

Legal and arrest NVDA

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1. What are your rights?

We have the right to protest, and this right can be traced back to both national as well as international law. On an international level, the right to freedom of assembly, association, expression, free speech and conscience have been recorded in the 1948 Universal Declaration of Human Rights, the 1950 European Convention on Human Rights, 1998 UN General Assembly Declaration on Human Rights Defenders, and so on.

Most important for us in the Netherlands are [art. 9 of our Constitution](#), which does not only allow us to meet and protest, but also lays upon our local and national government the duty to protect and facilitate these rights.

More specifically, your right to protest is described and regulated in the [WOM](#) (Wet op de Openbare Manifestaties) on a national level. In the WOM, the law-makers have mostly described the *restrictions* to these rights, concerning protect health, traffic-reasons or to combat or prevent disorder. As this law protects the right to protest only in public places, it also describes what it defines as a public place and what not.

The WOM also refers more detailed regulations about the right to protest to the local government/municipality, in the person of the mayor. The municipality almost always describes local rules and regulations in the APV (Algemene Plaatselijke Verordening/by-law). On the most basic level, we have to give notice of what we are planning to do, at least 24/48 hours in advance.

What is the most important to remember here, is that in its fundament, the right to protest is not something we have to ask for, or something we have to apply for. We simply send a notice that we are coming, and the state should facilitate our right.

2. Who is allowed to protest?

In essence, your right to protest is a human right, meaning that every living soul has the right to protest and will be protected under the law. However and unfortunately, there are some exceptions to this starting point, both in the law and in practice. We will try to capture them here as exact as possible.

Nationality

Under art. 1 of the Dutch Constitution, (principle of non-discrimination), every person is treated equal. However, want to go more in-depth into particular situations. The baseline here is the Dutch citizen with a registered NL address. This person has the full scale of rights and is fully protected under Dutch (and international) law.

- non-Dutch - EU citizen

If you have a registered NL address, you have exactly the same rights as a native Dutch person as per EU laws. For British citizens, you have to closely follow the procedures after the Brexit, to see how your legal rights develop in that matter.

- Non-EU citizen

Based on international law, you have the same rights as Dutch and EU citizens. However, we advise non-EU citizens to be extra cognizant of your actions (i.e. not a threat to national security, etc.).

- What can we say about people that do not have a passport (people that are without identity-papers)?



As this group of people is very vulnerable, we strongly advise not to take part in any actions, that could endanger their possibility of finding a safe place in this country, our could enhance the chances of them having to leave the Netherlands. Additionally if you have had your fingerprints taken when entering the country, the police might be able to identify you very quickly upon arrest without ID.

Age

What does age matter when you are in XR-actions? The baseline here is the person who is 18 years or older. From that point onwards, you are considered to fully take the responsibility for your own actions, including informing yourself on what the risks of such an action could be. That is why you are here today!

➤ [People between 12 - 18](#)

Minors can still join XR actions, but we do advise to ask your parents for consent. However, it won't make much of a difference if minor is arrested. Regardless, arrested minors will be treated under juvenile criminal law.

People 18 and above normally fall under the grown up legal system, but for people that are between the ages of 18 and 23, a judge can decide they will be prosecuted still under juvenile law. When you are under 18 and arrested, your parents or care-takers will always be informed, and they can always access the person, in the same status as a lawyer. These rights can be restricted 'in the interest of' the investigation.

Minors can be detained as long as people over 18, so depending on the charge, 6 to 9 hours in the basics, not counting the hours between midnight and 9am.

- [Link](#) to a very interesting article about minors and their rights after arrest (Parool – in Dutch)

3. Communication about the specific action with authorities

We do what we say, and we say what we do!

XR Core Principle and Value number 4 is that '*We Openly Challenge Ourselves and Our Toxic System*'. Part of what this means is that XR tries to operate openly and above ground as much as possible. As it reads in P&V #4, "we will practice a security culture to the extent that it enables actions to be planned without being intercepted before they are completed. However our civil disobedience and direct actions are in full public light, organizers accept the risks they are taking. [...] We appreciate and admire those willing to take "below ground" or "covert" actions to fight for environment and social justice, within other settings. For clarity, and for the safety of those organizing in Extinction Rebellion it is important we are clear that all actions taken in the name of Extinction Rebellion are "above ground," i.e. that they are taken in the open and no below ground actions are taken as Extinction Rebellion.

For every rebel it is good to know that we try to openly communicate what we do and how we do it, and that this is not a random choice, but a conscious decision to be more open and inclusive. It also show other that we stand for what we do for 100%. Only the effective execution of processes and actions can stand in the way of this open communication.

What are we telling the authorities about our actions, and what not?

When possible, a 'kennisgeving' is being done, and open contact is maintained with local authorities on how to facilitate our right to protest. We will try to inform authorities about what we plan to do, why we do so, how many people we are expecting, and what we try to do to make the action go as smoothly as possible. We will also try to communicate the instances in which we choose to not obey or agree with proposed adjustments or restrictions, and the reason to not do so.



The answer to the question what we don't tell to the authorities is a constant search. We will not give away details that will make it possible for the authorities to make our actions less effective. We will also try to protect rebels from the (legal) consequences that will burden them in a disproportionate way during and after an action. But the base-line is an open/above ground operation and communication with our counterparts.

4. Getting Arrested

The practical part

XR is built on the sad conclusion that traditional ways of protesting are not enough to convince decision makers to act now. That is why, in some of our actions, we incorporate acts of civil disobedience. We consciously break very specifically chosen parts of the law. To show that, if the government does not protect us anymore, we also do not have to uphold our end of the social contract. And also to create a [dilemma-situation](#) for the authorities.

The risk with these kind of actions is, amongst others, to get arrested. We believe that being well-informed about how this works will prepare you in the best possible way: to make a choice to join the action or not, and if you join, to have the best possible experience.

High risk – low risk instead of arrestable – non arrestable

Since the October Rebellion, we try not to work with the term non-arrestable anymore, because it presumes that in particular roles you will definitely not get arrested. The truth is that we cannot give guarantees. In some situations, police will lock everybody in and arrest even people in well-being or police-liaison roles. Therefore, we use the term low-risk instead.

During the Action - Getting dragged away – getting to the police station – other practical steps

Some very practical pointers during an action, before the moment you will get put into a cell at the police station:

- During action: if you're not qualified to speak on behalf of the group, DON'T! When the police asks you particular questions about yourself or the action, always refer to the police-liaison that was appointed.
- One or several warnings or have to be given by the authorities to the group before they start the arrest. Normally this is done through a megaphone or police-van speaker. At this point, you have the right, but also the autonomy to live if you want to! (If you are not willing to be arrested, you must be careful about the distance you take from the actual civil-disobedience act. We have the experience that even bystanders are picked-out or pushed into the action and then not being allowed to leave. If you are in doubt, ask police if you can stay and observe.)
- Passive resistance: Do not run, do not actively resist arrest. Where the police can get a bit rough, it is of the utmost importance to remain 'non-violent' in any form. This is at the heart of our actions.
- Although the police can use force, this force still has to be proportional. When you get dragged away, you don't have the duty to co-operate. If you 'go floppy', they will have to carry you (or drag you). Try not to scream, but simply tell them when they are hurting you.
- You'll be asked to identify yourself. This can happen at the action-location before you go into the van (Amsterdam), or only when you get into the police-station (The Hague). You are not obliged to say anything – trying to remain anonymous is not illegal in itself, but can have consequences. We will get back to those later.
- We advise to say as little as possible, also during this early phase. (It is smart to have XR-lawyer info (name, number optional) written on your body and to make sure XR-stewards know that you're being taken away. For this last thing, you have gotten an arrestee-number!)
- You'll be frisked/searched for weapons or other paraphernalia. This could happen before you get into the police-van, or when you arrive at the police-station



- At your arrival in the police station, you can ask to make a phone call but this is not an automatic right; plus, they'll be listening

Talking to the lawyer

For big actions, XR will try to set up legal support and a contact-lawyer. You have [the right to talk to a lawyer](#) before you go into hearing. You will always be pointed towards this right and asked if you have a lawyer yourself. If you have not, a lawyer will be appointed to you.

Any arrested suspect who has been taken to a police station for questioning must be informed by the police that he/she has the right to consult a lawyer prior to the first substantive hearing. For A and B cases (see below), consultation assistance always takes place in a conversation at the police station. In C cases, the suspect is given the opportunity to contact a lawyer by telephone. In that conversation it can still be decided that a personal contact at the police station is deemed desirable for which the lawyer will be able to visit the suspect at the police station.

You can also wave the right to see a lawyer before you go into a hearing. A reason to do so is because we don't want to overburden our legal support team/lawyer, or you don't want to postpone your release for an unnecessary period of time. For every action, the strategy to do so will be discussed. An example can be that the action-consensus is that when you are taken in for a C-offense, you wave the right to talk to the lawyer, as long as nothing unusual happened and you feel comfortable to do so.

Detention

During detention

At some point, the police will want to interview you. Before this interview, you can talk to a lawyer, so ensure that they know you have an XR lawyer beforehand (the name of the lawyer and number should be written on your body).

The smartest thing to do is to say "no comment" when questions are asked. It is very tempting to give an answer, but you will be likely to incriminate yourself and others if you do (police officers are trained to get information out of you).

You have the right to request special meals, a translator, toilet time, and you can also make some noise while in detention (e.g. sing a climate song or whistle! It is very empowering and calming for your fellow rebels who can hear – the walls are not thin).

What are you accused of?

The public prosecutor can [choose to accuse you of different sorts of matters or offenses](#). They are categorized using different letters, and have an influence on the rest of the procedure:

- C-case/ or 'zaken' (crimes for which temporary custody is not possible and minor-offenses): under this category, trespassing, demonstrating without a kennisgeving and ignoring an official order all fall.
- B-cases/or 'zaken' (crime – for which temporary custody is possible, that are not A-cases): an example of a b-offense that XR rebels get charged with sometimes is destruction of property
- A-case/or 'zaken' (crimes like murder, let's not go there 😊)

Identification

Basic rule is that, under the Dutch law, you are required to carry ID on you aged 14 and older. For several reasons, however, you can choose to remain anonymous. You might want to avoid getting fined, or avoid getting your details in the legal system all together. Going into an action can also be part of your group's strategy. But there are also downsides on going into an action anonymous. Rule here is: XR informs you to the best possible extent – you decided and prepare!

Yes ID



- Pros: detention up to 6 hours
- Cons: fine for action committed and heavier fine for repeat offence, you will have your data recorded at that police station/city (but it is IMPORTANT to note that you're not going on record as a criminal per se – a criminal per definition is someone who has been convicted as guilty in a court of law)

No ID

- Pros: anonymity, possibly no fine, no personal data recorded
- Cons: you'll be at the discretion of the authorities, finger prints and picture will be recorded, detention up to 12 hours (see section on Detention)
- For full anonymity, please ensure there's nothing on you or your phone that can give you away (PRO TIP: turn off notifications or no phones at all)
- What can happen when they discover your identity? If identified anyway you will have to pay an additional fine of approx. 100 Euro, for not having an ID on you.

How long can you be kept inside?

Your detention officially starts, only when the (assistant) prosecutor has come to see you and has pointed out your rights to you. This is when the clock starts ticking. Unfortunately, all the time you spend in the police-van or in the cell after arrival is not taken into consideration here.

The maximum amount of hours you can be kept inside is dependent on several factors:

- Do you identify yourself, or not?
- Are you being accused of a C-offense (minor offense) or a B-offense (crime/misdemeanor)
- The time of the day you get arrested (the hours between midnight and 9am do not count)
- Detention with ID:
 - for a minor offence (C offence): up to 6 hours (excl. the time between 00-09h), in which case detention could last a max of 15 hours
 - For a crime (B offence): up to 9 hours (excl. the time between 00-09h), in which case detention could last a max of 18 hours
- Detention with no ID:
 - for both a minor offence (C offence) and crime (B offence): up to 12 hours (excl. the time between 00-09h), in which case, detention could last a max of 21 hours
 - NOTE: Those without ID may get threatened with detention at the undocumented immigrant center. Make this known to XR (i.e. police liaison, legal observer, buddy) or if already at the station, insist on having your XR lawyer present
- In the instance of a B-offense, the assistant prosecutor can decide that you have to remain in the police longer, for more questioning. At this point, you will be 'in verzekering gesteld'. In first instance, this *inverzekeringstelling* can take up to 3 days. After those three days, there are three more options:
 - Extend period with 3 days
 - Bring you before the public prosecutor
 - Let you go

This scenario, however, is highly unlikely if you stick within the action consensus and XR principles, especially the one that talks about non-violence.

Release

The police will most likely release you before the full detention time is up – they too want to go home, eat and rest. Some final pointers for when you get released

- Never sign any document when you get released. You are not even obliged to sign the "personal items" form – if you insist, an "X" will do since a signature may give an anonymous person away



- Arrestee Support Group will arrange for someone or more to greet you outside the police station after your release (worst case scenario: call someone from Arrestee Support)
- **IMPORTANT:** Be sure to contact and share details of your arrests with XR Legal ASAP before all memory is wiped so the XR lawyer can start working on your case

Other Legal Support roles During the Action

During and after the action, there are several people in place to make sure the legal side of things is handled in an optimal way (besides the lawyer). We want to quickly run through these roles, so you know what is there to support you.

Police Liaison

People who are specially trained to communicate between the authorities and the activists. We have these people in place so not every individual has to negotiate next moves or decision making on their own. Please try and communicate through them, when your being asked, or when you want to report wrongful behavior.

Legal Observers

In big actions, we strive to have (independent) legal observers in place, to register if all actions by public officials are done according to the rules. They for example monitor the force used by police in arrests, and the treatment of people that need special care (people who are glued or locked-on). With the information they gather, after the action a case can be brought before a judge or complaints can be made on wrongful behavior. But also, their presence in an action will already make police more alert on their behavior.

Arrestee Support

This team of people will make sure that, from the moment you are going into the police-van, until the moment you get out, XR knows where you are and what your status is (it depends on the size of the action whether this is realistic). They will get your arrestee-number/name when you go in and make sure to communicate your details to the lawyer, and make sure people are there to support you when you are released.

5. After your arrest

Possible consequences (VOG – fines – going to court)

After you leave the police station, several things can happen in your further proceedings. It is possible that you will face no further consequences, in two instances:

- First option here is that the public prosecutor decides that they cannot gather enough proof of the facts you are accused of, or that prosecution is not in the public interest. In that case, your case is dismissed ('geseponneerd' in Dutch).
- Second option here is that you can be acquitted of your charges ('vrijspraak' in Dutch), when the fact of which you have been accused cannot be proven. This is a decision that is made by a judge, so this can only happen when your case has gone to court.

Fines

If the public prosecutor finds that a violation has been committed or a crime that, according to the legal description, has a maximum sentence of no more than six years in prison, [it can issue a 'strafbeschikking'](#), without consulting a judge. The most frequently used beschikking is a fine.

- Fines can be imposed for not having an ID circa (EUR 60) and above but this can also be EUR 0 if anonymity is kept
- Possible fines for the action you were arrested for (e.g. trespassing, obstruction of traffic, criminal damage, etc) EUR 50 and above. Fines that are received by post can be appealed within 2 weeks – contact the XR lawyer or Legal Team ASAP. If you've been ID-ed, you may



receive an order to appear in court at a later date, in which case, communicate this to XR Legal Team or the XR lawyer ASAP

- You can appeal the 'strafbeschikking' within 14 days, which in Dutch is called 'in verzet gaan'. In that case, your case will be ruled on by a judge. This can be very interesting for XR, so when you get a 'strafbeschikking', please always get in touch with our lawyers.

Going to Court

Another option is that the public prosecutor takes your case to court. In this case, the public prosecutor decides that your case has to be decided on by a judge, for only the judge can hand out particular punishments that go beyond a fine.

- Not all arrests lead to people being charged and not all charges lead to conviction (pronouncement of guilt by the court). Hence, one is only guilty and recognized as a 'criminal' upon a guilty conviction.

Verklaring Omtrent Gedrag/Statement of Conduct

Finally, a very important part of making the decision to get arrested or not is based on what kind of consequences this decision will have on your working life. For some jobs/professions, you need a Statement of Conduct (in Dutch: Verklaring Omtrent Gedrag – VOG) by law. In other cases, an employer can choose whether they ask for a VOG for a certain position.

The only instance in which you cannot get your VOG is when you have committed a criminal offense that is relevant to the position in question. What the authority who will judge your application needs to research is: when the criminal offense committed in the past would repeat itself while in the function applied for, would that form a particular threat or danger for the group that this person is working with?

The VOG-authority consults the 'Justitieel Documentatie Systeem' during the investigation. This register contains information about the settlement of criminal offenses; from convictions to prosecuted cases and transactions. In addition, Justis can involve police register data in the investigation and obtain information from the Public Prosecution Service and the probation service.

The authority that rules on your [VOG can only look back 4 years on your criminal record](#). There are some exceptions: for very serious crimes (like sex offense) or specific professions (everything traffic-related) the term is longer. For people under 23, the term is only 2 years.

At Greenpeace, they always tell the story that only once in their long career of actions a person who was prosecuted for being involved with a Greenpeace action did not get their VOG, and this was for an application with the water police...

6. Making the Choice: Getting Arrested or Not

Different activists have very different experiences in participating in NVDA and getting arrested. Many rebels have a 'smooth' experience: they get dragged away by the police, spend some time in a cell and get out again. Others experience serious police violence and strong emotional impact. It is important to seriously consider whether you are willing to get arrested and temporarily give up your freedom. This section is *not meant to deter you* but just to give you some questions you can think about so you are better mentally prepared. On the other hand, arrest is just one of the tactics XR uses and there are many ways to contribute if you do not want to get arrested!

What are your motivations and how do you think you will react?



It may be obvious, but if you know why you are doing what you are doing, it will be easier to go through an arrest. Also, spending six or more hours in a cell can be very boring or alienating, what do you want to do during that time? How will you react when police gets violent?

Where do you come from? What are your previous experiences?

How do you think about the police? Are they your friends? Or are you afraid of them? What are your previous encounters with the police?

Your identity can play a large role in your interactions with the police and justice system. Unfortunately, also in the Netherlands, people are not treated equally, due to gender, ethnicity, disability or other aspects of identity. It is valuable to be aware of how this may affect you and others.

How do I prepare? What am I going to do afterwards?

It can be really helpful to meet up with your affinity group before the action and discuss how you feel about the action, and what your hopes and fears are. Also debriefing with your affinity group after the action is very important! The Regenerative Culture circle also organises debriefs and safe spaces to help you wind down after the action and process your experiences.

Resources

A very extensive XR UK document about arrest preparation: <https://docs.google.com/document/d/148oakxYFoomLfdc3BwIkTM1x-XPDMZMcF7wR686pTHQ/edit?ts=5d6124fa#>

7. More info

- XRUK Legal Briefing: <https://docs.google.com/document/d/1vzBdiuOTSjmmprHhVKXS8Mo1z4e5xB-dyQwuJJpdnDM/edit>
- Code Rood: https://code-rood.org/wp-content/uploads/2017/06/AGflyer_english.pdf
- Right to Protest: <https://pilpnjcm.nl/en/dossiers/right-to-protest/>
- Demonstreren is bijkans heilig (in Dutch): <https://www.amsterdam.nl/wonen-leefomgeving/veiligheid/demonstratierecht/>

