

Ende Gelände's position on refusing to identify yourself to the police

Summary

Ende Gelände thinks that people's collective refusal of giving the police their personal data is a useful strategy in the context of the mass actions they have planned. So far, Ende Gelände has had good experiences with ID refusal. However, for some people or specific groups of people, there might be very good reasons to do state one's personal data (see below). If you decided before an action to not identify yourself, you should then not be carrying your ID card or anything else that could disclose your identity. You can still change your mind at any time and decide to state your name verbally later on or have other people bring in your ID card. You can find more detailed remarks in the legal aid booklet, chapter 3.

Please talk to the people in your affinity group about whether or not you want to refuse to identify yourself. We advise you to really study and consider all the information in the legal aid manual and in this leaflet. Link to the legal aid manual: <https://www.ende-gelaende.org/en/legal-infos-en-2022/>

Personal identification

The police can try to get your personal data either in accordance with § 163b of the German Code of Criminal Procedure (StPO, when a person is accused of having committed either a crime or a misdemeanour), or to prevent a danger according to § 181 Communal Law of Schleswig-Holstein (LVwG SH) / § 13 Nds. Polizei- und Ordnungsgesetz (NPOG)/ § 12 Sicherheit und Ordnungsgesetz Hamburg (SOG HH); thus, if police thinks you are brewing some kind of a plan. You should always ask why they are checking you in particular and what the grounds of that identity check are. Under the police law, the police is not allowed to check your identity when you are participating in a demonstration. The law says you have to provide the following: first name, family or birth name, date and place of birth, family status, profession (e.g. student, employee), place of residence, nationality. Most of that can be found on the ID they demand to see. If you do not carry your ID you can also provide the information verbally. You do not need to give any other information.

German citizens are not obliged to carry their ID card, foreigners unfortunately are. As a foreigner, not carrying one's ID constitutes a misdemeanour. If you and others decide to identify yourself, you could also collect the IDs of everyone around you and hand them to the police as a stack, or just toss all of them on the floor. This makes it more difficult for them to identify who is who, hence, hinders them – and you can have fun watching the police trying to identify you.

ID refusal – what can police do?

In order to establish a person's identity, a person may be (thoroughly) searched, detained and transferred to the police station. The maximum duration of detention varies depending on the federal state. In Schleswig-Holstein and Hamburg, they can keep you detained for a maximum of 12 hours just to try and find out your identity (§ 181 (4) LVwG SH, § 13c SOG HH or § 163c (2) StPO); in Lower Saxony (Niedersachsen) six days of detention are possible, but this "shall" not normally last longer than six hours (§ 21 NPOG, i. e. the police must give reasons why detention should last longer in a specific individual case). The police can also entertain other measures to establish someones identity, usually "booking" them (German: ED-Behandlung) (§ 183 LVwG SH, § 16 (1) PolDVG HH, § 15 NPOG or § 81b StPO). In most cases they will take pictures as well as fingerprints. Sometimes they also measure your size and look for external features like tattoos. You do not have to voluntarily participate in the ED treatment, but if you do not do so, the police may use physical force to establish your identity. In just a few cases it has been reported that they also took DNA-samples, although this is prohibited without a court order.

Important: Do not make any statements in front of the police and do not sign anything. Do not talk about what you or other people involved did or did not do in the action. Any statement can be used against you or others. Don't be intimidated by threats or accusations by the police! You have the right to remain silent about accusations against you. Keep calm! Help others who are worse off.

In principle: If you would like to refuse to identify yourself during the action, there are a couple of things you need to keep in mind. The police can hold and search you. Thus, you should leave your identity card somewhere safe or with a person you trust. This also holds for any other object that could identify you (such as your insurance card, train ticket/personalized train discount ticket "BahnCard", credit cards, your wallet and

your phone, random objects with names or addresses on them). For items that could be interpreted as weapons by the police, consider whether you really need them. Before you head into action, check everything you carry with you once again for anything you might have missed!

Advantages der of ID refusal:

- Just as the detention centers have space for only a limited number of people, there are only so many people whose fingerprints or photos the police can check. When thousands of people refuse to identify themselves, it becomes really difficult to take all of them into custody to further research their identity.
- It can be a protective measure for some individual people (e.g. people without papers or residence permit, people with an open warrant) to have many people not voluntarily reveal their identity, who also do not cooperate during the police's attempt to establish their identity nonetheless. It makes it more difficult for the state to actually register and prosecute everyone involved.
- In previous anti-coal actions, refusing to reveal ones identity has not only protect people from repression in the form of criminal prosecution, but also from civil lawsuits pinned on them by coal companies like RWE. In the past, some people who could be identified were asked to sign preliminary injunctions or so-called “declarations to cease and desist” that would ask them to not set foot in the mine/the area around it. If people who have signed such a declaration to cease and desist are found to be on RWE’s premises again and can be identified by the police, they might be subject to very expensive lawsuits. The coal companies deliberately use civil lawsuits to weaken the climate justice movement and inhibit protests against those responsible for the climate catastrophe. Refusing to reveal our identities is one of our tools of fighting back.

Disadvantages and risks of ID refusal

- According to the Code of Criminal Procedure (StPO) or according to the administrative Law, police can take you into custody in order to establish your identity. During this time, you may be under psychological pressure due to the specific situation and police behaviour. Police sometimes also tries to use physical force to establish your identity (e. g. by holding you in place while your fingerprints or photos are being taken and/or using pain compliance holds).
- The risk of being put into detention awaiting trial is higher.
- You can never know for sure whether police won’t be able to identify you later on. The fear of being identified can sometimes result in people feeling restricted in their activism or becoming less active. They might be afraid that some police officers could recognize their faces at other actions or demonstrations, or they might not want to be part of actions of solidarity and support during which they would have to show their ID, like attending other activists’ court cases.
- If your identity is nevertheless established or suspected (e. g. by photo comparison, any ID papers found in your bag), you can be subjected to a kind of fee (Bußgeld) for your refusal to establish your identity. (→ § 111 Administrative Offences Act).

Unfortunately it is also possible that the police takes your fingerprints and photos (or detain you) even if you establish your identity.

Groups that are ”at risk“:

- If people without a passport from a country of the EU (or Switzerland) decide not to reveal their identity (name, age, and country of citizenship), that can be considered a criminal offence - if the identity check itself takes place in connection with decisions pertaining to residence (→ § 95 section 1 No. 5 AufenthG /Residence Law). Being convicted of a crime can have negative implications for any future attempts to be granted a visa for entry into Germany. It will also be considered in the decision on whether or not someone might be expelled/deported (see chapter 6 in the legal aid booklet). Being convicted of a crime can also jeopardize someone's unlimited humanitarian residence permit.
 - **IMPORTANT:** Police could make assumptions and attributions according to external/physical characteristics like skin color (maybe also language skills) with people who remain anonymous. Thus, people of color are at a higher risk once again!
- If you needed a visa to get to the action, you normally also had your fingerprints taken while applying for the visa. That data can be used to identify you more easily in an action, even if you refuse to reveal your identity. Your fingerprints could be cross-referenced with different German and European data bases (more info in the legal aid booklet, chapter 6).

- There is a serious risk of being identified if in a previous action you were both identified (because you stated your name voluntarily or because the police found out who you are) and also had your photos and/or fingerprints taken. Keep in mind that if you refused to reveal your identity in an action connected to coal mining or happening in the same area before, being identified now could lead to you facing repression for past actions long after you participated in them.
- If you are not legally an adult (meaning less than 18 years of age) you should definitely read up on your specific rights and possible scenarios in the actions (legal aid booklet, chapter 7, or check Ende Gelände's homepage for further information)

Arrival and departure

- You run a higher risk of being identified if you decide to bring your ID with you on arrival. Police is trying more and more to facilitate identity checks even before the action starts (e. g. when busses from other countries approach the border, or as it happened with ID checks on the collectively organized train going to the action in 2018).
- Ende Gelände does not have a solution for this problem. Meaning: get creative and talk to your affinity group!
- You find further information on arrival and departure on the EG homepage: <https://www.ende-gelaende.org/en/legal-infos-en-2022/>

Before the action

- Get together with your affinity group or other people you trust. Think about how you/your affinity group would like to deal with repression you might face during the action or while in detention, so that you feel prepared for what could be coming. Talk about your limits in action and about the risks you are willing to take.
- The Legal Team will not offer to store anyone's personal documents. If that is a scenario you would consider, you need to come up with an idea yourself on how to get your ID to the detention center if necessary. Obviously, the legal team would have to know how to get a hold of your ID.
- Please also think about who needs to know about your absence in case you might be locked up for a couple of days – tell the people in your affinity group where to find the phone numbers of people who have to be informed, let them know what the next steps need to be, and also whether it is okay to make your case public.
- Please think about what you want to do if the police threatens to put you into detention awaiting trial and requests an arrest warrant. Do you then want to establish your identity? Or do you want to wait for the court decision and take the risk, because they can hardly detain everyone up? Important: In cases in which your namelessness was the only reason you were arrested (to keep you from getting away and averting prosecution / risk of absconding), you have to be set free immediately after you decide to state your name and they were able to verify your identity. Talk to your friends and your affinity group about what should happen in case of your imprisonment – this helps yourself, but also all structures that try to support you in such a situation.
- The more scenarios you talked through with people your trust, the fewer decisions your affinity group (and the legal team) have to make for you in a situation that is stressful for them, too.

Custody and arrest

- Custody to establish someone's identity is limited to 12 hours in Schleswig-Holstein and Hamburg, in Lower Saxony, up to six days are possible, but according to the law it "should" normally only be six hours..
- The police have to file an application (until 12 p.m./midnight the day after your detention, e. g. the day after you landed in the police kettle), on which a judge decides. In this application, the police must explain how a longer detention serves an alleged "prevention of danger".
- If police arrests you because of a crime they are accusing you of, they can only detain you until 12 p.m./midnight of the following day. If they want to keep you in longer, they have to present your case to a judge/magistrate (name of this procedure in German: "Haftrichter*innenvorführung"). Only the magistrate/court can decide whether someone will be put into investigative detention.
- In the case of an accusation such as trespassing, investigative detention has only been ordered once so far: in early 2019, several people occupied excavators in Brandenburg/Lusatia and refused to identify themselves. They were accused of trespassing, and the judge they were presented to ruled to put them into investigative detention (see Ende Gelände's press release:

<https://www.ende-gelaende.org/press-release/pressemitteilung-vom-06-februar-2019/>). However, the police and judiciary did not follow this decision until now.

- If the only reason you are being held is that you are withholding your identity, the official reason for your detention is “risk of absconding”, simply put: you might get away without them being able to prosecute you. Thus, the law says that you should be released once you state your name. That does not mean that you will be let go right away, though (see legal aid booklet). You might be kept in holding for a longer time despite stating your name, if for example police come up with other “reasons for your arrest” to present to the court or they process the formalities necessary for your release (like cross-referencing your personal data) very slowly.
- Accusations such as resisting or attacking an enforcement officer pose a higher risk of being put into investigative detention. The court also has limited capacity for these hearings. As a result, in the past it was mostly individual people who refused to identify themselves and faced these specific accusations who were put into investigative detention.
- You find more information on detention and arrest in the legal aid booklet.

Phone calls and undressing in custody

- If you are being detained, you have the right to make one successful phone call to inform a person you trust about your situation (that person might be the Legal Team). In the past, the police often refuses to let people make their call, which is unlawful. So, if you feel up to it, demand to make your phone call! Do not make any statements in front of the police, meaning that you should not answer any questions about the action or other people involved.
- In the past, the police requested several detainees to take off all their clothes. According to the German Federal Constitutional Court, making someone undress without having any evidence of the person carrying dangerous objects that would be impossible to find by simply frisking them, is against the law. Object all police measures (like undressing) and have the police officially note down your objection. Don't sign anything!

After the action

- As soon as you are free again, call the legal team to let them know! (Even if you did not call them from the police station, maybe someone else told them about you being arrested.)
- Talking about the things you experienced is something many people find helpful when dealing with emotional and psychological burdens. As a movement, we act in solidarity with people who are facing repression. We support them not only at court, but for the long run and throughout the entire proceedings. It is crucial to not leave anyone alone with the repression they are facing, otherwise the fear of repression might isolate people and keep them from participating in actions.
- **Nobody is left alone. If you have questions afterwards, you can find help at: legalcare22@riseup.net (PGP key on the EC website www.ende-gelaende.org) and at local legal aid structures (EA, Rote Hilfe, ...).**
- **Always appeal if there are deadlines (can be withdrawn).**

Out of Action is a group of activists who can provide you with information about the psychological consequences of repression and violence experienced in the context of left political resistance. They offer emotional first aid for individuals and groups affected by repression. They also encourage everyone to be supportive of one another by means of consultation, info events and workshops. For contact data of groups in different cities, see <https://outofaction.blackblogs.org/>.

Stronger together to counter repression!

Ermittlungsausschuss (EA) / Legal Team (during the action):

0049 (0)30 340 603 13