

NEWSLETTER CLIMATE ANTIREPRESSION #18 - June 2022

Once again it took a little longer with our newsletter, but again with an exciting focus, this time around certificates of good conduct, criminal records and employers*. We have tried to explain the chaotic rules as well as possible. We are also always happy to receive feedback, ideas for new focal points or news contributions for the next newsletter. We translated this newsletter with deepl.com.

Content:

RHEINLAND

- As if swallowed from the face of the earth...
- Rhineland EA for Lützi
- Acquittal for Lebenslaute activists

NORTH

- Double standards: investigative zeal for the station forest

CENTRAL

- First sentences for highway rappelling actions

FOCUS: JOB AND REPRESSION

- Fines and daily sentences
- Federal Central Register
- Certificate of good conduct
- Extended certificate of good conduct
- Who is allowed to see everything?
- Statute of limitations
- Special features for young people
- Employment relationships in the private and public sectors
- Public service with sovereign tasks
- Civil servants
- Civil servants and criminal proceedings

RHEINLAND

As if disappeared from the face of the earth...

or: Why did Gova of 24.02. still not come back from the Gesa?

On 24.02.22 there were clashes between activists and police in Lützerath, at least 5 people were taken into police custody. Most of them were released the same evening - all except one!

Gova, one of our friends from Lützerath is in prison since that day, namely in the JVA Willich. The reason for this or the legal accusations against the person have nothing to do with Lützerath or the events of that day, but refer to a completely different court case.

Write letters to Gova, don't leave anyone alone in jail!

More info here: <https://antirrr.nirgendwo.info/2022/06/08/wie-vom-erdboden-verschluckt/>

Rheinland EA for Lützi

The Rheinland EA is on summer break ... but slowly a possible eviction in Lützerath is getting closer. Therefore it makes sense to prepare and plan actions. This also includes to get informed about repression! Please visit the workshops in Lützerath (announcement via Twitter by Lützi lebt) and/or read the legal aid brochure for NRW:

https://www.ende-gelaende.org/wp-content/uploads/2020/09/rechtsbroschuere_nrw_sep2020.pdf

You can also get an EA number at any time from the comfort of your own home. What that is and what you need it for you can find out here: <https://luetzerathlebt.info/ea-nummer/>

Acquittal for Lebenslaute activists

The case law on RWE's open pit mining and the offense of trespassing remains contradictory - even for one and the same action, here a concert in the Garzweiler open pit mine by Lebenslaute in August 2021. In March, the Rheydt District Court acquitted several defendants - with a remarkable reasoning: The basic rights of the defendants outweigh, RWE, responsible for numerous expropriations had to accept minor violations of their property rights. In May, on the other hand, the Grevenbroich District Court sentenced one of those involved in the same action to a really high fine of 110 daily rates. The verdict was appealed, of course, but it is a fine example of the arbitrariness of law and order. So, in the Garzweiler open pit mine, we recommend the jurisdiction of the courts in Rheydt and Erkelenz, less the jurisdiction of the court in Grevenbroich. Have fun in the open pit mine!

More info: https://www.lebenslaute.net/?page_id=7900#aufrufeundpm

The acquittal verdict:

https://www.justiz.nrw.de/nrwe/lgs/mgladbach/ag_moenchengladbach_rheydt/j2022/21_Cs_721 Js_44_22_69_22_Urteil_20220314.html

NORTH

Double standards: Investigation zeal for the Bahnhofswald in Flensburg

In February 2021, the occupied Bahnhofswald in Flensburg was cleared to make room for a hotel and parking garage (or currently still a wasteland). The result of the repression one year after the brutal eviction, initially by private security services, shows once again why trust in the state is not appropriate: Investigations because of the life-threatening sawing of a tree, on which a person was, against the involved arborists were discontinued. Meanwhile, numerous investigations against squatters and their supporters continue - in June, criminal warrants were sent to some people for trespassing or resistance. On the anniversary of the eviction, there was another loud and angry demonstration.

Contact for those affected via abc-flensburg@systemli.org

<https://subtilus.info/2022/02/06/ermittlungs-unwille-gegen-jara-etc-letztlich-niemand-verantwortlich/>

<https://subtilus.info/2022/02/06/zweierlei-mass-ermittlungseifer-am-bawa/>

<https://subtilus.info/2022/02/23/fff-bawa-jahrestagsdemo-bericht/>

CENTRAL

First judgments concerning highway rappelling operations

Jurisprudence is also very inconsistent when it comes to abseiling actions over highways. They can be perfectly legal if registered as an assembly, even over flowing traffic. The public prosecutor's office in Giessen consequently also sees no criminal liability. Nevertheless, there are unfortunately some courts that see it differently. The local court in Helmstedt (Lower Saxony) stopped the accusation of coercion after some discussion and sentenced attempted serious interference with traffic to 80-90 daily fines. For this, the Frankfurt-Höchst District Court considered it to be a

particularly serious case of coercion and immediately imposed 7 months probation (perhaps to justify the pre-trial detention imposed by the same court). Of the judgments nothing is yet legally binding, which constructs remain in the end is uncertain. At the moment, among other things, there is an attempt to argue that the abseilers took the police as a means of force to make the motorists stop. This is how creative prosecutors and courts can be when it comes to unwelcome actions. A trial report: <https://gerichtesindzumessenda.noblogs.org/post/2022/04/17/das-grose-theater-im-amtsgericht-helmstedt/>

FOCUS: JOB AND REPRESSION

Again and again we get the question in our counseling how it is with entries in the certificate of good conduct and whether the planned actions and expected repressions have influence on the job or the planned entry into the civil service.

To start with, it should be said that repression is unpredictable. That is a central part of it that intimidates us, precisely that we can never tell exactly what will follow in an action. Sometimes nothing, sometimes unexpectedly much, because some cops come up with kicks, for example. To a certain extent, a decision for action is always also a decision to enter this uncertain playing field with only supposedly clear rules. Nevertheless: More knowledge often helps, therefore we try to explain some terms to you, so that you can get a clearer view in the law tangle.

Fines and daily rates

In the FRG, most of the sentences imposed are fines, calculated in daily rates. In sentencing, there is both a number of daily rates, which is the actual amount of the penalty (and therefore comparable), and an amount of daily rates, which is calculated according to income. For example, there are people who are fined 30 daily rates of 15 euros each for trespassing (i.e., trespassing on a coal excavator, for example). In total, that would be 450 Euros, which is a monthly income that the court often assumes for Hartz IV recipients. If more money is earned, this would be correspondingly more. However, the number of daily sentences is always decisive for certificates of good conduct and the like.

Federal Central Register

Every (criminal) conviction is entered in the Federal Central Register. Even an unchallenged penalty order is a conviction (therefore always file an appeal). The Federal Central Register is a list maintained by the Federal Office of Justice. Courts and public prosecutors can obtain extracts from it for other proceedings, which are then often read out in court during hearings. There are then the collected convictions in it (unless they are statute-barred, more about that later). There is an extra law for all this, the Bundeszentralregistergesetz (BZRG).

Convictions from abroad are entered if a person has German citizenship or lives or was born in the FRG.

Certificate of good conduct

Every person over 14 can apply for a certificate of good conduct (§30 BZRG). Some, even quite 'normal' employers require the presentation of this and can then make this a criterion in their decision about your employment. However, not every conviction ends up there, but there are exceptions. The most relevant one is that convictions up to 90 daily sentences (or 3 months) do not end up there, as long as there are not several such lower convictions. So if you've been sentenced to

a low fine once, it won't show up on your criminal record. By the way, you may call yourself "unpunished" if nothing appears in this certificate of good conduct.

Extended certificate of good conduct

There are certain regulations according to which an extended certificate of good conduct may be required - but then you have to confirm that you need it. Generally, this applies to work with minors, but it can also be regulated by law for other areas. In the extended certificate of good conduct, some convictions under 90 daily sentences do appear. That concerns pretty much exactly the criminal offenses, with which that is also logical, thus everything which has to do with sexual abuse, neglect of protectees, human trafficking etc. - not the criminal offenses, which are accused to us usually with politischen actions. (§§ 30a, 32 (5) BZRG)

If you want to register a trade and have that registered, certificate of good conduct for authorities is required, in which also convictions under 90 daily sentences appear, which concern criminal offenses in connection with the practice of a trade or a wirtschaftlichen enterprise. (§ 32 (4) BZRG)

Who is allowed to see everything?

Only certain authorities are granted unrestricted access to information from the Federal Central Register (according to § 41 BZRG): Courts, public prosecutors' offices, correctional authorities, offices for the protection of the constitution, foreigners' authorities, naturalization offices, the criminal police, the bar association for admissions, the medicines authority to clarify whether there is a permit for narcotics - to name the most relevant ones. So if you want to get a license to practice medicine, pharmacy or law, any conviction can actually be looked at there.

Statute of limitations

Now it gets really complicated, even if we simplify things a bit for the sake of comprehensibility. The time limits are not calculated according to the date of the offense, but according to the date of the first-instance conviction, i.e. the conviction before the district court. If there were still appeals and appeal hearings, these are irrelevant for the deadline. So how long the judgment is final does not matter. The running times of the period go after the punishment height. Basically, if new things are added, all things, including the old ones, remain until all statutes of limitations have expired.

Now, on the one hand, there are deadlines for deletion from the Federal Central Register (§ 46 BZRG). Convictions of up to 90 daily sentences are deleted after 5 years, all fines and suspended sentences of up to one year after 10 years, and convictions of more than one year imprisonment can remain there for 15 years or even longer in individual cases. So those are the time limits for what courts and prosecutors see the next time they judge what we've done.

On the other hand, there are deadlines for when things may no longer appear in the certificate of good conduct. (§ 34 BZRG) For crimes punishable by up to 90 daily sentences (or 3 months imprisonment) there is a time limit of 3 years, for over 90 daily sentences 5 years and in certain convictions with more than one year imprisonment even 10 years. These are the deadlines that are important for submitting certificates of good conduct to employers*.

By way of example: If you are alleged to have committed a trespass in June 2015, were sentenced for it by the district court in April 2017, and perhaps had an appeal hearing in 2018, then in May 2020 you will no longer have an entry in the certificate of good conduct and in May 2022 you will no longer have an entry in the Federal Central Register. If you are then in court again, everything is as if you had never been convicted. Of course, all this only applies if no further convictions have

occurred in the meantime. Preliminary proceedings by the police and the public prosecutor's office that are still ongoing do not matter.

Special features for young people

In the case of juveniles and juvenile offenses (can only happen to people under the age of 21 on the date of the offense), some things are deleted earlier and deleted from the certificates of good conduct, but there is also the education register. Not only convictions are entered there, but also suspensions due to insignificance, educational measures by family courts or acquittals due to lack of maturity (§ 60 BZRG). Entries from the education register are removed when you turn 24, unless there are also any prison sentences in the Federal Central Register.

Employment in the private sector and public service

For employment in the public sector, a certificate of good conduct must be submitted, and sometimes it is also asked whether there are any proceedings in which more than 90 daily sentences are to be expected. Companies in the private sector may also require a certificate of good conduct. For work with children and young people, it is always the case that an extended certificate of good conduct must be submitted.

However, if you have already been hired, it is more difficult to get rid of you. You may only be dismissed if criminal offenses are directly related to the job, e.g. if you have been convicted of property crimes and have to handle money professionally, or if you have been sentenced to more than one year's probation or imprisonment. The conditions apply to both private sector and most public sector employees covered by the TVöD (Tarifvertrag öffentlicher Dienst).

Public service with sovereign duties

Special fiduciary duties only exist for employees who fall under the TVöD-V, i.e. in the area of "administration". In addition, sovereign activities must also be performed in their areas of responsibility. Construction and public order administration are cited as examples of this in the comments, and employees of job centers and other repressive authorities presumably also fall into the category. Only for this group of employees does it apply that they must "commit themselves to the free democratic basic order within the meaning of the Basic Law" through "their entire conduct." (§ 41 sentence 2 TVöD-BT-V, Art. 33 GG). As we understand it, this is the only place where dismissals on the grounds of assumed or actual hostility to the constitution would be possible - but the requirements must not be as high as for civil servants. All in all, it is debatable whether sovereign tasks should not actually only be performed by civil servants and whether it should be possible at all to expect such duties of loyalty from employees. (Comment by Kutzki on § 41 TVöD BT-V)

Civil servants

So let's move on to the next topic: civil servants. The state makes people civil servants because it wants to be sure of them and thus restricts many of their freedoms. The civil service offers a kind of additional payment for the surrender of freedoms - from our point of view nothing that should be done. It is already clear from the Basic Law (Art. 33) that sovereign powers are only conferred on people who are in a public-law service and loyalty relationship. Civil servants may only be appointed (i.e. hired) if they can guarantee that they will at all times stand up for the free democratic basic order as defined in the Basic Law (§ 7 BeamtStG). Civil servants must not only stand up for the free democratic basic order, but also maintain "moderation and restraint" in political activity - a

muzzle by the state. (§ 60 BeamStG) Their appearance and other conduct (including off-duty conduct) must also be appropriate to their profession. (§ 61 BeamStG).

Observations by the Office for the Protection of the Constitution (which, as is well known, is not controlled) can therefore become a problem. In the current and most recent reports on the protection of the constitution, Ende Gelände, Hambacher Forst, rappelling actions over highways and also individual local climate justice groups appear, among others. On this basis, people can also be removed from their civil servant status through disciplinary proceedings - and they can be deprived of their pension rights. Employees keep their pension rights if they are thrown out, civil servants can lose them completely - even after retirement.

Civil servants and criminal proceedings

Even small fines can stand in the way of civil servant status, because they are then considered to be lacking character suitability for the profession. Since the highest federal and state authorities are allowed to look directly into the Federal Central Register, they also see all convictions.

All criminal proceedings initiated against civil servants by the public prosecutor's office are also reported to the employer. If there is a conviction to a prison sentence of at least one year (even on probation), the civil service relationship is automatically terminated and the pension entitlements expire. In the case of bribery in office or accusations such as treason, a sentence of half a year is sufficient (§ 24 BeamStG).

Overall, our impression is that the fear of repercussions on career choices is often greater than the actual consequences. It is actually much more difficult to reconcile working for pay and being active at the same time - this is often the phase when people stop their activities. Think about what is important to you. And if you have a choice, don't get tenured. Just give up the few hundred euros more and remain free in your own decisions to stand up for a good cause and for change in this shitty world.

So: Stay active and resistant!

AntiRRR