



Fédération internationale des ACAT – Action des chrétiens pour l'abolition de la torture  
International Federation of ACATs – Action by Christians for the Abolition of Torture



**Observations by ACAT Germany and the FIACAT on the implementation of article 11 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment in Germany for the review of the 6th periodic report of Germany by the Committee against torture**

*March 2019*

1. Action by Christians for the Abolition of Torture in Germany (ACAT Germany) and The International Federation of ACAT's (Action by Christians for the Abolition of torture) would like to highlight one particular cruel, inhumane or degrading aspect of treatment in certain prisons of the Federal Republic of Germany to the United Nations Committee against Torture: the absence of access to substitution treatment for prisoners dependent on opioids.

2. Opioid dependency is now considered to be a serious chronic illness<sup>1</sup>. As early as 2010, the Guidelines of the German Medical Association identified opioid substitution treatment as suitable therapy and identified its uninterrupted use in prison as necessary.<sup>2</sup>

3. Nevertheless, in 2016, the scientific services of the Bundestag (the lower house of the German Parliament) estimated that 30 to 40 % of prisoners (approx. between 18 000 and 25 000 prisoners) were drug addicts, yet only 5 to 9 % of them allegedly had access to substitution therapy, with help in prison generally being limited to abstinence, with the aim of overcoming the addiction<sup>3</sup>.

4. Substitution therapy is certainly available in some prisons, for example in North Rhine-Westphalia, Baden-Württemberg, Lower Saxony, Berlin and Hamburg. However, in May 2016, the 'German Addiction Association' found that it was virtually impossible to access substitution treatment in prisons in Bavaria and in many Länder in eastern Germany. The scientific service of the German Bundestag also found that the number of prisoners benefiting from substitution treatment did not in any way correspond to the significant number of prisoners dependent on drugs. In most cases, imprisonment means that any treatment started beforehand is halted, in spite of the Guidelines issued by the German Medical Association<sup>4</sup>.

5. In July 2016, 40 prisoners in Würzburg began a hunger strike to obtain methadone substitution treatment. The strike ended after 11 days without any result.

6. On 1 September 2016, the European Court of Human Rights (ECHR) condemned Germany for violating the prohibition of inhumane treatment pursuant to Article 3 of the European Convention of Human Rights by refusing for many years to allow substitution treatment for a prisoner in Bavaria who had been dependent on heroin<sup>5</sup>. The Court referred, inter alia, to the principle of 'equivalence of care' – a standard established by the CPT – under which prisoners must be able to benefit from the same level of healthcare as available outside prison.

7. Following this judgment, ACAT Germany sent a petition to the Bavarian State Premier and the Minister of Justice for prisoners dependent on opioids to have the right to substitution treatment.

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<sup>1</sup> Directives of the German Medical Association on the provision of substitution treatment for opioid dependents of 22/3/2002 (*Richtlinie der Bundesärztekammer zur Durchführung der substitions-gestützten Behandlung Opioidabhängiger vom Vorstand der Bundesärztekammer vom 22.3.2002*) and the Doctors' Periodical, Drug addiction: "an illness like any other" (*Drogenabhängigkeit: "Eine Erkrankung wie jede andere"*) Eva A. Richter, Dtsch Arztebl 2002; 99(19): A-1265 / B-1055 / C-983.

<sup>2</sup> Directives of the German Medical Association on the provision of substitution treatment for opioid dependents of 27/28 April 2017 published in the Official Journal of 2 October 2017 p.6 (*Richtlinie der Bundesärztekammer zur Durchführung der substitions-gestützten Behandlung Opioidabhängiger vom Vorstand der Bundesärztekammer in seiner Sitzung am 27/28. April 2017 verabschiedet mit der Veröffentlichung im Bundesanzeiger am 2. Oktober 2017 in Kraft getreten*).

<sup>3</sup> Bundestag Scientific Services, Current situation regarding substitution treatment in correctional facilities (*Sachstand Substitutionsbehandlung im Justizvollzug*), WD 9 – 3000 – 049/16, 28 Sept. 2016.

<sup>4</sup> German Bundestag, *Substitutionsbehandlung im Justizvollzug*, WD 9 – 3000 – 049/16, 28 Sept. 2016.

<sup>5</sup> Wenner v. Germany Case – Application No. 62303/13.

In his reply, the Justice Minister indicated that the prison administration always prioritised the principle of abstinence, but that it did all it could to ensure that substitution treatment was available by encouraging prison doctors to undergo training on the treatment of prisoners who were drug addicts. If there was no doctor specialised in this field in one of the federal state prisons, it was possible to transfer the prisoners concerned to another institution where this type of treatment was given. Paragraph 8 of the Criminal Code in fact provides that a prisoner may be transferred to another penal institution if it facilitates their integration, if it is necessary for them to serve their sentence, or for other important reasons. The decision to transfer is the responsibility of each federal state (Land) and, ultimately, the board of each penal institution. However, there are no statistics on the application of this provision in Bavaria.

8. In autumn 2017, ACAT informed the Committee for the Prevention of Torture of the Council of Europe (CPT) and the Federal Body for the Prevention of Torture (*die nationale Stelle zur Verhütung von Folter*) of the lack of substitution treatment in certain Länder and in particular in Bavaria. Subsequent contacts with the members of the joint Länder Commission (*Länderkommission*) – who were very aware of the problem just like the CPT themselves – confirmed the difficulty of tackling the problem at national level, as prison administration is dealt with exclusively by each individual federal state. Moreover, even within each federal state, the practice may vary from one prison to another<sup>6</sup>.

9. The reply from the Federal Minister for Justice to a parliamentary question to the federal government about prisoner access to substitution treatment from 2016 to 2018 highlighted that criminal matters are entirely the responsibility of the Länder and not the federal government, which explained the absence of overall statistics that would help to ascertain the extent of the problem at national level<sup>7</sup>. The reply does provide some figures produced in January 2018 at the request of the World Health Organisation on the healthcare systems in European penal institutions. The table in this report contains no information on how many prisoners are dependent on opioids as compared with the number receiving substitution treatment in the 16 German Länder<sup>8</sup>. It confirms the important differences between the Länder as regards substitution treatment.

***FIACAT and ACAT Germany call on the Committee against Torture to recommend to Germany to:***

- ***Set up a database with statistics on the number of drug addict prisoners and the number of prisoners benefiting from substitution treatment;***
- ***Ensure that the care received in prison is equivalent to that outside prison and in particular that drug addict prisoners in all federal states have access to substitution treatment if necessary.***

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<sup>6</sup> European Monitoring Centre for Drugs and Drug Addiction, Germany – 2016 Report by the national focal point of the EMCDDA regarding penal institutions ([\*Deutschland Bericht 2016 des nationalen Reitox Knotenpunkts an die EBDD Gefängnis\*](#)).

<sup>7</sup> German Bundestag, German government reply to the short request from MP Niema Movassat, Dr André Hahn, Gökay Akbulut, other MPs and the leftist party DIE LINKE, Mitigating measures regarding intravenous drug consumption in penal facilities, Journal (*Drucksache*) No 19/5225.

<sup>8</sup> See Annex 1 – Table on the number of prisoners benefiting from substitution treatment between 2016 and 2018 by federal state.

Annex 1 – Table on the number of prisoners benefiting from substitution treatment between 2016 and 2018 by federal state

<b>Land</b>	<b>Anzahl</b>	<b>Stichtag</b>
Nordrhein-Westfalen	1415	30. April 2016
Niedersachsen	keine Information	
Hessen	318	1.Oktober 2016
Sachsen	1	18. Januar 2017
Sachsen-Anhalt	40	31. März 2016
Thüringen	31	31.Dezember 2016
Rheinland-Pfalz	60	31. März 2016
Mecklenburg-Vorpommern	2	26. Januar 2017
Baden-Württemberg	800	2016
Brandenburg	keine Information	
Bremen	100	28. Januar 2017
Saarland	2	20. Januar 2017
Bayern	35	31. Januar 2016
Berlin	1068	2016
Hamburg	ca. 150	31. Januar 2017
Schleswig-Holstein	122	1. Februar 2017