

FEDERAL REPUBLIC OF GERMANY

To the analytical report on the implications of over-incarceration and overcrowding for the human rights of persons deprived of their liberty (resolution 24712 of the Human Rights Council)

"1. Overcrowding and over-incarceration

a) Prison Overcrowding

Prison overcrowding is no serious problem in Germany. Prison overcrowding is explicitly prohibited for by Section 146 of the Prison Act (Strafvollzugsgesetz des Bundes, see translation under http://www.gesetze-im-internet.de/englisch_stvollzg). According to section 18 of the Prison Act, every prisoner shall be lodged alone in his cell at night. In suitable cases, detainees may be accommodated in open institutions; in open institutions prisoners may, with their consent, be accommodated jointly during the night where any detrimental influence is not to be feared. The prison acts of the federal states contain similar provisions. These statutes provide also for minimum space of prison cells (usually, at least 14 m² for a communal cell with two prisoners).

Germany supports the Drafting Working Committee on prison overcrowding, an initiative launched on the occasion of the 17th Council of Europe Conference of Directors of Prison Administration (Rome, 2012) at a special meeting held between European judges, prosecutors and prison and probation directors, and under the aegis of the European Committee on Crime Problems (CDPC). This initiative aims at assisting the national authorities in starting a dialogue between judges, prosecutors, legislators, decision-makers and prison and probation services with a view to agreeing on a long-term national strategy and on specific actions to deal with prison overcrowding in Europe.

b) Incarceration rates, prevention of over-incarceration:

Over the recent years the prison population in Germany has steadily declined. The absolute number of prison inmates has fallen from 60.693 inmates in 2010 (31.03.2010) to 56.641 inmates in 2013 (31.03.2013). The most recent statistical survey in 2014 (date: 30.11.2014) revealed 61.872 inmates, including 11.582 inmates remanded to custody or in pretrial detention. The prison occupancy rate for Germany is 77,5 inmates per 100.000 inhabitants (for comparison: France 118,3 inmates per 100.000; United States of America: 231 inmates per 100.000).

The predominant criminal sanction under German criminal law is the monetary fine; section 47 of the German Criminal Code provides that the court shall impose short terms of imprisonment of less than six months only in exceptional cases.

Approximately 2/3 of all prison sentences are suspended on parole; recalls for parole violations do not materialize for the larger part of them. Pre-trial detention may also be suspended under certain circumstances (see section 116 of the German Code of Criminal Procedure for suspension on bail and on similar measures, translation: http://www.gesetze-im-internet.de/englisch_stpo).

2. Alternatives to detention and good practices:

a) Electronically monitored house arrest

Electronically monitored house arrest as a means to avoid the service of prison sentences has been successfully implemented in Hesse and other federal states. For example, since 2007, electronic monitoring may be used in all Regional Court districts throughout Hesse. By 31 December 2013, a total number of 1.213 (2 January 2012: 969) individuals had been monitored as part of the project, 812 (2 Januar 2012: 665) of whom as a result of a direction on probation and 401 (2 January 2012: 302) in the context of the suspension of the execution on remand detention. In fewer than 10% of cases did a revocation or a reinstatement of the warrant of arrest take place. As per January 2012, 92 individuals were part of the project in Hesse, 54 of whom in the context of the suspension of a prison sentence on probation or of suspension of the remainder of a sentence on probation (parole), and 38 as a measure as part of the suspension of the execution of remand detention.

b) Use of diversion and alternative sanctions for young offenders

Young offenders (juveniles of age 14-17 and young adults of age 18-20) fall under the special regime of the German Youth Courts Law (see translation under http://www.gesetze-im-internet.de/englisch_jgg). The German Youth Courts Law primarily aims at the prevention of re-offending. Hence it provides a large spectrum of non-custodial and community sanctions as alternatives to imprisonment (see sections 5 pp of the German Youth Courts Law). By different means of diversion (see sections 45, 47 of the German Youth Courts Law), approximately 2/3 of all proceedings in juvenile justice cases already get resolved (mainly by the public prosecutor before even a formal indictment) without formal criminal conviction and sanctioning by the court. Of the formally convicted young offenders (juveniles and young adults), only 20 % are convicted to youth detention (Jugendstrafe = specially organized and structured imprisonment for young convicts) and 60 % of those convictions to youth detention are suspended on probation immediately at the time of the conviction.

Pre-trial detention for juvenile offenders is – even more strictly than for adults - a measure of last resort (see section 72 of the German Youth Courts Law). It may only be ordered if non-custodial educative or other measures or the placement in a youth welfare institution would not be sufficient."