Preventive Detention as a Driving Force for Prison Reform in Germany?

Budapest, 5 September 2013
Prison Law in Germany

- Stable legal situation for 40 years: Federal Prison Act
- Since 2006:
  - Range of new state laws
  - Changes, changes, changes
The Case of Preventive Detention

- National law: not a punishment, but a measure of correction and security
- But: enforced in prison after a prison sentence like imprisonment
- ECtHR (2009): penalty in the sense of art. 7 ECHR
- German criminal policy: retain status as measure
- Federal Constitutional Court (2011): How to follow the ECtHR and at the same time contradict them
Seven Requirements of Distance

Federal Constitutional Court (2011):
1. Ultima ratio principle
2. Individualisation and intensification
3. Motivation
4. Separation
5. Minimisation
6. Legal protection and support
7. Effective (legal) control of necessity

⇒ To be implemented in the law until 31 May 2013
Political Action

- Federal law: New description of preventive detention as a therapeutic measure in a secure environment
- State law: execution of preventive detention
- Federal/state working group:
  - Essentials for federal law
  - Joint draft for the execution of preventive detention
Amendments to the Criminal Code

- Describe an institution that focuses on
  - Offending behaviour treatment with a systematic approach
  - Separation from ‘normal’ imprisonment in accommodation and regime
  - Prison leaves
- Establish focus on offending behaviour treatment for prisoners facing preventive detention
- Possibility to ‘punish’ institutions for failure to deliver by releasing prisoners
State Laws on Preventive Detention I

Right to offending behaviour treatment

- Despite ‘principle of resocialisation’ new in German prison law
- Extended to prisoners facing preventive detention
- Includes development and evaluation of treatment

⇒ Target group too small
⇒ Extension to ‘normal’ prisoners necessary
State Laws on Preventive Detention II

• Considerable extension of minimum time for visits
  ⇒ 10 h per month

• Mention long unsupervised visits
  ⇒ Will absorb staff resources
  ⇒ But: reasons apply for all prisoners, esp. long-termers
  ⇒ Outlook: prisoners to claim equal treatment before courts
State Laws on Preventive Detention III

• Entitlement to regular prison leaves
• At least four short supervised leaves per year
⇒ Same situation as with visits
⇒ Prisoners to claim equal treatment before courts
State Laws on Preventive Detention IV

• Recognise the importance of preparing food individually

• Practice: communal kitchen on many wings for additional cooking and baking

⇒ Extension to ‘normal’ prisoners possible in newer prisons
State Laws on Preventive Detention V

- Raise remuneration for work from 11.60 € to 20.70 € per day
- Detainees do the same work as prisoners
- Low level of remuneration barely constitutional
  ⟹ Likely to be extended to prisoners
  ⟹ But: need to go to court
Conclusion

- Potential for change: yes
- But: no direct influence on prison legislation
  ⇒ Indirect influence via prisoners‘ lawsuits
  ⇒ Very slow process