



Witness Protection in Germany

Guide For Witnesses of Crimes
Committed in Syria

BUNDESVERWALTUNGSGERICHT

Syria Justice and
Accountability Centre



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I. ELIGIBILITY : Who is eligible for witness status in Germany?



This guide is intended for general informational purposes only and does not constitute legal advice. Each case is unique, and witnesses are encouraged to seek personalized legal counsel to ensure that their rights are fully protected, and their individual interests are addressed.

What is a “witness” and under what conditions can he or she testify?

A witness refers to a person who provides information about a specific event or course of events in an investigation and/or trial, which constitutes important evidence in court proceedings.

If a person is summoned as a witness by the court or a prosecutor, they must appear (Sect. 48(1) and Sect. 161a(1) of the [German Code of Criminal Procedure](#)¹ (“Strafprozessordnung” – CCP)). Such a summons typically arrives by letter.

Minors can be witnesses, too. An age limit does not exist, even young children may testify. They are afforded special considerations and cannot be asked to testify under oath.²

Can the witness be a party to the proceedings?

Yes. For example, witnesses who are victims of certain severe crimes can also become **joint plaintiffs** and thereby become an “active” party in proceedings (see below).

Certain basic rights and duties (e.g. right to a lawyer, duty to appear and testify, see below) apply to all witnesses, however, certain special considerations or measures may apply depending on their role in the proceedings. For example, special rules apply to expert witnesses and co-defendants, as well as minors.

What is the difference between a witness and a joint plaintiff?

While the role of a witness is typically limited to giving testimony, a joint plaintiff can engage in the proceedings actively. Additionally, joint plaintiffs

- can attend the entire trial, even if they are later testifying as a witness (Sect. 397(1)(1) CCP);
- have the right to challenge a judge or expert, ask questions, object to orders and questions, request evidence, and make statements (Sect. 397(1)(3) CCP);
- can apply to receive translations of written documents relevant to the proceedings and their rights if they do not speak German (Sect. 397(3) CCP);
- can lodge an appeal against the judgment in case of acquittal or file a complaint if the case is dismissed before trial (Sect. 400 CCP);
- who have been the victim of a grave crime, such as war crimes, can apply to be assisted by a lawyer. They can also apply for legal aid (Sect. 397a CCP).

1 Please be aware that the english translation is not official and in parts outdated.

2 Sect. 60 No. 1 CCP.

In addition, all victims – not only joint plaintiffs – can apply to have a person of their choosing present with them during interviews (Sect. 406f(2) CCP). All victims can also ask that their lawyer be allowed to review the case file (Sect. 406e(1) CCP) and can receive psychosocial trial support (Sect. 406g CCP).

How can a witness become a joint plaintiff?

A witness can declare his or her wish to become a joint plaintiff at any point of the proceedings in **writing** to the court responsible for the trial. The precondition to becoming a joint plaintiff is that the person was injured by a crime listed in Sect. 395(1) CCP or is a close relative of a deceased victim of such a crime. In addition, victims of other criminal offences may become joint plaintiffs if they have suffered serious consequences as a result of the crime (Sect. 395(3) CCP).

Is a witness necessarily innocent?

No. A witness can be under investigation, or even a defendant in a separate trial (for the right to remain silent and legal support in such cases, see below).

Can a witness be investigated and indicted during the trial?

Yes. If the trial (or an investigation separate from the proceedings) yields information which is incriminating, a witness may be investigated and/or indicted.

This could pertain to the criminal conduct on trial (especially participation in the crime) or to behavior in the role of witness (e.g. if the authorities believe that the witness provided false information in their statement) or any other potential crime the court becomes aware of.

As every other accused, a witness who is investigated or indicted has the right to remain silent and to an attorney. These rights can be invoked at any time.

Does the witness have to be located in Germany?

No. A witness can be summoned to appear before the police, a prosecutor or a German court even if they are located abroad. However, in practice, this rarely happens. German authorities cannot force a witness abroad to appear, he or she can refuse. But German authorities can ask the country where the witness is located for assistance.

Alternatively, the witness could be interviewed by a (German or foreign) judge abroad (Sect. 223 CCP) or via telephone or video stream (Sect. 247a(1)(1), 251(2) No. 2 CCP; Art. 10 European Convention on Mutual Assistance in Criminal Matters; Sect. 61c, Sect. 91h(3),(4) Act on International Mutual Assistance in Criminal Matters - IRG).

II. OVERVIEW: Rights and duties as a witness in Germany

What information can a witness provide in legal proceedings?

Witnesses describe their own perceptions in their testimony (about what happened, when, where and how), which constitutes important evidence in court proceedings. It may even suffice if the witness is only able to describe another person's account. However, the witness should always make it clear which information comes from their own perception, and which derives from another person.

Witnesses shall not be asked questions which may be defamatory to them or a close relative or concern their personal privacy, for example questions regarding sexual history if this is unconnected to the alleged crime (Sect. 68a(1) CCP).

What are the rights and duties as a witness?

The interviewer must inform the witness of his or her rights and duties before every interview (Sect. 57 CCP).

Rights of a witness:

1. Right to an attorney

All witnesses have the right to an attorney (Sect. 68b CCP). Generally, the state does not cover the costs of an attorney. However, if legal representation is deemed "necessary", the witness can reclaim the respective costs as compensation (Sect. 7 Judicial Remuneration and Compensation Act – Justizvergütungs- und -entschädigungsgesetz (JRCA), Sect. 397a CCP).

2. Right to a translator

If the witness is not fluent in German, he or she has the right to a translator (Sect. 185(1) [Courts Constitution Act](#) – "Gerichtsverfassungsgesetz" (CCA). This service is free of charge.

3. Right to refuse to give evidence and not to incriminate yourself or a close relative

A witness can refuse to testify entirely if the accused is a close relative. Close relatives are the witness's fiancé, spouse or former spouse and registered life partners, as well as close relatives (parents and children³, (great-) grandparents and -grandchildren, siblings, aunts and uncles (Sect. 52(1) CCP). Cousins and other distant relatives are NOT included.

The witness may also refuse to answer any questions which would put **themselves or a close relative** at risk of prosecution (Sect. 55(1) CCP).

In relation to the right not to incriminate oneself or a relative, the risk of prosecution includes crimes as well as administrative offenses such as "Ordnungswidrigkeit", e.g. a traffic violation or leaving the area of residence without permission in case of asylum seekers (Sect. 56, 86 Asylum Law – Asylgesetz (AsylL)).

However, it is important to note that such a right not to incriminate themselves does not exempt the witness from giving testimony altogether: He or she must still answer any question that does not pose a risk of future prosecution. **A witness can refuse to testify entirely only if the accused is a close relative.** In case of doubts whether a testimony may yield such a risk it is best to consult a lawyer before the interview.

Invoking this right and refusing to answer corresponding questions does not lead to negative consequences, e.g. in asylum proceedings.

3 It is irrelevant whether the child is born out of wedlock. Stepchildren are also encompassed, even if the marriage has ended.

4. Right to compensation

Witnesses have the right to compensation. If the witness was summoned by a court or prosecutor's office to testify, travel expenses (incl. trains, accommodation, loss of earnings) will be reimbursed. Receipts have to be submitted to the court. The cost of a lawyer may also be reimbursed (Sect. 19(1) JRCA).

Duties as a witness:

1. Duty to appear

If a witness is summoned by the **court** or a **prosecutor**, he or she **must appear** (Sect. 48(1)(1) and Sect. 161a(1) CCP).



Missing the appointment of a summons unexcused may lead to an order to cover the costs of the missed appointment (e.g. lawyer costs) and a fine of up to 1.000 Euros.⁴ In case the fine cannot be collected, it may be substituted by detention instead. In addition, the police may escort the witness to the next interview (Sects. 51, 70 CCP).

It is therefore very important to contact the court or prosecutor as soon as possible if circumstances arise which may render the witness late or unable to come to the interview appointment (e.g. because of illness).



Work or personal reasons, as well as the right to refuse testimony are not an excuse not to appear.

If the summons is for an interview with the police, carefully check the letter:

- If the summons is issued by the police on behalf of the prosecution ("Staatsanwaltschaft"), the witness is obligated to appear (Sect. 163(3) CCP) (see the information above). The letter will clearly state the obligation to appear;
- If the summons is not issued on behalf of the prosecution, but solely by the police, the witness is **not obligated** to appear. Choosing not to testify will not lead to negative consequences. However, the witness may still be served with an obligatory summons in the future. If the witness would like to testify but is unavailable at the date or time proposed by the police, the witness can contact the police about rescheduling.

2. Duty to testify

Witnesses are generally obliged to answer all questions posed by a judge or a prosecutor in an interview (Sect. 48(1)(2), Sect. 161a(1) CCP). An exception only applies if the witness has the right to refuse to testify, including:

- if the **accused is a close relative** (see above for who is included). The witness can invoke this right before or at any point during or after testimony;
- if the person is under professional confidentiality obligations (e.g. lawyers and their staff, medical doctors, psychological therapists, journalists regarding their sources, etc.), they are generally exempt from the duty to testify (see list in Sect. 53, Sect. 53a CCP);
- if the testimony would incriminate the witness or a close relative (Sect. 55(1), 52 CCP).

If a witness initially testified, but later chooses to refuse testimony because of their relationship to the accused, the witness's prior testimony can only be used if he or she previously testified before an investigative judge (Sect. 252 CCP).

⁴ See Sect. 51(1) CCP, Art. 6 Introductory Act to the Criminal Code. Such detention may last for a period of one day to six weeks.

3. Duty to tell the truth

There are **no exceptions** to the duty to tell the truth. Even when a witness has the right to refuse testimony wholly or regarding questions which may incriminate him- or herself or a close relative, this does not mean that the witness can lie.

In addition, witnesses are not allowed to skip over certain parts in their testimony. If the witness has the right to refuse testimony, he or she must invoke that right instead.

It is normal that uncertainties or gaps in memory form over time. This is no reason for concern. If you are unsure whether you recall something correctly, it is important that you state this clearly during your testimony.



Giving false information in a testimony can lead to serious criminal consequences. If a witness is found guilty of giving false testimony while not under oath, this can lead to 3 months to 5 years of imprisonment (Sect. 153 German Criminal Code – “Strafgesetzbuch” (CC)).

After having testified, a witness may be sworn in (Sect. 59 CCP). In Germany, this is the exception. Witnesses are only sworn in if the court deems it necessary because the testimony is of crucial importance or to caution the witness to tell the truth. This is reflected in a significantly higher penalty in case a witness gives false testimony (Sect. 154(1) CC (minimum of 1 year of imprisonment)).



In addition, providing false information due to negligence is a crime if under oath (Sect. 161(1) CC).

If you are under oath and notice that you have provided wrong information **accidentally**, it is of the utmost importance to **correct** this as soon as possible.⁵ By clarifying the error on time, you will **not** be held criminally liable (Sect. 161(2) CCP). Even if testimony is found to have been provided falsely on purpose, the penalty can be reduced or voided (Sect. 158 CCP).

What is the typical process of giving testimony?

A witness may be asked to give testimony multiple times: at the police, to a prosecutor or judge during the investigation, and/or at trial.

Process at the police station:

- A witness has the right to have a lawyer present at every interview, including with the police.
- At the start of the interview, the police officer will ask for the name, date and place of birth, profession as well as the home address of the witness, which will be noted in the interview record. In case of security concerns, an alternative address can be noted instead of the home address where the witness can be reached (Sect. 68(2) CCP). **It is important to alert the police to such concerns as soon as possible.**
- The police officer(s) will then ask questions about the crime and its circumstances. They may also ask personal or background questions.
- If the witness was injured as a result of the crime, officers or medical personnel may photograph or otherwise record these injuries.

⁵ The witness must correct his or her statement before the decision or an investigation or indictment is initiated or before this leads to other negative consequences for someone, Sect. 158(2) CCP.

Process at the courthouse (if no protective measures apply):

- It is important to bring the summons letter and an ID/passport to the courthouse. If the hearing is open to the public, the witness can bring a family member or friend to the hearing for emotional support, who can sit in the courtroom area designated to the public. If it is not public, which is only the case in exceptional circumstances, they will still be able to wait in the waiting area outside of the courtroom.
- The media may report on the proceedings. If the trial is open to the public, journalists may sit in the designated area. Anyone is prohibited from taking photos inside the entire courthouse. In Germany, data protection laws also prohibit the media from disclosing the full name of a witness.
- At the beginning of the court's session, the attendance of the witness(es) will be noted. The presiding judge will then ask the witness to leave the courtroom until he or she is called upon to testify. This serves to ensure that the witness is not influenced by prior testimony.
- The witness will first be informed of his or her rights and duties, particularly the duty to tell the truth.
- If the witness is not fluent in German, a translator will be present for the entirety of the testimony. He or she will translate everything simultaneously.
- Before testifying, the witness will be asked his or her name, age and marital status and whether he or she is in any way related to the defendant.
- The judge(s) will then start asking the witness questions about the course of events. After this part of the questioning, other participants in the trial, such as the prosecutor or the lawyer of the defendant can ask questions.
- After the witness has finished testifying, the witness can decide whether to stay to observe the remaining proceedings from the gallery or not.

A criminal trial can last for multiple months up to years, especially if the case concerns severe crimes and if large numbers of witnesses are heard.

III. BENEFITS : Witness protection measures in Germany

If someone is acutely threatening you, please contact the police at **+49 110** (German emergency hotline). If you feel intimidated or generally threatened, you can also contact a lawyer, advice centers or the witness protection service.

If you need witness protection, it's important to mention this as soon as possible during your first contact with investigators, as changing or removing personal details later can be difficult. For this reason, consulting a lawyer before the interview is advised to ensure that your protection needs are fully considered from the start.

Protective measures during ongoing criminal proceedings: Concealment of the witness's identity.

The judiciary can allow a witness not to provide information about his or her identity or, in case the person has assumed a new identity, only about a prior identity (Sect. 68(3) CCP). This is possible if revealing the identity of the witness would put the life, health or freedom of the witness or another person at risk.

The witness may also cover his or her face if such a risk exists (Sect. 68(3)(3) CCP), for instance by wearing a scarf, wig and/or sunglasses.

Protective measures during ongoing criminal proceedings: Concealment of the witness's domicile

If a witness or others, for example family members, could be endangered or pressured if their home address is disclosed, measures to conceal their domicile may be taken.

- The witness can provide an alternative address to the authorities. This must be an address where they can be reliably contacted, for example their place of work, their lawyer or a victim support organization (Sect. 68(2) CCP);
- If the risks are particularly high, the witness can be fully exempt from providing an address (Sect. 68(3) CCP). The police may also help with providing an address for correspondence.

The authorities are obligated to take measures to avoid that information regarding the identity and address of the witness is disclosed (Sect. 68(5) CCP), especially to the defendant and his defense as well as the public.

Protective measures during ongoing criminal proceedings: Protective measures regarding the witness's testimony

As a rule, proceedings are public, and the defendant has the right to be present in the courtroom during the entire evidentiary hearing in order to properly defend him- or herself.

However, in certain cases, the defendant may be excluded from the witness's testimony before a judge (Sect. 168c(3) CCP) or for the duration of their testimony at trial (Sect. 247 CCP). Whether this measure is taken is up to the court.

In some cases, the public can be excluded from proceedings (Sect. 171b, 172 CCA). This measure can be taken if the witness testifies about intimate details, especially if minors or crimes of a sexual nature are concerned. In addition, the public can be excluded if this is necessary to avert a risk to the life, health or freedom of a witness or another person.

If questioning the witness in the courtroom poses an acute risk to the wellbeing of the witness, he or she may be interviewed from a separate, secret location (Sect. 247a(1) CCP). The testimony of the witness will then be live transmitted to the courtroom in video and audio. Whether this measure is taken is up to the court.

In exceptional cases, a recording of testimony made prior to the trial can be played instead of questioning a witness in court (Sect. 255a CCP). This is commonly used if a minor has to testify to a sexual offense or homicide.

Non-Procedural Measures: General protective measures and assumed identity

Protection under the Witness Protection Harmonization Act

Measures under the Witness Protection Harmonization Act ("Zeugenschutz-Harmonisierungsgesetz" (ZSHG)) require that the willingness of a witness to testify would endanger their life, health, freedom or substantial financial assets or those of a person close to them. The witness must also be considered a key witness for the investigation or finding out the whereabouts of the accused (see Sect. 1 ZSHG).

Witness Protection Services ("Zeugenschutz-Dienststellen") can initiate the creation of an assumed identity, including by arranging documents to "camouflage" a witness's identity (Sect. 5(1) ZSHG). Such protective measures do not automatically end once the trial is over. They will continue to apply as long as a risk persists.

Other Police Measures

The police can take additional measures which are not directly related to a person's status as a witness. For example, they can

- prohibit a person who is “stalking” a person from making contact;
- temporarily send a violent person away from certain locations (expulsion order);
- take a violent person into custody.

Punishability of pressuring or threatening a witness

Threatening or pressuring a witness can yield different kinds of criminal liability depending on the perpetrator's actions.

If you were the victim of such a crime and would like the person(s) responsible to be prosecuted, you must file a criminal complaint (“Strafantrag”) within **three months** (Sect. 77, 77b CC) – unless it concerns a severe crime, in which case the police is obligated to investigate even without your complaint. You can file the complaint with the police, a prosecutor or at a district court (Sect. 158(1)(1) CCP).

IV. PROCEDURE : Application procedures for obtaining witness protection measures in Germany

Concealment of the witness's domicile or identity

It is important to alert the authorities to the danger that the disclosure of the witness's address would pose as soon as possible (e.g. when submitting a criminal complaint, or as soon as the witness knows he or she will be asked to testify). This can prevent the home address of the witness appearing in the case file.

German law does not provide a formalized application for court-ordered protective measures. However, it is important to alert the judiciary to risks to the witness or their loved ones. The court will then have **discretion** in deciding if and if so, which measures it orders. Once granted, the measures could still be challenged by the defense during the trial.

Other protective measures and assumed identity

You can apply for witness protection with the police or the judiciary. For witnesses of certain particularly severe crimes, such as war crimes, the authority responsible for witness protection measures is the German Federal Criminal Police Office (“Bundeskriminalamt”, BKA).⁶ Otherwise, the State Police (“Landeskriminalamt”, LKA) is responsible. The Witness Protection Services within the police are responsible for protection measures and adhere to strict confidentiality (Sect. 3, Sect. 5 ZSHG).

There is no legal claim to witness protection or certain protective measures. The German Federal Criminal Police Office has **discretion** regarding which measures it deems necessary to protect a person from risks to their life, health, freedom or significant assets (Sect. 66 BKAG: Law governing the BKA). The regulations of protective measures under the auspices of the State Police differ depending on state legislation.

Witnesses or their loved ones can revoke their consent to witness protection measures any time.

6 Sect. 4, Sect. 7 BKAG.

V. LIMITS : What to consider before becoming a witness in Germany

Why does not every witness testify anonymously or is granted protection measures automatically?

Protective measures which limit the information about the identity of a witness can impact the “value” attributed to a witness’s testimony, as they are viewed to impact the right of the defendant to adequately defend themselves against a charge and therefore their fair trial rights. This is especially the case if the participants of the proceedings cannot ask the witness questions, e.g. because only a recording of the witness’s testimony is played at trial.

For this reason, protective measures obscuring the identity of a witness are the exception, not the rule.

Can a witness located abroad benefit from protection measures?

Within the European Union and a number of other European states, witness protection measures across borders can be requested via judicial cooperation. However, no binding system currently exists.



Protective measures typically cannot extend to persons located in states outside the EU.

Can the family of a witness also benefit from protection measures?

Yes. Protective measures can also extend to relatives⁷ or other persons close to the witness (e.g. close friends or romantic partners) who reside in Germany. They can receive protection if a risk to their life or health, liberty or significant assets arises due to the witness’s willingness to testify. Such measures require their consent (Sect. 1(2) ZSHG).



Unfortunately, witness protection measures by the German police do not extend to third countries, such as Syria or Turkey.

Can testifying in court have an impact on the asylum application or asylum status?

The fact that someone is testifying as a witness by itself cannot negatively impact their **asylum application**. If the witness receives non-procedural witness protection measures such as an assumed identity, an expulsion measure would require the additional consent of the Witness Protection Unit (Sect. 72(4)(2) Residence Act - Aufenthaltsgesetz).

It is **unlikely** that testimony can affect the pending **asylum procedure**. An asylum application can be rejected if the witness is considered a **serious security risk**, e.g. because he or she was convicted of a crime to over three years imprisonment (Sect. 30(1) No. 7 AsylL). While false testimony under oath carries a minimum sentence of one year imprisonment (Sect. 154(1) CC), it is unlikely that this alone would make a person a serious security risk.

Once **asylum has been granted**, it is only revoked in rare and exceptional circumstances - the person must be convicted of a severe crime to over three years imprisonment and considered a serious threat to national security (Sect. 73(5), Sect. 3(4) AsylL, Sect. 53(3a),(4), 60(8) Residence Act).

In case a witness is **found guilty** of a crime, for example for giving a false statement under oath, this may, however affect the **application or renewal** of subsidiary protection, a visa or residency. It may even be grounds for **expulsion**.

⁷ Within the meaning of Sect. 11(1) no. 1 CC.

Any criminal conviction to imprisonment of over six months negatively factors into such a decision (Sect. 5(1) No. 2, 5(4), 53, 54 Residence Act).

In addition, other, lesser infringements can negatively impact the residence application or status. Single, insignificant acts are not sufficient however (Sect. 54(2) No. 10 Residence Act). Even infringements committed abroad may however factor into the German asylum process, if such behavior is a severe crime under German law. This, for example, may include false statements under oath given abroad.

If you are summoned **as an accused**, please contact a lawyer. If you are accused of a crime with a minimum sentence of one year, if a conviction could lead to your expulsion or if you are taken into custody on remand, a lawyer must be provided for you (Sect. 140(1) No. 2, (2), Sect. 141(1) CCP).

VI. KNOW YOUR RIGHTS

Helpful Websites (in German):

- https://www.hilfe-info.de/Webs/hilfeinfo/DE/EigeneRechteKennen/HilfeUndRechte/Zeugen/RechteUndPflichten/RechteUndPflichten_node.html
- https://www.bmj.de/DE/themen/praevention_opferhilfe/opferschutz_strafverfahren/einleitung_opferschutz_strafverfahren/opferschutz_einleitung_strafverfahren_node.html
- <https://zeugeninfo.de/>
 - You can receive personalized advice via the service number +49 711 / 585 339 50, via E-Mail (kontakt@zeugeninfo.de) or via an anonymous online counseling service (<https://zeugeninfo.de/service/online-beratung/>). This service is free, confidential and available in English, French, Russian, Turkish, Ukrainian and German, however currently not in Arabic.

Human Rights Organizations:

- European Center for Constitutional and Human Rights (ECCHR)
- Weißer Ring e.V. (Victim's rights organization)

Police Services:

- Central Office for Combating War Crimes "Zentralstelle für die Bekämpfung von Kriegsverbrechen" (ZBKV) at the German Federal Criminal Police Office (BKA)

Universal Jurisdiction in Germany (available in English and Arabic):

- <https://syriaaccountability.org/universal-jurisdiction/#germany>



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