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Defendants (criminal proceedings)

Germany

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.

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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 licence (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 it may 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 (*Oberlandesgericht*).

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 wide-ranging, 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.

Last update: 18/09/2023

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