

Enhancing the Right of Access to a Lawyer for Detained Suspects and Accused Persons via Videoconferencing

The Situation in Germany and Proposals for Improvement



Article

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ABSTRACT

This article discusses access to a lawyer via videoconferencing for detained suspects and accused persons. In today's digital age, the introduction of videoconferencing leads to enhance the right of access to a lawyer for suspects and accused persons under Directive 2013/48/EU. The article first provides an overview of the current provisions of the Directive, then analyses the situation in Germany (which has already introduced access to a lawyer by means of videoconference), and lastly shows the benefits of access to a lawyer via videoconference. A revision of Directive 2013/48/EU in order to enshrine this right is proposed in the last section.

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I. Introduction

Criminal proceedings have become increasingly digitalised in recent years. Videoconference hearings have been provided for in many EU laws since the 2000s, in both civil and criminal cases.¹ In 2013, the Council released a guide on the use of videoconferencing in cross-border proceedings.² Since the COVID-19 pandemic, the introduction of videoconferencing in judicial proceedings has progressed even further. In 2020, the European Criminal Bar Association published guidelines on remote hearings and interviews of suspects and accused persons by means of videoconference.³ The Council of Europe released guidelines on videoconferencing in judicial proceedings in 2021.⁴ And Art. 5 and 6 of the 2023 Regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial, and criminal matters provide for hearings via videoconference.⁵ Discussions on the introduction of videoconferencing have so far mainly focused on hearings in cross-border cases.

However, videoconferencing's pivotal role in facilitating immediate legal access for detained suspects and accused persons highlights a critical and specific area of application, especially during the crucial pre-trial phase. The digitalisation of criminal proceedings thus provides an opportunity to enhance the right of access to a lawyer for suspects and accused persons under Directive 2013/48/EU.⁶ The practice of allowing detained suspects and accused persons access to a lawyer via videoconference has become widespread in Germany in recent years (predominantly Skype is used). This is a major step forward in enhancing the right of access to a lawyer, but there are still areas that need to be improved. To date, there is no literature in Germany directly addressing access to a lawyer via videoconferencing for detained suspects and accused persons (indirectly: see III. 4), and the issue also has not been addressed in international journals. Therefore, this article examines what future revisions of Directive 2013/48/EU are needed in the age of digitalisation – through a discussion of access to a lawyer via videoconferencing in Germany.

The article first reviews the provisions of Directive 2013/48/EU (II), then analyses the current practice in Germany of access to a lawyer for detained suspects and accused persons via videoconference in Germany (III). This is followed by a discussion on the benefits of access to a lawyer by means of videoconference and how Directive 2013/48/EU should be revised in the digital age (IV) before conclusions on the matter are drawn (V).

II. Provisions on the Right of Access to a Lawyer in Directive 2013/48/EU

Art. 3(1) of Directive 2013/48/EU provides that suspects and accused persons have the right of access to a lawyer in such time and manner as to allow them to exercise their rights of defence in a practical and effective manner. The right of access to a lawyer entails the right to meet and communicate in private with the lawyer representing them (Art. 3(3)(a)). Suspects or accused persons have access to a lawyer at the earliest time and without undue delay after deprivation of liberty (Art. 3(2)(c)). The confidentiality of communications, including meetings, correspondence, telephone conversations, and other forms of communication permitted under national law between suspects or accused persons and their lawyer, is guaranteed (Art. 4). Confidentiality of communication between suspects or accused persons and their lawyer is key to ensuring the effective exercise of the rights of the defence and is an essential part of the right to a fair trial (Recital 33). Member States "may" make practical arrangements concerning the use of videoconferencing and other communication technologies to enable communication with a lawyer (Recital 23). It is thus left to

the discretion of Member States whether or not to introduce communication by means of videoconference between suspects or accused persons and their lawyer.

In exceptional circumstances and only at the pre-trial stage, Member States may allow a delay in access to a lawyer where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty (Art. 3(5)). In such cases, the competent authorities should not question the person concerned or carry out any of the investigative or evidence-gathering acts provided for in this Directive until access to a lawyer has been secured (Recital 30). Where immediate access to a lawyer is not possible because of the geographical remoteness of the suspect or accused person, Member States should arrange for communication via telephone or videoconference, unless this is impossible (Recital 30). The addition of the phrase “unless this is impossible” means that Member States are not obliged to introduce these means of communication if their introduction would be difficult because of technical difficulties or the risk of absconding or destroying evidence. Thus, the Directive requires Member States to introduce either videoconferencing or telephoning only on the grounds of geographical remoteness.

In the case of the European Arrest Warrant, a requested person has the right of access to a lawyer in the executing Member State without undue delay after arrest (Art. 10(1) and (2)(a)). Member States “may” make practical arrangements concerning the duration, frequency, and means of communication between requested persons and their lawyer, including concerning the use of videoconferencing and other communication technologies to facilitate such communication (Recital 44). Thus, even in the case of the European Arrest Warrant, the introduction of videoconference communication is left to the discretion of the Member States.

In Germany, the implementation of Directive 2013/48/EU did not address the introduction of access to a lawyer via videoconference.

Furthermore, neither the European Prison Rules⁷ nor the Nelson Mandela Rules⁸ provide for the right of access to a lawyer via videoconference for detained suspects and accused persons.

III. Extended Access to a Lawyer by Means of Videoconference in Germany

1. Legislative development

Art. 148(1) of the German Code of Criminal Procedure provides that suspects and accused persons have the right to communicate with their defence counsel in writing and orally, even when they are in custody. In the literature, oral communication in Art. 148(1) is understood to include telephone calls,⁹ but it is not clear whether new tools such as videoconferencing are included. Prior to the 2006 constitutional amendment, the rules governing pre-trial detention in Germany, including access to a lawyer, were governed by the Federal Rules on the Execution of Pre-Trial Detention (*Untersuchungshaftvollzugsordnung*). No. 38 of the Federal Rules allowed communication by telephone and telegram between pre-trial inmates and persons outside the penal institution. Similarly, Art. 32 of the Federal Prison Act (*Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung*) also provided for communication by telephone and telegram for convicted prisoners. In 2006, a constitutional amendment placed the execution of pre-trial detention and imprisonment under the jurisdiction of the *Länder*, the German federal states.¹⁰

In 2011, the *Länder* of Berlin, Brandenburg, Bremen, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein, and Thuringia jointly released a Model Bill for Prison Acts of the *Länder* (*Musterentwurf zum Landesstrafvollzugsgesetz*).¹¹ Art. 36 (Other forms of telecommunic-

ation) of this Model Bill provides that if “other forms of telecommunication” other than the telephone are authorised by the supervisory authority, the head of the penal institution may permit prisoners to use these forms of telecommunication at their own expense.¹² “Other forms of telecommunication” includes videoconferencing.¹³

In addition, the *Länder* of Berlin, Brandenburg, Bremen, Hamburg, Hesse, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein, and Thuringia jointly released a Model Bill for Acts of the *Länder* on the Execution of Pre-Trial Detention (*Musterentwurf der Untersuchungshaftvollzugsgesetze der Bundesländer*).¹⁴ Art. 40 of this Model Bill provides for communication by telephone, but there is no article on other forms of telecommunication (such as videoconferencing).¹⁵ The exclusion of forms of telecommunication other than the telephone has been criticised as outdated.¹⁶

When the *Länder* first introduced their pre-trial detention acts, only the Act of Hesse provided for other forms of telecommunication.¹⁷ The Acts of Brandenburg,¹⁸ Hamburg,¹⁹ Mecklenburg-Western Pomerania,²⁰ Rhineland-Palatinate,²¹ and Schleswig-Holstein²² provided only for telephone provisions and stated in the explanatory memoranda to their respective bills that other forms of electronic telecommunication were, in principle, not permitted, because the potential for abuse and the costs of controlling such abuse were too high.

Subsequently, the Acts of Brandenburg,²³ Hamburg,²⁴ North Rhine-Westphalia,²⁵ Rhineland-Palatinate,²⁶ Saarland,²⁷ Saxony-Anhalt,²⁸ and Thuringia²⁹ introduced articles on other forms of telecommunication. Additionally, in response to the COVID-19 pandemic, Schleswig-Holstein introduced relevant legislation in 2021,³⁰ followed by Baden-Württemberg³¹ and Bavaria³² in 2022. As of 1 March 2024, 11 out of 16 acts of the *Länder* provide for other forms of telecommunication.

2. Videoconferencing provisions and objectives

The contents of the provisions of the articles on other forms of telecommunication in the respective acts of the *Länder* are largely the same.³³ The statutory text of Baden-Württemberg is used here as an example. The relevant article provides for a two-step procedure.³⁴ First, the supervisory authority (the federal state's Ministry of Justice) grants authorisation only if the abstract risk to the security of the penal institution can actually be controlled.³⁵ As a second step, the head of the institution decides on an individual permit for use.³⁶ According to the websites of several penal institutions of the *Länder*, videoconferencing at the pre-trial stage has currently been introduced in practice in at least 12 *Länder* (see table below). Several *Länder* have introduced videoconferencing, despite the absence of a provision on other forms of telecommunication.³⁷ Inmates do not have an individual right to obtain or be granted authorisation for this.³⁸ The costs of any other forms of telecommunication are, in principle, borne by the inmates themselves.³⁹ Only in well-founded exceptional cases, when inmates are not in a position to bear the costs, is it possible for the institution to bear a reasonable part of the costs.⁴⁰ In the case of videoconferences, which fall somewhere between telephony and visits, the rules on telephony specifically apply, and the rules on visits in so far as they regulate visual surveillance.⁴¹ Therefore, all videoconferences between an inmate and a lawyer are permitted and unmonitored.⁴² Whether videoconferencing is actually introduced varies from institution to institution as does the duration, frequency, and conditions under which it is used. There are no restrictions on where lawyers can use videoconferencing in any penal institution, so lawyers are free to use it from anywhere.

The purpose of this provision in Baden-Württemberg is to take into account the progressive development of communication media on the one hand and the changes in communication and information behaviour on the other.⁴³ Another reason for the provision is that, since the pre-trial inmates have not yet been sentenced, they should have access to the same means of telecommunication as members of the general public, underscoring the approach that inmates should be treated as similarly as possible to members of the general public.⁴⁴

Other arguments are given, for instance, by the federal state of Bavaria, which introduced videoconferencing after the COVID-19 pandemic and explained its reasons as follows: The feedback from the ministries of justice of other federal states, which already provide for more extensive telecommunication possibilities for inmates, does not reveal any serious reasons against the extension of telephone communication for inmates.⁴⁵ Since the outbreak of the pandemic, inmates' communication has already been expanded from available budget funds, so that terminals needed at short notice have already been procured.⁴⁶ Videoconferencing has also been made available to inmates in some Bavarian penal institutions.⁴⁷ The Bavarian Ministry of Justice carried out a comprehensive evaluation of the experience of extending telecommunications facilities in Bavarian penal institutions during the COVID-19 pandemic, with positive results.⁴⁸ In view of this result, the possibility of authorising other forms of telecommunication (e.g., videoconferencing) has also been regulated by law.⁴⁹ Videoconferencing can also be an important element of psychological relief for inmates in acute crisis situations.⁵⁰ The wording "other forms of telecommunication" is intended to open up the possibility of using forms of not yet widely used telecommunication.⁵¹ Thus, the objectives of introducing videoconferencing do not include strengthening the right of access to a lawyer for detained suspects and accused persons.

3. Videoconferencing as a tool

In Germany, Skype is used as a videoconferencing tool in most penal institutions. It is unclear why Skype is used and, for example, Zoom is not.⁵² The websites of some penal institutions state that users themselves carry the risk of their Skype calls being monitored.⁵³ As Skype is provided by the American operator Microsoft, its operation is not subject to the data protection rules that apply in Germany or other European countries.⁵⁴ This means that all data exchanged when using Skype (sounds and images, spoken words, and the contents of conversations) are transmitted unencrypted to the USA.⁵⁵ It is therefore possible that third parties may access this data during or after transmission.⁵⁶ It is also possible that this data may be collected, stored, modified, read, linked, or otherwise processed by Microsoft or third parties in the United States.⁵⁷ On the other hand, the Wittlich Penal Institution in Rhineland-Palatinate, which introduced access to a lawyer via videoconferencing in February 2024, has chosen "Sichere-Videokonferenz.de" as its videoconferencing tool.⁵⁸ The team at Horizon44 GmbH, based in Munich, Germany, operates this application.⁵⁹ It is more secure than other providers, as well as anonymous, and data protection complies with the technical and organisational measures in accordance with the General Data Protection Regulation (GDPR).⁶⁰ Conversations between two participants using this application are protected by encryption.⁶¹ Unlike other providers, Sichere-Videokonferenz.de does not store any call content on its server, and even users cannot record videoconferences.⁶² The communication is therefore comparable to a normal face-to-face conversation without the participation of unwanted third parties.⁶³ The use of such a tool can ensure the confidentiality of communications between suspects or accused persons and their lawyers.

The following table shows whether there are provisions for other forms of telecommunication for pre-trial inmates in each federal state and whether videoconferencing has actually been introduced in each federal state.

Table: Implementation of Videoconferencing in Each Federal German State (as of 1 March 2024)

Federal German State	Provision on other forms of telecommunication for pre-trial inmates	Introduction of videoconferencing for pre-trial inmates
Baden-Wuerttemberg	✓	✓
Bavaria	✓	✓
Berlin	-	-
Brandenburg	✓	No information about videoconferencing on the websites of the penal institutions. ✓ There is no statutory basis for this, but the Bremen Penal Institution website provides information about videoconferencing with relatives, and it is not clear which tool is used. ⁶⁴
Bremen	-	No information about videoconferencing on the websites of the penal institutions. The introduction of Skype is currently under consideration. ⁶⁵
Hamburg	✓	✓ The provision limits this to cases where there are important reasons (Art. 28(1) HUVollzG). There is no statutory basis for this but, according to the explanatory memorandum to the bill, it is permitted in exceptional cases. ⁶⁶
Hesse		
Mecklenburg-Western Pomerania		✓
Lower Saxony	-	✓ There is no statutory basis for this, but Skype is available in several penal institutions. ⁶⁷
North Rhine-Westphalia	✓	✓
Rhineland-Palatinate	✓	✓
Saarland	✓	✓
Saxony	-	✓ There is no statutory basis for this, but according to the website of the Zwickau Penal Institution, Skype calls are only permitted with relatives. ⁶⁸
Saxony-Anhalt	✓	No information about videoconferencing on the websites of the penal institutions.
Schleswig-Holstein	✓	✓ The Lübeck Penal Institution website only provides in-

Federal German State	Provision on other forms of telecommunication for pre-trial inmates	Introduction of videoconferencing for pre-trial inmates
Thuringia	✓	✓

4. Literature on other forms of telecommunication for pre-trial inmates

Schulze, who compared acts of the *Länder* on the execution of pre-trial detention in his dissertation, supports access of suspects and accused persons to people outside the penal institution via videoconferencing for the following reasons: As a consequence of the presumption of innocence, acts of the *Länder* on the execution of pre-trial detention should include provisions covering all communication media.⁷⁰ In today's communication society, not only telephones but also internet telephony, especially videotelephony, have long since become the norm.⁷¹ The cost of introducing internet telephony for pre-trial inmates is not an issue.⁷² *Länder* that do not provide for other forms of communication overemphasise security aspects, while neglecting the fact that new control possibilities are also developing.⁷³ *Länder* cannot use lack of resources as an excuse and must take "all appropriate and necessary measures to avoid restricting the rights of pre-trial inmates".⁷⁴ Therefore, other forms of telecommunication, in particular via the internet, should be made available in pre-trial detention.⁷⁵

IV. The Need for Access to a Lawyer by Means of Videoconference and the Revision of Directive 2013/48/EU

As mentioned above, the possibility for detained suspects and accused persons to have access to a lawyer by means of videoconference have been extended in Germany in recent years. However, under German law, access to a lawyer via videoconference is not recognised as a right *per se* for suspects and accused persons and is only available if an article on other forms of telecommunication is provided for in an act of a federal state and authorised by the supervisory authority, and only in accordance with the conditions of the penal institution. Skype – the tool that is predominantly used in penal institutions in Germany – is also not suitable for unmonitored communication with a lawyer due to the lack of encryption and data protection rules. It follows that access to a lawyer by means of videoconference is not adequately provided for in Germany.

Directive 2013/48/ EU leaves it up to the Member States to introduce access to a lawyer via videoconference. However, Art. 3(1) of Directive 2013/48/EU provides that suspects and accused persons have the right of access to a lawyer "in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively". In addition, suspects or accused persons are to have access to a lawyer at "the earliest" time and "without undue delay" after deprivation of liberty (Art. 3(2)(c)). Videoconferencing enables suspects and accused persons to have rapid access to their lawyers. Videoconferencing is particularly useful in cases in which urgent contact with a lawyer is needed, such as first contact, when the distance between the lawyer's office and the penal institution is considerable, or when access to the penal institution is difficult for reasons beyond one's control (e.g., bad weather).

Unlike visits, videoconferencing does not require time for travel, which allows for frequent access by the defence to suspects and accused persons, thereby enhancing their right of access to a lawyer. Furthermore, in cases in which the suspect or accused person denies the offence, or in complex cases, frequent contact with the lawyer by means of videoconference allows for careful preparation of the trial and thus also enhances the right to a fair trial (Art. 14(1) ICCPR, Art. 47 CFR, and Art. 6(1) ECHR). These enhancements, in turn, contribute to a speedy trial (see Art. 14(3)(c) ICCPR, Art. 47 CFR, and Art. 6(1) ECHR). As mentioned in Section III. 2 above, a videoconference should also be introduced from the perspective of psychological relief (unlike the telephone) for pre-trial inmates and the principle of the presumption of innocence (Art. 3 Directive (EU) 2016/343), and financial considerations should not be an issue. Videoconferencing and facial recognition technology can be used together to prevent impersonation of lawyers.

In addition to these considerations, videoconferencing for suspects and accused persons is corroborated by the – albeit non-binding – international prison rules: European Prison Rule 98.2 provides that “all necessary facilities” shall be provided to assist untried prisoners in preparing their defence and meeting with their lawyers. In addition, Nelson Mandela Rules 120(1) and 61(1) provide that inmates shall be provided with “adequate opportunity, time, and facilities” to communicate and consult with a lawyer without delay. In accordance with Rule 111(2), inmates are presumed innocent until proven guilty and shall be treated as such. The introduction of access to a lawyer via videoconference is therefore in line with European and international legal standards.

Hence, Directive 2013/48/EU should be revised to bring it into line with these European and international standards and should explicitly provide for the right of suspects and accused persons to have access to a lawyer by means of videoconference, including in the case of a European Arrest Warrant. In the modern digital age, this should no longer be left to the discretion of Member States. It should also be explicitly provided that confidentiality is also guaranteed in the case of access to a lawyer via videoconference, as there is a risk of surveillance by police officers. In doing so, the confidentiality of communications between suspects or accused persons and their lawyers should be ensured by requiring the use of tools such as “Video-Konferenz.de”, which are free from surveillance risks, instead of common tools such as Skype. Moreover, if access to a lawyer by means of videoconference is to become a right for suspects and accused persons, it should be explicitly established that it is guaranteed free of charge.

V. Conclusion

Although the example of Germany demonstrated that access to a lawyer via videoconference has brought improvements to the right of access to a lawyer in some respects, a revision of Directive 2013/48/EU, in line with digitalisation, is essential to harmonise the enhancement of the right of access to a lawyer for suspects and accused persons in all EU Member States.

The analysis in this article also reaffirmed that the right of access to a lawyer via videoconference offers many benefits at a low cost. On the one hand, it is important for lawyers to visit penal institutions and to communicate face-to-face in order to build trust with suspects and accused persons. On the other, the telephone, unlike a videoconference, does not require a personal computer or tablet setting and can be used to communicate messages quickly. Therefore, the right of access to a lawyer for suspects and accused persons should be more effectively enhanced through a combination of all three means of communication: visits, telephone calls, and videoconferencing. Digitalisation is surely an opportunity to strengthen the rights of suspects and accused persons.

1. E.g., Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union - Council Declaration on Article 10(9) - Declaration by the United Kingdom on Article

20, OJ C 197, 12.7.2000, 3, Art. 10; Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ L 174, 27.6.2001, 1, Art. 10(4) and 17(4).[←](#)

2. General Secretariat of the Council, "Guide on Videoconferencing in Cross-border Proceedings", *European Union* <<https://op.europa.eu/en/publication-detail/-/publication/bbdbd7f4-7da8-479d-ad83-0b56463d8e32/>> accessed 1 March 2024.[←](#)

3. European Criminal Bar Association, "Statement of Principles on the Use of Video-conferencing in Criminal Cases in a Post-Covid-19 World", *European Criminal Bar Association* <<https://www.ecba.org/content/index.php/publications/statements-and-press-releases/789-ecba-statement-on-video-conferencing-in-criminal-cases>> accessed 1 March 2024.[←](#)

4. European Commission for the Efficiency of Justice (CEPEJ), "Guidelines on Videoconferencing in Judicial Proceedings", *Council of Europe* <<https://edoc.coe.int/en/efficiency-of-justice/10706-guidelines-on-videoconferencing-in-judicial-proceedings.html>> accessed 1 March 2024. See also Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, CETS No. 182, 8.11.2011, Art. 9; Second Additional Protocol to the Convention on Cybercrime on Enhanced Co-operation and Disclosure of Electronic Evidence, CETS No. 224, 12.5.2022, Art. 11.[←](#)

5. Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, OJ L, 2023/2844, 27.12.2023.[←](#)

6. Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294, 6.11.2013, 1.[←](#)

7. European Prison Rule 99(b) provides that untried prisoners may communicate with their family members and other persons by other forms of communication. "Other forms of communication" include electronic communication. Council of Europe, *European Prison Rules*, 2006, pp. 95, 52. There is no provision, however, for access to a lawyer via electronic communication (see Rule 98.2).[←](#)

8. Nelson Mandela Rule 58(1)(a) provides for prisoners to communicate with family and friends by electronic and digital means, but electronic and digital communication with lawyers is not provided for (see Rules 120(1) and 61). United Nations General Assembly, "United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)", A/RES/70/175, 8.1.2016, 1.[←](#)

9. See e.g., M. Jahn, in: J.-P. Becker et al. (ed.), *Löwe-Rosenberg, Die Strafprozeßordnung und das Gerichtsverfassungsgesetz Vierter Band Teilband 2 §§ 137-150*, 27th ed., 2021, Art. 148, mn. 15; G. Willnow, in: C. Barthe and J. Gericke (ed.), *Karlsruher Kommentar zur Strafprozeßordnung mit GVG, EGGVG und EMRK*, 9th ed., 2023, Art. 148, mn. 7.[←](#)

10. Gesetz zur Änderung des Grundgesetzes (Artikel 22, 23, 33, 52, 72, 73, 74, 74a, 75, 84, 85, 87c, 91a, 91b, 93, 98, 104a, 104b, 105, 107, 109, 125a, 125b, 125c, 143c), BGBl I 2034, 28.8.2006.[←](#)

11. N. Nestler, "Der Musterentwurf für ein Landesstrafvollzugsgesetz als Konsequenz des Phlegmas um die Europäischen Strafvollzugsgrundsätze?", (2012) *Neue Kriminalpolitik*, 87, 90.[←](#)

12. Senatorin für Justiz und Verfassung, "Musterentwurf zum Landesstrafvollzugsgesetz vom 23. August 2011", *Freie Hansestadt Bremen*, p. 25 <<https://www.justiz.bremen.de/publikationen/gesetze-verordnungen-verwaltungsvorschriften-vereinbarungen-1871>> accessed 1 March 2024.[←](#)

13. See *ibid.*, 104.[←](#)

14. Landtag Mecklenburg-Vorpommern, "Gesetzentwurf der Landesregierung: Entwurf eines Gesetzes über den Vollzug der Untersuchungshaft in Mecklenburg-Vorpommern (Untersuchungshaftvollzugsgesetz Mecklenburg-Vorpommern - UVollzG M-V)", Drs. 5/2764, 7.9.2009, p. 2.[←](#)

15. H. Pollähne, in: S. König (ed.), *Anwaltkommentar Untersuchungshaft*, Art. 40, mn. 7.[←](#)

16. *Ibid.*[←](#)

17. Gesetz zur Schaffung und Änderung hessischer Vollzugsgesetze, GVBl I 185, 28.6.2010: Hessisches Untersuchungshaftvollzugsgesetz.[←](#)

18. Landtag Brandenburg, "Gesetzentwurf der Landesregierung Gesetz über den Vollzug der Untersuchungshaft im Land Brandenburg (Brandenburgisches Untersuchungshaftvollzugsgesetz - BbgUVollzG)", Drs. 4/7334, 11.3.2009, p. 104.[←](#)

19. Bürgerschaft der freien und Hansestadt Hamburg, "Mitteilung des Senats an die Bürgerschaft: Entwurf eines Gesetzes über den Vollzug der Untersuchungshaft (Hamburgisches Untersuchungshaftvollzugsgesetz – HmbUVollzG)", Drs. 19/4451, 27.10.2009, p. 34.[←](#)

20. Landtag Mecklenburg-Vorpommern, *op. cit.* (n. 14), p. 77: Gesetz über den Vollzug der Untersuchungshaft in Mecklenburg-Vorpommern.[←](#)

21. Landtag Rheinland-Pfalz, "Gesetzentwurf der Landesregierung: Landesuntersuchungshaftvollzugsgesetz (LUVollzG)", Drs. 15/3292, 7.4.2009, p. 45.[←](#)

22. Schleswig-Holsteiner Landtag, Drs. 16/2726, 9.6.2009, p. 78: Gesetz über den Vollzug der Untersuchungshaft in Schleswig-Holstein.[←](#)

23. Gesetz über den Vollzug der Freiheitsstrafe, der Jugendstrafe und der Untersuchungshaft im Land Brandenburg (Brandenburgisches Justizvollzugsgesetz - BbgJVollzG), GVBl I/13, [Nr 14], 24.4.2013.[←](#)

24. Gesetz über den Vollzug der Sicherungsverwahrung und zur Änderung weiterer Gesetze, HmbGVBl 211, 21.5.2013: Gesetz über den Vollzug der Untersuchungshaft.[←](#)

25. Gesetz zur Regelung des Jugendstrafvollzuges und zur Änderung der Vollzugsgesetze in Nordrhein-Westfalen, GV NRW Nr 19 483, 7.4.2017: Gesetz zur Regelung des Vollzuges der Untersuchungshaft in Nordrhein-Westfalen.[←](#)

26. Landesgesetz zur Weiterentwicklung von Justizvollzug, Sicherungsverwahrung und Datenschutz, GVBl 79, 8.5.2013: Landesjustizvollzugsge-setz.[←](#)

27. Gesetz Nr. 1804 zur Neuregelung des Vollzuges der Freiheitsstrafe im Saarland, Amtsbl I Nr 11 116, 24.4.2013: Gesetz über den Vollzug der Untersuchungshaft im Saarland.[←](#)

28. Erstes Buch Justizvollzugsgesetzbuch Sachsen-Anhalt – Vollzug der Freiheitsstrafe, der Jugendstrafe, der Untersuchungshaft und des Strafarrestes (Erstes Buch Justizvollzugsgesetzbuch Sachsen-Anhalt - JVollzGB I LSA), GVBl LSA 666, 18.12.2015.[←](#)

29. Thüringer Justizvollzugsgesetzbuch (ThürJVollzGB), GVBl 13, 27.2.2014.[←](#)

30. Gesetz über den Vollzug der Untersuchungshaft in Schleswig-Holstein (Untersuchungshaftvollzugsgesetz – UVollzG), GVOBI 1170, 23.9.2021.[←](#)

31. Gesetz zur Änderung des Justizvollzugsgesetzbuchs, GBl Nr 26 410, 26.7.2022: Gesetzbuch über den Justizvollzug in Baden-Württemberg Buch 2 Untersuchungshaftvollzug.[←](#)

32. Gesetz zur Änderung des Bayerischen Strafvollzugsgesetzes und weiterer Rechtsvorschriften, GVBl 642, 21.10.2022: Gesetz über den Vollzug der Untersuchungshaft. ↵

33. By way of exception, the provision of the Act of Hesse provides that it is limited to cases where there are important reasons (Art. 28(1) HU-VollzG). ↵

34. Beteiligungsportal Baden-Württemberg, "Entwurf eines Gesetzes zur Änderung des Justizvollzugsgesetzbuchs", *Beteiligungsportal Baden-Württemberg*, p. 47 <<https://beteiligungsportal.baden-wuerttemberg.de/de/mitmachen/lp-17/gesetz-zur-aenderung-des-justizvollzugsgesetzbuchs#:~:text=Mit%20dem%20Entwurf%20f%C3%BCr%20ein,der%20Vollzugsziele%20gezielt%20weiterentwickelt%20werden>> accessed 1 March 2024. ↵

35. *Ibid.* See also Art. 19 JVollzGB I. ↵

36. *Ibid.* ↵

37. The reasons for this are not clear, but it is assumed that Skype calls are interpreted as part of a phone call. ↵

38. Beteiligungsportal Baden-Württemberg, *op. cit.* (n. 34), 47. ↵

39. Beteiligungsportal Baden-Württemberg, *op. cit.* (n. 34), 47. ↵

40. Beteiligungsportal Baden-Württemberg, *op. cit.* (n. 34), 48. In practice, Skype appears to be provided free of charge to pre-trial inmates in many penal institutions, according to their websites. ↵

41. Beteiligungsportal Baden-Württemberg, *op. cit.* (n. 34), 48. ↵

42. Art. 20(2) and 15 JVollzGB II. ↵

43. Beteiligungsportal Baden-Württemberg, *op. cit.* (n. 34), 47. ↵

44. Beteiligungsportal Baden-Württemberg, *op. cit.* (n. 34), 47. ↵

45. Bayerischer Landtag, "Gesetzentwurf der Staatsregierung zur Änderung des Bayerischen Strafvollzugsgesetzes und weiterer Rechtsvorschriften", Drs. 18/23106, p. 1. ↵

46. *Ibid.* ↵

47. *Ibid.*, 5. ↵

48. *Ibid.*, 5. ↵

49. *Ibid.*, 5. ↵

50. *Ibid.*, 6. ↵

51. *Ibid.*, 6. ↵

52. The reason for this is presumably that German penal institutions introduced videoconferencing via Skype before Zoom became widespread. It was used as a model for other penal institutions to introduce videoconferencing, hence the widespread use of Skype. It is also assumed that another reason is that Skype is a video call (Zoom is a video meeting), which is in line with the general understanding that the right of access to a lawyer under Art. 148(1) of the German Code of Criminal Procedure includes telephone calls. ↵

53. E.g., Justizvollzugsanstalt Vechta, "Datenschutz bei Nutzung der Skype Videotelefonie", *Niedersachsen* <https://justizvollzugsanstalt-vechta.niedersachsen.de/startseite/besuchs_und_angehorigeninformationen/skype_videotelefonie/> accessed 1 March 2024. ↵

54. *Ibid.* ↵

55. *Ibid.* ↵

56. *Ibid.* ↵

57. *Ibid.* ↵

58. Justizvollzugsanstalt Wittlich, "Besuch von Gefangenen in der Justizvollzugsanstalt Wittlich", *Rheinland-Pfalz* <<https://jvawt.justiz.rlp.de/de/service-informationen/besuchsregelung/>> accessed 1 March 2024. ↵

59. Sichere-Videokonferenz.de, "Hilfe & FAQ", *Sichere-Videokonferenz.de* <<https://sichere-videokonferenz.de/faq/>> accessed 1 March 2024. ↵

60. *Ibid.* Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, 1. ↵

61. *Ibid.* ↵

62. *Ibid.* ↵

63. *Ibid.* ↵

64. Justizvollzugsanstalt Bremen, "Besucherinformationen", *Freie Hansestadt Bremen* <<https://www.jva.bremen.de/besucher-info-1471>> accessed 1 March 2024. ↵

65. Bürgerschaft der freien und Hansestadt Hamburg, "Schriftliche Kleine Anfrage der Abgeordneten Cansu Özdemir (DIE LINKE) vom 26.08.20 und Antwort des Senats", Drs. 22/1195, 1.9.2020, p. 6. ↵

66. Landtag Mecklenburg-Vorpommern, *op. cit.* (n. 14), 77. ↵

67. E.g., Justizvollzugsanstalt Vechta, *op. cit.* (n. 53). ↵

68. Justizvollzugsanstalt Zwickau, "Besuch/Skype", *Sachsen.de* <<https://www.justiz.sachsen.de/jvaz/besuch-4096.html>> accessed 1 March 2024. ↵

69. Justizvollzugsanstalt Lübeck, "Informationen zum Kontakt mit männlichen Gefangenen", *Schleswig-Holstein* <https://www.schleswig-holstein.de/DE/justiz/gerichte-und-justizbehoerden/JVALUEBECK/Gefangene_documents/maennliche_gefangene.html> accessed 1 March 2024. ↵

70. Jan Peter Schulze, *Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich*, 2017, p. 247. ↵

71. *Ibid.*, 248. ↵

72. *Ibid.*, 248. ↵

73. *Ibid.*, 248. ↵

74. *Ibid.*, 248; Bundesverfassungsgericht (BverfG) [German Federal Constitutional Court], (2008) *Neue Zeitschrift für Strafrecht* (NStZ), 521, 522. ↵

75. *Ibid.*, 247. ↵

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