

Guide to action

Legal Aid Guide for civil disobedience



Important: This is Austrian law only!

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Stay safe! Know your limits! Know your rights!

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1. Why do we do civil disobedience?

Why do we do civil disobedience actions? Why not a registered demonstration? Why don't we collect signatures for petitions or write letters to politicians?

If democratic majorities are wrong and act unjust civil disobedience is a means to draw attention to injustices in the system and encourage them to overthink/reconsider their actions. Climate crisis and the inaction of democratic majorities is such an unjust action. Since more than 50 years we know that the crisis is coming and we also know which main steps we'd have to take to reduce its impact – still far too little has been done by decision-makers.

As nowadays drastic and just means to fight climate crisis are necessary we even have to accept that others get restricted in their freedom of movement and employment. If we are detained by the police or get denounced now and then what we do is still legitimate from our perspective.

Back to our initial question: Why don't we choose one of the many other options of resistance to point out the problem? Other environmental and political groups have tried it over decades but it was not sufficient. Today it is necessary to take recourse to civil disobedience as climate change has been ignored far too long.

2. We do have a common action consensus

For a successful action day where everybody feels at ease the action consensus is of great importance. Everybody who follows the consensus is invited to take part in the action.

It states that the safety of everybody involved in the action (activists, passengers, car drivers) ranks first. There is no escalation from the activists and we do not use physical violence against living beings or infrastructure.

Everybody is responsible for her/his own behaviour!

3. Legal consequences

Which legal consequences can I expect when I participate in an action?

3.1 When I decide to disturb traffic with a sit-in:

A sit-in is considered as a spontaneous and unregistered meeting (= demonstration). The mere participation at a spontaneous demonstration is not indictable. At unregistered demonstrations an administrative penalty of 70- 200€ can be imposed on one person, in place of the whole group. That is why you should not reveal yourself as the organiser.

The police is not allowed to disperse a meeting as long as no endangerment of the public order, peace and safety has to be feared. The authorities have to render the dispersal audible (although not all people present need to actually hear the announcement). A typical dispersal happens via megaphone. The dispersal applies immediately and all people present need to leave the place.

Reasons for a dispersal could be: criminal elements of an offence, threatening of the public order or other violations of the Public Meetings Act. Only a non-compliance of the ban can lead to an administrative penalty.

In case the police wants to disperse the blockade by carrying people away, the following applies: If you actively resist the police by tearing, hitting or pushing them away or back, this is considered to be resistance against the state authority and will be prosecuted. We therefore strongly advise to not actively resist the police. The situation is different if you hold on to other people or something during a sit-in. This would be passive resistance, not resistance against state authority and therefore not subject to prosecution. However you must be careful not to 'accidentally' break away from the police or similar. Actions can very quickly be misinterpreted by the police.

3.2 If I have not brought an ID but am asked to identify myself:

In Austria the police does not have the right to conduct an identity verification without a valid reason. There is no obligation to show identification (for Austrian citizens). The police must give you a reason, e.g. that you are suspected of committing a criminal or an administrative offence or you are on an "international transport route" (train station, airport, etc.).

Otherwise an identity verification is not permitted!

References to a 'routine control', a 'police control', the 'security police law' or statements like 'we need no reason', 'If you refuse to show us your ID, you'll be taken to the inspection', 'otherwise liable to prosecution' or 'There have been frequent burglaries in the area' are no reasons for an ID check.

If you decide to identify yourself to the police you must (and please should) provide only your name, date of birth and registered address. For people younger than 18 the parents names are also required. Refusal is possible and in case of unlawful ID verification not indictable. However there is no legal possibility – except for non-cooperation – to defend oneself at the moment of authority and coercive power. Only in retrospect – provided that documentation/preservation of evidence exists – a complaint against the executing authority is possible.

If the ID verification is justified but you refuse it the police can arrest you and take you to the responsible district inspection. According to the Security Police Act the police is authorised to detain a person for up to 24 hours on suspicion of an administrative offence and on suspicion of a criminal offence for up to 48 hours.

Important to know: In Austria, there is no penalty for identity refusal. That means you can only be prosecuted for the offence for which you were detained. People with non-Austrian citizenship have to keep an identity document at a maximum distance of one hour otherwise it is an administrative offence.

People with non-Austrian citizenship must also declare their nationality. The police can compare your data with the register of residents either via radio or at the police station. If non-Austrian citizens refuse their ID to be checked the police is authorised to make an arrest according to § 39 FPG. Arrest in these cases is admissible for up to 24 hours, after which you must be released. In certain situations (e.g. expulsion order, residence ban, arrest order) a longer detention of 48 or 72 hours is possible.

According to § 99 FPG the police is allowed to implement identification measures. This means that the police is entitled to photograph you, film you, take a writing and voice sample or your fingerprints. It especially happens if the police assumes that you do not have an Austrian citizenship and cannot identify yourself.

An entry and residence ban can be imposed on third-country nationals (= non-EEA nationals) in the case of certain administrative offences pursuant to § 53 FPG and § 63 FPG. A legally binding administrative offence due to e.g. violation of the Public Meetings Act according to § 14 Public Meetings Act, disturbance of the public order according to § 81 SPG or aggressive behaviour towards officials according to § 82 SPG can already be sufficient. The proceeding must be completed so that the foreigners registration office can impose an entry ban or exclusion order based on the administrative offence. As long as you have lodged an appeal or no final decision has been made by the authorities the legal consequence may not yet occur. The amount of penalty does not matter. So be aware that you take a certain risk especially by participating at spontaneous demonstrations and after dispersals of meetings.

3.3 If I damage private property, e.g. a car:

Damage to property falls outside our action consensus and is rejected by the action organisation! It will be prosecuted.

Civil nuisance charges are still possible even if the action consensus is adhered to. A civil nuisance occurs when the possession of a thing is either arbitrarily impaired or violated or is completely withdrawn (e.g. obstruction of access to a property, prevention of planned work). Civil nuisances are negotiated under civil law and are associated with a 'low' expenditure (up to 2000€ in case of lawsuit loss).

3.4 If I damage public property, e.g. transportation infrastructure:

Damage to property falls outside our action consensus and is rejected by the action organisation! It will be prosecuted.

3.5 If I am involved in a situation where a police officer is injured:

As agreed in the action consensus, we do not use physical violence against participants of the action! If nevertheless police officers get harmed the following applies: Even minor injuries such as scratches are considered grievous bodily harm. Bodily harm is subject to criminal prosecution and should therefore be avoided at all costs.

What about self-defence or emergency relief against the police? If the situation was not filmed chances are high that you will be convicted anyway.

3.6 If I am involved in a situation where a passer-by is injured:

As agreed in the action consensus, we do not use physical violence against participants of the action!

If nevertheless minor bodily injuries occur to passers-by, the following applies: The injury must be visible (hematoma, wounds, etc.). Slight scratches however that disappear after a few minutes do not count as bodily injuries. Basically, in delicate situations that you want to be able to prove, it is always important to secure evidence. This includes, e.g. videos, photos, eyewitnesses, service numbers, IDs or protocols.

4. Behaviour before the action

What do I need to consider prior to the action? How do I prepare for the action? And what do I (not) take with me during the action?

4.1 How do I prepare for an action?

We advise all activists to participate in an action training before an action. Before, during and after an action, your buddy and your reference group are your most important points of contact. Talk in advance about your expectations, concerns and anticipations and how you want to deal with potential risky situations!

Write down the legal aid number with a waterproof pen somewhere easily accessible on your body where you can find it quickly and call them. The legal aid is available during the action for legal issues and needs by phone. With your action name the people on the phone will be able to understand where you are and what you need.

4.2 What do I bring to an action?

We have prepared a small packing list:

- comfortable shoes
- rain protection, umbrella (against sun or rain)
- sunscreen
- sunglasses
- water bottle(s)
- small snacks for in between: chocolate, dextrose, granola bar, etc.
- first aid kit
- emergency blanket
- banner
- sturdy instruments
- card games, something to read and pass the time
- some cash
- medication, if you need any
- sleeping bag and mat

4.3 What should I leave at home?

- ID cards if you want to deny your identity
- cell phone
- camera

- wallet
- anything that could identify you in any way (calendars, notebooks, etc.)
- any items that could be considered a weapon, especially knives and glass bottles
- contact lenses (better to take (old) glasses with you)

Tip: Check your bags once more before you start, especially if these are bags and clothes that you use in your normal life.

4.4 What are the pros and cons of leaving our IDs at home?

The climate justice movement in Europe has made good experiences with identity refusal in mass actions of civil disobedience in the last years. If everyone leaves their ID at home we create a shelter from repression and set a political sign against it.

The police' capacities to carry out identification services are limited just as the intake capacity of police detention centres. If hundreds of people refuse to give their personal data, it will be difficult to take them all into custody and conduct identification procedures.

However there may be good reasons to give your personal data, e.g. if you want to own up your actions or if you do not want to be taken to the police detention center by no means. Please discuss the question whether or not you want to reveal your ID in your reference group.

4.5 What do I have to consider for a bicycle action?

When we are on the road by bike e.g. as part of a Critical Mass it is important that the bikes are roadworthy - because only properly equipped bikes are allowed to participate in road traffic. We have prepared a small checklist of what you need to consider:

- brakes (two independent, well working brakes)
- bell/ horn
- taillight (red, may flash, does not have to be attached directly to the bike)
- front light (white, must shine steadily, may be removable)
- reflectors (red reflector at the back; yellow reflectors at both pedals, yellow or white reflectors on both wheels, white reflector in front)

If the bicycle is not roadworthy fines may be levied whereby the fine has to be paid per missing part. Normally in the case of a traffic ticket the cost is about 20 euros per part and has to be paid within two weeks.

For racing bikes other less strict rules apply but we recommend that racing cyclists also follow the checklist to avoid misunderstandings and repression. What is considered a racing bike and what a city bike is not always clear-cut.

Please keep in mind that we have stated in the action consensus that the safety of all participants ranks first! Therefore we want to avoid putting people in danger by the fact that a bike is not roadworthy.

5. Behavior during the action

The most important things to memorize for the action are: Be prepared for a peaceful time in the blockade, say as little as possible in case of emergency and be as passive as possible. There are spokespeople who communicate with the police – so you do not have to talk to the police. If it comes to a talk the most important thing is to remain polite and human - the clearer it is to all sides that we are all just human the less violence there will be.

You can already think of a few sentences beforehand why you are there for the police and potential press representatives. Only use your action name during the entire action.

As explained above: If you are in a sit-in that the police wants to disperse, remain calm and passive. Always keep your arms under the hips, fingers and hands open but together, also do not start verbal attacks! However shouts and slogans can encourage each other and show that it is a political meeting.

Be attentive, also to people outside your reference group! If you observe an escalation and feel comfortable try to deescalate. It is always best to bring restless people to the middle of the group as they are most protected there.

5.1 What helps me to stay calm during the action?

Your most important source of strength is your own experience. Think in advance about when you have already been in stressful situations and how you have dealt with them. You have your own strategies for success that you can use again. If you can't remember a similar stressful situation consider that people need to go to the toilet more often when they are stressed, that food can help, that stress can affect your digestion and that breathing exercises can help to relax.

The best support during an action is your reference group. If you have already exchanged ideas about the action in advance it will help you to communicate and take better care of each other during the action. Bring enough to eat and drink. It also helps to always know where the next toilet is! One of the most powerful tools against repression and violence is collective singing because it has a deescalating effect. During the action an out-of-action team will be present that you can ask questions about the action.

5.2 What to do when the police starts to end the action?

Authorities must conduct a dispersal audibly but it is not necessary for every individual to have heard the announcement. Typical is the dispersal via megaphone. The dispersal applies immediately and those present must leave the place.

Reasons for a dispersal can be: criminal offences, a character of the meeting that threatens public order or other violations of the Assembly Act. A failed registration of the demonstration is no reason for a dispersal.

After the announcement of the dispersal you have two options:

- You go. You may simply go, your identity is not inquired and thus also not determined.
- You stay and wait. Often nothing happens for a while. It is possible that the police disperses the meeting again after a few hours and you still have the possibility to leave unchecked. However there is no guarantee for it anymore if you did not leave the place of assembly immediately after

the first dispersal. If people remain at the place of assembly after the dispersal the police may enforce the dispersal with coercion. Carrying away, pepper spray and truncheons may be used. The police is called upon to use 'reasonable' force but it does not have to mean a lot. Usually afterwards personal data are recorded. If you do not disclose your ID you may be arrested to verify your identification. In case of ID disclosure you normally get an administrative penalty for 'not leaving the place of the meeting'. Administrative penalties are offences such as illegal parking or jaywalking. Even if you are convicted you will not get a criminal record.

Tips on how to deal with carrying away, pepper spray, pain compliance holds, etc. you will learn in action trainings and the corresponding information brochures.

5.3 How do I behave if the police takes me with them?

Rights upon arrest:

If you are arrested, stay calm, do not actively resist and do not insult the police officers. If you observe an arrest ask for the action name of the arrested person.

If you refuse to reveal your identity then of course you don't have to say anything at all. For everything else, the rule is: REFUSAL TO GIVE EVIDENCE! The best way is a direct and clear statement like: 'I refuse to give information' or 'I don't want to say anything about it.'

Don't try to be clever or to fool the policemen, it won't do you and others any good at all. In the best case they ignore you or become grumpy, in the worst case you blab and give away incriminating information about yourself or others! Even the most innocuous statements can be turned against you while the fact that you have testified to the police will not help you in court.

You have the right to two successful calls: Make your first call to the legal aid number. When calling tell your personal number or your action name, where you are, what you are accused of (state only the accusation, not what you did or did not do!) and who should be informed urgently. However the people who are in charge of the legal aid phone are experienced in their work and will make sure that you say all the important information without telling too much at the same time.

In reality, during the first few hours you will often be given no call at all or only one call.

You don't have to sign anything at the police station so pay attention to what is presented to you! Preferably you also do not make small talk. You don't have to talk to the police even if they are friendly to you.

If recorded transcripts do not match your statement, data are incorrect or you meant a statement differently, you have the right to have the transcript corrected and resubmitted and to reread it. You can also make such changes by hand.

5.4 Documentation

Documentation is allowed at meetings and can be decisive in case of police abuse in order to avoid punishment/repression. At the same time it can incriminate you or others! You should handle the recorded data with care (no online storage, safe place for storage - best encrypted). Filming police actions is legal.

If you want to upload a video only do it with pixelated faces - software for that exists! When filming it is important that you do not obstruct the official action. So keep at least two meters distance. However many activists also do not wish to be filmed and we ask everyone to be considerate of each other. Generally we will also organise our own documentation teams for the action.

5.5 What may the police do and what are they not allowed to do?

The first thing to be aware of: Police officers do not tell you what they are allowed or not allowed to do. They first instruct you to do something and if you let them it is good for them. Therefore: Know your rights and say clearly if you don't want something! Say no!

What is the police not allowed to do?

- beating, torture etc.
- strip you naked
- men may only be examined by a man, women only by a woman
(male female interpreted, gender identity is an unfortunately often ignored topic)
- refuse to go to the toilet
- refuse two successful phone calls

What to do if they delay your call or don't respond to your request?

Insist - wait – insist

If you are treated very badly try to remember the service number of the acting policemen. Police officers must wear such numbers and disclose them upon request. Do not take everything that police officers say on trust!

In case of allegations under the administrative criminal law the police can detain you for up to 24 hours and in case of criminal charges up to 48 hours. If they want to detain you for a longer time they have to bring you before a magistrate and remand you in custody.

5.6 Why is it annoying if the police has saved your fingerprints?

After all you haven't done anything wrong and don't have to expect a high fine anyway. And they haven't even found out your identity, so it doesn't matter! Wrong. Even if the police did not find out your identity they might next time. And then they can check where else they have seen those fingerprints. So you can still get in trouble for things that have long since passed. And every time they take your fingerprints again it becomes easier to find out your identity as more information on you exist.

6. Behaviour after the action

Once you've made it back safely take a few quiet moments to breathe! Then call the legal aid number and let them know that you (tell your action name) made it back. If you had negative experiences during the action it is useful to write down memory minutes in which you note down all the important details. For reflecting the whole action continue to rely on your buddy and your reference group. In shared action plenums we will reflect on the course and success of the actions.

If you get mail from the authorities after the action, please report it to us as soon as possible (often there is an appeal period of only two weeks): rechtshilfescncc@riseup.net.

We support you with legal aid, contact to lawyers, networking and solidarity structures!

Stay safe! Know your limits! Know your rights!