

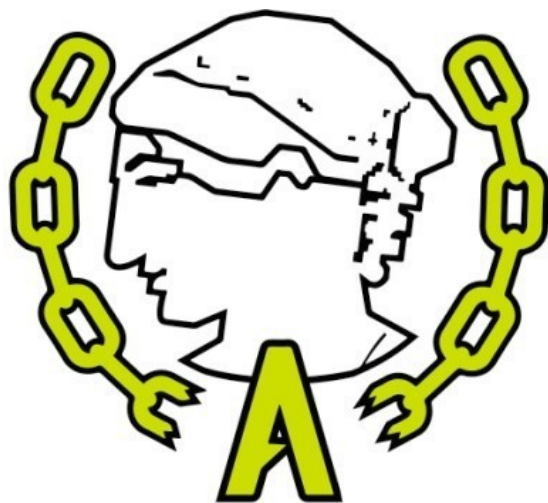
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**Have prisons learnt from Covid-19?
How the world has reacted to the pandemic
behind bars**



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N. 1/2020 HAVE PRISONS LEARNT FROM COVID-19? HOW THE WORLD HAS REACTED TO THE PANDEMIC BEHIND BARS

edited by Susanna Marietti and Alessio Scandurra

TABLE OF CONTENTS

<i>Preface</i> , Susanna Marietti, Alessio Scandurra	7
PART ONE - A PRISON WORLD OVERVIEW with the contribution of the European Prison Observatory and the American Civil Liberties Union	15
BELGIUM - <i>So far, so good? Health and prisons in Belgium during Covid-19 pandemic</i> , Elena Gorgitano, Adriano Martufi	17
BRAZIL - <i>Covid-19 and prisons in Brazil: conditions and challenges</i> , Bruno Rotta Almeida, Elaine Pimentel, Patrick Cacicedo	27
BULGARIA - <i>Covid-19 and the prison system in Bulgaria</i> , Krassimir Kanev	34
FRANCE - <i>The pandemic crisis and opportunities for lasting change in French prisons</i> , Cécile Marcel	40
GERMANY - <i>Covid-19 shows substantial problems in the German prison system</i> , Melanie Schorsch, Christine Graebisch	47
GREECE - <i>Isolation for protection. Facing the Covid-19 pandemic in Greek prisons</i> , Ioanna Drossou, Nikolaos Koulouris, Theodora Pantelidou, Sophia Spyrea	55
HUNGARY - <i>Much ado about nothing. Banning visitation did not prevent the virus spreading into Hungarian penitentiaries</i> , Zsófia Moldova	62
ISRAEL - <i>A matter of absence: the Ministry of Health and Covid-19 in Israel's prisons</i> , Anat Litvin, Dana Moss	68
ITALY - <i>Coronavirus and Italian prisons: a success story?</i> , Federica Brioschi	75
PORTUGAL - <i>The management of Covid-19 in Portuguese prisons</i> , Vera Silva	85
SIERRA LEONE - <i>Covid-19 responses to mitigate the impact of the virus in Sierra Leone's prisons: an overview</i> , Lydia W. Kembabazi, Isabella Cordua	91

SPAIN - <i>Coronavirus management in Spanish and Catalan prisons</i> , Alejandro Forero Cuéllar	99
UNITED KINGDOM - <i>Covid-19 in prisons: the view from England and Wales</i> , Matt Ford	106
UNITED STATES OF AMERICA - <i>United States' failure to respond to the Covid-19 crisis in prisons and jails</i> , Udi Ofer	116
PART TWO - THE PANDEMIC AND PRISON: REFLECTIONS AND INSIGHTS	126
<i>The Covid-19 pandemic: the urgency to rethink the use of pre-trial detention</i> , Laure Baudrihayé-Gérard	128
<i>The Covid-19 pandemic highlights the urgent need to decriminalise petty offences in Sierra Leone and beyond</i> , Isabella Cordua, Joseph Bangura	139
<i>Pandemic and democracy: for a global constitutionalism</i> , Luigi Ferrajoli	151
<i>Assessing strategies to prevent and control Covid-19 in prisons in the initial emergency phase of the pandemic</i> , Matt Ford	160
<i>How the pandemic has aggravated the gendered impacts of drug policies on women who use drugs and incarcerated women for drug offences in Mexico</i> , Corina Giacomello	171
<i>The social revolution of fraternity against the virus of identitarian ideology</i> , Patrizio Gonnella	190
<i>Policy responses to Covid19 in prison. Testing the (in)action of European institutions during the pandemic</i> , Adriano Martufi	198
<i>Health and prison</i> , Aldo Morrone	212
<i>University and prison. A complex but unavoidable (more than ever in time of Covid-19) institutional and cultural interweaving</i> , Iñaki Rivera Beiras	225
<i>Prisons, health and drug control in the time of Covid-19</i> , Gen Sander	242
<i>In the United States, the Coronavirus devastated prisons and jails, exposing the violence and indifference of the country's mass incarceration system</i> , Alice Speri	257
AUTHORS	272



GERMANY - Covid-19 shows substantial problems in the German prison system

Melanie Schorsch¹, Christine Graebisch²

1. Introduction

In recent months, a variety of measures have been introduced in the German federal states to prevent and contain the outbreak of Covid-19 in prisons. These include, among others, the suspension of substitute penalties for failure to pay fines and longer prison sentences as well as the suspension of the execution of sentences under various conditions. However, tracking these developments as well as the infection rates of prisoners and staff seems almost impossible, as the justice ministries of the federal states publish statistics and news only sporadically and independently. This is usually done in the form of FAQs on the respective web pages.

In this article, the focus will be on two federal states and the following areas: prevention measures, restrictions on activities within the prisons and the restrictions on relaxation and preparations for release. The data will be partly drawn from letters of prisoners, describing the recent changes. The article will describe two

problems that have been highlighted during the *Corona-crisis* but have been in existence long before: the medical service in prisons as well as the preparations for release.

2. Materials and methods

Official information on the measures within the prisons was obtained through press releases and information on the web pages.

In addition, questionnaires on measures and the infection rates were sent to all 16 federal states as part of an international *ad hoc* research project. The feedback was more than reserved, and participation in the study was refused with the response that insufficient resources were available. Nevertheless, results from this survey will be included in this article.

In cooperation with the prisoners' journal *Lichtblick* the Prison archive (*Stafvollzugsarchiv*) published an announcement with the following questions:

- What experiences have you had with Corona protection measures in prison?

- Which measures (relaxation, visits, etc.) were cancelled and what alternative measures are available?
- What changes in the medical service do you notice?
- Has Corona changed the prison climate?
- To what extent are preparations for release being carried out?

The Prison archive received 26 answers from 25 different institutions and 12 different federal states. The answers arrived at the Prison archive in July and August 2020. This survey is by no means representative; however, it offers an insight into German prisons.

3. Official statements regarding Covid-19-measures

Initially, the official description of the Ministries of Justice will be examined. In the context of this article, two selected federal states will be described, which have been given the titles A and B.

In general, prisoners and staff are required to respect the regulations regarding physical distancing and hygiene. To protect the prison population, measures have been taken to avoid larger groups in closed areas. New prisoners are accommodated in a separate reception unit for the first 14 days, separated from the other prisoners. All newly admitted persons are supposed to be examined for infection by throat swab within a few days. After the 14 days and negative test results, they are transferred to other areas of the prison.

According to the Ministry of Justice in federal state B, there is access to necessary preventive, protective equipment for staff.

Other preventive measures include staff training on Covid-19 and prevention measures. Prisoners were also provided with crucial information on prevention and symptoms.

Infected prisoners and prisoners who are suspected of being infected are immediately placed in quarantine areas and reported to the local public health department. Prisoners will be accommodated in their detention room or a quarantine unit. There, staff will provide, amongst others, medical care. In federal state A, joint accommodation will be introduced in the event of an accumulation of infection cases. Quarantine stations have been set up as a precautionary measure. If necessary, a transfer to the prison hospital will be arranged. In federal state A, places are available for the inpatient admission and care of acutely ill Covid-19 patients. In federal state B, persons with severe conditions and in need of intensive medical treatment have to be transferred to an external hospital.

In federal state A, the majority of workplaces were operating during the past months. According to the Ministry of Justice, treatment measures and programmes for prisoners seem to continue. However, according to its statement, the scope varies due to different requirements in the prisons. In federal state B, some workplaces have been closed. In these cases prisoners received minimal compensation for the loss of wages. Workplaces in certain prisons have been converted so prisoners can produce protective (face)masks.

In federal state A, measures outside of prisons – like prison leave – were initially

not granted. According to the Ministry of Justice, an exception was made for measures to prepare for prison release or employment outside the prison walls. The scope varied from prison to prison. According to public statements, the restrictions were further relaxed. As of June 2020, accompanied measures and leaves without prison personnel are permitted again. In federal state B, the responsible health authority is supposed to be informed when a prisoner is released while still in quarantine. It does not seem clear whether the quarantine can be maintained, through the control of the authorities or medical facilities.

Even though release preparation should be possible, the Ministry of Justice of federal state B stated that there had been delays due to Covid-19. B is certainly not an isolated case.

4. A closer look

4.1. The medical service

Interestingly, the Ministry of Justice of federal state B has indicated that unfair treatment, exposure to a high risk of infection and contact restrictions have been identified as significant concerns in prisoners' complaints. In the following, the experiences and assessments of the prisoners in federal states A and B will be described in more detail².

Stable health is one of the cornerstones of a successful life after prison. However, the continued existence of a parallel health system in German prisons prevents continuity in the treatment of prisoners, both inside and outside of prison (W. Lesting, 2017, para 3f.). The highly over-represented accumulation of infectious diseases and addictions as well

as mental illness is particularly concerning (W. Lesting, 2017, para 7). Therefore, it is crucial to take a look at the medical system in prisons during a pandemic.

Prisoners report that preventive measures were implemented in prison with a delay as compared to the outside. Moreover, many staff members seem to underestimate the situation, according to the prisoners: masks are rarely used, and the behaviour of staff members triggers fear of an increased risk of infection amongst the prisoners. The survey participants have the feeling that a mere *recommendation* to wear the mask is not taken seriously and that substantive discussions with the officers were not possible.

Although treatment programmes were restricted to comply with physical distance requirements, a prisoner reports that they had to share showers with others or work closely together at the same time.

"The measures seem to me to be very unprofessional and massively burdensome. Unprofessional because in the initial phase, safety notices were hung up, but these instructions could not be followed due to a lack of soap or paper towels. Officers and staff are allowed to leave and enter the prison every day without face masks etc., while visits to the prisoners have been severely restricted" (A15).

Disinfectants do not seem to be available. Furthermore, masks were not distributed to prisoners in federal state B until June 2020.

To the question "What changes in medical services do you notice?" respondent B1 answers: "None. Medical consultation are rather reduced" (B1).

One respondent reports general problems as a person with a chronic illness and the difficulties of getting vaccinations (e.g. against influenza).

There are also reports of postponed external medical appointments as well as a lack of agreement between the prison administration and medical services regarding quarantine measures after a hospital stay.

Preventive measures also seem to be disregarded by some medical staff:“(…), the doctor comes from outside and never wears a face mask, so he is a great danger for us” (B16).

Another prisoner reports on the limited medical services that existed before Covid-19:“(…) Since Jan. 2019 provisional care by only 1 today 2 retired doctors. Med. service wears face mask” (A3).

Survey participant 15 also reports that the medical services in federal state A have remained unchanged: “From my personal point of view, medical care has not changed. However, a quarantine unit has been set up, of which I have only heard very negative things so far” (A15).

Although the health care system in prisons has to comply with the requirements of the public health insurance regulations and has to guarantee comparable services to those outside prisons, the medical services provided to prisoners still does not reach the level provided in freedom. Prisoners are not allowed to choose their doctor and, thus, the prison doctor becomes a compulsory partner. Furthermore, the doctors are not only responsible for the treatment of their patients but are also part of the prison hierarchy and therefore have certain

control functions. They operate in a field between patient-oriented action and prison regulations. Thus, prison doctors are expected to intervene in the daily routine of the prison in a resource-saving and efficient manner (W. Lesting, 2017, para 3). This is particularly evident in drug substitution treatment (W. Lesting, 2017, para 4). Furthermore, prisons are faced with the problem of finding qualified medical staff and vacancies remain vacant (e.g. in federal state A).

This article can only provide an introduction to the medical service within the prison system. This is mainly due to the unregular and incomprehensive collection and publishing of (statistical data by the Ministries of Justice. For example, in federal state B, there seems to be no central registration of how many prisoners consult the medical service or how many health care professionals (except doctors) are employed full-time in prisons. The average waiting time for appointments is also not recorded. According to Lesting, there is a lack of overview and control by external and independent experts, institutionalised quality management as well as control authorities, professional associations and medical ethics commissions (W. Lesting, 2017, para 6).

The medical service in prisons shows its weaknesses particularly during release. Prisoners must be reinstated in a health insurance scheme after their imprisonment. Health insurance companies often refuse to examine admission before release, as the application can only be made after release from prison because of the availability of health care in prisons (W. Lesting, 2017, para 4).

With the pandemic and the increased responsibility of the medical service that this crisis entails, it would be expected that the service provided has changed and transformed. However, looking at the prisoners' answers, this does not seem to be the case. The medical service is still described as inadequate, and the staff ignores the general hygiene measures. Disappointment, scepticism and resignation towards medical service seem to be common feelings amongst prisoners.

4.2. Prison release

The management of the transition between prison and freedom is designed to facilitate the release from prison and to provide support for prisoners through cooperation between judicial authorities, offender support agencies and other third parties (E. Bahl, H. Pollähne, 2017b, para 16). The obligation to prepare for release skillfully conceals the fact that imprisonment can be part of social exclusion, fostering this process even after imprisonment (E. Bahl, H. Pollähne, 2017b, para 5). Prisons are therefore obliged to help prisoners to put their personal, economic and social affairs in order before release and thus prepare them for the demands of life after release (E. Bahl, H. Pollähne 2017a, para 4-5). Hence, an examination of prisoners' experiences and perceptions regarding the release preparation should give an insight into the recent developments during Covid-19 but also a general assessment of the measures at hand.

Prisoners in federal state B report that (purpose-related) escorted prison leaves have been reinstated. Other prisoners from the same federal state report a lack of preparation, even though the release is

perceived as imminent: "Release preparations do not take place in the prison (name)! I personally will be released in 10 months after more than 14 years in prison and nothing is done" (B18).

Another survey participant reports on a fellow prisoner who had only limited German language skills and no place to stay shortly before his release.

From federal state A, it is reported that preparations for release did not take place even before the pandemic: "Release preparation has not been available in the prison (name) for years" (A3).

"In more than two years, I have seen a number of prisoners *leave*, but I have never experienced anyone reporting positively or at all about a preparation for release. On the contrary, I currently have a fellow inmate from the ward who is likely to be released into homelessness in 3 weeks, and actually does not receive any help - although he has asked for it several times" (A15).

Respondent A15 also adds that the institutions have a lot of discretionary power in the organisation of the release preparations. That this discretion does not always seem to be used in favour of the prisoners.

Imprisonment implies multiple exclusion mechanisms such as being excluded from the pension and health insurance system, from minimum wages for work in prisons and from the housing market (E. Bahl, H. Pollähne, 2017b, para 7 *et seq.*). Imprisonment often leads to the loss of the accommodation because the earned income is lacking, and welfare benefits are discontinued. Often those affected by short prison sentences are not aware of

the possibilities of securing their home by welfare benefits for up to six months. Especially in highly competitive housing markets, the access barriers for former prisoners are very high and renting as well as initial equipment often involves considerable costs (V. Busch-Geertsema *et al.* 2019, p. 211).

While the exact measures for release preparation are not clearly defined, referral to supporting organisations and other authorities seems to be a fundamental part of the preparation (E. Bahl, H. Pollähne, 2017a, para 4-5). This referral involves more than just passing on addresses but aims at establishing contact between prisoners and support organisations and authorities (E. Bahl, H. Pollähne, 2017a, para 21).

Preparations for release also include relaxations of the prison regime, such as unaccompanied leave as well as long-term leave (E. Bahl, H. Pollähne, 2017a, para 49). These relaxations are necessary for prisoners to be able to find work and accommodation in advance, to strengthen their social ties, and for people with longer prison sentences to become accustomed to living in freedom. The development of new contacts and participation in education and other measures are also elementary objectives (E. Bahl, H. Pollähne, 2017a, para 27).

According to Bahl and Pollähne, however, releases without preparation are not uncommon (E. Bahl, H. Pollähne, 2017b, para 13). The mandate to support prisoners is at the discretion of the prison. This discretion is necessary in order to design the measures according to the prisoners' needs; however, it also gives the prison considerable flexibility in the actual

implementation (E. Bahl, H. Pollähne, 2017a, para 23). Moreover, even before Covid-19, the organisational structures and staffing of many prisons often prevented a holistic support (E. Bahl, H. Pollähne, 2017a, para 23). Due to the restrictive prevention measures to contain Covid-19, the relaxations have been completely removed. However, prisoners' comments indicate that these measures have been disregarded by the prisons before. During the past months essential aspects of the prisoners' reintegration, such as relaxations, visits, and preparation for release, were reduced considerably. In addition, pre-existing deficits have become more apparent and intensified. Covid-19 measures allowed a certain formalisation of this lack of support.

Notes

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³ The quotations are translated from German to English by the authors.

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