

# Legal Aid Manual for Actions in Brandenburg

[compiled on the occasion of “Ende Gelände” 2016]

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# 1. Introduction

This manual is legal aid from activists for activists, focusing on the “Ende Gelände” action in 2016. It is based on an earlier version published by Anti-RRR, a local anti-repression structure from the Rhineland (<http://antirrr.blogspot.de/>), and has now been updated and extended by the legal team for “Ende Gelände” 2016.

Anti-repression work is intended to support the resistance against the powers that be. It makes sense to deal with possible repressions 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 which we need to resist together. Repression seeks to isolate and intimidate us, which is why it's important for us to emphasize:

We act in solidarity! No one is left alone!

## 2. Legal team support during camp & action

For the duration of the camp and the action, there will be a group of people who have taken preparations to deal with repression.

### Counselling at the camp

The legal team tent will be open all day for counselling. Please don't hesitate to approach us with your questions. We can talk to you in English or German; for other languages we will try to organize translation if needed. But of course we cannot promise to have satisfactory answers to each and every question, especially if they happen to be particularly complicated.

We will also hold info events on Thursday and Friday.

### Calling the legal team

The legal team will be available by phone 24/7 during both camp and action. We will publish the number before the camp starts so you can also reach us on your way there.

Please call the legal team if you have been arrested or seen that somebody else was arrested. Or when other important things occur. If in custody, you have the right to make two phone calls. Please use one of them to contact the legal team.

### This is what you should tell us:

- ✓ Your name (or alias)
- ✓ What happened (i.e., where and when you or others were arrested) (**NOT**: What you actually did or didn't do)
- ✓ Where you are held in custody
- ✓ What they are accusing you of
- ✓ How you are
- ✓ If more people 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:

- x What you really did or didn't do
- x Your name, in case you want to stay anonymous vis-à-vis the authorities
- x 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 center/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!**

## General recommendations for the action

- Talk about what should happen if someone from your affinity group gets taken into custody for a longer period of time (bring medication, take the dog for a walk, call mom, call in sick for work etc.).
- Take stuff you need, such as medication, with you. Do not take stuff you don't need (address books, notes, cell phone with registered numbers etc., letters addressed to you in your coat pocket, valuables you don't absolutely need) so nothing gets lost and relevant information is not presented to the police.
- If you consider bringing a camera, please observe the “Ende Gelände” photo policy (which will be communicated at the camp) and remember that there will be professional photographers who will publish their high-quality pictures online in line with the photo policy to protect participants' privacy, so you won't need your camera to produce souvenirs.

## ...and wherever you are:

**No testimony when talking to law enforcement authorities!**

**Don't say anything about the case; also, don't say what you did not do!**

**If you can't be silent, sing a song ;-)**

## 3. Criminal Law and police law

### 3.1 Situations in which you might be confronted with police law or criminal law - and how to protect/defend yourselves

Political actions are supposed to change something that is not good as it is. Or create something new. Or sometimes protect something that would otherwise take a turn for the worse. But if we want to keep working on our dream and act on changing the existing conditions, we need to learn to deal with whatever is there to stop or intimidate us.

We need:

- ✓ courage and creativity instead of fear and powerlessness in the face of state power
- ✓ ideas on how to be successfully politically active and stay on the offensive – despite the repression,

and sometimes maybe even because of it!

- ✓ protection from persecution and penalty!

Dare to empower yourselves. Cooperate with others, support one another! You are neither weak nor alone if you don't want to be!

### Which rules are set by the powerful?

The repression we face is actually based on surprisingly few laws, as most of the thousands of laws and norms do not directly affect us.

- ◆ **Police Law:** The law governing police action is set by the states (in our case: Brandenburg). An exception to this is the federal police (Bundespolizei) which deals with borders, airports and railways. The police law defines what “legal“ police behavior is and how police can secure law and order. This means police laws are preventative in nature, i.e. aimed at preventing crime.
- ◆ **Criminal Law:** When a criminal offense has been committed or the police suspect someone of having committed a criminal offense, criminal law becomes relevant. It consists of two major and a couple of minor laws that are the same everywhere in Germany. The first one of the major laws is called *Strafgesetzbuch* (StGB) or penal code. The code defines what is a criminal offense and which offense is to be met with what penalty. It also contains the clauses that are most often used against political activists (see more about this below in section 3.6). Another important law is the so-called *Strafprozessordnung* (StPO) – the Code of Criminal Procedure – which defines how a criminal offense is prosecuted. The StPO is repressive in the sense that it is aimed at investigating and prosecuting criminal offences. In addition, the Act on Regulatory Offences deals with administrative offenses, e.g. if you do not provide your personal details to police.
- ◆ Some other laws can affect your political actions. In particular, the law governing **assemblies** (*Versammlungsrecht*) is important. It works for and against activist: It does define additional criminal offenses but at the same time it can liberate you from laws that affect you outside of legal assemblies (see section 3.2 below).

If “we“ do not comply with legal rules, then repression is quick to come. But ironically, especially those who are supposed to enforce the law break it most regularly. Therefore, if you read this text please do not expect to be able to fully anticipate police and state behavior as if they always followed their own rules. Prepare yourself for situations in which they don't. You might then see that this is not purely negative for us. It is, however, important not to just rely on laws. Be creative during the action (and afterwards) to protect yourselves!

## 3.2 How police act: Stop-and-search, bans from premises, assemblies

Your encounters with state forces can take different forms. They could have consequences that are disagreeable for you. For many political actions one would prefer to not even get in contact with police and the state. Whether you make that happen with the help of good camouflage, under cover of night, or by running fast, is up to your imagination.

The following are tips in case you do have to – intentionally or by surprise – deal with police. First and foremost: Whatever you do – **do NOT give testimony** regarding the action, other actions, yourselves, your political structures, your friends or anything else! The police are not our friends in these situations. They do collect data and material to use against you, your friends and others (more information concerning the refusal

to give information below).

### Face to face with the law

At some stage it happens: You are facing the police. Formally, they have a lot of power over you, even though they have to abide by some laws as well. In every scenario, there are legal specifications regarding police action. For example, police “must” always act proportionately and choose the mildest of available means (at least, that's what the law says). If police act unlawfully, oftentimes you have to subordinate to them anyways, but afterwards you can file an objection and sue them. This can be very useful: Resistance against enforcement officers is no longer an offense if police act unlawfully.

### Stop-and-search: getting your personal information and searching your bags

More often than not, police “only“ want your personal information. In this case you can choose between various options (for people who have no German passport, see also section 5):

- ◆ **Provide your personal information:** According to the law you must indicate your first and second name, address, date and location of birth, nationality, family status and a vague description of your profession. They can obtain most of these details from IDs (at least, from German IDs) which they will want to see. If you are not carrying your ID, they will want you to provide the same information orally. You do not have to provide more than these details.
- ◆ **Provide your personal details, but do so in a creative way:** For example, do an ID mix-and-match: If you are a group of people you can also collect and mix your IDs and give them to the police like a stack of cards. They will find out who is who certainly, but you are showing them that you will not simply do whatever they ask you to and deal with the situation proactively.
- ◆ **Refuse to provide your personal details** (just like this or in a creative manner): Not providing your personal details is an administrative offence (*Ordnungswidrigkeit*). How much this will cost will also depend on your personal situation (e.g. income), but for example in Berlin there were cases where people had to pay about 200 Euros. What is often more annoying is that police can detain you for several hours to ascertain your identity. In the state of Brandenburg they can detain you for up to 12 hours according to § 20 (2) of the Brandenburg police law (see section 3.4 below on refusing to provide your personal details).
- ◆ In any case do file an **objection** (simply say so and demand that your objection be written down – ideally in the presence of a witness).

**Searches:** Oftentimes, police also want to search your bags and pat you down, e.g. to in order to look for dangerous objects. If you are suspected to have committed a criminal offence this is based on some clauses in the above-mentioned law called StPO; however, police law also allows the police to search you under certain conditions.

### Options, Risks and Chances during personal searches:

- ➔ 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 then act shocked and throw it away – police might be distracted, giving you options to not show something that is indeed significant.
- ➔ Again: Always file an objection (simply demand that your objection is written down, ideally in the presence of witnesses).

## Bans from premises: They don't want me here

If police are 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 detaining you. Bans from premises are really common – often times they are confusing and spatio-temporally unspecific. Often they are a result of the police being angry and are linked to other ways of trying to intimidate you. They are normally communicated orally only, which is legal. When a ban is communicated only orally, this can also have some advantages: after all, it might be very difficult for you to understand what police are saying if at the same time there is loud shouting of some slogans or the samba players are hitting their drums with passion....

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. This would also be unlawful if the ban is unlawful in first place – but that does not really help you 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 time and again)

### Options in case of bans from premises:

- File an objection (ideally in the presence of witnesses)
- As always: No testimony, not even “but I didn't do ...“

Note: While there is an assembly (e.g. demonstration) going on, the above rules on bans do not apply (see section below on assemblies).

## Right of assembly supersedes police law: demonstrations are a special situation

There are a few particular legal rules on demonstration, vigils etc. – they come within the purview of the law on assemblies (*Versammlungsgesetz*). The state of Brandenburg does not have such a law of its own, meaning the federal law will apply.

An assembly is defined as a group of several people who have come together for the common purpose of publicly forming and manifesting an opinion. An assembly can also gather spontaneously.

The law on assemblies supersedes general police law; this means that as soon as the law on assemblies applies, the **police no longer have the options they normally have**, e.g. according to the police law of Brandenburg. For example, the police cannot ban participants of an assembly from the premises or take them into custody; for this to happen, the assembly needs to be dispersed or individual participants must be excluded from it. Either of these options are only permissible under certain conditions. Mistakes during the registration procedure of a public assembly are not a reason to disperse or prohibit a demonstration. At the most, the leader might be in trouble. A demonstration remains a demonstration as long as it is a public manifestation of opinion by a group of people. It can only be dispersed when it generally or predominantly poses a threat to public security and order.

Unfortunately, announcing a public assembly also brings disadvantages, otherwise registering an assembly would always be a good idea. However, there are certain **restrictions** resulting from the law of assemblies. The most important ones are:

- ◆ If the police disperses a demonstration, everyone has to leave the place.

- ◆ It is prohibited to disguise/cover one's face during demonstrations for the purpose of rendering oneself unrecognizable to the police. However, there may be other reasons for covering your face, e.g. you maybe need a mask to protect yourself against coal dust. Non-compliance with the prohibition to cover one's face in a demonstration is a criminal offense; if prosecuted, the penalty imposed would normally be a fine.
- ◆ Passive armament (holding on to each other, lock-ons, protective gear) is prohibited. Again, violating that prohibition is a crime, leading – if prosecuted – normally to a fine.
- ◆ Every assembly needs a formal leader. Besides this leader, marshals are required most of the times. They have to follow the leader's instructions.

Adding to those four points, the process of formal registration with the authorities may hinder creative action. These restrictions may be tackled with even more creativity.

You can use the specific features of the law of assembly in certain situations. For example, it is possible in principle to announce a spontaneous demonstration if police are banning people from the premises. As long as the assembly lasts, participants cannot be taken into custody. However, a spontaneous assembly cannot take place on private ground without the consent of the owner – so this does not help you in a coal pit. Moreover, for an assembly to take place someone would have to be the “leader” of that demonstration and provide his/her personal details to the police.

### **If assemblies are dispersed:**

Emphasize the positive effects of it: be happy about the dispersal, inform everybody that now they can do whatever they want, wherever they want and that actions like disguising oneself or lock-ons are legal again. In fact, the police would rather that all people stay at one demonstration.

## **3.3 When police take me with them: In the police station and the courtroom**

### **Custody and arrest**

It is important to be clear on whether police are seeking to take someone into custody on the basis of police law, in order to prevent crimes from happening, or whether they are seeking to arrest someone who is suspected of having committed a crime already; the latter is based on provisions in the Code of Criminal Procedure (StPO). From a legal point of view, being taken into police custody and being arrested are hence two different things – with different legal requirements and consequences – even though the immediate practical result is the same in both cases: police is detaining you.

The police law sets rules regarding occasion, procedure, being brought before a judge and the maximum duration of **custody**. You can find the relevant clauses from the Brandenburg police law in the annex to this booklet. Generally, police can take a person into custody for specific reasons set out in the law (see for details § 17 of the Brandenburg police law). In Brandenburg, the following applies:

- ◆ A reason for taking people into custody that is particularly relevant in the context of political actions is that custody is necessary to prevent the immediate commission or continuation of a crime or to enforce a ban from the premises as specified. In such cases, police may keep you in custody until the end of the day following the day on which they have detained you. For example, if you are taken into custody at 13h on a Saturday, you must be released by Sunday at midnight. An exception to this is if a judge decides that you need to stay longer, for a maximum period of four days, in custody. However, this is only possible under certain conditions (see § 20 (1) of the police law of

Brandenburg, contained in the annex to this booklet).

- ◆ A further reason for why police may take you into custody is to ascertain your identity if you decide not to provide your personal details upon request. In this case, they may keep you in custody for no longer than 12h (§ 17 (2) of the police law of Brandenburg).

In police custody, you have certain **rights** (for specific details concerning non-Germans, see section 5):

- ✓ You must be informed on why you have been taken into custody.
- ✓ You may call a legal counsel and a person of your choice (e.g. the legal team).
- ✓ If you are in need of medical treatment, police must ensure that you receive such treatment.
- ✓ If you are in custody for a longer period of time, they will need to provide meals and something to drink and you are allowed to use the toilet.

According to the Code of Criminal Procedure, police may **arrest** someone even before a court has imposed a sentence, if the person concerned is suspected to have committed a crime and certain additional requirements are fulfilled. Among these are that the person suspected of a crime is likely to attempt to try to escape or to tamper with evidence (e.g. by destroying it). If one is arrested for one of these reasons until a criminal court has taken a decision, this is called **pre-trial detention**. Pre-trial detention can last for extended periods of time, including several months, and must be based on a court order. We do not expect pre-trial detention orders in the context of an action of mass civil disobedience. For criminal offenses for which the statutory penalties (i.e. the penalties “on paper”) are low, pre-trial detention is only possible under relatively restrictive conditions (an exception to this is if police cannot establish your identity).

Instead of putting people into pre-trial detention, judges and police sometimes try to demand money, i.e. a **bail**, from the accused. The legal basis for this is provided by § 127a of the Code of Criminal Procedure. Although bail is not often demanded, it has happened a few times in the metropolitan region of Cologne. These situations are hardly predictable. It is possible to pay immediately if you really want to leave.

However, it is always good to have a lawyer involved in such situation; if you are facing pre-trial detention this means that you are facing rather serious criminal charges and you should not try and face this situation without legal counsel. The legal team will have the phone numbers of lawyers whom we can contact during the action and if there is a need, we will find one for you.

Something that could also happen is a so-called **accelerated procedure**; this is a simplified and quick criminal trial procedure. If such a procedure is to be conducted, a judge can order a person to stay in pre-trial detention until the trial starts, but only for a maximum of up to a week. In such cases, a person might first be put into police custody and after this remain in detention until the trial starts. Again, it is a good idea to get a lawyer involved in this situation.

### Options, Risks and Chances concerning custody:

- ➔ Running away is not prohibited, but police may use force to prevent it.
- ➔ As always: File an objection.
- ➔ No testimony, no signatures – even if they promise you amazing things. Annoy them if you want: Sing songs, do gymnastics, perform poetry loudly ... “Don't bear testimony” does not mean act defensively and endure everything silently. You can at least make them not have a pleasant memory of your “visit” - it might help for the next time and can protect others.



## Refuse to testify!

The police always look for information such as the schedule of the specific action or general structure of the political movement. Big police departments have their own section for politically driven crime at their disposal. This is the so called Staatsschutz (State Protection Office). The Staatsschutz has nothing to do with any intelligence departments like the "Verfassungsschutz." The latter one hardly ever becomes visible but works undercover without the privileges of the police.

Now what? Don't testify! Even exonerating testimony (presenting evidence for your innocence) is dangerous.

### ■■■ 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 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. It is advisable to try and practice role-playing before. You can do that at a police station or in a police car – as done by the clowns army for example. Pay attention to accidental testimonies during such exercises.

Be resolute: No testimony, no signatures – you don't need any of it (and they neither). It is nothing but bluffing if they claim that you cannot leave without testifying or signing something. **Do not sign anything!**

When they release you from custody and give back your stuff they might ask you for a signature. You can refuse that signature. Usually they will tell you that you cannot take your stuff without the signature. Staying cool and not getting afraid might annoy the police the most. A good reaction would be: "Nice! If you send me all my stuff via post I don't need to haul it around." You could also write "abolish police" on the signature line. The main aim is to not feel powerless and show the police that it's no fun to arrest you (and others).

Police may only keep stuff under certain conditions, e.g. if objects have been used to commit a crime. They are not allowed to keep your personal belongings. 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.

## 3.4 Refusing to provide your personal details: what is important?

In 2015, a huge number of activists involved in "Ende Gelände" refused to provide their personal details to the police when apprehended in the pit. This created significant practical challenges to the police and effectively allowed everyone to occupy the pit for a longer period of time. We do not provide any specific recommendation on what to do. How Vattenfall (or a different company) and the police forces of Brandenburg will act when faced with a similar situation is very hard to predict.

What the state can do to people who refuse to disclose their identity is set down in police laws (of the states) and the (federal) Law on Regulatory Offences (*Ordnungswidrigkeitengesetz*). The legal basis allowing the police to establish your identity is §12 of the police law of Brandenburg. Accordingly, a person's identity can be established if this is needed to prevent a risk from materializing.

When you refuse to provide your personal details – or if it is considered necessary to prevent crimes from happening – you can be subjected to certain measures carried out with the aim of establishing your identity,

referred to as **ED treatment** in German. The rules on what measures the police may take are contained in § 13 of the Brandenburg police law. The permissible measures include taking photos, fingerprints and hand prints and ascertaining certain physical features (e.g. measuring you). Whether conducting a DNA analysis (i.e. by taking a sample of your saliva) is legal for this purpose is controversial. But it is recommended that you object to such measures and, if you feel up to the task, not cooperate.

Measures to establish your identity are normally carried out when you are in police custody. However, there are no guarantees: during the last big “Ende Gelände” action in the Rhineland police only resorted to certain measures for establishing the identity of most of those participants who had refused to provide their personal details. After a body search, conducted with the aim of finding papers or objects allowing conclusions on the person’s identity, only photos were taken.

People’s approaches when subjected to measures carried out with the aim of establishing their identity are quite diverse. Some cooperate, others offer physical resistance. Indeed, it is difficult to measure you or take your photo if you do not cooperate, lower your head, close your eyes, distort your face, bend over, pull away your hands from the fingerprint template etc. In particular in the context of mass action the efforts required by the police to carry out measures aimed at establishing the identity of many participants can become quite substantial and may ultimately lead the police to give up. However, if you resist such measures this could also lead to them trying to force you, sometimes in a painful ways.

## Advice

- ➔ You should discuss with your affinity group whether or not you would want to provide your personal details to the police! Those who do might be separated from those who do not; so in order to ensure that no one is alone, it is good if at least two persons within an affinity group have the same approach.
- ➔ If you do not want to be identifiable, pay attention to what objects you carry with you that might make you identifiable – an invoice with your address in your pocket, information on the glasses you wear – or your normal mobile which is almost an ID card.
- ➔ Allegedly, putting several layers of super-glue on your fingertips is quite an effective means of making any fingerprints unusable.

## Uncovered?

If the authorities manage to identify a person who had refused to provide his/her personal details, that refusal can be sanctioned, because it constitutes a regulatory (or administrative) offence under § 111 of the Act on Regulatory Offences (*Ordnungswidrigkeitengesetz*). This is not the same as a criminal offence. However, you may have to pay an (administrative) fine (in addition to whatever consequences may result from other charges). The amount of the administrative fine may vary upon your personal situation; in Berlin, in some cases the amount charged for violations of § 111 is was around 200 euros; however, the statutory maximum is 1,000 euros).

Committing an administrative offence does not add to your criminal record; and an administrative fine will not be converted into days in prison if you do not pay. However, you can still be sent to detention in order to make you pay the fine. If you do not know whether you want to provide your personal details to the police, please **seek advice from the legal team**.

## 3.5 After the action

### Summons (*Vorladung*)

Before initiating a criminal trial procedure, the police will normally try to interrogate you on whatever happened. You are not obliged to 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. Conversely, if the prosecutor's office summons you, you have an obligation to go (otherwise police can take you there by force). However, you do not have to say anything on what happened at the prosecutor's office, either – you just have to give your personal details.

### Penalty order (*Strafbefehl*)

If everything goes wrong you might end up in criminal proceedings. 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 prepare for your case.

For less severe criminal offenses (e.g. the ones that we refer to below) and if the evidence is rather clear, German prosecutors and judges often use something called a “penalty order” (*Strafbefehl*). A penalty order is a document stating what you are charged with and imposing at the same time a certain penalty. Once you have received such an order, you have two weeks to file an objection. 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 a fine (or go to jail).
- ◆ 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 91 days (which is a relatively hefty sentence and unlikely for participating in an Ende Gelände style action) 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.
- ◆ Your right to refuse testimony as a suspect or a defendant does not exist anymore since your case is completed. In case other people are accused of the exact same crime you might be forced to testify as a witness. Your final verdict could hence become a problem for others as well.

Due to the 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. Afterwards, you can calmly rethink your further strategies, and 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. 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, proceedings resume. You have to go to the trial or be represented by a lawyer, otherwise your objection will be rejected.

### ■■■ Access to files during the proceedings ■■■

Whoever is accused of a crime and hence in court has the right to access her\*his files - even without an attorney. It is important to make use of this right since this is the only way to find out what the police and prosecutor have investigated, know, plan to do etc. It is wrong to draw any conclusions on the proceedings merely based on your knowledge. The police investigate what they are interested in and what they think is important and the prosecutors bring charges according to what they think is right. And these are the only things you have to defend against. Nothing else matters and nothing else is the police's business. Hence: as soon as a case is taken to court or a court is involved in a decision, go there and access your files (or let your attorney do that). After having done that, think about your further strategy. Without access to the files, everything is just guesswork and therefore dangerous.

The legal basis for an undefended accused to get access to the files is § 147 (7) of the Code on Criminal Procedure in conjunction with a judgment of the European Court of Human Rights. The paragraph reads: "Where an accused has no defence counsel, information and copies from the files shall be given to the accused upon his application, provided that this is necessary for an adequate defence, cannot endanger the purpose of the investigation, also in another criminal proceeding, and that overriding interests of third persons meriting protection do not present an obstacle thereto."

### 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. Most likely it will take a long time before you are put to trial – if at all. It is not unusual for a year or more to pass. So, you can take all the time you need to prepare for trial.

Anyways: a criminal trial holds great chances. Nowhere else is one able to question one's political opponents or witnesses for the prosecution 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 give evidence 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 nearly suggests itself, for example if it's about "resistance" (§ 113 of the Criminal Code, see below) and they want to talk about how the police behaved. Or if the charge is "coercion" – because here the action's objective is supposed to have been "reprehensible." For different kinds of political actions, like occupations, blockades, rallies, militant actions etc. you can make use of § 34 of the Criminal Code (*Rechtfertigender Notstand*/justificatory emergency). It allows you to actually commit an offense if some kind of danger (even an abstract one!) could otherwise not be prevented.

A trial needs to be prepared and also rehearsed. Trainings on defence in court could be helpful. Apart from help by a lawyer, we are also allowed to help one another. § 138 (2) of the Code on Criminal Procedure makes it possible for lay people to defend others if the court agrees.

### If you have been sentenced to a fine

It is rather unlikely that anyone will be sentenced to prison as a result of a mass action of civil disobedience. Fines are more likely. If you do not have money to pay a fine, there are a number of options:

- You can always try and raise money – organize a party, collect donations etc...
- An organization called "Rote Hilfe" sometimes helps people pay penalties resulting from political action.
- You can also request to pay the fine in several installments.
- You can also request that instead of paying daily fines, you are allowed to work a corresponding number of days. In Brandenburg, one daily fine corresponds to 6h of work. This means that if you have been sentenced to pay 30 daily fines, you would instead have to work for 180 hours.
- 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.

In a **police clearance certificate** (or certificate of good conduct), which you may need in order to be given certain jobs, penalties amounting to at least 91 daily fines or at least three months in prison will be shown (unless you have a prior conviction). Three years after the court's judgment, even higher fines will normally no longer appear in the certificate. A **daily fine** normally corresponds to the 30th part of your net income. However, exceptions to this rule can be made, e.g. in the case of particular low incomes.

## 3.6 Relevant criminal offenses

The following describes some selected offenses that often occur during political actions and relevant for mass civil disobedience actions as well. However, please do note that the authorities may use other provisions as well.

In the following, you'll find excerpts from the corresponding legal text and a few tips on how to not get into this kind of offense or how to deal with the charge brought. You can find the entire text of the law on the internet, including in English).<sup>1</sup> However, please be aware of the fact that the police sometimes more or less invents charges. Even if you are certain yourself not to have committed a crime, you may receive a letter from the police or the prosecutor at some stage. However, this does not mean that there will be a trial resulting in you being sentenced.

Generally, we would expect the criminal sanctions imposed to be fines rather than prison sentences for mass actions of civil disobedience, in particular when you have no prior criminal record. However, such measures are hard to predict and we can never rule out that police or prosecutors will bring more serious charges.

### Incitement to Criminal Behaviour (§ 111) or Instigation to commit a Crime (§ 130a)

Whoever calls people to join actions which the authorities consider to be criminal, whether it be using leaflets, the internet or your voice, could get into conflict with this paragraph. But it all depends on how you say it.

Thus, a tip: choose a wording that is not in itself an appeal, but rather a piece of information. E.g.: "It has a certain effect if..." or "I am not allowed to call upon you to do X. But I cannot NOT tell you that the possibility exists." General instructions are not illegal, either (§ 111 StGB), unless you start distributing bomb-building manuals...

### Resistance against Enforcement Officers (§ 113) and Breach of Peace (§ 125)

This is a pretty common accusation. Police often uses it to excuse their own use of violence or to get people to trial who aren't subject to any other accusation. The wordings are rather vague; hence it often works to convict people because of this.

Note: the German Criminal Law actually is easily available in English, so now we're quoting – still it can be difficult to understand. Please contact us if you need clarification on something!

#### ■■■ From StGB § 113 Resistance against Enforcement Officers ■■■

(1) Whosoever, by force or threat of force, offers resistance to or attacks a public official or soldier of the Armed Forces charged with the enforcement of laws, ordinances, judgments, judicial decisions or orders acting in the execution of such official duty shall be liable to imprisonment not exceeding three years or a fine.

(2) In especially serious cases the penalty shall be imprisonment from six months to five years. An especially serious case typically occurs if

1.the principal or another accomplice carries a weapon or another dangerous instrument for the purpose of using them during the commission of the offence; or

2.the offender through violence places the person assaulted in danger of death or serious injury.

(3) The offence shall not be punishable under this provision if the official act is unlawful. This shall also apply if the offender mistakenly assumes that the official act is lawful.

<sup>1</sup> At [http://www.gesetze-im-internet.de/englisch\\_stgb/](http://www.gesetze-im-internet.de/englisch_stgb/)

## From StGB § 125 Landfriedensbruch/ Rioting

(1) Whosoever as a principal or secondary participant participates in

1. acts of violence against persons or objects; or
2. threats to persons to commit acts of violence,

which are committed by a crowd of people who have joined forces in a manner which endangers public safety, or whosoever encourages a crowd of people to commit such acts, shall be liable to imprisonment not exceeding three years or a fine unless the act is subject to a more severe penalty under other provisions.

(2) To the extent that the offences indicated in subsection (1) Nos 1 and 2 above are punishable under section 113, section 113(3) and (4) shall apply mutatis mutandis.

According to the case law, being convicted for a crime according to § 113 of the Criminal Code requires an “active behavior vis-à-vis enforcement officers”. Merely being passive when confronted with the police is not illegal under this paragraph. For example, it is not “resistance” in this sense if you let police officers carry you away as a parcel from a sit-in blockade, without offering any physical resistance to it or if you simply do not follow an order to get up. Also, simply running away is not “resistance”. However, things look differently if you try to hit police with your feet while being carried away, you move away from them forcefully or chain yourself to a stationary object.

However, **“resistance” is only punishable if the police itself acted lawfully.**

The provision contains two options for action which, in court, force the police to take centre stage and enable you to further inquire what they did: was the police operation lawful? How did the officer behave, and why? Who were the superiors and what were their instructions? And so on... Because: first of all, the allegedly attacked officer must have been fulfilling official “duty“ (first paragraph) at that moment, and second of all, none of this is “punishable under this provision if the official act is unlawful“

This is what the law says, providing a basis for you to question everything and anything that has happened. Their behaviour is at the centre of attention – and, other than you, they are not allowed to stay silent!

Landfriedensbruch/rioting is similar. This section also says that a battle with the police is left unpunished if the police acts wrongfully.

Hence a tip: **remember** (and if you can: write down immediately after the action) **all the mistakes** the police make – because if they do something wrong, you cannot be punished anymore because of this section. This is especially important in context of big assemblies, because attacks on rallies or their participants are hardly ever lawful. To prevent them from filing a complaint against you, you can even go and tell the officers that you will be inquiring about their behaviour and its background in case of a trial – and that you do not plan on talking to them beforehand! They might be put off by this already.

## Trespass (§ 123 of the Criminal Code)

Once again a section you might be confronted with easily – because many political actions aim to disturb something that we do not want to happen. Sometimes this happens on someone else's property. To enter it is only “trespassing“ if it's visible that entering is not invited – like walls, doors (open ones, too!) or fences (fences with holes do count). It is also trespassing if you do not leave the premises once a person qualified to do so asks you to.

## From § 123 of the Criminal Code: Trespassing

(1) Whosoever unlawfully enters into the dwelling, business premises or other enclosed property of another, or

into closed premises designated for public service or transportation, or whosoever remains therein without authorisation and does not leave when requested to do so by the authorised person, shall be liable to imprisonment not exceeding one year or a fine.

(2) The offence may only be prosecuted upon request.

Signs prohibiting entering or fences can simply have disappeared until the police show up – (hopefully) no-one will be able to tell who removed it. A conviction at the district court of Kerpen due to participation in a workshop in an occupied house (and therefore: burglary) was overturned in revision – because the workshop was announced on the wall of the house, hence the defendant could not know that entering was illegal. But, as always: That's none of the police's business – refusal to give evidence is the best thing to do in court, too! **The usual punishment for trespassing is 10-30 daily fines.**

### **Insult (§ 185 of the Criminal Code) or Defamation (§ 186 of the Criminal Code)**

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 is considered an insult. If you want to say something negative about a person or group of people, it is better to say something like: “Whoever says that... is just right“ or “I bet my grandma would say...”

You can't insult a group that is really big. Meaning: you can rant about the whole police, army, the state etc. as you want. But you should not say this to the face of someone who belongs to that group – then it becomes assignable and punishable again.

### **Causing bodily harm (§ 223 of the Criminal Code)**

Causing bodily harm to anyone is certainly not the objective of disobedient action. So this could only happen accidentally or because of wrongful accusation by Nazis, the police or others. The latter often combine it with charges of resistance – the options as described above apply.

### **Using threats or force to cause a person to do, suffer or omit an act (Nötigung, § 240 of the Criminal Code)**

A typical accusation during and after blockades, because a blockade is indeed supposed to prevent something – be it access to a certain area, a deportation or a machine from working. The laws wording doesn't actually say much about what is “compulsion“ and what's not.

#### **From StGB § 240 of the Criminal Code: Using threats or force to cause a person to do, suffer or omit an act**

(1) Whosoever unlawfully with force or threat of serious harm causes a person to commit, suffer or omit an act shall be liable to imprisonment not exceeding three years or a fine.

(2) The act shall be unlawful if the use of force or the threat of harm is deemed inappropriate for the purpose of achieving the desired outcome.

Meanwhile, there have been lots of judgments. They state that a simple blockade with your own body (like a sit-in) is not an act of “compulsion“. Some judges came up with an idea, though: in a blockade, the first car that is stopped is not being “coerced,” but the second one is (because there are not only people, but also another car blocking its way). The matter is still pretty unclear at the moment. But there is clearly always a chance that part two of this section holds: If the target of an action is not deemed reprehensible, then there will be no punishment.

## Criminal damage (§ 303 of the Criminal Code)

Whether on purpose or not – this accusation is easy at hand with political actions. The section is pretty clear.

### From StGB § 303 Criminal damage

- (1) Whoever unlawfully damages or destroys an object belonging to another shall be liable to imprisonment not exceeding two years or a fine.
- (2) Whoever unlawfully alters the appearance of an object belonging to another substantially and permanently shall incur the same penalty.
- (3) The attempt shall be punishable.

A couple of years ago, part two about “altering the appearance of an object“ has been included in this section to enable the state to punish graffiti artists. Using sidewalk chalk is still okay – remaining one of the most important “arms“ in public space when it comes to conveying messages.

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

### 4.1 Declarations to cease and desist

Most experience in the anti-coal movement is from the Rhineland area. In recent years, 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. Vattenfall has done so as well in the case of activists who blocked a coal train as part of a Greenpeace action in 2013, and had an injunction to this effect issued by the courts. By signing such a declaration you pledge to refrain from doing whatever is specified in the declaration in the future.

Usually, a penalty is defined, to be paid by the individual if s\*he violates the declaration. This fine may be precisely specified in the document or left to the courts to decide on. These sums are usually substantial – usually, several thousand euros rather than just several hundred. If you don't sign this declaration, you run the risk of having your opponent sue you, which may lead to fees for courts and lawyers – if you lose, you will also have to pay the fees for the plaintiff's lawyers.

But not every action will be responded to with declarations to cease and desist – this is a decision at the corporation's discretion. For “Ende Gelände” 2015 in the Rhineland area, several such declarations have been sent out to activists to be signed.



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.

### General points to note

- ✓ 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 (e.g. because the person publicly declared s\*he 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 (RWE or Vattenfall). 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.

### What does this injunction mean for 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 apart from the fact that you might have to pay the legal fees of your opposing party.

If you, however, do exactly what you have been asked to desist from (as specified in the declaration), e.g. if you climb on that specific coal digger, then you will probably have to pay the penalty, which may still have to be specified by a court.

### Which options for action exist if you are prompted to sign a declaration to cease and desist?

By all means get in touch with a **local anti-repression group that you trust, or a lawyer!** Together you can deliberate on which course of action is best for you. Among other things, it should be examined whether the wording of the declaration is too broad and may better be changed. **No signature without legal aid!**

- ➔ **Signing the declaration to cease and desist:** In doing so, you accept all specified conditions and you pledge to "never" do it again. This may be inconvenient if you were actually planning on doing the opposite or you don't want a corporation to tell you what to do and not to do.
- ➔ **Adapting the declaration:** Declarations to cease and desist can be modified, particularly if they are too unspecific. A commitment to pay the legal fees of the other party, often contained in these declarations, may potentially be cut. Often, lawyers present exaggerated demands. For instance, the demand to "not disturb any of the operational facilities owned by Vattenfall AG" is inadmissible. The injunction also has to be defined spatially, e.g. "the opencast pit Garzweiler II, field sectors ....".

Before making any changes, you should consult your legal aid group or a lawyer and discuss any changes you wish to make with them. Any changes have to be such that the other party can still accept them. If they do not accept the changes, they can request a temporary injunction in court. This can happen if the changes you have suggested make it clear that no agreement can be achieved.

- **Not signing the declaration:** This may lead the company to sue you, which may be costly for you if you lose the lawsuit. There maybe an accelerated procedure in which the court only makes a rough assessment of the subject matter; the result could be a temporary injunction against you which requires you to desist from certain behaviour. A temporary injunction is a provisional court order in cases that require a quick decision in order to maintain a certain status quo. For example, you can be prohibited from entering a particular coal pit. But for this, the plaintiff (i.e., the company) has to prove that the matter is urgent and a regular lawsuit would take too long. If you violate a temporary injunction, you may have to pay a fine.

If the corporation does file a lawsuit against you, the statement of claim will be sent to you via mail to the address noted on your document of identification. Important: Depending on the value in dispute, either the Landgericht (regional court) or the Amtsgericht (district court) is responsible. At the regional court, only professional lawyers can defend you. At the district court, you may also defend yourself.

## 4.2 Damage claims

According to §823 of the German civil law code (BGB), an individual or legal body is entitled to compensation if harmed by an unlawful action on someone else's part. This means, for example, that if anything in an opencast pit is damaged in such a way that one or more power plants have to shut down and the owners thus suffer significant financial loss, they can file a lawsuit and request an "appropriate" sum for compensation. Vattenfall did this in the case of the 2013 coal train blockade, but the regional court of Cottbus decided that the activists did not have to pay.

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.

Damage claims can be filed in addition to cease-and-desist: Damages, after all, are about something you (allegedly) did in the past; cease-and-desist relates to things you are supposed not to do in the future.

### What you can do when facing damage claims:

Do not let them divide you, stay calm and united, because we know:

There is a diverse “Ende Gelände” alliance capable of making such demands public. The more people participate in the action and in the protests in the area, the less likely it is – speaking from experience – that our opponents will put their threat into practice after the action. The threat is almost always a lot more frightening than the actual demand later on. If in the end damages are to be paid, we will not leave anyone out in the cold.

So even if a coal company later claims damages from many of us or just from some individuals, there is a large group supporting those affected. So it is best to contact an anti-repression group that you trust or a lawyer. Decide together which steps to take next!

And even if you have to pay in the end: there are many opportunities to collect money together (cf. subsection on monetary fines in section 3.5 of this booklet).

## 5. Situation of non-German citizens / persons without place of residence in Germany

In the following, we will mention 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 and non-EU citizens. We recommend that you read this section after reading our general legal information; otherwise, not all of this may be easily understandable.

### I am traveling to the action from within Europe and have to cross the border to Germany

- ✗ According to Article 5 of the Schengen Agreement, a person can be denied entry if he or she is a danger to public safety and order, e.g. if he or she is expected to commit criminal offenses in Germany
- ✗ Only in the case of very big mobilizations is there a possibility of systematic border controls, such as in France during the winter of 2015.
- ✗ Random border inspections are possible, i.e. your bus or car can be stopped or your ID can be checked on a train.
- ✗ 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 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 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 (number will be published online in advance of the camp).

### Details:

- The possibility of border controls within the Schengen area is specified in the Schengen Agreement.
- Regarding databases, see next section.

## I am an EU citizen (living in Germany or abroad) and I am considering not revealing my identity to the police during an action

- x In this case, police will try to get your fingerprints. If they succeed in doing so (cf. section 3.4 on ID refusal!), they could match them with various databases.
- x Police have access to various German and European fingerprint databases and will try to identify you this way.

### Details:

- ◆ 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.

## I am not a citizen of Germany or any other Schengen country - how about (not) revealing my identity?

- x 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 visa ever again.
- x When you apply for a visa, authorities now take your fingerprints and will store these.
- x Refusing to reveal your identity (name, age, and country of citizenship) in this case is a criminal offence.
- x German police are conducting racist inspections particularly near the borders (“racial profiling”).

### What can I do?

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

### Details:

- ◆ The following countries form the Schengen area: Austria, Hungary, Norway, Belgium, Iceland, Poland, Czech Republic, Italy, Portugal, Denmark, Latvia, Slovakia, Estonia, Liechtenstein, Slovenia, Finland, Lithuania, Spain, France, Luxemburg, Sweden, Germany, Malta, Switzerland, Greece and the Netherlands.
- ◆ The establishment of a person's identity (regarding non-citizens) is regulated in article 49 of the Residence Act (*Aufenthaltsgesetz*).
- ◆ The criminal offense character of ID refusal is regulated in article 95 (1) no. 5 of the same law.
- ◆ Regarding the taking of fingerprints during the visa application process, the Federal Foreign Office provides official information:

## I am not a German citizen and have been taken into custody

- x 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.
- x When in custody you are not legally entitled to translation; during criminal procedures you are. You should not expect the police to speak English or other languages well.
- x You should by no means sign any paper you don't understand, and you're not required to (this is true for everyone, but it's especially important if you don't understand what you are signing).
- x 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.
- x In Germany, it is a criminal offence and usually pointless to try and bribe officers. We strongly recommend against trying it.

## I have no place of residence or do not reside in Germany

- x If you are taken into custody and charged with criminal offenses, there is an increased risk of an accelerated procedure. This means, you will remain in custody and will be put on trial very quickly, perhaps even on the following day (see section 3.3).
- x You are more likely to be held in pre-trial detention. But usually the charges to be expected following a mass action of civil disobedience are not severe enough to make this scenario very likely.

In each instance, the reason is that the risk of flight is assumed to be heightened in your case.

If you indeed are facing an accelerated criminal procedure, you will have little opportunity to prepare for your trial or consult with lawyers. One conceivable strategy is to remain silent during the trial and let yourself be sentenced. You may later appeal against the sentence; of course, in accelerated procedures courts and prosecutors may make mistakes.

In any case you should seek a lawyer's advice if you are facing an accelerated trial. Call the legal team so we can organize legal support! In an accelerated trial you are required to have a professional defense if the charges may lead to a sentence of at least 6 months in prison. But for actions of civil disobedience and if you remain within the action consensus, this is rather unlikely.

### What can I do?

- ➔ In advance, you may consider whether or not you will be able to withstand the pressure in an accelerated trial and remain silent.
- ➔ If things are coming to a head, call the legal team so we can organize legal support!

### ■■■ German Code of Criminal Procedure - Section 113 - Restrictions Applying to Remand Detention ■■■

(1) If the offence is punishable only by imprisonment of up to six months, or by a fine up to one hundred and eighty daily units, remand detention may not be ordered on the ground of a risk of evidence being tampered with.

(2) In such cases, remand detention may be imposed on the ground of a risk of flight only if the accused

1. has previously evaded the proceedings against him or has made preparations for flight;
2. has no permanent domicile or place of residence within the territorial scope of this statute; or
3. cannot establish his identity.

## **I am not a German citizen and I am seeking or will seek naturalization or permanent residence (or a visa) in Germany**

- x In this case, a minor conviction for participation in an action may suffice to thwart your plans.
- x What is meant by “minor”? Depending on the legal basis upon which you are planning to stay in Germany, even a sentence of 50 daily fines may suffice (all convictions are added up here).
- x If charges are pressed against you, police or prosecution will communicate this to the foreigners' registration office (Ausländerbehörde).

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

- ➔ We can only recommend that you do not risk prosecution and get yourself out of harm's way at every opportunity. We know this will be very frustrating to read, but that's the way it is. Nevertheless, you can contribute a lot to the success of our action by participating in preparations, in the organization of the camp and in action support. We assume this to be the best option if you don't want to gamble with your long-term stay.

## **I am not a German or EU citizen. I live in Germany and I am planning to stay here for a longer period of time for my studies, job training or work.**

- x In this case, conviction to a prison sentence, e.g. for resistance against police officers (see section on criminal law for information on various offences), may in the worst case lead to your expulsion. For actions within the action agreement of “Ende Gelände” we consider this unlikely.
- x 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.
- x The risk increases if you are sentenced to a longer prison term (1 or 2 years). For actions covered by the action agreement of “Ende Gelände” we consider this extremely unlikely, but we nevertheless want to mention the possibility here.

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

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

### **Details:**

- The legal basis for expulsions is to be found in sections 53, 54 and 55 of the Residence Act (Aufenthaltsgesetz).

## Which foreign authorities are informed about convictions?

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 (e.g. 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).

## I am affected by racism

- ✗ If you are affected by racism in everyday life in Germany or Europe, don't count on the police to treat you better.
- ✗ Consider that racism depends on the racist's perspective: For example, an individual considered to be White in Brazil may be considered a person of color in Germany.
- ✗ We dearly hope that you will not experience racist discrimination from other participants in our actions. If you should face such situations, it would be helpful to report this to the awareness team. With your approval, the awareness team will contact the organizational structures to report what happened (anonymized or not, depending on your preference), and if you wish so they will approach the offenders about this.

## 6. Annex: Legal texts

### 6.1 Brandenburg Police Law (BbgPolG)

#### § 12 Identity verification

(1) The police may verify a person's identity,

- in order to avert a danger, if the person is located in a place assumed on the basis of facts to be used by people to arrange, prepare or carry out offenses of considerable importance (§ 10 paragraph 3), or used as a meeting place by people violating penal provisions of immigration laws, or used as a hiding place by wanted criminals
- or if the person is located in a traffic or public supply facility, a public transportation vehicle, an administrative building or another particularly threatened object or its immediate vicinity and facts justify the assumption that inside or against these objects criminal offenses are planned which would endanger people or these objects, and the identity verification is necessary due to the dangerous situation or evidence concerning the person in question.
- at a check point set up by the police to prevent a criminal offense according to § 129a of the Penal Code, one of the offenses mentioned in that provision or an offense according to § 250 paragraph 1 no. 1 letter a or b and paragraph 2 no. 1, according to § 255 of the Penal Code in the previously mentioned manners of conduct or according to §§ 125, 125a of the Penal Code or § 27 of the Assembly Law. The establishment of a checkpoint is only permissible with the consent of the administrative chief, except in cases of imminent danger, in airport areas for the prevention of illegal border crossings, to the extent that this is not the responsibility of the Federal Police, for the prevention of cross-border crime and the prevention of criminal offenses of considerable importance (§ 10 paragraph 3) with international aspects in the area ranging from the federal border up to 30 kilometers inside the country if the police has evidence of such cross-border crime at the location of the check point or for the protection of private rights (§ 1 paragraph 2).

(2) The police can carry out the measures necessary to verify a person's identity. They can especially stop the person concerned, interrogate him regarding his identity and demand information concerning the verification of his identity and the handing over of ID documents carried by that person. The person concerned can be detained if his identity cannot be determined otherwise (or could only be determined with considerable difficulty). If this is the case, the person concerned and his belongings may be searched.

#### § 13 Measures for the verification of identities

(1) Measures for the verification of identities include in particular the taking of fingerprints and handprints, photographs, the observation of external physical characteristics and measurements.

(2) The police can carry out identification measures if an identity verification permitted by § 12 is not possible otherwise or could only be completed with considerable

difficulty or if this is necessary for the prevention of criminal offenses because the person concerned is suspected of having committed a punishable offense and, due to the type of offense and the manner in which it was conducted, there is a danger of repetition.

(3) Once an identity is established, the records created during the process are to be destroyed in the case of offenses according to paragraph 2 no. 1 [if it wasn't feasible to determine a person's identity otherwise], except if their continued storage is necessary for the purposes specified in paragraph 2 no. 2 [crime prevention] or permissible according to some other legal provision.

(4) The person concerned is to be informed during the identification treatment that he can demand the destruction of these records if the conditions for its continued storage are no longer given. If the records have been created without the knowledge of the person concerned, he is to be informed about which records are to be stored as soon as this is possible without threatening the purpose of this measure.

## § 17 Custody

(1) The police may take a person into custody if

- it is necessary to protect this person against a threat to life and limb, in particular if the person is recognizably in a state of being unable to make conscious decisions or is otherwise helpless
- it is required to prevent the immediate commission or continuation of a crime or a misdemeanor which may have a sustained negative effect on peace under the law; the assumption that a person is about to commit or contribute to such a deed may particularly be derived from an announcement to this effect on the part of that person, from an explicit encouragement of others or from banners and other objects carried by that person; this also extends to leaflets containing such messages if carried in sufficient number to be intended for distribution; objects in question include weapons, tools and other objects which are clearly intended to be used to commit the deed or are commonly used for such purposes, also if these are carried by accompanying persons if the person concerned can be assumed to be aware of this; the assumption is also valid if the person has been known to have been responsible for similar actions in the past and may be expected to repeat these
- this measure is necessary to enforce a ban from the premises as specified in § 16
- or it is required to enforce a ban from a private residence or a return ban according to § 16a or it is required to protect private rights and an arrest and arraignment of the persons concerned is covered by §§ 229, 230 section 3 of the Civil Law Code (Bürgerliches Gesetzbuch, BGB)

(2) ...

## § 18 Judicial Decision

(1) If a person is detained according to § 12 section 3 clause 3, § 15 section 3 or § 17, the police is required to effect an arraignment immediately, within a maximum of 24 hours, and to obtain a judicial decision on the admissibility and duration of the arrest immediately. Neither of these are necessary if it may be assumed that the judicial decision and the arraignment would only take place after the original occasion for the police operation has ceased to exist.

(2) ...

## § 19 Treatment of detained persons

(1) If a person is detained according to § 12 section 3 clause 3, § 15 section 3 or § 17, he or she has to be informed about the reason immediately. The person has to be informed about her/his legal rights in this situation.

(2) The detainee is to be allowed to request legal support of his/her choice immediately and to notify a family member or a person of their choice unless this endangers the purpose of the detention. This does not affect the duty of notification in the case of a judicially ordered detention. The police is to take care of the notification if the detainee is not able to make use of their right as determined in clause 1 and does not object to the notification. If the detainee is under age or has a legal guardian the responsible person is to be notified immediately.

(3) The detainee is to be accommodated separately; particularly, the person should not be accommodated in a shared room with convicts and pretrial detainees without his/her consent. Men and women are to be accommodated separately. Only such restrictions may be applied to the detainee as are necessary to fulfill the purpose of the detention or its orderly conduct.

(4) If medical treatment or medication is recognizably required, such measures are to be initiated immediately, including a physician's appraisal of the detainee's physical fitness for detention.

## § 20 Duration of detention

(1) The arrested person is to be released as soon as the reason for the police operation has ceased to exist, if continued detention is declared unpermissible by a judge or, in any case, by the end of the day after the arrest, at the latest, unless a continuation of the detention is by that time ordered by judicial decision on the basis of this or another law. Continued detention beyond the day after the arrest may only be judicially ordered on the basis of this law if there is evidence that the detainee will commit or participate in crimes against health and life according to §§ 125, 125a of the penal code (StGB) or §§ 26, 27, 28 of the assembly law. The judicial decision must specify the maximum duration of detention; on the basis of this law, this may be no longer than four days.

(2) Detention for the purpose of verifying a person's identity may not exceed twelve hours.

# 6.2 Act on Regulatory Offences (OwiG)

## Section 111: Stating False Names

(1) Whoever makes a false statement to a competent authority, to a competent office-holder or to a competent soldier of the Federal Armed Forces or refuses to make a statement concerning his first name, family name or name at birth, place or date of birth, marital status, profession, place of residence, address or nationality, shall be deemed to have committed a regulatory offence. ...

(3) The regulatory offence in cases falling under subsection 1 may be sanctioned by a regulatory fine not exceeding one thousand Euros ... unless the act may be sanctioned according to other provisions.