

Where Is the German Penal System Heading? Plea for a broad public discussion and the introduction of a Federal Report on the German Penal System

The security of the penal system has become a major focus of public interest in recent months – and in fact not just in North Rhine-Westphalia. Since the introduction of the German Prison Act 25 years ago the political climate among the public towards the prison system has clearly become more sceptical about the possibilities of reintegrating criminal offenders into society.

In this situation pastoral care charities for persons at risk have been pleading for a broad public discussion on the future of the German penal system and for the introduction of a Federal Report on the system. We feel that the following developments should be covered:

The current situation: over-crowded prisons¹

North Rhine-Westphalia currently has 37 penal institutions, with 12 associated branches and 23 subsidiaries, offering places for 18,248 offenders:

Places at confinement facilities	14,160
Places at open prisons	4,088
Of which: places for women	902
Total number of places for prisoners	18,248
Places under reconstruction	Approx. 500-600

At the moment, about 18,400 persons are in prison. Even if we include the places that are currently under construction, this means that **capacity utilization is about 105%**.

Comparing the December figures on the use of prison places in all German states showed that during the six years leading up to December 2000 there was an increase by more than one third. This increase differed significantly from one state to another. (Saxony-Anhalt +144%, Saxony +118%, Brandenburg +96%, Mecklenburg-Western Pomerania +82%, Hesse +63%, Berlin +45%, Lower Saxony +36%, Schleswig-Holstein +38%, Bavaria +21%, Hamburg +15%, Baden-Württemberg and North Rhine-Westphalia +14% each). There was a slight downturn in December 2001.²

Attempting to find **clusters of causes** for the rise in the prison population, Heinz Cornel concludes that the most noticeable rise has been recorded among youthful offenders in penitentiaries in the eastern German states. However, the proportion of imprisonments in default of fine payments has been going down (from 7% to about 6% in the last two years). There has also been a reduction in the number of remand prisoners (from 21,784 in December 1993 to 17,523 in December 2000 and with a further drop in the subsequent year). “In all,” says Cornel, “there has been some slight relaxation in overcrowding, a development in the penal system of which we hardly know the reasons at this stage.”³

¹ Statement made by the North Rhine-Westphalian Minister of Justice, Jochen Dieckmann, at a press breakfast on the topic “The Penal System in North Rhine-Westphalia – Current Situation and Projects”, ministerial press release of July 23, 2002. (Unless otherwise indicated, all details about North Rhine-Westphalia are quoted from this press release.)

² Heinz Cornel: “Neuere Entwicklungen hinsichtlich der Anzahl der Inhaftierten in Deutschland” (Recent developments in the number of prisoners in Germany), in: *Neue Kriminalpolitik*, year 14, issue 2, June 2002, pp. 42-43

³ Ibid. p. 43

Overcrowding is above all a **problem of confinement facilities**. The Ministry of Justice of the state of Baden-Württemberg therefore concludes on its website: “Despite overcrowding at confinement facilities, we have so far not succeeded in increasing the capacity utilization of open prisons. This is largely because, on the one hand, a large number of prisoners have significant addiction problems (alcohol and narcotics) or are potentially violent, so that they are unsuited for the low-security accommodation offered at open prisons. A further reason is that about 35 per cent of all prisoners are foreigners, and in order to keep open various options in relation to foreigners (such as expatriation and deportation), there are only limited possibilities to detain such offenders in open facilities and to release restrictions.”⁴

Klaus Lange-Lehngut, head of Tegel Prison in Berlin, Germany’s biggest penal institution with a population of 1,700, comments on the **consequences of overcrowding**: “The more prisoners we cram into a small amount of space, the more easily they form subcriminal environments among them.”⁵

The prison population: the problems are now different

The problems characterizing the situations of prisoners have changed: the **proportion of foreign nationals** has increased considerably, reaching an annual total of 31% in North Rhine-Westphalia, with people from about 14 different nations.

This growing share of foreigners, according to the Bavarian Ministry of Justice, must be seen against the background of globalization and the opening of the borders of our Eastern neighbours: “The important reasons for this development are the marked increase in the number of foreign prisoners – both those on remand and regular prisoners – since the opening of the borders of neighbouring Eastern states, increasing globalization of serious crime, particularly gangs and drug offences as well as an increase in the number of prisoners awaiting deportation. 50.5% of Bavaria’s remand prisoners are currently foreigners, and the total share of foreigners in relation to the total Bavarian prison population is about 34%. On March 31, 2001, Bavaria had 3,994 non-German prisoners from 110 different countries.”⁶

The **proportion of drug addicts among prisoners** has settled down at a high level of about 35%. In addition, there are ethnic German prisoners who were born in the former Soviet Union – so-called *Aussiedler* (“emigrants”): these are often impossible to reach in prison despite all endeavours to integrate them.

Moreover, the average duration of prison terms and thus the **seriousness** of the underlying **crimes** has also increased: In North Rhine-Westphalia in 1986 about 36% of all male prisoners had received sentences for sexual offences, homicides, robberies, blackmail and drug dealing. By 2001, their proportion had risen to 45%.

In North Rhine-Westphalia about 10,500 out of 16,000 adult prisoners and about 1,800 out of 2,100 young prisoners enter penitentiaries **without job qualifications**.

⁴ <http://www.jum.baden-wuerttemberg.de/> of July 27, 2002

⁵ Quoted in the German magazine *Der Spiegel*, issue 16 of April 15, 2002

⁶ http://www2.justiz.bayern.de/_justizvollzug/infos.htm of July 27, 2002

Escaping and absconding prisoners

According to nationwide regulations, an **escape** is defined as a prisoner escaping from prison or being helped to do so by a third party. **Absconding**, on the other hand, means that a prisoner fails to return from leave, particularly from a holiday. The following picture emerges for North Rhine-Westphalia with regard to escaping or absconding prisoners:

Escapes in 1999	10
Escapes in 2001	5
Escapes in 2002 (until July 23, 2002)	1

There has also been a downturn in the number of escape from open prisons:

Escapes in 1999	785 (4.7%)
Escapes in 2000	740 (4.4%)
Escapes in 2001	617 (4.1%)

And there been a slight downturn in absconding⁷:

Absconding prisoners in 1999	519 (0.5%)
Absconding prisoners in 2000	416 (0.45%)
Absconding prisoners in 2001	375 (0.3%)

Some of the media focus on spectacular cases of escapes and abscondments. Whereas it is of course right to keep a close eye on people while they are in prison, it would be wrong if prisons were unnecessarily restricted in their scope, for instance, when preparing prisoners for release or in allowing contact with next of kin.

Investment in construction programmes and security technology

Detention capacities in **North Rhine-Westphalia** are currently being expanded: in 1994/95 a new prison was built in Aachen, called Aachen-Neu, costing EUR 86.9m, and the construction of a new prison in Gelsenkirchen in 1998 cost EUR 95.9m. Also, the State Diet in Düsseldorf set up a special scheme for the reduction of overcrowding in prisons in 1999. The investment of EUR 38.6m is to create an additional 600 places by 2005/6. Extensions have been or are being added to existing prisons in Moers, Geldern, Rheinbach, Remscheid and Schwerte.

Bavaria released about EUR 40m under its 2001 law budget for building activities, of which EUR 18m came from privatization revenue.⁸ **Lower Saxony** is planning to create a total of 526 new prison places at Sehnde by 2004, costing EUR 103.5m, and 318 places at Rosdorf for EUR 61.6m.⁹

The **German Federal Constitutional Court** gave two rulings early this year¹⁰, in which it expressed constitutional concern about the practice of placing two prisoners in single cells, thus exerting further pressure on the need for more prison places.

⁷ The percentages refer to total leaves: 1999: 98,126 leaves, 2000: 102,598 leaves, 2001: 108,543 leaves

⁸ http://www2.justiz.bayern.de/_justizvollzug/infos.htm of July 27, 2002

⁹ http://www.niedersachsen.de/MJ_9-4-neubauten.htm of July 27, 2002

¹⁰ 2 BVR 553/01 of February 27, 2002 and 2 BVR 261/01 of March 13, 2002

According to Prof. Frieder Dünkel, Ph.D., criminologist at Greifswald University, **prison construction programmes** are the “worst and most expensive way” to solve the problem of overcrowding.¹¹ The most efficient way to reduce the number of prisoners should be **the avoidance of crime and of repeated offences**. This is borne out by the enormous significance of **crime prevention programmes**. It is a challenge which concerns all social institutions, as the endeavour to prevent subsequent offences must not stop as soon as a person is released from prison.

Another area of investment is the use of new **security technology**: concrete bars are being replaced by straight manganese steel, a mobile radio monitoring system is currently being tested, electronic security fences and state-of-the-art security stations are being set up, and tests are conducted on a video sensor for the monitoring of the areas around façades. Considerable protests have been expressed against close-meshed bars on cell windows (“two-dimensional lattice windows”) in conjunction with monitoring. One argument that was put forward for the use of state-of-the-art security technology is that the tight budget situation makes it impossible to increase the current staffing levels.¹²

Treatment-based detention to be abandoned?

Speaking at a press interview on July 23, 2002, the North Rhine-Westphalian Minister of Justice, Jochen Dieckmann, underlined the concept of treatment-based detention¹³: “The foremost purpose of imprisonment is the reintegration of an offender into society. This can only be achieved if the penal system gives prisoners a sphere where they can practise social behaviour in a way that encourages them to become independent, responsible and capable of managing their own lives. Open detention is particularly suitable for this purpose, as it follows the constitutional principle: as much imprisonment as necessary, and as much normal life as possible. The difficult job is to meet the needs of the general public for security while at the same time achieving the penal purpose of a penitentiary.”

However, there are also other positions, for instance the one held by the Association of German Prison Officers (BSBD), who expressed their views at a consultation given by the Federal German Ministry of Justice on March 13, 2002¹⁴:

“Developments both in society and in criminal law have not left the prison population untouched over the last few years. Prisoners today are therefore difficult to compare with those 25 years ago [*editorial note: the year when the German Penal System Code was passed*]. The number of dangerous prisoners who are prepared to use violence and who do not respond to treatment has increased steadily since then. Nowadays only a relatively small number of prisoners are open to treatment – if any is on offer at all. This means that the realities of prison have changed radically since the Act came into force. In view of the continuous overcrowding of prisons and the drop – or at best stagnation – in the number of prison officers, the BSBD believes it is absolutely essential that the increasingly scarce resources should largely be focused on prisoners who are capable and willing to undergo treatment. With all other prisoners, the emphasis should be on safe custody under humane conditions (with distinctions being made within the system). (...) However, this would require a fundamental amendment of some essential regulations in the penal system. In

¹¹ Quoted in *Der Spiegel*, issue 16 of April 15, 2002

¹² North Rhine-Westphalian Ministry of Justice: *Rechts- und Justizpolitik in der 13. Legislaturperiode* (Legal and Law Enforcement Policies in the 13th Parliamentary Period), December 2000, p. 16

¹³ Press Breakfast on the topic of “The Penal System in North Rhine-Westphalia – The Current Situation and Projects”, press release of the North Rhine-Westphalian Ministry of Justice of July 23, 2002

¹⁴ *Der Vollzugsdienst* (The Penal Service), No. 3, May 2002, p. 1

particular, it would concern the underlying principles of the system, regulations on the relaxation of prison conditions and on open detention, accommodation, contact with the outside world and aspects of security and order.”

Challenges to society

It ought to become obvious in the public debate that, on average, today’s prisoners are people who have committed more serious crimes and have greater social problems than in the past, but that if relaxations are implemented to their imprisonment in a responsible manner, these prisoners do not actually pose any greater **security risk**.

When dealing with **groups of prisoners who are described as special problem cases** – drug addicts, foreign nationals, Germans from the former Soviet Union and repeated offenders – it is important to find new ways that will involve specific social groups, such as voluntary helpers and institutions assisting persons at risk. Imprisonment must not become merely a matter of “detaining” them to keep them away from society. Discussion groups that involve the active participation of Germans from the former Soviet Union have a special appeal to offenders from this social group.

The **transition from imprisonment to release** must be put more clearly at the focus of attention: How can we improve the chances of social integration (particularly for prisoners described as problematic, i.e. drug addicts, Germans from the former Soviet Union, etc.)? Another reason why integration should be emphasized is that society should be concerned with the avoidance of reoffending and not just with safe custody during imprisonment. At the same time, it should be expressed openly that the penal system and professional associations and institutions are incapable of solving the problem on their own. When integrating ex-prisoners into society it is essential that **society should cooperate**.

A “Federal Report on the German Penal System” – a proposal to promote a broad discussion in society on the future of the penal system

Many problems of the penal system are the same or similar in the various federal states, with some of the differences due to the “north-south” and “east-west” gaps. Being responsible for this area of politics, each state government has a different way of accepting the challenge, operating with different political majorities.

As the general public is becoming more and more interested in questions of internal security and as there is less and less understanding for a penal system geared towards resocialization, a **“Federal Report on the German Penal System”** would make it possible to open up a broad discussion in society on such issues (the aim).

Such a report could also deal with a number of **topical issues**, of which sometimes the one and sometimes the other would be at the focus of attention: organization of labour administration, development of alternatives to the current penal procedure, development of construction blueprints, preparation of prisoners for their release, voluntary work, prison overcrowding, the share of foreign nationals, the development of open facilities, etc.

The production and discussion of the report may also **involve various social institutions**, such as welfare associations, academic institutions, victim support organizations and churches. Christians would want to contribute answers concerning our conception of man: human beings are loved by

God on account of their humanity and are capable of change, regardless of their achievements or failures.¹⁵ We must never give up on anyone.

Moreover, such a report must not neglect the **perspective of rehabilitation**, while at the same time asking how one might integrate ex-prisoners. The aim must be promote a discussion in society on the mutual interaction between “security” and “reform”. Unless we have an open discussion on the penal system and on rehabilitation assistance, there is a danger that voices will dominate demanding measures that are exclusively geared towards the external security of prisons.

A penal system report would also stimulate the **further development of voluntary work** in the system. Voluntary activities of ordinary people is an important bridge between prisons and society.

Hückeswagen, August 2002

¹⁵ The Bible also questions to what extent an ‘offender’ differs from a ‘normal citizen’. See, for instance, 1 Timothy 1:15