

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. The conditions of our actions have changed, which is why we also need to change our methods. 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 booklet and this leaflet.

You can find the legal aid booklet here: www.ende-gelaende.org/en/action/legal-matters/

Current situation

In December 2018, the federal state of North Rhine-Westphalia passed a new law that regulates what police is authorized to do (Polizeigesetz, PolG). It is also targeting climate activists. Longer times in detention are one of its novelties, e.g. if someone intentionally evades being identified by using super glue on their finger tips, they might be kept in custody longer (for details, see section on "detention/custody and arrest" below). Even though we find ourselves in this new situation, Ende Gelände would still like to keep up the collective practice of refusing to disclose one's identity – there are still good reasons for a refusal (see below). As a participant in the action, please research the police's new authorizations beforehand with your affinity group, and prepare for possible scenarios accordingly. **Please read the information in this leaflet very carefully!** - No matter whether you have participated in some of the actions over the last years or not.

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). Before you head into action, check everything you carry with you once again for anything you might have missed!

What's new:

Before the action, you need to put a lot of thought into what you might want to do in case of being kept in custody for more than one day, as could happen due to the new police law. (At the moment, there is no way of telling how many people might be affected or how much at risk one specific person could be of being kept for a longer time!) Note: there are ways of keeping your options open and leaving custody rather soon by means of identifying yourself later on. People might want to have that choice e.g. because they absolutely have to be home 2 or 3 days later, or for a number of other reasons. If you would like to have that option, you need to make sure that your ID card is kept somewhere where people can easily find it and take it to the detention center/the place you are being kept. Police don't always accept a verbal confirmation of your identity, or sometimes you can get out of custody faster if you can prove who you are.

Arrival and departure:

You run a higher risk of being identified if you decide to bring your ID to the action camp. 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! Maybe one of you has a very inconspicuous way of getting to the action and could carry along a couple of ID cards...? (please also check the Ende Gelände homepage for more information on getting to the action.)

ID documents: how to store them and hand them in later

It makes sense to think about how you could access your documents while in the detention center if you really need to. Ideally, there are people who know where to find your ID, or even keep it for you while you are in action. Also consider how the Legal Team could get into contact with that person if need be.

One possible way of going about this:

- 2 to 3 affinity groups consisting of 6 to 8 people each choose one person at the camp who they trust to keep their IDs or let them know where to find their IDs, if they hid them. The people who go into action leave their person of trust with some information about possible scenarios or people's wishes, e.g.

about who needs to be informed in case of a longer stay in the detention center (e.g. call in sick for work after three days, call your flat mate...)

- If people don't come back after the action, their person of trust talks to the Legal Team (either at their tent or in another way, e.g. by calling the Legal Team's phone number – without using people's names! Alternative number system explained below). The person of trust will ask what information the Legal Team has on the people who did not come back, and hands over their IDs, if necessary.
- **IMPORTANT:** the Legal Team will not be collecting any data about the people who go into action, so they won't be able to contact a person of trust themselves (giving them details about how to contact someone during your phone call from the detention center might not be a good idea!). So, the people of trust have to be ready to become active themselves.
- **NUMBERS:** If you would like to refuse to reveal your identity, come to the Legal Team before the action and have them give you a number they can identify you by later on. You should tell the person keeping your ID what number you are. When you call the Legal Team from the detention center, you can use this number to identify yourself for as long as you would like to remain anonymous. The person who has your ID can use that number to inquire with the Legal Team about where and how you are.
- **ALSO IMPORTANT:** If you would consider staying in custody for more than 1 or 2 days, don't leave your ID in your tent or other areas at the camp, since it might already be taken down when you come back.

Advantages 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 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.
- Refusing to reveal ones identity does 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 movement and inhibit protests against those responsible for the climate crisis. Refusing to reveal our identities is one of our tools of fighting back.

Disadvantages and risks of ID refusal:

- The new police law that came into effect in December 2018 allows for people to be kept by the police for up to 7 days (for more info, see below). Not everyone has the option of being in an action that long, so they would then have to state their personal information in order to get out of custody.
- According to the Code of Criminal Procedures (effective whenever police is accusing you of having committed a crime), police can keep people in **custody** for up to 12 hours in order to establish their identity. People affected by this might be subject to psychological pressure due to the specific situation and the police officers' behavior. 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).
- 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.

Groups that are "at risk":

- Anyone who does not hold citizenship of a state of the European Union (or Switzerland) is considered to be committing a crime when refusing to reveal their identity (§ 95 Residence Act, also known as Immigration 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 5 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).

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.
- 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.
- 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.

Detention/custody and arrest:

- Currently, custody to establish someone's identity is limited to 12 hours. Even though the law allows for up to 12 hours of custody, police is also legally required to act reasonably. In previous actions, some people were let go before the 12-hour-mark.
- Nonetheless, as allowed by the new Police Law (§ 38(2) PolG NRW) police could try to keep people in custody for up to seven days "in case facts support the assumption that establishment of one's identity was prevented intentionally". Police would have to file an application that has to be either approved or denied by a judge until midnight one day after the day you were taken into custody (e.g. after the police started kettling you and the people around you). This application is composed of an explanation why police thinks keeping you in custody longer would help to "avert dangers", and which facts lead them to believe that you are intentionally preventing the establishment of your identity. One case in February 2019 saw super-glued fingertips being used as such a "fact" in the application to the judge.
- 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 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: <http://www.ende-gelaende.org/de/press-release/pressemitteilung-vom-06-februar-2019/>). Whether police and the courts in the state of North Rhine-Westphalia will take the court's decision in Brandenburg as an example is difficult to say at the moment.
- 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.
- Potentially, individual people or groups of people in the action could be affected by investigative detention or by measures allowed for by the new police law. At the moment there is no way of knowing how many people could be subject to this. Thus it is very important that you talk to the people in your

affinity group about this new situation of e.g. possibly being kept in detention for up to 7 days and how all of you would like to handle that risk. Everyone in your affinity group should make the necessary preparations for such a scenario.

- The legal aid booklet and the workshops on antirepression that will be held in a number of cities in the weeks leading up to the action provide you with more information and tips on what to do when you are in the detention center.
- The legal team will also be offering legal aid workshops at the action camp during the days before the action.

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 Rhineland, 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.**
- Last year, 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.

After the action

- 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.
- If you need help after being arrested or getting into contact with the police, the Legal Team for all (legal_team_fuer_alle@posteo.de) will be there for you.

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!

**How to contact the Legal Team
(German: Ermittlungsausschuss/ EA)
during the action:
0049 (0)30 340 603 13**