German criminal and prison policy

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Introduction

Since 1996 Germany has seen fundamental changes in its traditional criminal policy, entailing massive consequences also for prison policy. Pushed by media coverage, the federal as well as the state political powers promised more safety against a statistically small number of violent and/or sex offenders. Three types of changes are especially noteworthy. Firstly, we are witnessing a renaissance of the instrument of preventive detention (first introduced in 1933 by the Nazi government). Secondly, we find a change in prison policy, which came about without any change in the law, but has recently also led to legal changes (in the context of the reform of federalism). Last not least, post-release supervision is getting tougher and is also increasing in numbers. In what follows, we will discuss these changes as well as describe in detail the present legal as well as factual situation in German prisons.

Renaissance of preventive detention

The German system of criminal sanctions is based on the distinction between punishments on the one hand and Reform and Prevention Measures (Maßregeln der Besserung und Sicherung sect. 62 ff. Penal Code) on the other hand. The former are to be applied on the basis of past criminal behavior and mens rea. The latter are social defense measures designed to prevent future dangerousness of the offender to society. Such preventive measures include sentencing offenders to be kept in a mental hospital (usually served instead of a prison term), but also sentencing offenders to preventive detention (Sicherungsverwahrung) to be served after completion of the prison term. In principle, these measures are of unlimited duration; the offenders are, however, to be released whenever they are considered not dangerous any more. All these Reform and Prevention Measures were first introduced by Nazi Germany
and kept on after the Second World War in a somewhat reduced fashion. The measure of preventive detention was reduced to a mere fifty cases per year and was limited, when applied for the first time, to a duration of ten years. A case of sexual murder in Bavaria (Bayern) in September 1996 produced a prolonged activity of the political powers to produce new penal laws. A detainee, who had just been released on parole, raped and murdered an eleven year old girl named ‘Natalie’. The case was the beginning of an emotional public debate how to treat dangerous violent and sex offenders. The administration of justice was accused in the media of leniency towards offenders of this kind. Bayern and other federal states introduced in the legislature the draft for a general reform of the sentencing frames for most of the crimes against life, bodily integrity, personal freedom, or sexual self-determination. Especially for such crimes the courts were urged to impose higher sentences. As a consequence of this new legislation the number of long-term detainees has increased substantially in prisons. Complementarily, the section in the German Penal Code/Strafgesetzbuch (StGB) dealing with parole (sect. 57 StGB) was revised with the goal to curb early releases. Before that change, most of the prisoners were released after serving 2/3 of their sentences, now a larger number of detainees have to serve their sentences to the very end. In another related development (in 2007), the instrument of post-release supervision (sect. 68 StGB) was revised and extended, providing a tougher control of all prisoners who have served their complete sentence.

*Extending the scope of preventive detention*

The federal legislature also reduced the formal requirements for preventive detention (sect. 66 StGB), especially for the group of violent and/or sex offenders. This law also changed retroactively the situation for those detainees serving a preventive detention order: now the first preventive detention was no longer limited to ten years, but could last the whole life of the detainee. The Law to Combat Sex Offences and other Major Criminal Offences was rushed through the federal legislature and came into force of law of on January 26, 1998. In hindsight it is evident that the consequences of these changes on the number of detainees and on the conditions of detention in the correctional facilities were not taken into account.

*Introducing reserved preventive detention*

In 2002, the Federal Government took another step to pacify the general population by broadening the applicability of preventive detention. If the sentencing court feels unable to establish with sufficient certainty whether
the offender will constitute a risk to society in the future, it may reserve the possibility of imposing the measure at a later point in time (sect. 66a StGB). Because of later legislative developments, this new variant of preventive detention has remained, practically irrelevant.

Post-sentence preventive detention

The real breakthrough into completely unchartered territory came when first the federal states and then the federal legislature made it possible to order preventive detention independently of the trial court, without any previous reservation.

Federal states

In the year 2001, three federal states tried to expand preventive detention on a regional basis. For this purpose these federal states enacted special state laws ‘for the treatment of especially recidivism-prone highly dangerous criminals’. These laws were to apply to those violent and sex offenders, who already served a criminal sentence in a correctional facility, but who had not yet received an order of preventive detention. The new laws obliged the prison authorities to file a petition with the local court seeking an order of post-sentence preventive detention. This would permit an extension of confinement because of a significant present danger to the life, bodily integrity, personal freedom, or sexual autonomy of others. Main purpose of the law was to stop the release of detainees who persistently did not cooperate in their treatment, especially by refusing or terminating psychological or social therapy intended to reduce recidivism. The prison administration was duty bound to file the petition promptly after having become aware of the ‘new and relevant’ facts. The court had to convene a hearing and order testimony from at least two expert witnesses from outside the correctional facilities. If the Court ordered post-sentence preventive detention, the measure had to be carried out like the regular preventive detention, i.e. in correctional facilities. The period of detention was supposed to be either indefinite or limited (in case the court found that the danger posed by the prisoner was only a temporary one). The Court was supposed to review the detainee’s case on its own motion every two years.

In two decisions, published on February 5 and 10, 2004, the Federal Constitutional Court struck down these state laws on formal grounds, finding that the federal states lacked the necessary legislative competence. While striking down the new state laws, the Constitutional Court gave, however, its general
blessings to such new preventive instruments. They were not seen as a violation of the prohibition of retroactive penal legislation nor as cases of double jeopardy.

Federal republic

The Federal Government (a coalition between Social Democrats and Greens) lost no time to replace the invalidated state laws with a federal version. On March 10, 2004, the Minister of Justice interpreted the Court’s decision of February 10, as an order to present as soon as possible draft federal legislation permitting post-sentence detention on the federal level. The proposal was passed by both houses of the federal legislature and became law as soon as on July 29, 2004, again without much debate and without consulting the relevant practitioners and experts. A new section 66b was added to the Penal Code entitled Post-Sentence Placement in Preventive Detention.

The preconditions for post-sentence detention are defined as follows: when before the end of the execution of a prison sentence for a crime against life, bodily integrity, personal freedom, or sexual self-determination new facts become recognizable that indicate that the prisoner represents a high danger for the general public, the court may order [subsequently to the serving of the original sentence] placement in preventive detention, if a complete evaluation of the prisoner, his crimes, and his development during prison confinement reveal, that with high probability he will commit again serious crimes through which the victims will be seriously psychologically or bodily injured, and if the other conditions of for regular preventive detention are met (especially the disposition for further crimes mentioned in sect. 66 § 1 no. 3 StGB) The main effect of the new instrument in section 66b StGB is that everybody involved in the process must be very cautious when releasing a detainee that might possibly commit another serious crime. In such an event the decision makers will have to fear to be held personally responsible (even for normal and unforeseeable cases of recidivism) by their superiors and the general public.

Young offenders

The present Federal Government (Christian Democrats and Social Democrats) decided in July 2007 to go one step further and to introduce post-sentence preventive detention also for young offenders sentenced by Youth Courts. The draft law does not even require new facts, because the dangerousness of the offender is established by the sentencing court in the first place. The federal legislature is supposed to vote on this proposal in the course of the year
2008. With this step the new federal law will give up a 50-year legislative and judicial tradition of special caution in the application of preventive detention to adolescents and young adults.

**Prison institutions**

What follows is just a brief overview with respect to the variety of prison, some statistics and a few words about prison regimes.

*Types of facilities*

According to the law, the following kinds of penitentiary institutions are to be distinguished: facilities for pre-trial prisoners, facilities for offenders sentenced to imprisonment by regular criminal courts and facilities for offenders sentenced by Youth Courts. All of these facilities are under the responsibility of the Justice Ministries of the respective federal states. In addition, special psychiatric hospitals (or special parts of regular psychiatric hospitals) are used for offenders sentenced to Reform and Prevention Measures. They belong to the jurisdiction of the Health Ministries.

For sentenced offenders, the Prison Act (sect. 141 Prison Act) distinguishes only two types of institutions: those which provide for secure keeping of the inmates (closed prisons) and those which foresee no or only reduced measures against absconding (open prisons). In reality most states distinguish between several levels of security. Some correctional facilities or parts thereof are designated as socio-therapeutic institutions and meant to provide treatment in a more thoroughly therapeutic environment. The 1998 law reform includes a provision making it mandatory to transfer sex offenders to such socio-therapeutic institutions (sect. 9 Prison Act), which has led to a larger demand for such facilities.

*Prison statistics*

On March 31, 2007 there was a total of 194 correctional institutions (not including mental hospitals for the criminally insane). This number includes 175 closed and 19 open prisons. At that date, these institutions had a capacity of 80,214 places, housing 75,719 prisoners (occupancy rate 94). There was prison overcrowding in some federal states (Bayern, Berlin, Thüringen), while others had a lot of vacant cells (e.g. Hamburg with an occupancy rate of 71).

The West German imprisonment rate has seen a number of ups and downs, reaching its lowest point in the late 1980’s. After unification, the imprison-
ment rate (per 100,000 of the population) has increased continually from its lowest point of 71 (1992) to 81 (1995), 96 (1998), 98 (2001 though 2004). But most recently, it has decreased again to 92 (2007). Concerning the number of long stay detainees we have as a consequence of the Renaissance of Preventive Detention since 1996 an increase from 176 prisoners up to 426 in 2007 (30/11/2007).

On the same date, there were in addition 8,664 offenders in mental hospitals, being placed there under Reform and Prevention Measures. This number has constantly increased over the years (from a low point in 1980 with only 3,237 offenders in mental hospitals).

Prison regime(s)

It is difficult to identify clear regimes in the British or Dutch sense of the word. This may have to do with the variety caused by the federal system, with its sixteen different federal states. Therefore, what is being described here may not apply to each state nor to every single facility.

The common core of regime activities is a Monday to Friday work week. Work hours follow those of the civil service. In addition there is the one hour of daily exercise in the open air. Prisoners are walked to their work places after breakfast, they are returned to their cells for lunch and at the end of their work hours. Here the uniformity ends. Regulations with respect to nighttime lockup differ widely. In pretrial prisons, where most prisoners do not work, prisoners may be locked up for 23 hours a day. Many prisons have adopted a policy of open cell doors between the end of work and lockup time. After lockup, leisure-time activities outside the cell rooms may still be possible. But this depends on the prisoner’s enrolment in one of the organized activities offered by prison staff or (more likely) by some external group (from Alcoholics Anonymous to political parties, religious groups et cetera). But all of this may not apply to all prisoners and it definitely does not apply to all prisons.

An important distinction has been introduced into the prison system by the advent of living groups. Cell houses are increasingly subdivided into flats with some ten to fifteen prisoners are sharing a kitchen, a commons area and other communal features. These living groups are usually mutually accessible during opening hours, but even if and when they are closed to the outside, they may still have open cell doors on the inside to permit communal activities. This system is typical for some of the newly-built prisons, but it is also achieved in some of the older prisons by introducing additional separating walls.
Prison legislation

The 1949 Constitution assigned legislation in criminal law (including prisons) to the federal legislature. The administration of correctional facilities was, however, a competency of the individual federal states. This distribution of competencies changed in the year 2006.

Prison Act

The first-ever Prison Act was passed by the federal legislature in 1976 and came into force in 1977. It had been a long time in the making and represents a particularly well-designed piece of legislation. Pushed by several decisions of the Constitutional Court, the legislature provided a framework for the rights and duties of prisoners and instituted a system of special courts (*Strafvollstreckungsgerichte*) to decide about prisoners’ complaints as well as about parole. The Federal Prison Act also fixed reintegration as the goal to be pursued by the prison administration. The Act was, however, flawed from the beginning by the fact that some of its finance effective provisions (higher wages and social security for prisoners) were not immediately put into force. They were postponed to a later parliamentary decision, which, however, never came about.

Although the Prison Act is a federal law, its implementation is in the hands of the sixteen federal states. The Prison Act is supplemented by many administrative regulations at the level of the federal states.

Federalism reform

This legal situation has changed with the decision of the present Federal Government to include prison legislation into its reform of federalism. In exchange for other legislative matters, the national parliament has ceded prison legislation to the individual federal states. This decision was reached in the face of an almost unanimous opposition from the correctional and criminal justice community. Critics pointed out that it was illogical to have one national penal code as well as one national code of criminal procedure combined with sixteen different prison laws. There were also warnings about a possible competition of shabbiness. But the reform went ahead anyway and the government used its two-thirds majority in the Federal legislature to change the constitution. The new rules came into force of law on September 1, 2006. From now on the Federal Prison Act remains in force only in those federal states that have not (yet) enacted their own prison laws.
Youth Prison Acts

The Federal Prison Act did not apply to juvenile correctional facilities. Attempts to design special legislation for youth prisons have failed in the past. As a consequence, these prisons were run on a rather meager legal basis provided by two norms of the Youth Court Act. This situation was seen by many legal experts as violating the Federal constitution. In May 2006, the Federal Constitutional Court ruled that an adequate legal basis for the running of youth prisons had to be created until the end of the year 2007. As a result, starting on January 1, 2008, Youth Prison Acts are in force in all sixteen German federal states. In three cases (Bayern, Hamburg, Niedersachsen) these acts were combined with legislation for adults, thereby making the Federal Prison Act obsolete in these three federal states.

Resulting situation

The described combined effect of the developments (moral panic about sex offenders; shifting of prison legislation to the federal states; pressure from the constitutional court to draft youth prison laws) has led to rather hasty legislation in the field.

The results are nothing less than confusing:
- In thirteen federal states the old Federal Prison Act is still valid, while three federal states have passed their own partly different laws.
- For juvenile correctional facilities sixteen laws exist. Nine of these laws are rather similar, since the respective federal states have collaborated to produce a model law. The other six Youth Prison Acts exhibit a wide variety of regulations for the same problems. For some areas, however, the regulations of the Federal Prison Act have been adopted without any change (e.g. religious care; data protection).
- In the course of the recent legislation, some unforeseen complications have become obvious. While the change in the Federal Constitution shifts competency for prison legislation to the federal states, some legislative competencies remain with the Federal Legislature that. It is yet unclear in how many different areas this problem exists.
- The clearest case of remaining federal competencies exists with respect to procedural norms. Therefore, the federal states are not empowered to change prisoners’ access to the courts as laid down in the Federal Prison Act. These regulations remain in force also in the three federal states that have passed their own prison acts.
- In the case of juvenile correctional institutions, the Federal Constitutional Court had specifically demanded that access to courts should take into account special needs of juveniles. In the absence of competency on the part of the federal states, the Federal Legislature has meanwhile (in December 2007) changed the Youth Court Act and created a new system of judicial oversight for correctional institutions for juveniles.
- So far, only one federal state (Niedersachsen) has created a legal basis for pre-trial imprisonment. But already one month later, the constitutionality of some of the clauses was questioned by a court. The question was forwarded to the Federal Constitutional Court for clarification of the constitutional issue.

Options of early release from prison

Since the mid-1950’s, possibilities of early release for prisoners exist. As a rule, they are a competency of the courts. Since 1975, specialized judicial bodies (Strafvollstreckungskammern) exist for that purpose. In addition, there is always the possibility of executive clemency.

Release after serving two-thirds of the sentence

If a prisoner has served two-thirds of the sentence, the competent court has to hold a hearing on its own motion. The prison authorities and the prosecution give a written opinion on the prognosis of the prisoner, who is heard in person. The court releases the prisoner if the safety of the general public does not require further imprisonment (sect. 57 § 1 StGB). Usually, the opinion of the correctional institution is decisive. Expert testimony on the prognosis is required in the case of lifers as well as in the case prisoners convicted to sentences of more than two years for certain offences (all felonies and certain sexual offenses as well as certain assault and battery offences).

Release after serving half of the sentence

Under the above conditions, the court may decide to release a prisoner already at the half-time point, if the offender serves his/her first prison sentence and if the sentence is less than two years (sect. 57 § 2 no. 1 StGB). Theoretically, release at the half-time point is also possible for longer sentences and for repeat servers, but this requires extraordinary circumstances (sect. 57 § 2 no. 2 StGB) and is consequently very rare.
Prison rules und prisoners’ rights

The Prison Act starts from the premise that, as a rule, prisoners’ freedom may only be curtailed insofar as this Act contains specific provisions to that effect (sect. 4). If no such provision can be found in the Act, restrictions on the prisoners’ freedom are only permissible if this is imperative for the maintenance of security or for averting a serious disturbance of the order of the institution. The Act provides a few prison-specific rights to prisoners (e.g. visiting rights, correspondence rights, exercise in open air), but most other relaxations and amenities are subject to the discretion of the prison officials. While prisoners maintain their civil and political rights, the exercise of these rights is de facto limited as a consequence of imprisonment. It remains, however, an open question, how far these necessary limitations may go. Earlier restrictions on voting rights have been removed, restrictions of the right of forming and joining associations are still in dispute, marriage and family rights of prisoners are largely running dry under prison conditions.

General principles and norms

Reintegration as goal of corrections

As already indicated, the Prison Act of 1976 was the result of decisions by the Federal Constitutional Court. In one of these decisions (BVerfGE 35, 202 ff, 236) the court indicated that resocialization or socialization has constitutional status. It is, according to the court: “the outstanding goal of the execution of prison sentences”. As a consequence, the Prison Act includes the following statutory definition: “While serving the sentence, the prisoner shall be enabled to lead, in social responsibility, a life without criminal offences (goal of corrections). The execution of the prison sentence also serves to safeguard the public of further offences”. This is widely interpreted to mean that reintegration is the only goal of corrections, taking precedence over other tasks to be performed by prisons (including public safety).

Since the late 1990’s, several federal states demanded to change the Prison Act to give public safety at least the same (if not more) weight than the reintegration of offenders. This was part of political campaigns that also led to the strengthening of preventive detention described above. Because of the constitutional arguments, chances to translate these demands in Federal legislation were, however, slim. When, however, the federalism reform gave over prison legislation to the individual federal states, a number of different
attempts were made to move away from reintegration as the only goal of corrections.
The city state of Hamburg as well as the state of Bayern distinguish between two tasks of corrections: a safety task and a treatment task, with the safety task given first place. The state of Niedersachsen announced two goals of corrections that are to be pursued at the same time, but it leaves the reintegration goal in first place. It remains to be seen what this will mean in practice and whether the Federal Constitutional Court will strike down one or all of these clauses for violating the Federal Constitution.

Principles of corrections

Section 3 Prison Act announces three principles that are to guide and inform prison practice as well as the interpretation of the specific clauses of the Act:
- the principle of normalization: life in prison institutions shall as much as possible resemble general living conditions outside prisons;
- the principle of damage reduction: damaging consequences of imprisonment shall be counteracted;
- the principle of integration: life in prison shall be organised in such a way as to help prisoners to integrate themselves into a free life.

Individual reintegration plan

Central to the present system is the idea of individual reintegration planning. An assessment process is foreseen right at the beginning of every individual prison term. It is supposed to focus on all the circumstances necessary to know for a methodical treatment of the prisoner in prison and for reintegration after release (sect. 6 Prison Act). On the basis of this assessment, an individual plan is to be drawn up specifying placement, workplace and/or training, specific treatment measures, possible prison leaves et cetera (sect. 7 Prison Act). This plan is to be revised in reasonable time intervals. The plan and its revisions are to be discussed with the particular prisoner. While the courts have made it clear that prisoners have a right to a written plan, it is still in dispute whether prisoners will receive a copy of this plan. In some parts of the country this is done as a matter of course, in others it is still completely refused.

Prison practice varies widely with respect to reintegration planning. On the one hand some states have specially designated diagnostic facilities, in which prisoners are assessed, classified and then sent on to the serving prisons. In other states, the assessment is performed directly in the prison where the particular prisoners will have to serve their sentences. In many prisons, how-
ever, planning has degenerated into a mere bureaucratic exercise. Forms are completed, but often with only little content.

Planning also depends on the length of the sentence. Section 6 Prison Act permits to waive reintegration planning if it does not seem necessary in view of the length of the sentence. This has led to a practice to forego any assessment and planning if prisoners have to serve less than one year (which is a large part of the prison population).

On the other hand, in the case of prisoners serving very long sentences, planning is often postponed to a point in time when it becomes clearer whether the prisoner will be paroled or whether he has to serve the complete sentence. This planning problem is being aggravated by the growing importance of preventive detention, be it regular or post-sentence.

This points to a structural problem of prison planning. While the prison administration is responsible for planning, it is the courts that decide whether the individual prisoner will be released earlier (be it at half-time or two-thirds of the sentence) or later because some sort of additional measure has to be completed. The court’s decision depends, however, to a large degree on what plans have been made and implemented in prison. If the prison decides, at the planning stage, that a prisoner stands no chance to be released before the end of the sentence, this will most likely become a self-fulfilling prophecy.

*Placement and transfers of prisoners*

Prisoners are supposed to serve their sentences in the federal state of their place of residence. This means that they will usually be transferred from wherever they have been sentenced to their home state. But in some of the bigger states they may still end up being sent to some prison far away from their family, relatives and friends. This may cause serious problems with respect to being visited in prison. On the other hand, some prisoners may have different plans for their future and may be looking for a fresh start somewhere far away from home.

Section 8 Prison Act envisages transfer to another correctional facility if this would facilitate the treatment of the offender or his integration after release. But the decision is discretionary and prisoners find it difficult to convince the authorities of the necessity of a transfer. Especially being separated from one’s family is usually seen by the prison officials as a normal accompaniment of imprisonment and therefore constituting no valid reason for a prison transfer. Such transfers are particularly difficult to achieve across state lines, since two different administrations have to agree. It was only recently that
the Federal Constitutional Court had to remind the authorities that family ties are an important component of a successful reintegration. The Prison Act also allows prison transfers for administrative reasons, like overcrowding or the necessity to send a prisoner to a more secure institution. It is still in dispute whether correctional tourism (i.e. the periodic transfer of dangerous or troublesome prisoners from prison to prison) is justifiable.

Costs of imprisonment

The Prison Act starts from the assumption that adequately paid prisoners have to contribute to the costs of their imprisonment. However, given that prison labour was originally remunerated with only five percent of the average outside wages, the legislator decided to waive in principle any contributions to the costs of imprisonment on the part prisoners. In the year 2001, prisoners’ wages have been raised from five to nine percent of the average outside wages. But the original assumption is still seen as valid and as a rule there still is no cost sharing on the part of prisoners (sect. 50 Prison Act). Only the following categories of prisoners have to contribute to the costs:

– prisoners on work furlough, who receive regular outside wages and are included in social security;
– prisoners who are self-employed (which will usually allowed only under the condition that they pay their share of the costs in advance);
– prisoners, who do not have to work but receive some outside income (e.g. a retirement pension);
– prisoners, who are culpably without work (i.e. who refuse to work or cannot work because they are placed into arrest or solitary confinement).

The last category is obviously problematic, since these prisoners have usually no income at all. To make them contribute to the costs of their imprisonment has therefore the character of a sanction. The cost sharing will not be implemented if this is necessary in order not to jeopardize the reintegration of the prisoner into society.

According to section 50 Prison Act, cost sharing means that prisoners have to pay for food and accommodation but not for other costs of the prison service (e.g. building costs, staff costs). There are, however, two other clauses in the Prison Act that imply costs for the prisoner: if prisoners are allowed to wear their own clothes, they have to bear the costs for cleaning and upkeep (sect. 20); prisoners have to contribute to the costs of dental prostheses (sect. 63).

In recent years, some prison administrations have started to demand cost-sharing also in additional areas (especially electricity and health costs). It is highly controversial whether this is legally possible under the Prison Act.
The three federal states which have passed their own prison legislation have therefore included special clauses legalizing cost-sharing in other areas.

**Physical conditions - basic necessities**

*Accommodation*

Size and design of the prison cells is dealt with in section 144 Prison Act, where it says that it should be homelike and that it should have enough volume and should be equipped with heating, airing, floor space and window space sufficient for a healthy conduct of life. The Federal Ministry of Justice was supposed to specify details with respect to volume, airing, floor space, window space et cetera, but has never done so. Neither have the new state Prison Acts. The new Youth Prison Act for Baden-Württemberg does, however, specify that in newly built prisons, individual prison cells should have nine square meters of floor space and shared cells seven square meters of floor space per prisoner.

As a rule, prisoners should be accommodated during night time in single cells. Shared accommodation is permissible only if a prisoner is in need of assistance or if a prisoner’s life or health is endangered. Over and above these exceptions, shared accommodation over night is only permissible temporarily and for compelling reasons (sect. 18 § 2 Prison Act). Unfortunately, the legislator has restricted the validity of this regulation to prisons built after the coming into force of the Prison Act. Thirty years after that date, this restriction is still in force and as a consequence many prisoners still have to share accommodation against their will during nighttime. This is particularly aggravating, since most of the older prisons do not have separate toilets, but prisoners have to share an open toilet in the same room in which they have to live, eat and sleep.

The competent courts have reacted to this situation only after the Federal Constitutional Court has indicated (in 2002) that certain kinds of cell accommodation are likely to violate human dignity. Since then a number of court decisions have declared certain constellations as illegal and/or in violation of human dignity, e.g. three prisoners in a cell of 11.54 sq.m. with open toilet (OLG Frankfurt 2005); and two prisoners in a cell of 9.13 sq.m. with separated toilet (OLG Karlsruhe 2005).

This has also led to a number of decisions by civil courts granting prisoners damages for having been housed in violation of their human dignity. It is, however, still far from easy for prisoners to avoid being placed in similar
conditions. But if they protest and indicate their intention to bring the case to court they are likely to be given a single cell (while somebody else will be placed in shared accommodation).

Food, clothing, personal hygiene

As a rule prisons provide prisoners with food (sect. 21 Prison Act), i.e. three meals a day from the prison kitchen. The meals are brought by trusties to the prison cells where the inmates usually eat (there are no dining halls in prisons). The prison doctor can prescribe special diets which the prison kitchen will have to provide. The same goes for food prescribed by the dietary rules of certain religions. In larger prisons, there will be usually several kinds of food to choose from. As a minimum, there will be, in addition to the regular food, something called Muslim food. Usually, there will not be a special vegetarian diet; but vegetarians can ask to exchange the meat for something else. Inmates may buy, at their own expense, supplementary food from the merchant that visits the prison periodically. If the prisoner is housed in a living group there will be a kitchen where some basic cooking is possible.

Until the end of the Second World War smoking was prohibited in prisons. In the post-war era smoking was allowed and became a major pastime for prisoners (and cigarettes one of the major currencies in prison). With the recent advent of antismoker statutes, smoking in public buildings (and that includes prisons) has been outlawed. Prisoners are, however, allowed to smoke in their cells (which continues to create problems with cellmates).

According to section 20 Prison Act prisoners have to wear prison uniform. The prison director may permit prisoners as an exception to wear their own clothes if they will take care of cleaning, upkeep and periodic change. This is clearly in contrast to the principle of normalization. In practice some prisons have long made the exception the rule. Some of the federal states have legalized this practice in their new Youth Prison Acts. During prisons leaves prisoners are always allowed to wear their own clothes.

For personal hygiene the prison administration provides basic soap, toothpaste et cetera. Those prisoners who prefer something better will have to buy it from the prison merchant. The prison will see to it that a hairdresser will be available from time to time. In some prisons haircutting will be done by prisoners. There are no rules in the Prison Act as to showers. But in all prisons communal showers exist, which can be used by prisoners at least once or twice a week.
Electricity

Until the 1970’s electricity was usually switched off during night time, thereby depriving prisoners of the possibility to read or to write. Then electricity was acknowledged as a basic necessity and made available around the clock. This became the basis for radio and TV reception and for the use of other appliances (including CD/DVD-players and electronic games) by prisoners. In recent years, prison administrations have started to develop different schemes for curbing the indiscriminate use of electricity by prisoners. In many federal states only a certain number of electric appliances are now free of charge; for the rest a certain lump sum payment will be asked of the prisoner. It is controversial whether this is in conformity with the Prison Act’s norms about prisoners sharing the costs of imprisonment.

The new federal states/state Prison Acts do explicitly allow for charging prisoners to a reasonable extent for electricity costs caused by the use of electric appliances in their possession (Bayern, Hamburg) and for providing the cell with electricity for the use of electric appliances insofar as the costs go beyond what is necessary to secure a reasonable basic supply (Niedersachsen).

Contacts with the outside world

Outside contacts are generally regarded as important for keeping in touch with outside society and as a precondition for a successful reintegration. The Prison Act provides a range of such contacts from possibilities to leave the prison, to rights to be visited and to indirect contacts by mail or phone.

Prison leaves

The Prison Act specifies five different kinds of leaves:
– short-term occasional leave accompanied by a staff member;
– supervised work gangs outside the institution;
– unaccompanied short-term occasional leave;
– up to 21 days per year of overnight home leave; and
– daily work or educational furlough.

But these are only examples and the prison may grant other kinds of leave under the same conditions. These conditions are: no risk of absconding and no risk of new offenses.

In practice, the system of home leaves has turned out to be the single most important feature of the prison system since the 1960’s. The number of prison leaves has continually increased over the years, while the number of abuses
has decreased to negligible quantities. In the late 1990’s, however, this trend was reversed. In the midst of the media uproar about isolated cases of sexual crimes committed by ex-convicts, the practice of prison leaves has changed drastically without any change in the Prison Act. An important mechanism in this change has been the introduction of obligatory expert opinions before granting any leaves to prisoners. Within a few years, leaves were reduced in some states by more than 50%. Other states followed and continue to follow. The effect this will have on parole decisions is still to be seen.

Visits

On the basis section 24 Prison Act the inmate has a right to receive visitors for at least one hour per month. In practice, most prisons allow today more than one hour per month. The new laws for youth prisons have set the minimum to four hours per month. In addition, prisons are encouraged to allow more visits, if they are conducive for reintegration and/or necessary for personal, legal or business purposes.

As a rule, the visits take place in general visiting rooms supervised by prison staff. Supervision is limited to optical means, while the conversation may be overheard only if this is deemed necessary in specific cases (sect. 27 § 1 Prison Act). The use of glass partitions is not explicitly foreseen by the Prison Act, but employed by some prisons in specific cases (for oral supervision or to avoid the exchange of objects).

Visits by defense lawyers may not be supervised in any way. They usually take place in special visiting rooms. Lawyers have to identify themselves and pass a detection gate. Their briefcases may be searched, but without taking notice of the content of their files.

The prison director may prohibit visits from certain persons, if the visit could endanger the security or order of the institution or have a bad influence on the prisoner. The last reason is not applicable to relatives of the prisoner.

In a growing number of prisons facilities for long-stay visits exist. These are rooms, usually outside the inner prison compound, where visitors can stay overnight with the prisoner. These unsupervised visits are usually only granted to long-term visitors and for encounters with their spouses.

Letters and parcels

Prisoners have the right to send and receive, at their own expense (except in the case of indigent prisoners) an unlimited number of letters (sect. 28 Prison Act). The prison director may, however, interdict the correspondence with certain persons, if the correspondence with them could either put at risk the
safety or the order of the prison facility, or could have a detrimental effect on
the particular prisoner. In the second case, this does not apply to near family
members (including fiancés/fiancées).
Furthermore, the prison administration is authorized to monitor outgoing as
well as incoming letters (sect. 29 Prison Act). This does not apply to corre-
spendence with defense lawyers, nor does it apply to certain institutions
specified in the Prison Act, such as German and European Parliaments and
its members, European Court of Human Rights, European Committee for the
Prevention of Torture, the Data Protection Commissioners of the Federal
Government as well as those of the federal states. The monitoring does, how-
ever, apply to all other correspondence with courts or government institu-
tions. The administration may stop incoming or outgoing mail under certain
specified conditions, e.g. criminal or defamatory content; unnecessary use of
a foreign language (sect. 31 Prison Act). In the case of outgoing mail contain-
ing incorrect or misleading descriptions of the prison situation, the prison
administration may add an accompanying letter, if the prisoner insists on
sending it.
In practice, a great variety of approaches to monitoring of the mail can be
found. In some prisons all the mail is routinely opened and checked. In other
prisons only few prisoners are subjected to mail censorship, while the rest of
the mail goes unchecked. In most institutions incoming mail is opened in the
presence of the recipients but checked only for illicit enclosures.

Prisoners have the right to receive three times per year parcels with food-
stuff. Details can be specified by the prison administration. More parcels or
parcels with a different content are subject to prior permission from the
prison administration (sect. 33 Prison Act). All parcels will be opened in the
presence of the respective prisoner. The right to receive food parcels is, how-
ever, about to be abolished for reasons of security and expediency. The State
Prison Acts have explicitly abolished such parcels.
Some prison administration are using the distinction between letters and
parcels to stop people from sending photocopies or brochures as mail at-
tachments by claiming that this makes the letter a parcel requiring prior
permission. The courts have held, however, that such postal items remain let-
ters as long as they are part of an exchange of opinions or views.

Telephone, telegraph, fax, email

Telephonic media are a late-comer to communications in prison. They are
still far from enjoying the status they enjoy outside prison system. In 1977,
the Prison Act officially granted the prison authorities the discretion to allow
prisoners to make phone calls or to send cables. The rules for visits apply (by analogy) also for the supervision of phone calls (sect. 32 Prison Act).

It took some time to furnish prisons with pay telephones, even telephone cells. In recent years a number of prison administration have started to have prisoners contract directly with outside providers of phone services. Mobile phones are, however, still strictly forbidden in closed institutions for presumed reasons of security. At the same time, they have become the object of desire for most prisoners and are therefore frequently confiscated (and made the starting point for disciplinary actions).

The use of telegrams or faxes is much less frequent than that of phones, since they still necessitate the good services of a prison officer. From the point of view of the law, the rules for correspondence apply (by analogy) also to telegrams (and presumably to faxes).

With respect to email correspondence today the same situation prevails as with telephone calls some thirty years ago, when calls could be made only through the complaisance of occasional prison clerics or social workers. Email is still out of reach for prisoners. Not only is email not mentioned in the Prison Act, but the internet itself is still something quite unusual, i.e. limited to a few (higher) prison officials.

**Medical care of prisoners**

According to sections 56-66 Prison Act, the state (i.e. 16 Ministries of Justice) is responsible for providing adequate medical care to prisoners. Medical care must follow the guidelines of the National Health Insurance system and comply with the medical standards outside the prison. Therefore, substitution treatment within the prison system should follow the same regulations and standards that apply to substitution treatment under the National Health Insurance system outside prison. This is called the principle of equivalence.

*Comparing extra- and intramural services*

In 2003, there were 304,117 medical doctors in Germany. In relation to the total population this means a physician-patient-relationship of 1:271. In the same year, there was an average intramural physician-patient-relationship of 1:261 (the data differ somewhat for the federal states). This means that the doctor-patient-relationship is quantitatively not much different inside or outside the prison walls.
As a rule, the medical care of prisoners should be in the hands of full-time prison physicians (sect. 158 Prison Act). There are no exact statistical data available as to how many prison doctors are indeed civil servants, but it is well-known that in many prisons additional physicians are contracted from the outside. In addition to doctors, prisons employ an appreciable number of registered nurses. Since imprisoned patients do not have the free choice of their doctors, the relationship between patient and physician is somewhat coerced and uneasy. In general, inmates have tendency to mistrust doctors and meet them with reservation and prejudice.

Substitution treatment for intravenous drug users

An estimated 25% of all prisoners (including remand prisons) are intravenous drug users. This constitutes a major concern for prison medical care. Only six out of sixteen federal states in Germany provide substitution treatment in prisons. Admission criteria vary between these states and substitution treatment is not available in all the prisons of those states. Effectiveness and attraction of substitution treatment depends on the positive attitude of the treatment staff as well as on the entry threshold level. The prison system often has problems with both of these conditions. As far as politicians and the public are concerned, methadone maintenance programs carried expectations which were rather unrealistic. The large-scale distribution of substitute drugs – in addition to medical and social stabilisation – was supposed to eliminate drug subcultures and drug scenes in and outside prison. The outcome, however, fell short of such expectations.

Methadone maintenance is still approached in entirely different ways across the nation. It varies from state to state and even from prison to prison. It is time and labour intensive, particularly in the starting phase of treatment. Also, the medical staff has first to acquire the necessary maintenance know-how, which can sometimes be an arduous process. Furthermore, methadone maintenance remains costly throughout the program, especially when the number of methadone patients increases. Drug testing for the additional use of psychotropic substances is mandatory for all methadone patients. This also applies within the prisons. Due to a variety of manipulation techniques in urine testing, the usual testing procedures should be interpreted with great care. There is a consensus both outside and inside the prisons that, besides providing the substitute drug, supportive psychosocial measures are important and can contribute to achieving therapeutic objectives. Substitution treatment in prisons is often an integral component of a broader drug service concept and includes psycho-social sup-
port, provided by prison staff, alongside health or social workers. The goals of the treatment are diverse and can be grouped into the categories of medical, socio-rehabilitative and prison-code requirements.

*Mental disorders*

Detainees with mental disorders represent another problematic group in our correctional facilities. There are no representative studies about the prevalence of such disorders, but specialists are sure, that it is definitely higher than in the general population. International studies say that the prevalence data are between 5% and 37%. For an effective and reasonable support the correctional facilities are not prepared.

*Prison labour and leisure time*

Detainees are obliged to work or to spend the working hours for training or schooling (sect. 41 Prison Act). Those who refuse to work without good reasons can be subjected to disciplinary punishments. No participation in prison labour can mean no money to buy tobacco or other intramural goods, no money to rent a TV or pay for telephone cards or stamps. The prison authorities are responsible for the acquisition of labour. Because of the bad situation on the external labour market it is not easy to find outside companies to bring work to penitentiary establishments. Another reason consists in the fact of low qualification of a large number of prisoners. Some prisoners find work as trusties, a substantial number is unemployed. Nevertheless, Nordrhein-Westfalen published for 2007 a rate of 58.5% of intramural employment and profits of 44,9 million Euros, which were used to reduce the regular costs for the prisons. But in fact the rate of employment in the prisons differs very much and depends on the availability and needs of the business companies in the areas around the correctional facilities.

Prisoners’ wages amount to 10,58 Euros per day (in 2006). Prisoners who have worked for a continuous period of one year will get eighteen workdays of vacations (to be spent in prison or on home leave). For every two months of continuous work, prisoners can ask for an additional day off. They may however decide to forego these additional vacations, in which case they will be released so many days earlier (‘good time’). An alternative to badly paid prison labour is to work outside prison and earn regular wages including social security benefits on work furlough. But this is usually only possible in open prisons and remains therefore a minority op-
tion. Another possibility is to get permission for self-employment which is, however, even more minoritarian.

Money

Money earned by prisoner is kept by the administration and credited to individual accounts. A little less than half (3/7th) of the earned money can be spent by the prisoner to buy things offered by the prison’s accredited merchant. The rest is put aside as ‘bridge’ for the time immediately after release. The necessary amount of bridge money is determined by the administration. Once this amount has been reached, the remaining part of the wages (as well as payments made from the outside) can be disposed of by the prisoner. By the same token this part of the money can be impounded by creditors. The Federal Supreme Court has decided in 2003 that the normal limits of exemption from execution do not apply to prisoners.

As a rule, cash money is not allowed in prisons. Attempts to introduce small amounts of cash in connection with pay telephones were stopped with the advent of telephone cards. Therefore, cigarettes and instant coffee continue to be the preferred currency in prisons.

Leisure time

Section 67 Prison Act obliges the prison authorities to establish a variety of recreational activities. The prisoner has the right to take part in evening school, distance learning, continuing education, recreational group activities (usually arranged by external groups) group discussions and sport events. He also has the right to use a library. With a special chapter in the Prison Act, the legislator underlines that a reasonable program of recreational activities can be one of the most promising steps to reach the goal of social reintegration. It must be the target of the correctional facilities to support the prisoners in their efforts to learn what free or leisure time is and how to spend it. The prisoner does not have a legal claim to special offers, but the correctional facilities have to provide rooms and the necessary manpower. Special offers are needed for foreign prisoners from many different cultures, who make up some 30% of the prison population.

There is a tradition of sports programs for prisoners. These include not only intramural possibilities but also contact to clubs and sports associations outside. Joint sports events give the chance to learn social rules and to bridge over language and cultural borders especially in Youth Prisons. There are positive experiences to reach in particular young detainees with migrational background to stimulate their consciousness for their body and their health.
Unfortunately, lack of money and manpower often stands in the way of adequate area wide offers.
There are other well-established leisure-time activities in prisons. All the major prisons (as well as some of the minor ones) have their own prison journal which is produced by prisoners for their fellow-prisoners (as well as for interested outsiders). There are usually some art programs, creative writing groups, theatre workshops and the like. For the politically active, there is always the possibility to get themselves elected as representatives on an advisory board foreseen by the very Prison Act.
External groups of volunteers play an important role in offering human contact and a variety of thematic discussion groups. Private and public community services (drug counselling, legal advice, debt counselling et cetera) supplement the intramural social services. In some cities the prison libraries have become part of the system of public libraries, with the possibilities of interlibrary loan. Private organisations also organize the sponsorship of newspapers for detainees.
There is, however, a growing discrepancy between the needs and wants of individual prisoners and what the prison is prepared to offer in terms of leisure activities. Many prisoners spend their free time watching TV in their rooms. Video games are also high on demand, but some of the products are forbidden either for reasons of security or because of problematic content.

Other matters

Religion

In accordance with section 4 of the Constitution the Prison Act gives prisoners the right to practice their religion and to participate in religious services. There is no official registration of prisoners’ religious affiliations. Therefore, prisoners can contact representatives of religious groups of their choice. Section 55 Prison Act gives the same rights to adherents of non-religious world views.

Data protection

After a decision of the Federal Constitutional Court in 1984 announcing a right to informational self-determination, this has become maybe the most important religion. In 1998 new articles were included in the Prison Act regulating the collection, protection and potential sharing of the personal data of prisoners. Most important from the prisoners’ point of view is section 185
giving them the right to be informed about the contents of their files or even to personally inspect these files. The details are, however, still in dispute.

Another controversial article (sect. 182 Prison Act) makes it mandatory for prison psychologists and social workers to divulge information to the prison director, even if this information was received confidentially and such divulgence would normally constitute a breach of professional secrecy. Medical doctors and priests are exempted from this obligation.

**Disciplinary and special security measures**

In the German tradition, there is a strict separation of (preventive) special security measures and (repressive) disciplinary measures. But the measures taken are frequently quite similar.

*Special security measures*

Examples of special detention measures are:
- taking away of (potentially dangerous) objects;
- observation during the night;
- separation from other prisoners, especially solitary confinement;
- taking away or reducing the exercise in open air;
- placing the prisoner in an especially secure room (calming down cell); and
- hand-cuffing.

Special detention measures are imposed as a matter of expediency and they may be continued as long as necessary for the fulfilment of their goals with only proportionality and excess as limitations. After three months in solitary confinement, the prison administration has to inform the Ministry of Justice.

*Disciplinary measures*

Disciplinary measures may be taken after a culpable violation of duties. There is no catalogue of such duties. Examples of disciplinary measures are:
- restrictions on shopping;
- restrictions or withdrawing of reading material for up to two weeks;
- restrictions or prohibition of radio and TV access for up to three months;
- taking away of (leisure time) objects up to two weeks;
- separation from other prisoners up to four weeks (during leisure time); or
- arrest up to four weeks (in form of solitary confinement).
Taking away or reducing the exercise in open air as a disciplinary punishment used to be part of this catalogue but was deleted after repeated complaints by the Committee for the Prevention of Torture (CPT).

Handing out disciplinary measures requires a certain amount of procedural steps, due process criteria have to be followed and the punitive measures are limited by statute.

*Surrogates for disciplinary measures*

In practice, special detention measures are not seldom used instead of disciplinary measures (e.g. solitary confinement instead of arrest). This strips the respective prisoners of the safeguards connected with disciplinary measures. Even more widespread is the withholding of discretionary benefits for the purpose of disciplining prisoners. Not granting a home leave is perhaps the most effective instrument to show a disapproval of the prisoner’s behaviour. But it is not foreseen as a disciplinary punishment in the Prison Act. Some of the new Prison Acts of the federal states urge prison staff to use mediation and educational approaches before resorting to disciplinary sanctions. This will require a new type of staff training.

*Prisoners’ complaints and access to the courts*

The Prison Act provides several possibilities for the prisoners to voice grievances and address the courts. This system has survived the federalism reform, but it has its practical limitations.

*Internal complaint procedure*

Prisoners have to be offered an opportunity to approach the prison director with wishes, suggestions and complaints (sect. 108 § 1 Prison Act). This is, however, limited to matters pertaining to the particular prisoner. Periodic office hours have to be institutionalized. But there is a tendency among prison directors to delegate their responsibilities, which makes it increasingly difficult to get an appointment with the director.

*Supervisory authority*

Prisoners have the right to petition higher authority and to ask for redress of alleged grievances. In some federal states they have to complain to the supervisory authority before the can bring the matter before the courts. It is,
however, a widespread experience that the supervisory authority will not investigate such cases themselves but will merely ask the prison director for his opinion and make this the basis of their reply. Prisoners do have the right to talk to representatives of the supervisory authority, whenever they visit the respective prison. The rule that every prison should be visited at least twice a year has, however, been deleted.

*Prison visitors’ council*

The Prison Act (sects 162-165) envisages that every prison must have a visitors’ council (*Anstaltsbeirat*). Ideally it is composed of interested and committed citizens. They are supposed to help improve the prison’s running and the care of the prisoners and to meet regularly with the prison director. Council members are entitled to visit every prisoner in their prison cells. The conversation and the correspondence with members of the visitors’ council shall not be controlled or supervised by the prison authorities. In reality, prison visitors have very little influence on the day-to-day running of the prison. They are unsalaried voluntary workers, usually handpicked by the supervisory authority and not very well organized to do their job.

*Court access*

The Prison Act has established a two-tiered special system of court review for prisoners. Prisoners can bring all complaints about perceived violations of the Prison Act to a chamber (*Strafvollstreckungskammer*) of the local Superior Court (with the possibility of an appeal to the High Court of the respective region). It is the same chamber that also has jurisdiction for early release of prisoners and in this context has to interview the prisoners. The idea was to have specialized judges near the prison who would come regularly to the prison and thereby gain insights into the day-to-day working of the institution. Unfortunately, the complaints procedure is an entirely written one. It therefore depends very much on the (rare) abilities of individual prisoners to present their case in writing. Lawyers are not very interested in prison cases, since the average prisoner cannot reimburse them adequately. The courts can appoint state-paid pro bono counsels, but this rarely happens because it presupposes a likelihood of success.

While a great number of prisoners turn towards the courts, empirical research shows that the results are rather meagre. Furthermore, even in the case of success in the court system, recent experience demonstrates that not all court orders are dutifully implemented by the prison administrations. Absent the equivalent of an Anglo-Saxon contempt power, the courts can do
nothing to force the administration to comply with their decrees. Furthermore, the courts are limited to decide individual complaints. There is no such thing as a class-action or for prisoners.

**Ombuds-institutions**

All of this has led to a repeated call for Ombuds-institutions. But these calls went unheard until in 2006 in Northrhine-Westfalia a juvenile offender was tortured and killed by his cellmates. In order to stem the criticism of the media and an enraged public the Justice Minister of that state decided to write the institution of an ombudsman into the draft Youth Prison Law. She followed that up by appointing a retired judge to become the first Prison Ombudsman. It remains to be seen whether that new institution will be effective and set a new trend in monitoring prisons.

**National mechanism for the prevention of torture**

Germany has signed, in 2006, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Signatories are obliged to set up a national mechanism for the prevention of torture. This will necessitate a contract between the Federal and the federal states/state governments. Present plans envisage a small secretariat and four voluntary inspectors. These plans are criticized by NGOs as insufficient.

**Released prisoners: aftercare and supervision**

Prisons are working (with varying degree of success) to prepare prisoners for reintegration into society. Probation officers are working (with varying degrees of success) to help ex-offenders cope with life after release. In recent years, a gap between these two institutions has become obvious and there are attempts to close this gap by more intensive cooperation between the two types of agencies. At the same time, however, probation officers are directed to work closer with the police in order to prevent recidivism of persons released from prison.

**Pre-release preparations**

Ideally, release preparations have to start whenever a person enters the prison. But the law specifies such preparations only towards the end of a
prison sentence: in order to prepare their release, prisoners are to be counselled with a view to organize their personal, economic and social affairs, including directing them towards the institutions responsible for social welfare benefits. Prisoners are to be helped finding employment, housing and personal contacts for the time after release. In prison social workers are mainly responsible for these tasks. Ideally, they should be able to send prisoners out of prison to make the necessary contacts.

In order to prepare the release the prison regime shall be relaxed (sect. 15 Prison Act). Prisoners can be transferred to an open institution if this will serve the purpose, and during the last three months before release, they can be given extra home leaves up to one week. Maybe most importantly, they should be put on furlough, working outside the prison and getting extra home leaves of up to six days per month. This is the ideal, but it happens all too seldom, given that the number of home leaves, work furloughs and transfers to open prisons are decreasing.

Increasingly, the need is seen to build up a network of aftercare services for detainees released from prison. This would imply linking intramural and extramural services that traditionally belong to different jurisdictions and are not used to cooperate. What is already normal for the psychiatric clinics and clinics for drug and alcohol rehabilitation does not exist to such extent for the regular prisons. Only in some special institutions for social therapy exists the necessary network for aftercare. On the whole, it is mainly private initiatives that have built up ambulatories which offer assistance to ex-offenders, especially to those that have spent time in prison for sexual and/or violent crimes. Many questions are being raised as to who can perform the necessary services and who is responsible for the costs.

*Probation services*

The federal states are not only responsible for the justice and prison administrations, but also for running the probation services. Probation is not a sanction in its own right. Probation officers are working with offenders that have received a conditional prison sentence (which they would have to serve in case of probation violations or new offenses). But they are also working with offenders that have been released form prison before the end of their sentence.

Probation officers vary considerably from state to state with respect to their methods and the way they are organised: from predominantly hierarchical models with probation officers as state functionaries to privately organised probation services run by the Austrian “Neustart eGmbH” in a pilot project
in Baden-Württemberg. This project has opened a new chapter of partial privatisation in a field that used to be considered a state function. Politicians say that the main intention of any privatisation should always be to keep a high quality management, only secondarily it also should cut costs. To make privatisation effective new guidelines are being developed new volunteers recruited, who work primarily on a honorary basis and less for money. This pilot project is supposed to lead to extensive reforms and in case of success it shall allow the probation officers to focus their energies on their main tasks. The results of this experiments are still open, but the politicians hope that a probation officer will have in the future more time for each of his up to 100 probationers. There is also hope that the project will show the way to diminish the costs for this task.

But, the terms and condition keep difficult no matter the private or the state probationer has to work with a client who has a sentence on probation or he is just released from prison: the socialisation carried out, including school-related and professional education, the physical mental state, the economic, work-related and resident-related conditions as well as the relationships (partnerships) and the delinquency, including their monitoring and the social-pedagogic counselling. We have further on a high rate of unemployment, housing shortage and a great number of detainees with drug or alcohol problems.

Post-release control

The fundamental changes in criminal policy are beginning to influence the work of the probation services. In 2007, the Federal legislator revised section 68 Penal Code and strengthened post-prison supervision, a kind of intensive probation. It turns out that already before these changes 15,000 up to 20,000 clients were under this kind of control. Every tenth probationer in North-Rhine-Westfalia and every fourth probationer in Bayern is a client of post-prison supervision. These figures are the result of longer sentences, more long-stay detainees and their release at the very end of their sentence. These clients are supposed to get more intensive support and supervision, especially those that did not get receive any or not enough social-therapeutic interventions during the time of their stay in prison.

But the politicians have already found new duties and responsibilities for the probation officers with respects to the clients who need aftercare. New programs are fostering a stronger cooperation between probation and police. These new instruments are data files which contain all currently released violent and sex offenders, classified by risk and the necessary arrangements to prevent recidivism. The probation officers have not only to assist and look af-
ter the offenders but are also obliged to give detailed information and to co-operate with the police to prevent new crimes of their clients in case of personal crises and non-compliance. It is obvious that this new role for the probation officers needs intensive discussions.