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Schleswig-Holstein
Ministerium für Justiz
und Gesundheit

WORKSHOP II: THE ULTIMA RATIO PRINCIPLE OR HOW TO DECREASE THE PENAL RESPONSE TO OFFENDING

The “Schleswig-Holstein Act on Ambulant Reintegration of Criminal Offenders and on Victim Protection (ResOG SH)

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ResOG SH

Background – General Data

Schleswig-Holstein

2.95 million inhabitants (31.12.2022)

7 prisons

1441 prisoners maximum

37 per 100.000 actual incarceration rate

4 (8) public probation services

90 public probation officers

36 non governmental probation services/projects

96 non governmental probation officers

approx., 10.000 clients per year



Source: LVerMGeo SH

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Background - Premises

- **Reintegration of criminal offenders as a constitutional right in Germany**

- **International recommendations**

(UN, CoE, EU)

- **Low incarceration rate**

Benchmark of the Schleswig-Holstein government – operationalization of the UN sustainability goals

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Background – Ultima Ratio Principle

International Recommendations

UN “Tokyo Rules” 1993

“Member States shall **develop non-custodial measures** within their legal systems to provide other options, **thus reducing the use of imprisonment**, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.”

Quelle: <https://www.ncjrs.gov/pdffiles1/Digitization/147416NCJRS.pdf>, p.. 5



CoE “European Prison Rules 2006

“... the Recommendation emphasises that sight must never be lost of the principle that **imprisonment should only be used as a last resort, the so-called ultima ratio principle**. It seeks to reduce the prison population to the lowest possible level.”

Quelle: <https://rm.coe.int/pc-cp-2018-1-e-rev-2-epr-2006-with-changes-and-commentary-22-may-2018/16808add21>, p.. 4



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Background – Ultima Ratio Principle

Criminology

The usefulness of a consistent application of the „ultima ratio“ principle corresponds to results of criminological research:

These prove that harsher penal sanctions do not lead to better effects in terms of relaps nor concerning the support of the reintegration off offenders

The police crime statistics (PKS) in Germany also suggest that tougher sanctions (unconditional prison sentences) do not lead to a lower crime rate.

Criminal offences per 100.000 inhabitants 2021:

Germany total:	6.070
Schleswig-Holstein:	6.077

Source: de.statista.com

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Background – Ultima Ratio Principle

Incarceration Rates

Comparison of the application of the ultima ratio principle according to incarceration rates

Germany:	67 (Dec. 2021)	
Schleswig-Holstein	37 (Dec. 2021)	lowest figure in GER
Hamburg	98 (Dec. 2021)	highest figure in GER
France :	106 (Jan. 2023)	
UK (England&Wales):	141 (Apr.. 2023)	
USA:	531 (Dec. 2021).	

Source:
<http://prisonstudies.org>

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Background - Assumptions

Basic assumption:

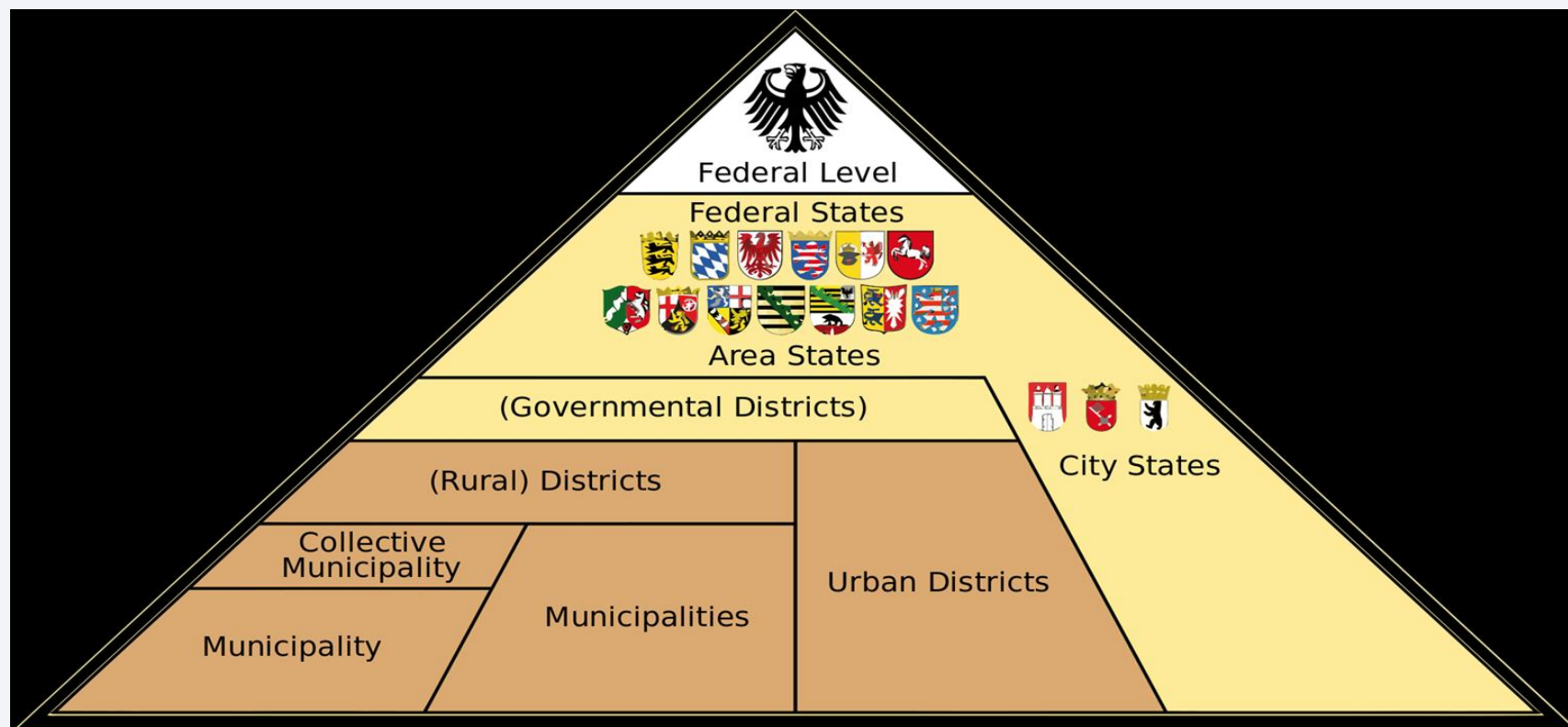
The implementation of the ultima ratio principle in criminal sentencing avoids and reduces imprisonment in a responsible way.

This can be achieved by the imposition of less intervention-intensive, ambulant (out-patient) measures – such as probation services according to the definition of the Council of Europe.

Courts and public prosecution offices are therefore dependent on a highly developed and well functioning system of probation services that is provided with adequate financial and personal resources by the government.

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Background – Federal Structure Germany



[wikipedia.org](https://www.wikipedia.org) „States of Germany“

Central Government	Central Government/ Federal States	Federal States
Exclusive legislative competence e.g. foreign affairs, defence, currency, telecommunication etc.	Competing legislative competence e.g. civil and criminal law, court procedures, legal counseling etc.	Exclusive legislative competence e.g. prison and probation services,
Art. 71, 73 Basic Law (Constitution)	Art. 72, 74 Basic Law (Constitution)	Art. 70 Basic Law (Constitution)

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Genesis

- **Coalition-contract Schleswig-Holstein (Conservatives, Liberals, Green Party) 2017-2022:** ResOG is taken into account
- **Work-programme of the government:** Needs-Assessment, Mandate to draft a law
- 2018: **Needs-assesment:** positive result
- 2019: **Key points paper**
- 2020: **Draft of Ministry of Justice and Cabinet of Ministers**
- 2021: Schleswig-Holstein Parliament,
Adoption in October 2021
- 2022: **Implementation (decrees)**
- 2022: **In force since July 2022**

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Goals

- **Promotion of ultima ratio principle in criminal sanctioning**
- **Strengthening of victim protection (and victim support services)**
- **Improving security for the public and improving the lives of offenders as well as of victims of crime**
- **Stronger position of non-governmental organizations in the probation system**
- **Comprehensible data protection rules**
- **Clarity and transparency of supervision on all levels**

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Selected Contents – Section 1

Section 1 „General Provisions“:

§ 3 Definition of Terminology

- Legal definition „Resozialisierung“ (Resocialization/Reintegration/Resettlement) (No. 1)
- „Proband/in“ (offender, client, patient) as generic term (No. 2)
- Far reaching definition of „Verletzte/Opfer“ (Victim) (No. 3)
- „Leistung“ (Service) (No. 4)
- Legal definition „Wiedergutmachungsdienste“ (Restorative Justice Services) (No. 7)
- Legal definition „Fallmanagement“ (Case Management) (No. 8)

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Selected Contents – Section 2

Section 2 „Gestaltungsgrundsätze“ (Principles of design/implementation):

§ 7 Priority of social work and therapy over control measures

§ 8 Orientation towards the victim

§ 9 Orientation towards resources and lifeworlds of victims and offenders;
digitalization

§ 12 Participation of clients

§ 13 Subsidiarity

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Selected Contents – Section 3

Section 3 „Contents and structure of the services“

Public probation services

Restorative justice services

Non governmental probation services

Victim support services

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Selected Contents – Section 4

Section 4 „Supervision, participation, binding standards“:

§ 38 Standards of service delivery

Structure – process - outcome (based on Donabedian)

§ 37 Participation of service deliverers

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Selected Contents – Sections 5, 6, 7

Section 5 „Advisory board, criminological research“

Section 6 „Right of appeal and legal protection of service users“

Section 7 „Data protection“

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Implementation / Sub-Statutory Regulations

According to § 38 ResOG the MoJ shall enact standards of service delivery for the different services. These must contain the structures, processes and outcomes of the services.

14 standards of service delivery

Goal: enacting all standards on the 01. July 2022

Status quo: 12 Standards in force, 2 still in the process of participation

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Implementation / Sub-Statutory Regulations

Example

- **Example: Standards of service delivery of transition-counselors from prison to probation (IB) according to §§ 27, 28 ResOG SH**

Introduction

1. Legal basis
2. Structures
3. Processes
4. Outcome
5. Data protection

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Implementation / Sub-Statutory Regulations

Example

2. Structures

Organizational Form, Finances

Digital Equipment

Staff

Cooperation

Further Education

Accessibility

Supervision and Intervision

Management of Complaints

Travel

Quality Assurance

Rooms and Equipment

Structures of Meetings

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Implementation / Sub-Statutory Regulations

Example

3. Processes

Referrals and tasks

Professional basics

Theories

Methods

Aspects of casework

Principles of implementation

Support processes

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Implementation / Sub-Statutory Regulations

Example

4. Outcome

Goals of the services

How to measure the outcome

Quantitative criteria
Identification numbers

Qualitative criteria

Documentation

Evaluation

Individual audits

Overall audits of effectiveness and efficiency of the services

Criminological research

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Conclusion

The Schleswig-Holstein Act on Ambulant Reintegration of Criminal Offenders and on Victim Protection (ResOG SH) forms the **legal basis for highly developed, transparent and reliable probation- and victim support services.**

These services help to **change the lives of offenders as well as of victims of crime to the better.** They also give judges and prosecutors a **responsible alternative to custodial sanctions.**

The ResOG SH therefore helps meeting the **requirements of the German constitution** concerning the reintegration of offenders.

It therefore also helps meeting the **requirements of the UN and the CoE** recommendations by enhancing the possibilities for **implementing the ultima rartio principle in criminal sentencing in a responsible way.**

Schleswig-Holsteins incarceration rate of 37 per 100.000 shall not be the end of the story.

Thank you for your attention