

XR GERMANY

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

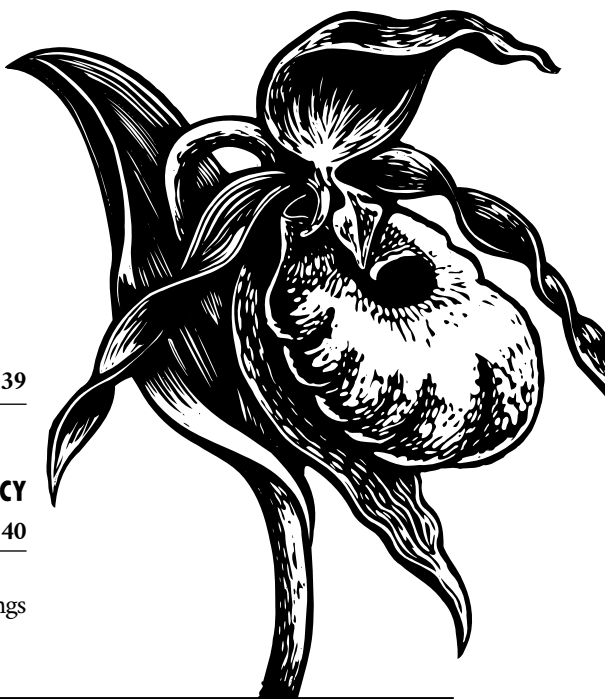
(AUGUST 2019)



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PREFACE

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 Mattermost by direct message under @legalteam
- via e-mail legalteam@extinctionrebellion.de
(PGP Key unter www.extinctionrebellion.de/legal,
Fingerprint: F476 887E 18AB B8E1 4276 B731 71B6 0EEA 1AA1 8D27)

The Berlin Legal Team can be contacted:

- via e-mail legalteamberlin@extinctionrebellion.de
(PGP Key unter www.extinctionrebellion.de/legal,
Fingerprint: B283 F690 C27A 853A B0F6 CE81 2E50 5989 3E3E 1BA5)
- on Wire (encrypted messenger, available free of charge for desktop and smartphone) at @XR_Legal_Team_Berlin

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).

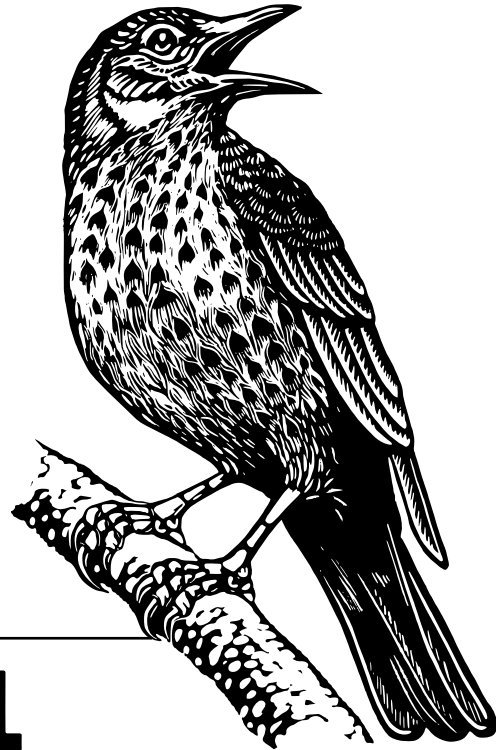
Administrative offences (Ordnungswidrigkeiten) are unlawful acts which do not amount to a criminal offence. In particular, they are only subject to a fine and do not have to involve judicial proceedings, but can be dealt with by an administrative authority.

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: 6.6 - 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.

GENERAL BEHAVIOURAL GUIDELINES



2.1 Affinity Groups

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.

2.2 What to do if someone gets hurt during the action

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!

2.3 Contact with the police

The Berlin working groups 'Legal and Regenerative Culture' have worked together and developed tips regarding contact with the police. These can be found on the XR website in the „Legal“ section (www.extinctionrebellion.de/legal).

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:

2.3.1 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 resistance¹.

2.3.2 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).

2.3.3. Insult (§185 StGB)

Apart from the fact that insulting officials does not fit within the non-violent culture and communication enshrined in XR, such behaviour can also have legal consequences, because insults can amount to a criminal offence. Beware that addressing a police officer informally (in German language there is a distinction between formal ('Sie') and informal ('du') language) can be an considered an insult.

2.3.4 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.

¹ 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“.



III.

RIGHT TO ASSEMBLY



3.1 Basics

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.**

3.2 *Rights and duties of participants*

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).

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 BVerfGG). 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 BVerfGG).

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. In general, rebels of XR tie their faces and names to the actions (see also 5.1.1 Determination of personal data).

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 BVerfGG). 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

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 BVerfGG). 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.

3.4 Organization of registered meetings

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.



IV.

FORMS OF ACTION



The information in this brochure on the right of assembly, on the requirements for dissolving an assembly and on possible police measures after dissolution applies to all forms of action listed here. The following sections are primarily concerned with the **additional** legal consequences, which different forms of action may have.

4.1 Blockades and Swarming

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.

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: 6.6 - 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 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 Resisting enforcement officers, § 113 StGB

Once the police have arrived, they will examine the situation and probably ask you to release the chains or whatever means you have used. If you don’t comply with this request, they will usually detach you after some time with their own tools (bolt cutters, solvents...). By disobeying the request you are resisting the police and may be prosecuted for „resisting enforcement officers“. According to the law, this is punishable by up to three years of prison or a fine. A custodial sentence is only considered if you have a criminal record or are at that time on probation. In the vast majority of cases the termination of monetary fines or penalty orders including fines will follow. If the police has to take expensive measures to enforce an eviction (see also 5.1.4 - Eviction), rebels may be charged with administrative costs for the measures taken. (see also: 6.6 - Legal costs). For example, cranes, lifting platforms and police specialised in climbing are usually used to remove a treehouse or someone occupying a tree.

4.2.3 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.

In addition, if something is blocked by people chained or glued to something or by the occupation, coercion might also be considered (see also 4.1.1.)

4.3 Critical mass

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.² 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.

² 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.

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.

4.4.2 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.

4.4.3 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: 6.6 - Legal costs).

4.5 Protest camp

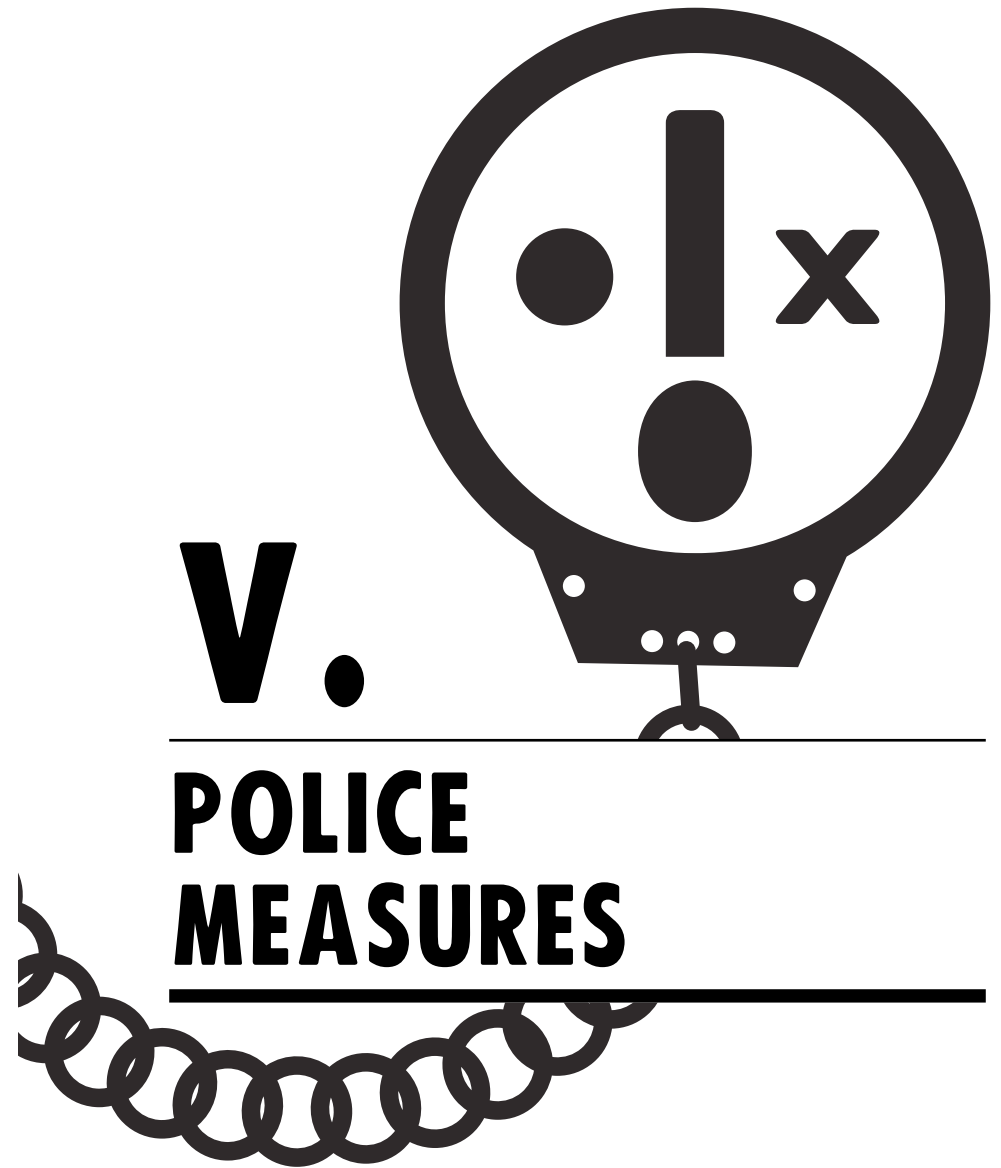
Protest camps are in general also covered by the right to freedom of assembly if the content of the programme is aimed at contributing to the formation of public opinion on a particular event. This was decided by the Federal Constitutional Court as part of a dispute concerning the G-20 protest camp Hamburg 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.



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 5.1 On the street / On the way to actions

5.1.1 5.1.1 Identification checks (Personalienfeststellung)

During an identification check you only need to state your name, place of residence, date and place of birth, nationality, marital status and occupation. The police may ask more questions, but you don't have to answer them, especially if you are suspected of a crime or administrative offence. In addition, you should only reveal your marital status and occupation if it is explicitly asked for.

At XR, rebels stand by their actions with their faces and names. Denial of identity is not consistent with our core values, and you do not enjoy the protection of a critical mass of people who simultaneously deny their identity. If you still want to disguise your identity for certain individual reasons (residency status, previous convictions, etc.), it is best to speak with the Legal Team before the start of the action. In large cities such as Berlin, the police have the necessary infrastructure to take you into custody if you refuse to provide personal data and to carry out an recognition process and thus determine your identity (see 5.3.2). If the police then have your data, you can be fined for refusal to provide personal data (§ 111 Ordnungswidrigkeitengesetz).

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 we work together with the existing Berlin EA (<https://ea-berlin.net/>), which offers this support for many different protests and actions.

You have the right to make two successful calls when you are detained or arrested. **Request to use the phone and use one of your calls to inform the EA. In order to do this, you must have written down the EA phone numbers somewhere on your body in advance or memorized them.** Notes on paper or in your mobile phone may be taken away from you so that you don't have them available at the crucial moment.

Limit your conversation with the EA to the essential and uncritical information: your name, date of birth and place of residence. Tell us where you are being held, what the accusation is against you and what the police intend to do with you. Don't say what you or anyone else did or didn't do. **Call the EA again after your release**, so that the EA can continue to keep track of who is no longer being held. You may also reach the answering machine, in which case you can simply write your information on the tape.

It is highly recommended to prepare for the consequent legal procedure by writing down your recollection of the events as promptly as possible, including information about the (possibly illegal) behaviour of the police. This record is a very important document. Make sure you keep it safe. The police or other investigative agencies should not get their hands on your written record!

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 Red Aid and solidarity lawyers).

5.3 Measures used by the police

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 2.3) 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 voluntary³, 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 Recognition procedure (erkennungsdienstlichen Behandlung oder ED-Behandlung)

During an recognition treatment your fingerprints will be taken and photos taken. This usually happens in the pre-charge detention centre (GESA), but can also happen on the road. It is imperative that you file an objection to the recognition treatment and have this recorded. Don't sign anything! A recognition treatment is usually carried out in the case of refusal to identify oneself, 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 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 iris scan) 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.

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



VI.

AFTER THE ACTION



6.1 Criminal proceedings

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). 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 - another important reason why you should first lodge an objection by default.

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)

If you have committed an administrative offence, you will receive a fine notice (probably in the weeks or months after the action) (see also: 6.6 - 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 Civil proceedings (Zivilverfahren)

In the case of some forms of action, subsequent claims for damages are theoretically conceivable. This applies whenever something is damaged. It also includes the requirement under private law to refrain from actions, for example in shopping centres, or the blocking of a main access road to an airport in such a way that passengers can no longer reach their flights on time even if they walk past the blockade. This possibility should therefore already be taken into account when planning such an action. Even more far-reaching actions, such as paralysing flight operations by releasing drones or the like are extremely risky from the point of view of cost or compensation law and can lead to life-long financial ruin (since both airlines and airport companies will demand compensation for the financial loss incurred).

6.4 Witness statements (Zeugenaussagen)

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.

6.5 Certificate of good conduct (Führungszeugnis)

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.

6.6 Legal expenses

There are many different financial consequences that can arise from actions: fines, court costs, invoices for administrative expenses or claims for damages.

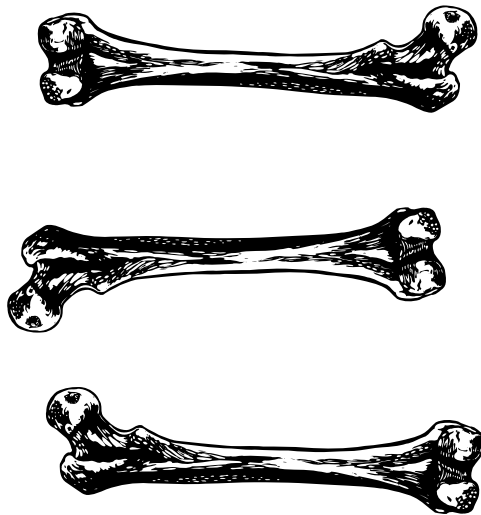
We do not leave each other alone with these costs.

But we cannot predict how large the costs generated by the rebellion wave will be. **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. We also ask you to make an honest estimate of the costs you can bear yourself.

To prevent this from happening, we ask all of you to share our appeal for donations as a matter of urgency! There are many people who do not want or are not able to take part in actions themselves, but who would like to

support us financially. You can also start your own fundraising campaigns in your local group or small group, for example fundraising parties. Under certain conditions there is also the possibility to get support from outside XR, for example from the Red Help (<https://www.rote-hilfe.de/>).

It is key that the prerequisite for assuming the costs is timely communication and cooperation with the Legal Team - this also means that you should not make any statements without consulting the Legal Team.



ADVICE

7. Advice for underage rebels

As an underage rebel, you may be detained during actions because the police assume that you are there without the permission of your parents or guardians. You can prevent this by having written permission if your parents are willing (important: must be signed by all legal guardians).

In addition, your parents/guardians may issue a power of attorney to another (adult) person to collect you from pre-conviction detention (GESA) upon detention (see 5.2.1).

If you are accused of a criminal offence and you are questioned, your parents or guardians have the right to be present. If you want, you can insist. If you're younger than 14, you can't be interrogated.

The same applies to young people as to everyone else: don't say anything, turn to the Legal Team with confidence and act together!

8. Information for people without a German passport or residence in Germany

8.1 Consequences for residency status

In the worst case, a criminal conviction can lead to deportation for people without a German passport. The nature of the residence status and the seriousness of the offence shall be taken into account in the assessment. This means that people with an EU passport or with asylum or in an asylum procedure can only be expelled for more serious crimes. Even for people without an EU passport, it is quite unlikely that a conviction following an XR action will lead to expulsion, at least if it is the first conviction.

An attempt at naturalisation can easily fail even due to a minor conviction.

Consider carefully whether you feel up to the situation and what risks you want to take. There are many ways to participate in XR's actions without jeopardizing your residency status. Inform yourself well about your individual consequences under residence law.

8.2 In custody and criminal proceedings

If you are in custody (and possibly have no residence in Berlin or Germany), it cannot be ruled out that you will be subject to a fact-track procedure (see above) and will remain in custody due to the danger of escape and obfuscation. When you are detained you have no right to an interpreter, whereas in criminal proceedings you do. Be aware that the police often do not speak English or other languages. Never make a statement, sign nothing and contact the EA or your attorneys so that an expedited procedure can be averted and you can be released from custody.

The police will pass your data on to the consulate of your country. You have no right to speak to the consulate however.



AFTERWORD

The information in this brochure can be overwhelming or frightening at first. Take the time to let the information sit and remember why you're involved with XR. If you feel insecure, talk to people who have experience with civil disobedience. If you are unclear or have further questions, please contact the Legal Team. For emotional support before and after actions, XR has working groups on regenerative culture.

**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

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 / Gefangensammelstelle):

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):

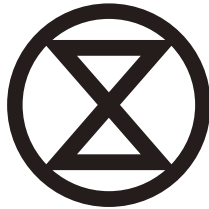
Danger of obfuscation means that the authorities have a strong suspicion that the person may destroy, alter or influence evidence.

SOURCES

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/>
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