

## 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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