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# The prisoner citizen: juridification and the AIDS activist struggle for harm reduction in German prisons

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## ABSTRACT

For more than 30 years, AIDS activists have been fighting for harm reduction – i.e. needle and syringe programs, and opioid substitution treatment – in German prisons. From the 1990s onwards, international and national legal contexts emerged around HIV/AIDS, prisons, and drug use, significantly impacting activists' engagements with the law. Based on archival research, interviews and observations of AIDS prison activism in (West) Germany, this paper explores how activism focused on enhancing access to a right to health for imprisoned people who inject drugs (PWID) has shifted from medical disobedience and radical critique to judicial action. Building on anthropological debates about biological citizenship and juridification, I argue that the citizenship status of prisoners has transformed with the juridification of health activism. Disobedient acceptance-based activism, morally calling upon human rights, evoked imprisoned PWID as self-determined and worthy members of the body politic. As judicialized activism adopts the bio-medical discourse on drug 'addiction', the prisoner is reconfigured into a deserving patient, whose rights are bound to the responsibility to normalize. Accounting for the varied means and channels through which prisoner biological citizenship is negotiated allows for better understanding the different and shifting responses to the unfolding epidemic from a heterogeneous European civil society.

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## Introduction

Since the beginning of the HIV/AIDS epidemic, activists have been fighting for harm-reduction (HR) measures as the most effective and humane way to prevent transmission of the virus in German prisons. The penitentiary's emphasis on security, re-integration, and drug abstinence has, nonetheless, hindered the implementation of such measures. At the 2017 European Conference on Prison Health Promotion in Vienna, panelists criticized the German penitentiary for its sparse coverage of opioid substitution therapy (OST) and needle and syringe programs (NSP) in prisons, despite the more than 30 years of activists advocating for their introduction and accessibility. Referencing early activist smuggling of needles into jails, and prison doctors illegally providing sterile syringes, conference organizers and panelists stressed the need for moral courage and individual initiative.

To further entice participating health-care workers to show courage and take initiative, the organizers interviewed a French prison doctor. He described how he continues to provide syringes to prisoners as a means of HIV and hepatitis C prevention against the will of prison authorities. He justified his actions by invoking the legally-prescribed principle of equivalence, which seeks to attain the same health-care standards inside prisons as in society at large.<sup>1</sup> Although it may have seemed as

if the organizers were trying to encourage a return to past 'disobedience', a closer look reveals a significant change in activists' engagements with the law. Instead of acting *against* the state by violating existing laws and regulations, this new form of activism, as represented by the French doctor, acts *in line with* an emerging legal framework. Thus, this novel strategy seeks to invoke and enact the legal norms and laws that certain practices and policies of the state do not currently follow.

In this paper, I reflect upon the shifting engagements with the law by HIV/AIDS prison activists in (West) Germany, asking how biological citizenship is enacted and reconfigured through the mobilization of the law, and, in particular, the use of judicial instruments. I focus on the ongoing activist struggle for HR in prisons, which demands NSP and OST as a matter of prisoners' rights. However, the political strategy to access these rights has shifted; or, more precisely, activist engagements with the law, rights and legal instruments have changed. That is not to say that rights claims have increased significantly through the decades. Instead, an emerging legal context on prisons, HIV/AIDS, and drugs has gradually opened up the possibility to access rights *judicially*, and has thereby turned judicial action into a promising political tool. With the juridification of HIV/AIDS prison activism, the prisoner-as-citizen is reconfigured as a subject of rights in order to become 'answerable to justice' (Isin, 2009, p. 381). Claiming citizenship rights judicially on the grounds of biological vulnerability means that activists must refrain from political critique and instead strategically adopt the dominant discourse that medicalizes, and, ultimately, depoliticizes, 'drug addiction'.

The following analysis is based on two years of research on the field of HIV/AIDS prison activism in (West) Germany.<sup>2</sup> To reconstruct the historical shifts in activism, I conducted 16 interviews with prison medical staff, social workers, researchers, policy advisors, and former prisoners,<sup>3</sup> and analyzed selected policy documents, prisoner newspapers, letters written by prisoners, and grey literature from activist organizations published since 1984. I complemented the interviews and archival research with observations at prison health events, such as at the above-mentioned conference, and analyses of current political debates. Before briefly introducing the field of HIV/AIDS prison activism in Germany, I outline the theoretical frame for what I conceptualize as the juridification of biological citizenship.

## The juridification of biological citizenship

Contesting prison health policies through the evocation of rights, ethics and the state's duty of care constitutes HR in prisons as a matter of prisoner citizenship. To theorize the demands for this medical and technical intervention, I draw on Isin's (2009) conceptualization of citizenship as an institution and practice that determines, negotiates or claims social, economic and political inclusion and exclusion through multiple sites, scales and acts. In Germany, prisoners are not fundamentally deprived of their citizenship rights, as their right to vote basically remains in force (Tripkovic, 2016). In practice, however, prison conditions, administrative procedures, political constraints and social stigmatization severely limit the prisoners' options for political and social participation and representation, and their access to rights and services, including to healthcare and disease prevention. I use the notion biological citizenship as conceptualized by Petryna (2002, 2006, 2005) to analyze the expansion of citizenship beyond a mere legal status with formal political rights. This concept illuminates practices and institutions that negotiate inclusion and exclusion to the body politic on the grounds of biological damage, mediated through biological and medical classifications.

Following Rose and Novas (2005), I understand the making-up of the prisoner-citizen as an intertwined process involving both the government of prisoners and PWID, and the articulation of prisoners' needs and demands by prisoners and their advocates. Describing the struggles of health activists for treatment, an end to stigma, and access to services as 'rights bio-citizenship', the authors point to the relevance of laws and moral orders (p. 442). Like Petryna (2002), they argue that biological beliefs about human existence, and the construction of identities around certain biological conditions, make ethical claims possible and determine entitlements, rights, and responsibilities. Instead of moving 'beyond biological citizenship', I further illuminate the concept of rights bio-citizenship to inquire into the conditions for and effects of different strategies and instruments that

mediate and shape rights-claims based on biological conditions and identifications. I delineate the different ways in which AIDS activists engage with the law, moral norms, and the judiciary, and thus constitute imprisoned PWID as citizens.

A shift from disobedience to juridification can be observed within HIV/AIDS prison activism in (West) Germany. 'Juridification' refers to 'a variety of social processes entailed in the proliferation of law' (Eckert et al., 2012, p. 2) that reflect the 'importance of the juridical subject to late-liberal political economies' (Biehl, 2013, p. 421). The term points to an increased 'faith in "the law"' (Eckert et al., 2012, p. 3) and rights-consciousness of lay people, social groups and activists for claim-making. Anthropologists theorize the 'juridification of political protest' (Zenker, 2012, p. 137), that is, the activist turn to legal vocabularies, instruments, and procedures, differently. Some scholars stress the emancipatory potential of the spread of human rights, and analyze it as a bottom-up politics for rights (Baxi, 2012), or as 'legalism from below' (Eckert, 2006): Marginalized groups can use the 'law against the state' (Eckert et al., 2012) to claim the rights they have been denied. Those demands that conflict with the dominant moral order and cannot mobilize political majorities might thus find justice in the courts rather than the political arena (Fuchs, 2013). Other anthropologists critique the global proliferation of rights and laws and the negotiation of contentious issues in legal terms within and beyond courts as depoliticizing social conflicts. Juridification, it is argued, 'entails an emasculation of the transformative potential of political agitation through the self-confinement to "legal cases", that in its appeal to laws, ostensibly instantiate rather than transform the existing order' (Zenker, 2012, p. 138; Comaroff & Comaroff, 2006). Moving social conflicts from the realm of elected bodies or demonstrations into the judicial system reduces political decision-making to the application of existing laws (Eckert et al., 2012, p. 5).

Investigating public health litigation in Brazil, Biehl (2013) shows that these supposedly contradictory effects can in practice actually be two sides of the same coin. Claiming access to pharmaceuticals in court exposes and challenges the state's biopolitical disregard of the wellbeing of certain citizens (p. 424). Simultaneously, case-by-case litigations contribute to the individualization of activism. Instead of contesting public health policies and market regulations as a matter of social justice and class struggle, judicial action creates 'atomized subjects of rights' and might contribute to the 'vanishing of "civil society" as a viable transactional reality' (p. 431). Biehl shows, therefore, how the juridification of biological citizenship reconfigures the relations between the individual and the body politic. Inspired by Biehl, I agree with Eckert et al. (2012, p. 6) that the question of whether juridification has depoliticizing or emancipatory effects is more of an empirical question; and may even mistakenly separate entangled processes. Considering that activists apply legal instruments reflexively and cannily, as they navigate through and weigh up the depoliticizing and enabling consequences in their interest. (Klausner, [in press](#)), allows us to further detail how the equivocality of legal actions is contested, negotiated, and even used within everyday activist practice.

Aware of the potentially ambivalent conditions for and consequences of judicialized activism, I follow Sharma and Bornstein (2016) by investigating activist use of law as a political tactic. Juridification, the authors state, creates a 'technomoral' form, idiom and mode of citizenship struggles as it translates 'moral projects into technical, implementable terms as well as [justifies] technocratic acts [...] as moral imperatives' (p. 77). They conclude that judicialized activism does not 'signify the *end* of politics', but rather its transformation into 'a *righteous* and *rightful* form' (p. 87). Thus, they do not distinguish between law and morality, but focus on the simultaneity and entanglements of both so as to grasp the enactment and mobilization of law. Accounting for moments of incongruencies between social mores and law, I show that juridification reconfigures the prisoner-citizen, but also the relations between social mores and the law.

## HIV/AIDS prison activism in (West) Germany

Soon after the first HIV diagnoses among prisoners were reported in West Germany in the mid-1980s, drug use was identified as the main route of transmission. In response to emerging repressive state policies,

a coalition took shape of AIDS and HR activists, social workers, (former) prisoners, prison health professionals, and public health researchers. Closely connected to the West German AIDS movement, they campaigned for the more humane treatment of prisoners living with or particularly vulnerable to HIV. They criticized the practices of isolation, discrimination, mandatory HIV testing, and HIV status disclosure, and, instead, demanded the provision of voluntary prevention measures: condoms, NSP and OST.

HIV/AIDS prison activism consolidated between the late 1980s and early 1990s. Community organizations such as local *AIDS-Hilfen* (AIDS service organizations) and *JES* groups (Junkies, Former Users and Substitution-Users), the gay community center *Mann-O-Meter* in West Berlin, and the *AK Kommunale Drogenpolitik* (Working Group on Communal Drug Policy) in Bremen began to offer counseling for HIV-positive prisoners and educational workshops for inmates and prison employees. Some groups, including local ACT UP chapters, organized public demonstrations in front of prisons.<sup>4</sup> Prisoners initiated self-help groups, went on hunger strikes, and made demands of authorities (JES, 1990; Kriener, 1989; Selbsthilfegruppe, 1989; Viertler, 1989). At the policy level, the *Deutsche AIDS-Hilfe* and *Akzept*, federal associations for HIV/AIDS services and accepting drug politics respectively, began to raise public awareness and advocate for prisoner rights and health. Additionally, public health officials and social scientists started to publish reports and scientific studies, often in cooperation with international health-governing bodies, to provide evidence on effective prevention measures and encourage the formulation of scientifically-informed prison healthcare standards (e.g., Müller et al., 1995; Stöver et al., 2004; Stöver & Schuller, 1991). Within this varied political repertoire, and from the 1990s onwards, engagements with the law gradually changed.

### Morality against state laws at the beginning of AIDS prison activism

In the 1980s and early 1990s, activists criticized the criminalization of drug use, and demanded HR in the name of human rights and humanity. Activist idioms and practices reflected the urgency and fatality of a rapidly unfolding epidemic, the absence of effective medications or vaccinations, and the constant encounter with death. By then, the German *Act on Narcotic Substances* and the *Prescription of Narcotic Substances Regulation* rendered the procurement of drugs illegal and criminalized NSP and OST. Inspired by the disobedient actions for HR outside prison settings, prison activism took on a spirit of moral courage, protest and medical disobedience (Schuller & Stöver, 1989). Despite the strict security measures of the penal system prison, some social and health care workers managed to smuggle sterile syringes into prisons, and other activists threw syringes over prison walls (Deutsche AIDS-Hilfe (Ed.), 1989, p. 230; Stöver et al., 2014, p. 38).

Rooted in an acceptance-based approach to drug use, activists called for HR as the state's duty to protect prisoners from the severe harms resulting from injecting drug use. They criticized the criminalization of PWID and HR, and the emphasis on abstinence-based approaches, as unjust and epidemiologically counterproductive. They linked the demand for HR to the general acceptance of life choices by PWID under the slogan 'right to intoxication'. HR, they argued, empowers drug users to handle their substance use responsibly. They dispensed with appeals to behavioral change and stressed users' right to self-determination. Drug users were understood as subjects of their own life choices and capable of reasonable health behavior (Schneider, 2004). Thus, activists linked demands for citizenship rights, based on (potential) biological damage and mediated through biological, medical and health-related classifications, to a radical political critique, and framed HR as an emancipatory intervention.

In constituting imprisoned PWID as responsible citizens and worthy recipients of the state's duty of care, activists challenged the framing of drug use during that time. Following Bergschmidt's (2014) analysis of German drug policies, the contemporaneous discourse on HIV and drugs constituted the 'junkie' as contagious and dangerous (p. 66). A moralizing discourse of drug 'abuse' framed PWID as socially deviant, lacking in will, and morally culpable, whereas the medical understanding of drug 'addiction' constituted PWID as patients unable to adhere to social and legal norms (Bergschmidt, 2014; O'Malley & Valverde, 2004). Although the medical discourse on addiction as a brain disorder

had already replaced the definition of drug ‘abuse’ as social deviancy within addiction and criminological research (Bergschmidt, 2014; O’Malley & Valverde, 2004), the law de facto continues to criminalize the use of illicit substances and marks PWID as criminals and delinquents. According to my interviewees, many people, including policy makers, continue to consider the withdrawal of certain rights, such as the right to health, as an acceptable, even ‘just’, side effect of imprisonment. Furthermore, presenting the prison as a site of HIV transmission positioned imprisoned PWID less as ‘at risk’ but ‘first and foremost as a risk to the wider community’ (Weston, 2019, p. 2). Social stigmatization and legal sentencing around HIV and drug use enacted the prisoner-citizen as an unworthy member of the body politic – as lacking the will or capacity to act responsibly, and thus as morally undeserving of full citizenship rights. This moral economy has produced discriminatory restrictions on accessing health and medical services.

Against this background of congruent social mores and legal orders, activists called for the decriminalization and implementation of HR as the righteous fulfillment of prisoner rights. The counter-figuration of imprisoned PWID as responsible and autonomous citizens with full entitlements to rights on the grounds of their human condition radically challenged the existing moral and legal order. Activists negotiated prisoner citizenship as a matter of political and social justice, and tried to shift the status of the prisoner from less-deserving deviant to worthy and equal citizen. In this sense, acts of medical disobedience seemed ethically legitimate and even inevitable. In his writing on the history of HIV/AIDS activism, drugs, and prisons, social scientist and activist Heino Stöver (2014) remembered these activist practices as progressive in that they often enabled the provision of services against official regulations:

Looking back at the milestones of AIDS and drug policy, it is noticeable that the practice of support has always been years ahead of the political acceptance of controversial offers. The distribution of sterile syringes as infection prophylaxis, for example, was already common practice in many places from 1983 before the legislator legalized it in 1992. (p. 247, author’s translation)

Framing the violation of regulations and laws as ‘years ahead’ links prison activism to the general AIDS movement’s fight for progressive public health policies. Furthermore, it builds upon the liberal critique of the penal system. In line with the pervasive (West) German post-war narrative of a linear development away from the inhumanity of the Holocaust toward westernization, the treatment of prisoners came to be negotiated as a matter of liberalization and human rights (Ramsbrock, 2018). The activists’ mobilization of this narrative made HR the most logical next step in (West) Germany’s progression towards liberalization.

Although activists repeatedly called upon human rights, access to HR could not be fought for judicially. Rights, and, particularly, prisoner rights, Fassin (2016) argues, ‘sit in an uncertain zone of the social space, where law is only one element among others and rarely the deciding factor’ (p. 216). The vagueness of international prisoner rights, such as the UN *Minimum Rules for the Treatment of Prisoners*, and the absence of international and national guidelines and laws on drug use and HIV/AIDS prevention in prisons, made it impossible to challenge the criminalization of OST and NSP in court (Pant, 2000; Weston, 2019). In 1994, a former prisoner, supported by his lawyer and a member of the party *Bündnis 90/Die Grünen*, unsuccessfully sued the state of Berlin for damages after he was infected with HIV through needle-sharing while imprisoned (Desselberger, 1994). Given that prisoner rights had not yet been specified as such, the plaintiff and his supporters had anticipated the court failure, but nonetheless sought to generate public attention and political pressure. Even when mediated through the judiciary, the invocation of prisoner rights bio-citizenship was less a legal act than a politico-moral strategy that opposed the legal and moral order of the time.

### **The juridification of HIV/AIDS prison activism**

The possibilities for enforcing prisoners’ rights increased with an expanding legal framework regulating prisons, HIV/AIDS and drugs. In response to the unfolding epidemic and AIDS activism

in the 1990s, domestic legislations concerning public health and the penitentiary were gradually reformed. With the 1992 German *Act on Narcotic Substances*, NSP and OST were progressively legalized; in 2010, the binding guidelines of the German Medical Association were changed to prescribe that OST should be continued in prisons; and the 2001 *Law on Infection Protection* explicitly included prisons in their regulations for infection control. The implementation of HR in prisons was thus no longer a question of legality, but of political will.

Furthermore, existing international guidelines and laws were specified and new ones emerged. The multilateral body overseeing the European anti-torture convention started to monitor health-care in closed settings and link the provision of care services to the human-rights matters of torture and inhumane treatment. The WHO and other international governing bodies, often in collaboration with AIDS activists, specified the principle of equivalence in relation to HIV, drug use and prisons (Kerr et al., 2004; Thane & Stöver., 2011).

The legalization of OST and NSP, complemented by medical expertise and the specification of international prisoner rights, rendered HR in prisons lawful and desirable, and gave additional weight to activist demands. The activists faced a situation similar to that of the French doctor above providing syringes in prisons: Although national legislation and health policies favored harm reduction in prisons, the penal system mostly rejected activist demands.<sup>5</sup> To this day, activists critique the insufficient provision of OST, and the absence of NSP in all but one prison. The prison system lacks political will, they argue, due, firstly, to its focus on security rather than health or human rights. Needles are foremost considered as potential weapons and less as health interventions (Stöver et al., 2006, p. 72). Second, prisoners are considered 'unlikely candidates to fulfill the expectations of responsibility' as imagined within the public health model of HR activists (Weston, 2019, p. 11). Third, the penitentiary follows the official political and medical goal of drug abstinence, and the legally defined purpose of rehabilitation. Providing prisoners with injection equipment or OST is believed to support drug addiction and thwart the penitentiary's social mission. Thus, prison authorities can flout legislation and medical recommendations on the grounds of morality and security. Fourth, the persistent stigmatization of prisoners and an increasing predilection for security and punishment hinders any mobilization of public support for pressuring policy-makers to improve prison health. In other words, *political* strategies to secure HR remain mostly ineffective. However, in light of the legal shifts mentioned above, the *judicial* mobilization of rights has become a promising tool through which to negotiate prisoner citizenship.

Faced with political rejection, German activists had hoped for the opportunity to initiate a strategic lawsuit that would shift the policy landscape in their favor. Finally, a 2015 European Court of Human Rights (ECHR) ruling brought such a success: In *Wenner v. Germany*, Wolfgang Wenner successfully sued Germany for inhumane treatment while jailed in a Bavarian prison. Upon incarceration, the prison doctor discontinued Wenner's 17 years of OST. Despite suffering from HIV, hepatitis C and a neuropathy, he underwent Polamidon withdrawal. Supported by the *Deutsche AIDS-Hilfe* and a social worker, he then applied to the prison authorities for renewed OST access. After the authorities and local courts dismissed his application, and the Constitutional Court declined to consider his complaint, he appealed to the ECHR. Against the background of growing legal and scientific consensus as presented above, the court ruled that the evidence offered to demonstrate the prison's proper assessment of the claimant's health, and the adequacy of provided care, was neither convincing nor credible. Thus, the court concluded, Germany had violated Article 3 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, which protects from torture or inhuman or degrading treatment (Wenner v. Germany. ECHR 725, 2016).

'It's on now', concluded the claimant, Wolfgang Wenner, when I interviewed him three years after the ruling. He was referring to the OST programs in Bavarian prisons, which were started as a result of the court decision. Activists are optimistic that the authorities will extend OST offers for fear of future lawsuits (Stöver et al., 2014, p. 8). This case of strategic litigation exemplifies how activists use 'the law against the state' (Eckert et al., 2012). Challenging and transforming state mandated inequalities in access to health care, this outcome indicates that the individualization of judicialized health

activism does not necessarily lead to depoliticization. Although strategic litigation is based on an individual claim, it nevertheless mobilizes single cases into a push for broader political change (Fuchs, 2013). In a social situation where prisoners' rights to, and deservingness of, equal and humane treatment is called into question, and in which security overshadows health matters, legal action has proven to be a powerful tool for enforcing rights. Thus, the relationship between the individual claimant and the body politic within judicialized forms of activism can be conceptualized as the politicization of a particular case.

In contrast to the violation of laws through medical disobedience, an emerging prisoner rights context enables activists to push for the law to be upheld. This is not to say that this case marked the turning point from protest and disobedience to judicial action. Neither did judicial instruments and vocabularies fully replace other strategies. Activists still initiate protests, offer educational seminars, strive for cooperation with the penitentiary, argue with regards to public health, and address the moral dilemmas of prison staff. Nonetheless, this case signifies the novel political effectiveness of judicial instruments in light of a changing legal context. Against the backdrop of new legal opportunities, and confronted with a growing tendency toward security and punishment, activists re-evaluated their political repertoire. 'The law beats all our other efforts', Stöver concluded from the ECHR case during our interview, 'the lawsuit is the most effective and successful means to reach change.'

Not everyone, however, seemed confident about the new adherence to the legal order. In our interview, Bärbel Knorr recalled dissent among activists. As policy advisor at the *Deutsche AIDS-Hilfe*, she regularly drafts informational leaflets on OST for prisoners in which she meticulously lists all the legal regulations, policies, and guidelines in close consultation with the ministries of justice of the *Bundesländer*. Some AIDS and drug activists criticized the leaflets for not denouncing the penitentiary's deficits in providing OST. She told me in response to such critiques:

This [the information within the leaflets] doesn't resemble the reality one-to-one, but every single word is approved by the ministries. And I can always write to the prisoners: 'This is the way the Ministry of Justice sees things. If this isn't happening in your situation, write to them! Complain! Take legal action!'

As this example demonstrates, activists reflect critically on the shift to judicialized activism as it can be accompanied by a softening of a confrontational approach. Yet, Knorr chose to focus on the law's ideal order to hold authorities responsible in cases of non-conformity. The activists' critical and canny use of judicial instruments indicates that their subtle adoption was certainly not inevitable. However, the health and rights of imprisoned PWID were (and still are) so precarious, and resistance to HR in prisons so persistent, that activists pragmatically welcomed almost any strategy that promised improvement.

## The conditionality of judicialized citizenship

Because its political potential relies on an individual claimant, negotiating prisoner citizenship judicially bears specific conditions and challenges. Few imprisoned PWID meet the criteria and conditions for a (successful) lawsuit. In pursuing judicial remedies strategically, activists had carefully considered all potential claimants. They selected only two or three who were mentally and physically stable enough to go through tenacious court proceedings and the associated harassment. A lawyer then selected Wenner from a legal perspective according to the duration of his previous OST treatment and the amount of time he had spent outside prison. Thus, claiming one's rights judicially appears to be highly exclusive, closed to the very people who have been most affected by unequal access to health.

For those who meet the criteria, strategic litigation places a heavy burden on the plaintiff. Wenner remembers the harsh treatment he faced in custody following the initial legal steps: insults by the prison staff; frequent urine testing; temporary solitary confinement; and, finally, when he was severely ill, the doctor refusing to see him. Furthermore, his health status was publicly disclosed,



and, in court, the defense team used intimate details of his life to present him as morally reprehensible. As Wenner's case demonstrates, the ethical dilemma between the collective benefit and the individual burden of this strategy, as described by Fuchs and Berghahn (2012), builds on the fact that litigation is not only stressful and time-consuming, but also requires the public exposure of intimate matters. It further indicates how the individual burden increases when plaintiffs find themselves in closed settings controlled by representatives of their legal opponent.

The strategic politicization of a particular case can even result in the individual claimant receiving no personal benefits from the ruling. As Wenner recalled:

Originally, I had hoped that I too would benefit from the ruling during my time in prison [...]. Maybe one day, one will not be able to remember how the situation was before someone started to litigate.

In other words, litigation is time-consuming, and the outcomes often fail to satisfy their original aims. Wenner's ruling was made three years after his release. This points to the different temporal dimensions of citizenship strategies. The appeal and relevance of long-lasting and stressful political strategies, such as litigation, must be understood in light of the changing temporality of the epidemic. With the introduction of highly active antiretroviral therapy in 1996, HIV in Germany transformed from a deadly infection into a chronic condition. While protest, direct action, and medical disobedience were motivated by the urgency and fatality of the first decade, judicial action became attractive at the moment when HIV activism came to operate with new temporal horizons of life itself.

## Reconfiguring the prisoner-citizen

While strategic litigation in the realm of health does not primarily (if at all) focus on benefits to the individual claimant, it nevertheless relies on their biological vulnerability. As Biehl and Petryna (2011) have shown, the individual must first undergo judicial transformations to become a formal subject of rights, a process which affects self-identification, and offers new, but also limiting, possibilities of self-realization (Eckert et al., 2012). The ruling in *Wenner v. Germany* exemplifies how, to become 'answerable to justice' (Isin, 2009, p. 381), the judicial enacting of biological citizenship must affirm those legal and medical discourses and classifications through which drug use is governed. The plaintiff's successful strategy was based on the medicalization of drug use, a framing that both the court and defense adopted:

The Court notes in this context that according to the relevant domestic guidelines [...] opiate addiction was a serious chronic disease requiring medical treatment. It is further clarified that substitution treatment was a scientifically tested therapy for manifest opiate addiction (*Wenner v. Germany*, ECHR 725, 2016).

Moving the political conflict into the courts means that HR access is negotiated as a question of lawfulness, referring to a legal order that frames drug use as a strictly medical matter, and thereby reduces health to its biological dimensions.

For some activists, the adoption of the medicalization framework came at high costs. Many once defended drug-using prisoners as rightfully deserving life-saving services due to their humanity and as equal citizens capable of making informed life choices. 'To put it critically, we allowed ourselves to be bought into it a little bit', Dirk Schäffer, coordinator of *JES* and policy advisor at the *Deutsche AIDS Hilfe*, told me in an interview. And Stöver (2014) has explained that the 'medicalization of drug addiction has contributed a great deal to the acceptance of symptoms and, consequently, therapy and support – but not to acceptance of the lifestyle', admitting that, 'the references to violated human dignity and human rights must be seen as less powerful arguments' (p. 255, author's translation). Schäffer and Stöver's critiques point to the implications of framing drug use as a medical condition with harmful effects that can be mitigated by technical and medical interventions. Strategically adopting this discourse requires neglecting the social and political dimensions of health, and the political critique and emancipatory potential of HR.

This brings us to the uneasy compromise between rights and responsibilities inherent in political articulations of citizenship. Negotiating the conflict about HR in court turns the culpable delinquent produced by the moralizing discourse, and the free-choice-consumer of the acceptance-based approach, into a patient. Whereas, in the first discourse, prisoners' membership in the body politic is denied because of their irresponsibility, the latter proclaims prisoners' full and unconditional membership based on human dignity. Instead, the legal order enforced through the judiciary links the prisoners' citizenship and deservingness of rights and services to their transformation into a vulnerable 'patient-citizen-consumer' (Biehl & Petryna, 2011, p. 374). It also alters the notion of responsibility accordingly. In the realm of health, and especially HIV, successful acts of biological citizenship rely on adherence to regimes of therapy, as well as patients' demonstration of, and identification with, responsibility for self-care and care for others (Biehl, 2004; Nguyen, 2010; Rose, 2006; Young et al., 2019). According to Bergschmidt (2004), access to OST often depends on the patients' demonstrated will to normalize, which means suspending the lifestyles and routines associated with drug use. The 'good' patient is supposed to long for stable work, family relations and a drug-free life, and thus to assure their 'acceptance of certain social norms' (p. 60). Accessing HR judicially once more shows that successful rights claims must be based on acceptable modes of being (Bell & Binnie, 2000, p. 3).

## Conclusion

Interested in the conditions and consequences of the juridification of HIV/AIDS prison activism for prisoner citizenship, I have investigated how an emerging legal context and new temporal dimensions in the unfolding of the epidemic have enabled a shift in activist strategies from disobedience and protest to judicial action. Although acceptance-based activists had always argued for HR as a matter of citizenship rights, the possibilities, conditions, and strategies for accessing these rights have changed according to the legal order in force. From the mid-1980s to the early-1990s, activists used the political strategies of medical disobedience and protest linked with a radical political critique to enable HR in prisons. Their strategies expressed the urgency and fatality of the first decade of HIV/AIDS, but could hardly prevail against social mores, security concerns and a politics of criminalization. The expanding (inter-)national legal framework on prisons, health, and drug use bolstered activist demands with legal authority and paved the way for enforcing prisoner rights judicially. Whereas activists were previously fighting against the congruency of a legal order and social mores, legal action now appeared to be a promising tool, especially at a time when anti-retroviral therapy had opened up a new temporal horizon in HIV activism: long-lasting legal procedures had the potential to enforce new universally-framed laws against political wills and moral economies, and to challenge an otherwise highly discriminatory prison health policy. The new legal context makes it possible for those demands that once felt *righteous* to now be justified and enforced as *rightful*.

Analyzing this shift in strategy allows to illuminate the nuances of, and tensions within, activist struggles for 'rights bio-citizenship' (Rose & Novas, 2005). The radical political critique defends the imprisoned PWID as worthy members of the body politic with equal rights on grounds of their humanity. The strategic shift to judicial action reconfigures the prisoner-citizen. Judicialized forms of prisoner citizenship are highly exclusive and conditional as they instantiate a legal order that tends to medicalize and normalize imprisoned PWID. The adoption of the legally-prevailing medicalizing discourse transforms the prisoner-citizen into a patient whose deservingness of rights and services is based on biological damage. Both the acceptance-based and judicial approaches mediate demands through biological classifications of health and illness. However, the disobedient strategy attributes the causes of physical harm to the politics of criminalization and stigmatization, whereas the medicalization frame reduces harm to the individual biology. The acceptance-based emphasis on the prisoners' self determination and responsibility is overshadowed by the diagnosis of 'addiction', which limits the prisoners' capacity for rational choice-making. The claimed acceptance of, and even

right to, deviant lifestyles are widely replaced by the affirmation of, and will to, a norm-abiding life. This shift shows that citizenship struggles in the realm of health and illness, based on a language of rights, can be fought by multiple means and through multiple channels, each of which sets very different conditions for membership into the body politic. These very different strategic engagements with the law to claim and enforce rights and access state services have gravely different effects on the way the biological citizen is imagined and constituted.

This analysis furthermore highlights the problematic relation between rights and (biological) vulnerability along the fault lines of liberal democracies' drift towards control and punishment. When prisoners are only allowed to be citizens if they are suffering patients, the fulfillment of rights relies on the great difficulty of convincingly presenting prisoners as vulnerable and their suffering as unacceptable – in opposition to social stigmatization and an increasing punitive politics (Weston, 2019, p. 11).

Driven by an analytical interest in the simultaneity and entanglements of the depoliticizing and emancipatory effects of the juridification of protest, I argue that negotiating rights bio-citizenship judicially in the field of HIV/AIDS, prisons and drugs means mobilizing a legal order that is itself ambivalent. While making it possible to transform existing inequalities in access to health and intervene in state biopolitics, judicial action also instantiates the prevalent mode of governing drug use, health and imprisonment, which ultimately depoliticizes, even stabilizes, their social, economic and political conditions.

Drawing on the opening practices of the French prison doctor who implemented (inter-)national legislation in his daily medical practice against the penitentiary's own policies, I have argued that what might sound like a recall of the medical disobedience of the early years is indeed a call for the adherence to, and even active enforcement of, a legal order. Whereas anthropologists have either critically or enthusiastically discussed the shift from protest to legal vocabularies, and from disobedience to judicial action, AIDS prison activists have embraced the mobilization of law strategically as a politically powerful tool for forcing the state to change those practices and policies that are considered unjust. The moral economy that continues to constitute the imprisoned PWID as less deserving of citizenship rights, and finds its expression in state authorities' refusal to provide sufficiently for HR, can now be effectively contested 'from below'. As Wenner told me:

I was incredibly pleased that it worked out to bring Bavaria to its knees, so to speak. That doesn't happen so often. And Germany in that sense even too! [...] Now even the great specialists who think they are omniscient can't get away with their opinions.

This reflection evokes a kind of David and Goliath scenario. The mobilization of law and the enforcement of the legal order appear as a powerful strategy against the all-powerful state for marginalized people. A similar picture was drawn at the conference discussion described in the opening of this article. Activists linked the judicial enforcement of rights to the medical disobedience of the past, assembling both under the frame of resistance. Although activists are well aware of its conditions, costs and consequences, the shift from disobedience to legal action does not represent a fundamental change in course, but rather a continuation of resistance by other means.

## Notes

1. In 1955, the UN *Standard Minimum Rules for the Treatment of Prisoners* declared what would later be known as the principle of equivalence: 'Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation'. The principle has been adopted by many nation-states. My interviewees evaluate this principle as one of the most important advocacy tools. For the conference proceedings see Akzept e.V (2018).
2. The analysis of AIDS prison activism before 1990 is limited to West Germany. After German reunification, the research focus is broadened to include activism in the entire Federal Republic.
3. Interview citations have been translated by the author.

4. Local *AIDS-Hilfen* emerged from the early 1980s onwards in many (West) German cities and towns. *JES* is a Germany-wide network of people who use drugs that was founded in 1989 as an attempt to self-organize apart from professionalized NGOs. Both organized under the umbrella of *Deutsche AIDS-Hilfe*. Inspired by ACT UP chapters in the USA, local ACT UP groups emerged and were active in West Germany from 1989 to 1993 (Würdemann, 2017). For the political and civil response to AIDS in West Germany see, for example, Rosenbrock and Wright (2000), Telge (2013), and Klöppel (2017).
5. Exceptions existed: In the mid-1990s, selected German prisons introduced NSP pilot projects that were ultimately closed down. The authorities had responded to scientific evidence demonstrating that NSP helped to prevent HIV transmission, and to WHO advocating for NSP in prisons (Faust, 2019). Some *Bundesländer* (states) make great efforts to expand OST provision.

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## Data availability statement

The quoted interviews are available online in the *European HIV/AIDS Archive* (EHAA): <https://rs.cms.hu-berlin.de/ehaa/pages/home.php>

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