

CRIMINAL PROCEEDINGS AND DEFENCE RIGHTS IN GERMANY

This leaflet covers:

- Information about FTI
- Definitions of key legal terms
- Criminal proceedings and defence rights in Germany
- Useful links

This booklet was last updated
in February 2013

About Fair Trials International

Since 1992 Fair Trial International has worked for the better protection of fair trial rights and defended the rights of people facing criminal charges in a country other than their own. Our vision is a world where every person's right to a fair trial is respected, whatever their nationality, wherever they are accused.

Fair Trials International was established to help people arrested outside their own country to defend their right to a fair trial. Every year we help hundreds of people and their families to navigate a foreign legal system by offering practical advice, including contacts of local lawyers; guidance on key issues encountered by people arrested abroad; and basic information on different legal systems and local sources of support. As a charity, we do not charge for any of the assistance that we provide.

We believe that respect for fundamental rights and the rule of law are the hallmarks of a just society and that the right to a fair trial is at the heart of this. Sadly too many shocking cases of injustice demonstrate how, time and again, this most basic human right is being abused. We fight against injustice by lobbying for the legal reforms needed to ensure that the right to a fair trial is respected in practice. Working with our clients and international networks, we also campaign for changes to criminal justice laws which are being abused and overused.

To find out more about how FTI can assist you, please contact our legal team (contact details on the back cover).

Fair Trials International is a registered charity (No 1134586) and is registered with limited liability in England and Wales (No 7135273). We are a non-governmental organisation; as such, we are a wholly separate and independent organisation from the Foreign and Commonwealth Office.

If you require this leaflet in large print, please contact us at the address on the back cover.

DEFINITIONS OF KEY LEGAL TERMS

Accusatorial or Adversarial System (*adversatorisches Verfahren*): A system in which a prosecutor and the lawyer representing the accused present their case before an impartial judge. This system is followed in some countries such as the UK and the USA. Unlike some European countries, judges are expected to be neutral and do not take an active role in investigating cases.

Appeal (*Berufung*): An opportunity to dispute a decision made at trial before the District Court (Amtsgericht) (either on guilt or on sentence) by asking a higher court to decide again. The whole proceeding will be repeated (with all testimonies) before the Higher Regional Court (Oberlandesgericht).

Appeal (*Revision*): An opportunity to dispute a decision made at trial before District Court (Amtsgericht) or Higher Court (Landgericht) (either on guilt or on sentence on points of law) by asking a higher court to review it. This can result in the decision being overturned, changed or, in most cases, in the decision to send back the case to the instance before (but to a different bench of judges) to decide newly with the special remarks of the Appeal court.

Arrest Warrant (*Haftbefehl*): A document issued by the investigative judge authorising the police to make an arrest, search premises, or carry out some other action relating to the administration of justice.

Bail: The temporary release from pre-trial detention (prison) of a person accused of a crime and awaiting trial.

Bar Association (*Rechtsanwaltskammer*): An organisation whose role is to represent lawyers and help people in their dealings with lawyers.

Charge/Indictment (*Anklage*): A written statement accusing a person of carrying out an offence.

Consulate (*Konsulat*): The section of an embassy whose task is to assist its citizens.

Court of Appeal (for 'Revision') (*Revisionsgericht: Bundesgerichtshof* (Federal Supreme Court) for serious crimes and *Oberlandsgericht* (Higher Regional Court) for misdemeanours or lower criminality). The latter is competent to decide on appeals made to decisions of the District Courts (*Amtsgerichte*).

Court of Appeal (for 'Berufung') (*Berufungsgericht: Landgericht* (Higher Court) for appeals (*Berufung*) made to decisions of the District Courts (*Amtsgerichte*). In this sort of Appeal the proceedings start from the beginning again with the evidence hearings to be repeated.

For serious crimes the *Landgericht* hears cases at the first instance. From here you only can appeal the decision in form of a *Revision* to the *Bundesgerichtshof*.

Court of First Instance (*Landgericht* for serious crimes and *Amtsgericht* for misdemeanours or lower criminality): A lower court where a trial is initially heard.

Embassy (*Botschaft*): The office of a government official who resides in a foreign country and represents his/her government's interests.

European Court of Human Rights (*Europäischer Gerichtshof für Menschenrechte*): The Court is based in Strasbourg, France, and hears human rights cases against the 47 countries which make up the Council of Europe (which is different from the European Union).

Fast track proceedings or summary proceedings (*beschleunigte Verfahren*): This is the name given to proceedings that take place very immediately after arrest by the police and police custody. These proceedings are used quite rarely, and usually only in simple and straightforward cases.

Inquisitorial System (*Inquisitorisches Verfahren*): A system in which the judge plays an active role in conducting the investigations and seeking the truth. This system is followed in Germany, France and many other European countries (but not in the UK). Unlike in adversarial systems such as the UK and the USA, the role of the defence lawyer is to ensure that his/her client's rights are respected, but it is not to investigate the case. The defence lawyer however, can request the court to hear new evidence, and the court can only dismiss this request with reasoned, lawful decisions.

Investigative Judge (*Ermittlungsrichter*): A judge who performs an examining role. Investigative judges specifically hear all challenges to the way your case is handled by the police or the prosecution. They also decide on your status pending trial (whether or not you

should be released) and investigative measures such as house searching, tapping or taking DNA samples.

Judge (*Richter*): A person with authority to hear and decide on cases in a court of law.

Judgment (*Urteil*): A decision on a case provided by a judge or a panel in a court of law.

Lawyer (*Rechtsanwalt* / criminal lawyer: *Strafverteidiger*): A person whose profession is to give legal advice and assistance to clients and represent them in court or in other legal matters.

Duty Lawyer (Legal Aid Lawyer) (*Pflichtverteidiger*): If the crimes are serious or the case is difficult or you are a vulnerable person then the court appoints a duty lawyer for you who is paid by the court. This only will happen if you do not choose a lawyer who is paid by you. However, you also can decide which duty lawyer you want.

Plea Bargain (*Verfahrenverständnis*): A procedure which allows the defendant to plead guilty in exchange for a less severe sentence.

Police Custody (*Polizeigewahrsam*): Detention of a suspect by the police after arrest.

Pre-trial Detention (*Untersuchungshaft* or “*U-Haft*”): Detention in in prison during the investigations (and often during the trial itself as well), which happens before the decision on guilt or innocence is made by the court.

Power of Attorney (*Anwaltsvollmacht*): Written authorisation provided usually to a lawyer, allowing him/her to defend him and make decisions on his behalf. This can include matters of business or private affairs.

Public Prosecutor (*Staatsanwalt*): A jurist (civil servant) who conducts a case against a person who is accused of a crime

Remand (*Untersuchungshaft* or “*U-Haft*”): The act of sending a person, accused of a crime, into pre-trial detention.

Sentence (*Strafe*): The punishment assigned to a person convicted of a crime as fixed by a court of law.

Victim is known as “*Opfer*” in Germany.

Witness is known as “*Zeuge*” in Germany. A victim can be a witness in the proceedings.

INFORMTION ON CRIMINAL PROCEEDINGS AND DEFENCE RIGHTS IN GERMANY

We have prepared these notes with the assistance of local criminal lawyers, who tried to describe how things happen in practice, i.e. in the real world. Even within one country, however, practice can vary a lot from one place to another and it is therefore possible that your experience will sometimes differ from the descriptions below. This document does not constitute legal advice and only provides general information. If you need advice in relation to your specific case, or if you are concerned about a possible violation of your rights, you should discuss this with your local lawyer.

1. LEGAL SYSTEM

Q1. Where do the laws of Germany apply?

Germany is a federal republic, with 16 different states (*Länder*). Most of criminal and procedural laws apply throughout the whole of Germany (eg. the Criminal Code, the Code of Criminal Procedure and Prison Act). However, some laws are specific to the states (e.g. prison laws); you should ask your lawyer for specific advice on local laws.

Q2. What kind of legal system is it?

The German legal system is a civil law system which is very different from common law countries like England and Wales, the US and Australia. The criminal process is “inquisitorial” in which judges take an active role in conducting the investigations.

2. ARREST AND INVESTIGATION

I. What are my rights upon arrest?

(a) Right to information:

Q3. Will the police inform me of my rights? Will this be done orally or in writing?

You will be informed of your rights upon arrest. A written document containing a list of rights (in German) will be shown to you. If you do not speak German an interpreter will explain what is on the list. You will then be asked to sign a document confirming that you were informed of your rights. If you refuse, this will be recorded.

Q4. Do I have a right to be informed of the allegations/charges against me?

Upon arrest, you will be given a copy of the warrant for your arrest in case there is one at this early stage of proceedings. This document will be in German, but if you do not speak that language, an interpreter will translate its content orally for you. You are also allowed

to receive a written translation of this warrant, but in practice this will only follow weeks later.

Normally the allegations are explained to you orally by the police officers.

(b) Right to inform people:

Q5. Do I have a right to have the consulate informed of my arrest?

Yes. You can demand that the consular representation of your native country is notified of your arrest.

Q6. Do I have a right to inform my family of the arrest?

You can normally notify a relative or another person you trust of your arrest although this can be denied by the police if they have reason to believe that it would threaten the investigation.

If a judge decides to order that you are placed in pre-trial detention, your family must immediately be informed.

Q7. Do I have a right to a lawyer?

Yes, you may consult with a lawyer at any time after your arrest, even before your interrogation by the police (see below on how to find a lawyer).

Q8. Do I have a right to a translator/interpreter?

Yes, you have a right to an interpreter free of charge during the proceedings and during (police) interrogations. You should tell the police and your lawyer that you need an interpreter.

Q9. Do I have to talk to the police or can I remain silent during police interrogation? Will it work against me if I am silent?

You need a local lawyer to help you decide whether to remain silent or to answer questions. It will not be used against you if you refuse to answer any questions until you have spoken to a lawyer.

You have the right to remain silent and you will be informed of this right when you are arrested. If you remain silent, as a matter of law this cannot be used against you during the trial. If you do not have a lawyer present during police interview, and you are concerned that what you say can play against you, then it is advisable to remain silent.

Please note that if you answer some questions and then refuse to answer others, this can be used against you. It is therefore safer not to answer any questions than to pick and choose which to respond to (unless your lawyer advises you otherwise).

Q10. When will I know about the case against me?

As described above you will receive a copy of the documentation of your arrest.

You will not, however, have access to the case file until you are brought before the investigative judge. This must happen the day following your arrest. In principle, your lawyer will not see the case file before that stage either but, in some circumstances, s/he may be allowed to see a document summarising the charges against you.

It will take approximately a week after your first court hearing before your lawyer is granted full access to the case file, which is in German. Access to the file at this stage will only be restricted if it could jeopardize the investigations.

Q11. How long can I be kept in prison before my trial starts?

If you have been arrested and taken into custody by the police you must be brought before a judge as soon as possible and at the latest on the day after your arrest.

If the judge then decides that you should be kept in prison while awaiting trial, there is no maximum duration of pre-trial detention but most cases are tried within six months. You can only be kept in prison for more than six months before trial if there are strong grounds to justify your detention.

The decision to keep you in detention pre-trial has to be taken by a judge and can be challenged by making a complaint to the Higher Court. The High Regional court will review your detention pre-trial after six months and then every three months.

3. LEGAL REPRESENTATION

For general information on why and how to appoint a local lawyer, please refer to FTI's "Arrested in Another Country?" leaflet.

Q12. How can I find a lawyer?

Your consulate or the German Bar Association should be able to assist you to find the names and contact details of criminal lawyers. See our "Useful links" section for the contact details of the bar association.

Upon arrest by the police, you will be allowed to be represented by a lawyer. You can appoint a lawyer of your own choice. If you do not know any, or cannot find one, there is an emergency telephone number which allows you to call a lawyer (see 'Useful Links' at the back of this document for details of local bar associations offering 24 hour hotlines for legal advice). If you do so, the lawyer on duty may be able to come to the police station and assist you while you are at the police station and during your first appearance to the judge. You will then be able to appoint another lawyer after this first court appearance or to keep this lawyer.

Q13. What is the role of my lawyer? Will s/he investigate the case?

Your lawyer will provide you with legal advice and represent you in court, based on the evidence gathered by the prosecution and given by any witnesses that are called. S/he can also request that the prosecution conducts further investigations and/or that the court calls witnesses or gathers specific evidence, but this will be at the discretion of the court.

14

Q14. I cannot afford to pay for a private lawyer, what should I do? (Is there legal aid? How should I apply? What are the criteria to be eligible? What is covered by legal aid?)

A private lawyer will request that you pay some money upfront (an amount that can be considerable) before s/he takes on a case. You need to discuss with your lawyer how you could pay him/her, and s/he may sometimes agree to take instalments.

There is a system of court appointed lawyers in Germany. Under this system, if you have not appointed a lawyer yourself, the court will appoint one for you. You will in principle have to pay his/her fees after the proceedings, if you are found guilty and can afford the payment.

The court must appoint a lawyer for you, or you can nominate a lawyer of your own choice if:

- You are in pre-trial detention (immediately);
- You face very serious charges, where the prison sentence is likely to be more than one year;
- The proceedings might result in you being prohibited from practising your profession;
- You do not speak German;
- You are deaf or mute;
- Your case is complicated.

- An expert opinion is required on your mental condition which may lead to your detention in a mental institution;
- The main trial is to be held at the Regional Court or the Higher Court;
- It is in the interests of the public safety;
- A previously appointed lawyer has been dismissed from proceedings by a decision of the court; or
- It is obvious for other reasons that you are not capable of speaking in your own defence.

Whether or not the state will pay for your lawyer is a decision that will be made by the judge who hears your case, although the prosecutor can also suggest that this should be done. If it is decided that your legal fees will be covered by the state, you are free to nominate any lawyer who is entitled to practise in Germany

Please be aware that even if your legal costs are covered by the state, you may have to bear some costs (court costs). Additionally, if you are convicted, you may be required to pay the legal fees later on. In practice, the court will not expect you to reimburse the cost of your lawyer if you are sent to a prison where you cannot work. If, however, you can work in prison, then you will be expected to pay.

Q15. I am unhappy with my lawyer: How can I change lawyer? How can I complain about my lawyer?

16

Fair Trials International – February 2013

This note is intended to be for information purposes only and does not constitute legal advice. Take local legal advice on your specific situation.

A good first step is to speak to your lawyer about your concerns. If that does not resolve the issue, you can complain about your lawyer and seek to have another one appointed (see below about how). For general information about changing lawyer, please ask for our “Arrested in Another Country?” leaflet, and look at question 13.

Court-appointed and state-funded lawyer: It is very difficult to change lawyer if s/he is paid for by the state; there must be good reasons given to the court. If the judge appointed the lawyer for you and after a few weeks you find out that you do not trust this lawyer and cannot work with him/her, then you can ask for another lawyer. The decision is at the discretion of the judge.

Private lawyer: You can terminate your lawyer’s contract at any time. You need to ensure that you have paid his/her fees and that s/he will send your file to the new lawyer you want to appoint.

If you want to make a complaint about your lawyer, you need to send a letter outlining your complaint to the Regional Bar Association (the contact details are in the useful links section). The Association can provide you with more details.

4. PRE-TRIAL MATTERS

4.1 Pre-trial matters: detention

The information given below is specific to Germany. For general information and tips about how to obtain your

release prior to your trial, please refer to note of advice on “Release Pending Trial”.

Q16. Will I have to stay in prison until my trial starts?

You may have to stay in prison until your trial starts. Although there is a presumption that people should be given bail (i.e. should be released pending your trial), in many cases defendants, particularly when they are foreign nationals, are kept in custody.

Reasons for keeping people in custody are to prevent them from:

- (1) Failing to attend their trial (i.e. absconding);
- (2) Tampering with evidence or interfering with witnesses;
- (3) Committing another offence ;or
- (4) Being in danger from others or themselves.

Q17. Are there alternatives to detention pending trial?

Yes, you can be released, with or without conditions.

Conditions imposed if you are released include requirements:

- to inform the competent authority of any change of residence;

- that you do not enter certain localities, places or defined areas;
- that you remain at a specified place during specified times;
- that you do not leave Germany;
- to report at specified times to a police station;
- not to engage in specified activities relating to the alleged offence, including work in a specified profession or employment;
- to deposit money as a guarantee;
- to undergo therapeutic treatment or treatment for addiction;
- to avoid contact with specific objects relating to the alleged offence;
- to surrender passport and identity cards;
- to freeze your bank account; or
- House arrest and electronic tagging (but these are rarely used).

Q18. How and when can I apply for release while waiting for trial?

You and your lawyer may apply at any time (but at a maximum every two months) for a review of the decision to keep you in prison and to propose alternatives to detention.

19

If you are kept in pre-trial detention for six months, this will be automatically reviewed by the High Regional Court (to determine whether there are grounds to justify further detention pending trial) and every three months thereafter. At this stage (i.e. after six months) there must be very serious reasons to justify your detention, otherwise you will be released.

If bail is denied, you or your lawyer can either request a second hearing in front of the same judge (which has to take place within two weeks), or you can appeal the decision to the Regional Court and, if this fails, you can then appeal to the Higher Regional Court.

If you are eventually acquitted, depending on the circumstances of your case you may be entitled to financial compensation for each day you have been held in pre-trial detention.

If you are convicted and given a prison sentence, the time served in pre-trial detention will be deducted from your overall sentence.

Q19. Can I go back to my home country while on bail?

Yes, you can leave the country, unless the judge has explicitly prevented you from doing so (by taking your passport for instance).

You need to appoint a representative who will be able to receive summons or other official documents for you in Germany. A possible solution is to give a power of attorney to your lawyer so that s/he can receive summons on your behalf.

Q20. What will happen if I breach my bail conditions?

You will be detained. If you paid money as a security, it will be confiscated. Breaching your bail conditions does not, however, constitute a criminal offence.

Q21. Do I need a lawyer to apply for bail?

No, you do not need a lawyer to apply for bail. If you do not have a lawyer at your first court appearance, you can apply for bail directly to the court.

In practice, suspects who are remanded in custody after their first court appearance will automatically be granted a lawyer. So from the second court appearance you will have a lawyer who can assist with your bail application.

4.2. Pre-trial matters: timing

Q22. How long before my case goes to trial?

Most cases are tried within six months. You can only be kept in prison for more than six months before trial if there are serious grounds justifying your detention.

Q23. There are always delays with my case, does that mean my lawyer is doing a bad job?

No. Delays happen at each stage of the proceedings and courts are known to be overwhelmed, which causes cases to be fairly slow to reach a conclusion. Sometimes witnesses are not available, or expert opinions take a long time to be produced. This is not necessarily the result of poor quality work from your lawyer.

4.3. Pre-trials matters: pleading guilty

Q24. Can I plead guilty? What are the consequences of pleading guilty?

As the consequences of admitting your guilt are very serious, you should always discuss this with your lawyer before making any decision.

Under German law there is no requirement to enter a plea. However you are free to plead guilty – e.g. acknowledge you committed the offence. This plea is not binding on the judge. The judge can, in theory, decide to acquit you even if you plead guilty. However, this is very rare and usually you will be found guilty and convicted.

If you admit your guilt, this can result in a more lenient sentence (as a mitigating factor). You might also be given a more lenient sentence if you name another person involved in committing the offence.

5. THE TRIAL

Q25. What happens at the trial?

You will be questioned by the judge (only about your identity and your general personal situation) and then the prosecutor will read out the charges against you and the legal basis for the prosecution. The judge will explain your right to remain silent but will give you an option to respond to these charges.

The judge will then question the witnesses and/or experts. The public prosecutor and your defence lawyer will have the option to ask additional questions. All evidence will be read out at trial.

After all the evidence has been presented, the public prosecutor followed by your defence lawyer will give the closing speeches. You will always have the opportunity for the last word; even if defence counsel has spoken on your behalf you will be asked if you have anything to add to your defence.

Q26. Do I have to be present?

In the vast majority of cases you have to attend trial and it is generally advised that you do so.

In principle, you could be permitted not to appear before the court if the sentence is likely to be very low (less than six months' imprisonment, a low fine, etc.).

In theory, trials cannot take place in the absence of the defendant unless the sentence is expected to be very low. However, in practice, the prosecutor can request your conviction in your absence if you knew about the trial and decided to abscond.

Q27. Can I ask for the trial to take place in my home country?

No.

Q28. Is there a jury?

No, there is no jury but depending on the seriousness of the charges, the judges' panel may consist of professional and lay judges.

Q29. Can my lawyer call and cross-examine witnesses?

Yes, your lawyer can call witnesses. If you request witnesses or experts to be summoned, or any other evidence for the main hearing, you or your lawyer must apply to the judge, indicating the facts on which evidence is to be taken.

The judge has the main role in asking the witnesses questions but your lawyer will have the opportunity to ask additional questions.

Q30. I don't speak the language of the court, do I have a right to an interpreter? Is it free?

In court there is always a free interpreter who translates everything.

Q31. Will the written evidence be translated for me?

Only the main documents on the case file are translated (e.g. arrest warrant, indictment and judgment). Written evidence does not have to be translated. This is why you should ideally have a lawyer fluent both in your mother tongue (or another language you understand) and in German. The lawyer can also visit you in prison with an interpreter who is being paid by the state.

Q32. Will the interpreter also help me if I need to talk to my lawyer?

The costs of an interpreter for all confidential conversation in prison or elsewhere between you and your lawyer should be covered by the state.

Q33. Why is the victim taking part in the trial?

Victims are often called as witnesses.

If the alleged offence has caused damages to the victim, the criminal court can order damages to be paid to the victim without the need for a separate legal case on the civil courts. For this reason, victims often decide to take an active (although limited) part in the trial, but they have no obligation to do so.

Q34. Will I be informed of the decision of the court on the day of the trial?

Yes. The judgment will be read out loud in court.

Q35. Can I receive a copy of the judgment in my mother tongue?

No, the judgment does not currently need to be translated by the court but this will change in 2014 when a new European Union law providing for better standards of interpretation will enter into force.

Your lawyer should be able to arrange for a translation (at your own cost).

Q36. I was tried in my absence and was not informed of this, what can I do?

You should know about any proceedings against you as trials in the absence of the defendant do not exist in Germany.

If, however, you think that you may have been tried in your absence, you should consult a lawyer at the earliest opportunity to see whether you can challenge the decision or obtain a re-trial.

6. APPEALS

Q37. I am not happy with the decision, can I appeal against it?

You should always consult your lawyer if you wish to appeal as there are strict deadlines to respect (usually one week after the judgment).

Yes, you can appeal against the decision that found you guilty, or against the sentence you were given. Appeals can be either on matters of fact and law or on points of law only.

Q38. How can I appeal?

You should always seek legal advice from your lawyer about the possibility to appeal as this is very technical and deadlines must not be missed.

Appeals must be made either orally to the court of first instance or in writing within one week after the judgment is given.

Q39. Do I need to pay my lawyer more money if there is an appeal?

Unless you have agreed on fees that will also cover an appeal, you will have to pay the additional fees that are incurred.

If the court has decided that your legal fees will be covered by the state (remember that even in such a case, you may have to reimburse the lawyer fees if you are found guilty), then this decision will also apply to appeal proceedings.

Q40. What is the time frame for the appeal to take place?

This will depend strongly on the court that is hearing the appeal and its workload. In practice, you are very unlikely to hear anything for several months.

Q41. Could things get worst during the appeal?

Not if you appeal and the prosecution does not appeal.

If the prosecution appeals against your sentence, then your sentence can be increased.

Q42. If I am acquitted, can the prosecution appeal?

Yes the prosecution can appeal within one week after the oral judgment. The prosecution are allowed to appeal even against an acquittal.

7. PRISON CONDITIONS

Q43. Do I have rights as a prisoner? Where can I find out about my rights?

As a prisoner you have some rights that cannot be taken away from you (e.g. the right to food and water; to see your lawyer; to be protected from bullying, violence, and racial harassment; to vote, etc.).

Your lawyer can provide you with more information on your rights.

Q44. What can I do if my rights are violated?

If your prisoner rights are violated (e.g. you are denied food) you should inform the prison governor. If this does not resolve the problem, you must complain to the courts. Ask your lawyer for further advice.

Q45. Where can I get assistance regarding my welfare issues? Regarding abuse and mistreatment?

A lawyer will be able to help you with welfare issues and complaints about other abuses or mistreatment. You can also get assistance from NGOs listed on the attached useful links pages.

8. POST-TRIAL MATTERS

Q46. Can I get my sentence reduced?

You can appeal against your sentence. The Court of Appeal cannot reduce your sentence itself but can decide to send the case back to the lower court.

The public prosecutor is responsible for ensuring that sentences are carried out and he must consider whether a prisoner should be released after they have served two-thirds of the sentence. He will then make a recommendation to the regional court which will decide. This judicial decision can be challenged.

You can also submit an application for early release when approaching the half-term point of your sentence but this will not be automatically considered unless the sentence was less than two years' imprisonment and you are a first offender. Release after serving half a sentence is the exception and not the rule and is normally coupled with deportation.

Q47. What would help me get an early release?

Good conduct in prison will help to get an early release.

Q48. I have been sentenced to pay a fine, what will happen if I don't pay it?

Failure to pay a fine can result in imprisonment.

Q49. Can I ask for a transfer to my home country?

You can be transferred to any country which has a transfer agreement with Germany.

This process can take up to 18 months and you must renounce your right to any further appeals.

Q50. I have exhausted all legal remedies, is it still possible to get my case reviewed?

The case can be reviewed if new facts and evidence are produced, which, independently or in connection with the evidence previously taken, tend to support the defendant's acquittal. It is usually very difficult to get your case reviewed.

The case can also be reviewed if the European Court of Human Rights has decided that there has been a violation of your rights and the judgment was based on that violation.

Q51. I have exhausted all legal remedies; can I apply for a pardon?

Pardons vary from one state to another so you should check the law in the state where you were convicted.

In general, pardon applications should be sent to the state ministers (either the Justice Minister or the Prime Minister). In certain states, the courts have a special person appointed who handles pardon application at first instance before a decision is made by the Ministry of Justice.

Only pardon applications for the most serious crimes (such as terrorism), which are prosecuted by the federal prosecutor, should be sent to the President of Germany.

In practice, pardons are rarely granted.

Q52. Can I be expelled instead of serving my sentence?

In practice, this is possible after you have completed half of your prison sentence.

Q53. Is there a risk that I will be deported after serving my sentence?

Yes. You should ask for more information from your lawyer.

USEFUL LINKS

ORGANISATION	MANDATE	CONTACT DETAILS
LAW GOVERNING BODIES		
<p>Bundesrechtsanwaltskammer</p> <p><i>(German Federal Bar Association)</i></p>	<p><u>Mandate:</u></p> <p>The Federal Bar Association represents the German legal profession as a whole. It is responsible for regulating the legal profession and membership is obligatory for all lawyers practicing in Germany.</p> <p><u>Additional information:</u></p> <p>The website provides a search tool to allow you to find your local/regional bar association.</p> <p>To complain about a lawyer, you must contact your regional bar association. A list of regional bar associations and their addresses can be found on the website.</p> <p><u>Languages:</u></p> <p>German</p>	<p><u>Website:</u></p> <p>www.brak.de</p> <p>E: zentrale@brak.de or contact regional bars via website: http://www.brak.de/service/kontakt/</p> <p>T: 030 284939-0</p> <p>F: 030 284939-11</p> <p>Bundesrechtsanwalt skammer (BRAK) Littenstraße 9 10179 Berlin</p>
<p>Deutscher Anwaltverein (DAV)</p> <p><i>(German Bar Association)</i></p>	<p><u>Mandate:</u></p> <p>The DAV works to promote the legal profession in Germany. The membership to the DAV is voluntary for practicing lawyers in Germany. Includes links to local bar associations by 'Bundesland' (Federal State). To access the links click on 'Über uns' and search in 'Örtliche Anwaltvereine'.</p> <p><u>Additional information:</u></p> <p>Detailed information on the role of the</p>	<p><u>Website:</u></p> <p>www.anwaltverein.de</p> <p>E: dav@anwaltverein.de or through website</p> <p>T: 030 72 61 52 0</p> <p>F: 030 72 61 52 190</p> <p>Littenstraße 11</p>

ORGANISATION	MANDATE	CONTACT DETAILS
	<p>German Bar Association and its role is available on the website and to download in English and French.</p> <p><u>Languages:</u></p> <p>Website in German – also available in English and French.</p>	<p>D – 10179 Berlin</p>
<p>Local Bar Associations</p>	<p><u>Mandate:</u></p> <p>There are several local bar associations which have a 24 hour, or out-of-office hours emergency hotlines with specialists in criminal law who are able to provide initial legal assistance after arrest.</p>	<p>Hamburg:</p> <p>T: 0171 610 5949</p> <p>Cologne:</p> <p>T: 0221 42 63 82</p> <p>Stuttgart:</p> <p>T: 0711 236 9306</p> <p>Dresden:</p> <p>T: 0172 795 55 59</p> <p>Frankfurt:</p> <p>T: 0172 690 690</p> <p>Munich:</p> <p>T: 0171 532 8104 (between Friday evenings and Monday mornings)</p>
<p>OMBUDSMEN</p>		
<p>Petitionsausschuss</p> <p><i>(Petitions Committee - German)</i></p>	<p><u>Mandate:</u></p> <p>Petitions Committee is in place to receive comments, suggestions and complaints from members of the public about all aspects of public bodies and their functions.</p>	<p><u>Website:</u></p> <p>www.bundestag.de/bundestag/ausschuesse/17/a02/index.jsp (German)</p> <p>www.bundestag.de/ht</p>

ORGANISATION	MANDATE	CONTACT DETAILS
<p>Ombudsman)</p>	<p><u>Criteria to receive assistance:</u></p> <p>Anybody can petition, including foreigners and prisoners. Comments, suggestions and complaints can also be made by a third party on their behalf.</p> <p><u>Cost:</u></p> <p>Free</p> <p><u>Additional information:</u></p> <p>All complaints must be made in writing, signed and include your address. Complaints can be sent by post or to faxed. An online form for making suggestions/complaints is available on the website</p> <p><u>Languages:</u></p> <p>Website available in German, English, French and Arabic.</p>	<p>docs_e/bundestag/committees/a02/index.html (English)</p> <p>E: post.pet@bundestag.de</p> <p>T: 030 227 352 57</p> <p>F: 030 227 360 53</p> <p>030 227 360 27 (Complaints)</p> <p>Petitionsausschus, Deutscher Bundestag, Platz der Republik, 11011 Berlin</p>

ORGANISATION	MANDATE	CONTACT DETAILS
INTERPRETERS		
<p>The Federal Association of Interpreters and Translators (Bundesverband der Dolmetscher und Übersetzer e.V. (BDÜ))</p>	<p><u>Mandate:</u></p> <p>The BDÜ is Germany's largest association of professional linguists. The BDÜ represents 75% of all professionally organized translators and interpreters in Germany.</p> <p><u>Languages:</u></p> <p>Website available in German, English and French.</p> <hr/> <p>(You can also look for an interpreter using the website of the German ministry of justice at http://www.justiz-dolmetscher.de/suche.jsp)</p>	<p><u>Website:</u></p> <p>http://www.bdue.de/in-dexen.php (in English)</p> <p>http://www.bdue.de/in-dex.php (in German)</p> <p>http://www.bdue.de/in-dexfr.php (in French)</p> <p>E : info@bdue.de</p> <p>T: 030 88712830</p> <p>F: 030 88712840</p> <p>Bundesgeschäftsstelle (Federal Head Office) Uhlandstraße 4-5 10623 Berlin</p>
<p>Aticom</p>	<p><u>Languages:</u></p> <p>German.</p>	<p><u>Website:</u></p> <p>http://www.aticom.de/a-verzfach.htm (in German)</p> <p>E : Geschaeftsstelle@aticom.de</p> <p>T: 023 245 935 99</p> <p>F: 023 246 810 03</p> <p>ATICOM-Geschäftsstelle</p>

ORGANISATION	MANDATE	CONTACT DETAILS
<p>ADÜ Nord</p>	<p><u>Languages:</u> German.</p>	<p>Winzermarkstr. 89 45529 Hattingen</p> <p><u>Website:</u> www.adue-nord.de (in German)</p> <p>E: info@adue-nord.de</p> <p>T: 040 219 100 1</p> <p>F: 040 219 100 3</p> <p>ADÜ Nord e.V. Wendenstraße 435 20537 Hamburg</p> <p><u>Opening hours:</u> Monday to Thursday 09:30-12:30</p>
<p>NGOs</p>		
<p>- HUMAN RIGHTS</p>		
<p>Internationale Gesellschaft für Menschenrechte (IGFM)</p> <p><i>(International Society for Human Rights (ISHR))</i></p>	<p><u>Mandate:</u> International independent human rights organisation based in Germany. Reports on all issues concerning human rights.</p> <p><u>Languages:</u> German and English, with some sections also available in Farsi. English and German email contacts.</p>	<p><u>Website:</u> http://www.igfm.de (in German)</p> <p>http://www.ishr.org (in English)</p> <p>E: German: info@igfm.de</p> <p>English: info@ishr.org</p>

ORGANISATION	MANDATE	CONTACT DETAILS
		T: 069 420 108 0 F: 069 420 108 33 Internationale Gesellschaft für Menschenrechte (IGFM) Deutsche Sektion e.V. / International Society for Human Rights (ISHR) International Secretariat Borsigallee 9, 60388 Frankfurt am Main
Amnesty International: Germany	<u>Mandate:</u> Amnesty International is a campaigning organisation. Its aim is to protect people wherever justice, fairness, freedom and truth are denied. AI's campaigns differ from country to country. <u>Cost:</u> Free <u>Languages:</u> German.	<u>Website:</u> www.amnesty.de E: info@amnesty.de T: Bonn: 0228 9 83 73 0 Berlin: 030 420248 0 F: Bonn: 0228 63 00 36 Bonn: Amnesty International, Sekretariat der deutschen Sektion, Büro Bonn, Heerstr. 17853111 Bonn

ORGANISATION	MANDATE	CONTACT DETAILS
		Berlin: Amnesty International, Sekretariat der deutschen Sektion e. V., Büro Berlin, Greifswalder Str. 4, 10405 Berlin Mailing address / Postanschrift: Amnesty International, Sektion der Bundesrepublik Deutschland e.V., 53108 Bonn
- GENERAL ASSISTANCE FOR PRISONERS		
<p>Die Bundesarbeitsgemeinschaft für Straffälligenhilfe (BAG-S)</p> <p><i>(The Federal Association for Offenders (BAG-S))</i></p>	<p><u>Mandate:</u></p> <p>The Federal Association for Offenders (BAG-S) is a non-profit incorporated association and a trade organization, to improve the support for offenders and people as well as the interests of Offenders at federal level.</p> <p><u>Criteria to receive assistance:</u></p> <p>Offenders, their families, etc</p> <p><u>Cost:</u></p> <p>Free</p> <p><u>Languages:</u></p> <p>German</p>	<p><u>Website:</u></p> <p>www.bag-s.de</p> <p>E: info@bag-s.de</p> <p>T: 0228 96635 93</p> <p>F: 0228 96635 85</p> <p>Bundesarbeitsgemeinschaft für Straffälligenhilfe (BAG-S) e.V. Oppelner Str. 130 53119 Bonn</p>

ORGANISATION	MANDATE	CONTACT DETAILS
<p>Nothilfe Birgitta Wolf e. V.</p> <p><i>(Birgitta Wolf emergency fund)</i></p>	<p><u>Mandate:</u></p> <p>A charitable not-for-profit organisation which aims to prevent crime by helping prisoners, ex-prisoners, their families and victims, as well as other needy people. Their volunteers mediate between offenders and their victims as an extra-judicial service. They also try to facilitate volunteers who are willing to write to/visit prisoners, and/or assist prisoners when they are released from prison.</p> <p><u>Criteria to receive assistance:</u></p> <p>Prisoner (German or foreign), ex-prisoners, prisoners' families, victims of crime and the sick and elderly.</p> <p><u>Cost:</u></p> <p>Free – exclusively financed by membership fees and donations</p> <p><u>Languages:</u></p> <p>German</p>	<p><u>Website:</u></p> <p>nothilfe-birgitta-wolf.de</p> <p>E: info@nothilfe-birgitta-wolf.de</p> <p>T: 08841 7533</p> <p>Nothilfe Birgitta Wolf e.V. Auweg 18 82441 Ohlstadt</p>
<p>Freie Hilfe Berlin e.V</p> <p><i>(Free Aid Berlin)</i></p>	<p><u>Mandate:</u></p> <p>A charity providing general and specific advice, support and assistance to offenders, the unemployed and homeless people, and their relatives. FHB provides counselling in prison, in it's counselling centre and in home visits with relatives. FBH also offers advice to foreign prisoners.</p>	<p><u>Website:</u></p> <p>www.freiehilfe-berlin.de</p> <p>E: beratung@freiehilfe.de</p> <p>T: 030 44362440</p> <p>F: 030 44362453</p> <p>Standort Berlin-Mitte, Brunnenstr. 28, 10119 Berlin</p>

ORGANISATION	MANDATE	CONTACT DETAILS
	<p><u>Criteria to receive assistance:</u> Prisoner (foreign or national), unemployed, homeless, their relatives in the Berlin area</p> <p><u>Cost:</u> Free</p> <p><u>Languages:</u> German.</p>	<p><u>Opening hours:</u> Office hours: 10/9am-6pm, Tuesday and Thursday</p> <p>Telephone: 9am-4pm Monday, 1pm-4pm Wednesday, 9am-6pm Tuesday and Thursday, 9am-12pm Friday</p> <p>Prison hours: Moabit on Tuesday and Thursday, Tegel TA 4, 5, 5E, 6 on Tuesday or Wednesday, Pankow Lichtenberg womens' facility on Wednesdays, Charlottenburg on Mondays, Brandenburg on Thursdays.</p>
<p>Initiative Zelle (Cell initiative)</p>	<p><u>Mandate:</u> A not-for-profit student organisation from the University of Würzburg which aims to provide social contact for prisoners in the correctional facility at Würzburg.</p> <p><u>Criteria to receive assistance:</u> Prisoner at Würzburg prison</p> <p>The groups meet with two separate groups of 10-15 prisoners every Tuesday from 6.30-8pm.</p>	<p><u>Website:</u> http://uploader.wuerzburg.de/zelle/</p> <p>E: IniZelle@web.de</p> <p>T: 0931 354530</p> <p>Initiative Zelle Katholische Hochschulgemeinde Hofstallstraße 4 97070 Würzburg</p>

ORGANISATION	MANDATE	CONTACT DETAILS
	<u>Cost:</u> Free <u>Languages:</u> German	<u>Opening hours:</u> 6.30pm – 8pm, Tuesdays
Landesarbeitsgemeinschaft ehrenamtlicher Mitarbeiter im Strafvollzug Bayern e.V. (LAG e.V.) (Bayern Prison Volunteer Groups)	<u>Mandate:</u> LAG is a non-profit organisation coordinates volunteers and prison employees to help better support the prisoners and represent their interests. <u>Criteria to receive assistance:</u> Prisoner in Bavaria – various locations covered <u>Cost:</u> Free <u>Languages:</u> German	<u>Website:</u> www.ehrenamt-im-strafvollzug.de E: information@lag-strafvollzug-bayern.de <u>Multiple addresses are provided on the website.</u>
Arbeitskreis Resozialisierung – Stadtmission Nürnberg e.V. (Nuremberg Ex-Offenders Rehabilitation Group)	<u>Mandate:</u> A charity based in Nuremberg which aims to support prisoners/ ex-offenders on their release from prison in order to reduce the risk of re-offending. The group visits prisons and provides advice and assistance with all aspects of their release, including advice on parole. <u>Criteria to receive assistance:</u> Prisoners / ex-offenders	<u>Website:</u> www.reso.de E: ak-reso@stadtmission-nuernberg.de T: 0911 37 66 71 00 F: 0911 37 66 71 07 Arbeitskreis Resozialisierung, Kraußstraße 5, 90443

ORGANISATION	MANDATE	CONTACT DETAILS
	<u>Cost:</u> Free <u>Languages:</u> German	Nürnberg <u>Opening hours:</u> 9am-12.30pm and 2pm-5pm, Monday to Thursday 9am-12.30pm Fridays
- PRISONERS' WELFARE		
Bayerischer Landesverband für Gefangenenfürsorge und Bewährungshilfe e.V. (BayLGB) <i>(Bavarian National Association for the welfare of prisoners and Probation Association)</i>	<u>Mandate:</u> A charitable organisation that provides support for prisoners and ex-offenders, as well as supporting those on probation and the probation officers. In particular, it focuses on educational and vocational training for prisoners, financial assistance, advice on aspects of prison life and probation, housing provision and maintaining centralised contacts for prisoners. <u>Criteria to receive assistance:</u> Prisoner, ex-offender, probationer, probation officer <u>Cost:</u> Free <u>Additional information:</u> There are 21 district associations within the national association. <u>Languages:</u> German	<u>Website:</u> www.baylgb.de E: info@baylgb.de T: 089 6903845 F: 089 6901563 Headquarters: Prielmayerstraße 7, 80335 Munich, (Bavarian State Ministry of Justice and Consumer Protection) Office: Schlierseestraße 3, 81541 Munich

ORGANISATION	MANDATE	CONTACT DETAILS
<p>Freiabonnements für Gefangene e.V</p> <p><i>(Free Subscriptions for Prisoners)</i></p>	<p><u>Mandate:</u></p> <p>A not-for-profit organisation providing free newspaper and magazine subscriptions to prisoners to ensure prisoners do not lose touch with the outside world.</p> <p><u>Criteria to receive assistance:</u></p> <p>Prisoner</p> <p><u>Cost:</u></p> <p>Free to prisoners</p> <p><u>Additional information:</u></p> <p>Freiabos is a member of the German Joint Welfare Association</p> <p><u>Languages:</u></p> <p>German (Potentially some subscriptions in other languages)</p>	<p><u>Website:</u></p> <p>www.freiabos.de</p> <p>E: info@freiabos.de</p> <p>T: 030 611 21 89</p> <p>F: 030 61 62 98 99</p> <p>Freiabonnements für Gefangene e.V., Köpenicker Str. 175, 10997 Berlin</p>
<p>Straffälligen- und Bewährungshilfe Berlin e.V.</p> <p><i>(Prisoners Welfare Association of Berlin)</i></p>	<p><u>Mandate:</u></p> <p>Charitable organisation aimed at reducing the risk of re-offending and improving prisoner welfare. It provides advice and counselling to all those affected by or at risk of imprisonment, including foreign nationals.</p> <p><u>Criteria to receive assistance:</u></p> <p>Prisoners, ex-offenders, detainees, as well as their relatives, friends and acquaintances</p> <p><u>Cost:</u></p> <p>Free</p>	<p><u>Website:</u></p> <p>www.sbh-berlin.de</p> <p>E: info@sbh-berlin.de</p> <p>T: 030 86 47 13 0</p> <p>F: 030 86 47 13 49</p> <p>Straffälligen- und Bewährungshilfe Berlin e.V., Bundesallee 42, 10715 Berlin</p>

ORGANISATION	MANDATE	CONTACT DETAILS
	<p><u>Additional information:</u></p> <p>SBH provides a leaflet (in German) for foreign prisoners on its website</p> <p><u>Languages:</u></p> <p>German</p>	
- CHILDREN / YOUNG PRISONERS		
<p>Die Deutsche Veereinigung für Jugendgerichte und Jugendgerichtshöfen e.V. (DVJJ)</p> <p><i>(The German Association of Juvenile Courts and Court Services)</i></p>	<p><u>Mandate:</u></p> <p>DVJJ is a professional association for youth services and criminal law dealing with the cause and effects of youth crime.</p> <p><u>Criteria to receive assistance:</u></p> <p>Juvenile offenders</p> <p><u>Languages:</u></p> <p>German</p>	<p><u>Website:</u></p> <p>www.dvjj.de</p> <p>E: info@dvjj.de</p> <p>T: 0511 34836 40</p> <p>F: 0511 3180660</p> <p>DVJJ, Lützerodestraße. 9 30161 Hanover</p>
- BRITISH PRISONERS		
<p>Prisoners Abroad</p>	<p><u>Mandate:</u></p> <p>Prisoners Abroad is a small UK-based charity dedicated to supporting British citizens imprisoned overseas. They also provide assistance to those affected by imprisonment, and help ex-prisoners start a new life free of crime after their release.</p> <p><u>Criteria to receive assistance:</u></p> <p>The person in prison must be a British Citizen – that is they hold a full British passport – and they must not hold a</p>	<p><u>Website:</u></p> <p>www.prisonersabroad.org.uk</p> <p>E: info@prisonersabroad.org.uk</p> <p>T: 020 7561 6820</p> <p>Helpline: 0808 172 0098 (this is free from all UK)</p>

ORGANISATION	MANDATE	CONTACT DETAILS
	<p>passport for the country in which they are detained.</p> <p><u>Cost:</u> Free</p> <p><u>Additional information:</u> For prisoners, PA can make grant payments for food and other essentials, depending on where they are held and what other support they receive. PA can send magazines and newspapers, information about prison and their rights, and PA may be able to help if they need medical treatment in prison.</p> <p><u>Languages:</u> English</p>	<p>landlines)</p> <p>F: 020 7561 6821</p> <p>Prisoners Abroad 89-93 Fonthill Road Finsbury Park London N4 3JH</p> <p><u>Opening hours:</u> 10am-4pm, Monday to Friday</p>

This leaflet was last updated in February 2013. The information contained in this document is provided for information purposes only and is not intended as legal advice, nor does it constitute legal advice. Whilst we endeavour to keep the information up to date and correct, Fair Trials International makes no representations or warranties of any kind, express or implied about the completeness, accuracy, reliability, suitability or applicability to individual cases of the information contained in this leaflet. Any reliance you place on such material is therefore strictly at your own risk. Fair Trials International disclaims any liability to the fullest extent permissible by law for any loss or damage of any kind arising from the use of the information provided. You should always seek professional legal advice from a lawyer qualified to practice in the jurisdiction you are in.

If you think that an important question is not covered in this fact sheet, please let us know.

FAIR TRIALS INTERNATIONAL

**Working for a world where every person's right to a
fair trial is respected, whatever their nationality,
wherever they are accused**

THANK YOU

Fair Trials International would like to thank the law firms and individual practitioners, both in the UK and abroad, who have generously given their time and expertise to help produce these legal guidance notes.

Fair Trials is grateful to all of its funders, including:



Co-funded by the European Union

For a full list of our funders see
www.fairtrials.net/support_us/supporters

Fair Trials International
3/7 Temple Chambers
Temple Avenue
London EC4Y 0HP
United Kingdom

T: + 44 (0)20 7822 2370
F: + 44 (0)20 7822 2371
casework@fairtrials.net
www.fairtrials.net

47

Fair Trials International – February 2013

This note is intended to be for information purposes only and does not constitute legal advice. Take local legal advice on your specific situation.

LON18648467/10