

“What Do You Mean, I’m Going to German Jail?!!!”

by Joe Hall

“But I’m a Soldier -- the Germans can’t try me!” Wrong.

“How about me? I’m a DOD civilian – and me, I’m a family member.” You, too, can be tried by the Germans and placed in German prison.

We live in Germany. We are all subject to German criminal and civil laws. However, under the NATO Status of Forces Agreement (SOFA) and its German supplement, special rules have been implemented regarding which country – the US or Germany, will try a particular criminal case.

In general, the Germans have waived their right to prosecute for crimes committed by our uniformed military members. However, the Germans have reserved their right to recall their waiver and try a case if it is of special interest to the German community.

For our civilians, both DOD employees and all family members, the Germans have the primary right to try them for criminal offenses, since we can only try our civilians by court-martial in time of war or if they are in an area of contingency operations (e.g., “downrange”).

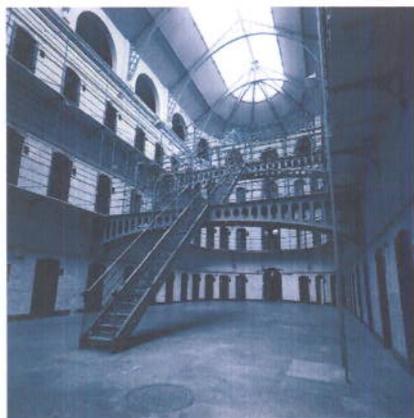
What Happens if I am Caught Committing a Crime?

Let’s look at the process:

- First, the German police will likely arrest you. If they do, you should let them know that you have SOFA status and would like them to notify US authorities.
- If you are military, you will usually be released to the MPs or to your unit. If you are a DOD civilian or family member, if the offense was serious, you will probably be placed in German pretrial confinement.
- If you have been released pending trial, come to the local legal office (Kleber for

Army, Ramstein for Air Force) International Law Section. They will brief you on what you can expect as help from the US Government and how the German criminal prosecution system works.

- If you are in pre-trial confinement, ask the prison officials to contact the US Forces legal liaison office (the Kleber or Ramstein international law offices). The international law paralegals will do “housecalls” and come to the prison to brief you. If you are in pre-trial confinement, you will probably stay there from three to eight months depending on how complicated the case is.



What help will the US Government provide?

If you are in German pre-trial confinement, the international law liaison paralegals will visit you once a month and bring a chaplain with them if you want; also, they will arrange for an initial medical exam and for quarterly follow-up medical exams by a US Forces doctor.

More good news – the US Government will normally pay the cost of your reasonable attorney fees; you select the attorney and the Government will pay his/her reasonable, customary local fees. (If you hire the most expensive attorney in town, you will likely pay the amount of his/her fees considered above average.) The US Government will also pay

various court costs that normally would be charged to you.

At your trial, a US Government Trial Observer observes the proceedings to ensure that all your rights are respected (e.g., right to a translator; to know the charges; some right to cross-examine witnesses). While German trials may differ to some degree from US trials, years of experience have shown that the German trial courts routinely observe the accused’s guaranteed rights and that the proceedings are fair.

Some Practical Tips:

- If you are guilty, it is probably best to admit it early on. Assuming responsibility for your actions and expressing remorse are significant factors in determining the length of your sentence. A sincere apology to a victim is looked at very favorably by German courts.
- When you are in pretrial confinement, prison visits by relatives and friends must be approved by the prosecutor; the international law office can help arrange those approvals if you do not have a defense counsel to do that.
- Don’t expect your German defense attorney to visit you more than one time (if that) while you are in pre-trial confinement. Don’t expect your attorney to make many objections at trial; and don’t expect him to do very much cross examination of witnesses. In the German system, the judge is responsible for examining the witnesses and for finding the truth – think of the procedure more like that of an Article 15 hearing or a Summary Court proceeding. The judge will ask the questions that go to excuse or mitigate the offense, as well as ask the questions that will prove culpability.
- At any German hearing, organize your thoughts before you speak, and speak up. Avoid slang. Don’t chew gum. Think of the court proceeding as if