

Chapter 9  
Punishment of criminal offences and fines

**Section 95**  
**Penal provisions**

(1) The following persons are punishable with up to one year's imprisonment or a fine: anyone who

1. resides in the federal territory in contravention of section 3 (1) in conjunction with section 48 (2),
2. resides in the federal territory without a necessary residence title as required by section 4 (1) sentence 1, if
  - a) he or she is enforceably required to leave the federal territory,
  - b) he or she has not been granted a period for departure or this has expired and
  - c) his or her deportation has not been suspended,
3. enters the federal territory in contravention of section 14 (1) nos. 1 or 2,
4. contravenes an enforceable order under section 46 (2) sentences 1 or 2 or section 47 (1) sentence 2 or subsection (2),
5. fails to furnish an item of information or furnishes incorrect or incomplete information in contravention of section 49 (2), where the offence is not punishable under subsection (2) no. 2,
6. fails to tolerate a measure specified in section 49 (10) in contravention of said section,
  - 6a. fails repeatedly to meet an obligation to report to the authorities in contravention of section 56, repeatedly contravenes geographic restrictions or other conditions imposed on their stay, fails to meet the obligation to take up residence in a designated facility despite having been notified repeatedly as to the legal consequences or uses certain means of communication or does not abide by specific contact bans in contravention of section 56 (4),
7. repeatedly breaches a geographic restriction under section 61 (1) or (1c) or
8. belongs to an organisation or group in the federal territory which consists primarily of foreigners and whose existence, aims or activities are concealed from the authorities in order to avert the prohibition of said organisation or group.

(1a) The same punishment is applicable to anyone who intentionally commits an act specified in section 404 (2) no. 4 of Book Three of the Social Code or in section 98 (3) no. 1, who requires a residence title under section 4 (1) sentence 1 in order to reside in the federal territory and only possesses a residence title in the form of a Schengen visa pursuant to section 6 (1) no. 1.

(2) The following persons are punishable with up to three years' imprisonment or a fine: anyone who

1. in contravention of section 11 (1) or of an enforceable order under section 11 (6) sentence 1 or (7) sentence 1,

a) enters the federal territory or

b) resides in said territory or

1a. contravenes an enforceable court order pursuant to section 56a (1), thereby preventing the competent authority referred to in section 56a (3) from continuously locating him or her, or

2. furnishes or uses false or incomplete information in order to procure a residence title or a suspension of deportation for themselves or for another or to prevent the expiry or subsequent restriction of a residence title or the suspension of deportation, or who knowingly uses a document procured in this manner for the purpose of deceit in legal matters.

(3) An attempt to commit an offence is punishable in the cases covered by subsection (1) no. 3 and subsections (1a) and (2) no. 1 (a).

(4) Objects related to an offence under subsection (2) no. 2 may be confiscated.

(5) Article 31 (1) of the Convention relating to the Status of Refugees remains unaffected.

(6) In the cases covered by subsection (1) nos. 2 and 3, an act carried out without the necessary residence title will be deemed equivalent to an act carried out on the basis of a residence title obtained by threat, bribery or collusion or by furnishing incorrect or incomplete information.

(7) In the cases covered by subsection (2) no. 1a, the offence will only be prosecuted upon an application made by the competent body referred to therein.

## **Section 96**

### **Smuggling foreigners into the federal territory**

(1) The following is punishable with a prison sentence of three months to five years,

in less serious cases with a prison sentence of up to five years or a fine: anyone who

1. incites another person to commit or assists that person in committing an act referred to in section 95 (1) no. 3 or (2) no. 1 (a), and

a) receives a pecuniary advantage or the promise of a pecuniary advantage in return or

b) acts in such a manner repeatedly or for the benefit of several foreigners or

2. incites another person to commit or assists that person in committing an act referred to in section 95 (1) no. 1 or no. 2 (1a) or (2) no. 1 (b) or no. 2 and receives a pecuniary advantage or the promise of a pecuniary advantage in return.

(2) In the cases covered by subsection (1), the following is punishable with a prison sentence of between six months and 10 years: anyone who

1. acts for gain,

2. acts as a member of a gang which has come together for the purpose of committing such offences on a continuing basis,

3. carries a firearm, if the offence concerns an act referred to in section 95 (1) no. 3 or (2) no. 1 (a),

4. carries another type of weapon in order to use said weapon in connection with the offence, if the offence concerns an act referred to in section 95 (1) no. 3 or (2) no. 1 (a), or

5. subjects the smuggled persons to potentially fatal, inhumane or humiliating treatment or a risk of serious harm to their health.

The same punishment is applicable to anyone who, in the cases covered by subsection (1) no. 1 (a), acts in favour of a minor unmarried foreigner who enters the federal territory unaccompanied by a person having the right of care and custody or by a third person who has taken charge or care of him or her.

(3) The attempt is punishable.

(4) Subsection 1 no. 1 (a) no. 2, subsection (2) sentence 1 nos. 1, 2 and 5 and subsection (3) are to be applied to contraventions of statutory provisions on the entry of foreigners into the territory of the member states of the European Union or of a Schengen state and on the residence of foreigners in such territories, where

1. such contraventions correspond to the acts specified in section 95 (1) nos. 2 or 3

or subsection (2) no. 1 and

2. the offender supports a foreigner who is not a national of a member state of the European Union or of another state party to the Convention on the European Economic Area.

(5) Section 74a of the Criminal Code applies.

### **Section 97**

#### **Smuggling foreigners into the federal territory resulting in death; smuggling for gain and as organised gangs**

(1) Anyone causing the death of the smuggled person in the cases covered by section 96 (1), also in conjunction with section 96 (4), is punishable with a prison sentence of no less than three years.

(2) Anyone acting for gain as a member of a gang which has come together for the purpose of committing such offences on a continuing basis in the cases covered by section 96 (1), also in conjunction with section 96 (4), is punishable with a prison sentence of between one and 10 years.

(3) Less serious cases covered by subsection (1) are punishable with a prison sentence of between one year and 10 years, less serious cases covered by subsection (2) are punishable with a prison sentence of between six months and 10 years.

(4) Section 74a of the Criminal Code applies.

### **Section 97a**

#### **Obligation of secrecy**

Information concerning the specific planning of a deportation measure, in particular information under section 59 (1) sentence 8, constitutes a secret or item of information as referred to in section 353b (1) or (2) of the Criminal Code. The same applies to information on the specific planning, and in particular the date, of orders as referred to in section 82 (4) sentence 1.

### **Section 98**

#### **Fines**

(1) Anyone who negligently commits an act specified in section 95 (1) no. 1 or 2 or (2) no. 1 (b) is deemed to have committed an administrative offence.

(2) Anyone is deemed to have committed an administrative offence who

1. fails to furnish evidence in contravention of section 4 (2) sentence 1,

2. fails to submit to the policing of cross-border traffic in contravention of section 13 (1) sentence 2,

2a. in contravention of section 47a sentence 1, also in conjunction with sentence 2, or in contravention of section 47a sentence 3, fails to submit, on time or at all, a document referred to therein, or to allow, on time or at all, his or her face to be checked against the photograph,

3. in contravention of section 48 (1) or (3) sentence 1, fails to submit, on time or at all, a document or paper or a data carrier referred to therein, or fails to surrender the same on time or at all, or fails to leave, on time or at all, the same with the competent authorities, or

4. acts in contravention of an enforceable order under section 44a (1) sentence 1 no. 3, sentence 2 or 3, or

5. in violation of section 82 (6) sentence 1, fails to provide notification on time or at all.

(2a) Anyone is deemed to have committed an administrative offence who intentionally or recklessly

1. in contravention of section 4a (5) sentence 1, commissions a foreigner on a sustained basis to perform paid work or services for gain,

2. fails to provide notification, provides incorrect notification or fails to provide notification on time in contravention of section 4a (5) sentence 3 no. 3 or section 19a (1) sentences 2 or 3,

3. fails to provide notification or provides incorrect or incomplete notification or fails to provide notification on time in contravention of section 19b (7), or

in contravention of section 60c (5) sentence 1 or section 60d (3) sentences 3 and 4, fails to provide notification, or to provide it correctly, completely, in the prescribed manner or on time.

(2b) (repealed)

(3) Anyone is deemed to have committed an administrative offence who intentionally or negligently

1. pursues a self-employed activity in contravention of section 4a (4),

2. contravenes an enforceable condition imposed in accordance with section 12 (2) sentence 2 or (4),

2a. in contravention of section 12a (1) sentence 1 does not take up residence in the Land in which he or she is obliged to take up residence or does not do so for the prescribed length of time,

2b. contravenes an enforceable order imposed in accordance with section 12a (2), (3) or (4) sentence 1 or section 61 (1c),

3. enters or leaves the federal territory outside of an approved border crossing point or outside of the stipulated traffic hours or fails to carry a passport or passport substitute with him or her in contravention of section 13 (1),

4. contravenes an enforceable order pursuant to section 46 (1), section 56 (1) sentence 2 or (3) or Section 61 (1e),

5. fails to provide notification, provides incorrect notification or fails to provide notification on time in contravention of section 56 (1) sentence 1,

5a. contravenes a geographic restriction under section 56 (2) or section 61 (1) sentence 1,

5b. in contravention of section 60b (1) sentence 2 fails to undertake all reasonable efforts to acquire a recognised and valid passport or passport substitute,

6. fails to file one of the applications stipulated in section 80 (4) in contravention of the said section or

7. contravenes a statutory instrument under section 99 (1) no. 3a (d) nos. 7, 10 or (13a) sentence 1 (j), insofar as such statutory instrument refers to this provision as to fines for a specific offence.

(4) An attempt to commit an administrative offence may be punishable in the cases covered by subsection (2) no. 2 and subsection (3) no. 3.

(5) The administrative offence may be punishable in the cases covered by subsection (2a) no. 1, by a fine of up to 500,000 euros, in the cases covered by subsection (2a) nos. 2, 3 and 4 by a fine of up to 30,000 euros, in the cases covered by subsection (2) no. 2 and subsection (3) nos. 1 and 5b by a fine of up to 5,000 euros, in the cases covered by subsections (1) and (2) nos. 1, 2a and 3 and subsection (3) no. 3 by a fine of up to 3,000 euros and in the other cases by a fine of up to 1,000 euros.

(6) Article 31 (1) of the Convention relating to the Status of Refugees remains unaffected.