you are requesting a judicial review of the search.

Read the minutes as carefully as possible and if you do not understand anything, ask. Take your time. That is your right. All confiscated items must be listed and described in detail. Check whether the many crosses - for example, for objecting to the search - are in the right place. If you discover that something is missing, **insist that it is added**.

The protocol must be signed by the head of the operation and neutral witnesses. You will also be asked to do this, **but you should not do it**. Do not say this until after the discussion about the missing contents of the protocol.

As long as the police consider it possible for you to sign, they will be more likely to respond to your requests for changes. Make sure you get a copy! If you don't get one, insist on having the minutes photographed.



**In short version:**

- Call a lawyer and immediately state that a house search is underway.
- Refuse to sign.
- Clearly object to the measure.
- Do not actively support search (no passwords, no self-opening of lockers).
- No statements on the matter.
- Talk as little as possible. Except: "I disagree" and "Please record this in the minutes". You cannot say this often enough.

**After the search, this is what you should do:**

- Write down a "memory log".
- Appeal through your lawyer.
- Draw up a damage report.
- Remember that listening devices may have been installed.
- Inform the people who the police now have information about.
- Inform us about Wire or PGP encrypted mail
- Do something good for yourself. Don't mess with yourself. Your privacy has been invaded. No one reacts "perfectly" to such a situation.

Sources: <https://www.rote-hilfe.de/downloads1/category/3-was-tun-wenn-s-brennt-und-rechtshilfe-infolyer-zu-spezifischen-themen> (Flyer Durchsuchung)

Further information: 35C3 - Verhalten bei Hausdurchsuchungen

<https://www.youtube.com/watch?v=DweeWfW1cLg>



# VI.

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# AFTER THE ACTION

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## 6.1 Criminal proceedings

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### 6.1.1. Investigative procedures

If a preliminary investigation is initiated, this only means that you are suspected of having committed a criminal offence. It can come to a house visit, a subpoena to a police hearing, or a request for a written statement. As the accused, you have the right to refuse to testify. The state is not allowed to force you to incriminate yourself. You should always make use of this right by answering any requests for a statement with „I exercise my right to refuse to testify.“

If, for any reason, you are thinking about expressing yourself in any way about the allegations (which may make sense in individual cases), please contact the Legal Team first to discuss the risks and chances of such a course of action. Please never make a statement without planning it beforehand and/or without first discussing it with the Legal Team - you might not only be burdening yourself, but additionally other rebels and ultimately you may adversely affect the solidary structure of XR actions and the XR community.

Via the Legal Team you can also network with other affected people. A common approach is not only more legally effective, but can also generate public pressure and thus possibly a cessation of the procedure.

You must attend a subpoena by the state prosecutor you must appear (as opposed to a subpoena by the police), but there is no obligation to make a statement!

### 6.1.2. Penalty orders (Strafbefehle)

An penalty order is a conviction without prior trial. If you receive a penalty order, file an informal written objection (without grounds) within two weeks. This initially buys us time and the objection can be withdrawn at a later date. The Legal Team has created a template for you for this situation, which you can find on the XR website in the Legal section ([www.extinctionrebellion.de/legal](http://www.extinctionrebellion.de/legal)). Bring the completed objection personally to the authorities with a witness or send it by registered post with a return receipt or by fax with transmission record. If you expect an order of punishment and are not at home, then please ask a trusted person to look after your mail and prepare an objection where only the address, date and file number need to be entered so that it can also be sent by that person within the time limit.

**If you don't object, you have a criminal record and must pay the fine. Since your proceedings are now over, you will also have the opportunity to be called as a witness against other participants in the action** - a nother importa nt reason why you should first lodge a n objection by defa ult.

Contact the Legal Team immediately. Then we will consider together, based on the circumstances of your concrete individual case, whether we should first apply for access to the files via a lawyer, whether it is worth entering into court proceedings or whether the appeal should be withdrawn as late as possible and the penalty accepted.

### 6.1.3. Trials (Gerichtsverfahren)

Since actions of civil disobedience in XR are in a very low-level area in terms of sanctions, court hearings will generally not take place. It may be different if you have a relevant criminal record or have appealed against an order for punishment and have not withdrawn it.

Since court proceedings entail higher costs than a mere criminal penalty procedure (Strafbefehlsverfahren), it should be carefully considered beforehand whether it is worth taking this additional cost risk. This will usually only make sense if the order of punishment contains clear errors or if you (usually in consultation with other participants in the action) want to enter into a process to use it politically for XR purposes. A political process offers opportunities, but must be collaboratively very well prepared.

### ***6.2 Administrative offence procedures (Ordnungswidrigkeitenverfahren)***

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If you have committed an administrative offence, you will receive a fine notice (probably in the weeks or months after the action) (see also: 6.5 - Legal costs). Just as with a penalty order, an appeal can also be lodged in writing against an administrative order imposing a fine. **The deadline is also 2 weeks after receipt.** Use your right to appeal to buy time and contact the Legal Team. We network the participants of an action and jointly advise the most sensible approach.

### ***6.3 Witness statements (Zeugenaussagen)***

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As a witness you are not obliged to attend a summons from the police, however you are obliged to attend if a state attorney or judge summons you. If you are not related, in-laws, married or engaged to the accused, you are basically obliged to testify. However, you have the right to refuse to answer questions that may incriminate you or a relative or spouse. You must also be instructed about this by the interrogators, otherwise your self-incriminating statements in a trial are unusable. You should then always say explicitly that you have the right not to incriminate yourself and say nothing else without a lawyer. Here too it is advisable to consult the Legal Team beforehand.

### ***6.4 Certificate of good conduct (Führungszeugnis)***

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For a correct understanding of this point, it is first important to distinguish between the following terms: federal central register, simple certificate of good conduct, extended certificate of good conduct, official certificate of good conduct. The term „police clearance certificate or permanent record (polizeiliches Führungszeugnis)“ does not exist legally, but only colloquially. Therefore, it is not used here because it is misleading.

In principle, all convictions for criminal offences are entered in the Federal Central Register (no administrative offences). Fines are calculated by multiplying a daily rate by a number of days depending on the offence committed. If the fine did not exceed 90 x one daily rate and no further offences were committed within five years, the entries will be deleted after five years. Only convictions at more than 90 daily rates are entered in a simple certificate of good conduct. Such a high penalty is very unlikely for XR actions, unless there are several previous convictions for the same offence in close temporal relation.

An extended certificate of good conduct also includes convictions under 90 daily rates, but only if a criminal offence has been committed for sexual or other abuse of minors. The extended certificate of good conduct is requested by employers or institutions if someone is dealing professionally or voluntarily with minors, asylum seekers or, for example, persons in need of long-term care. However, there is no conclusive information on how likely convictions in connection with XR actions of civil disobedience are.

An official certificate of good conduct on the other hand contains a copy of all the entries in the Federal Central Register, for example, because of a conviction in the event of civil disobedience with a low fine and a low daily rate. It can only be requested by authorities such as public prosecutors, criminal courts or recruitment authorities to which you apply, and you must apply for the certificate yourself in the latter case - so without your consent the recruitment authority does not receive it (public prosecutors or criminal courts do).

Conclusion: Entries that actually make it into certificates of good conduct are a topic that is usually very hotly discussed, but not so dramatic in practice. In particular, the extended certificate of good conduct does not differ from the simple one when it comes to XR actions. Only those who want to apply within the next five years as civil servants, employees or trainees in the public service (this includes the teaching and legal internship) should consider whether they should participate in criminal actions of civil disobedience.

### **6.5 Legal costs**

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There are many different financial consequences that can arise from actions: Fines, legal costs, administrative costs or claims for damages, etc. more.

We do not leave each other alone with these costs.

But we cannot predict how many costs will be incurred during the actions. For this reason, we cannot promise to reimburse all costs in every case. If our financial means are not sufficient for everyone, we will first support those rebels who cannot raise the money themselves. For this purpose, we also ask you to give us an honest estimate of what costs you can bear yourself.

**A prerequisite for the assumption of costs** is in any case the early communication and cooperation with the Legal Team - either with the local team or with the nationwide XR Legal Team.

You can find more details here:

<https://extinctionrebellion.de/mitmachen/legal/repressionskosten/>

To avoid financial shortages, we urge you all to share the XR appeal for donations! There are many people who do not want to or cannot take part in activities themselves, but who are happy to support us financially. You can also start your own fundraising activities in your local group or small group, for example fundraising parties.

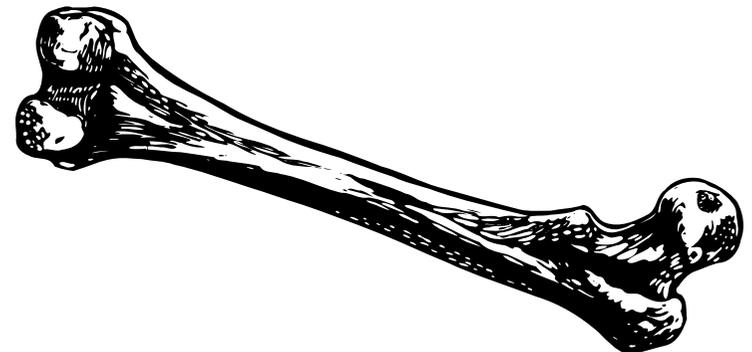
Under certain circumstances, it is also possible to get support from outside XR, for example from the Red Aid: <https://www.rote-hilfe.de/>

### **6.6 Claims for damages in civil proceedings:**

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In some forms of action, claims for damages against you are possible. Blockades of production plants, sales outlets, transport companies and construction sites can result in high to very high claims for damages.

According to §823 Abs. 1 BGB the so-called "established & practised business" is protected against **direct business-related interference**. (It is not mentioned there but follows from case law.) Even considerable interference with the possession of machinery (e.g. by disturbing/occupying excavators) can trigger tort claims for damages. Here too, immediacy and materiality are decisive.



**Example:**

In the night before a working day activists board the construction equipment of a building site and keep it occupied. The construction work cannot be continued the following day because no one can get to the machines. The construction site is shut down for 48 hours.

**Counterexample:**

Due to a sit-in blockade at a road junction in the city centre, the local radio station warns of traffic jams. A large part of the population therefore skips the Saturday city stroll. Although the burger shop in the city centre is still easily accessible, it has suffered massive losses in turnover. However, there has been no intervention in the actual business.

Once a significant direct interference has been established by the court, all verifiable direct and indirect damages can be claimed. This also includes the loss of Profit. Even standing or operating costs that have been wasted because activities had to be discontinued are eligible for compensation. It is also conceivable that replacement costs could be claimed.

This can add up to a lot. Commercial enterprises can usually fall back on ongoing bookkeeping and thus fulfil their burden of proof.

The probability that the courts will regard your action as directly targeted increases with the proximity to the object, the direct physical impact (e.g. through damage or chaining), but also with the practical coercive effect on customers or staff.

Actions that effectively exclude access to the business are much more likely to trigger your liability than blockades that can be easily identified or reasonably circumvented.

Even more far-reaching actions, such as paralysing flight operations by letting drones or the like climb on board, are extremely risky from a cost or compensation point of view and can mean your own lifelong financial ruin (since both airlines and airport companies will demand compensation for the financial loss incurred).

It is also important that you are fully liable for the proven damage, even if there are several of you. Plaintiffs can choose against whom to enforce their claims.

**6.7 Police and administrative costs**

In addition to fines, penalties and claims for damages, an action may also involve administrative and among them police costs. This is the case if 1. authorities (e.g. police or public order office) take action on the basis of your XR-action and 2. there is a fee regulation for the specific measures taken by the authorities. Whether fees are to be feared depends on the concrete form of the action as well as on the applicable federal or state regulations and the responsibilities of the authorities. Illegal behaviour by persons (e.g. criminal offence, administrative offence) is not always required.

**Fee schedule of the Federal Police**

Since October 2019, the Federal Police have been able to charge fees for measures such as evictions, identity checks or seizure of property.<sup>4</sup> Illegal behaviour is not required, it is sufficient for the police measure to be caused. For example, a first-time eviction costs € 88.85, an identity check costs € 53.75 and a detention order costs € 74.15.<sup>5</sup>

However, the scope of tasks of the Federal Police is limited in the federal state structure. The Federal Police are mainly responsible for border protection, aviation security, railways, the protection of federal bodies and for the coast guard.<sup>6</sup> You should therefore be aware of the additional risk of having to pay fees, especially in the following places of action: Federal railway facilities, e.g. railway stations (without forecourt)<sup>7</sup>, the 14 major German airports<sup>8</sup>, actions near federal organs, e.g. the Federal Chancellery, federal ministries, the Federal Constitutional Court in Karlsruhe, the Bundesbank in Frankfurt.

It is currently unclear whether the fees of the Federal Police are also charged when the Federal Police only act in support of the State Police (e.g. at major events, football matches).<sup>9</sup>

### **Fee regulations of the states (Länder)**

As a rule, the state police are responsible for gatherings, demonstrations and actions of civil disobedience in accordance with the state laws. In most federal states, police measures such as identity checks and expulsions are free of charge or financed solely by taxes. We are not yet aware of flat fee and comprehensive cost regulations such as those of the Federal Police.

Many state regulations, however, provide for charges fees for individual police measures, e.g. for seizures, detention or generally for the use of direct coercion, e.g. by carrying off participants of an action (e.g. Schleswig-Holstein-H<sup>10</sup>, MV<sup>11</sup>, NDS<sup>12</sup>, Mecklenburg-Vorpommern, Niedersachsen, Bayern<sup>13</sup>, Hessen<sup>14</sup>). Please inform yourself about the regulations and administrative practice in your federal state and let us know your findings.

### **Legal arguments against the fee regulations**

Action by public authorities is in principle tax financed. Beyond that, fees may only be charged for individually initiated special services (typically e.g. towing a wrongly parked car or deliberately triggering a false alarm). In the area of freedom of assembly, fees are also considered particularly critical because of their deterrent effect.

An assembly usually triggers police action. But even more so if the participants do not violate legal norms, passing on the costs of measures such as identity checks is likely to restrict freedom of assembly inadmissibly.

For example, the Federal Constitutional Court has also considered the levying of a fee for the registration of an assembly (possible under Bavarian cost rules) to be unconstitutional in the absence of a specific reason.<sup>15</sup>

<sup>4</sup> Besondere Gebührenverordnung des Bundesministeriums des Innern, für Bau und Heimat für individuell zurechenbare öffentliche Leistungen in dessen Zuständigkeitsbereich (Besondere Gebührenverordnung BMI – BMIBGebV)

<sup>5</sup> Vgl. BMIBGebV, Anlage (Gebühren- und Auslagenverzeichnis), Abschnitt 1

<sup>6</sup> Für den vollständigen Zuständigkeitskatalog siehe das Inhaltsverzeichnis des Bundespolizeigesetz §§ 1-13.

<sup>7</sup> So die aktuelle Rechtsprechung des Oberverwaltungsgerichts

<sup>8</sup> Berlin-Schönefeld, Berlin-Tegel, Frankfurt am Main, München (ohne Fluggast- und Gepäckkontrollen), Stuttgart, Köln/Bonn, Hamburg, Dresden, Saarbrücken, Leipzig/Halle, Düsseldorf, Hannover, Bremen, Erfurt, Düsseldorf.

<sup>9</sup> Der wissenschaftliche Dienst des Bundestags hält es für zulässig <https://www.bundestag.de/resource/blob/691224/94d4fd069c90b4d30e2765c98354d68d/WD-4-028-20-pdf-data.pdf>

<sup>10</sup> Vollzugs- und Vollstreckungskostenverordnung SH

<sup>11</sup> Verwaltungsvollzugskostenverordnung MV, GebVerz

<sup>12</sup> Allgemeinen Gebührenordnung (AllGO) NDS, Anlage, insbes. Tarif-Nr. 26, 108.6

<sup>13</sup> § 1 Polizeikostenverordnung (PolKV) Vom 13. November 2000

<sup>14</sup> Verwaltungskostenordnung MdIS, Anlage, Nr. 54 ff.

<sup>15</sup> BVerfGE vom 25.10.2007 - 1 BvR 943/02.

# ADVICE

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## 7. Advice for underage rebels

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### Before the action

If you are under 18 years of age, you are considered a minor. This has some disadvantages when dealing with the police. If the police assume that you are travelling without your parents' knowledge, they can take you into custody just to take you to your parents or to the Youth Welfare Office (so-called "custody detention").

You can avoid being held in custody for this reason by having written permission from your guardians to take part in the protests. It is best to ask them to write and sign a letter like this. The letter must be signed by all your guardians:

### Written permission (In German)

Hiermit erlaube ich meinem Kind XY (Personalien aufgeführt unter Ziffer 2.) zwischen dem XX.XX.20XX und XX.XX.20XX an den Klimaschutzaktionen in ..... teilzunehmen. Im Fall einer Ingewahrsamnahme/Freiheitsentziehung darf sich mein Kind anschließend wieder zurück in die Obhut der nachfolgend unter 3.aufgeführten Person begeben bzw. dort hin gebracht werden.

### 1. Personalien des/der Personensorgeberechtigten (Eltern):

Name, Vorname: .....  
Straße: .....  
Wohnort: .....  
Telefonnummer: .....

Name, Vorname: .....  
Straße: .....  
Wohnort: .....  
Telefonnummer: .....

### 2. Personalien der zu beaufsichtigten Person:

Name, Vorname: .....  
Straße: .....  
Wohnort: .....  
Telefonnummer: .....  
Geburtsdatum: .....

### 3. Personalien der Obhutsperson:

Name, Vorname: .....  
Straße: .....  
Wohnort: .....  
Telefonnummer: .....  
Geburtsdatum: .....

Ich/Wir erklären, dass die oben angegebene Obhutsperson für diesen Zeitraum die Erziehungsaufgaben gegenüber der unter Pkt. 2 genannten Person wahrnimmt.

Wir kennen die Begleitperson und vertrauen ihr. Sie hat genügend erzieherische Kompetenz und Verantwortungsbewusstsein. Wir haben mit ihr auch vereinbart, wann und wie unser Kind wieder nach Hause kommt und welche Grenzen gelten. Wir sind ausdrücklich damit einverstanden, dass es in/ bei ..... übernachtet.

Wir wissen, dass sowohl unser minderjähriges Kind wie auch die von uns mit Erziehungsaufgaben beauftragte Person im Falle einer Kontrolle in der Lage sein müssen, sich auszuweisen. Für eventuelle Rückfragen sind wir unter der oben angegebenen Telefonnummer zu sprechen.

Eine Kopie unserer Ausweise ist dieser Erklärung angehängt.

.... (Ort, Datum und Unterschrift/en des/der Personensorgeberechtigten (Eltern) und der Obhutsperson)

.....  
A person who is of legal age and remains at the lowest level of action is eligible as a guardian. If your parents accept this and you don't know any such person directly, ask the action planners for people who can do this for you.

But this precautionary measure only protects you from pure custody. You can still come to Gesa for searches and interrogations.

### **In the GeSa**

Children (up to 13 years of age) and juveniles (14 to under 18 years of age) may only be taken into custody if they are accused of a criminal offence or if they significantly disrupt official business. In all other cases, they usually have to be taken immediately to a person with custody or to the youth welfare office, i.e. e.g. in the case of detention to avert danger or to enforce a dismissal. In practice, however, the police will usually take you with them in the first instance.

If you provide personal details, the police will have to try to call your legal guardian to have them come and pick you up. Even if you are underage, you have the right to call a person you trust - so call GeSaFon (EA) and tell them where you are. If you have previously left a collection slip (see previous section) from your parents, the authorised person with this slip can also pick you up from the police station.

If you refuse to give details and the police believe that you are a minor, there is a good chance that they will take you to a youth centre. You must not be locked up there. So you can just leave once the police have gone. In practice, there have been very different experiences of what it means to just go away: sometimes it is easy, but sometimes personal things are locked away.

Even if you give your personal details, this does not necessarily mean that you are spared humiliating experiences. For example, the custody regulations in all federal states also provide for adults that a physical search combined with a complete undressing is only permissible if facts justify the assumption that you are hiding objects. Officers not involved in the search may not be present. The sense of shame must be preserved during the search. However, underage activists have reported that they have been subjected to double examinations, including searches for physical signs of identification, despite having given their personal details.

It may be that the police want to interrogate you. They have to instruct you that you can refuse to give evidence (which you should do). Do not rely on them to instruct you. If you are questioned, your guardians have a right to be present. So, if you want them to be present, you can insist that you can talk to them on the phone beforehand. If you are under 14, you may not be interrogated.

Juveniles aged 14 and over can also be taken into remand custody (U-Haft) in the event of more serious charges and if they are in danger of fleeing and end up in a juvenile prison.



## ***8. Advice for people without a German passport or who are not living in Germany***

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### ***8.1 Consequences under aliens law***

The legal consequences of protests of foreigners can have dramatic effects on your whole life. There is also no absolute certainty about how things will turn out for you when police or authorities take discretionary measures. You do not have to expose yourself to risks to make an important contribution to climate justice. Even if you choose action level 0, you are a highly valued and equal member of our movement. If you have any questions about the criminal risk you run when you take part in a particular action, please contact the action planners or the Legal Team.

Foreigners' law is a very complex issue. We can therefore only give a very superficial first indication. If there are any problems, you should get a lawyer for residence and asylum law and for criminal defence. The Legal Team will be happy to help you with your search.

Contrary to the wording of Article 8 of the German Constitution, people without a German passport have the right to take part in protest actions in Germany. This already follows from human rights guarantees under international law.

Peaceful gatherings are "police-proof" before being dissolved. So, on the way and shortly after dissolution you must not be controlled. BIPoC\* and people who are perceived as migrants are, however, in our experience disproportionately often asked by the police to provide proof of their personal details, even if they have remained at Action Level 0.

If, for example, as an asylum seeker or a person with a toleration certificate ("Duldung") you are still subject to a so-called "residence obligation" (a territorial restriction of your human right to free movement), the mere fact that your personal details are determined outside this restriction can mean custody and a fine of up to 2,500 euros; in the event of a repeat offence it is even considered a criminal offence. (§95 (1) No. 6a AufenthG)

As soon as preliminary proceedings are initiated for a criminal offence, the competent foreigners authority is notified in accordance with §42 MiStra. Consequences under the law on foreigners are, however, only to be expected if a conviction is handed down. If you are convicted of a criminal offence, your risk of being deported varies greatly depending on your residence permit and your interest in staying. (§55 Residence Act)

EU citizens can only be expelled in very rare cases. Crimes within the scope of XR actions such as coercion, resistance and trespassing are not included.

If you do not have an EU passport or a similarly secure residence permit, even convictions for a total of 50 daily rates or more can lead to consequences under aliens law, such as the non-renewal of your residence permit. In extreme cases - if there is no case of interest in staying according to §55 of the Residence Act or a ban on expulsion - this can mean expulsion. If you are convicted of resistance (e.g. for Lock - On), the 50 daily rates can be exceeded. Several convictions are added together.

The probability of deportation increases considerably if you are sentenced to 1 or 2 years in prison. However, this is absolutely unlikely in typical XR actions.

If you are seeking naturalisation, convictions of less than 90 daily rates or 3 months in total are not to be taken into account. But even the initiation of a preliminary investigation leads to the naturalisation procedure being suspended until the criminal case has been decided. In our experience, this can take up to a year. If the conviction is only slightly above the limits of 90 daily rates, the naturalisation authority still has a certain amount of discretion. However, administrative court rulings no longer allow naturalisation if a fine of 120 daily rates is imposed.

## 8.2 In custody and in criminal proceedings

In custody you have no right to an interpreter, but in criminal proceedings you do. You should demand it in any case if German is not one of your mother tongues.

In custody you have the right to receive written information about your rights in a language you "understand". You will be asked to confirm this by signing the notification of arrival. Do not do this. It will then be signed by the officials who posted it. This does not disadvantage you. This applies to all requests for signatures from the police.

Your release may be considerably delayed if the police consider it necessary to consult with the immigration authorities.

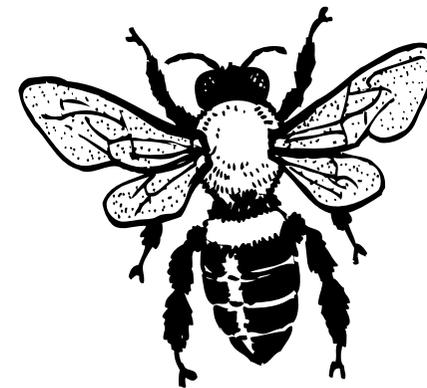
The police must pass on your data to the consulate of your country of origin, even if you do not wish to do so. They may only pass on the reason for your arrest if you allow them to do so. If this is important to you, insist that the reason for your arrest must not be disclosed under any circumstances and have it recorded (but don't sign anything anyway). The consulate has the right to contact you. If you want to make sure that the consulate is informed of your arrest, you should also explicitly request this. Especially if it is an active consulate that is known to assist nationals in detention, this sometimes does not happen otherwise. You also have the right to have your messages forwarded to the consulate.

Your right to visit is further restricted by the fact that "a conversation in a non-German language" only has to be allowed if the officials present understand that language, if you yourself provide a "reliable" interpreter for visitors or if you yourself provide "visitors" with "your own guarantee of a correct translation". In practice, this means that non-German-speaking visits are usually made impossible.

If you are detained, the possibility of an accelerated procedure cannot be completely ruled out. The likelihood of you being detained in custody is much higher because you are quickly considered to be in danger of escaping.

**Do not sign anything!** Officials sometimes threaten deportation or promise your release if you make a statement. You do not have to believe any of this! They don't have to tell you the truth, but everything you say or sign can be your undoing afterwards. Silence is interpreted as consent. That is why you should always say "No, I don't agree with that" and ask for your objection to be recorded.

Do not make a statement, do not sign anything and contact EA (Investigation Committee) or Gesafon or your lawyer to avoid an accelerated procedure or detention and be released from custody.



## 9. racist police measures

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Actions of civil disobedience can result in much more severe repression for BIPoC\* - e.g. illegal racist measures such as racial profiling (random identity checks based solely on phenotypic appearance), which make them more likely to come into focus.

Although peaceful gatherings are "police-proof" before dissolution, i.e. people must not be checked on the way and shortly after dissolution, in our experience BIPoC\* are often requested by the police to provide proof of their personal details and, if necessary, their registration addresses, even if they have remained at action level 0.

Likewise, police arbitrariness and police violence more often meet BIPoC\*.

Lawyers advise victims of police violence not to file charges because they are regularly answered by counter-charges for resistance and even physical assault. High pressure to conform and disadvantages for whistleblowers in the police force systematically lead to unsubstantiated accusations against victims of racism being covered and upheld in court. There are no independent complaint and investigation authorities in Germany according to international standards for investigating suspected cases against the police, although human rights bodies and organisations have been calling on Germany to do so for more than two decades.

### 9.1 Information for white people

BIPoC\* have the right to participate equally in the rebellion. This includes the possibility to participate in civil disobedience at all levels of action. Due to the structural and institutional racism in society, police and judiciary BIPoC\* are exposed to much higher risks.

As white people you enjoy privileges which you should be aware of. During the action or in interactions with the police or racist troublemakers you should try to use these privileges to protect BIPoC\* who are involved in the action in a spirit of solidarity.

### What can you do?

- if you have not yet studied racist police practices much, you can get information in advance, e.g. here:
  - <https://www.bpb.de/gesellschaft/migration/kurz dossiers/308350/racial-profiling-institutioneller-rassismus-und-interventionsmoeglichkeiten>;
  - Guidelines for white people at BLM protests : <https://www.blacklivesmatterberlin.de/things-to-consider-if-you-are-joining-a-demo-as-a-non-black-person/2/>
  - Book: Campaign for victims of racist police violence (KOP): Everyday state of emergency Institutional racism in German law enforcement agencies
  - <https://www.edition-assemblage.de/buecher/alltaeglicher-ausnahmestand/>
- Ask BIPoC\* if they have special wishes and listen to them
- signal that you are aware of your privileges and respect them if BIPoC\* decides not to allow identification in livestream and photos, e.g. for security reasons
- be alert to racial profiling, racist police violence
- document racist police practices (memory protocol), observe legal aspects when filming (see Media under point XX) and always ask the consent of the person concerned / make face unrecognisable. Then ask the person concerned how you should handle the material. If they agree, you can send the recordings to KOP Berlin. (Contact: <https://kop-berlin.de/kontakt>)
- Ask affected people if they want support or presence
- contact officials or stand by them if the person concerned has given his or her consent beforehand, which is also clearly recognisable to the police
- offer emotional and practical help after the action; provide you as witnesses

- it is essential that the decision and control on how to react to the situation is left to the person concerned. Be an ally and supporter and respect the decision-making and assessment competence of the person concerned.

## 9.2 Notes for BIPoC\*

XR is aware of racist police practices in Germany and also tries to sensitise all participants in actions to this. White people at the actions are encouraged to use their privileges to protect you from racist police practices. If you have certain wishes for white people in your reference group or at the action, we would like to encourage you to express them. Our aim is to make it possible for all people to participate in actions of civil disobedience equally. If you like, the Legal Team will be happy to help you.

We do not want to withhold these important information and recommendations from Black Lives Matter from you:

- <https://www.blacklivesmatterberlin.de/what-to-do-if-you-witness-or-experience-racial-profiling-and-police-brutality/2/>

BIPoC\*, who were discriminated against by Berlin police officers\* during an action, now also have civil law claims under the new Berlin State Anti-Discrimination Act (LADG). You can claim compensation for damages caused by the discriminatory measure (e.g. damaged property, medical expenses), but also compensation for pain and suffering. In order to assert a claim, a BIPoC\* does not have to prove the existence of a discriminatory act, but "only" has to substantiate the facts that make the existence of discrimination predominantly probable. Then the police can only exonerate itself by disproving the offence.

For BIPoC\* who find themselves in a dangerous situation, this means: remember as precisely as possible all the details of the circumstances under which the discrimination takes place (Who is involved? What is happening? To what extent are other (white) rebels treated differently, even though they are behaving the same way, e.g. practising the same form of civil disobedience?).

Even though the LADG is supposed to make it easier for BIPoC\* to be compensated for a discriminatory police measure, prosecution is still associated with risks: Police officers are more likely to be in the majority and could confirm each other's statements.

Affected BIPoC\* can also turn to an anti-discrimination association to sue for their rights. Before taking legal action BIPoC\* can also turn to the ombudsman's office of the Berlin Senate Administration for Justice and Anti-Discrimination and try to settle the conflict by mediation. Provisional telephone number: 030 90133460."



## AFTERWORD

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The wealth of information contained in this brochure can at first seem overwhelming or frightening. Take time to read the information and remember why you are involved with XR. If you feel unsure, talk to people who have experience of civil disobedience. State and other actors will try to discipline us all by punishing individuals in an exemplary way, but only solidarity will help. In the group, in the action, and afterwards, in the costs of repression and the psychological and physical consequences. If you have any doubts or further questions, please contact the Legal Team. For emotional support before and after actions, there are working groups on regenerative culture in your local XR group. Do not be afraid to seek help, only together we are strong.

**And again the most important hints  
for dealing with the police in short form:**

**KEEP CALM!  
STAY POLITE!  
SILENCE IS KEY!  
DON'T SIGN ANYTHING!**



## GLOSSARY

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### **Committee of Inquiry (Ermittlungsausschuss or ED):**

The so-called committee of inquiry (EA) is a collection point for information on detention during actions (who is where, who is out again...) and if necessary, sends lawyers to those affected. The phone number will be announced before the action.

### **Recognition procedure / identification treatment (ED Behandlung / erkennungsdienstliche Behandlung):**

An identification treatment is a police measure for acquiring personal and biometric data. Usually photos are taken and fingerprints are taken.

### **Pre-charge detention centre (GESA / Gefangenessammelstelle):**

Pre-charge detention centre (GESA) is a police term and refers to the place where people are held in detention. This can be a police station, but the police can also temporarily set up other GESAs, especially for large actions.

### **Administrative offences or misdemeanours (Ordnungswidrigkeiten):**

Administrative offences are of lesser importance than criminal offences. In particular, they are subject only to a fine and do not have to be dealt with by a court, but can be dealt with by an administrative authority.

### **Criminal offence (Straftat):**

A criminal offence is an unlawful act that is classified as such according to criminal law. The penalty may be a fine or imprisonment. A court must act here, which does not mean, however that there is always a court case.

### **Danger of obfuscation (Verdunkelungsgefahr):**

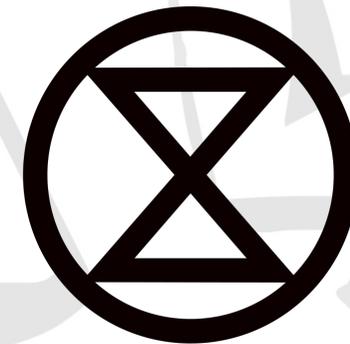
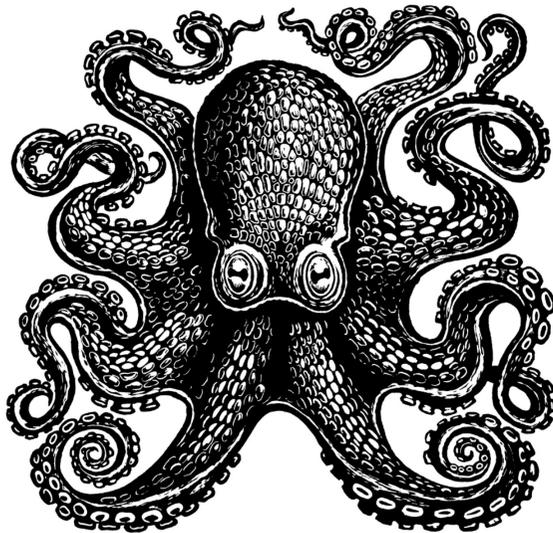
Danger of obfuscation means that the authorities have a strong suspicion that the person may destroy, alter or influence evidence.

## SOURCES

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Much of the information in this brochure is based on the following sources - unfortunately they are only available in German. If you have more questions, please contact the legal team.

- Rote Hilfe, [What to do when it burns](2017), „Was tun wenn's brennt“ <https://www.rote-hilfe.de/downloads1/category/3-was-tun-wenn-s-brennt-und-rechtshilfe-infolyer-zu-spezifischen-themen>
- Ende Gelände, [Legal help brochure for actions in NRW] Rechtshilfebroschüre für Aktionen in NRW (2019), <https://www.ende-gelaende.org/de/rechtshilfebroschuere/>
- Jasper Prigge, [Right to Assembly – a practical guide] Versammlungsfreiheit – ein Praxisleitfaden (2019), felix halle Verlag



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