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Alternatives to imprisonment: opportunities and problems in Germany

Mesures alternatives à l'incarcération : opportunités et problèmes en Allemagne

Alexander Bähr[•], Arthur Hartmann^{}, Felix Steengrafe[♦]*

Riassunto

L'articolo fornisce una breve panoramica sulla normativa tedesca in materia di misure alternative alla detenzione. Vengono successivamente presentati i dati statistici relativi agli istituti penitenziari tedeschi e gli autori riflettono sulle problematiche principali della situazione attuale delle carceri tedesche. Inoltre, sulla base di dati statistici e di esempi pratici, l'articolo presenta una panoramica complessiva sulle misure alternative in Germania e sullo stato dell'arte della ricerca. Infine, gli autori sottolineano il ruolo e la prospettiva delle vittime, arrivando alla conclusione che una serie di iniziative e di progetti sono già stati avviati, ma che è ancora troppo presto per poter giungere a delle conclusioni.

Résumé

Cet article donne un aperçu du cadre juridique allemand des mesures alternatives à l'incarcération. Des données statistiques sur les prisons allemandes et sur les détenus sont ensuite présentées. Les auteurs s'interrogent sur certains des principaux problèmes liés à la situation actuelle des prisons allemandes. De plus, cet article donne un aperçu global des mesures alternatives en Allemagne par le biais de données statistiques et d'exemples concrets. S'ensuit l'état des évaluations scientifiques et de la recherche. Enfin, les auteurs valorisent le rôle et la perspective des victimes, toutefois dans leurs conclusions ils soulignent que nombreux sont les programmes et les initiatives déjà commencés, mais qu'il est cependant encore trop tôt pour dresser un bilan.

Abstract

The article provides a short overview on the German legal framework regarding alternatives to imprisonment. Then statistical data about German prisons and their inmates are presented and the authors reflect on some major problems of the contemporary situation in German prisons. Furthermore, the article gives a comprehensive overview on alternative measures in Germany by statistical data and examples from the practice. Then the state of evaluations and research is examined. Finally, the authors emphasize the role and perspective of victims but conclude that a number of initiatives and projects have started already, but it is still too early for a resume.

Keywords: alternatives to imprisonment; Germany; legal framework; statistical data; victims of crime.

1. Introduction.

From a historical perspective, imprisonment as a sentence for offenders is a liberal and human achievement compared to death penalties, torture or feuds. Opposite to this, imprisonment is in the contemporary academic discussion also regarded as relict of a revenge-oriented criminal law and policy, which modern legislation and legal practice should

overcome and replace by better alternatives. In particular, we know historical and contemporary examples of living conditions for prisoners, which are so dreadful and terrible that imprisonment is nothing but a modern kind of torture as the European Court of Human Rights (ECHR) ruled (1). In order to resolve these conflicting views we

[•] M.A. studied sociology and social sciences in Bremen and Oldenburg. He was employed at the Institute for Police and Science research (IPoS – University of Applied Sciences, Bremen) from 2010 through 2015 and was the project manager for the European project “Reducing prison population. Advanced tools of Justice in Europe” for the IPoS.

^{*} Professor for criminal law and criminology at the University of Applied Sciences of Public Administration (HföV, Bremen) and director of the Institute of Police and Security Research.

[♦] Ass. jur studied law at the University of Bremen and was trainee lawyer at the Higher Regional Court of Bremen. He was engaged in different projects of the Institute for police and science research (IPoS) in the field of criminal law.

need to have a closer look on imprisonment and its alternatives.

There is not much doubt that imprisonment is still needed as a last resort, or at least a stopgap solution in order to deter future crimes, stabilize law-obeying behavior and safeguard the society from very dangerous criminals. This perspective gives space to consider and evaluate in detail the advantages and pitfalls of imprisonment as well as its alternatives. We can also deduce a two-fold strategy from this position, which includes both the improvement of living conditions in prisons and the development of proper alternatives to imprisonment. The most important factor in the evaluation of imprisonment and its alternatives may be the ability of imprisonment and its alternatives to re-integrate offenders into society and give them the motivation and the necessary abilities to keep themselves away from crime.

This strategy is at the same time utilitarian and humanitarian and seems therefore to be non-negotiable. However, in the course of developing human and effective treatment for offenders, and more or less eager efforts to improve their living conditions and re-integrate them into society it were the victims, who have been forgotten. Only in the last few decades, the suffering of the victims from the crime itself and sometimes even more from the further consequences of crime received attention again. This results not necessarily in a restriction of efforts towards the offenders or a relapse to revenge. On the contrary including the victims and their perspectives can rather become a fruitful element of rehabilitation and re-integration of both victims and offenders.

In order to find and collect best practices in this field the European Community funded the project “Reducing Prison Population: advanced tools of

justice in Europe”, which enabled the authors of this article to carry out the research that is outlined in the following article.

2. Legal framework for alternatives to imprisonment.

First of all we want to give a very short overview about the relevant German general legal framework for alternatives to imprisonment. It can be distinguished between alternatives to imprisonment in the phase of pre-trial detention and alternatives to imprisonment, which are available in the phase of post-trial detention.

In a pretrial detention, a not yet convicted person is arrested. Therefore the pretrial detention collides with the supposition of innocence (2). The enforcement of the detection of a crime and the punishment of the offender as soon as possible is the objective of the pretrial detention. In addition to that, the pretrial detention should guarantee the enforcement of the sentence of imprisonment (3). Due to this conflict with the supposition of innocence, the pretrial detention is only lawful in strictly restricted cases. Further a consideration between the interest in effective criminal proceedings and the supposition of innocence is necessary (4). As a result of this conflict the pretrial detention can only be arranged or maintained, when the interest of the public welfare in the enforcement of the pretrial detention is prevailing. In the academic discussion the electronic foot chain is partially considered as a substitution of the pretrial detention (5).

- a) Regulations of the German Code of Criminal Procedure.

The provisions of the arrangement of the pretrial detention are part of the StPO (German Code of Criminal Procedure). However, the *Grundgesetz*

(German Constitution) and the European Convention on Human Rights (ECHR) have an effect to the interpretation of the provisions of the pretrial detention. Due to the legal character of the ECHR as an international agreement these provisions are not part of the German constitutional law (6). The ECHR is considered in the interpretation of the German fundamental rights by the Federal Constitutional Court (BVerfG).

According to article 104 paragraph 2 s. 1 German Constitution an arrest warrant generally requires a judge decree. Before the indictment regularly, a co-operation between the judge and the public prosecutor's office is necessary for the decree of an arrest warrant. The prosecutor is in accordance to sec. 120 paragraph 3 German Code of Criminal Procedure responsible for the preliminary proceedings. Therefore the public prosecutor has the competence to apply for the abolition of the arrest warrant before a person is charged (7). The court can decree an arrest warrant ex officio when the suspect is accused. In this case, the prosecutor has the right to be heard by the court (8).

The decree of the pretrial detention requires a sufficient suspicion and a reason for arrest in the sense of sec. 112, 112a German Code of Criminal Procedure. The reasons for arrest are: escape (9), a risk that the accused person will evade the criminal proceedings (10), strong suspicion that the accused person may manipulate evidence (11), severity of the offence (12), repeatedly or continually committing of specific offences (13). Due to the constitutional law sec. 112 paragraph 3 German Code of Criminal Procedure requires further a second reason for arrest. This second reason requires fewer indications. Finally the pretrial detention is referring to sec. 112 paragraph 1 s. 2 German Code of

Criminal Procedure not lawful when it is disproportionate (14). Reasons for a disproportionate pretrial detention are when the accused person submits voluntary restrictions, e.g. the delivery of the passport or a therapy in a medical institution (15). Another reason is when the consequences for the life of the accused person and the significance of the case as well as the penalty are not be balanced. This proportionality always depends on a case-by-case review. In addition to that, the execution of a warrant of arrest can be suspended (sec. 116 German Code of Criminal Procedure). This provision must be applied, if the purpose of the pretrial detention can be achieved by other less affecting measures (16).

- b) What alternatives to imprisonment are legally available in the phase of post-trial detention?

The sanction system for an offence are part of the provisions of the StGB (Criminal Code). This system distinguish between sentences and disciplinary measures. The public should be protected by disciplinary measures against dangerousness of offenders, which has manifested itself through previous crimes.

The sentence is according to sec. 46 paragraph 1 s. 1 of the Criminal Code based on the guilt of the offender for the committed crime (17). The duration of a prison sentence expresses the degree of illegality and the severity of the guilt (18). The only aspect for the sentence is how much the offence disturbed the legal system (19). Aspects like moral considerations are not relevant in this regard (20). The consideration of the guilt of the offender is the basis and the limitation of the penal frame at the same time (21). The sentence should allow the compensation of the offender's guilt and further give the offender the opportunity to reflect on his crime (22). Therefore a sentence should have the

effect that the offender “improve” his behavior and serve the goal of crime prevention (23). The court has to consider all circumstances, which speak for and against the offender as well the effect of the sentence to the life of the offender. Sec. 46 paragraph 2 s. 2 Criminal Code contains possible circumstances of consideration. The court has also the opportunity referring to sec. 46a and sec. 46b Criminal Code to reduce the sentence.

According to Sec. 12 Criminal Code, the various criminal offences are divided into felonies and misdemeanors. Felonies are unlawful acts punishable by a minimum sentence of one year imprisonment, while misdemeanors are unlawful acts punishable by a lesser minimum amount of imprisonment or by a fine. Only special circumstances can justify short termed imprisonments (24). About one fifth of the criminal sentences are custodial sentences, exceptional intentional homicides, violent sexual offenses, violent robberies as well as extortion. In 95 % of such cases, the sentence is imprisonment (25). A custodial sentence up to 2 years may be suspended on probation in accordance to sec. 56 Criminal Code. The objective of this provision is to reduce short and medium terms custodial sentences and to support the rehabilitation of the offender. Instead of imprisonment, the convicted person has to fulfill conditions and directions (26). The possible conditions in this sense are exhaustively listed in sec. 56b Criminal Code while the directions according to sec. 56c Criminal Code aren't exhaustively listed (27). Directions should help convicted persons to avoid further crimes (28). Not allowed are directions that can't achieve this goal, for example measures to facilitate the monitoring of offenders. Therefore, there is a controversial discussion about the use of electronic ankle

bracelets or the electronically monitored house arrest (29). In cases of less severely crimes, the court has the competence to declare an admonishment with reservation of punishment (30). This is the mildest and rehabilitation supportive measure (31). If the offender was affected himself so seriously by the consequences of the crime, that an imposition of penalties would be clearly inappropriate the court can order a discharge (32).

- c) The termination of proceedings according to sec. 153 German Code of Criminal Procedure and sec. 153a German Code of Criminal Procedure.

In a case of less severe crimes a proceeding can be terminated according to sec. 153 German Code of Criminal Procedure or sec. 153a German Code of Criminal Procedure.

A termination of proceedings by the prosecution according to sec. 153 German Code of Criminal Procedure is necessary when the offence is a misdemeanors as defined in sec. 12 paragraph 2 Criminal Code, the guilty of the offenders is minor and no reasons for public prosecution may exist (33). Contrary to the wording in sec. 153 paragraph 1 German Code of Criminal Procedure the prosecutor has no discretion in this case (34).

In addition to the termination in accordance with sec. 153 German Code of Criminal Procedure in cases of misdemeanors, the prosecutor can terminate the proceedings with approval of the court. The court can concurrently impose conditions and instructions upon the accused if these are suitable to eliminate the public interest in criminal prosecution and the degree of guilt is not withholding diversion. The justification of sec. 153a German Code of Criminal Procedure is that in some cases the objective of the punishment can also be reached by less drastic measures. Examples of such conditions and instructions are: the offender

compensates the damage, pays a sum of money to a non-profit institution or to the Treasury or the offenders' serves community work (35). It is necessary that the offender accepts these measures voluntarily. Therefore, they are not a punishment (36). Further, these measures are a "sanction" beside the sentence system of the criminal code. The conditions and instructions in sec. 153a paragraph 1 of the German Code of Criminal Procedure are not exhaustively listed. Due to this the court can determinate other conditions and instructions.

3. Statistical data about imprisonment in Germany.

After this short overview about the relevant German general legal framework for alternatives to imprisonment, we want to take a more detailed look into the situation of imprisonment in Germany. Firstly, it has to be mentioned that Germany is a state with a pronounced federal structure. Germany consists of 16 federal states. This remark is important when you look at the statistics, because there might be some differences between the federal states.

On March 31st 2016, the number of prisoners in Germany was 64.397 (37). As shown in the

following figure, the number of prisoners in Germany has been declining nearly continuously since 2006. In 2006, the number of prisoners in Germany was 78.581. Accordingly, calculated back to 2006 there was a decrease of 14.184 prisoners. In 2006, there were 14.634 prisoners in pre-trial-detention. In addition, the number of pre-trial detainees is decreasing. On March 31st 2016, the number of pre-trial detainees was 13.389. Therefore, the number of pre-trial detainees decreased in the considered period by 1.245. However, it has to be mentioned, that the number of pre-trial detainees increased since the last years. This increase might be the result of imprisoned refugees. It can be assumed that refugees are more likely be imprisoned due to the before mentioned assumed higher risk of absconding. The ascending rate of pre-trial detainees might result in overcrowded prisons and a higher level of other problematic situations inside prisons. Before we take a closer look at this development and give more details about the prisoners we deal with the before mentioned federal states (38).

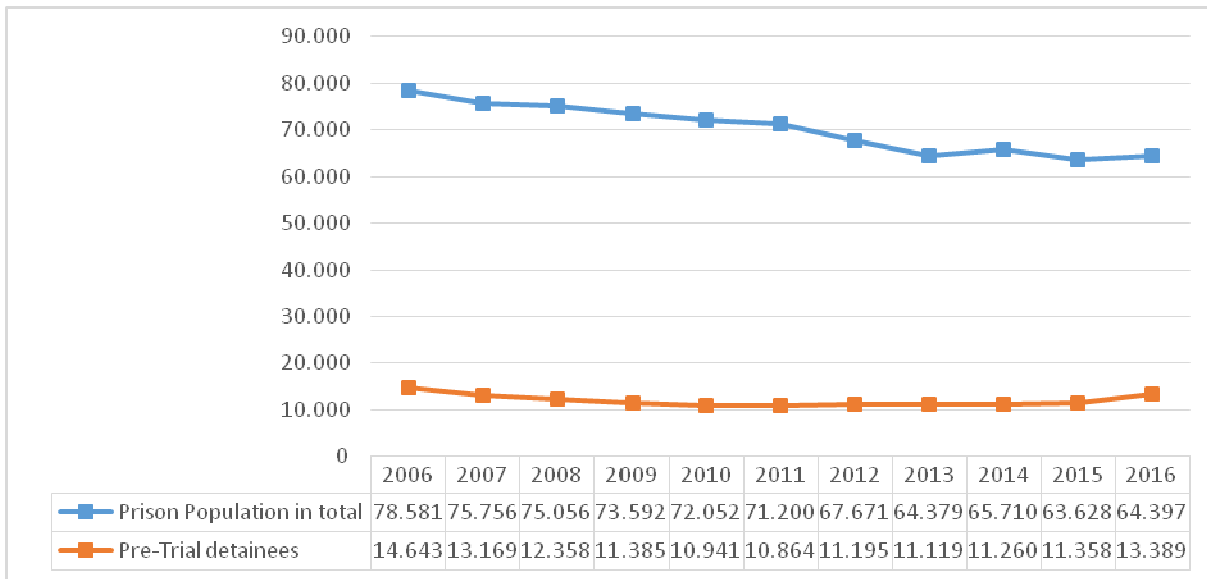


Figure 1: *Development of the number of prisoners and detained in German prisons since 2006*

The prison population differs from federal state to federal state. For example on 30th November 2015, the prison population rate (prisoners per 100.000 citizens) in the federal state Schleswig-Holstein was 40 (39), in Bavaria 87 (40), in Brandenburg 53 (41) and in Bremen 77 (42). According to Dünkel those differences may be the result of different criminal policies and differences in the judicial decision-making practice (43). Furthermore, it has to be mentioned that the social structure of the federal states differs and that especially in large cities the crime rates are higher than in rural areas. Therefore, when you think about alternatives to imprisonment, you have to consider the fact that not only the general legal framework is of importance. Other aspects like the present government, their view on alternatives to imprisonment, the availability and quality of alternatives to imprisonment, the social structure/the social problems especially on local basis and the level of crime must be taken into consideration.

Now we want to take a closer look at the prison population in Germany. On March 31st 2015 the number of prisoners, including prisoners in preventive detention, but excluding pre-trial

detainees, was 52.412. Most of the prisoners are male. At the mentioned date 49.307 prisoners were male and only 3.105 were female. 4.397 persons were inmates of youth imprisonment, and again most of them were male. Their number were 4.258 and only the remaining 139 inmates of youth imprisonment were female (44).

On March 31st 2015 80 % of the prisoners were sentenced to imprisonment up to and including five years. 3.980 prisoners (8 %) were sentenced to a prison sentence with a length from 5 years up to and including 15 years. 1.883 (2 %) prisoners were sentenced to life long imprisonment. In most of the cases, the prisoners were convicted due to theft and misappropriation (23 %), violations of the narcotics law (13 %), robbery and extortion (13 %) and violent crimes (12 %) (45).

In the year 2015, the proportion of foreign prisoners was about 34 %. The following figure shows that their absolute number is not increasing in the last years but their relative number is increasing. Newer data for the year 2016 is not available yet. Due to the before mentioned situation with criminal refugees it can be presumed that the share of foreign prisoners will continue to increase.

Until now, there are no scientific studies available

that focus on this aspect.

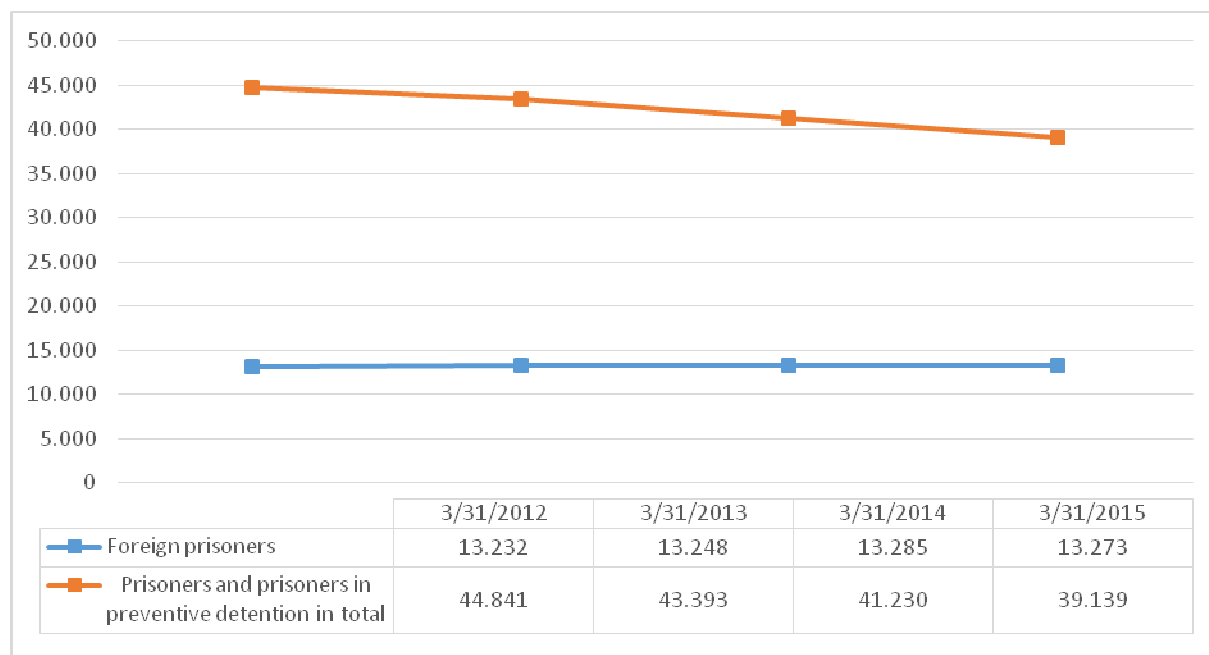


Figure 2: Development of the number of foreign prisoners in German prisons since 2012

Furthermore, we want to get into detail with the socio-demographic background of prisoners. Unfortunately, there are no standardized and regular surveys available that deal with the living situations and background of prisoners. Therefore, only older studies can be used to approach this topic. Some information can be found in the study “*Lebenslagen straffällig gewordener Menschen*” (life situation of delinquent people) of the “*Bundesarbeitsgemeinschaft für Straffälligenhilfe e. V.*”.

A survey on 1.773 imprisoned persons compared to a control group of 1.081 interviewees has proved that 14.2% of the imprisoned have no graduation, while this finding applies to 7.4 % of the total population of Germany. Concerning the achieved highest graduations the differences between the groups are not so clear, but according to the special analysis it is a fact “[...] that the group of the delinquent on the one hand has less often an educational attainment and on the other hand fewer higher educational qualifications” (author's

translation) (46). Also regarding vocational training it can be stated, that prisoners have less often finished successfully their vocational training or got a university degree than the total population of Germany. The high number of dropouts from vocational training is remarkable also 30 % of the prisoners have cut off their started vocational training. The cut off rate in the total population of Germany however amounts to 1.6 % (47).

The lower educational standard affects apparently negatively the income situation of the imprisoned persons. The special analysis of the BAG-S shows, that “[...] the majority of the offenders has a lower income than the comparative group: For 75 percent of the delinquents the income amounts to at least 400 Euros less than for 75 percent of the non-delinquents” (author's translation) (48). Moreover prisoners are more often indebted than the group of not imprisoned people. Further, they have more frequent health problems, e.g., alcoholism or drug addiction. A study from the year 2003 has proven

that approximately 10.000 from 62.000 prisoners are dependent on alcohol. Besides, about one third of them were dependent on other anaesthetics at the same time (49). Also Laubenthal points to the addiction problems of prisoners: “The proportion of drug addicted prisoners is high: Estimates with regard to the consumption of hard drugs like heroin, cocaine, ace etc. vary between 10 and 40%, whereby most information lies with 30%. The portion of those, which have already consumed cannabis, might be even higher” and he concludes: “The life in prison is stamped highly by the addiction problems” (author's translation)(50).

There are also differences between imprisoned persons and the all-German population concerning their residential situation. Thus 81.9% of the interviewees lived before the arrest in a lasting housing condition, while these were almost everybody with the interviewees of the control group. Furthermore the imprisoned persons have grown up exceptionally often in a difficult family situation or had a “problematic” circle of friends. For example, “[...] 35,7 % of narrow family members from the delinquent persons had alcohol or drug problems within the first 15 years of the delinquent’s lives. The relatives of the not delinquent interviewees have such problems significantly less often. 13,6 % of their narrow relatives had problems with alcohol or drugs” (51) (author’s translation) and more than 20 % of the relatives of the interviewed inmates were condemned during their youth, while these were 3,3 % within in the control group (52).

A confirmation for the partly problematic living conditions of convicted persons can be found within the 2. *Periodischen Sicherheitsbericht*. In a section about the topic “Probation services” those problematic living conditions are described as

follows: “Many of the offenders which are under care of probation services are marked through social problems (like lacking vocational training and chronic unemployment, high debts) and personal difficulties and results of critical life events”(53) (author's translation).

These problematic backgrounds of prisoners were described and confirmed in many interviews we did in the framework of the “Reducing Prison Population” project. In this regard, some interviewees had the perspective that imprisonment is never a “really good idea”. Alternatives to imprisonment would enable to work in a better way with convicted people. The problems that lead to their criminal offence/s could be dealt with in a more appropriate way than in prisons. For example, addiction problems could be treated, a new job could be searched for, and the convicted could get the possibility to learn self-control and impulse control when they attend an anti-violence-training. Therefore, alternatives to imprisonment would possibly result in a better social rehabilitation and stabilization of convicted persons.

Some of the before mentioned arguments against the penal system are taken from Kaiser and Schöch. In the year 2003 they observed an increase of violence, drug trafficking and acquisitive crime in prisons due to overcrowding. Therefore, a “Crisis of the imprisonment and penal system” (54) (author's translation) is stated. By the overcrowding, the human dignity of the prisoners is negatively affected and the chances for a successful penal system are endangered (55).

This finding of an increased aggressiveness from and among prisoners in the penal execution is empirically made clear by the study “Violence among prisoners” from the criminological service of the federal state of North-Rhein – Westfalia (NRW)

in the year 2006. The study focused on the amount of violence among the prisoners in NRW with the finding, “[...] that most registered acts of violence among the prisoners were assaults and offences causing bodily harm, which are similarly reported on schools. Violence in prisons shouldn’t be seen basically as an isolated and special problem within the penal system” (56) (author's translation). Furthermore Wirth finds out that especially young prisoners, because of their socialization use the “*Faustrecht*” (Law of the strongest) to solve their problems (57). However, the results of such offences of violence are in about half of the cases rather marginal and “only” in less than 10 % of the cases more serious according to Wirth. Violence in prisons is still an everyday phenomenon (58). In his conclusion, Wirth expresses to draw different conclusions from the results of the study. Especially in prisons for juveniles “[...] vocational trainings and jobs close to the labor market should be offered for appropriate prisoners, especially for those with a high need of vocational training, these offers should be extended to create perspectives for the prisoners [...]” (59) (author's translation).

Within this context the increased number of juvenile foreign prisoners and the negative outcomes of this development has to be mentioned: “With prisoners immigrated from thirty or more nations, in pre-trial-detention-institutions even up to sixty nations, there can already observed a lot of occasions for national or ethnic tensions and even open “frictions”. Additionally there is the problem of the lacking or even totally missing possibility of communication caused by the variety of languages and dialects. Furthermore, the different religions have a high relevance, partly because of the various ritual needs of religious prisoners, because of the food orders or bans, because of the conflicts

between the religions, not to mention from sects. The prisoners themselves suffer according to their origin and nationality from additional stress, for example because of restrictions regarding loosening of prison rules, lesser options to other offers of treatment or, finally, after partial or entire completion of the punishment, deportation or expulsion” (60) (author's translation). With the before mentioned current presumed increase of imprisoned refugees in German prisons those conflicts may rise and therefore may impede the rehabilitation and resocialization of prisoners.

Therefore, it is not surprising that in Germany there is a huge discussion about the treatment of foreign prisoners not only regarding juvenile foreign prisoners but as well as adult foreign prisoners. Different aspects are important here. It is determined that foreigners are overrepresented in German prisons. Considering their share of the population, they are overrepresented by two and a half time (61). Due to the development of migration it can be presumed, that this share will increase in the following years because foreigners are more likely imprisoned than Germans (62). Due to the before mentioned problems and needs of foreign prisoners, law enforcement has to deal with different challenges. There are for example only few “[...] specific concepts for the treatment of foreign prisoners” (author's translation) and the heterogeneous composition of foreign prisoners “[...] with various individual and independent cultural believes, lifestyle habits, different attitudes towards physical integrity, leads to conflicts and disputes between different groups of prisoners, which are sometimes pursued with violence” (63) (author's translation). The already mentioned language barriers, which influence communication between prisoners and correctional staff, have

possibly the effect that foreign prisoners can't use their rights or are not being able to make use of possibilities for long-term education because of an impending deportation (64). In his conclusion, Laubenthal establishes that foreigners in prison are being disadvantaged in comparison to German prisoners (65). According to Laubenthal an internationalization of imprisonment can help to solve problems resulting from imprisonment of foreigners. Among other things this means “[...] serving the sentences in the respective home states of convicts, who are not German” (66) (author's translation). This has to be questioned for example with regard to whether the convicted foreigners are in favor of serving their sentences in their home states, because the conditions of imprisonment might be worse than in Germany (67).

In this context, the current jurisdiction regarding custody-pending deportation by the ECJs has to be mentioned. It is a specific form of imprisonment used to prepare for or secure the deportation, which the court criticizes in its current form (68). According to a ECJ judgment of 17.07.2014 (69) the custody pending deportation has to be organized in such a way, that “[...] imprisonment of illegal immigrants with the goal of deportation has to take

place in special prisons” (70) (author's translation). However, in federal structured Germany not every federal state has such special prisons. That is why the federal states without those prisons have to place the prisoners, who are supposed to be deported, in prisons of other federal states (71).

4. Alternatives to imprisonment.

Alternatives to imprisonment are available in every German federal state. Important are alternatives for imprisonment in default of paying a fine. This alternative imprisonment is used if a convicted can't pay his or her fine. This practice is criticised very often because the sentence for the convicted was not imprisonment but to pay a fine and may lead to a vicious circle. Social connections of the convicted may get lost or a loss of job may occur and therefore the situation of the convicted might not be improved by imprisonment. To solve this problem many federal states have projects like the “*Schwitzen statt Sitzen*” project in Lower Saxony. Convicted have the opportunity to work off their fines. The following figure shows the number of cases in which this alternative to imprisonment was used:

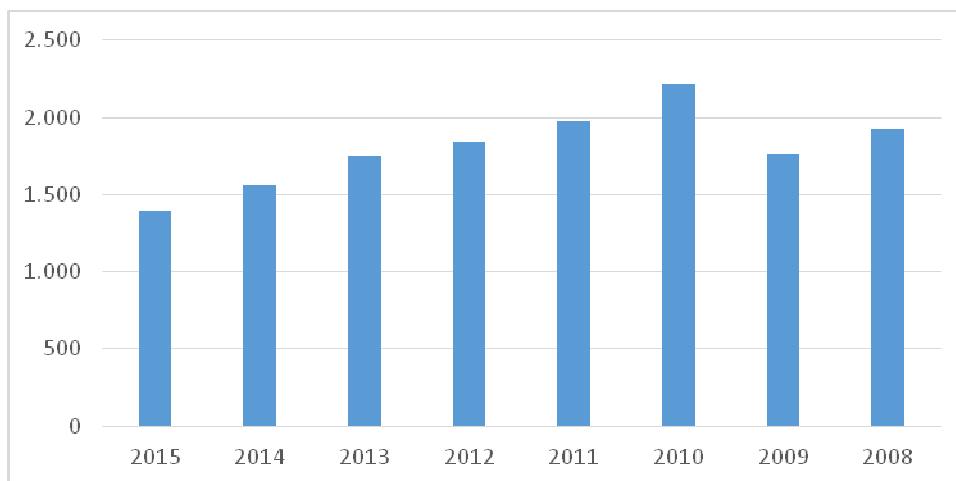


Figure 3: Number of cases in which imprisonment in default of payment was avoided by working off the debts (72)

Maybe more important is the following figure. It shows the number of days of imprisonment that

were saved due to the project “*Schwitzen statt Sitzen*” in Lower Saxony.

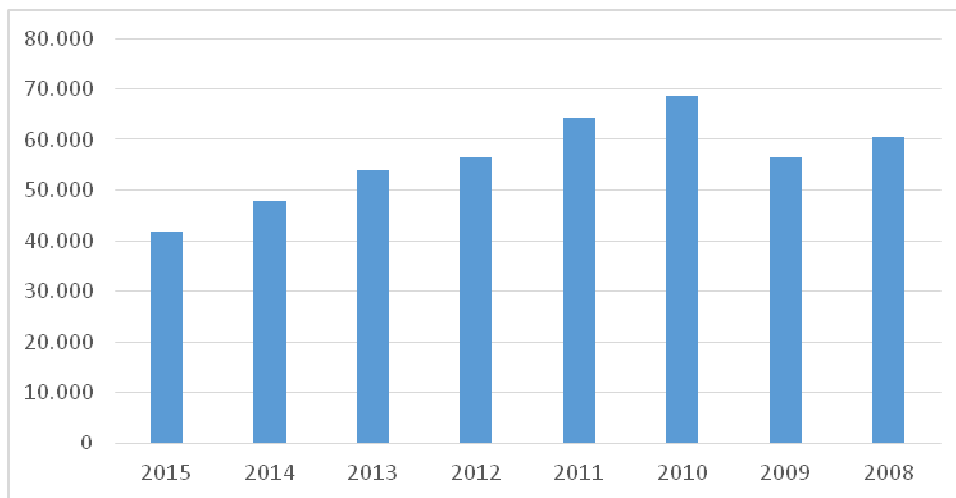


Figure 4: Number of days in imprisonment were saved by working off the debts (73)

At a rough estimate one day in prison costs about 120 €. Therefore the Ministry of Justice of Lower Saxony stated that due to the project “*Schwitzen statt Sitzen*” the amount of over 52. Million Euro were saved since 2008. This alternative to imprisonment could prevent negative side effects of imprisonment and save tax money (74).

In this context, another project in the federal state Bremen has to be mentioned (75). It aims at fare evaders. Some fare evaders are imprisoned because they could not pay their fine. In special hardship cases fare evaders can buy with very little money special tickets for the public transportation network. The Ministry of Justice Bremen and the Office of Social Services fund it. During a question time in the Parliament of Bremen the representative of the Ministry of Justice argued that this project is important because in Bremen 15 up to 20 people were imprisoned because they couldn’t pay the fine for their fare evasion. These people would often have multiple problems like drug addiction, homelessness, indebtedness etc. The use of imprisonment in default of payment would not lead

to a stabilisation or an improvement of their life situation. Therefore, this project would be better in special hardship cases than imprisonment. Furthermore the use of this project would save, like the before mentioned “*Schwitzen statt Sitzen*” project, personnel expenses at court, prosecution, prison and days of imprisonment and therefore tax money (76).

Of course, there are many more alternatives to imprisonment available in Germany. For example, many counselling institutions or support facilities for different problems can be used, like homelessness, drug addiction and addiction to gambling, indebtedness, joblessness and other situations. Assistance is available outside and inside - very important is the transition management, which is dealing with prisoners, who will be released of prisons in near future.

From our perspective, especially measures that are taken into action before imprisonment are useful. This is the so-called front-door-approach. This approach aims to limit the number of people sent to prison. Therefore, it seems to be reasonable to

invest especially in the primary and secondary crime prevention. In this regard, Franz von Liszt has to be cited. He said: “The best law and order policy is a good social policy”. Possible causes for crime have to be identified and dealt with in a proper way so the crime rates are reduced. For example, the gap between poor and rich persons should not get any larger. Otherwise, social tensions may increase and crime rates will raise.

In the context of alternatives to imprisonment, it seems to be important to have a good public relation strategy because there are many different stakeholders. For example, the need for punishment of the society has to be taken into account; the alternatives to imprisonment have to be funded etc. A good practice in this regard is the “*Haftvermeidung durch soziale Integration*”- network, which is located in the federal state Brandenburg. The network has its own info-portal in the internet. With this info-portal one can inform his or herself about the network itself, its structure and partners. On the main page relevant news for and about the network are posted. Furthermore, one can download a newsletter, which is also sent to the social services of justice. The newsletter contains information about the network and about other relevant aspects, which may influence the network. Since 2009, annual reports are published. In addition, documents about conferences are available as well as information about the guiding principles of the network or about the evaluation of the network. Additionally a so-called “communication-plan” is published on the homepage. In this document, the different partners co-operating in the network are enlisted and specific contact persons are named. In summary, the network offers many ways of communication, which can be used by private persons, organisations or the media. The

transparency of the work of the network seems to be very high. The communication with the media seems to be a very important factor. In the guidebook of the network the trans-regional public relation is described. The target groups of the PR are the professional public, policy and ministries. One goal is to inform the target groups about the goals, work and the results of the network/projects. Other goals of the PR are the promotion of and lobbying for the HIS-network/project and the promotion of the image and contacts. Therefore, the main outcomes and results of the network/project seem to be communicated with the civil society and the media in different ways to increase their support, which seems to be very relevant in the framework of alternatives to imprisonment.

5. Further need for research.

At the moment, especially research regarding the situation of refugees is needed in the context of crime prevention and alternatives to imprisonment. As mentioned before the number of foreign inmates in German prisons is increasing. This may lead to social problems inside the prisons and more negative side effects due to imprisonment. Some urgent questions are: What are the special needs of imprisoned refugees? Are the counselling institutions or support facilities inside and outside prisons sufficient and adequate in this regard? Is there a need for new alternatives to imprisonment? Furthermore, external impact evaluations of alternatives to imprisonment in terms of longitudinal studies are still needed. In these studies possible selection-processes must be taken into account – e.g. which (groups) of people with what risks receive alternative measures and which are sent to prison. The opportunities, but of course also the

limitations of alternatives to imprisonment should be evaluated carefully considering differences in risk and problems.

6. Conclusion.

In conclusion, this short overview on the legal situation and the practise shows that alternatives to imprisonment are well established in Germany. Due to the federal structure of the country, a comprehensive picture is hardly possible. On the other hand, the federalism gives the opportunity to try different ways and pilot projects; some of them we have mentioned in this article. We support the idea of piloting new ways in the field of alternatives inside and especially outside prison walls. The raise of migration requires new answers for new problems. By the rising migration people and their problems and needs become more and more diverse and therefore we have to find individual answers to individual needs of different persons and groups. However, this includes also the danger to lose track of abundant projects and measures. Therefore, we mentioned the “*Haftvermeidung durch soziale Integration*”- network in Brandenburg as a possible solution. This research project also showed that only a few projects have been evaluated and only very little external (impact) evaluations and longitudinal studies are available. There is a lot of activity in the field but we do know only little about the effects. Finally, the situation of the victims and their perspectives came on the agenda of professionals in this field only very recently. A number of initiatives and projects have started already, but it is still too early for a resume.

Notes.

- (1). See e.g. the case “Torreggiani et al. vs. Italy”, ECHR application number 57875/09 et al.
- (2). Cf. BVerfGE 19, 342 (347); BVerfGE 20, 45 (49); BVerfGE 53, 152 (158); Meyer-Goßner / Schmitt-

- Schmitt, StPO, Vor § 112, Rn. 2; HK-GS-Laue, StPO, § 112, Rn. 1.
- (3). Cf. BVerfGE 19, 342 (348); BVerfGE 20, 45 (49); BVerfGE NJW 1991, 1043 (1043); Meyer-Goßner / Schmitt-Schmitt, StPO, Vor § 112, Rn. 4.
- (4). Cf. Meyer-Goßner/Schmitt-Schmitt, StPO, Vor § 112, Rn. 2; HK-GS-Laue, StPO, § 112, Rn. 1.
- (5). Cf. Schünemann, Prolegomena zu einer jeden künftigen Verteidigung, die in einem geheimdienstähnlichen Strafverfahren wird auftreten können“, GA 2008, 314 (332); Meyer-Goßner/Schmitt-Schmitt, StPO, Vor § 112, Rn. 2.
- (6). Cf. Grabenwarter / Pabel, EMRK, § 3 Rn. 2.
- (7). Cf. Meyer-Goßner / Schmitt-Schmitt, StPO, § 125, Rn. 8.
- (8). Cf. *Ibidem*, Rn. 10.
- (9). Sec. 112 paragraph 2 No. 1 German Code of Criminal Procedure.
- (10). Sec. 112 Paragraph 2 No. 2 German Code of Criminal Procedure.
- (11). Sec. 112 paragraph 2 No. 3 German Code of Criminal Procedure.
- (12). Sec. 112 paragraph 3 German Code of Criminal Procedure.
- (13). Sec. 112a German Code of Criminal Procedure.
- (14). Cf. Meyer-Goßner/Schmitt-Schmitt, StPO, § 112, Rn. 10; KK-Graf, § 112, Rn. 52.
- (15). Cf. Meyer-Goßner/Schmitt-Schmitt, StPO, § 112, Rn. 10; KK-Graf, § 112, Rn. 52.
- (16). Cf. BVerfGE 19, 342 (351); BVerfGE NJW 1991, 1043 (1043); Meyer-Goßner / Schmitt-Schmitt, StPO, § 116, Rn. 1; HK-GS-Laue, StPO, § 116, Rn. 1.
- (17). Cf. BGHSt 20, 264 (266); BGH NJW 1987, 2685 (2686); HK-GS-v. Danwitz, StGB, Vor § 38, Rn. 3.
- (18). Cf. *Ibidem*.
- (19). Cf. BGHSt 20, 264 (266); BGH NJW 1987, 2685 (2686); HK-GS-Rössner / Kempfer, StGB, § 46, Rn. 12.
- (20). Cf. HK-GS-Rössner / Kempfer, StGB, § 46, Rn. 12.
- (21). Cf. Fischer, StGB, § 46, Rn. 19; HK-GS-Rössner / Kempfer, StGB, § 46, Rn. 12; with the same result BVerfGE 45, 187 (260).
- (22). Cf. Fischer, StGB, § 46, Rn. 3.
- (23). *Ibidem*.
- (24). Sec. 47 Criminal Code.
- (25). Cf. HK-GS-v. Danwitz, StGB, Vor § 38, Rn. 6.
- (26). *Ibidem*, Rn. 7.
- (27). *Ibidem*.
- (28). Cf. LK-Gribbom, § 56c, Rn. 1; HK-GS-Braasch, StGB, § 56c, Rn. 1; NK-Ostendorf, § 56c, Rn. 1.
- (29). For example cf. Schlömer, „Die Anwendbarkeit des elektronisch überwachten Hausarrests als Bewährungsbeweisung nach geltendem Recht“, In: *Bewährungshilfe*, BewHi 1999, 31; Bammann, „Anwendbarkeit des elektronisch überwachten Hausarrests in Deutschland“, JA 2001, 471; HK-GS-Braasch, StGB, § 56c, Rn. 1; Fischer, StGB, § 56c Rn. 6; NK-Ostendorf, § 56c, Rn. 1.
- (30). Sec. 59 Criminal Code.
- (31). Cf. HK-GS-v. Danwitz, StGB, Vor § 38, Rn. 17.
- (32). Sec. 60 Criminal Code.
- (33). Cf. HK-GS-v. Danwitz, StGB, Vor § 38, Rn. 22.
- (34). Cf. *Ibidem*, Rn. 23.

(35). Cf. *Ibidem*, Rn. 25.
 (36). Cf. *Ibidem*.
 (37). Statistische Bundesamt, „Bestand der Gefangenen und Verwahrten in den deutschen Justizvollzugsanstalten – 31.03.2016“, 09.08.2016, Available at: <https://www.destatis.de/DE/Publikationen/Thematisch/Rechtspflege/StrafverfolgungVollzug/BestandGefangeneVerwahrte.html>
 (38). *Ibidem*.
 (39). Institute for Criminal Policy Research, „World Prison Brief“, Available at: <http://www.prisonstudies.org/country/schleswig-holstein>
 (40). *Ibidem*, Available at: <http://www.prisonstudies.org/country/bayern>
 (41). *Ibidem*, Available at: <http://www.prisonstudies.org/country/brandenburg>
 (42). *Ibidem*, Available at: <http://www.prisonstudies.org/country/bremen>
 (43). Dünkel F., „Strafvollzug in Deutschland – rechtstatsächliche Befunde“, 08.02.2010, Available at: <http://www.bpb.de/apuz/32967/strafvollzug-in-deutschland-rechtstatsaechliche-befunde?p=all>
 (44). Statistische Bundesamt, „Strafvollzug – Demographische und kriminologische Merkmale der Strafgefangenen zum Stichtag 31.03.“, 29.06.2016, Available at: https://www.destatis.de/DE/Publikationen/Thematisch/Rechtspflege/StrafverfolgungVollzug/Strafvollzug2100410157004.pdf?__blob=publicationFile
 (45). *Ibidem*.
 (46). Meyer S., „BAG-S-Sonderauswertung: Lebenslagen straffällig gewordener Menschen“, Available at: http://www.bag-s.de/fileadmin/user_upload/PDF/sonderauswert.pdf.
 Other studies have the same results. Within this context Laubenthal points: „Though prisoners have educational and vocational deficits in disproportionate frequency, this should not lead to the mono-causal interpretation that a lack of education is the cause of delinquency.“ (Laubenthal K., *Strafvollzug*, Springer-Verlag, Berlin, Heidelberg, 2011, p. 253).
 (47). Cf. *Ibidem*.
 (48). Cf. *Ibidem*.
 (49). Heimerdinger A., „Alkoholabhängige Täter: justizielle Praxis und Strafvollzug“, 2006, Available at: <http://www.krimz.de/fileadmin/dateiablage/E-Publikationen/kup52.pdf>, p. 91.
 (50). Laubenthal, *Strafvollzug*, Springer-Verlag, Berlin, Heidelberg, 2011, p. 351.
 (51). *Ibidem*.
 (52). Cf. *Ibidem*.
 (53). Bundesministerium des Innern; Bundesministerium der Justiz, „Zweiter Periodischer Sicherheitsbericht“, 2006, Available at: https://www.bmi.bund.de/SharedDocs/Downloads/DE/Veroeffentlichungen/2_periodischer_sicherheitsbericht_langfassung_de.pdf?__blob=publicationFile, p. 603.
 (54). Heinz Schöch K., „Strafvollzug – Eine Einführung in die Grundlagen“, UTB, Heidelberg, 2003, p. 71.
 (55). Cf. *Ibidem*.
 (56). Wirth, „Gewalt unter Gefangenen. Kernbefunde einer empirischen Studie im Strafvollzug des Landes

Nordrhein-Westfalen.“, *Bewährungshilfe*, 54, 2/2007, pp. 185-206.
 (57). Cf. *Ibidem*, p. 189.
 (58). Cf. *Ibidem*, p. 191.
 (59). *Ibidem*, p. 205.
 (60). Bundesministerium des Innern; Bundesministerium der Justiz, „Zweiter Periodischer Sicherheitsbericht“, 2006, Available at: https://www.bmi.bund.de/SharedDocs/Downloads/DE/Veroeffentlichungen/2_periodischer_sicherheitsbericht_langfassung_de.pdf?__blob=publicationFile, p. 617.
 (61). Walter J., „Minoritäten im Strafvollzug“, Available at: <http://www.bpb.de/apuz/32979/minoritaeten-im-strafvollzug?p=all>
 (62). Cf. *Ibidem*.
 (63). Laubenthal, *Strafvollzug*, Springer-Verlag, Berlin und Heidelberg, 2011, p. 194.
 (64). Cf. *Ibidem*.
 (65). Cf. *Ibidem*.
 (66). *Ibidem*, p. 195.
 (67). Cf. *Ibidem*, p. 199.
 (68). Cf. *Ibidem*, p. 579.
 (69). ECJ judgement of 17.07.2014 in the case C-474/13.
 (70). ECJ, Press release No. 105/14, <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-07/cp140105en.pdf>
 (71). Cf. *Ibidem*.
 (72). Niedersächsisches Justizministerium, „Schwitzen statt Sitzen“, Available at: http://www.mj.niedersachsen.de/themen/strafrecht_soziale_dienste_und_opferhilfe/schwitzenstattsitzen/schwitzenstattsitzen--10362.html
 (73). *Ibidem*.
 (74). Cf. *Ibidem*.
 (75). Bremische Bürgerschaft, „Plenarprotokoll 15. Sitzung 10.07.12“, Available at: <http://www.bremische-buergerschaft.de/dokumente/wp18/stadt/protokoll/P18S0015.pdf>, p. 592.
 (76). Cf. *Ibidem*.

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