

Report on older persons deprived of their liberty - Germany

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1. Key human rights risks and violations affecting older persons deprived of their liberty

Older persons in prisons are at risk of following human rights violations:

- *Violation of their dignity (Art. 1), for example when older prisoners have to deal with incontinence in shared cells, or have to place soiled linen outside of their cells, there is a risk of mockery and victimization (Meyer, 2022).*
- *When older prisoners die in custody against their will their dignity is at risk, as German law scientists and ministry representatives acknowledge (e.g. Wulf, 2017). Due to slow administrative processes, many dying persons are not released before their death leading to an absolutely undignified, solitary and de-subjectifying dying process.*
- *Older prisoners are at risk of being victimized by other prisoners (Art. 3, 4, 5). The risk of further victimization might prevent them from talking to staff. In some German prisons separate wings for older prisoners are provided, but in the majority of prisons older adults have standard cells.*
- *The combination of frequent somatic illnesses, declining mobility and frequent cognitive impairments increases the risk of victimization, whether by fellow prisoners or staff. Cognitive deficits can lead to insufficient compliance with instructions, which can be interpreted by staff as resistance or disobedience and sanctioned with measures.*
- *Older prisoners are at risk of not having access to public services (Art. 21). While basic health care is available in prisons, there are limited health prevention opportunities that older prisoners can access. There is also no consistent screening of health challenges, such as cognitive decline and depression. Living conditions in prisons affect the mental and physical health of older persons (Art. 25) (Meyer, 2022; Verhülsdonk, 2021). A recent study also revealed that there is no access to palliative care for most older persons in prisons. The principle of equivalence is clearly violated (Kenkmann, Ghanem, Erhard 2022).*
- *Studies from Germany have pointed to an increased need for help as a result of somatic disorders, an increased prevalence of cognitive impairment, but also affective syndromes (Meyer, 2022; Verhülsdonk, 2021).*
- *No pension contributions are made in prisons for their work, this affects their social security after their release (Art. 22, 23). Even departments of justice have*

expressed this maladministration, yet so far nothing has been done for reduce these long-term consequences for older persons.

- *Education opportunities are partly available in prisons, but older prisoners report that when places are limited younger prisoners may be preferred (Art. 26). Cultural opportunities are very limited (Art. 27) and vary significantly between federal districts (Bundesländer) and correctional facilities.*

2. Figures and data on older persons deprived of their liberty

On 31 March 2021 2.123 people (2003 male, 120 female) over the age of 60 were incarcerated in German prisons. 40 of those older people live abroad, thus contact with their families is extremely difficult during their time in prison. 174 older people were kept in prisons after the end of their sentence for security reasons. The number of older prisoners has slightly increased over the last decade (2.079 were imprisoned on 31 March 2011), but as there has been a decline in the prison population in Germany the percentage of prisoners over the age of 60 has risen from 3.5% in 2011 to 4.8% in 2021 (Statistisches Bundesamt, 2011/2021).

3. Specific COVID-19 measures for older inmates

We do not know of any specific measures concerning older prisoners, but visiting regulations have at times been altered and reduced as a result of the pandemic.

4. National and local legal frameworks to prevent and protect older persons deprived of their liberty from human rights violations

The justice system in the county of Northrhine-Westphalia has established an independent ombudsman (Justizvollzugsbeauftragten) in 2007/8. He or she can be contacted by prisoners and it is her or his explicit task to ensure the protection of human rights in prisons. There is no legal obligation for the ombudsman to monitor concerns raised and he or she has advisory power. In other German counties no such institutions are available.

All prisons are legally obliged to have independent advisory boards (Anstaltsbeirat) consisting of volunteers who can be contacted by prisoners and staff. Communications between prisoners and members of the advisory are confidential and not monitored by the justice system. The advisory board has, however, only advisory functions and has no power to make decisions.

5. National and local legal frameworks to prevent and protect older persons deprived of their liberty from human rights violations

15 prisons such as the JVA Konstanz-Singen, JVA Schwalmstadt-Kornhaus provide 331 places for older people in separate buildings or wings for older prisoners (for an overview see Kenkmann, Ghanem, & Erhard, 2022). Cell doors are kept open during the day, extended visiting hours are available, and specific educational (e.g. cookery

classes, diabetes prevention) and recreational activities (including exercises classes for this age group) are offered to enhance older people's daily living skills in order to enable them to lead an independent life after their release. Two organizations (Drehscheibe Altern e.V. in Berlin <https://humanistisch.de/drehscheibe> and Chance e.V. in Baden-Württemberg <https://nwsh-bw.de/content/wiedereingliederung-von-%C3%A4lteren-gefangenen>) support older prisoners before and after their release. There is some evidence that information about the specific needs of older prisoners are included in some training programmes for prison staff. In North Rhine-Westphalia, a booklet for prison staff on the subject of "dementia in the penal system" is currently in print. However, most experts complain about a lack of sensitization for health and social needs of older prisoners.

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