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Germany

Defendants (criminal proceedings)

Germany



These factsheets explain what happens if you are suspected of committing a crime.

Summary of the criminal proceedings

Below you will find a summary of the stages involved in criminal proceedings.

There are five different stages: investigation, intermediate proceedings, trial, appeal and enforcement proceedings.

- Investigation (*Ermittlungsverfahren*): the law-enforcement authorities (public prosecutor or police) will open an investigation against you if you are suspected of committing a criminal offence. The purpose of the investigation is to clarify whether or not the suspicions against you are justified. Various investigative measures may be taken to this end, such as searching your home. Once the investigations have concluded, the public prosecutor will decide whether to terminate the proceedings for lack of evidence or for other reasons, or whether to bring charges against you.
- Intermediate proceedings (*Zwischenverfahren*): during intermediate proceedings the court will consider the charges and decide whether to terminate or continue with the proceedings. If, on the basis of the evidence presented, the court believes that a conviction is likely, it will start the trial.
- Trial (*Hauptverfahren*): during this stage the court will prepare and conduct the trial. The charges will generally be considered at an oral hearing on the basis of the available evidence (witnesses, documents, etc.). You will also be given the opportunity to comment on the charges and give your version of events. If the charges are upheld, you will usually be sentenced. In juvenile criminal cases the court will often order other measures instead, which will mainly serve an educational purpose and do not have the legal consequences of a sentence. If the charges are not upheld, you will be acquitted.
- Appeal (*Rechtsmittelverfahren*): you can lodge an appeal against a conviction within certain time limits. If an appeal is brought on points of fact and law (*Berufungsverfahren*), a new trial will be held before a higher court and, where appropriate, new evidence will be taken. On the other hand, if an appeal is brought on points of law only (*Revisionsverfahren*), the judgment will be reviewed solely to establish whether it contains any errors in law. The judgment may not be enforced until it becomes final.
- Enforcement proceedings (*Vollstreckungsverfahren*): lastly, once the judgment has become final, the penalty that has been imposed is enforced during enforcement proceedings. At this stage, decisions may also be taken on matters including the early release of the offender (with the remainder of the sentence being suspended on probation).

There are variations on the above. The main variations are discontinuation of the proceedings (*Einstellung des Verfahrens*), summary penalty proceedings (*Strafbefehlsverfahren*) and expedited proceedings (*beschleunigtes Verfahren*). In the area of juvenile criminal law there are also simplified juvenile court proceedings.

Details on the stages in criminal proceedings and on your rights can be found on the following pages. This information is not a substitute for legal advice and is intended to be for guidance only.

Click on the links below to find the information that you need

[My rights during the investigation](#)

[My rights during trial](#)

[My rights after the trial](#)

Related links

[Code of Criminal Procedure \(*Strafprozessordnung*\) \(English version\)](#)

[Youth Courts Act \(*Jugendgerichtsgesetz*\) \(English version\)](#)

[Criminal Code \(*Strafgesetzbuch*\) \(English version\)](#)

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1 - My rights during the investigation

No information currently available. Please check back on a later date.

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2 - My rights during trial

A. Where will the trial take place?

The trial will be held in the place where the public prosecutor files the charges; there are legal rules governing this. Often the trial is held before the court in the place where the crime was committed.

Whether it is brought before the Local Court (*Amtsgericht*), Regional Court (*Landgericht*) or Higher Regional Court (*Oberlandesgericht*) also depends on factors including the sentence that can be expected for the crime. If a person has been accused of a less serious criminal offence (*Vergehen*) and the sentence is expected to be just a fine or a custodial sentence of up to two years, the case will be heard at the Local Court by a judge sitting alone. In the case of serious criminal offences (*Verbrechen*) with an expected custodial sentence of between two and four years, the mixed bench (*Schöffengericht*) at the Local Court, consisting of a professional judge and two lay assessors, will rule on the case. If the expected sentence is a custodial sentence of more than four years, the case will be decided by the Regional Court, with a panel consisting of two or three professional judges and two lay assessors. In the case of crimes against the state, the Higher Regional Court has jurisdiction to hear the case, with a panel made up of three or five professional judges, depending on the complexity or scope of the proceedings.

B. Can the charges be modified? If so, what is my right to information in this regard?

Under certain circumstances the conviction pronounced by the court may deviate from the charges brought against you. A conviction based on different criminal legislation is permitted only if the court has made you explicitly aware that the legal assessment will deviate from the charges brought and has given you the opportunity to present a defence.

A conviction based on different criminal offences requires the public prosecutor to bring supplementary charges, if these offences and the event described in the original indictment would not be regarded as a single event by an impartial third party. Supplementary charges will only be heard if you and the court agree to this.

C. What are my rights during the court appearances?

i. Am I required to be present in the court? What are the conditions for me to be absent during the court case?

In principle, you are required to participate in the trial. If you have not been exempted from the obligation to attend and still fail to appear, the trial will generally be suspended and, under certain circumstances, an arrest warrant may also be issued against you. Exceptions apply, for example, to trials in summary penalty order proceedings and appeals on points of fact and law.

ii. What are my right to an interpreter and translated documents?

You have the right to be informed promptly, in a language which you understand and in detail, of the nature and cause of the accusations against you.

If you do not have a sufficient command of German, the court will appoint an interpreter, who will translate all significant occurrences and statements during the trial.

iii. Do I have the right to a lawyer?

You are entitled to be defended by a lawyer. In certain cases this is compulsory. If you do not appoint a lawyer in such cases, you will be assigned a defence counsel by the court. Information on how to find a lawyer and who pays the costs is available [here](#).

iv. Which other procedural rights should I be aware of? (e.g. presentation of suspects in front of the court)

After any evidence is taken you are entitled to make a statement on it. You may object to the taking and use of evidence that you consider to be unlawful.

In addition, you may request that further evidence be obtained. You are entitled to identify and present evidence yourself, although you do not hold the same powers as the police. You are not allowed to tap telephones and submit the recordings as evidence, for example.

You can ask witnesses to make truthful statements on what they observed and can also bring witnesses to court with you. Witnesses are obliged to appear before the court and tell the truth.

Initially, witnesses will be questioned by the court and the public prosecutor, after which your lawyer and you may put questions to them.

D. Possible sentences

Possible sentences include fines and custodial sentences. In certain cases the court may also order a rehabilitation and prevention measure. Such measures include placement in a psychiatric hospital, placement in a drug rehabilitation centre or preventive detention, for example. Withdrawing your driving licence is another such measure. As an additional penalty the court may impose a driving ban. Rehabilitation and prevention

measures can be ordered independently or, in certain cases, in addition to a sentence.

A fine is imposed in the form of a specific number of daily units (for example, 50 daily units of EUR 15 each). A daily unit generally equates to a thirtieth of your monthly net income. If you do not pay the fine, you will have to spend one day in prison for every two daily units (imprisonment for failure to pay a fine (*Ersatzfreiheitsstrafe*)). To avoid imprisonment, it is also possible to settle the fine by undertaking unpaid work. In the case of fines of up to 180 daily units, under certain conditions the fine may be suspended. You will then receive a warning and will have to pay the fine only if you commit another criminal offence following the judgment or infringe any conditions or instructions that have been imposed on you.

Custodial sentences of up to two years can be suspended on probation. The probation period runs for two to five years. If you break the rules of your probation, the sentence can be enforced.

The custodial sentence is served in a prison. After the decision has become final you will receive notice that you must start serving your sentence. If you fail to do so voluntarily, an enforcement arrest warrant will be issued.

After you have served at least two thirds of your sentence (or only half – and at least six months – of the sentence in the case of a first custodial sentence of up to two years or in special circumstances), you will be considered for early release, provided that you agree to the remainder of your sentence being suspended on probation. For certain serious crimes an expert opinion must be obtained for this purpose if the court is considering a release. Court decisions in connection with the enforcement of a sentence are generally made by judges of a sentence enforcement division at a Regional Court sitting alone.

In the area of juvenile criminal law the emphasis is not on punishing the perpetrator to compensate for wrongdoing, but on education with the aim of preventing reoffending. Consequently, in addition to juvenile custodial sentences ranging from at least six months up to five or, in serious cases, ten years (for juveniles between 14 and 17 years of age), which can also be suspended on probation if the sentence does not exceed two years, there are also other possible penalties (which are much more common for more minor and medium-level crimes). Examples include orders to undertake community service, pay money to a charity, take action to make good the damage caused, participate in a social training course, be placed under the care and supervision of a specific person or attempt victim-offender mediation, but there is also the possibility of imposing juvenile detention of up to four weeks.

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3 - My rights after the trial

A. Do I have the right to appeal the court's decision?

The following ordinary remedies are available if you disagree with court decisions: an appeal on points of fact and law (*Berufung*), an appeal on points of law (*Revision*) and a complaint (*Beschwerde*). In the case of a summary penalty order (*Strafbefehl*) you have the right to lodge an objection (*Einspruch*). A trial is then held. An objection may, however, also be lodged solely against the level of the daily unit used to calculate the fine. With the consent of the accused, the defence counsel and the public prosecutor, the court may then decide on the matter by means of a court order without a trial.

An appeal on points of fact and law may be brought against judgments of a Local Court (*Amtsgericht*). This results in a comprehensive retrial before the appropriate criminal division of the Regional Court (*Landgericht*). An appeal on points of law may be brought against judgments of a Local Court and Regional Court, as well as against judgments at first instance of a Higher Regional Court (*Oberlandesgericht*). During this kind of appeal the judgment is reviewed purely for errors of law and there is no comprehensive retrial.

A complaint is not lodged against judgments (*Urteile*), but against court orders and procedural decisions

(*Beschlüsse* and *Verfügungen*).

Appeals on points of fact and law, appeals on points of law and complaints are subject to additional admissibility requirements, in particular formal requirements and deadlines. Immediately after the judgment has been pronounced, you or your lawyer may dictate a statement to the court registry indicating that you are lodging an appeal. You may also lodge the appeal up to a week after the judgment has been pronounced. The appeal may be lodged in writing or by dictating a statement to the court registry. It is still possible to lodge an appeal even if a negotiated agreement (*Verständigung*) preceded the judgment.

You can appeal against the conviction itself or against the severity of the sentence only.

If you lodge an appeal on points of fact and law, it is up to you whether you substantiate it.

An appeal on points of law must be substantiated no later than one month after the written justification of the judgment has been received, by submitting a statement signed by a lawyer or by dictating a statement to the court registry.

B. What other recourse options do I have?

As an extraordinary remedy against a final judgment it is possible to request a retrial of the case. However, this is only permitted if there are grounds for a retrial, such as the production of new evidence demonstrating your innocence.

In principle, judgments can also be reviewed within the context of a constitutional complaint (*Verfassungsbeschwerde*) to ascertain whether they infringe fundamental rights. Constitutional complaints are, however, only possible after other remedies, in particular appeals on points of fact and law and appeals on points of law, have been exhausted.

C. What are the consequences if I am sentenced?

i. Criminal record

Final convictions are entered in the [Federal Central Criminal Register](#) (Bundeszentralregister). This register is kept by the Federal Office of Justice (Bundesamt für Justiz) on the basis of the Federal Central Criminal Register Act (*Bundeszentralregistergesetz*). Your consent is not required to make the entry. The entry of a conviction is deleted/removed after a legally specified period if no new convictions have been added. The period in question is determined by the nature of the criminal offence and the severity of the sentence imposed on you. Only a very limited number of courts and authorities are granted unrestricted access to the full contents of the Federal Central Criminal Register for specific purposes.

Certain convictions, such as fines amounting to more than 90 daily units or custodial sentences of more than three months, are entered in the person's certificate of conduct (*Führungszeugnis*). This certificate is a document serving as evidence as to whether or not you have any previous convictions. It is issued on request by the [Federal Office of Justice](#) and can also be applied for online. If, in addition to holding German nationality, you are also a national of another EU Member State or the United Kingdom, the certificate of conduct will also contain entries relating to you from the criminal records in your country of origin. Whether, and for how long, a conviction is included in your certificate of conduct depends on the nature of the criminal offence and the severity of the sentence.

In addition to the Federal Central Criminal Register, there is also a Register of Youth Offences (*Erziehungsregister*). This contains details of certain orders and decisions relating to juveniles and adolescents, such as orders for correctional or disciplinary measures. These entries may be communicated only to a very limited number of courts and authorities for specific purposes.

ii. Execution of sentence, transfer of prisoners, probation and alternative sanctions

Once the judgment has become final, the public prosecutor will start enforcing the sentence.

If a German court has delivered a judgment imposing a custodial sentence, besides enforcement of the judgment

in Germany it is also possible to serve the custodial sentence in another Member State. If you are already abroad when convicted, the public prosecutor, as the enforcement authority, will decide, after you have been heard, whether to transfer enforcement to the other Member State (Section 85(2) of the Act on International Mutual Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen* – IRG)). If you are still in Germany when convicted, a prerequisite for such a transfer is that you agree to enforcement being transferred to another Member State or that a Higher Regional Court has made a decision to this effect (Section 85(2) IRG).

If it is your wish, as a convicted person, to serve your sentence in another Member State, you may submit an application to the competent public prosecutor. The public prosecutor's decision will largely depend on whether the convicted person is more likely to be successfully reintegrated into society in Germany or in the foreign country.

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