

Consequences for activists without a German passport

In this case, the individual's status of residence is crucial. If you have a permanent residence permit, you are usually treated equally to German nationals. The worse your residence status, the more difficult it can get.

The "act committed" also plays a role. The more severe the act you are accused of, the bigger the problem in terms of immigration law.

1. What holds for everyone

Everyone, whether of German or other nationality, has the right to a successful phone call [\[1\]](#).

Additionally, foreign nationals are entitled to a phone call to get in touch with their embassy or consulate. The embassy or consulate ought to support people in need with lawyers and interpreters. And because not everyone wants to be in contact with their diplomatic representation, you have the right, but you are not obliged.

Sometimes, the police asks non-Germans to be put on bail, based on the reasoning that you would not otherwise turn up to your court trial knowing that the sentence could not be enforced abroad. However, they forget that bail can only be requested if there are reasons for pre-trial detention. If this is not the case, they have to release you within 12 hours.

If you do not speak German, you are entitled to an interpreter, from the police interrogation onwards. However, it can take a while until one is found.

This is pretty much all that can be said in general terms. Legal matters for people without documents are very complex and often no obvious regulations exist. This leaflet cannot evaluate conclusively whether people without German documents are going to be deported. The legal option for deportation does exist. However, it often conflicts with the claim of the state to prosecute crime and enforce penalties. In the end, it is more of a political decision whether or not to deport activists. According to the law, "foreigners" who commit an offence in Germany can be subject to an entry ban (as long as they are not EU citizens). If such a ban is imposed, no criminal case can be opened and the person concerned does not have the option to defend themselves. Whether the state bodies opt for criminal procedures or an entry ban is, in the end, a political decision. And at the moment we lack any further information to exclude either option.

2. EU citizens

EU citizens have the right to freedom of movement anywhere in the EU. They can only be deported in the case of severe crimes (if the legal minimum penalty amounts to 6 months of custody) or in the case of repeated delinquency. The mere initiation of an investigation procedure, however, does not suffice as grounds for deportation.

Even if there is a risk of absconding (escape by the individual concerned), pre-trial detention is not admissible if the penalty to be expected is only a fine or a prison sentence shorter than the pre-trial detention. In addition, within the EU, court decisions can be mutually recognised and, under certain circumstances, be executed in the country where one is registered.

Detention before the main trial (you are being detained until the fast-track main trial - this takes one week) is only admissible if the police and judges believe that you would otherwise fail to appear in court. However, one precondition for detention before the main trial is that the police can demonstrate to the judge that they have already collected all of the essential evidence. This requires more police staff to work on the case, therefore this option is less likely. It could get difficult if you cannot prove to have permanent residence either in Germany or in another EU country. Then the police might doubt the information you have provided and not want to release you. In this case, get in touch with the legal team and we will do our best to support you with lawyers.

3. Tourists

If you are white and supposedly middle-class it is likely that you will be released after identification without much ado. This is particularly true if you are a national of a country with which the German government has very good diplomatic relations. If you're unlucky, paragraph 1 holds true.

If you are a person of colour and a national of a country from which many migrants originate, it might be that the police will want to clarify whether you are an actual tourist or actually an asylum seeker. This can take a few hours. If there are larger problems, it might make sense to ask for a lawyer.

4. People with a residence permit

A revocation of the residence permit only comes into question in the case of serious offences, meaning when the minimum penalty would amount to at least six months in prison.

It gets more problematic for people with a temporary residence permit. If there is an open criminal investigation it becomes easier for the Foreign Department/Office to deny the extension of the residence permit or to limit it to a shorter period.

NOTE: Racism! Unfortunately, it is the case again that white middle-class people from so-called western countries will be treated better than others.

5. People with a "Duldung"

In the case of a "Duldung" (exceptional leave to remain in the country, temporary or permanent), it can become very complicated. If the "owner" of a "Duldung" commits a criminal act, then, legally, the "Duldung" must be revoked and he/she has to leave the country. On the other hand, no one can be deported, if facing persecution in their home country. Whether this is the case or not is usually judged differently by the authorities compared to the people concerned.

So the risk does exist and it has to be weighed carefully.

6. People without a residence permit

These are people who, according to the law, are illegal in the country. For these people there is a real danger of being detained in deportation centers.