

## RE-SOCIALISATION OF OFFENDERS IN THE EU: ENHANCING THE ROLE OF THE CIVIL SOCIETY (RE-SOC)

Workstream 4: Civic monitoring of prisons

**Analysis of availability and accessibility of data in Germany**

**Author:**

**Sven-U. Burkhard**

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## **I. Introduction**

The design for the Prison Condition Monitoring Index (PCMI) foresees the use of publicly available and accessible data. For Germany this means statistics of the Federal Statistical Office and the states statistical offices, internet presentations of ministries and prisons, and we have chosen to take into account some press information, which relied directly on interviews. We also took into account the European Sourcebook of Crime and Criminal Justice Statistics (5<sup>th</sup> ed. Helsinki 2014), Space I and II, Reports by the Committee for the Prevention of Torture (CPT) of the Council of Europe, the National Preventive Mechanism, and reports by the Special Rapporteur on Prisons in North-Rhine Westfalia. At one point we relied on personal knowledge (central heating system), because it seemed unfair to assign the lowest possible number of points, only because the prison is not stating something in the public what they will deem a matter of course.

### **1. The structure of the German Criminal Justice System**

Looking at statistics in Germany always has to take into account that there are 16 different states involved, meaning 16 different Ministries of Justice and, because of forensic psychiatric clinics or forensic drug treatment clinics, 16 different Ministries of health, with different systems in prisons and/ or forensic clinics, and with different statistical systems. E.g. still, some 25 years after unification of the former German Democratic Republic and the Federal Republic of Germany in 1990 prison statistics do not include data on all the “new” states, but, however, the (now) whole of Berlin (which is a state on its own). E.g. this is true for the data on forensic clinics.

### **2. The Structure of the German Prison System and Measures of Betterment and Security**

Incarceration is divided into two different systems, the prison system for those found guilty having committed a crime, and those incarcerated in a forensic clinic, either for psychiatric or for drug treatment, and having been found, by the criminal court, to have acted without or with

diminished responsibility<sup>1</sup>, and are seen to be dangerous in the future without treatment. The latter institutions are within the responsibility of the relevant Ministries of Health. A third group of incarcerated, having been found guilty and fully responsible for their criminal acts, but seen as dangerous to commit certain severe crimes, are in preventive detention, after they have completely served their prison term. Even though this is, like the placement in a forensic institution, a Measure of Betterment and Security the responsibility rests with the Ministries of Justice, and the relevant institutions are special parts of prisons, or annexed to one.

### **3. Prison Statistics**

Looking at the two systems, the rough data is as follows:

On the 30 November 2014 75,793 persons were incarcerated in 186 prisons within the 16 states of Germany. Of these 49,131 were serving a prison sentence (44,344), juvenile sentence (4,276) or preventive detention (511), plus 11,258 remand prisoners, and 1,213 others (Federal Statistical Office, Rechtspflege: Bestand der Gefangenen und Verwahrten, Wiesbaden 27-01-2015).

On 31 March 2013 10,471 persons were incarcerated in forensic institutions in the “old states” plus the whole of Berlin (about 85 per cent of the German population lives in these states).

As on 1 April 2014 there were 74 forensic institutions existing in the 16 German states ([https://www.justiz.nrw.de/Gerichte\\_Behoerden/anschriften/justizanschriften/bundesweit/masregelvollzug.pdf](https://www.justiz.nrw.de/Gerichte_Behoerden/anschriften/justizanschriften/bundesweit/masregelvollzug.pdf)). Some of them are external units of a central entity, sometimes annexed to an “ordinary” psychiatric or drug rehabilitation institution. In some Cities there was more than one forensic institution (e.g. Berlin), in other places not every unit is that autonomous that it is an institution of its own, even though it might be bigger than others.

### **4. Availability**

Prisons as total institutions collect a wide range of information on prisoners and the prison system itself. Yet, not all information is public, and some information is not even available within the overall prison system. E.g. the files on the health of prisoners have to be kept separate

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<sup>1</sup> In the case of a drug/ alcohol addiction a connection between the crime and the addiction plus the future dangerousness is sufficient.

from the general prisoners file. This is supposed to reflect a relationship of trust between the medical staff and the prisoner, even though the medical staff is part of the prison system. However, looking at psychological treatment programmes within the prison system such separation of files is not planned, and to get treatment with an external psychologist, which rarely happens, the problem of disclosure or non-disclosure is one of major concern, since the prison administration is very often interested in gaining most information, even though this might mean that the concerned prisoner will not open himself to therapeutic treatment. One special aspect within North Rhine Westphalia is the HIV status of a prisoner which is made public to the prison staff, and under certain circumstances (asking permission for a cell share, even for hours only) other prisoners will be informed (cf. Tätigkeitsbericht des Justizvollzugsbeauftragten des Landes Nordrheinwestfalen, Köln 2012, pp. 214-7). These examples clearly show, that not every information should be available, not even in generalized (anonymised statistics). There is an inalienable human right on personal information, which is always under pressure within total institutions, especially if it is argued that these information are needed in the interest of society in preventing further crimes.

## **5. Research on (specific) Prisons**

The prison pilot study should open the eyes for possibilities and obstacles for the Monitoring Index developed by the Bulgarian Partner, and discussed with the other partners in Dortmund in August 2014. One question implied is the one of comparability between institutions and legal cultures as well as the operational ability of the scale.

JVA Werl is one of Germany's largest prisons. Prisoners incarcerated are imprisoned under different regimes, i.e. times spend outside one's cell, the possibilities of contact to the outside world (e.g. use of a telephone), therapeutic programmes offered, "openness" within the prison facilities. All prisoners are male, they are under remand, serving a sentence or serving preventive detention. To answer the PCMI we decided to refer to the regime most prisoners are under – not constructing four or more PCM-Indexes. The prison system within the state of North-Rhine Westphalia is organised in a way that different prisons serve special purposes, thus education and vocational training is organized within different facilities thus JVA Werl has only about 20 places for vocational training and only a very basic educational training programme. A special hospital prison (i.e. a prison which is a hospital or a hospital which is a prison) exists in North-Rhine Westphalia, thus more severe cases are transferred from JVA

Werl to JVA Fröndenberg. Nurses are technically within the group of ordinary wardens (Allgemeiner Vollzugsdienst, General Prison Staff). In sum, the results may seem to be worse in comparing them with other prisons one by one, since one may need to take into account a cluster of prisons working together with a division of responsibilities.

The data used was only public available data, prison statistics, information of the prison or the prison administration made public, and some own experience as legal council to some of the inmates. Some unpublished data would have been available by interviews to the prison Government or (former) prisoners, however, the project outline said to rely on public data. Additionally, there are some stricter rules on research within the German prison system, and in North-Rhine Westphalia in special. The North-Rhine Westphalian prison research guideline ([https://www.justiz.nrw.de/Gerichte\\_Behoerden/Justizvollzug/justizvollzug1/forschung/index.php](https://www.justiz.nrw.de/Gerichte_Behoerden/Justizvollzug/justizvollzug1/forschung/index.php)) allows the decision on research undertaken in one prison only to be made by the prison governor on his/ her own. However, in case of more than one prison involved the decision lies with the North Rhine Westphalian Ministry of Justice, and in case of the involvement of other federal states or international comparative research the decision process might involve the conference of the Ministries of Justice of all federal states. To take this endeavour would have taken a long period of time way out proportion for the small pilot study. The information possibly being gained would have not changed the problems of the prison system organisation mentioned above. Additionally, prison research under some circumstances may only be allowed by agreeing to gain the approval of the prison administration prior to publication.