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# Facing an Arrest Warrant in Germany

Extradition, European Arrest Warrants  
and Interpol Red Notices

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## Who Should Read This Guide?

Foreign nationals at risk of arrest in Germany; their families; foreign law firms advising clients facing extradition proceedings or Interpol Red Notices; and in-house counsel whose executives travel internationally and may be subject to arrest warrants.

## Key situations covered

- ✓ Arrest at a German airport, border crossing, or other location on a warrant
- ✓ Rights on arrest: silence, legal counsel, and consular notification
- ✓ European Arrest Warrants - grounds for challenge and the surrender procedure
- ✓ Extradition to non-EU countries under the IRG framework
- ✓ Interpol Red Notices and Diffusions - challenge through the CCF
- ✓ Immediate steps for foreign lawyers and families

## Introduction

An arrest on a warrant in Germany can happen without warning - at an airport, at a border crossing, during a routine traffic stop, or at a private address. For foreign nationals, the experience is compounded by unfamiliarity with German criminal procedure, language barriers, and the immediate risk of extradition detention. For the foreign lawyers and families who receive the call, the first hours are the most consequential.

This article sets out what happens when a person is arrested in Germany on a warrant, what rights they have, how extradition proceedings work, and what steps foreign lawyers and families should take immediately.

# 1. How Arrests on Warrants Happen in Germany

Arrests based on warrants in Germany arise in four main scenarios.

**German domestic arrest warrants** are issued by a German judge where there is strong suspicion of a criminal offense and one of the statutory grounds for detention exists - typically risk of flight, risk of tampering with evidence, or risk of reoffending. The warrant authorizes arrest anywhere within Germany and is entered into INPOL - the national police information system - enabling police forces across Germany to act on it.

**European Arrest Warrants (EAW)** are issued by judicial authorities in EU member states and recorded in the Schengen Information System (SIS). They are designed to facilitate rapid arrest and surrender within the EU. Once recorded in the SIS, member states are obliged to arrest the person concerned at any German entry point or police contact - the obligation to act is mandatory, not discretionary.

**Interpol Red Notices** are international alerts issued by Interpol at the request of a member state, calling for the provisional arrest of a wanted person for extradition purposes. They are entered into the Interpol International Police Information System and into national police databases - in Germany, INPOL - and can trigger arrest at airports and border crossings in any of Interpol's member states. A Red Notice is not an international arrest warrant - but it is sufficient grounds for provisional arrest in Germany.

**Interpol Diffusions** are a less formal variant - alerts sent directly by one national authority to another, bypassing the Interpol General Secretariat's review. They can have the same practical effect as a Red Notice and are issued in significantly higher numbers.

Airport arrests are the most common scenario for foreign nationals, triggered by an SIS flag or Interpol notice when a passport is scanned at passport control. The arrest happens immediately and without warning.

| Scenario                      | Triggered by                               | Procedure                                             | Result                                                          |
|-------------------------------|--------------------------------------------|-------------------------------------------------------|-----------------------------------------------------------------|
| German domestic warrant       | A German judge                             | Entered into INPOL                                    | Authorizes arrest anywhere in Germany                           |
| European Arrest Warrant (EAW) | Judicial authorities in EU member state    | Recorded in the SIS                                   | Arrest is mandatory at any German entry point or police contact |
| Interpol Red Notice           | Interpol, at the request of a member state | Entered into Interpol's system and national databases | Grounds for provisional arrest                                  |
| Interpol Diffusions           | One national authority directly to another | Less formal, bypassing Interpol's review              | Same practical effect as a Red Notice                           |

## 2. The First Hours – Rights on Arrest

The rights available to a person arrested in Germany apply from the moment of arrest and must be exercised from the outset. Decisions made in the first hours - particularly any statements made to investigators - can shape the entire subsequent proceedings.

**The right to remain silent** applies in full. A person under arrest in Germany has no obligation to answer questions beyond providing their personal details. This right is absolute, and exercising it cannot be interpreted as evidence of guilt. No statement should be made to police or investigators until a lawyer has been consulted - not even a statement that appears innocuous.

**The right to legal counsel** attaches immediately on arrest. The person has the right to contact a lawyer of their choice before any interrogation. Where the person requests a lawyer, questioning must be suspended until counsel is present or the person waives this right. Since 2019, a public defense lawyer must be appointed without delay in pre-trial detention cases - but waiting for a court-appointed lawyer risks the initial hearing proceeding without adequate preparation.

**The right to consular notification** applies to all foreign nationals. Under the Vienna Convention on Consular Relations, a foreign national who is arrested has the right to have their consulate notified. The consulate can visit, provide assistance, and coordinate with family and legal representatives. This right should be asserted immediately.

#### **IMPORTANT NOTE**

Do not consent to searches or provide voluntary statements. Where investigators seek to search belongings, devices, or personal data, a formal objection should be noted - even where the search proceeds regardless. Consent transforms a seizure into a voluntary disclosure with different procedural consequences. Any statement made to German investigators without legal counsel present can be used in subsequent proceedings and cannot easily be retracted. There is no obligation to provide passwords, PINs, or access credentials to devices - this applies equally to mobile phones, laptops, and any other device.

### **3. Extradition Detention – The Legal Framework**

Following arrest on a warrant with extradition implications, the arrested person is brought before a German judge, in principle no later than the next day. This hearing determines whether extradition detention is ordered.

Extradition detention in Germany is governed by the Act on International Mutual Legal Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen - IRG). The judge assesses whether the grounds for detention are established - primarily the risk of flight, assessed on the specific circumstances of the case, not simply the fact that the person is a foreign national. Family ties, professional connections, assets, and other factors that connect a person to a country can be used to rebut a presumption of flight risk.

German law sets strict time limits on extradition detention. If proceedings are not progressed within those limits, the person must be released. German courts must also consider whether alternatives to detention are sufficient - including reporting obligations, surrender of travel documents, or a security deposit. A well-prepared application at the initial hearing can avoid weeks or months of unnecessary detention.

A person held in extradition detention can apply for a detention review at any time under Sections 117 et seq. of the German Code of Criminal Procedure (StPO). A detention complaint under Sections 304 et seq. StPO is an alternative remedy that goes to the next higher court.

## **4. European Arrest Warrants – Challenge and Procedure**

The European Arrest Warrant framework - based on the EU Framework Decision of 2002 and implemented in Germany through the IRG - provides a streamlined mechanism for surrender between EU member states without the full extradition procedure applicable to non-EU states.

Once a person is arrested on an EAW in Germany, the Higher Regional Court (Oberlandesgericht - OLG) is the competent court for the extradition proceedings. The court has 60 days from the arrest to rule on the admissibility of the extradition where the person does not consent.

Germany may refuse to execute an EAW on a number of grounds, including double jeopardy, the person not having reached the age of criminal responsibility in Germany, amnesty, lack of double criminality for offenses outside the 32 listed categories, statute of limitations, and human rights. Importantly, human rights grounds - including prison conditions in the issuing state - can provide a basis for challenge even in EAW proceedings between EU member states. Where prison conditions in the issuing state do not comply with EU fundamental rights standards, German courts have declared extradition inadmissible. The 32 listed categories - which include terrorism, trafficking, corruption, cybercrime, murder, and organized crime - do not require double criminality.

EAWs have been issued for minor offenses - minor theft, small drug quantities, driving offenses - that would not justify the disruption and cost of extradition proceedings. German courts have refused surrender where the offense is minor and the issuing state cannot demonstrate proportionality.

#### **IMPORTANT NOTE**

Consenting to surrender accelerates the EAW process dramatically - surrender must take place within ten days of the admissibility decision. The decision whether to consent is a significant strategic one and should only be made with legal advice on the consequences, including the proceedings that will follow in the issuing state and the available defenses there.

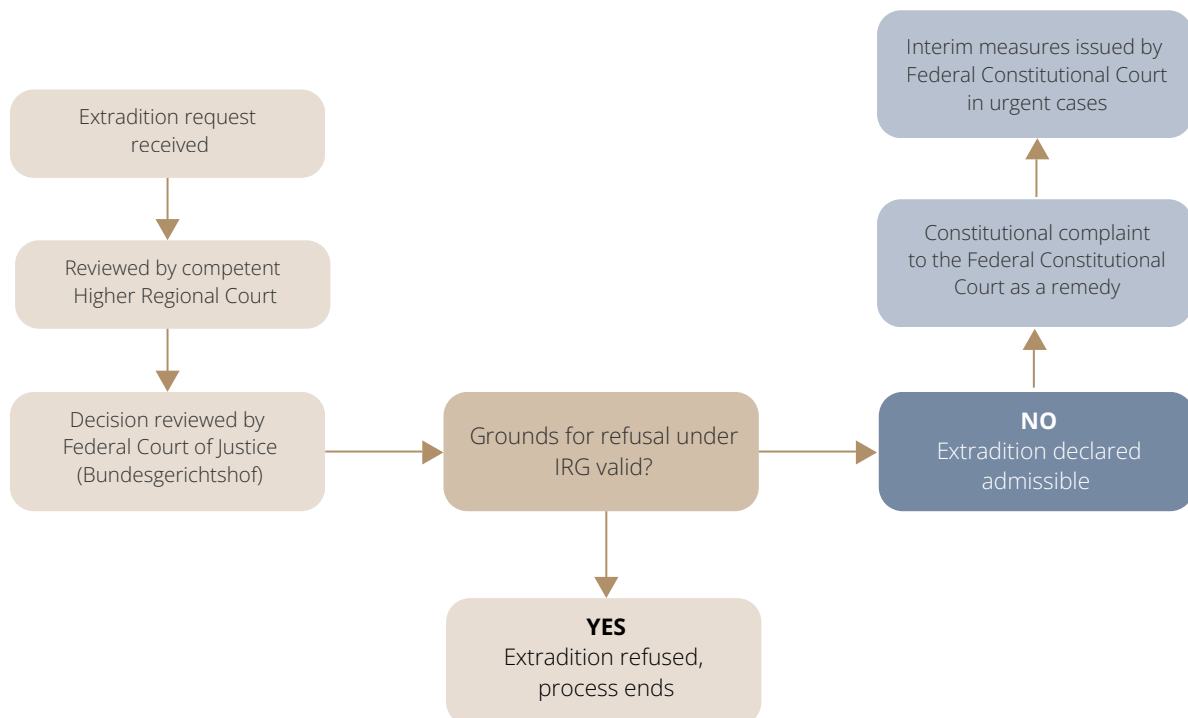
## **5. Extradition to Non-EU Countries - The IRG Framework**

Extradition from Germany to non-EU countries is governed by the IRG and any applicable bilateral or multilateral extradition treaty. The procedure is more involved than the EAW process and affords greater opportunity for challenge.

All extradition requests from non-EU states are reviewed by the competent Higher Regional Court, whose decision is subject to review by the Federal Court of Justice (Bundesgerichtshof). Grounds for refusing extradition include the act not constituting an offense under German law, political offense grounds, the inability to expect a fair trial in the requesting state, risk of torture or inhuman detention conditions under Article 3 ECHR, the death penalty where no adequate assurance has been given, and disproportionality.

**Extradition to the United States** raises specific issues including the possibility of very long sentences, the death penalty in some states, and prison conditions. German courts examine whether assurances given by US authorities are adequate and reliable. The broad discretionary powers of US judges and the possibility of sentence reduction through plea agreements are regularly raised as mitigating factors. Assurances regarding the death penalty, where given, are generally treated as reliable by German courts.

Where the extradition is declared admissible, a constitutional complaint to the Federal Constitutional Court (Bundesverfassungsgericht) is available as a further remedy. In urgent cases, the Federal Constitutional Court can issue interim measures to prevent extradition pending a decision.



## 6. Interpol Red Notices and Diffusions

An Interpol Red Notice is issued by the Interpol General Secretariat at the request of a member state. The General Secretariat conducts a limited review for compliance with Interpol's rules but does not conduct a comprehensive assessment of the underlying facts. Once issued, the Notice is entered into national police databases, enabling provisional arrest in member states, including Germany.

Interpol's system is susceptible to abuse. Red Notices have been issued by authoritarian states to pursue political opponents, dissidents, and human rights defenders under the guise of criminal prosecution. Article 3 of the Interpol Statute prohibits the use of Red Notices for political, military, religious, or racial purposes - but the initial review does not always detect such abuse.

The Commission for the Control of Interpol's Files (CCF) is Interpol's independent oversight body and the primary mechanism for challenging a Red Notice. A successful CCF challenge results in deletion of the notice from Interpol's system - though this does not automatically result in deletion from national databases, which may require separate action.

Diffusions bypass the Interpol General Secretariat entirely and are not subject to pre-circulation review. They can have the same practical effect as a Red Notice and can be challenged through the CCF on the same grounds.

Where there are indications that a Red Notice may be sought, a protective letter can be filed proactively with Interpol to alert it to the potentially abusive nature of a likely request before it is issued.

## 7. Immediate Steps for Foreign Lawyers and Families

When a foreign national is arrested in Germany on a warrant with extradition implications, the window for effective intervention is short.

**Engage German extradition counsel immediately.** The initial hearing before the German judge takes place no later than the day after arrest. Appearing at that hearing without prepared German counsel puts the person at a serious disadvantage.

**Instruct the arrested person to say nothing.** Foreign lawyers and families who make contact before German counsel is in place should convey one message only: exercise the right to remain silent and wait for legal representation.

**Request consular notification.** Consular officials can visit the person in detention, assist with communication, and serve as an additional point of contact for the family and foreign counsel.

**Obtain the warrant documentation.** The EAW, Interpol notice, or German domestic arrest warrant should be obtained as soon as possible. The basis for the warrant determines the available grounds for challenge and the urgency of specific legal steps.

**Assess the human rights position early.** Where the requesting state has a poor human rights record, problematic prison conditions, or applies the death penalty, the human rights grounds for opposing extradition should be assessed and documented from the outset.

**Coordinate foreign lead counsel and German extradition counsel from the outset.** Decisions made in German extradition proceedings - particularly consent to surrender - have direct consequences for the person's position in the requesting state.

## 8. Common Mistakes

- 01 Making a statement without counsel.**  
The right to remain silent is absolute. Police may suggest that cooperation will help or that the matter can be resolved quickly. These assurances carry no legal weight.
- 02 Assuming the EAW or Interpol notice is unassailable.**  
Both mechanisms are challengeable. EAWs have been refused on the grounds of proportionality, double jeopardy, human rights, and double criminality. The CCF has deleted Red Notices on political persecution grounds.
- 03 Delaying engagement of German extradition counsel.**  
The most consequential hearing takes place within 24 hours of arrest. Delay compounds at every subsequent stage.
- 04 Failing to explore alternatives to extradition detention.**  
Bail, reporting obligations, and surrender of travel documents are all available and should be argued at the initial hearing.

## 9. Key Takeaways

- ✓ Arrests on warrants in Germany can arise from a German domestic warrant, an EAW recorded in the SIS, or an Interpol Red Notice or Diffusion. Airport and border arrests happen without warning when a passport is scanned.

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- ✓ The right to remain silent applies immediately on arrest. No statement should be made to investigators without legal counsel present. The right to a lawyer and the right to consular notification should be exercised at once.

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- ✓ Extradition detention is subject to strict time limits. Alternatives to detention should be argued at the initial hearing.

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- ✓ EAWs can be challenged on grounds including double jeopardy, lack of double criminality, proportionality, and human rights.

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- ✓ Extradition to non-EU countries under the IRG is subject to more extensive review. Human rights grounds - including risk of torture, inhuman detention conditions, and the death penalty - are established grounds for refusal.

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- ✓ Interpol Red Notices and Diffusions can be challenged through the CCF. National database entries may require separate action.

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- ✓ German extradition counsel must be engaged immediately - before the initial hearing, which takes place no later than the day after arrest.

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- ✓ Foreign lead counsel and German extradition counsel must coordinate from the outset.

# Extradition and Interpol Law Practice Group

## LEAD CONTACTS



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