

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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