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Acusados (procedimientos penales)

Alemania

Estas hojas informativas exponen lo que sucede cuando se sospecha que alguien ha cometido un delito.

Este sitio no dispone de traducción oficial a la lengua que ha seleccionado.
Puede acceder aquí a una versión de este contenido traducida automáticamente. Recuerde que la traducción automática solo sirve a modo de contextualización. El propietario de esta página no acepta responsabilidad alguna sobre la calidad de la traducción.
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La información sobre delitos de tráfico que tal vez sólo comporten la imposición de una multa, figura en la Hoja informativa 6.
Si ha sido usted víctima de un delito y busca información, encontrará una amplia exposición de sus derechos aquí.

Breve descripción del proceso penal

A continuación figura una breve descripción de las fases de un proceso penal.
El proceso penal se divide en tres fases: Instrucción, fase intermedia y plenario (que incluye la fase de recurso y la ejecución de sentencia).
Instrucción *(Ermittlungsverfahren)*: la fiscalía o la policía inicia la instrucción de un sumario contra usted si sospecha que ha cometido un delito. Con él se pretende dilucidar si la sospecha está fundada o no. A tal fin se pueden adoptar diferentes medidas de investigación, como por ejemplo el registro de su domicilio. Una vez concluida la instrucción, la fiscalía decide si sobresee el procedimiento por falta de pruebas o si presenta una acusación contra usted.
Fase intermedia (Zwischenverfahren): en la fase intermedia, el tribunal examina la acusación y decide si archiva la causa o la continúa. Si, a la vista de las pruebas disponibles, aprecia que es probable un resultado condenatorio, inicia el procedimiento plenario.
Plenario *(Hauptverfahren)*: en el procedimiento plenario, el tribunal prepara e lleva a cabo la vista oral. Los cargos de la acusación se examinan en una vista oral mediante las pruebas disponibles (testigos, documentos, etc.). También se le ofrece al acusado la posibilidad de exponer los hechos de que se le acusa desde su punto de vista o de manifestarse al respecto. Si se confirman los cargos, le condenan a una pena. Si no se confirman, lo absuelven. Se puede recurrir la sentencia condenatoria en unos plazos determinados. En el procedimiento de apelación se repite la vista oral ante un tribunal superior. En el procedimiento de casación solamente se examinan posibles errores jurídicos en la sentencia.
Existen variantes de este procedimiento. Las principales son el procedimiento sumario *(Strafbefehlsverfahren)*, el sobreseimiento del proceso *(Einstellung des Verfahrens)* y el procedimiento acelerado *(beschleunigtes Verfahren)*.
En las hojas informativas figuran detalles sobre las fases del proceso penal y sobre los derechos del acusado. Se trata de información meramente orientativa que no sustituye a la asistencia letrada.

El papel de la Comisión Europea

Es importante tener en cuenta que la Comisión Europea no desempeña ninguna función en el proceso penal en los Estados miembros y no le puede ayudar si quiere usted formular una queja.

Entre en el siguiente enlace, donde encontrará la información que desea.

1 – Aclaraciones
2 – Cómo obtener asistencia letrada
3 – Mis derechos durante la instrucción
Toma de declaración al imputado
Identificación policial/registro personal
Registro/incautación/escuchas
Detención
Prisión preventiva
Acusación
4 – Mis derechos en el proceso ante el tribunal
5 – Mis derechos tras el juicio oral
6 – Delitos de tráfico y delitos menos graves

Enlaces relacionados

Ley de enjuiciamiento criminal (versión inglesa)

Última actualización: 30/08/2019

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1 - Notes

Discontinuation of proceedings (1)
Summary proceedings (2)
Expedited proceedings (3)
Court-appointed lawyer (4)
Data on investigations/charges/convictions (5)
Legal challenges during investigation (6)

Discontinuation of proceedings (1)

Proceedings may be discontinued (*Einstellung*) at any point, either by the public prosecutor or, after the prosecution has been brought, by the court. There are various ways in which proceedings can be discontinued. The main ones in practice are as follows.

Proceedings can be discontinued provisionally, for example if you are absent for a long period. Proceedings can also be discontinued if the investigation does not produce sufficient grounds to bring charges, in which case the public prosecutor may reopen the proceedings at any time (subject to certain periods of limitation), for instance if new evidence comes to light.

The proceedings can also be discontinued definitively. This can happen in the case of offences where the degree of culpability is small and there is no reason to believe that prosecution would be in the public interest. Proceedings may also be discontinued conditionally, for example on condition that you pay a fine or comply with an order, such as an order to attend road safety classes.

Summary proceedings (2)

At the end of an investigation into a minor offence (*Vergehen*) the public prosecutor, rather than bringing a prosecution, may apply to the court in writing for a summary order (*Strafbefehl*). The court may make a summary order if it considers the written evidence sufficient. A summary order describes the offence briefly and imposes a stated penalty. If you do not object, the summary order has the same effect as a final judgment.

A summary order has limited legal consequences. It normally imposes a fine. It may also impose a driving ban. Provided you have a defence lawyer, you may also be sentenced to a term of imprisonment of no more than one year, but probation must be granted.

If you do wish to object, you have two options:

In the case of a fine, you may confine your objection to the daily quota used to calculate the fine. If you and the public prosecutor agree, the court can take a decision without a full trial.

If you do not limit your objection, the case will go to trial. You do not have to appear in person, but may be represented by a lawyer. Witnesses do not need to appear in person either. Minutes of examinations of witnesses can be read out with your agreement, if you are present at the trial.

At the end, the court will deliver judgment. It is not bound by the penalty imposed in the summary order: it may also impose a higher penalty, within the legal sentencing limits.

Expedited proceedings (3)

Where the facts are simple and the evidence is clear, the public prosecutor can also apply to the court for expedited proceedings (*beschleunigtes Verfahren*). Proceedings of this kind may be resorted to for example if you are not resident in Germany and there is reason to believe that you will not appear at a later court hearing.

If the public prosecutor applies for expedited proceedings, the trial will take place immediately or within a short time. There is no need for a court decision to proceed to the trial stage, as there is with an ordinary prosecution: there are no intermediate proceedings.

In expedited proceedings there are simpler rules allowing the court to refuse applications to have certain evidence considered.

The scope for sentencing is likewise limited. The court can impose only a fine, or a term of imprisonment of no more than one year. It may also withdraw your driving licence.

Courtappointed lawyer (4)

Unless you are already being represented by a lawyer, the court must appoint one if you are suspected of a more serious crime (*Verbrechen*), or if the likely sentence in the event of a conviction is more than one year's imprisonment, or if you are being held in pretrial custody, or you are unable to defend yourself for other reasons. In expedited proceedings a defence lawyer will be appointed if the likely sentence is more than six months. The court's obligation to appoint a lawyer does not depend on your financial status.

The court appoints the lawyer. It must allow you to choose your own lawyer if you so wish and to nominate that lawyer to the court. If you do not nominate a lawyer, the court will designate one itself.

The courtappointed defence lawyer can be changed only in exceptional cases. You may also appoint a different lawyer of your own choice, in which case the court will usually withdraw the appointment of the courtappointed lawyer. If you do choose your own lawyer you will have to pay the costs yourself, except in so far as the costs have to be borne by the state in the event of an acquittal.

Data on investigations/charges/convictions (5)

What data is kept?

The police keep their own databases of information obtained during investigations.

The public prosecutor's office also stores data during and after an investigation. Information obtained in the course of an investigation is also kept in a central register of prosecutions. There are specific periods set by law after which the information must be deleted.

Records of convictions in criminal cases are kept in the Federal Central Criminal Register (*Bundeszentralregister*). You have no say about whether this data is recorded. Convictions are deleted after a specified time if no fresh convictions have been added. The length of time depends on the severity of the sentence.

What data are consulted in criminal proceedings and when?

The police and public prosecutor may access their own databases at any time. They have no direct access to the Federal Central Criminal Register. When the court prepares for the trial it will request an extract from the register.

Do the data play a role at the investigation stage?

If there are records of previous investigations, the public prosecutor's office must take these into account if, for example, it is checking the possibility of discontinuing proceedings under Sections 153 and 153a of the Code of Criminal Procedure.

Do the data play a role at the trial stage?

The law allows previous convictions recorded in the central register to be taken into account at the trial. If you are found to have previous convictions, they may have a negative effect on the sentence. Data kept only by the public prosecutor or the police may not be taken into account in sentencing.

How can I find out what information has been stored about me, and what can I do about it?

You can find out what data concerning you has been stored by applying to the departments that record the data.

You can apply to have the data deleted by the department. If the department refuses to do so, you may have the decision reviewed by a court.

Further information

The Central Criminal Register is governed by the Federal Central Criminal Register Act. Data stored by the public prosecutor is subject to Sections 483 ff. of the Code of Criminal Procedure; the central register of prosecutions is covered by Section 492(1) of the Code of Criminal Procedure, with further details in a Regulation; police databases are governed by the Federal Office of Crime Prevention Act and the police legislation of the *Länder*.

Legal challenges during investigation (6)

You have the right to challenge measures taken during an investigation. The remedies open to you include filing a police complaint or applying for the matter to be decided by a court.

You can lodge a complaint (*Beschwerde*) against such a court decision.

If the police or the public prosecutor have taken a measure without a warrant, you can apply to have it reviewed by the court retrospectively. If you object to a seizure, the matter will be brought before a judge automatically, and you do not need to apply to the court.

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2 – Getting legal advice

Getting independent legal advice is very important if you are involved in some way in the criminal process. The factsheets tell you when and in what circumstances you are entitled to be represented by a lawyer. They also tell you what a lawyer will do for you. This general factsheet tells you how to find a lawyer and how the costs of the lawyer will be met if you cannot afford to pay for legal advice.

Finding a lawyer

When you learn that you are subject to a criminal investigation, you may search for specialist criminal lawyers on the Internet for example. Every lawyer (*Anwalt*) registered in Germany is authorised to act as a defence lawyer. If the matter is urgent, because you are about to be arrested or your premises are about to be searched, you can find a defence lawyer around the clock through a criminal lawyer hotline. If you need someone with specific language skills or in a particular location, you can go to the criminal lawyer search function provided by the Criminal Department of the German Law Association (*Deutsches Anwaltverein*). You can also look up the regional bar association (*Rechtsanwaltskammer*). Since 1 January 2010, there have been regional lists of lawyers who are prepared to take on court-appointed defence work. You can find out where to get these lists and how to use them through your local bar association (including here).

If you have been arrested or are being held in pre-trial custody you will not be able to access this information. The police are obliged to provide you with a list of lawyers or a telephone directory if you ask for one. The police also know the hotlines. If the police do not allow you to get in touch with a lawyer, you must tell this to the court as soon as you appear there. The courts also have lists of lawyers who are prepared to take on court-appointed defence work.

Paying for a lawyer

If you are acquitted, the state must pay the lawyer's costs. If the proceedings are discontinued at the investigation stage or if you are convicted, you will have to bear the costs yourself.

Even if you are on a low income or have no income at all, there is no basic right to financial support from the state in criminal proceedings. You can apply for aid for initial legal advice from your local court (*Amtsgericht*).

There are special rules on payment in the case of court-appointed defence lawyers. Here the state pays the lawyer in the first place, but the statutory payment for a courtappointed lawyer is lower than what the lawyer would otherwise be able to charge. If you are convicted, you will be billed for the costs of the court-appointed lawyer at the end of the proceedings. You will then have to pay the legal costs back to the state, and in addition pay the lawyer the costs he or she would have been entitled to charge if he or she had not been appointed as your lawyer by the court, always supposing that you are in fact able to pay.

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3 – My rights during the investigation

This factsheet deals with the investigation stage, which starts when the law enforcement authorities carry out their first investigations and ends when the public prosecutor brings a charge or discontinues the proceedings.

What are the stages in a criminal investigation?

The prosecuting authorities (either the public prosecutor or the police) will start an investigation if they suspect you of a criminal offence. The aim of the investigation is to establish whether or not the suspicion against you is justified. They must also investigate any evidence in your favour. If the public prosecutor believes that the suspicion is justified he or she will bring a charge against you (or apply for a summary order (*Strafbefehl*)).

In order to investigate the case there is a variety of measures that the police and the public prosecutor can take. What measures will be taken, and when, depends on the circumstances. For example, you may be arrested immediately after committing an offence. Arrest may be followed by pre-trial custody.

If you feel that an investigative measure will affect you adversely you may challenge it before a court, at the time or retrospectively.

Data regarding previous investigations and convictions may be called for. The details are explained here.

My rights during an investigation

You have the right to a lawyer throughout the investigation. For information about finding a lawyer and the related costs, see here. If you do not speak German, you can request an interpreter for your meetings with your lawyer.

You do not have the right to see your file. However, you can be granted disclosures from the documents if they do not put the investigations in jeopardy, or infringe the rights of third parties. When the investigation is complete, your defence lawyer will be granted access to the documents. Before this, access is granted only if it does not jeopardise the purpose of the investigation.

For information about your rights if any of the following investigative measures are taken against you, see the sections below:

Questioning (1)

Identification procedure/body search (2)
Search/seizure/wiretapping (3)
Arrest (4)
Pre-trial custody (5)
The charge (6)

If I am a foreign national, how will this affect the investigation proceedings?

In general, you have the right to leave Germany during a criminal investigation. You are prevented from leaving the country only if you have been arrested, or if an arrest warrant has been suspended subject to the condition, for example, that you are not to leave your place of residence without the permission of the court.

If you know that you are being investigated, you should make sure that the public prosecutor and the court can contact you by post.

You can contact your national consulate at any time in the course of an investigation.

Questioning (1)

If you are suspected of an offence, the police or the public prosecutor will question you about the accusation, so as to ensure that you are given a proper hearing. In some cases, if the public prosecutor so requests, you may also be questioned by a judge.

What should I do if I have been called for questioning?

If the public prosecutor or a court has called you for questioning (*Vernehmung*), you must attend. If you fail to respond you may be brought before the prosecutor or court by force. If you are called for questioning by the police you are not bound to attend.

What will I be told before questioning?

Before you are questioned you will be told what you are accused of having done, and what laws may have been broken. You will be told that you have the right to remain silent, that you may consult a lawyer before you are questioned, and that you may ask for items of evidence in your favour to be considered.

Will I be provided with an interpreter if I don't speak the language?

If your German is not good enough, an interpreter will be provided. This will not cost you anything. The interpreter will attend the whole interview and will translate the questions, your answers and the written record of the interview.

Can I talk to a lawyer?

As a suspect you may speak with a defence lawyer alone or in the presence of an interpreter. If you are questioned by the public prosecutor or a judge, you may have a defence lawyer present, but not if you are questioned by the police.

Will I be interviewed? Should I give information?

Before the end of the investigation the police or public prosecutor must question you, unless the proceedings are discontinued. If the case is straightforward, you may be questioned in writing.

When you are questioned, even in writing, you must give your personal particulars. These include your first names, surname, name at birth, place and date of birth, marital status, your occupation, your address and your nationality.

However, you are under no obligation to answer the accusation, or to provide information relating to the case. What you say, and how much, is up to you, though you may wish to speak to your lawyer first.

What happens if I say something to my disadvantage?

Everything you say during an interview will be recorded in minutes. If you say something that is to your disadvantage, the court that considers your case after you are charged will know of it. Even if at a later stage you want to remain silent or to withdraw your statement, the court may in its judgment take account of anything you said earlier.

Will I be told of the state of the investigation when I am questioned?

It is up to the public prosecutor whether to inform you about the state of the investigation. The public prosecutor may not, however, give you misleading information.

What methods may not be used?

You cannot be mistreated or otherwise physically handled during questioning. Nobody may threaten you or promise you anything that is not allowed by law. Any statement you make under those conditions cannot be taken into consideration, even with your agreement.

Further information

The rules on interviewing suspects are set out in Sections 136, 136a and 163a of the Code of Criminal Procedure.

Identification procedure/body search/blood samples, etc. (2)

You can find details of how to challenge such measures here.

What does the identification procedure involve? When will this be done?

The aim of the identification procedure (*Erkennungsdienstliche Behandlung*, *ED-Behandlung*) is to identify you so as to help establish your guilt or innocence in pending criminal proceedings. You may be photographed, your fingerprints or palmprints may be taken, and a note may be made of any distinguishing features, such as tattoos.

The identification procedure may be ordered by a court, by the public prosecutor, or by the police. It is generally carried out by the police.

The identification procedure may be carried out under compulsion, which means the police can restrain you and straighten your arms or fingers in order to take fingerprints, for example.

Can an identification procedure be carried out if it isn't necessary for present purposes (e.g. if it is obvious that I am the perpetrator)?

Identification procedures may also be carried out for the purposes of future criminal proceedings, i.e. not for purposes of the case now pending but in order to preserve your details for any other cases that may arise at a later date. There must therefore be reason to believe that you may be subject to other criminal proceedings in future.

Are body searches allowed?

A body search may be ordered to establish facts that are material to criminal proceedings.

With a simple body search by the police, your body will be investigated to establish whether there is anything hidden in any of your natural orifices. If such a search might be embarrassing to you, it will be conducted by a person of the same sex or by a doctor. Before a search, you must be informed that you may ask for a person you trust to be present and that if you have a legitimate reason for doing so you are entitled to choose the sex of the person conducting the search. You are obliged to tolerate a search, but nobody can force you to take part in it actively.

Can samples be taken of my blood, other bodily fluids or my DNA (for example hair or saliva)?

Blood and other bodily substances may be taken, for example to check for any alcohol in your blood or to compare your DNA with traces of DNA found at the scene of the crime. Such samples may be taken only by a doctor, and not by the police. When the samples are no longer required for the criminal proceedings, they must be destroyed. However, your DNA pattern may be stored in a file if there is reason to believe that proceedings for a serious crime will be brought against you in the future.
If you do not agree to a body search or a DNA test, they will have to be ordered by a court. Where there is danger in delay and the matter is consequently urgent, the order may be given by the public prosecutor or the police. Force may be used.

Further information

Identification procedures are governed by Section 81b of the Code of Criminal Procedure, body searches and blood samples are governed by Sections 81a and 81d, and DNA tests are governed by Sections 81e, 81f and 81g.

Search/seizure/wiretapping (3)

You can find details of your how to challenge such measures here.

May my home, my office, my car etc, be searched?

If you are suspected of a crime, the public prosecutor or the police may search your home and other premises, including your car, if they expect to find evidence there or if they need to arrest you.
The search generally has to be ordered by a court. Where there is danger in delay and the matter is consequently urgent, a warrant may be issued by the public prosecutor or the police.
You may be present during the search. You may also have your defence lawyer present. If a judge or prosecutor is not available to attend the search, two local government officials should be called if possible. But you may dispense with their presence. When the search is over, you must be provided on request with a document stating the reasons for the search and the offence you are accused of.

Can my property be seized?

The prosecuting authorities may secure items belonging to you if they are important as evidence. If you do not hand them over willingly, they can be seized. To seize property a court warrant must be issued. Where there is danger in delay and the matter is consequently urgent, a warrant may be issued by the public prosecutor or the police. You may challenge a warrant in court at any time, even after the search has been carried out.
If any items are secured or seized during a search, you are entitled to an inventory if you ask for one.

Can my driving licence be seized?

Your licence can be suspended provisionally by a court if there are compelling reasons to suppose that the court will withdraw it in a subsequent judgment on a traffic offence. This usually applies if you have committed a traffic offence which has shown that you are unsuitable to drive a vehicle. The provisional suspension of your licence is confirmation by the court of any earlier seizure of the licence. The police or the public prosecutor can seize your licence where delay would be dangerous and there are urgent reasons for withdrawing your right to drive.

Is wiretapping allowed?

Any communications (e.g. by phone) and conversations you have in your home may be monitored and recorded, subject to strict legal conditions; however, there has to be suspicion of a serious or very serious crime. Both measures require a court warrant. Where there is danger in delay and the matter is consequently urgent, such measures may also be ordered by the public prosecutor. You must be informed of the measures retrospectively.

Further information

Search and seizure are governed by Sections 102 ff. and 94 ff. of the Code of Criminal Procedure, provisional suspension of a driving license (seizure of a driving license) is governed by Section 111a, and wiretapping is governed by Sections 100a ff.

Arrest (4)

The public prosecutor or the police may arrest you provisionally if you are stopped at the scene of a crime or pursued from the scene of the crime and are suspecting of trying to escape. The public prosecutor or the police may also arrest you provisionally if there is danger in delay and the matter is consequently urgent, provided the conditions for issuing an arrest warrant are met. This is so if there are compelling reasons to suspect you of a crime and there are specific grounds for arrest. At the time you are arrested a warrant may already have been issued or ay still have to be issued by a judge on application by the public prosecutor.
Arrest may also be ordered if particular investigative measures, such as questioning or a body search, have to be carried out forcibly.

Will I be told why I have been arrested?

You will always be told the reason why you are being arrested. If a warrant has been issued, a copy must be given to you when you are arrested.

How long can I be held?

If you are detained under an arrest warrant which has already been issued or which has still to be applied for, your detention is subject to these time limits.
If you have been arrested in order to allow investigative measures to be carried out forcibly, they must be carried out immediately, and you must be released when they are complete. The time necessary depends on the circumstances. In such cases you may not in any event be detained for longer than the end of the day following the day of your arrest.
If you are arrested and it subsequently emerges that you are already under a custodial sentence which you have not yet served, you may be put in penal custody following your arrest.

Can I contact anyone?

When you are arrested you have the right to ask for a defence lawyer chosen by yourself at any time. You can inform a family member or someone you trust if this does not jeopardise the purpose of the investigation. You can also ask for your own country's consulate to be informed.

Can I get a doctor if I need one?

You can ask to be examined by a doctor of your choice.

What is a European arrest warrant, and how can I contest one?

The purpose of a European arrest warrant is to order the arrest and handing over of a person who is wanted in the EU for prosecution or to serve a prison term or other custodial sentence. If you are subject to a European arrest warrant, you can be arrested in any Member State and removed to the Member State that issued the warrant.
If you are held in Germany under a European arrest warrant, you will first be questioned in the nearest local court (*Amtsgericht*) to establish your particulars and hear whether you have any objection to make to your extradition. The decision on any objections will be taken by the higher regional court (*Oberlandsgericht*).
You are entitled to legal representation at every stage of the procedure.
If you agree to extradition, you will be extradited immediately (the 'simplified extradition procedure'). You will be advised that you may waive the 'speciality rule'. If you do this, you may be prosecuted in the country issuing the warrant in other proceedings that are not the subject of the warrant. Your agreement to simplified extradition or to the waiver of the speciality rule is irrevocable.

If you do not agree, the higher regional court will rule on the validity of the extradition within 60 days. There is no appeal against the court's decision.
For further information, see here and here.

Pre-trial custody (5)

When must I be informed of the arrest warrant?

If you have been detained under an arrest warrant, it must be given to you upon your arrest. If you have been arrested provisionally, you will have to appear before a court no later than the day after the arrest. If the court then issues an arrest warrant, it will inform you accordingly. If the court does not issue an arrest warrant, you will be released.

When can I be held in custody before my trial?

You can be held in custody if there are compelling reasons to suspect you and one of the grounds for arrest is present. These grounds include very serious crime, efforts to abscond, the danger that you might abscond, the danger of a repeat offence, or the danger that you might impede investigation of the offence, for instance by destroying evidence or influencing witnesses. You may be considered likely to abscond if you have no fixed abode, no permanent job and no close social attachments.

What can I do to contest a warrant for pretrial custody?

You can challenge a warrant for pretrial custody before the next higher court. You can also apply for a review of the warrant by the court that issued it. But if you apply for a review by the same court you cannot also challenge the warrant in the higher court.

How long can I be held in pretrial custody?

You can be held until the end of the criminal proceedings. You may be released earlier if the arrest warrant is withdrawn or your arrest is suspended. A suspension of your arrest may be conditional: for example, you may have to deposit a sum of money in bail, or you may be required to report regularly to the police.

You may be held in pre-trial custody for more than six months only in specified circumstances (e.g. if the investigation is especially difficult or unusually wideranging, or there are other important reasons), which must be examined by the public prosecutor or by the court even on their own initiative

What will I be told on my arrest?

When you are arrested you will have to be told, in a language you understand, that you
will appear before court immediately, or no more than one day after your arrest;
are entitled to express your view of the accusation, or to remain silent;
are entitled to ask for evidence in your favour to be considered, and to remain silent otherwise;
may consult a lawyer of your choice at any time, even before you are formally questioned;
are entitled to ask to be examined by a doctor of your choice; and
may inform a relative or another person you trust, provided this does not jeopardise the purpose of the investigation.

You must be told that you may request interpreting services free of charge, and that you may inform the consulate of your country, which is entitled to correspond with you. When you are formally questioned you must be told of any incriminating circumstances. You must be allowed to rebut the reasons for suspicion and for your arrest and to draw attention to any circumstances in your favour. Finally, you must be informed of your right to challenge your arrest in the same or a higher court.

Can I receive visitors, get mail, wear my own clothes, etc., when in custody?

Generally you are allowed to receive mail while in pre-trial custody. However, you may be subject to certain restrictions. For example, you may be required to ask permission to receive visits and to use telecommunications. There may be a requirement that telecommunications and any mail or parcels you receive be monitored, or that you must ask permission to receive items during visits. You can challenge any of these restrictions. On the other hand, there are generally no restrictions on spoken or written communication with your defence lawyer. The rules on pre-trial custody can differ from one *Land* to another.

The charge (6)

If the investigation reveals sufficient grounds for you to be charged, the public prosecutor will submit an indictment setting out the charge (*Anklage*) or apply for a summary order (*Strafbefehl*) from the appropriate court. Otherwise the prosecutor will discontinue the proceedings. In the indictment the public prosecutor summarises what you are accused of, what laws you have broken, and what the evidence is.

What does it mean if the court sends me an indictment?

At the intermediate stage the court has to consider whether the case should go to the main proceedings stage, i.e. to trial. It will first give you a copy of the indictment. It will also ask you to declare by a certain time if there is other evidence in your favour that needs to be considered, and whether you have any objection to the opening of the main proceedings.

In expedited proceedings the charge is treated differently, see here.

What can I do if I cannot understand the charge because I don't speak German?

If you are charged in a language you do not understand, you can request to have it translated, at no expense to you, and served on you again.

What can I do if I believe the charges to be wrong?

The court will give you a certain amount of time to state the grounds on which you believe the charge to be untrue. You can also apply for evidence to be considered which you think will be to your advantage.

Can the court dismiss the charge?

If the court believes that you will probably not be sentenced on the basis of the indictment, for example if it believes there is insufficient evidence, it will not allow the case to go to trial. The public prosecutor may immediately appeal against this decision.

Can the indictment be changed before the trial stage?

The public prosecutor may withdraw or amend the indictment at any time before the court allows the case to go to trial. The prosecutor may in any event bring forward new evidence at any time during the criminal proceedings.

Can I be charged for a crime for which I have already been charged in another Member State?

Being charged in another Member State does not prevent you from being charged in Germany. But if you have already been convicted for the same offence you will not be prosecuted again.

Will I be informed of the witnesses and evidence against me?

In the indictment the public prosecutor will list the evidence in support of the charge. Your defence lawyer will be able to view the file no later than at the end of the investigation and before the charge is brought against you. You yourself are entitled to information from the file and copies of individual documents.

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4 – My rights in court

The public prosecutor will forward the indictment to the court, which will decide in intermediate proceedings whether or not to proceed to the main proceedings stage, i.e. to a trial.

If the court allows the indictment to go to trial, the main proceedings begin with a court hearing. Court hearings may take place on one day or over several days. The indictment may also be dealt with in expedited proceedings governed by separate rules.

How will the trial proceed?

First of all, the court will determine who is present: the public prosecutor, you and your defence lawyer (if any), and witnesses. The witnesses will then be asked to wait outside the courtroom.

You will be asked to give your personal particulars. You must give your name, address, place of birth, marital status and occupation. You do not need to say how much you earn.

The charge will then be read out.

You will be able to state your view on the accusations made. You do not have to say anything: you may remain silent. The court may not draw any inference against you from your silence. After that the evidence will be produced, i.e. witnesses questioned, expert witnesses heard and/or documents read out.

The public prosecutor and your defence lawyer (if any) will then give their assessments of the evidence and propose that you be convicted or acquitted.

You will have the last word.

The court will then give judgment and state the grounds on which its judgment is based.

Where will the trial take place?

The trial will be held in the place where the public prosecutor brought the charge; there are specific rules governing this aspect. Often the trial takes place in the court with jurisdiction for the area where the offence was committed.

Whether the proceedings will be conducted in the local court (*Amtsgericht*), the regional court (*Landgericht*) or the higher regional court (*Oberlandesgericht*) depends on the likely penalty for the offence. If a fine or a term of imprisonment of no more than two years can be expected, the case will be heard by a single judge sitting in the local court. If a sentence of two to four years' imprisonment is expected, the case will be heard in the local court before three judges, consisting of one professional judge and two nonprofessional judges (*Schöffen*). If a sentence of more than four years' imprisonment is expected, the case will be heard in the regional court, before two or three professional judges and two nonprofessional judges. Matters of national security are heard by the higher regional court, consisting of three professional judges.

Will the trial be public?

The trial is public. The public will be excluded only in exceptional circumstances, e.g. in order to protect witnesses.

Can the charges be changed during the trial?

Minor changes can be made to the charges on the instructions of the court. Supplementary charges may be brought during the trial. But supplementary charges will be considered only if you and the court agree.

What happens if I plead guilty to some or all of the charges in the course of the trial?

An admission will not end the proceedings. However, the court may decide not to hear some of the evidence if it regards your admission as reliable, for example because it is corroborated by evidence already heard. If you admit any of the charges the court may reduce the sentence. In some cases your admission may form part of a plea bargain. A plea bargain relates to the sentence, and not to the verdict of guilty or not guilty.

What are my rights during the trial?

You are required to attend the trial. If you have not been excused from attending and nevertheless fail to appear, the trial will be stayed, and a warrant may be issued for your arrest. Proceedings for a summary order are an exception to this rule.

If you cannot speak the language well enough, the court will provide an interpreter to translate all important steps taken and statements made during the trial.

You can appoint a lawyer to defend you. In some cases you must have a defence lawyer. If you do not choose a lawyer, the court will designate a court-appointed defence lawyer.

Can I challenge the evidence presented against me?

When evidence is brought against you, you can express your opinion of it. You can dispute any evidence which you believe has been improperly brought against you.

You can also apply for further evidence to be brought. You can gather your own evidence, but you will not enjoy the same powers as the police. For example, you cannot intercept telephone calls and produce the recordings n evidence.

You may ask witnesses to appear and say what they know, and you may bring them to the court. Bear in mind, however, that witnesses are under an obligation to tell the court the truth.

Witnesses are questioned first by the judge or judges and then by the public prosecutor. You and your lawyer may question them after that.

As a rule, an extract from the register showing your criminal record, clean or otherwise, will be read out. If you have already been convicted of a crime similar to the one at issue in the present proceedings, the previous judgment may also be read out. The criminal register does not show previous convictions in other Member States. However, if the court learns of previous convictions in some other way it may take them into account.

What happens at the end of the trial?

The trial ends with a judgment, or the proceedings may be discontinued.

In the majority of cases trials end with a judgment. The court may find you guilty or acquit you, depending on the evidence. The judgment may impose a fine or a term of imprisonment. In particular circumstances provided for by law, the court may order a measure such as placement in a psychiatric hospital or a drug rehabilitation centre, or preventive detention. Withdrawal of your driving licence is another possible measure of this kind. A driving ban may be imposed as a supplementary penalty.

A fine is measured in terms of a certain number of daily quotas (*Tagessätze*, e.g. 50 daily quotas of €15). The daily quota is always one-thirtieth of your monthly income. You can also work to discharge a fine. If you do not pay the fine, and do not work off the fine, you will be imprisoned for one day per daily quota. If the fine is no more than 180 daily quotas, it may be suspended. That means you will be given a warning, and will have to pay the fine only if you offend again after sentencing, or otherwise breach any orders made by the court.

Prison sentences of up to two years can also be suspended. If you fail to meet the probation conditions, the sentence can be enforced.

Other measures and additional penalties can be attached to the sentence.

What is the role of the victim during the trial?

In the majority of cases the victim is an important witness, and will be heard in that capacity.

Victims of certain crimes may also take an active part in the trial if they are entitled to join their own civil action to the public criminal action. Victims may then themselves ask questions or apply for evidence to be considered, and may be represented by a lawyer who will do this on their behalf. At the end of the trial the victim or the victim's lawyer may make closing submissions recommending a particular sentence.

Further information

The main proceedings are governed by the Code of Criminal Procedure and the Organisation of the Courts Act.

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5 – My rights after the trial

If the court convicts you, you may appeal against the sentence. If you are acquitted you have no right of appeal, even if you do not agree with the grounds for your acquittal. The court must inform you of the options open to you.

There are two kinds of appeal against a judgment of a local court (*Amtsgericht*): a full appeal (*Berufung*), on questions of fact and of law, and an application for review (*Revision*), which is an appeal on points of law only. Against the judgment of a regional court (*Landgericht*) only the second of these is available.

Can I appeal the judgment?

As soon as the judgment is announced, you or your lawyer may state on the record that you are appealing. You can also appeal up to one week after the judgment. You can either appeal in writing or make a formal statement to the court office to say that you are appealing. You can appeal even if the judgment was preceded by a plea bargain.

You can appeal either against the conviction itself or against the level of the penalty.

If you enter a full appeal on questions of fact and law, you need not necessarily state your grounds.

If you apply for a review on points of law only, you must provide a statement of your grounds within one month of the date on which you are informed of the grounds of the judgment. To do this you will need a lawyer, because you are not entitled to submit such a statement of grounds without professional assistance.

What happens if I appeal?

If you appeal against the judgment it is not enforceable for the time being. This means that for the time being you do not have to pay the fine or serve the sentence imposed. If you are in pretrial custody, however, you will not be released. You can be released only if the court withdraws or suspends the pretrial arrest warrant.

There are no time limits within which your appeal must be decided. However, there is a general requirement that criminal proceedings must be completed as rapidly as possible.

On a full appeal a fresh trial takes place before the regional court. The court itself decides what evidence it considers material. It may look at the same evidence as the first court. But it may also consider other evidence. You yourself may also apply to have new evidence considered.

On an application for review no new evidence is produced. The court considers only whether there were any legal defects in the earlier judgment and the proceedings that led to it.

What happens at the appeal hearing?

In a full appeal before the regional court the hearing follows the same pattern as the hearing in the local court. The court delivers its own judgment. The procedure is different only if you confine your appeal to the level of the sentence. In that case the court will hear only evidence relevant to the level of the penalty, for example regarding your motives and personal circumstances.

In an application for review, judgment can be delivered without oral proceedings.

What happens if the appeal is successful/unsuccessful?

If you have brought a full appeal, and your action succeeds, you will be acquitted or your sentence will be reduced. If you are not acquitted, you can apply for a review of the appeal judgment.

If you have brought an application for review of the first judgment, and your action succeeds, there are two possibilities. Under certain circumstances the court carrying out the review may decide the case itself, and may for example acquit you. But in some cases the court carrying out the review must quash the earlier judgment and send the case back to the lower court.

A judgment that has been quashed is not entered in the criminal register.

A judgment is final if no appeal is entered within the time allowed, by any of the parties, that is to say by you, by the public prosecutor, or by any other party who has been allowed to join their own civil action to the public criminal proceedings.

I am from another Member State. Can I be sent back there after the trial?

As a citizen of the EU you can be expelled and deported from Germany only in strictly defined circumstances. The details are set out in the Free Movement of EU Citizens Act. If you are concerned that you might be deported, you can consult a lawyer.

If I have been convicted, can I be prosecuted again for the same offence?

In principle you cannot be convicted twice for the same offence. But whether a conviction does in fact relate to the same offence is a question that can involve fine legal distinctions.

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Nuestros traductores trabajan en una versión en la lengua que está
consultando.

6 – Traffic offences

How are traffic offences dealt with?

Minor traffic offences, such as speeding, are dealt with administratively. They are not considered criminal offences (*Straftaten*), but only misdemeanours (*Ordnungswidrigkeiten*). But serious traffic offences, especially offences where other road users are endangered or injured, do usually constitute criminal offences.

Minor traffic offences are investigated by the administrative authorities. During the proceedings you can present your views in writing. For very minor offences (e.g. parking offences), you will be cautioned and offered the chance to pay a cautionary penalty (*Verwarnungsgeld*) of up to €35. If you pay, that

will be the end of the matter; if you do not, and the administrative authorities believe you are to blame, they can issue a fining order (*Bußgeldbescheid*) requiring you to pay a fine (*Bußgeld*). Such an order may also impose a driving ban. The amount of the fine and the length of the ban are set out in a catalogue of penalties .

You may enter an objection (*Einspruch*) to a fining order. The public prosecutor will refer the case to court. In principle there should then be a trial, on the lines described in factsheet 4. But if the court does not consider a full trial necessary, and you and the public prosecutor agree, it may decide the matter in a court order (*Beschluss*). You can challenge a judgment or order in such proceedings by bringing a complaint on a point of law (*Rechtsbeschwerde*) in the higher regional court (*Oberlandsgericht*). But this form of appeal is available only in certain circumstances, such as where you have been fined more than €250, or where the case would help to clarify the law.

Are citizens of other Member States prosecuted for such offences? If so, how?

Citizens of other Member States are also prosecuted for such offences. If you commit a driving offence, a cautionary penalty or a security payment may be required on the spot. Any such security payment will be offset against the fine determined at the end of the proceedings. If you are not stopped at the time of the offence, you may be prosecuted if your country shares vehicle identification data with Germany. Germany expects to join the EU-wide system for the enforcement of fines in autumn 2010. Fines imposed in Germany will then be enforceable in your home country.

Will these offences appear on my criminal record?

Minor traffic offences are not recorded in the Federal Central Criminal Register, but in a separate Central Register of Traffic Offenders. This contains particulars of persons committing traffic offences in Germany, whether their licence is German or foreign. Offences are recorded if the fine imposed amounts to €40 or more. Depending on the seriousness of the offence, a certain number of penalty points is also recorded. German drivers lose their driving licence if they get 18 points or more, while foreign drivers lose the right to drive in Germany.

Further information

Traffic offences and the relevant procedures are governed by the Road Traffic Act, the Highway Code and the Misdemeanours Act.

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