

Information sheet from Ende Gelände withholding identification information

Summary

Ende Gelände considers the collective refusal to provide ID in the context of planned mass actions to be a sensible strategy and has had positive experiences with it. However, there may also be good reasons for individuals or certain groups of people to provide their ID. If you have decided in advance to refuse to provide ID, you should not carry any ID or anything else that might reveal your identity during actions. However, if necessary, you can change your mind and provide your name verbally at a later stage or have someone else submit an identity document on your behalf. You can find detailed guidance in the legal aid booklet, Chapter 3. Please be sure to discuss the question of whether you wish to refuse to provide ID with your affinity group. We recommend that you study the legal aid brochure and this information sheet in detail with your affinity group before the action. Link to the legal aid brochure: <https://www.ende-gelae.de/rechtliches/>

Prolonged detention

In North Rhine-Westphalia, a new Police Act (PolG NRW) came into force in 2018, which is also directed against climate activists and, among other things, can result in longer periods of detention – e.g. in cases of deliberately preventing identification by using superglue (for details, see the section ‘Detention and arrest’ below). At Ende Gelände actions in recent years, we have had positive experiences with collective refusal to provide identification; hundreds or thousands have remained after the actions without facing criminal prosecution. However, with the introduction of extended detention, the circumstances have now changed, meaning that for some people it is no longer so easy to make this decision. If you are taking part in the action, please discuss the new police powers with your affinity group in advance and prepare yourself accordingly. Please read this information sheet carefully!

This also applies if you have taken part in actions in previous years!

In principle:

If you wish to refuse to provide your ID during the action, the following applies: As the police can detain and search you, you should store your ID documents and any items that could be used to identify you (e.g. health insurance card, ticket/BahnCard, debit card, wallet, mobile phone, random items with names/addresses) in a safe place or entrust them to someone outside the action. Check everything again before you join the action!

The following now applies:

Think carefully in advance about what you want to do if, under the new police law, you end up spending more than a day in police custody. (The risk to the individual, or how many people it will affect and who, cannot currently be quantified!) Important: If you wish to keep open the possibility of being released from custody promptly by providing your ID at a later stage (e.g. because the psychological strain of detention means the benefits of refusing to provide ID no longer outweigh the disadvantages, or because you must be back home after two or three days at the latest), you should ensure in advance that your identity document can be brought to your place of detention as quickly as possible if the need arises. Providing identification information verbally is not always accepted and often leads to further delays before release.

For many people, long-term detention also represents a considerably greater psychological strain. Anyone who cannot withstand the pressure and provides their identification information in order to be released sooner may feel bad afterwards for having ‘given in’. Those who hold out until the end and are then identified anyway may feel that they have suffered in vain. In our circles, there may be an expectation that one will have to endure detention for several days. It is not yet possible to estimate the extent to which automatic comparison of photos with police databases and images on the internet might lead to the identification of activists.

Advantages of refusing to provide ID

- The police’s capacity to carry out identification procedures is limited, as is the intake capacity of detention centres. If thousands of people refuse to provide their ID, it will be difficult to take everyone into custody and process them for identification.
- If many people refuse to provide their ID and also fail to cooperate during the identification process, this can have a protective effect for individuals. This makes it all the more difficult for the state to record the participants and prosecute them.
- Refusing to provide ID can protect people not only from criminal prosecution but also from civil lawsuits brought by coal companies such as RWE. For instance, individuals whose identities became known to have received cease-and-desist letters or injunctions prohibiting them from entering the opencast mining site. Should people who have signed such a cease-and-desist order be apprehended and identified by the police on RWE premises again, they face the threat of lawsuits seeking substantial financial compensation. Civil proceedings are deliberately used by coal companies to suppress protests against the perpetrators of the climate crisis and to weaken the climate movement. Refusing to provide ID is one of the ways we defend ourselves against this.

Disadvantages and risks of refusing to provide ID

- Since December 2018, the new Police Act has made it possible to detain people for up to 7 days (more information on this below). Not everyone is able to remain in action for such a long period, which is why they would be forced to provide their ID in order to be released from custody. This applies, for example, to people with chronic illnesses or disabilities, people with care responsibilities (children, animals, those in need of care) or people who would lose their jobs.
- Under the Code of Criminal Procedure (StPO) – which applies when the police accuse you of a criminal offence – the police may detain people for up to 12 hours for the purpose of establishing their identity. During this time, those affected may be under psychological pressure due to the particular circumstances and the police's behaviour. In some cases, the police also attempt to physically coerce the establishment of identity (e.g. by restraining you whilst taking photographs or fingerprints and/or using painful restraints).
- It cannot be ruled out that the police may identify you at a later date. The fear of being identified can sometimes lead people to feel restricted and less active, to fear being recognised by individual police officers at other actions or demonstrations, or to refrain from participating in solidarity support where they would have to provide their ID (e.g. when attending court hearings against other activists).

“At-risk groups”

- For people who are not nationals of an EU country (or Switzerland), refusing to provide ID may, under certain circumstances, constitute a criminal offence (Section 95 of the Residence Act). Being convicted of a criminal offence can have a negative impact on the granting or renewal of residence permits (e.g. including visas) in Germany and will be taken into account in a decision regarding possible deportation (see Chapter 5 of the legal aid brochure). A criminal offence can also jeopardise an unlimited residence permit granted on humanitarian grounds.
- **IMPORTANT:** In the case of people who remain anonymous, the police may make assumptions based on physical characteristics such as skin colour (possibly also in conjunction with language skills). It is likely that the police will make greater efforts to establish the identity of people whom they suspect, on the basis of such assumptions, of being non-EU nationals. As is so often the case, there is therefore an increased risk for Black, Indigenous and People of Colour (BIPoC)!
- Anyone requiring a visa to enter the country must provide fingerprints when applying for the visa and can therefore be identified more easily even if they refuse to provide ID during a protest. The same applies to people who have applied for asylum. Fingerprints can also be cross-checked against German and European databases (see Chapter 6 of the Legal Aid Brochure). If you have previously been processed (photo, fingerprints) and identified during a previous protest (either through the processing or because you provided your ID), the police may be able to use this data to identify you in connection with old or new investigations.
- If you are a minor, i.e. under 18 years of age, you should find out more about your specific rights and possible scenarios during a protest (see Chapter 7 of the legal aid brochure or information on the EG website).

Arrival and departure:

If you wish to bring your ID with you to the action camp/meeting point, this naturally entails a potential risk during your journey there and back, as the police are increasingly attempting to carry out identity checks in advance (e.g. near the border on buses from abroad or, in 2018, on the special train to the action). Ende Gelände does not have a perfect solution to this problem. So: Get creative, discuss it with your affinity group! Perhaps one person from your affinity group could travel there individually and inconspicuously and slip a few ID cards into their pocket...? (See also the travel advice on the Ende Gelände website.) It makes sense to take precautions so that, during a possible stay in the GeSa, you can access your ID document in an emergency. There should be people who know where to find your ID document, or who can even keep it safe for you during the action. Also consider how contact can be established between the legal team and this person.

One possible approach:

- 2–3 affinity groups, each with 6–8 people, give their ID cards or details of where these ID cards are hidden to one trusted person at the camp or at home. Those taking action should provide the contact person in advance with details of scenarios and requests, e.g. who should be notified and when, should they remain in the medical centre for an extended period (e.g. calling in sick at work after 3 days, contacting their flatmates, etc.)
- In medical emergencies, hospitals are allowed and required to treat you anonymously. This is also the case, for example, if an unconscious person is taken to A&E following an accident and has no ID on them. Medical staff sometimes forget that they are bound by professional confidentiality and usually cooperate with the police.

- If the participants do not return after the end of the action, the contact person should contact the legal team (if possible without mentioning any names! See numbering system below) and enquire there about the people who took part in the action, and, if necessary, bring their ID cards to the legal team.
- **IMPORTANT:** The legal team does not collect any data on action participants in advance and is therefore unable to contact any contact persons (telephone instructions on this from the GeSa are also inadvisable!). The contact persons or the free members of the affinity group must therefore take action themselves if the need arises.
- **NUMBERS:** Obtain a personal ID number in advance from the Ende Gelände website using the number generator, which will allow you to be clearly identified later. You should give this number to the person holding your ID card. You can quote this number when calling the legal team from the GeSa if you wish to remain anonymous, and the person holding your ID card can use the number to enquire about you with the legal team.
- **ALSO IMPORTANT:** If you think you might be staying in the GeSa for more than 1–2 days, do not leave your ID in your tent or elsewhere on the camp, as it may have been dismantled by the time you return.
- If you have any questions or need help, you can contact the Legal Team at the camp.

Before the action

- Before the action, discuss with your affinity group or trusted individuals how you or your affinity group might deal with repression during the action and in custody, so that you can prepare for it.
- The legal team will not provide organised storage for ID documents. Therefore, consider whether and, if so, how you would like your ID to be brought to the detainee collection point – for this, the legal team needs to know how to get hold of your ID.
- Please also consider who should be informed if you are detained for several days – tell your affinity group where they can find the important phone numbers, what needs to be done, and whether your case may be made public.
- The more you have discussed with trusted individuals, the less your affinity group (together with the legal team) will have to make decisions for you in a situation that is stressful for them too.

Detention and arrest

- Detention solely for the purpose of establishing identity is initially limited to 12 hours. Regardless of the legally defined maximum detention period, the police are legally required to observe the principle of proportionality and have not always exhausted the time limit in past operations.
- It is possible that the police may attempt to detain people for up to 7 days under the new Police Act, “provided that facts justify the assumption that the establishment of identity has been deliberately prevented” (Section 38(2) PolG NRW). To do so, the police must submit an application, which is decided upon by a judge (by midnight at the latest on the day following the day on which they detained you, e.g. the start of the police cordon). In this application, the police must explain how prolonged detention serves the purpose of ‘averting danger’ and what facts indicate the deliberate prevention of identification. In our experience, taped-together fingertips are considered such a fact.
- If the police arrest you on suspicion of a criminal offence, they may not hold you for longer than until midnight on the following day. By then at the latest, a so-called “appearance before a magistrate” will take place, during which a judge will decide whether to order extended detention or remand in custody.
- If you are being held solely because your identity is unknown, the ground for detention is “risk of absconding”. As soon as you provide your name, this ground for detention ceases to apply – but this does not necessarily mean you will be released immediately (see Chapter 4 of the legal aid brochure), particularly if other grounds for detention are presented to the court () or if the processing of formalities – e.g. verifying your identity – is delayed.
- In the case of allegations such as resisting arrest (Section 113 of the German Criminal Code) or assaulting a police officer (Section 114 of the German Criminal Code), the risk of remand being ordered is greater. However, the courts’ capacity for detention review hearings is also limited. For this reason, this has so far mainly affected individuals facing such allegations who refused to provide their ID or who were not resident in Germany.
- There is a possibility that individuals or groups may be affected by the 7-day detention under the new Police Act or by the ordering of pre-trial detention. It is therefore important that you discuss within your affinity group how you (or your group) intend to deal with this new situation should it arise.
- You can find further tips on staying in Germany in the legal aid brochure (Chapter 7).

Experience from previous years:

- Pre-trial detention has so far only occurred on a few occasions in cases involving charges such as trespass in connection with a refusal to provide ID: in early 2019, several people in Brandenburg occupied excavators in Lusatia and refused to provide their ID. As a result, they were charged with trespass and, following a hearing

before a magistrate, remanded in custody (see www.ende-gelaende.org/de/press-release/pressemitteilung-vom-06-februar-2019/). Activists who occupied an excavator near Leipzig at the same time were released after a few hours without being remanded in custody.

- In early September 2020, following an excavator occupation in the Rhenish lignite mining area, activists were held in extended custody (under the new Police Act) for several days (see <https://www.klimareporter.de/protest/anti-kohle-aktivisten-weiter-in-haft>). In similar actions, however, extended custody lasted less than a day.
- In early 2023, thousands of people were active in and around Lützerath to delay the clearance. Most people were only subjected to identification procedures on site (photos, fingerprint scans) and were allowed to leave. When making arrests, the police focused on individuals and small groups whom they accused of more serious offences such as occupying excavators or throwing stones. Pre-trial detention was only imposed on people who did not have their usual place of residence in Germany.
- It is difficult to assess in advance whether the police and courts in North Rhine-Westphalia will use extended detention for the purpose of establishing identity.

Rights in custody

- If you are detained, you have the right to make a successful phone call to notify a trusted person (e.g. the legal team). Sometimes the police (unlawfully) refuse such calls. If you feel able to do so, therefore, insist on making the call.
- Do not make any statements to the police; you have the right to remain silent. Do not answer any questions about the action or other people, and do not engage in seemingly innocuous small talk.
- In recent years, the police have, on several occasions during arrests, demanded that those detained strip completely naked. According to the case law of the Federal Constitutional Court, this is unlawful unless there are very specific indications of dangerous objects being carried on the body in such a way that they cannot be found by pat-down. Object to all police measures and have your objection recorded. Do not sign anything yourself!

After the incident

- It often helps people to talk about their experiences. This can help to counteract emotional and psychological stress. As a movement, we stand in solidarity with people who have experienced repression, and we support people not only during the action but throughout the entire process. It is important that we do not leave each other alone to face repression, so that the fear of repression does not isolate us and does not deter people from taking part in actions. A follow-up meeting with the affinity group is often helpful.
- If you need help with legal matters following contact with the police or an arrest, the Legal Team for All (legalcare26@systemausfall.org) is there for you. Out of Action is a group of activists who provide information on the psychological consequences of repression and violence in the context of left-wing political resistance. They offer emotional first aid to affected individuals and groups and promote solidarity through discussions, information sessions and workshops. You can find contact details for the various cities at <https://outofaction.blackblogs.org/>.

Together we are strong against repression!

Investigation Committee (EA) / Legal Team (during the action): 0049 (0)30 340 603 13