

LEGAL INPUT ON ACTIONS & REPRESSION



This is a compilation of information on legal questions meant to prepare you for taking part in actions by XR Berlin. Take the time to read it carefully, especially if you don't have a lot of knowledge on these issues yet. For more information, we recommend the legal info brochures by Rote Hilfe ("Red Aid") and Ende Gelände, which are also the basis for this text.

Civil disobedience can result in a number of inconvenient reactions by the state which you should be prepared for. But do not let this intimidate you in advance. The following repression measures can, but don't necessarily will happen. Think carefully about how far you are willing to go and in case of any questions, and particularly in case of problems after actions, contact the Berlin Legal Team, either at the XR Berlin Plenum or via email at: legalteamberlin@extinctionrebellion.de . You can find our public key on our website.

We will establish a support structure for everyone affected by repression and fight back together. We are in solidarity with everyone who gets in conflict with the law at our actions. For more information, read our action consensus ([Link on our website](#))

In general: Do not make any statements to the police or other repression organisations. Do not even engage in harmless "chats", not at identity checks and not if you are questioned at the police station. This might well end up supporting and legitimizing the police work and help them with their investigation.

AFFINITY GROUPS

Always, always go to actions with friends and/or in an affinity group. Think about the others and keep in mind that you are not alone. This includes the time after the action! Also read our affinity group flyer with more useful tips ([Link on our website](#))

REPRESSION MEASURES AND HOW TO BEHAVE

You could be confronted with the following measures already on your way to an action. Keep in mind that the police sometimes act illegally and do unexpected things which you later can object to or sue for. Thus, always pay close attention to the behaviour of the police officers. **In any case, it makes sense and mitigates legal risks if actions are completely non-violent, even if the police use violence.**

IDENTITY CHECKS

You only have to give the following information: name, place of residence, date and place of birth, nationality (possibly occupation and marital status). The police does not need to know anything else. It is possible to refuse to give your identity, however, we advise against this in the Berlin context. Discuss this issue (refusing to give identity or not) with your affinity group and discuss what measures need to be taken in case you refuse.

ED-BEHANDLUNG (taking a record for police records department)

If you refuse to give your identity, you will usually be taken to a police station where the police will draw up a record for the police record department (erkennungsdienstliche Behandlung or ED-Behandlung in German). This means your fingerprints and pictures will be taken. Always object to **the ED-Behandlung and make sure your objection is documented in your record. Do not sign anything!**

An ED-Behandlung can also happen if you did give your identity, for example if you are taken into custody.

BAG AND BODY CHECKS

Sometimes the police may check bags or even people. Think carefully about what you take with you and check all pockets before going to an action! Do not take any dangerous or incriminating things like pocket knives, pepper spray or drugs. Personal notes or data storage devices and mobile phones can also be interesting to the police.

It is lawful to check bags in public, but not to physically check people (patting down). In case you are asked to undress, definitely object! The police are only allowed to check you if they have concrete reasons to believe that you are carrying prohibited items that they cannot find otherwise. Thus, ask them for their reasons!

“ PLATZVERWEISE ” (prohibition to return to a particular site)

... can be given orally, rarely in written form, to ensure that individuals do not stay at a certain site at a certain time. In case of violation, you can be taken into custody (see below). Platzverweise are sometimes issued illegally, in which case you can take action against them afterwards. However, during an action, you also have to follow an illegal Platzverweis. Therefore, it is best to avoid them – if possible – e.g. by avoiding the police and taking another route. Object and do not make any statements!

BREAKING UP OF ASSEMBLIES (Auflösung von Versammlungen)

The right to assemble is a fundamental right, therefore, the police can only break up assemblies (including spontaneous assemblies) if they are a “danger to public safety”. The order to break up must be clear and unambiguous. The participants are then obliged to leave the place of assembly immediately. If they do not, the police can issue Platzverweise (not following them is a misdemeanor) or take people into custody. Since the goal is to dissolve the assembly, kettling is only permissible in exceptional circumstances.

It is possible to register spontaneous demonstrations against Platzverweise or arrests. These have to clearly concern a different topic, e.g. police violence. By registering a spontaneous assembly, participants are still protected by the right to assemble against being taken into custody. However, there needs to be an assembly leader who negotiates the route etc. with the police.

KETTLING OF ASSEMBLIES

To prevent actions or prosecute crimes, the police may kettle an assembly or parts of it. It is possible that people will only be let out of the kettle if they give their identity. If possible, discuss in delegates' plena or in the group how to proceed. Try to find out what the police is planning, be creative, create confusion, don't make it too easy for the police! In bigger kettles, collective refusal to reveal identities is sometimes successful and you can continue your demonstration. However, in a city like Berlin, it is also possible to collectively take the kettled people to a “pre-charge detention center” (Gefangensammelstelle, GESA) for ED-Behandlung. Kettling is a form of custody (see below).

EVICION OF BLOCKADES

When an assembly is dissolved, not leaving the place of assembly is a misdemeanor. To let yourself be carried away is not a crime, however, resistance, kicking, etc. can be an assault, which since the reform of the criminal code (§ 114 criminal code) may lead to a suspended sentence! Therefore, keep calm, do not let the police provoke you, insist on your rights and don't forget what you learned in your action trainings.

It is possible that the police uses disproportionate violence when evicting a blockade (batons, pain grips etc.). Try not to panic, stick together, look out for people injured or taken somewhere else. Afterwards there may be identity checks and people taken into custody.

INJURIES

Always take care of injured people and help to take them away. Contact the demo-paramedics, call the emergency number 112 and ask passersby for help.

If you yourself are injured and need help, do not make any statements about what happened to the paramedics and at the hospital. Be cooperative, but do not incriminate yourself or others! Only give your personal data and always ask for a medical certificate.

CUSTODY (police law) / **ARRESTS** (criminal law):

To prevent misdemeanors or crimes, the police can take you into custody until the danger is over. You have to be let go at midnight the following day at the latest. If there is a suspicion against you after a crime, you can be arrested, however, the maximum time for this is 48 hours (exception: pre-trial detention (U-Haft) or “accelerated procedures” (Schnellverfahren)). In rare cases a judge can order up to four days of custody.

You have the following rights:

- *The police have to tell you the reason for taking you into custody or arresting you*
- *you have the right to two successful phone calls, if the police refuses to let you make calls threaten to file a disciplinary complaint (Dienstaufsichtsbeschwerde in German)*
- *if custody takes longer, the police must give you necessary medication, food and drinks and let you use the toilet.*

CONTACT THE EA (Fact finding committee/Ermittlungsausschuss)

During action and campaigns, there is often an EA who looks after arrestees and gets attorneys for people to avoid they could get a so-called „Schnellverfahren“ in U-Haft (see below). You have the right to two successful phone calls if you are at a police station or GESA. Insist on them and use one to call the EA – this means you will have to have noted the number somewhere on your body or memorized it. **EA: 030/6922222.**

The police listens in on the call, therefore do not tell the EA anything but your name, date of birth and place of residence. If you wish to stay anonymous, only give a code name. Tell the EA where you are held, what you are accused of and what the police is planning to do with you. Never say what you or others did. Call the EA again once you are out so it is clear in the end if everyone is free. Once you are out, immediately draw up a protocol from memory, including the (possibly unlawful) behavior of the police). This protocol is a very important document. Make sure to keep it safe. The police or other investigative organs must not find your protocol from memory!

Important:

Always refuse to make statements!

Once you are taken into custody, do not say a word about what happened. Everything can be used against you or others. It is your right to refuse to make statements. Don't engage in harmless chats either. Also do not say what you didn't do. Do not sign anything, refuse all measures and object to them. Do not be intimidated. We are in solidarity, stick together and bear the consequences together!

PRE-TRIAL DETENTION (U-Haft) and **ACCELERATED PROCEEDING** (Schnellverfahren)

Following a crime, you can be taken into pre-trial detention if it is deemed that there is a risk of collusion or flight. This has to be ordered by a judge and can last a few months. It is unlikely after mass civil disobedience action, unless it is impossible to determine your identity. There is a risk that your home will be searched during pre-trial detention. **Before an action, think about what you have lying around at home!**

A so-called accelerated proceeding (Schnellverfahren) is a simplified, quick criminal process. It was established in the 1990s to quickly prosecute so-called "travelling violent criminals", i.e. protesters, even for smaller crimes. A judge can order up to one week of detention before the start of the trial. It is unlikely after an XR action but might still be a risk particularly for people without a German passport and residence in Berlin. Definitely contact the EA. Possibly the accelerated proceedings can be averted and you can be freed. Do not make any statements! Do not be intimidated! You can file a remedy/appeal within a week and prepare a regular trial together with solidarity structures (Berlin Legal Team, EA, Rote Hilfe and solidary lawyers).

INVESTIGATION PROCEEDINGS

If investigations proceedings are started, this means only that there is a suspicion against you to have committed a crime. There may be a home visit, a call for a hearing or for a written statement. **However, you are not obliged to make any statements, neither written nor orally. Do not do so!**

Summons by the police: Stay calm!

Under no circumstances appear as summoned after a police summons (whether as witness or as accused), you are not obliged to do so. Contact the Rote Hilfe, the Berlin Legal Team and other affected persons. Acting together creates public pressure and thus possibly the conditions to terminate the proceedings. If you are summoned by the

prosecution, you are obliged to appear, but not to make a statement.

PENALTY ORDER (Strafbefehl):

A penalty order is a conviction without trial. **If you get a penalty order, file a written objection (without stating reasons) within two weeks.** File this in person with a witness or send it as a registered letter. If you expect a penalty order but are not at home (but e.g. on vacation), prepare the objection so only the date and docket number have to be added. Ask a trusted person to send the objection to stay within the deadline.

If you do not file an objection, you will have a criminal record and have to pay the fine or serve the sentence. If the penalty is above 90 daily rates it will appear in your criminal record certificate (polizeiliches Führungszeugnis). Now you can be summoned as witness against others!

Immediately contact the Rote Hilfe and the Berlin Legal Team. An objection can be withdrawn at any time, also during the trial. If this does not happen, there will be a court trial where the penalty order is the indictment. You have to appear to the oral hearing or be represented by your lawyer.

COURT TRIAL

From the moment of filing the objection against the penalty order, it is important to demand an inspection of records by your lawyer (or yourself, if you are well-informed). This is crucial to be informed about what the police knows.

A political process has chances, but has to be very well prepared in cooperation with all involved!

MISDEMEANOR

If you committed a misdemeanor, you will receive (probably after weeks or months) a penalty notice (Bußgeldbescheid). As for a penalty order, you can file a written objection against a penalty notice. **The deadline is the same, 2 weeks from reception.** Use your right to file an objection to gain time and contact the above mentioned solidarity structures. We stick together and will find ways to get the money for your penalty. An objection can also be withdrawn.

OTHER REPRESSION MEASURES WHICH MIGHT BE TAKEN ARE

Taking of DNA samples, protective custody, home searches and imprisonment for contempt. We assume that these will not be taken for actions of non-violent civil disobedience like a peaceful road block. Inform yourself anyway, for example in the documents linked below.

REFUSAL TO GIVE EVIDENCE AS ACCUSED/WITNESS

If you are accused of something, you have the right to refuse to give evidence. Always use this right in the beginning of the process. You can discuss with the solidarity structures and your lawyer if you want to make “political”, “factual” or no statement during the process. As a witness, you do not have to follow summons by the police, but by the prosecution or judges. In the early stages of investigative proceedings it is not advisable to give evidence. There are no exonerative or harmless statements. Therefore, refuse to give evidence – also because it can happen that you are questioned as a witness first and then treated as an accused. If you are summoned as a witness later, discuss with the others involved (especially the accused) which statements can have which consequences. In most cases it will be advisable not to make any statements.

MINORS

If you are a minor, you have to expect to be taken into custody at actions and for your parents or guardians to be informed. If you do not want to reveal your identity, a letter of authorization (Vollmacht) by your parents can help to prevent this. If you are accused of a crime, you might be tried under juvenile law. Same here: Do not say anything, contact the solidarity structure and act together! Get a letter of authorization from your parents to allow friends of legal age to pick you up from police custody.

CONSEQUENCES FOR INDIVIDUALS WITHOUT A GERMAN PASSPORT/INFORMATION ON RESIDENCE LAWS

For individuals without a German passport or without a regular residence in Germany there are different legal situations to consider. There are large differences depending on whether you come from an EU country and where your residence is. In general, the situation is rather unproblematic for EU citizens with residence in Berlin. For them, it is very unlikely to face expulsion due to participation in civil disobedience. This is a possibility for offences like „breach of the peace” (Landfriedensbruch) or battery/assault, i.e. felonies with prison sentences, or in cases of repetition. However, it is always possible that things do not go as planned. If you are taken into custody (and possibly do not have a residency

in Berlin or Germany), it cannot be ruled out that you will get an accelerated proceeding (see above) or pre-trial detention due to risk of collusion or flight. In custody you do not have the right to an interpreter, in criminal proceedings you do. Be aware that the police often does not speak English or other languages. **Never make any statement, do not sign anything and contact the EA and/or your lawyer so accelerated proceedings can be averted and you can be freed.**

The police will pass on your data to the consulate of your country and possibly to the foreigners' office. Think carefully about the risks this entails and whether you are willing to take those risks, especially if you have ongoing asylum procedures. There are many options to take part in XR actions which will not endanger your right of residency. Inform yourself carefully about the potential consequences for your particular case. If you wish to obtain German citizenship, even small penalties can get in the way of this.

POSSIBLE PENALTIES AND HOW TO DEAL WITH THEM (FINES ETC.)

Don't worry too much about fines that might be the consequence of a misdemeanor or an alleged crime. We will establish solidarity structures and collect money in different ways. It is important that you contact the solidarity structures immediately when you receive a penalty order or notice. Then we can act together and develop a strategy. Solidarity is our strength. We stick together!

SOURCES

Rote Hilfe: What to do when things get rough: <https://www.rote-hilfe.de/downloads/category/8-legalinfo-in-other-languages>

In German:

Ende Gelände Rechtshilfebroschüre Brandenburg: <https://www.ende-gelaende.org/wp-content/uploads/2016/04/Rechtshilfebroschuere-2016.pdf>

Ende Gelände Rechtshilfebroschuere für NRW 2019 Work in Progress

http://antirrr.nirgendwo.info/files/2019/02/rechtsbroschuere_nrw_2019.pdf

