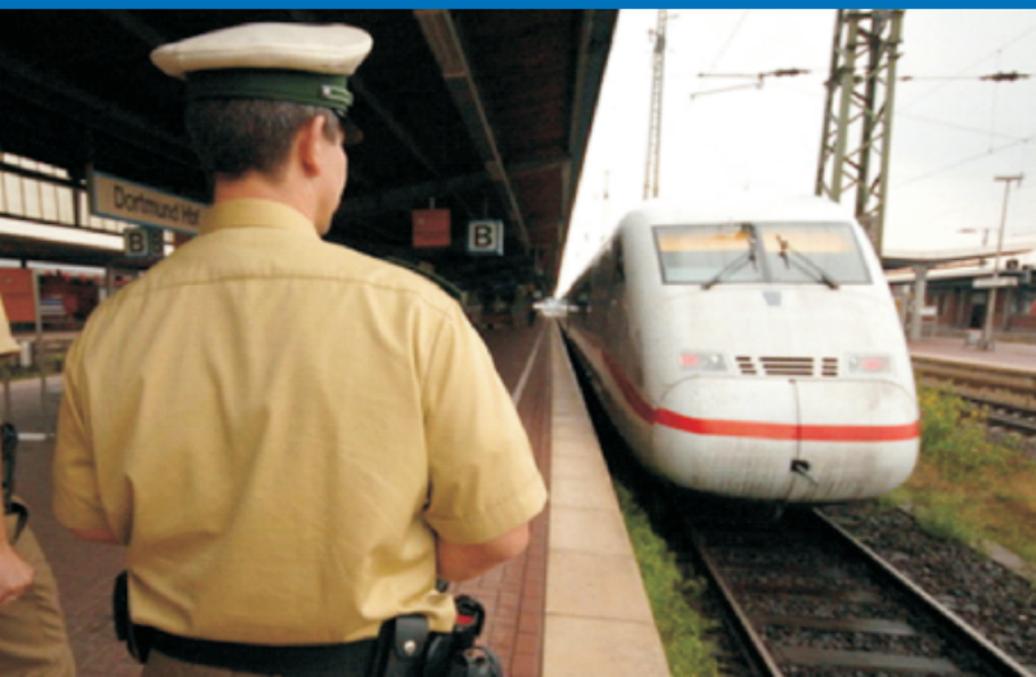


What should I do  
if there are signs of  
**racial profiling** during an  
**identity check without  
probable cause**  
because of suspected  
**illegal entry?**



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Maybe you have observed or even experienced personally this: In a train car, only one passenger is controlled by the federal police, and no other difference exists between this passenger and others - except for exterior characteristics, such as skin color.



The federal police is allowed to carry out these so-called identity checks without suspicion in order to prevent people from entering the country illegally. However, they are not allowed to selectively choose who they control based on a non-German appearance. The problem with these controls is that over and over again, they seem to take place due solely due to external appearance. This is racial profiling – an illegal, but widespread practice.

## What is racial profiling?

The term racial profiling was coined in the United States, and refers to the discriminatory practice of using a person's appearance, such as skin color, phenotypic characteristics, attributed, ethnic/religious affiliation, or national origin as a decisive factor in police measures like traffic checks, identity checks or searches, although there is no indication of criminal activity.



## What is an identity check independent of suspicion?

The Federal Police Act (de: Bundespolizeigesetz) authorizes the federal police to carry out identity checks without suspicion, in order to prevent illegal entry and more. They require no definite suspicion or reason. On this basis, in places that allow entry into Germany, for example in trains or in the 30 km zone along the border, a person can be controlled, even if they are not acting suspiciously.

## What we're talking about

There are different legal situations for identity checks without suspicion which took place out of racial profiling. Such controls may be carried out by the federal or state police. The situation is complex since a decisive legal basis must exist for every identity check as well as different basic conditions for the police. This brochure deals exclusively with identity checks without suspicion carried out by the federal police to prevent illegal entry on the basis of §22 para. 1a and 23 para. 1 nr. 3 of the Federal Police Act.

In this brochure identity checks with suspicion based on sufficient suspicion or definite involvement in a crime is not discussed.

The powers of the state police (such as veil searches and checks in dangerous areas or offenses for carrying drugs) is not a subject of this pamphlet.

## What's happened until now

In the first complaint of a young German man heard by the Higher Administrative Court of Rhineland-Palatinate in October 2012, it was clear that identity checks carried out solely on the basis of skin color infringed the principle of equal treatment as stated in Basic Law from Article 3 Paragraph 3, and therefore are discriminatory. This assessment aroused nationwide attention.

In connection with the 'little inquiry' of the federal government from December 2012, the view was expressed that “the external appearance of a person may be one of several criteria [...] although never the sole criterion” for an identity check by the federal police.

Lawsuits on the subject of identity checks without suspicion have been pending since 2015, which question whether the implementation of identity checks without suspicion conform with European law.





## Assessments of Affected People

People who are categorized because of their appearance as “non-German” complain that they are disproportionately subject to such police measures.

*“I’m always one of their samples.”*

*Member of the self-organized refugee organization ‘The Voice Refugee Forum’*

In addition, they noticed that they were usually the only ones who will be requested by police to identify themselves.

*“We have been the only dark-skinned people in the coach and the only one’s that have been controlled.”*

*Plaintiff of a racial profiling lawsuit that was supported by BUG.*

Through such discriminatory police controls, those affected feel exposed, vulnerable, and stigmatized as criminals. Article 3 Paragraph 3 of Basic Law, as well as European and international human rights standardizes the obligation to ensure that racial identity checks do not take place.

Moreover, racial profiling has come to be internationally recognized as inadmissible in human rights. Nevertheless, it happens repeatedly in Germany. However, the federal government denies that racial profiling is practiced by the federal police.

## The Legal Basis for Identity Checks without Suspicion by Federal Police

The paragraphs §22 paragraph 1a and 23 paragraph 1 of the Federal Police Act give the federal police the power to perform identity checks without suspicion to prevent illegal entry.

Therefore, there are two different legal bases that empower the federal police to carry out such controls for the prevention of illegal entries. §22 para. 1a of the Federal Police Act allows federal police to control people without concrete suspicion in institutions with cross-border traffic, such as railway stations, trains and airports. This is especially true for railway lines and trains, which are suspected, due to location and border police knowledge, to be used for illegal entry.

According to §23 para. 1 no. 2 of the Federal Police Act, the federal police may also control the identity of a person to prevent unauthorized entry within a 30 km zone along the border. The collection and examination of personal details from which the identity of the affected person becomes known is to be understood as an identity check.

Where this complies with norms set by European legal requirements is questioned.





## How does the law state a personal control should take place?

§22 para. 1a and §23 para. 1 BPolG provide different procedures for identity checks without suspicion to prevent illegal entries.

By the authorization §22 para. 1a BPolG the federal police can stop and ask basically any person in the context of a security check. Under questioning, the person is requested to give their information. The regulation gives no limit for the content of questioning, though questions should be levied that pertain to how the questioned person entered Germany, and if this entry was legal. Therefore the federal police may ask questions concerning the route, destination or even possibly look at the objects the controlled person has brought with them. Moreover, the federal police may demand for identity cards or papers authorizing border crossing to be handed over, like for example passports. They may also carry out a cross-check.

On the basis of §23 para. 1 No. 3 and para. 3 BPolG, the federal police may collect the identity of each person. Through these personal controls without suspicion, a person is obliged to indicate their name, date and place of birth, home address, and nationality. To determine a person's identity, the federal police may stop them and ask for their personal details. Moreover, they may ask them to present identification papers or border crossing papers. In the event that the identity or authorization to cross the border cannot be ascertained or can only be ascertained with great difficulty, the federal police are authorized to hold the person in question, to take them to their office, or search their means of transportation and items that could assist in ascertaining their identification.

Whether this procedure can continue is currently being analyzed in several lawsuits.



## What evidence of racial profiling can be given during a personal control?

You should look for the following during a personal control:

- ➔ Were there other people controlled or were you the only one?
- ➔ Were other People of Color<sup>1</sup> controlled?
- ➔ Were you asked directly to show your identity card or were you first questioned?
- ➔ Are you questioned for your data and your data then checked with the control center of the police?
- ➔ Does something in the way the police address you seem to point to racial profiling?
- ➔ Is there a reasonable suspicion of a crime against you?



<sup>1</sup> People or Person of Color is a term chosen by people that experience racism directly or institutionally on the ground of their perceived ethnic belonging.



## How should you behave during a personal control without suspicion?

- ➔ Find out if you are being controlled by the federal police, for example, pay attention to the coat of arms on the uniform, or ask the officials if they do not pre-sent themselves and identify that they are federal police.
- ➔ Ask the police officer the legal basis on which the control is being performed and note this.
- ➔ Seek the service number or name of the officer and write it down. The officers are obliged to provide you with their service number.
- ➔ Also ask about the intended purpose of the control.
- ➔ Ask for the reasons for selecting a person or why the police have assumed that you have entered with country without permission, provided that they have indicated suspected illegal entry as the reason for your inspection.
- ➔ Always be friendly and quiet (even if you find it difficult) and do not be abusive or insulting, so that you cannot be accused of insulting a public official.
- ➔ You have the right to file a disciplinary complaint when officers behave inappropriately. We recommend that you do not announce this intent to officers.



## What can you do after an inspection without any specific reason?

If you are under the impression, that the federal police has practiced racial profiling in inspecting you, you can take the following steps:

- ➔ Look around and look for potential witnesses who have seen you inspection. Talk to them, write down their names, telephone numbers and addresses – if they agree to do so – and ask them for memory minutes.
- ➔ After that, you should write down the incident as soon as possible and describe the situation in detail. The following questions should be answered by your report:
  - a. When did what happen?
  - b. Which train did you take (date, time, train number, direction of travel) and between which stations have you been controlled?
  - c. Who was involved or – respectively – affected (names and/or serial number of the officials)?
  - d. On which legal basis have you been inspected by the Federal police?
  - e. With what justification have you been singled out by the federal police?
  - f. Have you been directly asked to show your ID or have you been questioned before?
  - g. What has been talked about?
  - h. Besides you, who else has been controlled?
  - i. Are there witnesses and how many of them could be contacted? How many other persons have witnessed or noticed your inspection?

In case you want to take further steps, contact your local Anti-discrimination bureau and describe the event. The bureau can offer advice and evaluate if it would make sense to file a lawsuit.



## Do you want to file a lawsuit because of racial profiling?

In case you want to file a lawsuit because of racial profiling in the context of a personal control without suspicion, competent legal support is significant. Look for a lawyer and make sure that witnesses are willing to give testimony in court. Apart from that, you have the possibility to contact the Bureau for the Implementation of Equal Treatment e.V. (BUG) to discuss possible measures of support and monitoring of the lawsuit.

*You find contact information of the BUG on page 14*

### **What should you consider while filing a lawsuit?**

A discriminatory personal control by the police can be claimed with a so-called 'Fortsetzungsfeststellungsklage' (this is a lawsuit that determines whether an action by an authority that has already been performed and is non-reversible has been in accordance with the law or not). Only after several months an actual court hearing will take place where the witnesses will presumably be questioned. Since filing suit costs money, it is an advantage if you have a legal expense insurance or can utilize court grants of legal aid. If you win the case, the costs are to be covered by the federal police. Please note that the court action at first instance can take more than a year.

### **Why file a suit?**

In case of a favorable ruling for you, you can file for compensation in a second lawsuit.

Additionally, the ruling can show the legislator that said regulations in the Federal Police Act, on which personal controls without suspicion are based, contradict the law and ought to be reformed.

A successful lawsuit, moreover, can encourage other affected persons to also take legal action against discriminatory identity controls and proceed against racial profiling by the federal police.

## How could the BUG e.V. support a lawsuit?

The Bureau for the Implementation of Equal Treatment e.V. (BUG) has been founded in 2009 and offers legal advice to people who want to put up a fight against discrimination in court.

The BUG's activities focus on discrimination lawsuits that have extended value for an entire group of people – so-called 'strategic lawsuits'. Thereby precedents can be established that help to increase legal certainty and in the long run lead to more equality within our society. Apart from that, the BUG works intensively in public relations to inform other affected people after a successful lawsuit about their right to equal treatment.

To realize legal certainty in face of discrimination on a political and societal level, the BUG attempts to influence decision making processes and politicians who work in the anti-discrimination area.

If the BUG decides to support a lawsuit concerning racial profiling, a competent lawyer who is cooperating with the BUG will be consulted as legal representation. The BUG prepares the plaintiff in accordance with the lawyer and appears as legal adviser in court. Unfortunately, the legal expenses cannot be covered by the BUG. You would have to rely on legal expense insurance or on court grants of legal aid. If it should be necessary and looks promising, another legal instance can be targeted after an unsuccessful lawsuit.



***Any questions?***

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