

Imprisonment of fine defaulters in Germany: Status quo and prevention measures

Research Project, July 2011 – June 2013

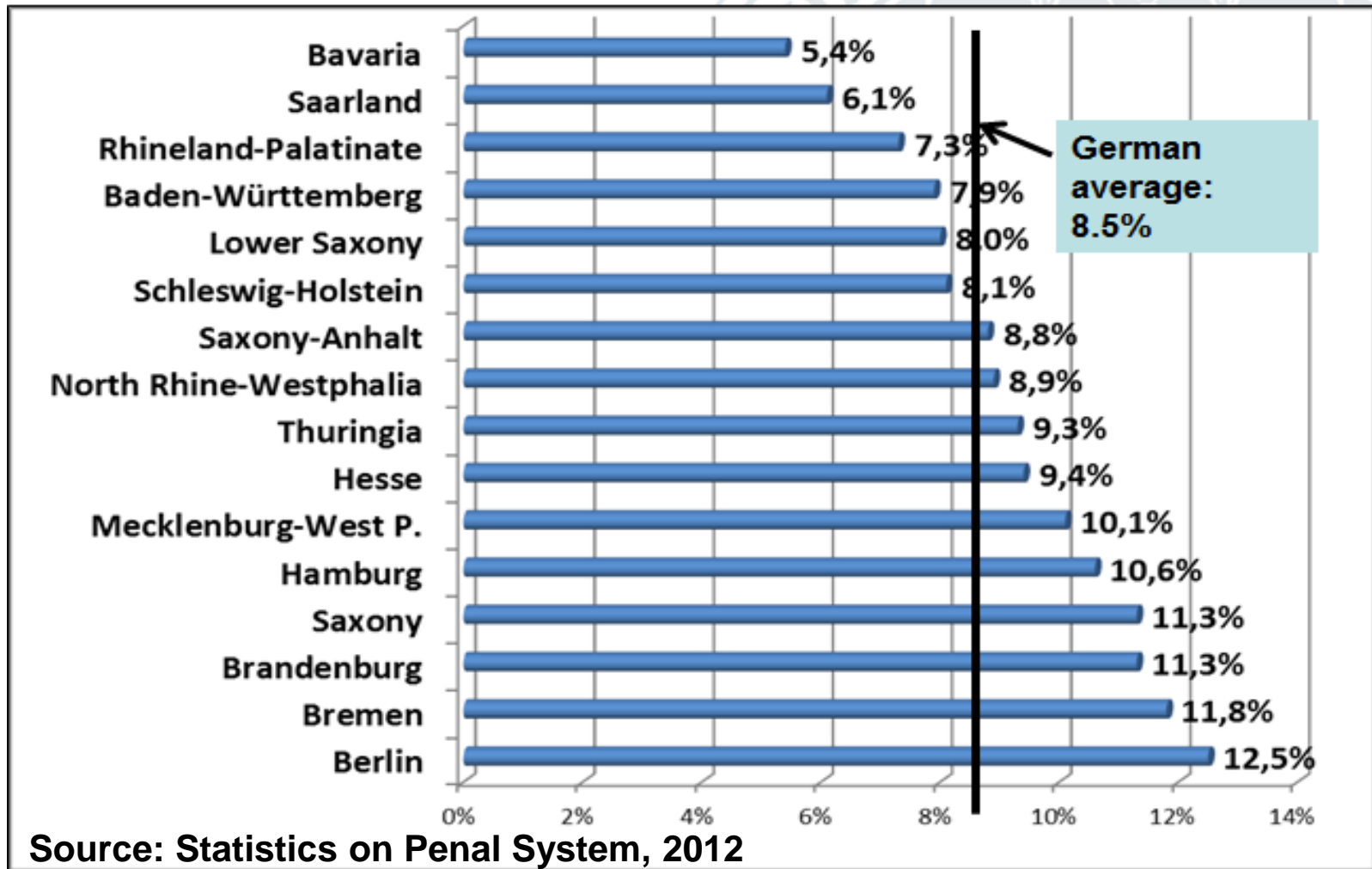
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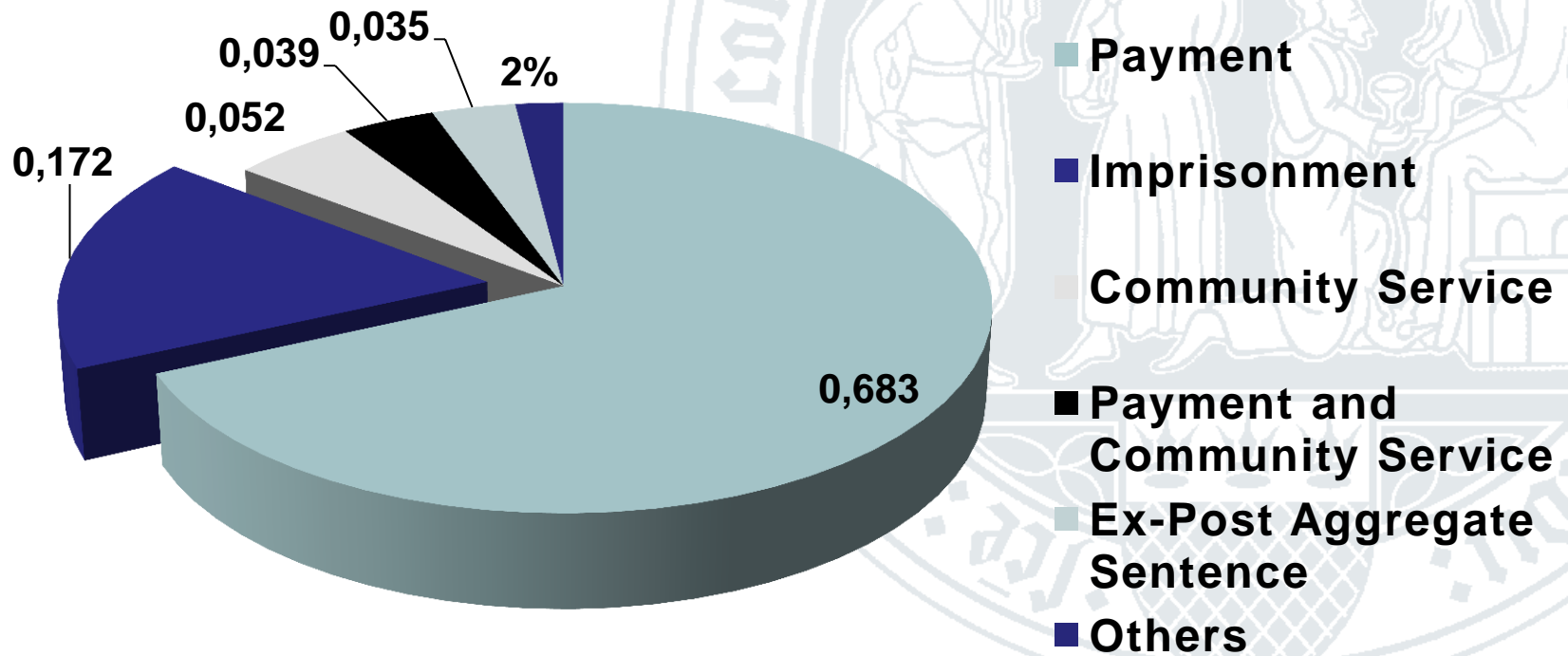
Legal framework

- **§ 43 StGB (German Criminal Code):**
“If the fine cannot be recovered, it shall be replaced by imprisonment. One daily unit shall correspond to one day of imprisonment. The minimum term of imprisonment for default of payment shall be one day.”
- **Art. 293 EGStGB**
 - the sentenced person can be authorized to replace imprisonment by community service
 - details are ruled by regulations on the resp. state level
 - the execution of sentences is up to the states
- **CM/Rec. (2010) 1 on the Council of Europe Probation Rules, in particular No. 47-52 (community service)**

Imprisoned fine-defaulters of all prisoners as at March 31st 2012 (in %)



Removal of uncollectable fines (2010, NRW)



The project

- **problem: too many fine defaulters in prison**
 - fines remain unpaid; additional costs caused by incarceration
 - the offender originally did not merit imprisonment; treatment cannot be delivered in the short period of time
 - the sanction impacts most severely on those without means
 - exacerbation of overcrowding
- **background: the minister's initiative 2010**
- **evaluating processes instead of effects**



Focus on fresh measures (into force since January 2011)

**Aim: increasing the number of community services,
reducing the number of imprisoned fine defaulters by**

- **better information for the sentenced**
- **specialization of the responsible officials**
- **involvement of the judicial social services
(*Ambulanter Sozialer Dienst*)**

Institutions/persons involved in avoidance of imprisonment *before* new regulation

Institution: Public Prosecutor's Office
Actors: Judicial Officials

Non-governmental Social Service Organisations
Actors: Social Workers

Person sentenced to fine

Institutions/persons involved in avoidance of imprisonment *since* new regulation

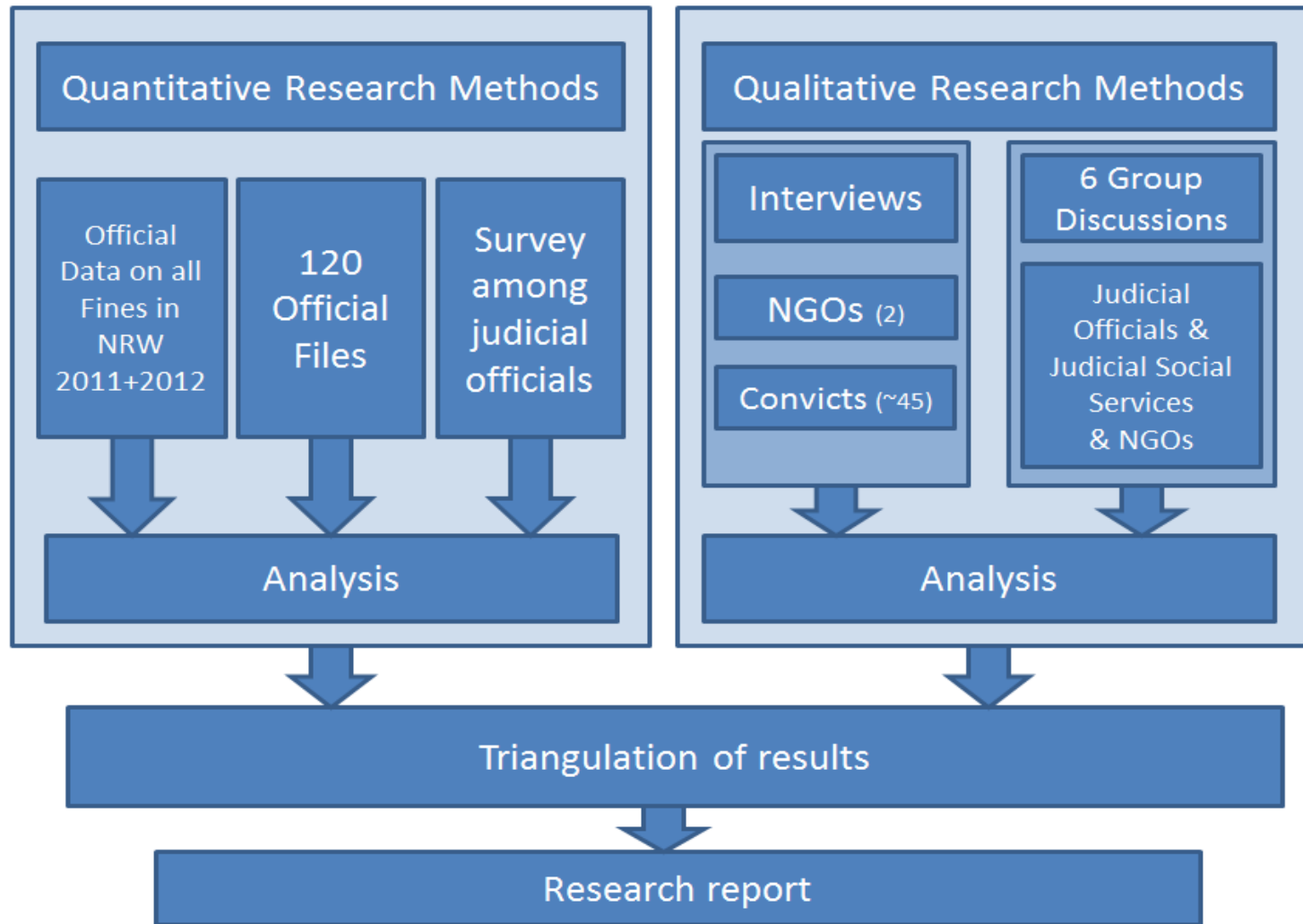
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Actors: Judicial Officials

Judicial Social Services
Actors: Social Workers

Non-governmental Social Service Organisations
Actors: Social Workers

Person sentenced to fine

Research Methodology



Research Review – Part I

- **Up to 70% of all admissions to prison up to 90 days for fine default (Barkmeyer 2012)**
- **Lower fines harder to obtain; contact starts activity with fine defaulters: 76% of defaulters pay at late stage (Feuerhelm 1990)**
- **Low socio-economic background of defaulters (Block 1990; Dolde 1999); serious debt (Cornell 2010)**
- **40% had been hospitalised due to mental disorder (Dubjelicik 2004)**
- **Importance to get in touch with clients (Kawamura-Reindl 2003); problem accumulation (K.-R. & Reindl 2010)**



Research Review – Part II

- ***International:***
 - **Fine Defaulters:** men, in debt, more than one outstanding offence; unemployed (Redmond 2002)
- ***Classic:***
 - **Imprisonment for fine-default in 1913 in England:** 49.6% of females and 68.2% of male convicts admitted to prisons;
 - **Problems of fine:** Who pays it? Where does the money come from?
 - **Different effects on different social classes** (Rusche/ Kirchheimer 1939)

Empirical Findings: Statistical Data

- **Fine-Defaulters in NRW (2011)**
 - **Men are more often imprisoned for fine-default than women**
 - **Imprisonment influenced by way of sentencing: if person is sentenced in the way of ex-post fixing of aggregate sentence more often imprisoned**
 - **Correlation of day-fine and imprisonment: significant but weak: offenders with lower fines slightly more often imprisoned**

Empirical Findings: Statistical Data

- **Offences and imprisonment**

| Offence | % of all fines | % of imprisoned fine-defaulters |
|------------------------------------|----------------|---------------------------------|
| Theft | 12.2 % | 18.0 % |
| Obtaining of services by deception | 8.5 % | 16.3 % |

- **Looking at it a different way: while of all persons sentenced to a fine only 8.3% are imprisoned, it is**
 - **17.4 % of those whose offence was obtaining of services by deception**
 - **13.5 % of those whose offence was theft**

Analysis of official files

- **120 Files: Non-collectable fines; disproportional sample by way of removal in closed cases**
 - **Warrant issued in 48 cases – of these:**
 - **18 convicts paid or fulfilled community service at this point of enforcement**
 - **Judicial Social Services only involved in 11 cases; NGOs in 10 cases**

Interviews with offenders

- **35 men, 10 women**
 - 34 imprisoned, 5 community service, 1 paid in instalments, others had mixed forms of removal
- **Of those who were imprisoned:**
 - 50 % had no children or partner
 - 20 % had left school without certificate
 - 78 % were unemployed

Interviews: First impressions

- **Lack of understanding of the system of day-fine**
 - **”My daily rate was too low ” – under the impression that this would elongate their imprisonment / community service**
 - **No insight in possibility to contradict daily rate**
 - **Economic rationale: fines seen as a civil debt rather than a sentence**

Models of Avoiding imprisonment for Fine-Default

- **Non-governmental Social Services Organisation Model**
 - 2 district areas → Non-governmental Social Services involved
- **Judicial Social Services Models**
 - 2 district areas → Social workers not involved
 - 2 district areas → Social workers involved

Discussion

- **Variety of models although based on a standard decree**
 - institutional inertia
- **Social Services (Judicial and non-governmental) involved once a convict gets active**
 - Does that miss those who really need support?
- **Confusion with convicts**
 - differences locally and regionally (working hours, who gets involved?)
- **Is a fine system necessarily linked to a certain number of imprisoned fine-defaulters?**
 - If avoiding imprisonment is politically wanted, would that be only through changes in legislation?



Thank you for listening!

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