

# Legal Aid Manual for Actions in Northrhine-Westfalia

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# 1 Intro

This manual is legal aid from activists for activists. It is intended to support the resistance against the prevailing powers, focusing on the climate movement. In part, it refers to specific laws in the German state of Northrhine-Westphalia (NRW). Hence, not all information can be used in all of Germany, but most.

Repression happens on different levels: starting with the pressure some relatives might put on you, up to the police and the court taking action against you. Anti-repression work is meant to support the resistance against the existing conditions. It makes sense to deal with possible repression beforehand, no matter what kind of action, whether state or civil law applies, to get to know the laws applying to the specific situation.

We see repression as a means to apply political pressure, a means we need to resist together. We want to offer all the support and knowledge we can give you, but we also depend on you working with us and want you to pay attention as well. We cannot promise that all our answers to any kind of question will be “waterproof“, since repression isn’t always predictable and depends on the tactics and strategies of the repressing forces. But one thing is for sure - repression seeks to isolate and intimidate us, so we want to emphasize: **We act in solidarity! No one is left alone!**

First and foremost, we want to offer legal support and not have people facing repression stay in isolation. To do that, we are working together with various people from different contexts.

In every individual case, we want to work on options to act together with the people who are affected by repression, in order for them to be able to decide what they want to do - based on a wide array of different options and views. We want to enable informed and responsible decisions for action. In our opinion that includes that the people affected are willing to dive into matters just as deeply as we do to consider their options.

We also want the anti-repression work to be supported by the movement, and have the whole movement stand united behind the people actually affected by repression. Dealing with repression is part of the resistance against the status quo and is a load that cannot be carried by a few alone. Over the last years we noticed that oftentimes a few individuals are pursued much more severely than others. Only some are affected by repression, but it’s all of us they had in mind. In these cases solidarity is the strongest antidote we have.

## What does a legal team do?

You can call the legal team number at any time during the actions. We will take care of arrestees, and will make sure that no one sitting in a police cell is forgotten. Before the actions we are going to offer workshops and counselling. If you have any questions, don’t hesitate to come around, we will do our best to give you answers. After the actions, the legal team can be contacted via e-mail if the actions had legal consequences. You can get advice or be referred to others offering support.

## Calling the legal team

The legal team will be available by phone 24/7 during both camp and action. We will publish the number before the camp starts so you can also reach us on your way there. Please call the legal team if you witness someone being arrested or e.g. if the police acted violently. If you get arrested yourself, please call the legal team from the police station! When in custody, you have the right to make two phone calls. Please use one of them to contact the legal team. If they do not let you make a call, demand they inform us of your arrest in your presence.

This is what you should tell us:

- ✓ Your name (or number/alias if you decide to remain anonymous)
- ✓ Where are you held in custody?
- ✓ What are they accusing you of?
- ✓ How are you?
- ✓ Do you need important medication?
- ✓ Are there other people who were taken into custody along with you? (Please **only** provide names of people who already have identified themselves to the police)

Things you should **NOT!** tell us:

- × What you really did or didn't do
- × Your name, in case you want to stay anonymous vis-à-vis the authorities
- × Which other people were involved, but not arrested

The legal team will establish contact with lawyers and make sure that they get in touch with you if you are facing accelerated procedures and/or the police are trying to detain you for a longer period. We will also try to organize people who will pick you up and welcome you upon your release from the detention centre/police station. We will make sure that nobody is forgotten! As soon as you are free again, call the legal team to let us know!

## Important

We tried to translate all German legal terms as accurately and as clearly as possible. Please be aware that a legal concept we describe here might differ from a concept of the same name you heard about elsewhere, as the legal system varies from country to country.

## 2 Forms of actions and their legal base

In this chapter we want to take a look at different forms of actions and give you some tips as to what to consider from a legal viewpoint, especially considering the legal framework that applies to demonstrations. This is not supposed to prevent you from doing anything. Quite the opposite, it is supposed to encourage you and help you choose a form of action that is a good fit for you. It needs to be said upfront that quite often the police themselves do not know the legal frameworks in which they act, or choose to ignore them. These hints we present here are based on experience, which does not mean that an action can't have any other consequences. Unfortunately, parts of repression can be unpredictable, which plays into intimidation tactics.

### 2.1 Demonstrations, assemblies

You and your peers count as an assembly whenever you are communicating with several people out in the open and are doing an action that aims to shape the public opinion – whether or not this assembly has been registered or not. This section will provide you with some tips on registered and non-registered demonstrations. Sometimes we will refer you to the corresponding paragraphs in the law concerning processions and assemblies (Versammlungsgesetz / VersG). You can find these in another booklet containing a number of legal statutes at the legal team.

#### 2.1.1 Participating in a demonstration/an assembly

Demonstrations are an important measure to build political pressure. They help us communicate our concerns to the public.

##### Legal background

Demonstrations are called *assemblies* if they take place at a fixed location (e.g. a manifestation or a vigil) or a *procession* when they are moving. Legally, this doesn't make a difference. Standing around or walking: holding demonstrations or participating in them is protected by the constitutional law. That means the police is not allowed to prevent you from getting to and joining a demo. As they are a legal form of action, demonstrations that are meant to have a peaceful, more colourful character can pose a lower risk to people with a precarious residential status – it is less likely they will get into trouble regarding their status of residence due to criminal procedures.

##### Keep in mind

- ✓ Police can only disperse a demonstration under strict conditions, namely if it is “unpeaceful”
- ✓ Once police dispersed a demo, everyone needs to leave. If they don't, that can be pursued as an act of misdemeanour. (→ §29 VersG)

- ✓ It is forbidden to wear masks (or similar props covering your face) at a demonstration, if they are meant to make you unidentifiable for the police. But there are other reasons why one might e.g. wear a dust mask – protecting oneself against coal dust for example. (→ §17a VersG)
- ✓ So called “defensive arms” or “passive armour” are also forbidden, meaning everything protecting you from police measures (e.g. helmets, padding). There is a wide range of interpretations of that concept. (→ §17a VersG)
- ✓ It is a crime to violate the ban of masks or passive armours. If it is persecuted, it can usually result in a fine.
- ✓ As soon as an assembly (registered or not) is in place, legally the freedom of assembly has priority over the police law. Thus, police is not allowed to apply measures condoned by police law such as searching people or banning them from the premises.

### **2.1.2 Registering/organising a demonstration or an assembly**

When organising a demonstration you do not only need to take care of having a megaphone, speeches, banners and so on, but you also need to register it. According to the law concerning processions and assemblies, a demo needs to be registered with the authorities 48 hours before it is supposed to start (→ § 14 VersG). If you do not want to do that, read the next paragraph. You can also register several assemblies with the police “in bulk” and call them off again, if your plans have changed.

#### **Registration process**

You can find a list of the authorities responsible for the mining area and their contact data at the legal tent. When filing a registration, you usually need to specify a time frame, motto, route, number of expected participants and a person who is supposed to be the “head” of the demonstration. You can register “spontaneous assemblies” within a shorter time than 48 hours. In this case you need to state a reason for having the demo that has occurred at such short notice (e.g. another person being arrested or banned from the premises).

#### **Keep in mind**

- ✓ All assemblies need to have a headperson who has to identify themselves to the police. The head is responsible of making sure the assembly is “properly executed”. (→ § 7,8 VersG)
- ✓ The authorities can impose official requirements at any time, also during the assembly, in case there are specific facts hinting that a certain measure might be necessary to prevent crimes or a danger to the public. For example, with large assemblies (more than 50 people) the police usually demands a certain number of “stewards” who are supposed to “implement” the head’s “instructions“.
- ✓ The head of the assembly has to try to implement the official requirements. If requirements are not met, it sometimes happens that the assembly’s head is being prosecuted, which can lead to a fine. (→ § 15, § 25 VersG)



- ✓ The people in the demonstration decide themselves where their demo is taking place and what it is like. If the police wants to change the route, they have to give a reason for every single restriction and requirement. Them being overworked is an argument that courts almost never accept in this context. There are also verdicts saying that it has to be possible to have a demonstration within visual and hearing range of the object one is criticising.
- ✓ But: a demonstration can not take place on private property without the owner's consent. There are exceptions from this rule (eg. if the larger part of the property is owned by the state), but let's just say that it is extremely unlikely that one could register an assembly in the middle of one of RWE's coal pits.
- ✓ The police can only film assemblies if there is a specific risk. Meaning, if they are filming without a detectable reason, the assembly's head can call them to cease doing that. (→ § 12a VersG)

### 2.1.3 Conducting unregistered assemblies

There are reasons to not register a demonstration, although that might cause more conflicts with the police at the scene. One example would be that people do not want to be inhibited in their choice of where, when and how they want to rally. Or maybe it is clear that if one tried to register the demo, it would be prohibited or met with requirements that would make it practically unfeasible.

#### Keep in mind

- ✓ Leading an unregistered assembly is a crime. (→ § 26 VersG)
- ✓ Participating in one, however, is not. Remaining in a spot police asked you to leave is an act of misdemeanour. (→ § 29 VersG)
- ✓ So, when you are a group in an unregistered assembly, make sure there is not one person who obviously appears to be the head (eg. talking to police alone, only one person speaking through the megaphone). Take turns with the tasks that could be associated with leadership. Most lawsuits concerning "heads" of unregistered assemblies come to nothing, though. If there is a verdict, the penalty is usually a fine. (→ § 26 VersG, → chapter 4)
- ✓ Unregistered assemblies are also covered and protected by the freedom of assembly. As long as they are peaceful they cannot be dispersed. As always, police will not necessarily stick to these rules.

## 2.2 Open actions

The international climate movement is fighting energy policies that are backwards and reckless, that destroy the global climate and the lives of many people here and elsewhere. Today, they are also doing so in German coal mines, the biggest source of CO<sub>2</sub> in all of Europe. Usage of one's own body and disobedient appropriation of space or machinery causes a very special form of confrontation. Here you can find a couple of scenarios

showcasing in which accusations your actions could result, both your participation in actions of civil disobedience, and organising direct actions (also using devices such as *climbing ropes, lock-on tubes* or *tripods*) with others. Before you continue reading, please make sure you understand that in any of these situations other accusations going beyond what we describe here could be constructed. Solidarity structures are in place to support you in these cases aswell.

### **2.2.1 Flowing / breaking through police lines**

It can happen during actions that suddenly police wants to bar your way. There might be a few individuals standing in your way, or they might form narrow lines (with several of them in a row). You can learn how to deal with these situations in action trainings, while we will focus on legal advice. However you overcome such police lines, there are several accusations that arise quite often:

- rioting (“Landfriedensbruch”, § 125 Strafgesetzbuch/StGB, Criminal Code)
- resisting enforcement officers (“Widerstand gegen Vollstreckungsbeamte”, § 113 StGB)
- NEW: Assaulting enforcement officers (“Tätlicher Angriff auf Vollstreckungsbeamte”, § 114 StGB)

The first two are accusations the police frequently uses to justify their own violent behaviour as a necessary reaction, or to get people who cannot be accused of anything else to stand trial. This tactic works because the law’s wording is relatively unspecific. We need to wait and see whether this gets any worse with the tightening of the laws in § 113 StGB an § 114 StGB that happened in late May.

#### **Rioting § 125 StGB**

“Landfriedensbruch” is the legal term for “riot”, “upheaval” etc. To uphold this accusation, the court needs to prove that it was you who acted violently against people or objects from within a group, or that you supported such actions by the crowd.

#### **Resisting enforcement officers § 113 StGB**

According to the legislation, one has to have “actively worked against the enforcement officer, in a way that is similar to putting them under duress” to be convicted according to § 113 StGB. This means that just being passive towards the police is not enough to be convicted of § 113 StGB. For example, letting the police carry you away as a “packet” after a sitting blockade is not resistance if you do not fight back – even if they asked you to get up and leave before. Running away isn’t resistance either. Kicking police people trying to carry you away or violently breaking free did count as resistance (until now). The law covers instances when people “resisted using violence or threatening to use violence” - e.g. using all your strength to not walk into the direction they are pulling you can be punishable under this law.

### **NEW: Assaulting an enforcement officer § 114 StGB**

This accusation has been created this very year, 2017. The part about assault was taken out of the former version of § 113 StGB and was molded into its own section with its own (much higher) sentence. Every supposedly violent movement in direction of the other body could be seen as assault, e.g. pushing, hitting or kicking. Neither § 113 StGB nor § 114 StGB necessitate pain or an injury of the person “suffering” the movement. Such “attacks” are now supposed to result in at least three months of jail time or in suspended sentences, but as of now it is unclear how all that is going to pan out. Hence, when flowing through police lines or in any other situation where you get really close to the police, you should pay extra attention to not making any movements (that could be interpreted as violent) in direction of the police persons’ bodies.

When in confrontation with the police, the accusations **insult** (Beleidigung, § 185 StGB) and causing **bodily harm** (Körperverletzung, § 223 StGB) can also be relevant.

In the German language, “you” has two variants – “du” for someone you know, the more formal “Sie” for example for superiors and (adult) strangers. If you say “du” to a child, it’s usually not regarded an insult. But if you say “du” to an adult, it might be – and if that adult is wearing a uniform it most often in fact is considered an insult. If you want to say something negative about a person or a group of people, it is better to say something less straightforward like: “I bet my grandma would say...” Also, you can’t insult a group that is really big. Meaning: you can rant about the whole police, the army, the state etc. as you want. But you should not say this to the face of someone who belongs to that group – then it becomes assignable and punishable again. It might be difficult for lay people to tell when it is okay and when it isn’t, and it might go wrong in confusing situations. So please think about what you want to say. Oftentimes it can give you a better feeling to be with a group of friends and empower one another rather than to rant about the police.

Causing bodily harm to anyone is certainly not the objective of civil disobedience or direct actions. So this could only happen accidentally or because of wrongful accusations by Nazis, the police or others. Try to avoid situations that seem to escalate quickly, rather than fuel them.

### **Keep in mind**

Rioting, resisting and assault should remain without punishment (even if there is proof you did it), if the police acted unlawfully in that specific situation. That is why it is advisable to try and remember all their mistakes. But: don’t rely on it – the law also authorizes police to do a lot, and at court it is much more likely the judge will believe a lying police person rather than you. This is especially important concerning assemblies, because it is almost always unlawful if the police attacks a demonstration or its participants. A tactic to avoid charges could be: you could tell the officers that in case of a trial they will be questioned about their behaviour and the circumstances, and that you will not talk to them before. The law also contains “particularly severe cases” for all three accusations, which are punished more seriously. Especially relevant:

**Committing them collaboratively:** if there is two of you involved in the offence (e.g. two people pushing someone) it can be punished as collaborative committal.

**Bearing arms or dangerous objects:** if carrying arms or other dangerous objects while (allegedly) committing a crime. Almost anything that can cause an injury can be

seen as a dangerous object: shoes, pencils... What's new: since the tightening of the laws in May 2017, the sole bearing of such objects is punishable. Before, it could only be punished if it could be proven that you had the intention to use that object as a weapon. This change seems absurd and has been criticised a lot, e.g. by associations of judges, before it was passed. Unfortunately we will have to await the results of a couple of trials until we can say anything about further developments. We advise you to meticulously consider what to take with you into action.

Police uses § 113 StGB to evade criminal persecution whenever there was police violence. If you file any charges against a police officer, it is common practice they will charge you with resisting an enforcement officer in return. In these cases the accusation solely relies on what the police says, so they have a lot of leverage. It occurs more often than one might think that police officers discuss their statements before a trial to protect one another. At the moment we can't say whether they will also try to charge you with § 114 StGB (assault) as a way to come back at you. At the same time, almost all proceedings against police officers are terminated before there is a verdict. Meaning that after actions of civil disobedience you have nearly no chance to legally oppose violent police. We are not saying that to make you afraid or keep you from doing actions. But we do not want you to trust a state under the rule of law which will let you down in this specific situation.

In case you are brought to court and have to defend yourself, it can be helpful to have your own photo and video footage available. It can help to lay down your own version of events and have proof that contradicts the statements made by the police. It can thus be very beneficial to have people at demos or actions who support your mission in solidarity and who take pictures – always aware that their equipment and footage could be confiscated by the police to use it as evidence instead. Discuss who can take pictures when. If you have been arrested, don't feel shy to ask the people who taped the whole thing if you could use their footage in your defense.

### **2.2.2 Entering a mine**

Many political actions are supposed to disrupt something we do not want in the place where it is happening. These places might be someone else's property, which also applies to the mines and their surroundings (if it already is RWE's "company site"). Entering a mine or someone else's house can lead to being accused of trespassing. Trespassing / Hausfriedensbruch (§ 123 StGB) holds whenever entering is visibly undesired – e.g. by means of walls, doors (also unlocked doors), solid earthwalls, continuous and visible signs (if the signs did not disappear beforehand) or fences (even if there are a few holes in it). It is also trespassing to not leave the premises after a person authorized to do so told you to leave.

### **2.2.3 Blockading excavators**

When the action of your choice involves approaching the excavators, you are on RWE's premises, hence, the accusation of trespassing can be applied to you (see above).

Depending on the situation, you could be accused of coercion (more precisely, "using threats or force to cause a person to do, suffer or omit an act" / Nötigung § 240 StGB), no matter what kind of excavator you are at. This is an accusation very common with

blockades, as blockades are meant to prevent something from happening – be it access to a site, a deportation or eviction or the work of a machine. The law doesn't clearly say from what point onwards something is coercion.

In the meantime, quite a lot of verdicts have cleared the matter up a bit: it was decided that a blockade in which you used only your own body (e.g. a sitting blockade) is not forcing anyone to do or omit anything. But legal experts came up with something else: in a blockade, e.g. the first car in line is not affected by coercion, but the second one is (because on top of the people, there is also another car keeping it from driving). You should also keep the accusation of Disruption of public services / Störung öffentlicher Betriebe (§ 316b StGB) in mind – more on that in the following section 2.2.4. Depending on the way the eviction goes, resisting officers or insult can also be relevant. Check section 2.2.1 on page 6.

#### **2.2.4 Blocking of railway tracks**

The power plants are supplied with coal via a railway system. These are part of RWE's business premises, and, as they are relevant for the burning of coal, another possible target of your actions. When you consider setting foot on the railway tracks, trespassing might be an accusation you could face, depending on whether at all and if yes, how well you should have been able to tell that it was private property you were entering. Please read section 2.2.2 on page 8.

If trains have to stop because of you, you might also be accused of coercion. Please read section 2.2.3.

As we already hinted in section 2.2.3, the accusation of disruption of public services (“Störung öffentlicher Betriebe”, § 316b StGB) might come into play with blockades of railway tracks. Crucial to this accusation: in this law, the provision of the public with an important good (eg. energy supply) has to be disrupted by someone “destroying, damaging, removing, altering or rendering unuseful” the facilities, or “tap[ping] electrical power”. Jurisdiction seems to lean towards assessing that simply sitting or lying on the tracks is not enough to be accused of disrupting public services. If you were to lock yourself on to the tracks, courts could rule that to be “altering” the tracks. People have been convicted on these grounds (money to be paid between 30 and 110 daily rates).

#### **2.2.5 Blocking streets**

If you block a street that is not visibly marked as being on the premises of RWE you can be accused of coercion/duress/“using threats or force to cause a person to do, suffer or omit an act” (see section 2.2.3). If the blockade was not more than a sitting blockade, a sentence is highly unlikely. The police formally dispersing the assembly on the other hand is quite common. In theory you have to leave once an assembly has been dispersed. If the procedure of asking you to leave went according to the rules and you do not leave, this can be seen as an act of misdemeanour. You might receive a fine – in this case, very similar to a parking ticket.

#### **2.2.6 Occupations**

You and your affinity group decided on occupying something – either a house owned by RWE, a public building (eg. the office of a political party or the roof of a police station)

or a part of your favourite forest. You should be prepared to be accused of trespassing (see section 2.2.2). Depending on the way the eviction goes, resisting officers or insult can also be relevant. Check section 2.2.1.

## **2.3 Other forms of action**

Of course there are various other actions with which you can oppose RWE and coal mining, but that are not civil disobedience like the situations described above.

### **2.3.1 Removal of barriers and signs**

With potential accusations of trespassing in mind, it can make sense to enter an action site where there are no fences or signs prohibiting access.

#### **Keep in mind**

- ✓ Don't get caught.
- ✓ Crimes you could be accused of: theft ("Diebstahl", → § 242 StGB) and, if something broke, property damage ("Sachbeschädigung", → § 303 Strafgesetzbuch).

### **2.3.2 Making a mark (e.g. chalk, graffiti, paint bombs)**

In the last years, people were called to "mark" RWE's infrastructure, eg. with colourful chalk, paint bombs or graffiti.

#### **Keep in mind**

- ✓ Property damage requires a "damage or destruction in substance". Drawing with chalk does not count because it can be washed off easily. Paint that can not be washed off is punished as criminal damage, but usually there is only a fine for a bit of paint, and usually a small one (→ § 303 StGB). But you may have to pay damages on the grounds of civil law (→ section 5.2.4 on page 33).
- ✓ If you install another object but do not break anything in the process, it should not be punishable as criminal damage.

### **2.3.3 Sabotage**

RWE reported 35 alleged acts of sabotage and 185 alleged cases of property damage in the year 2016. As no one has been caught so far, there is very limited experience with cases like these – luckily. The range of sentences probably depends a lot on the severity of the interference and the destructions. Depending on the case, sabotage might go beyond financial penalties and suspended sentences.

#### **Keep in mind**

- ✓ Don't get caught.
- ✓ Don't leave any traces (fingerprints, footprints, tire tracks, DNA, phone location).

- ✓ Disruption of public services (§ 316 StGB) might come into question, which is (among other things) about disrupting operations of a facility providing the public with energy (→ § 316b StGB).
- ✓ Disruption of public services is also part of the list of criminal offences used to pursue “terrorist organizations”. Over the last years, no one from the leftist movement has been convicted on the basis of this law (→ § 129a StGB), but it can be and is being used to attain far-reaching investigatory powers, like total digital observation.
- ✓ Depending on the action, criminal offences like arson (Brandstiftung → § 306 StGB, causing an explosion (Herbeiführung einer Sprengstoffexplosion → § 308 StGB), dangerous disruption of rail, ship or air traffic (Schwerer Eingriff in den Schienenverkehr → § 315 StGB) and criminal damage (Sachbeschädigung → § 303 StGB) can be relevant.

## 3 Personal identification and ID refusal

We provide a whole chapter about ID refusal, since it was one of the most discussed topics during the last climate actions.

### 3.1 Personal identification

The police can try to get your personal data either in accordance with the German Code of Criminal Procedure (when a person is accused of having committed either a crime or a misdemeanour), or to prevent a danger (according to § 12 Police-Law Northrhine-Westphalia), thus, if police thinks you are brewing some kind of a plan. So, you can first ask for the legal basis of checking your identity. Under the police law, the police is not allowed to check your identity when you are participating in a demonstration. The law says you have to provide the following: first name, family or birth name, date and place of birth, family status, profession, place of residence, nationality. Most of that can be found on the ID they demand to see. If you do not carry your ID you can also provide the information verbally. You do not need to give any other information. If you decide to identify yourself, you could also collect the IDs of everyone around you and hand them to the police as a stack. This makes it more difficult for them to identify who is who, hence, hinders them – and you can have fun watching the police trying to identify you.

### 3.2 ID refusal – what can police do?

The police can hold people and keep them at the police station in order to establish their identity. How long they can hold people depends on the federal state you are in: in Northrhine-Westphalia that's 12 hours just for finding out someones identity. After that they have to come up with some other reason to keep a person or put them in front of a judge deciding whether they will be detained. The police can also entertain other measures to establish someones identity, usually “booking” them (German: ED-Behandlung). In most cases they will take pictures aswell as fingerprints. Sometimes they will use force to do that. In just a few cases it has been reported that they also took DNA-samples, although that is prohibited without a court order (for further information, see sections 4.2.2, 4.2.3 and 4.3 starting on page 18).

#### Advantages

- ✓ Solidarity with people without papers or a residence permit, with a foreign ID or with pending arrest warrants
- ✓ prevents the police from working through the activists quickly, is more of an effort for them
- ✓ less likely to be the subject of declarations to cease and desist or criminal prosecution in the aftermath, especially if your pictures and fingerprints cannot be connected to your name



### **Disadvantages**

- × Difficult to openly say that you did perform that action insults, humiliation, maybe even physical assault at the police station
- × higher risk of being put into detention awaiting trial
- × solidarity work more difficult (e.g. if people do not attend other activists trials for the fear of being recognised)
- × if ones identity can be established or at least suspected nonetheless (e.g. by comparing to other photos or them finding your insurance card) an additional fine for refusing to declare ones identity in the first place can be the result

### **Further risks you need to keep in mind**

Experiences from the last years show that the police can take photos and then do “car checks”, eg. on the day of departure, to attain peoples identities afterwards. If you refused to identify yourself and they took your fingerprints, but they are able to identify you using photos etc., they might have the connection between your name and your fingerprints. As a result, older proceedings can be reopened. Of course police can also take your fingerprints even though you did identify yourself (→ section 4.2.2). It should be noted that the police might pay much more attention to ID refusal in a small group action than to those not identifying themselves in an action in a bigger group, eg. because they have to “process” less cases.

### **Decision and preparation**

Please discuss in your affinity group before the action whether or not you would like to refuse your ID. If you want to, remember to not take any papers that are in your name with you (insurance card, driver’s license, maybe also your phone). Leave it all at the camp. Maybe tell a person you trust where to find your ID in a case of emergency. Learn one anothers numbers (those you were assigned by the legal team) by heart, so that you can ask the legal team for information on people from your group who did not come back from the action with you.

It might sound harsh, but: please think about what you want to do if they threaten to put you into detention awaiting trial and set up a date to put you in front of a judge. Do you want to reveal your identity then? Or take the risk at first, because they most likely will not be able to detain everybody? Talk to your friends about what is supposed to happen then. The *ABC (Anarchist Black Cross) Rhineland* can provide you with forms that help you discuss this (see section 4.3.2 on page 20 about detention awaiting trial).

## 4 Police measures

In this chapter you can find some tips and tricks aswell as the legal groundwork for specific situations when dealing with police that could occur in the context of the camps and action days. As a general rule, you should not make any statements to the police about what you did or did not do, because they will only use your testimony against you and others.

### 4.1 On the street / on the go

#### 4.1.1 Car or bus inspections

The police can stop and inspect your vehicle for a number of different reasons. First, the general traffic control which police is always allowed to do, but also identity checks for which they need a specific reason (more information about identity checks see section 3).

#### **During traffic controls, always keep in mind:**

- ✓ Only the driver needs to show their driver's licens and ID, none of the passengers can be checked.
- ✓ Police can demand you to show your car papers, warning triangle and first aid kit.
- ✓ They can check whether the driver is fit to drive (alcohol test). You can refuse a blood test. If there is a specific suspicion that you might have consumed alcohol or drugs, the court can order the test. Medical personnel will then be authorized to conduct it against your will.
- ✓ Police needs a search warrant to search your vehicle or trunk, but they can also claim that there is "danger ahead" to justify their search. Demand an explanation: why do they think they have to check your car, and what are they hoping to find? Insisting on an explanation will sometimes keep them from doing the search.

#### 4.1.2 Searches

Oftentimes, police want more than just your ID. They also want to search your bags and pat you down, eg. in order to look for dangerous objects. If you are suspected to have committed a criminal offence this is based on some clauses in § 102 StPO (Code of Criminal Procedure), however, preventative police law also allows the police to search you under certain conditions (§ 12 Police-Law, refusing to give your name, or § 39 Police-Law).

#### **Options for action**

- ✓ Consider what you might or might not want to take with you before going to the camp or entering into action (e.g. knives, things that can be used to mask your face, fireworks, phones, drugs).

- ✓ Empty your bags theatrically, e.g. as a fashion parade (“what is this? Ahhh ... let’s take a close look ...”: Not illegal, but police might be really annoyed and angry (which is not necessarily bad). It creates opportunities to not show something or to let something disappear.
- ✓ Take something small and insignificant out of your bag, then act shocked and throw it away – police might be distracted, giving you options to not show something that is indeed significant.
- ✓ As with many police measures: file an objection (simply demand that your objection is written down, ideally in the presence of witnesses. Also try to write down the specific reasons the police stated and the wording they used as soon after as possible, as far as you can remember).

### 4.1.3 Bans from premises

If police is annoyed by you or they want you gone for any other reason, banning you from the premises is the more lenient means as compared to taking you with them to detain you (legal term: “detention/Ingewahrsamnahme”). Bans from premises are really common: police will tell you orally (in a few cases in written form) that you are not allowed to be in a certain area for a specific amount of time. If you do not comply with the ban, police is authorized to detain you.

#### Keep in mind

Like other police measures, bans are not always lawful – there might not be sufficient reason or the ban may be too unclear. Unfortunately, one can sue against an illegal ban only afterwards and has to comply with that unlawful ban for the time being. If you do not comply with the ban, police can take you into custody (→ section 4.3.1 on page 19). This would also be unlawful if the ban is unlawful in first place – but is that of any help in this situation? Therefore, it is better to perform actions on the street or in the field in a manner that complicates an orderly and effective pronouncement of a ban on the part of the police (e.g. by creatively withdrawing and coming back again). It also holds for bans from premises to better not make any statements, that includes things like “but I didn’t...” - they could use it against you or others. While there is an assembly (eg. demonstration) going on, the freedom of assembly supersedes police law. Thus, bans from premises are not allowed - which you can of course remind the police of.

### 4.1.4 Eviction

You are sitting (or standing) at the site of a blockade – an excavator, a forest occupation, in the mine, on the railway tracks or on the street. Usually at some point the police will not tolerate it any longer and starts to evict you. If they are dealing with an assembly (check section 2.1), they officially have to disperse the assembly before starting to evict. They have to ask you to leave three times before the eviction, but there is no guarantee they will always adhere to that rule.

### Keep in mind

- ✓ The sole act of not leaving the site of an assembly that has been dispersed is only an act of misdemeanour that sometimes results in a small fine and nothing more. But if police or state prosecution find other things to accuse you of (→ section 2.2) you can be faced with charges for a crime.
- ✓ There are a couple of different possibilities what one can do during an eviction. As a general rule, all passive behaviour (like letting them carry you away) is not a crime. If you end up (unintentionally) hitting or kicking the police during the eviction, it can be seen as assault (→ § 114 StGB). The updated and new law immediately threatens suspended sentences. Check section 2.2.1 on page 6)
- ✓ There are different levels of police brutality during evictions, sometimes they only carry people away, sometimes they use force to inflict pain on you. Take care of one another, of people who have been injured, and take notice whether some people are brought to a different police station.
- ✓ After an eviction, you can either be let go on the periphery of the area you blocked, or you can be taken into custody (→ section 4.3).
- ✓ If you have only been taken to the side of the venue, you can consider setting up a new blockade in another area.
- ✓ Identity checks ensue quite often, but not always (→ chapter 3).

#### 4.1.5 In the kettle

Kettling is a very common police measure in Germany. Police will surround a group of people to keep them in that place. This can only be temporary, but is often used to implement other measures, such as identity checks of individual people from within the kettle. In legal terms, a kettle can either be viewed as custody (if happening to prevent other actions) or as an arrest (if supposed to aid criminal prosecution).

#### Options for action

- ✓ Organize yourselves in the kettle! Try to get the police to tell you what they want to do with you (without telling them what you did or did not do). As long as you have a phone with you in the kettle, secretly call the legal team or send them a text message. Discuss your options.
- ✓ If they want to take you out of the kettle one by one, you can think about how to make it harder for them to process you (eg. so that they can't detain other people in other places). You could all demand to be processed first and create chaos because you all want to get to the pole position, you could always hide the person police wants to deal with next behind you, you could sit or lie down once they want to take you away.
- ✓ It can also make sense to not react to their requests (eg. if they want all people who carry IDs to come to them first) and instead cause some more chaos.

## 4.2 At the police station

The police can take you with them for three reasons:

- to ascertain your identity (see section 2),
- to take you into preventative detention (if they think you are going to do something that is forbidden, or if you did not comply with a ban from the premises) or
- to prosecute you (if they accuse you of a specific crime. It is then called arrest, not custody). Depending on the scenario police is allowed different things. So, ask them why they are taking you and what specifically they are accusing you of.

### 4.2.1 Interrogation – refusing to make a statement

If they are taking you in because you are being accused of something specific, they can try to interrogate you right away. **You definitely can – and should! - refuse to make a statement in that case.**

#### Keep in mind

- The police is always looking for information, such as the schedule of the specific action or the general structure of a political movement. Big police departments have their own section for politically driven crime at their disposal.
- Don't testify anything! Even exonerating testimony (presenting evidence for your innocence) is dangerous, eg. for other people they are suspicious of. If at some point you want to say something on the matter, it's better to take your time to think about what you want to say and to discuss it with others, not to do so at the station right away (even if police is saying something else). If you want to make a statement of any kind, you should always take a few days to think about it and get legal consultation before talking to the police about anything specific.

Refuse any testimony! But what is a testimony? A testimony is every detail about you, somebody else or any other facts. Even the negation of a question (such as: Were you at that place last night?) is testimony, because you tell them something about you. The reply might be right or wrong but it is testimony. Referring to the aforementioned question, the following reply would not be a testimony: “Do we have a love affair or why do you want to know where I've been last night?” This requires a lot of practice. It is easier to not say anything, to sing a song, recite poems, act a certain drama role or ask the police how expensive such a nice uniform is (think of the *clowns army* – you can act like that just as well when in a police car or at the station!). It is advisable to try and practice role-playing before. Pay attention to accidental testimonies during such exercises. You do not have to sign anything (even if they say you have to). No mandatory signature, even if they try to force you at the police station. **Do not sign ANYTHING!** If they do not stop nagging you, you could also write something like “abolish police” instead of your name (it better not be an insult). An interrogation does not have to take place in a formal setting like an interrogation room, but could also be more informal, like on a car ride on the way to the station. **So, always consider what you say, and don't let them provoke you.**

#### 4.2.2 Establishing your identity (ED treatment)

Usually, the so called ED treatment (German: **Erkennungsdienstliche Behandlung**, similar to **booking** someone to establish their identity) takes place at the police station or the detention centre (**Gefangenensammelstelle**, GeSa) as part of taking people into custody. But it can be done in other ways: during the last big *Ende Gelände*-actions in the Rhineland, they did a trimmed-down version of an ED treatment, most likely because they did not have enough personnel to handle all the people who refused to identify themselves. After they searched people's bodies/patted them down looking for their papers, they resorted to only taking photos of everyone.

In the meantime the police directory in Aachen has invested in some mobile fingerprint scanners they can use to check whether they are dealing with the same person (potentially anonymous) again when they are working in the field. An ED treatment usually entails a mugshot, getting your fingerprints taken and being measured. They will also look for specific details about your outer appearance, such as tattoos. People affected by ED treatments deal with it in different ways. Some do cooperate, others physically resist the treatment. In fact, it is more difficult to take a picture of you or measure your height when you are not cooperating – lowering your head, closing your eyes, making a funny face, bending down, pulling your hand off the fingerprint form, preparing your fingertips to be unidentifiable before with scratching and superglue, etc.. All this drastically increases the effort of a “successful“ ED treatment, especially during mass actions. Police could be so unnerved they just might give up. Still, the officers could also resort to violence or accuse you of something like resistance. You can again file an objection against the treatment (while it is going on or afterwards). Especially if you identified yourself, getting your fingerprints removed from their database later on might be easier if you can prove you filed an objection.

#### 4.2.3 Taking your DNA

A warrant is required to take your DNA. They can only do it if you are helpless and not identifiable otherwise (→ § 14a PolG/police law), they either have your written consent (which you should not give them, no matter what they threaten you with), or if they are accusing you of a serious crime (more than just something like trespassing) and have a warrant (→ § 81g StPO/code of criminal procedure). If they threaten to take your DNA, demand to call the legal team and a lawyer. Also demand to see the warrant. Whether you resist them trying to take your DNA is up to you, just like with resisting ED treatment.

#### 4.2.4 Confiscation of objects

Police may only confiscate stuff under certain conditions, eg. if objects have been used to commit a crime. They are not allowed to keep your personal belongings (money etc.).

#### Keep in mind

- ✓ You can insist on being shown a detailed list of what police took from you. This works well relatively often, especially if they want to keep your things for longer

than just the time of your custody. The paper should also contain the legal reason for why they took your stuff.

- ✓ In case they refuse to hand you back your things it is important that you have documents to show you are the owner (e.g. a receipt for an expensive camera). If you refused to give your ID in custody (see below), non-personalized receipts would be helpful since this enables others to pick up your stuff for you and your anonymity is not compromised by the need to get back your belongings.

## 4.3 Custody and detention

### 4.3.1 Custody and arrest

Kettling and longer arrests did occur again and again with actions in the last years. They are common measures the police uses to intimidate people and build pressure. Some officers like sayings that expresses the idea of forcing a person to confess by detaining them (after their confession, they would be released) – a forbidden practice. Fortunately, being arrested by the police and the ensuing feeling of being at their mercy is nothing we usually experience in everyday life, hence, the people affected by it find themselves in an exceptional situation. Thus, it is all the more important that you know your rights and insist on them being fulfilled. You need to understand: legislation sees arrest as one of the most serious infringements of your fundamental rights. This means that an arrest cannot last any longer than absolutely necessary for the reason the authorities stated (ensuring that a trial could take place) (check § 38 PolG /police law NRW and § 163 section 1 StPO / Code of criminal procedure for reference).

But arrests are also a huge effort for the authorities: they need to place all detainees in cells. They need to work and decide on all proceedings immediately, therefore, also on several at once. The more people are in custody, the more work for the police and the corresponding local court. They often do not have enough cells, the few officers on shift lag behind in their work, courts outside the bigger cities have limited personnel and can't work through the cases effectively. So, if you are somewhat okay with your situation and support one another, you can, as a large group of people, easily use the situation to your advantage and make the authority's work extra hard by prolonging each and every procedure. This increases the chance that they will give up after a few hours and let more people go without having looked into them. It can also make sense that detainees who have not been checked in at a police station ever before are especially loud or ask stupid questions to get the officers' attention. That way other people who had been registered at a police station before but could not be identified win time. Police might be especially keen on identifying them. Discuss what you want to do and support one another.

There are different ways of prolonging the police work and making it harder for them to process all of you. You could perform every movement as slowly as possible: walk towards the interrogation room really slowly, ask questions about each and every piece of paper they want you to sign, read it five times (and end up not signing it, of course), ask all the questions you can think of (without ever answering a question yourself), don't do anything until you are specifically asked to do it, then take your time or be reluctant about doing it, ask to go to the toilet even if you do not need to pee, ask for food, games, a cigarette, whatever. That alone makes the work on every case last longer. They might

give up after some time, just because the officers want the evening off, noone is working in the courthouse anymore, the action is over anyway, and they have no clue what to do with all these nameless people at the station. People who did not identify themselves might have to wait at the police station for a longer time (read more about detention awaiting trial below), but if everything goes according to plan your chances of being free of trouble (no letters, no court dates...) after your release are much higher.

**As a general rule: only do what feels right for you!**

Not everyone is willing to deliberately delay proceedings after a long time in action and a potentially exhausting process of being taken into custody. That's totally okay, don't put any additional pressure on yourself.

Police can search both you and your stuff, which they will gladly do to find anything that points them towards who you are. They can also search you to find any forbidden objects you might carry. They can thereby require you to strip naked; no doctor needs to be present for that. Actually it is only allowed to undress you completely if the police has any factual reasons to believe that you are carrying forbidden objects which they could not find otherwise (eg. by patting you down). Still, they try to do it to people in custody much more often. The Federal constitutional court ruled that undressing should not become standard procedure but should always be the result of thorough considerations and needs to be justified in every individual case.

In any case, object the search, and try to address the surrounding officers personally, asking for their support in this degrading and unlawful situation you are in. Let the police tell you what they think they can't find another way. Such degrading measures should be the exception, but many people who are let go have made these experiences. So prepare yourselves for situations like this. Later on you should definitely have a court check whether the proceedings were lawful. Like other forms of searches (eg. being patted down), having you strip naked in presence of a person who is not of the same biological sex as you is only permitted in very few, very pressing exceptional cases (→ § 39 PolG NRW / Police-Law NRW). It is possible that you will have to deal with insults and pain compliance holds (especially during ED treatments trying to establish your identity, see section 4.2.2). Discuss your fears and the way you want to deal with different situations in your affinity group beforehand. If you experience something at the police station that weighs you down, consult your friends or the *Out of Action* group to help you process what you went through.

#### **4.3.2 Detention awaiting trial / imprisonment on remand (German: U-Haft)**

If you decide not to disclose your identity, police and state prosecution could decide to get a court order authorizing them to keep you in detention awaiting trial (meaning: longer) in order to try and find out your name.

##### **Keep in mind / good to know**

- they can request such an order, and threaten you with the prospect of keeping you in for longer, but it's always (!) a court that has to decide on these matters. You have to be able to present your case to a judge, in a formal trial and in person. This hearing has to take place within 48 hours after you were first arrested.
- The more marginal the accusation, the more difficult for the authorities to obtain a court order to detain you, even if you refuse to say your name.



- What holds as well: police and court will need a lot of time to deal with you. They need to take you to court, all the papers have to be prepared, they need to get a cell ready, and so on. Meanwhile, you don't have anything to lose, because you still can decide to tell them your name if at some point you don't want to be detained longer.
- As a reaction to stating your name you have to be set free immediately ( $\rightarrow$  § 120 StPO), given the unknown name was the only reason to threaten you with detention awaiting trial (others could be: risk of flight or danger of collusion).
- You could for example await the court's decision and only state your name if the court decided to further detain you – and the judge is still in the room. You can also say your name later, once they actually want to transfer you to a prison.
- Once the court ruled to detain you (meaning, you spoke to a judge), it is not up to the police or the law enforcement officers to decide whether they set you free or not. They have to wait for a formal repeal of the arrest warrant from the court. Therefore: depending on the motivation the personnel is showing to get you out, the time of day and whether the court is reachable by phone, you might have to spend another night in the cell, even if you told the officers your name after the hearing (e.g. on the way to the prison).
- Attention: if the police can find reasons for a potential risk of flight, danger of collusion or risk of repetition to present to the court (eg. because of previous convictions, an open arrest warrant or a place of residence outside of Germany) this might not work.

Until you have been convicted, you officially are innocent and have to be treated that way. In the most common cases you will be let go right after stating your name. Detention awaiting trial/ imprisonment on remand is not a penalty, but only supposed to ensure that you can be prosecuted. If they know your name and you can prove that you have a place of residence in Germany they should be able to prosecute you – the authorities can then just send you letters. Meaning, it could still work to hold out, be optimistic and put a hiccup into their proceedings – if you keep the prospects in mind and remember that you have the right to be supported by a lawyer (demand to call the legal team, we will then find a lawyer for you). You can keep the proceedings going (as long as you feel like you can) and hinder the police from effectively processing other detainees, whom they then might have to let go. It could be a problem if you do not have a place of residence in Germany, a precarious residential status or you are accused of serious crimes like causing bodily harm. In these cases, please have a personal consultation with the legal team before or during custody.

If the investigating magistrate / judge ruled that a formal condition for arrest exists (e.g. risk of flight), you will be transported to a prison (German: Justizvollzugsanstalt – JVA) that day or the next day. Most likely there will be an order to control all your postal communication, meaning the officers read all your ingoing and outgoing letters. Your communication with your lawyer is the only exception from this rule. Write the word “Verteidigerpost“ (letter concerning the defender) on the envelope in thick letters. Of course you did not say anything to the magistrate that could incriminate you or

someone else either, very well. Keep on going! Maybe you meet other prisoners in the prison van. **Refrain from talking about your alleged crime with your fellow inmates, no matter how absurd the claims are and how angry you are about that.**

The law says that as a detainee awaiting trial you should be treated as if you were innocent. No one should be under the impression that you are serving a sentence. Of course this is not what reality looks like. You can file an objection against your arrest warrant or apply for a bail hearing at any time. If your imprisonment on remand lasted longer than 6 months the higher regional court will automatically reexamine whether you have to stay in detention any longer.

Detention awaiting trial is a world of its own: you have to apply for everything, like books, medical examinations (unless it is urgent) and cleaning material to clean your cell. The law enforcement officers will hand you forms that you usually have to hand back in during breakfast time. In some prisons, the arrestees themselves or their lawyer have to apply for a visitor to be able to come, in other facilities the visitors can file such an application. Especially if you are in prison anonymously it can be very helpful to have people you trust on the outside who can support you and eg. inform your relatives of your situation, if you want that.

Reading this text is not enough to be well-prepared for a potential imprisonment on remand. It would be a good idea if you chose to become familiar with the following laws beforehand: the “Untersuchungshaftvollzugsgesetz” (UVollzG, Remand Custody Act), the “Strafprozessordnung” (StPO, Code of Criminal Procedure) and the constitutional law. Try to get your hands on these as soon as you can once you are in prison, so that you can name and counter any illegal act that might happen to you (eg. you could call the responsible magistrate and demand the court to make a decision). Talk about the issue of imprisonment with your affinity group and the people close to you, ask them in which ways they would be able to support you and who would be willing to also visit you in prison. Talk about what kind of publicity work you might want, and what the people on the outside could realistically do.

You can talk to the *ABC (Anarchist Black Cross) Rhineland*, eg. at the climate camps. They will also offer workshops and counselling and help you if you want to fill out a form in case you go to prison (imprisonment on remand). We think that conversations from face to face are a better preparation than just pondering on these things on your own. We advise you to take enough time to deal with this topic, to inform and organise yourself. Keep in mind that the ABC is not a “service provider”, but wants to only offer their support. Gather as much information as you can and get organised. Mind you: not only people who are actively involved in actions are confronted with detention awaiting trial.

### 4.3.3 Legal base for imprisonment

The police is authorized to imprison someone on a wide range of different laws and in different situations. Of course, a police kettle or the forced stay in a police van are also a form of imprisonment. The same goes for all ensuing actions such as being transported in a police van and being detained at a police station or detention centre. All this can be allowed according to § 12 section 2 sentence 3 PolG (police law) NRW or § 35 PolG (police law) NRW and § 127 section 2 StPO (Criminal Code of Procedure).

- § 12 section 2 sentence 3 PolG allows holding a person if it is to establish their identity. It is only admissible as long as it takes to ascertain their identity, or for a maximum of 12 hours (§ 37 section 2 PolG). Another regulation the police could use in these instances can be found in § 163b StPO. It resembles § 12 PolG, but also allows searching the person who is being held. According to § 163c StPO the longest time one can be held just to establish ones identity is 12 hours.
- § 35 PolG allows for individuals to be held, eg. to enforce a ban from the premises (section 1 No. 3) or to prevent crimes that are of “considerable significance for the general public”. Let them explain to you what exactly you are supposed to have done, and which reasons the police has to hold you. Try to remember their arguments, but don’t comment on them. The measure is allowed as long as the ban from the premises needs to last or as long as the action is still going on. As soon as the reason for detaining you has become obsolete, you have to be let go (§ 38 PolG). To be sure when the purpose has ceased to exist, it is important to know which arguments the police used to justify each measure. At the latest, you need to be released at the end of the day after your arrest. Meaning: if you have been arrested at 1pm on a Saturday, you have to be released by midnight on Sunday. According to § 36 section 1 PolG, a judge immediately has to decide on your arrest, even if it is only temporary. Demand the judges decision, that’s extra work aswell. But keep in mind that they
- § 127 StPO also contains a preliminary law concerning the power to affect arrests. According to this regulation, everyone is allowed to arrest a person they caught red-handed committing a crime. Hence, you could also hold the person stealing your bike, if you really wanted. The police can use this regulation (in concordance with § 127 section 2) to hold you if they think they caught you committing a crime. The arrest can be admissible if it serves to open and conduct a criminal procedure. If police wants to detain you longer, they have to apply for an arrest warrant for custody on remand and support their application with a reason for arrest from § 112 StPO. Now you definitely have the right to talk to a judge.

When in a situation of imprisonment, you have the following rights (although they are not always observed):

- ✓ You have to be told why you are being held.
- ✓ You are allowed to inform a legal adviser and a person you trust (eg. the legal team).
- ✓ If you are in need of medical assistance, the police has to take care that you get it immediately. In practice they unfortunately don’t always do it, or try to trade the assistance for statements or your personal data.
- ✓ If you are kept in custody for a longer period of time, they have to give you food and something to drink and let you use the toilet.

#### 4.3.4 Fast proceedings

Theoretically you could face something called an **accelerated procedure**, a simplified and quick criminal procedure that can be conducted without your name being known to

the court. If such a procedure is supposed to be performed, a judge can rule to keep you in custody for maximum one week before the procedure starts. Thus, in these cases a person can first be taken into custody and then stay arrested until the trial starts (also requires a court order). If the *only* reason for the accelerated procedure was you failing to state your name, you can still come free lateron once you reveal who you are.

## **5 After the action**

### **5.1 Criminal proceedings**

If in the course of the action you gave the police your personal data, or your identity could be established otherwise, usually you will be summoned by the police in the months following the action. Sometimes it takes a little longer (usually within a year, with bigger proceedings like Ende Gelaende sometimes within up to 2 years after the action). You can make use of that time: get in contact with others and discuss your strategies. It is very important that you send us an e-mail if you received a letter from the police or a law firm, no matter whether it is a summons, a penalty order, a court date, a discontinuation or a declaration to cease and desist (if they failed to note that you do not understand German and did not translate the document, the German words that could top your letter would be Vorladung, Strafbefehl, Anklageschrift, Prozesstermin, Einstellung or Unterlassungserklärung). Also contact us if the proceedings have been terminated in your case. We will in any case help you to get in contact with other people affected by repression. We can also give you tips on further strategies and support you in solidarity in your preparation. Knowing about all ongoing proceedings also helps us to stay on top of things, gather information and experiences, and use these to develop strategies for actions to come. Therefore contacting us is also about increasing knowledge in the movement and to widen all our skills in countering repression.

#### **5.1.1 Summons (Vorladung) by the police or the state prosecutor**

Before initiating a criminal trial procedure, the police will normally try to interrogate you on whatever happened. You are not obliged to actually go to the police when summoned – and there is no good reason for you to go, either. If you go and talk to the police, that's normally only useful for them. On the 22nd of June 2017, the German parliament changed the regulations regarding the summons of witnesses in § 163 section 3 Code of Criminal Procedure (StPO). The grand coalition hereby seems to aim to make summons expressed by the police, but on behalf of the state prosecutor's office, more binding. The consequences of non-attendance are supposed to be disciplinary measures. We will closely observe the further developments of this new regulation and report to the movement what we learned. In short: being summoned by the police does not mean that one is obliged to go, but from now on we need to consider going more carefully than we had to before. Both as the person accused of a crime and as the witness you should definitely demand to get legal assistance according to § 68 b Code of Criminal Procedure (StPO), also in the less common case of the prosecutor's office summoning you: you have an obligation to go, otherwise the prosecution can order police to take you there by force. However, at the prosecutor's office you do not have to say anything on what happened, either – you just have to give your personal details.

#### **5.1.2 Penalty order (Strafbefehl)**

Still, you might end up in criminal proceedings. But don't panic now: it takes quite a while until you are sentenced (if you get sentenced at all). So you have a lot of time to

get well-prepared for your case. For less severe criminal offences and if the evidence is supposedly rather clear, German prosecutors and judges often use something called a “penalty order” (Strafbefehl, § 407 ff. StPO). A penalty order is a document stating what you are charged with and imposing at the same time a certain penalty. It is basically supposed to replace the trial. Once you have received such an order, you have **two weeks** to file an **objection** (§ 410 StPO). If you do not react within this period of time the penalty order will be the final verdict. That means:

- × You are sentenced and have to pay the fine stated in the penalty order (or choose to go to jail instead).
- × You are considered to have a criminal record and the next time you will be punished harder.
- × If you have to pay daily rates for more than 90 days or get sentenced for the second time, this will be mentioned in your police clearance certificate. This might be of interest for job applications etc. (check section 5.3)
- × Your right to refuse testimony as a suspect or a defendant does not exist anymore once your case is completed and a binding verdict is in effect. In case other people are accused of the exact same crime you might be forced to testify as a witness.

Due to its enormous disadvantages, there is hardly any reason to accept a penalty order. Even if you do not fancy long proceedings and you would rather just pay and accept all disadvantages: file an objection first. You do not need to give a reason for your objection. Some weeks or months later, “ordinary” oral proceedings will follow.

The advantages of objecting are:

- ✓ Afterwards, you can calmly rethink your further strategies and discuss your options with us and others.
- ✓ In the meantime you cannot be forced to testify in trials against others.
- ✓ You also have the opportunity to access the files related to your case. Checking what evidence they have against you might reveal that there is very little proof for what you supposedly did (or even none at all). Although you might have heard something else: you as an individual have the right to access your files, even without a lawyer. This is supported by § 147 section 7 StPO (Code of Criminal Procedure). (Want to know more? <http://www.projektwerkstatt.de/antirepression/akteneinsicht.html>)
- ✓ Theoretically, the proceedings could be terminated after you filed an objection.
- ✓ If the pending case is to be continued, you still have the possibility to withdraw your objection. This is possible until shortly before the trial. Usually no extra fees will be charged for this.

If you do not withdraw the objection, and the proceedings are not terminated, an oral hearing will take place. You have to go to the trial, otherwise your objection will be rejected (in very few cases you could just be represented by a lawyer and not attend yourself). Often they will order you to come, even though you are represented by a

lawyer. If you are older than 21 years the trial usually takes place at the local court where the alleged crime supposedly happened. If you are under 18 and they want to convict you in accordance with the statutes relating to criminal prosecution of juveniles, the trial will take place at the local court of your place of residence. Adolescents (between 18 and 21) could be subject to either one of the two versions (read chapter 7 on page 40).

### 5.1.3 The trial: not the end of your options for action!

Rather than sending you a penalty order, the prosecutor may also decide to initiate an ordinary criminal procedure. In that case you will receive a so called bill of indictment (Anklageschrift - which, other than the penalty order, you do not have to object to). No matter whether penalty order and objection or indictment, you should apply for access to your files, think about how you want to defend yourself and take enough time to get prepared. You can get support either from us or your local legal aid groups. We can also try to find a lawyer for you.

The main hearing still bears the chance of a successful defence. Nowhere else is one able to question one's political opponents or the prosecution's witnesses so intensely. Additionally, you can request to access additional files or file requests to gather evidence on things such as police strategy or political networks. You can refuse to testify and still file requests and ask questions. One aim could be to make the court room a platform of political action. With some parts of criminal law this almost suggests itself, for example if it's about "resistance" (§ 113 of the Criminal Code) and they want to talk about how the police behaved. For different kinds of political actions, like occupations, blockades, rallies, militant actions etc. you can make use of § 34 of the Criminal Code (Rechtfertigender Notstand/justificatory emergency). It allows you to actually commit an offense if some kind of danger (even an abstract one!) could otherwise not be prevented. This could actually help you to use the courtroom as yet another stage to publicly fight for what you believe in. If for example you are accused of resisting or assaulting enforcement officers (§ 113 and § 114 StGB, Criminal Code) it is a pretty obvious idea to criticize the police behaviour at court.

Another aim could be to reduce the charges or simply prove your innocence. What exactly you are going after has an effect on your court strategy. Good to keep in mind: what you do should feel right to you, it should not incriminate anyone else, and if possible should be useful for the movement. The antirepression structures will support you when deciding what you want to do at court. But we also encourage you to consult your affinity group and/or your friends, and develop and propose strategies together.

A trial needs to be prepared and also rehearsed. Trainings on defence in court could be helpful. It is not always necessary to have legal assistance or a lawyer. If you feel confident enough you can also defend yourself. Apart from help by a lawyer, we are also allowed to help one another. § 138 (2) of the Code on Criminal Procedure makes it possible for lay people with a certain prior knowledge to defend others if the court agrees. Once again: no one is left alone. You can rely on solidarity structures to support you.

### 5.1.4 Possible penalties and how to deal with them

In case of a verdict of "guilty", the ensuing penalties are defined by the section in the Criminal Code corresponding with the crime. There is always a minimum and a maximum penalty and the judge has to stay within these limits.

## **Fines (Geldstrafen)**

Although prison sentences or suspended sentences cannot be ruled out completely, mass actions will usually result in fines, if punishment is imposed at all. This is especially true if the defendant has not been convicted of a crime before. Fines are calculated in so called *daily rates*. The more severely you are supposed to be punished, the more daily rates you have to pay. The specific amount of each daily rate depends on your income. One daily rate corresponds to the 30th part of your net income. However, exceptions to this rule can be made, eg. in the case of particular low incomes.

If you do not have money to immediately pay such a fine, there are a number of options:

- ✓ You can always try and raise money together with others – organize a party, collect donations at a people’s kitchen etc. . .
- ✓ An organization called “Rote Hilfe” often helps people pay penalties resulting from political actions. They usually pay 50% of the costs, demanding that at court you do not make a statement and don’t say you are sorry for what you did. You need to file an application with the local Rote Hilfe group in your area.
- ✓ You can also request to pay the fine in several installments.
- ✓ You can also request that instead of paying the daily rates, you are allowed to work a corresponding number of days. One daily rate usually corresponds to 6 hours of work. This means that if you have been sentenced to pay 30 daily rates, you would instead have to work for 180 hours.
- ✓ We as antirepression groups are also accumulating money to support you financially. Contact us for more info.
- ✓ If a fine is not paid and the court cannot make you pay it, then you will be sent to prison for a corresponding amount of days. You can also deliberately decide to rather go to prison than pay your fine. One daily rate corresponds to one day of imprisonment. Keeping you in prison costs the state a lot of money and can be used for publicity work. Still, take your time to think about whether that is something you would want to do. It is possible to pay part of a sentence and spend the rest of the time in prison.

### **5.1.5 Fees (Bußgelder)**

If you are not accused of any crime, but only of an act of misdemeanour, you will usually only be subjected to a kind of fee (unfortunately, the literal translation of Bußgeld is also fine). You can file an objection against a fee just like you can against penalty orders. Fees will not show up on your police clearance certificate (or certificate of good conduct). If you do not pay a fee you can be ordered to go to prison (which is supposed to force you to pay).

## **Imprisonment and suspended sentences**

Writing too much about these topics here would go beyond the scope of this booklet. Read up on these issues, and talk to us or the *ABC Rhineland* (→ <https://abcrhineland.blackblogs.org/>)



## 5.2 Civil law

The opponents of those active in the climate movement are often not limited to the state but also include large corporations. They profit a great deal from the destruction of the environment. That's why those intervening in this field often have to deal with repression through civil law. This section provides basic information on the subject of civil law and demonstrates options for action.

Civil law deals with legal relationships between private legal entities. These entities can be individuals (people) or legal bodies (companies, clubs, organisations, etc.). Civil law is mainly concerned with who owes what to whom. Thus, if you are faced with demands from your opponents according to civil law, this may be very burdensome as there is (sometimes a lot of) money at stake. But none of this is going to constitute a previous conviction. So, for the most part you are not dealing with state authorities (except perhaps for a civil court) but rather with a corporation and its lawyers.

### 5.2.1 Declarations to cease and desist

In the last years the climate movement had quite some experiences with civil claims both in the Rhineland and in Lusatia. RWE (the legally recognized "owner" of the Rhineland coal mines) has been prompting activists who have allegedly trespassed on or otherwise violated the property of RWE to sign so-called declarations to cease and desist (similar to injunctions, but not the same). Vattenfall has done so as well. By signing such a declaration you pledge to refrain from doing whatever is specified in the declaration in the future.

Not every action will be responded to with declarations to cease and desist – this is a decision at the corporation's discretion. But RWE has become quite fond of this kind of repression, e.g. they sent out around 200 declarations to cease and desist in the aftermath of Ende Gelände 2015. Participants in small group actions have also already been asked to sign such a declaration. If you stayed anonymous during the action, it may well be that you won't hear back at all. But if you revealed your identity or the police found out who you are anyway, you may at some point receive a letter containing a declaration to cease and desist and demanding that you sign it within a short period of time.

#### **What are the basic (legal) conditions of declarations to cease and desist?**

A person may be asked to sign a declaration to cease and desist if there was a first act of trespass, a first violation or a documented threat of first trespass. So this holds when an individual can be accused of having trespassed/violated corporate property or when an immediate violation of property is to be expected (eg. because the person publicly declared that they will participate in such acts). Declarations to cease and desist can be posted via the mail or can be distributed on location by people authorized by the owner (eg. RWE, Vattenfall or LEAG). It is more common that activists receive a letter afterwards – presupposing, of course, that the owner knows your identity. The declaration can also be directed at an "unknown person" if the individual cannot be identified by the police. A declaration to cease and desist is only acceptable if there is a "danger of repetition" (meaning that the individual in question could perform the act in question again). It has to be clearly defined which act is to be discontinued and where. The injunction has to bear a sufficiently close relation to the impending violation, and

corporations can only claim their own rights. Thus, it cannot demand that activists “will desist from entering any coal mine in Germany” as this would include mines not run by the same company.

### **Which options do you have when asked to sign a declaration to cease and desist?**

Definitely contact your local antirepression group or a lawyer you trust. Talk to other people who were involved in the action! If your local antirepression group cannot answer your questions on civil law you can contact the antirepression groups who are specialized on the anti-coal movement (Legal Team for all, CAT, AntiRRR). Together you can plan your future actions and what works best for you. Also: please read section 5.2.2 in which we describe the experiences people have already had, because once again our interpretation of the legal situation is not always the same as the court’s.

- **Signing the declaration to cease and desist:** thereby accepting all the claims it includes.
- **Altering the declaration to cease and desist:** as the document is a kind of private contract you can adjust it and send it back to the company it came from. Sometimes the declarations contain an obligation to pay the lawyers of your opponent – you can strike that out. Lawyers often claim too much in these declarations. At best, you should only alter the document after you consulted your lawyer or a legal aid group you trust. The changes need to be done in a way that make it possible for the opponent to accept them. The “seriousness” of the document should not be in question due to your alterations. If they do not accept it and it is evident from the changes you made that they will not find an agreement with you otherwise, they can evoke an injunction at court.
- **Not signing the declaration to cease and desist:** this can lead to the corporation suing you. If you lose, you will have to accept the claims and pay a lot of money. A so called summary proceeding (quicker than the usual proceedings) can be used to only roughly go over and examine the situation.

The result of the last two options can be an injunction asking you to refrain from a certain behaviour. The injunction is a preliminary and especially urgent court order meant to conserve a certain situation as it is. For example you can be asked to refrain from entering a specific mine. The applicant (the corporation) however needs to prove that it is indeed urgent and they cannot wait for the outcome of a regular trial. If you violate an injunction you might be facing a fine.

### **5.2.2 The civil lawsuit**

If you do not sign a declaration to cease and desist, your opponent can sue you to accept the claims – which can result in high costs for the court and the lawyers. If the corporation sues you, the letter containing the statement of claim will be sent to the address on your ID. Then, a few deadlines are important to be met. Depending on the so called “amount in dispute”, either the local court or the county court are responsible in the trial. At the local court you can decide to defend yourself, if you want, while at the county court you need to be represented by a lawyer. You can still decide to sign the

declaration to cease and desist at this point, but you will not be able to do so without having to pay some money.

The costs of the trial are calculated based on the amount in dispute – a very particular detail of civil law. The higher the amount in dispute, the higher the costs for the lawyers of both sides. The costs of the court also increase with an increasing amount in dispute. If the amount in dispute is 50.000 Euro, losing the trial as a whole at first instance (the first court where the subject is disputed) can cost 8.000 Euro. The corporation can assign an amount in dispute rather randomly, complying with the damage that was caused. Unlike in the case of a compensation claim, they do not have to provide any evidence for the damage. The court can either accept the amount in dispute proposed by the corporation or change it. Another special characteristic of civil law is the way the opponents split the costs: if one side loses entirely, it has to pay for everything, including payment of the lawyers of its opponent. But if the court for example decides that one side wins three of the e.g. five disputed issues, the costs will be divided as follows: one side has to pay  $\frac{3}{5}$  of the costs, the other  $\frac{2}{5}$ . It is possible to file an appeal against the decisions of the local court or county court. The trial will then be taken to the next instance - another court that is basically just higher in the hierarchy of courts. The possible costs increase with every instance. Both sides are allowed to file appeals.

### **Which actual experience has been gained so far?**

Over the last months, RWE sued some of the people who had not signed their declaration to cease and desist. They also sued people who changed their declaration, then signed it and did not react to another inquiry by RWE to sign the whole thing. The declarations to cease and desist RWE is sending out have changed a lot over the years. In the beginning they at least followed the rule demanding that claims have to be defined clearly and be very specific, but now they just list all possible premises the corporation owns and one could potentially try to use for an action. In our view on legal issues, these declarations clearly contain too many claims, and altering them would be absolutely reasonable: you should not be asked to sign that in the future you will refrain from entering premises you have not been accused of entering yet. Unfortunately we had to learn in the past few months that the county court in Cologne does not share this opinion. RWE sued people who signed an altered declaration to accept all claims. Although it could have, the court did not dismiss the case. In another case in which the people accused did not sign the declaration, the defence argued that the claims are too broad. RWE objected, saying that there was a “general risk of repetition“. The court basically agreed. A higher court was asked the same question, resulting in a similar answer. The application for legal aid was rejected, which is a strong hint that the court does not expect the defendants to be successful in their defence. There have been a couple of cases in which activists were “successfully” sued by the county court, thus they were forced to cease and desist. But: the claims in question were about acts they supposedly had committed before. Meaning: the activists signed an altered declaration (to never access railway tracks, to be exact), and later they were accused to have done exactly that. It is still unclear how other county courts might decide. Some trials at the county court in Moenchengladbach are still ongoing. Until now, the amount in dispute has always been 50.000 Euro, no matter the accusation. Thus, all the trials took place at the county court, not the local court.

Currently a decision on objections to the high amount in dispute is pending. If this dispute were won, at least the trials would be less expensive and therefore less risky.

### **What effect do these claims (the “injunctive relief”) have on me?**

You have either signed a declaration to cease and desist or a court order (temporary injunction) has been imposed on you to refrain from engaging in certain acts, e.g. climbing on a coal digger. As long as you stick to this, nothing will happen.

Having an effective declaration to cease and desist can feel very intimidating or also demotivating. But it is not at all the end for your ability to oppose lignite mining! You can decide to concentrate on another coal mining area and test your skills in Lusatia or the Middle German coal district, maybe Hamburg’s coal harbour, or elsewhere :) You can be active in areas that are not affected by your declaration to cease and desist and still be part of an effective blockade – e.g. on public streets (might make sense to do very thorough research to be absolutely sure). Be careful: If your declaration to cease and desist does not (only) prohibit you to enter the premises of RWE, but also prohibits any general disruption of business, RWE might try to claim contract penalties in cases where a blockade happened outside their premises. It could be argued that the blockade renders the basic functions of operations impossible. Eg. blocking a power plant’s only access road as an individual, or blocking all access roads as a group could put you at risk of being the subject of a contract penalty. In these cases RWE will have to prove that your blockade was specifically meant to obstruct business. You should know the details of your declaration to cease and desist in any case! There shouldn’t be problems with this point if an action only disrupts business indirectly (eg. due to traffic chaos or because police is hindered during an eviction). You can support actions by cooking, looking after children, doing presswork in the background or join the antirepression work. Of course you can continue to do what you are supposed to refrain from (the things in the declaration to cease and desist). If during the action you are identified, or the police is able to establish your identity in another way, you will most likely have to pay the fine mentioned in the declaration, which is called a contract penalty.

### **5.2.3 Contract penalties**

Usually breaching the contract the declaration to cease and desist constitutes will result in a fine one has to pay. The contract penalty could either be to pay a certain amount of money or to serve a sentence in prison. The amount/severity can either be specified beforehand or it can be decided by either RWE or the court for every individual case. The penalty is usually more in the range of a couple of thousand euros than a few hundred (but far from the maximum contract penalty of 250.000 stated in the declaration). Until now, there has been no case of imprisonment on behalf of a contract infringement. In one case we could see that the contract penalty can very well be “negotiable”. After a violation of a signed declaration to cease and desist RWE will send you a letter stating the level of the penalty. You could either pay the money, or say that although you consider yourself innocent you would be willing to pay a smaller amount of money to avoid any more strenuous proceedings. RWE can accept the smaller amount (as happened in the one case we draw our experience from) or sue you for the rest. That it worked once does not mean it will necessarily work again and again. RWE could also sue you right away.

The amount in dispute would then only be the amount of the contract penalty – hence, the financial risk should be much lower. One important thing to keep in mind is that contact penalties will increase with time. Meaning: a first-time violation of a signed declaration to cease and desist will result in a lesser fine to pay as a contract penalty than the second- or third-time violation will.

#### **5.2.4 Compensation claims**

According to §823 of the German civil law code (BGB), an individual or legal body is entitled to compensation if harmed by an unlawful action on someone else's part. This means, for example, that if anything in an opencast pit is damaged in such a way that one or more power plants have to shut down and the owners thus suffer significant financial loss, they can file a lawsuit and request an “appropriate” sum for compensation. Vattenfall did this in the case of a Greenpeace coal train blockade in 2013, but the county court of Cottbus decided that the activists did not have to pay. Filing a compensation claim comes with quite some risks for the corporation and is usually perceived very negatively by the general public - which can be useful when developing a campaign to support people affected by compensation claims. The amount of compensation claims that have been filed by RWE over the last few years has been very limited. For its claim to be successful, the corporation is required to prove that it actually has suffered financial damage of this proportion through the action of the defendant – this is not quite so easy. It also helps the movement to gain some insight into the operations the corporation is running. Damage claims can be filed in addition to a declaration to cease and desist: after all, compensation is about something you (allegedly) did in the past; while a declaration to cease and desist relates to things you are supposed to refrain from in the future.

#### **5.2.5 Not paying?**

All civil law claims are about getting your money. Whenever you do not pay your court fees, the opponent's lawyer or the compensation claims they are demanding, RWE or the state can try to get your money anyway: by means of confiscating money from your bank account or through a judicial officer claiming your belongings. If you live of very little money anyway, you could consider providing information on your financial status (also known as an “oath of disclosure”) to avoid payment and leave it to RWE to deal with it. This would, however, result in some restrictions for you and your daily life – which are manageable nonetheless. More info on that in a booklet you can find online <http://vonunskriegtihnix.blogspot.eu/> (for information in English, contact the legal team). Same goes for not paying a contract penalty, unless it has been ordered to be carried out as a prison sentence (which hasn't ever happened until now, but could happen). In that case you will either have to pay or spend time in prison as demanded.

### **5.3 Disciplinary proceedings in the public service**

Opening of criminal proceedings can also cause you trouble at work if you are employed in the German public service as a civil servant (eg. as a teacher or a student teacher). According to § 49 Beamtenstatusgesetz (Law concerning the status of civil servants),

courts and state prosecution have to inform your department of any proceedings against you. If you are then sentenced to serve at least one year in prison (also applicable if it is only a suspended sentence), your status as a civil servant will automatically end for life once the verdict is in effect (according to §24 section 1 Law concerning the status of civil servants). But: a penalty of that severity is not to be expected as the result of actions of civil disobedience. Still, also lesser verdicts (eg. a fine) or a closing of proceedings can constitute a disciplinary offence according to §77 section 1 Bundesbeamtenengesetz (Law on Federal public servants). It can result in disciplinary punishments at your workplace according to the specific regulations of your federal state, such as lower payment, relocation or a reprimand. After completion of the criminal proceedings, separate disciplinary proceedings will follow. Civil servant candidates (like student teachers) are even more at risk, since they can be dismissed at any time according to §23 section 4 of the Law concerning the status of civil servants. They should still be given the chance to complete their second state examination (but do not have to be given that chance). Theoretically, even benign penalties can be problematic in these cases. It very much depends on you superiors and their will to sanction you. If you are a salaried employee working in the public service you have to be prepared for labour law sanctions corresponding with the general collective bargaining and labour laws. Dismissal is possible with very severe sentences. You should also pay a lot of attention to this issue if you are not employed in the public sector (or as a doctor or lawyer) yet, but are aspiring to be. Previous convictions that will not show up in the general police record (“certificate of good conduct”) that you would have to present to a private employer might nonetheless be included in the so called “extended certificate of good conduct” which public authorities want to check before they employ someone. The process of becoming a civil servant in the public service or getting your license to practise as a doctor or a lawyer can be inhibited or at least slowed down. Please do some research before the action and include your findings in your decision on the kind of action you would like to be part of. Try to take a decision, that meets your plans. Don’t let others pressure you into any direction.

## 6 Information regarding the right of residence

In the following, we will present some points that people who want to participate in actions without having a German passport or a place of residence in Germany should consider. There are differences between those who live in Germany and may want to stay here in the long term and those who will only be here for the action. Moreover, there are differences between persons from other EU countries, non-EU citizens and people who live without any papers. In general you will be charged regardless your nationality, the penalties are the same aswell. A big difference are the consequences a conviction can have on the right of residence of people without a German passport. We need to point out that German authorities are just as racist as many other structures in society. Therefore, if people choose not to be identified, but the authorities classify you as a “non-german” due to your outer appearance etc., they could try to attest you to be at “risk of flight” - an *accelerated procedure* (→ see section 4.3.4 on page 23) or *remand custody* among other things could be the result.

We are sometimes faced with the question of whether or not a conviction in Germany may lead to trouble when seeking a job in other countries. We cannot give reliable information on this as it mainly depends on the legal situation (eg. regarding police clearance certificates) and of course on the practices and attitudes among employers in the country in question. But we do know that German authorities convey information about convictions for criminal offences to other EU countries. Therefore, you should assume that authorities in your (EU) home country will be informed about your conviction. Upon request from authorities in non-EU countries, German authorities may provide information on convictions on the basis of the same conditions and restrictions as when dealing with other German authorities (unless there is a bilateral agreement that says otherwise).

### 6.1 Travelling to the camps or actions

You are action-bound and stopped at the German border:

- × According to Article 5 of the Schengen Agreement, a person can be denied entry if they pose a danger to public safety and order, eg. if they are expected to commit criminal offenses in Germany. The boarder police has to give specific reasons, which are not easy to find – especially if big demonstrations everyone is allowed to attend are taking place.
- × Only in the case of very big mobilizations is there a possibility of systematic border controls. Random traffic controls (your bus/car is stopped, you are checked on the train) can happen. Some officers have already asserted both in public and at court that the police is selecting people and vehicles based on racist prejudice.
- × During these controls, police may check your identity and look for matches in various databases, including the European database SIS (Schengen Information

System) and in the criminal records of the Federal and State Criminal Police Offices (BKA/LKA). They might also contact the police in your country of origin.

### **What can I do?**

- ✓ You may think about whether you are sufficiently well-known among the authorities in your home country and in Germany to be listed in the SIS (Schengen Information System database). You could also check in advance whether you are listed, using the inquiry system SIRENE. Depending on which country you are from, such inquiries might take a while.
- ✓ If you believe you may be listed in the SIS or another database, you could try to enter Germany in a more inconspicuous manner, e.g. in a small group on a train like a normal tourist, and not on a bus that is known to travel straight to the action.
- ✓ If you are stopped at the border, a lawyer could try to take action against your travel ban.
- ✓ If you want this, you could contact the legal team in this case. The possibility of border controls within the Schengen area is specified in the Schengen Agreement.

Regarding databases, see next section.

## **6.2 People with a passport from the EU**

You are an EU citizen (living in Germany or abroad) and are considering not revealing your identity to the police during an action:

- × In this case, police will try to get your fingerprints. If they succeed in doing so (cf. chapter 3 on ID refusal!), they could match them with various databases.
- × Police have access to various German and European fingerprint databases and will try to identify you this way.
- × These databases include in particular the European database SIS (Schengen Information System) and the criminal records of the Federal and State Criminal Police Offices (BKA/LKA). The Federal Criminal Police Office runs a centralized fingerprint database (AFIS) to collect fingerprints from all these sources.
- × Police can also direct specific requests to law enforcement agencies in other countries.
- × If you have previously entered the Schengen area from abroad, the Eurodac database (European Dactyloscopy) is also relevant. The police could use the stored fingerprint data to identify you even though you refuse to state your personal data.

## **6.3 People with a passport from a non-EU-country**

You have a passport from a country that is not part of the EU – how about (not) revealing your identity?



- × You will need valid ID documents to enter the Schengen area. If you are found without these in Germany, you may be deported and may have difficulties to receive a visa ever again.
- × When you apply for a visa, authorities now take your fingerprints and will store these.
- × Refusing to reveal your identity (name, age, and country of citizenship) in this case is a criminal offence. (→ § 95 section 1 No. 5 AufenthG /Residence Law)

#### **What can I do?**

- ✓ Illegal entry and ID refusal upon arrest during an action are a somewhat daring feat and will leave you in a difficult situation. Consider whether or not you feel up to the task before bringing yourself into this situation.
- ✓ As long as the police are unable to find out your identity it should be possible for you to claim you are living in a Schengen country. But we have no practical experience with this tactic yet.

The establishment of a person's identity (regarding non-citizens) is regulated in article 49 of the Residence Act (Aufenthaltsgesetz). Regarding the taking of fingerprints during the visa application process, the Federal Foreign Office provides official information: [http://www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/Visabestimmungen\\_node.html](http://www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/Visabestimmungen_node.html)[http://www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/Visabestimmungen\\_node.html](http://www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/Visabestimmungen_node.html)

#### **6.4 People without papers/without a residence permit/with travel restrictions**

People who are staying in Germany illegalised are affected by repression especially hard. We call it “illegalised” because to us it is clear that all borders need to be abolished and everyone should be able to choose where they want to live! We understand if people are hesitant to come to our consultation hours. We just want to say: we are on your side – we will not ask you any questions that are not connected to your ideas of action or the specific accusations you are facing. We will not forward any information to anyone – not to anyone else organising the actions and especially not to state authorities. You know much better than us what to do in everyday life to fly under the radar if you came to Germany without a visa, do not have a residence permit (anymore) or have a travel restriction. We think that passing unnoticed is especially important in the context of a political action when there is a lot of police around. While people who live in the European Union or people who have a visa can simply participate in a demonstration, the same is really dangerous for you, because although police is not allowed to do identity checks at an assembly or on the way to the demonstration, they might try it anyway.

#### **6.5 Naturalization procedure, permanent stay**

If you are not a German citizen but are seeking naturalization or permanent residence (or a visa) in Germany, please consider the following:

- × In this case, a minor conviction for participation in an action may suffice to thwart your plans. What is meant by “minor”? Depending on the legal basis upon which you are planning to stay in Germany, even a sentence of 50 daily fines may suffice (all convictions are added up here). If charges are pressed against you, police or prosecution will communicate this to the foreigners’ registration office (Ausländerbehörde).
- × We can only recommend that you do not risk prosecution. We know this will be very frustrating to read, but that’s the way it is. Nevertheless, you can contribute a lot to the success of our action by participating in legal ways! Feel free to ask the “Legal team for all” or other organising structures whether they might need your support.

If you live in Germany and are planning to stay here for a longer period of time, eg. for your studies, job training or work, please consider:

- × In this case, conviction to a prison sentence, eg. for resisting a police officer (see chapter 2 for information on different crimes), may in the worst case lead to your expulsion. For something like trespassing we consider this to be very unlikely, but can’t rate it out for sure.
- × The decision to deport you will be based on a balancing of the case for your expulsion and the case for your continued stay in Germany. The more severe the charges for which you receive a conviction and the weaker your residence status, the easier it is to expell you.
- × The risk of expulsion increases if you are sentenced to a longer prison term (1 or 2 years).
- × The legal basis for expulsions is to be found in § 53, § 54, and § 55 of the Residence Act (Aufenthaltsgesetz).

### **What can I do?**

Make up your mind in advance – how long do you want to stay in Germany and what is your personal limit for the action, especially in the case of confrontation with the police?

## **6.6 Specific characteristics of detention**

You are not a German citizen and have been taken into custody:

- × If taken in custody or arrested, the police has to inform the consulate/embassy of your country. They are not required to allow you to talk to the consulate.
- × When in custody you are not legally entitled to translation (that can of course also affect you if you are German); during criminal procedures you are. You should not expect the police to speak English or other languages well. You should still try to get an interpreter.
- × You should by no means sign any paper you don’t understand. You are not required to sign anything! This is true for everyone, but it’s especially important if you don’t understand what you are signing.

- × Depending on your country of origin your relatives may be able to contact the consulate/embassy to find out if and where you were arrested.

You have no place of residence or do not reside in Germany

- × If you are taken into custody and charged with criminal offences, there is an increased risk of an accelerated procedure. This means that you will remain in custody and will be put on trial very quickly, perhaps even on the following day (see → section 4.3.4 on page 23).
- × You are more likely to be held in detention awaiting trial. But usually the charges to be expected following a mass action of civil disobedience are not severe enough to make this scenario very likely if you do state your personal data.

In each instance, the reason is that the risk of flight is assumed to be heightened in your case, even if you state your name.

## 7 Under age and active

### 7.1 During the action

You are considered a minor if you are under 18 years of age, which authorizes your parents to determine your whereabouts. If your legal guardian is someone other than your parents, everything we are writing applies to them. When police assumes that you are out and about without your parents knowledge, they can take you into custody in order to bring you to your parents or the youth welfare office (so called “Obhutsgewahrsam” / custodial care, §35 section 2 Police-Law). Most likely they will try to reach your parents first. You can prevent to be taken into custody so easily if you carry a letter of authorization in which your parents permit you to participate in the protest. It has to be signed by all legal guardians and could for example read as follows: “I hereby allow my son / my daughter XXX to participate in the protest in the rhenish lignite mining area. In case he / she is taken into custody or arrested, my daughter / my son shall return to the youth camp on his / her own or be taken there.”

We advise you to try to get your parents/guardians to sign such a slip and to carry it with you at all times. Of course that does not apply to actions in which you wish to remain anonymous. Since your name can be found on that paper the police can use it to identify you! Of course they can only estimate how old you are if you do not carry your ID and do not make any statements. If you look a little older that might save you some trouble. Still, police can make very random assumptions about your age.

If you do tell the police who you are (your personal data) they will call your parents to come and pick you up. It can help to have your parents sign a mandate if you want other (**definitely adult!**) people to be able to pick you up at the police station (has to be signed by all guardians). The mandate can contain the following:

#### **Vollmacht (mandate)**

Mr / Mrs:

Address:

is authorized by me/us to receive and care for my/our daughter/son: name, address, date of birth

after he / she has been arrested between the XXth XX of 2017 and XXth XX of 2017.

Signature(s)

In some cases you might be taken to a youth centre if you do not state your personal data. Usually they do not have any legal reasons to lock you away or detain you for a longer period of time. So, you can just leave the centre once the police isn't there anymore.

### 7.2 After the action (youth penal process)

The criminal proceedings following an action also hold some specificities for both juveniles (under 18 years) and adolescents (between 18 and 21 years old). If you are an adolescent, the court has to decide whether to convict you under the criminal law relating to juveniles

or the one for adults (according to § 105 Jugendgerichtsgesetz / Juvenile Court Act). In theory, their decision depends on how “mature” the court thinks you are and whether the crime you are accused of is one “typically committed by young people”. In reality, they most often choose the criminal law relating to juveniles.

Juvenile Justice means that the trial will take place at the court closest to where you live and not closest to the “crime scene”. It also usually means that the trial is not public (if you are under 18), in the case of juveniles the public can, but does not have to be excluded. The court also has a so called “educational mission”: besides lecturing you on your morals, they can also impose unusual penalties – force you to write an essay, do community service etc.. The juvenile legal support agency is supposed to aid the court and help it decide what kind of a penalty could be appropriate in your case. You do not have to talk to them either, and you should avoid it.