

# Legal Aid Manual for Actions in Hamburg, Niedersachsen, Schleswig-Holstein

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# 1 Intro

This manual offers 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 Schleswig-Holstein, Hamburg and Lower Saxony. Hence, not all information can be used in all of Germany, but most.

## 1.1 Solidarity

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 aswell. 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. Therefore, we wish to see the affected person engaging in the matters 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.

## 1.2 Racism and repression

BIPoC<sup>1</sup> are more affected by repression due to racism than *white*<sup>2</sup> people. It is the task of all activists who plan the action and participate in it to develop an anti-racist practice that takes into account the different realities of participants and makes it possible to work together in solidarity and emancipation. Racism concerns us all. Anti-racism is a duty.

It can be a very empowering feeling to participate with hundreds and thousands of people in the different actions during the Action Days. But not all bodies are equally endangered or protected. Many BIPoC, or non-*white* persons are affected by Racial Profiling and more often than average by police violence. This can also happen on the way to an action, in or after the action. Unfortunately, no legal norms can protect against this in a concrete situation. Although such police behavior is clearly illegal, it does occur time and again. Therefore, it is important that everyone and especially *white* people who witness such a situation act in solidarity and support. But also note that people want different reactions in such a situation, so there is no one, single solution.

- always try to contact the person concerned first: Ask how they are doing and what they need. Signalize that you are on their side. If you can't talk to the person, first check if their affinity group or friends are nearby. If the person is not there, they may be able to better judge what the person needs.

### Possible actions are, for example:

In the meantime:

- As the person concerned: There is no right or wrong action in the situation. The most important thing is to focus on your needs. You know best what you need, for example if you want to get out of the situation as quickly as possible or if you want attention or interference from other people. It can be helpful to discuss possible scenarios with your affinity group in advance.
- You witness or are affected by racial profiling or racist police violence: Anyone can ask for the badge number and the name of the officer. Denial of the badge number is illegal, but in practice it is still common.

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1 BIPoC: stands for Black, Indigenous and People of Color. The term, which originates from the US-American civil rights movement, is a self-description and does not describe the biological characteristics of humans, but a social construction that assigns people a certain social position. What BIPoC have in common are shared experiences of racism, exclusion from the white-dominated majority society, and collective attributions of otherness. The concept sees itself as emancipatory and in solidarity. It positions itself against attempts at division through racism and culturalization as well as against discriminatory designations by white majority societies.

2 *white*: in contrast to terms like Black and People of Color, is not a political, empowering self-description, but describes a dominant position that is usually not named. The name serves to make white privileges visible, because they are usually invisible to white people. Racism also structurally assigns white people a certain social position. This position is associated with privileges, dominance and a standard for judging non-whites, without itself being marked white. To make clear that whiteness is not an empowering self-designation, we write it in white small and italic letters, in contrast to the empowering self-designation Black, which we write in capital letters and non-italic.

- Anyone can be taken as a witness<sup>3</sup>. We see the danger of being called as a witness against the person concerned if the police make a counter report, which is police practice. It can be more helpful to give the person concerned your contact details. They can then consider afterwards how they want to proceed and whether you can support them.
- Depending on the wishes of the person concerned also: stay close by, observe, intervene, say stop, create attention around it, call the EA, get further support, film if necessary.
- If you as an observer are unsure, you can also talk to other people nearby and think together about what you can do. As a *white* person, doing nothing or remaining in silence should not be an option (→ *white* silence). If you are affected by racism yourself, you should not only focus on the person concerned but also on your own safety.

In retrospect:

- Approach the affected person carefully and ask if you can support them (e.g. talk, drive away, medical care, exchange contacts).
- As an affected person and as an observer, it can be helpful to write a memory protocol (4) to be able to remember the incident later.
- A disciplinary complaint<sup>4</sup> can be filed afterwards with the police chief of the respective state, but should be discussed with the person concerned. Additionally, a complaint can be issued at the state parliament of Schleswig Holstein or at the complaints office in Hamburg and Lower Saxony.
- If you are affected and want to take action against racial profiling or racist police violence, we recommend that you talk to other affected people, anti-repression structures or solidarity lawyers beforehand.

**Attention for observers:** all actions can have a different effect on those affected and may even make the situation worse. Therefore, you should talk to each other about such situations beforehand, if possible. In this situation, you should first take what the person concerned communicates to you. For example, if the person wishes to behave calmly, you should not ignore the wish just because you personally think it is politically important to scandalize the situation.

Furthermore, non-white people without an EU passport, with a precarious residence status, or people who are illegalized may be threatened with deportation. In chapter 6 you will find information on this topic. If you have any questions, please feel free to contact us or send us an email. We will try to give you the information you need to decide how to assess the risk of repression for you. But as a *white* person, be careful with your ascriptions, many BIPoC activists have a German passport.

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<sup>3</sup> Be aware that both disciplinary complaints and even more so testimonies can lead to the fact that you do not leave the action anonymously.

<sup>4</sup> Tips for writing a memory protocol, as well as risks, are available here: <https://antirepression.noblogs.org/polizeikontakt/gedaechtnisprotokolle/>

### 1.3 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 noone 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 the action. We will publish our phone number some time before the action (e.g. you could find it at a camp, in the Hambach Forest or on the internet). 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 a phone call - please use it to contact the legal team. If they do not let you make a call yourself, demand they inform us of your arrest in your presence. As soon as your situation changes you should demand to call us again, e.g. we need to know if police want to present you to a judge so that we can arrange for a lawyer to support you (you have the right to get legal support).

This is what you should tell us:

- ✓ What is your name? (or number/alias if you decide to remain anonymous)
- ✓ Where are you held in custody?
- ✓ What are they accusing you of?
- ✓ What did the police say they are going to do with you?
- ✓ 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. Where necessary, we refer to the relevant paragraphs in the Freedom of Assembly Act of the federal states of Hamburg, Lower Saxony, and Schleswig Holstein. 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. (→ § 24 VersFG SH; § 21 NVersG; § 29 VersammlG)

- ✓ 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 wear a dust mask – protecting oneself against coal dust or the corona virus for example. (→ § 17 VersFG SH; § 9 NVersG; § 27 VersammlG)
- ✓ 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. (→ § 17 VersFG SH; § 9 NVersG; § 27 VersammlG)
- ✓ Violating the ban on disguises or passive weapons is an administrative offence in Schleswig-Holstein and Hamburg (in the end you have to pay money). In Lower Saxony, it is a criminal offense that is also punished with a fine or, in the worst case, with imprisonment up to one year (→ § 24 VersFG SH; § 29 Abs. 1 Nr. 1a VersammlG ) und in Niedersachsen eine Straftat (→ § 20 Abs. 2 Nr. 4 NVersG).
- ✓ 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. They are allowed to conduct searches if there is suspicion of weapons. They may take personal data if there are indications of criminal offences, weapons or disguises and protective weapons (→ § 15 VersFG SH; § 15 Abs. 3 NVersG).

### 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 planned demo needs to be registered with the authorities 48 hours before it is supposed to start ((→ § 11 VersFG SH; § 5 NVersG; § 14 VersammlG). 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

An assembly must be registered with the competent assembly authority. Find out which one it is in the respective district - sometimes it is part of the police (for example in Lower Saxony and Hamburg), sometimes it is part of the public order office or an independent authority (e.g. Schleswig Holstein). 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. When whatever makes you want to have a demonstration happened less than 48 hours ago, it is called an urgent assembly (German: Eilversammlung). Obviously, the deadline for registering an urgent assembly is shorter than 48 hours before the demo. Spontaneous assemblies due to sudden events, like e.g. the arrest of other activists, do not have to be registered. Once they start, police will ask to talk to the person responsible. 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«. (→ § 5 and § 6 VersFG SH; § 7 NVersG; § 8 VersammlG)
- ✓ 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". From time to time, non-compliance with the requirements leads to proceedings against the leader of the assembly, which is an administrative offence that can result in a fine. (→ § 13 VersSG SH, § 24 VersFG SH; § 21 Abs. 1 Nr. 10 NVersG; § 25 Nr. 2 VersammlG)
- ✓ The people in the demonstration decide themselves where their demo is taking place and what it is like. If the police or the public order office 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, like airports or train stations, → § 18 VersSG SH).
- ✓ 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. (→ § 16 VersFG SH; § 12 NVersG; § 12a VersammlG)

### 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

- ✓ Making an unregistered assembly is an administrative offence in Schleswig-Holstein. However, we do not know of any case where this has been prosecuted to the end, so that it has not yet been possible to check whether the regulation is constitutional, also because people who participate cannot necessarily know whether a meeting has been registered. ((→ § 24 VersFG SH; § 21 Nr. 4 NVersG), in Hamburg ist es eine Straftat (→ § 26 VersammlG). In Lower Saxony and Hamburg, the holding of a unregistered assembly is an administrative offence. As a participant it is an administrative offence when you don't leave an assembly after it was dissolved.

- ✓ 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

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 can arise:

- rioting (»Landfriedensbruch«, (→ § 125 Strafgesetzbuch, StGB)
- resisting enforcement officers (→ § 113 StGB)
- Assaulting enforcement officers (→ § 114 StGB)

These allegations are often made by the police to justify their own violence as being a necessary reaction, irrespective of whether or not the relevant participants actually tried to resist. After the tightening of the laws in May 2017, these accusations have unfortunately had much worse consequences.

#### Rioting

»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

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 sitting »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. In a few cases, using lock-ons has resulted in people being accused of resisting enforcement officers.

### **Assaulting an enforcement officer**

Any allegedly violent movement towards the other person's body, e.g. pushing, hitting or kicking, can be regarded as assault. Neither § 113 StGB nor § 114 StGB require pain or injury in order to be considered an assault. According to the text of the law, such assaults are punishable by at least three months probation or imprisonment, which, if they are at the lower end, can be converted back into fines. Since the tightening of this law in 2017, the jurisprudence on this has also become tougher. Pre-trial detention is imposed every now and then on the charge. In the past, there have also been cases where activists have remained in pre-trial custody in the context of this accusation linked with ID refusal. If the accusation is considered proven, suspended sentences usually result. This means that especially when flowing through police lines or in other situations where you come very close to police officers, you should be careful about the movements you make towards the bodies of police officers.

### **More possible accusations**

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. However, it is again punishable, if you say such statements to a concrete individual directly in the face. 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.

Causing bodily harm to someone can be added to the list of accusations when for example »in the heat of the moment« there is a confrontation between activists and police. But ever since the accusation of assaulting enforcement officers has been created, bodily harm is rarely used when it comes to small altercations with police. It might be more relevant during confrontations with nazis, for example.

### **Keep in mind**

Rioting, resisting and assault should theoretically 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 as well as document 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, bread knives... 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. We advise you to meticulously consider what to take with you into action and double-check your baggage before you go.

### 2.2.2 Charges after police violence

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.

### 2.2.3 Entering company premises

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 someone else's house or fenced premises 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.

#### 2.2.4 Sitting blockades

Legally, sitting blockades are accepted as a valid type of assembly. Thus, they are legal as long as police doesn't decide to disperse the assembly. Limitations apply, depending on where the sitting blockade takes place.

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«. Since blockades are actually supposed to prevent something from happening, be it a deportation, an eviction or a machine from working, the accusation of coercion is very typical of blockades. The law doesn't clearly say at what point something is coercive. If the blockade was not more than a sitting blockade, a sentence is highly unlikely even though the legal interpretation is tricky: a blockade that only utilises your own body to block something (like a sitting blockade) does not constitute a coercion. But legal specialists came up with another idea: in a blockade, the first e.g. car that is hindered from going its way by activists in the street is not subject to coercion, the second car behind the first one, however, is (since there are not only people in the street, but another vehicle that is theoretically insurmountable). More often, police will formally disperse the assembly. 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. Fines can be up to 500 euros, but can also be much lower.

More accusations can play a role, depending on where the sitting blockade takes place. If you find yourself in the mine or other enclosed areas, you could be accused of **trespassing** (see 2.2.3. Legally, there isn't really any difference between blocking the excavator closest to the mine's edge, RWE's railway tracks or a street.

Depending on how the eviction of the blockade goes, other accusations could be **resistance** or **insult**. Please read up on these accusations in section → 2.2.1 on page 9.

#### 2.2.5 Blockades using technical devices

If the blockade is supposed to last some time longer, there are several devices that can help with that, like tripods (three-legged scaffolds people can climb on) or installments people can use to lock themselves on to machinery or to one another, so called lock-ons. Evicting a blockade can last longer with the help of these technical devices, but repression is also often more severe.

**coercion**(§ 240 StGB)is accused when, for example, cars, and trains are stopped. Further you can be accused for the **disruption of public services**(§ 316b StGB). Coercion applies in scenarios in which trains, excavators or cutting machines have to come to a halt because of you. With disruption of public services (or operations), the deciding factor is whether the action performed by the person accused is interfering with the provision of the public with an important good (like energy supply), by the acts of »destroying, damaging, removing, altering or rendering useless« of the facilities, or by »draining them of/ tapping electrical power«. Courts usually rule lock-ons used



on railway tracks to be an alteration of the tracks, and a blockade of an excavator to be a disruption of public energy supply. People have been convicted because of these accusations and had to pay fines ranging from 30 to 110 daily rates.

Since early 2018, courts in the Rhineland have started to prosecute lock-on actions as **resisting enforcement officers** § 113 StGB, arguing that an eviction is predictable. In 2017, § 113 Criminal Code (StGB) has been tightened. Since then, collective resistance (with more than one person locked on) or resistance involving dangerous tools, like knives or screwdrivers (having them somewhere in your backpack is supposedly enough) result in sentences of at least 6 months. So far the sentences were always suspended. If a prison sentence is suspended, you don't go to prison unless you violate certain conditions, such as reporting back to the police regularly, not breaking any criminal law within the next three years or not going into the Hambach Forest again. But our experience shows that in these cases people who refuse to be identified are more likely to be put into investigative detention. Even though this didn't happen during all actions, people have already been sent to investigative detention for this also linked to the ID refusal.

When preparing actions (especially those that directly interfere with company procedures), talk about how to deal with civil claims for damages (→ section 5.2.4 on page 41).

### 2.2.6 Occupations

You and your affinity group decided to do an occupation – of your favourite patch of forest, of a house owned by RWE, or a public building (like a party's headquarters or the roof of a police station). You should anticipate to be accused of **trespassing** (→ section 2.2.3), especially if you don't comply with someone asking you to leave. Depending on how the eviction of your occupation goes, other accusations could be **resistance** or **insult**. Please read up on these accusations in section → 2.2.1 on page 9.

## 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

### 2.3.2 Removal of fences 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 StGB).

### 2.3.3 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 41).
- ✓ If you install another object but do not break anything in the process, it should not be punishable as criminal damage.

### 2.3.4 Sabotage

The term sabotage can be used to describe many actions, from breaking small things to setting larger fires. The possible range of punishment depends on the severity of the interference and destruction and what was broken, so it is difficult to make general statements. Claims for damages are also not entirely unlikely, cf. → section 5.2.4 on page 41.

#### Keep in mind

- ✓ Don’t get caught.
- ✓ Be careful not to leave any traces (fingerprints, footprints or tyre marks, DNA, mobile phone locations, surveillance camera recordings).
- ✓ Of course, damage to property (→ § 303 StGB) is always a possible charge.
- ✓ If it is about things that are used publicly, it is also common damage to property (→ § 304 StGB). Otherwise, there are also offences such as destruction of buildings (→ § 305a StGB) or destruction of important work equipment (→ § 305 StGB) - depending on what you want to tackle, inform yourself beforehand (or don’t get caught).
- ✓ If people act out of a crowd and use violence against property, this can be punishable as breach of peace (→ § 125 StGB), even if people are only participants in the crowd.
- ✓ If the installations in question serve public transport or the supply of electricity (e.g. open-cast mines or pipelines), it may also be a case of disturbing public operations under § 316b StGB (2.2.5 on page 12).
- ✓ If fire or explosives are involved, criminal offences such as arson (→ § 306 StGB, always imprisonment, no fine), causing an explosion (→ § 308 StGB) come into play. In this area in particular, experience has shown that when someone is caught,

it is often no longer a fine or suspended sentence, but a prison sentence that is in the offing.

- ✓ Disruption of public services and arson are also part of the catalogue of offences for terrorist organisations. In recent years, no one from the left-wing scene has been convicted on the basis of this provision (→ § 129a StGB). However, it is used by the authorities to authorise far-reaching investigations such as total digital surveillance and observation.
- ✓ Generally, depending on the damage, considerable claims for damages can be made.

## 3 Personal identification and ID refusal

We are providing you with a whole chapter on 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 § 181 Landesverwaltungsgesetz SH, LVwG SH; § 13 Nds. Polizei- und Ordnungsgesetz, NPOG; § 12 Sicherheit und Ordnungsgesetz Hamburg, SOG HH), 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. German citizens are not obliged to carry their ID card, foreigners unfortunately are.

If you and others decide to identify yourself, you could also collect the IDs of everyone around you and hand them to the police as a stack, or just toss all of them on the floor. 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?

In order to establish people's identity, police can search them (thoroughly), take them into custody and hold them at the police station. How long they can hold people depends on the federal state you are in: in Schleswig-Holstein, it is 12 hours for the sole purpose of establishing your identity (§ 181 Abs. 4 S. 5 LVwG SH, § 13c SOG HH oder § 163c Abs. 2 StPO); in Lower Saxony up to six days in custody are legally possible, but the law says custody should »in general« not exceed six hours (§ 21 S. 4 NPOG), that means the police is obliged to state a legitimate reason if they want to hold a person for more than six hours. If you have been arrested because you are accused of a criminal offence, a judge must decide by midnight of the day following your arrest whether you will be released or whether you will be remanded in custody (»habeas corpus«-rule). Midnight the day after you were taken into custody (hence, after a maximum of 48 hours in custody), a judge has to determine whether you have to be let go or whether keeping you for 7 days is warranted, or whether (in case you are being accused of something specific) you will be taken into investigative detention/detention awaiting trial. It is yet to be seen how far the tightened law actually affects the times that people spend in custody.

The police can also entertain other measures to establish someone's identity, usually »booking« them (German: ED-Behandlung according to § 183 LVwG SH; § 16 Gesetz über die Datenverarbeitung der Polizei, PolDVG HH; § 15 NPOG oder § 81b StPO). In most cases they will take pictures as well 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 this is prohibited without a court order (for further information, see sections 4.2.2, 4.2.3 and 4.3 starting on page 24).

### **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 – only if the police doesn't manage to identify you in some way, e.g. because your pictures and fingerprints can be connected to your name (for example because of identity checks during other actions).

### **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
- × remaining in police custody for up to 7 days
- × solidarity work more difficult (e.g. if people do not attend other activists trials for the fear of being recognised)
- × if one's 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 one's identity in the first place can be the result (→ § 111 Ordnungswidrigkeitengesetz).
- × uncertainty: there is no way of guaranteeing that police will not find out who you are in some way.

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

Experience from the last years shows that the police can take photos and then do »car checks«, eg. on the day of departure, to attain people's 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 (or lock you up) 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 another's 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 – letting others know about your plans won't only help you, but also all individuals and support structures that are trying to support you. The *ABC (Anarchist Black Cross) Rhineland* can provide you with forms that help you discuss this (see section 4.3.2 on page 28 about detention awaiting trial).

## 4 Police measures

In this chapter you can find some tips and tricks as well 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 license 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. (→ § 81a StPO)
- ✓ For a search, the police need a search warrant (→ § 102 StPO). Or they can invoke "imminent danger" (→ § 105 StPO). In any case, have them explain to you exactly why they think they absolutely have to look in your car or pockets and what they are specifically looking for. Insisting on reasons can sometimes prevent them from doing so.

#### 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, 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). In Schleswig Holstein applies §§ 202 und 206 LVwG SH, in Hamburg §§ 15 und 15a SOG HH and Lower Saxony §§ 22 und 23 NPOG to search a person and their items. People may only be searched by police of the same sex or by doctors, in the case of legitimate interest (for example, in the case of transpersons. The wish to be searched by a person of a certain gender should

be complied with (§ 203 LVwG SH; §§ 15 SOG HH; §§ 22 NPOG). You always have the right to be around and watch if the police searches your belongings.

### **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«(→ § 201 LVwG SH; §§ 12a SOG HH; §§ 17 NPOG). 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 (→ § 204 LVwG SH; §§ 13 SOG HH; §§ 18 NPOG).

### **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 26). 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 Seizure / Confiscation

Sometimes the police want to take things away from you, either outside during a search or at the police station. In principle, this can also be done repressively (i.e. for criminal prosecution) if things have been or are to be used to commit criminal offences (→ §§ 94 und 98 StPO) or preventively, i.e. to avert danger under police law. (→ § 210 LVwG SH; §§ 14 SOG HH; §§ 26 NPOG). Your personal belongings, money, etc. are generally not among the things they are allowed to take away from you.

#### Things to note / useful to know

- ✓ You can insist on a sighting/confiscation report that the police hand over to you and on which it is noted exactly what they have taken away from you. This works quite often (sometimes anonymously), especially if they want to take things away from you permanently and not only for the time of custody. The protocol should also state the legal basis of the seizure (danger defence or code of criminal procedure, i.e. criminal prosecution).
- ✓ If you file an objection, a court must decide on the legality of the seizure within three days. Filing an objection is usually useful, it also shows that you did not agree to it.
- ✓ If they do not hand over the items despite all efforts, it is important that you have documents with which you can prove afterwards that the items belong to you (e.g. proof of purchase for an expensive camera or similar). If you have refused to give your personal details (see above), non-personalised purchase receipts would be practical, as then others can also collect the items for you later and your anonymity is not compromised by the collection of items.
- ✓ It is best to try to get back items that have not been officially confiscated as directly as possible. Taking care of things later is usually more effort.
- ✓ As a rule, you will get back things that were seized to avert danger after the danger is over (e.g. when the action is over). Things that were seized for criminal prosecution are often only returned at the end of the court process.
- ✓ If you remain anonymous, it is more difficult to get things back and doesn't always work out.
- ✓ The Hambi Legal Team has summarised more tips on recovering confiscated property. (→ [Help the police stole my stuff on](#) (→ [antirrr.nirgendwo.info](#) at publikationen).

#### 4.1.5 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 (§ 24 VersFG SH; § 21 Abs. 1 Nr. 11 NVersG; § 29 Abs. 1 Nr. 2 VersammlG. 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 9)
- ✓ 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).

### 4.1.6 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 provisional arrest, not custody, §127 StPO). 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)

The ID treatment (German: **Erkennungsdienstliche Behandlung**, similar to **booking** someone to establish their identity) is usually carried out in the course of a detention at police stations or in prison collection centres („GeSa“ = „Gefangenensammelstelle“ in German) and is governed by § 183 LVwG SH; § 16 Gesetz über die Datenverarbeitung der Polizei, PolDVG HH; § 15 NPOG oder § 81b StPO. However, it can also work differently: At some Ende Gelände actions in the Rhineland, for example, a slimmed-down version was carried out, presumably for capacity reasons, on most participants who refused to give their personal details. After a search of the body for possible identity papers, only a photo was taken. In some cases, the police also worked with mobile fingerprint scanners. ID treatment usually involved taking photographs of you, taking fingerprints, measuring height and noting external features such as tattoos.

#### Possible behaviour

- According to the Basic Law, you are not obliged to cooperate with the investigation against you! Even if the police scare you, it is not resistance if you let them carry you, distort your face,...but the police are then authorised to use immediate coercion, i.e. they may force you to do so (also by means of pain grips, whereby the mildest means must always be chosen, but they don't care, they always use excessive pain grips). But a photo with a distorted look and two hands on your face is worse than a photo without two hands on your face. Also your weight/ height can be difficult to measure if you resist.
- You do NOT have to sign anything.
- Against fingerprint scanners, superglue (reflective), glitter, or cutting the top layer of skin has proven to be very effective, and in combination, lightly wiggling the scanner is also super helpful, there is almost nothing they can do about it, except inflict pain. Sometimes they resort to an ink pad. Stubborn glue has proven effective against tattoos and the like, but this is sometimes painfully removed. However, if many people have glue on them, even if there are no tattoos underneath, they sometimes stop being annoyed. It is the same with fingerprints. ID treatment is often the most painful and psychologically stressful part for people, so it is important to look at how you are feeling at the moment, what behaviour suits you best.
- It is very common to be accused of resistance during ID treatment. Either they are trying to force you to cooperate by scaring you, or you have actually resisted, for example by pulling your hand away when they pull it onto the scanner. But that doesn't mean that it will be followed up and go to trial every time.
- You are not obliged to give tape recordings, or to reenact any movements, e.g. a throwing motion with the right arm, to give pulse and breath samples, storage of social behaviour patterns is also not allowed. On the other hand, they are allowed

to change the outer appearance by putting on a wig or removing make-up, but a doctor would have to remove a stubborn adhesive.

- You can also appeal against the measure (directly or afterwards). It has happened that they refrained from taking the measure after an objection, but that is rather rare and tends to be the case when they have personal data. If they have personal data anyway, the objection can make it easier to take action against the storage of fingerprints afterwards.

### 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 (→ § 183a LVwG SH; § 15a NPOG) 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. 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.) (98 StPO).

### 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.
- ✓ If your things have not been confiscated officially, it might be an especially good idea to try and get them back as soon as possible. Taking care of that long after confiscation is often a much bigger hassle.
- ✓ Items that were confiscated to “avert a danger“ should be given back to you once that danger is over (e.g. after the action or the cutting season ended). Items confiscated to be used in criminal prosecution are usually only handed back over after the trial.
- ✓ If you file an objection, a court has to decide whether the confiscation of your things was lawful/warranted within three days.

- ✓ If you remain anonymous, it is more difficult to get confiscated items back – and sometimes, it doesn't work at all.
- ✓ You can find more tips on how to get back your stuff on the AntiRRR-homepage, compiled by the Hambi legal team (→ .

### **4.3 If they want to take me with them: at the police station and in court...**

#### **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 stupid sayings that express 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 § 204 LVwG SH; § 13c SOG HH; § 21 NPOG und § 163c Abs. 1 StPO for reference). According to § 13 SOG HH the maximum detention time because of ID refusal is 12h, in Lower Saxony applies § 21 NPOG which states that you need to be released not later than 24-hour clock the next day or after six days but this only applies when a judge decides so.

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. Same goes for people with an administratively precarious status of residency. 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 everything 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 frisking you). 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 (→ § 203 LVwG SH; §§ 15 SOG HH; §§ 22 NPOG).

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 you 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.

You can be taken into custody according to police law, or provisionally arrested according to the Code of Criminal Procedure. The difference is difficult to feel in practice, as you are in the same cell, a judge can decide whether you are detained or arrested. However, the distinction is important for the length of detention, so feel free to ask and tell your Legal Team. In the case of arrests and detention examinations, you have the right to a public defender. For the duration, no matter on what basis, you have to be released at the latest by midnight of the following day, unless a judge decides that you will be remanded in custody. In Schleswig-Holstein, there is no custody that can last longer than midnight the following day.

### **our rights in custody / arrest**

- ✓ You must be told immediately the reason why you are being detained (and theoretically also what legal possibilities you have to take action against it).
- ✓ You have the right to inform a person you trust, i.e. to call (often the Legal Team), as well as to contact your defence lawyer (can be arranged through the Legal Team).
- ✓ If you need medical treatment, the police have to take care that you get it immediately. Unfortunately, practice shows that they often do not do this and try to extort statements or personal data. It is best to carry medicines that you urgently need with you, as this increases the likelihood of getting them. A medical certificate can also help.
- ✓ You always have the right to water and to go to the toilet. You have the right to eat at mealtimes (at 7am, 12pm and 6pm) and the right to a blanket.
- ✓ You have the right not to testify and not to assist in any investigation against you.
- ✓ You have the right to have a judge decide immediately whether you should remain in custody if you have been detained for security reasons.

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

If you decide not to disclose your identity or if you are being accused of more serious crimes in combination with an assumed risk of absconding, 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.
- The lesser the charge, the more difficult it is for the authorities to obtain pre-trial detention, even if you don't give your name. In 2019, however, pre-trial detention was ordered for the first time after a digger blockade in Brandenburg (Lusatia) on the basis of an accused trespass because the persons had not initially given their personal details. This order was based on § 113 Abs. 2 Nr. 3 StPO. We do not know whether such a decision could also be made in Schleswig-Holstein, Hamburg or Lower Saxony.
- What holds aswell: 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 for you individually as well as everybody else who is anonymous who they try to detain, they need to get a cell ready, and so on. Meanwhile, you can still decide to tell them your name if at some point you don't want to be detained longer.



- In cases in which your namelessness was the only reason you were arrested (to keep you from getting away and averting prosecution / risk of absconding), you have to be set free immediately after you decide to state your name and they were able to verify your identity (→ § 120 StPO). Of course they could (and will) also try to make up other reasons to keep you in detention. 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/absconding, 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.

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 if you are accused of serious crimes like causing bodily harm or assaulting an enforcement officer. 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/absconding; § 112 StPO), 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 and check 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 should not say anything in front of the magistrate / judge that could incriminate you or someone else, either, but refuse to make a statement. 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.** That doesn't mean that you can't talk to one another at all. Quantum physics, architecture, your rights and anything else that doesn't pertain to your alleged crime and motivation to commit it is absolutely fine to talk about.

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. How far into detail your discussion of these issues has to go might of course depend on your chosen form of action.

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 on your own 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. The same applies to all follow-up measures such as transfer and detention in the police station/prison collection centre (GeSa). All this may be permissible under section § 204 LVwG SH sowie gem. § 127 Abs. 2 StPO.

- §§ 181 LVwG SH; §§ 12 SOG HH; §§ 13 NPOG permits the detention of a person to establish his or her identity. This is only permissible until the identity has been established or for a maximum of 12 hours. A corresponding provision, according to which the police could also take action here, is found in § 163b StPO. Like § 202 LVwG SH; §§ 15 SOG HH; §§ 22 NPOG this also allows the search of the detained person. Here, too, the maximum detention time for the sole purpose of establishing identity is limited to 12 hours under § 163c StPO (Code of Criminal Procedure).
- § 204 LVwG SH; §§ 13 SOG HH; §§ 18 NPOG allows for individuals to be held, eg. to enforce a ban from the premises or to prevent crimes that are of »considerable significance for the general public«. Let the police officers explain to you what exactly they suppose holds in your case and what reasons they see for holding you. Try to remember their arguments, but don't comment on them. The measure is allowed as long as e.g. 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 (§ 204 Abs. 5 LVwG SH; §§ 13c SOG HH; §§ 21 NPOG). To be sure when the purpose has ceased to exist, it is important to know which arguments the police used to justify each measure.
- A judge must decide on your arrest/detention immediately (even if it is only temporary). Ask for it, it is also more work. But remember that they do not always obey the law. However, if by the end of the day following your arrest no court has decided whether they can continue to hold you, the police must release you.
- § 127 Abs.1 StPO also contains a preliminary law concerning the power to affect arrests, though. 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.

#### 4.3.4 Accelerated procedure

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 § 417 StPO. 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 later on once you reveal who you are.

## 4.4 Trans\* people and detention

### General information

- If you declare your identity, the gender registered on your identity card counts for the police. If you have a change of civil status in your passport, the newly registered gender is valid.
- If you take hormones, this is part of your medical care. People have the right to take them and can insist on them in custody (e.g. GeSa). (Sometimes, however, they have to be applied for first and, if necessary, it has to be proven by a doctor that a person needs them. -> It may make sense to carry this evidence with you).
- The principle of separation is that people registered as men and women in custody are accommodated separately.
- It may be that people are placed in solitary confinement, this is decided by the prison management, there is no right to group/solitary confinement.

### Physical search

- People are always searched by persons of the same sex registered on their passport. (Only in Berlin are people allowed to choose who does the search).
- As soon as people are asked to undress, they may be asked to do so in a room where only the searchers are present.
- People do not have to give information about their gender! → This applies to ALL people (identity card, residence title, origin does not matter!).

### Supplementary ID

- Some trans\* people have a supplementary identity card from the German Society for Transidentity and Intersexuality. (dgti).
- It says which gender and which pronoun the person prefers.
- There is no legal basis on which one can refer to the supplementary identity card. The police structure does provide information about the supplementary ID, but it is questionable whether it is recognised.

For more detailed information, see:

[http://transundhaft.blogspot.de/images/Informationen\\_Fur\\_Transmenschen\\_inHaft2.pdf](http://transundhaft.blogspot.de/images/Informationen_Fur_Transmenschen_inHaft2.pdf)  
(german)

## 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. If they tried to interrogate you the day they picked you up, you might not be sent a summons. As the person accused of something, you don't have to attend whatever date police sent you – and you shouldn't.

With less severe accusations, you might just be sent a form to fill out, effectively replacing the actual hearing. If your personal data on the form are correct, you are not obliged to fill it out or send it back – no matter whether or not the form itself says otherwise. If your personal data are incorrect, you should correct them, leave everything else empty, and send it back. Any statement you would make on the form or in person talking to the police would only be used against you.

If you are summoned as a witness, you should read the summons more carefully. You don't have to comply with the police asking you to come by and make a statement. But if it was the prosecutor's office ordering the police to summon you, you are theoretically required to attend and make a statement (§ 163 Abs. 3 Strafprozessordnung (StPO)). If that is the case, your letter contains a so called advice on legal remedies (German: Rechtshilfebelehrung). Even if you are summoned by the state prosecution, refusing to make a statement is usually the best way to go (although it is not legal). The best you could do would be to tell the legal team or other legal aid structures about your

summons, get together with other people affected by this and come up with a strategy together. A witness who is summoned also has the right to have legal assistance by their side (§ 68b Strafprozessordnung (StPO)), that person can be a lawyer or a lay assistant, specified in § 138 Strafprozessordnung (StPO). If police tries to question you as a witness right there and then, claiming to be ordered by the state prosecutor's office, let them know that you demand legal assistance and that they should send you a letter asking you to come another day, so that you can manage to bring your assistance.

In the less common case of the prosecutor's office summoning you as a suspect: you have an obligation to go, otherwise the prosecution can order police to take you there by force (§ 163a Strafprozessordnung (StPO)). 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« (→ §§ 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 StPO. (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 49).

### 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 Strafgesetzbuch, StGB resp. § 114 StGB) 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 StGB 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 Strafgesetzbuch, StGB resp. § 114 StGB) 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 Abs. 2 StPO 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 (§ 46 StGB).

#### 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* (→ § 40 StGB). 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 and your affinity group can always try and raise money together – 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. (→ § 42 StGB)
- ✓ 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

If your conviction is a prison sentence of no more than 2 years, that sentence can be suspended. The court will decide whether or not to suspend your sentence according to your so called social prognosis, e.g. if you have never been convicted of a crime before, your chances of getting off with a suspended sentence are higher. A suspended sentence means that you have to stick to a number of conditions for a couple of years. If you violate these conditions you will be sent to prison. You can find a little bit of information about time on the inside in the chapter on investigative detention 4.3.2. If you want to know more, e.g. the *ABC Rhineland* can provide you with information (→ <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 go on your record as 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.

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 (theoretical and 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 antirepression (e.g. Untenlassen) group or a lawyer you trust. Talk to other people who were involved in the action! Together you can plan your future actions and what works best for you. Also: please read section ?? 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 to 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.

#### **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 the combustion of fossil fuels! 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 a different action target. :) 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 for example 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 contract 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 des Bürgerlichen Gesetzbuches (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 Fees

Another possibility for civil claims are fees. For example, in some federal states and with the federal police there is the possibility to charge the detainees for detention or removal, according to fixed rates or calculated according to how many cops they needed. Here, too, there is the possibility to object to the demand and to take legal action, for example, if at the same time one sues for the underlying police measure to be classified as unlawful.

### 5.2.6 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.

### 5.2.7 Experiences with civil claims

In the past years, many actions in the field of climate justice did not result in civil claims - but some of the many, many actions did. For example, RWE and Mibrag (operators of open-cast lignite mines) sent injunctions to participants of mass and small group actions to stop entering company premises. The courts mostly found this to be lawful.

Claims for damages were made, for example, in the case of a successful blockade of a coal-fired power plant by RWE and in the case of a blockade of a slaughterhouse by the company Tönnies in Kellinghusen (Schleswig-Holstein). In a few actions (e.g. motorway rappelling actions and during the eviction in the Dannenröder Forst), attempts are made to charge for the costs of police intervention.

It is often not easy to develop amicable strategies for dealing with such demands and to find a way of dealing that suits everyone involved. Therefore, it is also worthwhile to talk about possible civil claims before an action (especially if you are travelling in a smaller group).

## 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, BStG (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 Abs. 1 BStG). 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 § 24 Abs. 1 BStG (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 Abs. 4 Beamtenstatusgesetz, BStG. 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 in cases ending in very severe sentences, meaning prison sentences of at least a year, even if the sentence is suspended. Salaried employees are not required to show especially good conduct outside of their work duties anymore.

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. Certain court decisions (like the revocation of a firearms license or a business license, placement in a psychiatric hospital ordered by court, or a legally approved lack of criminal responsibility) can appear in the specific »certificate of good conduct to be presented to authorities« that people need to become lawyers or doctors. These would not appear in a regular certificate

of good conduct that usually only contains convictions of more than 90 daily rates or from the second conviction onwards. Convictions of less than 90 daily rates can also appear in the certificate of good conduct to be presented to authorities, if for example you need the certificate to acquire a business license and the conviction had to do with an economic enterprise. Furthermore, the process of getting your license to practise as a doctor or a lawyer can be inhibited or at least slowed down.

People who would like to prove that they are fit to work with minors have to present a so called »extended certificate of good conduct«. On top of any convictions the regular certificate of good conduct contains, any kind of incident/conviction that could pertain to this kind of work will appear in the extended certificate – this mostly applies to sex crimes and thus should not be relevant in the context of the actions planned. (More specifically: all convictions according to §§171, 174-184g, 225, 232 bis 233 a, 234, 235 oder 236 StGB/Criminal Code will appear in the extended certificate of good conduct).

Please do some research before the action and consider all these risks (as well as other possible consequences) 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 as well. 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 31) 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 border 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 (→<https://www.auswaertiges-amt.de/de/service/visa-und-aufenthalt>).
- × Refusal to provide personal data (age, identity and nationality) to the police is generally NOT a criminal offence, even for people without an EU passport. Refusal is only a criminal offence if the personal data are requested in connection with decisions under residence law. (→ § 95 Abs. 1 Nr. 5 AufenthG)

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

- ✓ As long as the police do not find out your identity, it should actually be possible to claim to be at home in a country of the Schengen area. You can also remain completely silent or speak only English with everyone - especially if your affinity group and the people around you also speak only English, we have had good experiences with this.

The establishment of a person's identity (regarding non-citizens) is regulated in § 49 AufenthG). Regarding the taking of fingerprints during the visa application process, the Federal Foreign Office provides official information: <https://www.auswaertiges-amt.de/de/service/visa-und-aufenthalt>

### **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:

- × A conviction for a serious offence prevents naturalisation (more than 90 daily sentences).
- × A conviction for a minor offence for participation in an action may already be sufficient to prevent or complicate the extension or granting of visas. Depending on the legal basis on which you want to stay in Germany, a conviction of 50 daily sentences may be sufficient. All convictions are added up.
- × As soon as charges are brought against you, the police or public prosecutor's office informs the Foreigners Authority.
- × Convictions are deleted from the Federal Central Register, usually after 5 to 10 years (after the date of conviction), so they can no longer be used against you after this period has expired.
- × If you want to know what our experience with the amount of convictions is for certain actions, have a look at chapter 2. But one thing is clear: there are no guarantees and convictions can be higher in individual cases.

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 AufenthG; § 54 AufenthG und § 55 AufenthG.

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

Think beforehand how long you want to stay in Germany and how far you want to go in the action, especially in case you are confronted by the police. There are also ways to support the action legally. Feel free to contact us as the Legal Team for All or other structures.

### **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 31).
- × 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 Minors in action

If you are less than 18 years of age, the German legal system considers you a minor. In this text we will often refer to a minor's parents, but if your legal guardian is someone other than your parents, the same information holds for them.

### 7.1 Before going to an action

It makes sense to plan ahead: if you want to avoid being brought back to wherever your parents are because police picked you up and considers you unaccompanied, someone else might need to be available to pick you up either at the police station or the facilities of the youth welfare office.

Normally, police would want to reunite you with your parents, because legally, it is a parents right to determine their underage child's whereabouts. If the police assumes that you are out and about without your parents' knowledge, they can detain you to bring you to either the youth welfare office or your parents (so called "custodial care", specified in § 204 Abs. 2 LVwG S-H; § 13 Abs. 2 SOG HH oder § 18 Abs. 3 NPOG)). Most likely they will try it at your parents' first. If you carry a permission slip signed by your parents that allows you to participate in the protests, you can avoid being detained by the police. So, in case you are on more or less good terms with your parents, it could be really helpful to your cause to ask them to sign a slip similar to the following. All your legal guardians have to sign!

I hereby allow my child (NAME) to participate in the protests in the Action from the XX/XX/20XX to the XX/XX/201XX. In case my child is being detained (GERMAN: Ingewahrsamnahme/Freiheitsentzug) I allow for my child to go back or be brought back to the camp.

**Authorisation (German: Vollmacht)**

I/we hereby authorise  
Mrs/Mr/person:  
Address:  
to receive my/our child: Name, address, date of birth from the authorities and take care of the child in case my/our child is being detained or arrested in the time between XX/XX/20XX and XX/XX/20XX.  
signature(s)

A good choice for the person authorised to pick you up is someone who is legally an adult and who is not going to be immediately involved in the action themselves. If you don't know anyone who fits these criteria, you could ask your parents if they would still sign a form even if it did not have the name of a person to be authorised on it yet. Then, you can still find someone whose name you want to put in shortly before the action. You can ask the legal team whether they know people who might be willing to do this. Obviously, this precaution can only be used for minors who do not plan to remain anonymous, or for those who want to remain anonymous but would consider disclosing their personal data at a later point.

## 7.2 In custody

Children (13 or younger) and young people (14-18) can only be taken into custody if they are being accused of a crime, or if they are considerably disrupting the operations of e.g. a company. In any other case (e.g. to enforce a ban from the premises or prevent an imminent threat) they would normally have to be brought into the care of either a legal guardian or the youth welfare office immediately.

But in practice, most of the times police will just take you with them anyway – and then at some point later they will ask whether there are any minors in the room.

If you **disclose your personal details** to the police, they are obliged to call your legal guardian to come and pick you up. It is entirely up to you whether you for example just hand them the phone number or whether you try to get the police to actually call your parents (which they often don't, even though theoretically, they have to). The right for all detainees to make a phone call also applies to minors – so please call the legal team and tell them where you are. Then the legal team knows that the person your guardians authorised (see above) can go to the police station and pick you up with the help of that permission slip.

If you do **not disclose your identity** but police still believes you to be a minor, it is very likely that they will bring you to a facility like a youth home – where you legally can't be locked up! So, as soon as the officers who dropped you of have left, you should be able to just leave on your own and walk off. In practice, the experiences with just leaving these facilities differ: some had no problem and just left, while others found their personal belongings to be locked away or were only able to leave the next morning. From e.g. the youth home or even still the police station, you should try to call the legal team to let them know the address or at least the city of the youth facility, so that they can find out more and pick you up.

If you want to be really well prepared you should also carry some cash so that you could try to get back to the camp on your own using public transport.

Whether you want to be read as a minor by the police, or whether you try to act mature and be treated as an adult is a strategic decision you need to take for yourself. It depends on whether you prefer to be in the detention centre together with a lot of other people, or whether you would rather try to take off after being put into a youth home – which, as experience shows, you would often have to do on your own, but the general conditions of your treatment would most likely be better than in the detention centre. If you want support in making that decision, consider talking to both your affinity group and the legal team.

Police might accuse you of committing a crime. In consequence, they might also want to question you. Before an interrogation, they have to inform you that you are allowed to refuse to make a statement (which you should!). But since the police often doesn't adhere to their own rules you should not rely on getting that information from them. Your parents as your legal guardians have the right to be present if you are being questioned by the police. If you want them to be there, you can demand to talk to them on the phone before being interrogated.

People below the age of of 14 years may not be questioned by the police.

In case of more severe allegations or if there is a supposed risk of absconding (people might try to get away), minors may be taken into remand or pretrial detention (German word more like investigative detention, see chapter 4.3.2) to a juvenile detention centre.

Children (younger than 14, or, if anonymous, appearing younger than 14) may not be taken into pretrial detention.

### **7.3 After the action (juvenile criminal law, court cases)**

#### **7.3.1 Being summoned by the police**

If a minor is summoned to be questioned by the police, the summons will also be sent to the minor's parents. Parents have a right to be present during police interrogations, which is why they will be informed of any such appointments. During court proceedings they also have the right to file motions (§ 67 JGG), so they can have a hand in influencing your strategy. For many people that turns out to be a bit difficult, because many parents tend to cooperate with the police to "solve" everything. In most cases that behaviour is a rather bad idea, since many parents do not have a lot of experience with political court cases. It might be hard, but it makes sense to talk to your parents or guardians about your trial and political motivation. They need to understand why it makes sense to refuse to give a statement, and also what it is that you are trying to achieve with the strategy you chose for your political criminal court case. Don't let them pressure you to do something you don't want! If you need help, come talk to us or other political anti-repression structures. If necessary, we will sit down with you and your parents and talk things through.

#### **7.3.2 Court cases**

In criminal court cases, minors (younger than 18 years) and adolescents (18 to 21 years of age) are subject to some specific regulations. If you are between 18 and 21 years of age, the court has to make a decision based on § 105 JGG whether you will be tried as an adult or as a juvenile. In theory, that decision depends on how "mature" the court thinks you are, and whether the alleged crime is considered to be "typically committed by young people". In practice, people are most often tried according to juvenile criminal law.

Juvenile law has several implications: the trial takes place close to your place of residence, instead of at the court closest to the scene of the alleged crime. Furthermore, a minor's trial usually is not open to the public. An adolescent's trial often is open to the public, unless the judge decides to purposefully have the session without any public present. Also, the court has what is called an "educational mission", meaning that apart from subjecting you to moral sermons, they can also impose more unusual penalties: e.g. writing an essay, doing community service, staying away from certain areas, attending an anti-violence-training etc.. Although minors reach the age of criminal responsibility at 14 and can be sentenced accordingly, they are not fully "legally competent" yet, e.g. they may not enter into contracts on their own. Thus, it is legally your guardians responsibility to hire an attorney. You should try to avoid your parents setting you up with a lawyer who has no experience with political court cases or one who tries to pressure you to distance yourself from your political stance or other political actors involved.

### **7.3.3 Legal protection of minors**

The division of legal protection of minors (Jugendgerichtshilfe) is another feature the “educational mission” yields: as soon as the documents for a trial against a minor are in the hands of the state prosecution, the division will know about it and try to get in touch with said minor. The division is supposed to support the court in trying to determine what kind of punishment might be appropriate in your case. Everything the division of legal protection of minors talks to you about, they will report back to the court. You are not obliged to talk to the division, and in the legal team’s opinion you should indeed try not to talk to them. But even if you do talk to them, you should absolutely not say anything about the alleged crime or about other people who supposedly were involved. Doing so would do nothing but cause harm. The Rote Hilfe (red help, anti-repression structure) has published a booklet on refusing to give a statement, and its chapter on minors in criminal proceedings contains more information about the (division of) legal protection of minors (Broschüre zur Aussageverweigerung).

If there is anything you feel insecure about, come talk to the legal team.