

The Criminal Justice System in Germany – an overview

In the last years the penal system in Germany has been affected by two occurrences. The first one was the shift of legislative power from the Federal State to the Bundesländer.

Until 2006 the legislation in substantive criminal law (German Criminal Code, German Code of Criminal Procedure) and the Penal System Act ruling the enforcement of penalty, was a matter of the Federal State.

In the wake of the federalism reform (2001 – 2006) the Länder demanded a new division of competence with the Federal State to strengthen their power. Besides new provisions concerning the financial equalisation scheme the Länder had gotten the concurrent legislative powers for some legal issues. Among other competences they are now responsible for the penal system. That means they are allowed to enact own Penal System Laws; so long as they don't the present (Federal) Penal System Act continues in force (see art. 74, 125a German Basic Law: www.gesetze-im-internet.de/englisch_gg/index.html).

The second influence resulted from the judicial system. A verdict taken by the Federal Constitutional Court in May 2006 put pressure on the Länder by imposing the legislators to enact new Youth Penal Laws. Until now an autonomous statutory basis for the enforcement of youth penalty which would do justice to the conditions of confinement had been missing. Since years this discontent situation has been criticized

Up to now the enforcement of youth penalty based on provisions of the Youth Courts Law (YCL) and the (Federal) Penal Code as well as on some administrative rules. The YCL determines the particular consequences of criminal offence by juvenile offenders. It shall apply if a youth (14 – 18 years) or young adult (18 – 21 years) under certain conditions engages in misconduct punishable under the provisions of general law (section 1 YCL: www.gesetze-im-internet.de/englisch_jgg/index.html). The provisions deal with youth misconduct and its consequences as well as the substantive legal consequences of youth penalty (supervisory and disciplinary measures, youth detention and youth penalty), constitution and procedure of youth courts and others. Apart from a general provision concerning purpose of executing youth penalties the YCL contains no further details about the prison regime.

The above mentioned verdict set legislation activities in motion. It encompasses not only Youth Penal System Acts (YPSA) but also the transfer of (Federal) Penal System Act and new provisions about detention while awaiting trial.

The new YPSA were an urgent matter. Seven Länder presented their own versions, nine a jointly outline; in January 2008 the YPSA entered into force. They are not the result of a "competition of poorness" as critics feared (see: call for minimum standards by four associations: www.dbh-online.de/service/JStVollzG_Mindeststand_DVJJ-DBH-ADB-BAG.pdf). Offender institutions are encouraged taking part on projects to gather experiences with alternative form of enforcement; work, vocational training and education programmes have gotten great importance. Anyhow education is regarded as the principal instrument for resocialisation and for preventing recidivism. To continue prisoners' relationship outside the walls the chance of non-confinement should be reinforced after a period of restriction. However just in this question the Länder act differently: Hesse's policy appears rather restricted (less than 10 percent non-confinement) whereas Rhineland-Palatinate and Saarland represent a less rigid policy (about 20 percent non-confinement). To realize the legal responsibilities young offenders' institution are encouraged to co-operate with public and private institutions (see: Forum Strafvollzug 56 (2007), no. 2).

Regardless the differences between the Laenders' policy and the difference between ambitious aims and reality the YPSA represent a solid basis for modern treatment and cooperation in prison. Anyway the challenges keep on a high level.

Prison Population in Germany

In Germany 69385 prisoners (100%) have been registered, among them 5,4 % women; 12,7 % are in non-confinement; 81,7 % are sentenced to imprisonment, incapacitation or youth penalty (nov. 2010)

In Hesse there are 5180 prisoners (100 %), 6,5 % are women, 7,4 % are in non-confinement. 79,7 % are sentenced to imprisonment, incapacitation or youth penalty (nov. 2010).

The most committed crimes are: theft and unlawful appropriation, offences against the person, robbery and blackmail, attacking a driver, fraud and embezzlement, drug delicts.

Transition Management

According to the Laenders' responsibility for penal system each Land has its own release planning and transition management (TM). The latter concerns different models regarding objectives and tasks, personal and financial resources, duration etc. (see: "Marketoriented Integration of Training and Employment for Prisoners and Releasees" in North Rhine-Westphalia, www.mabis-net.de; "Social Competence for the Re-insertion of Prisoners" in Saarland, www.jva-sb.saarland.de/10714_10868.htm)

The TM for adult prisoners is traditionally performed by charities affiliated to the protestant or catholic church. Their activities are restricted to a relatively short period after release, usually don't offer an integrated after care (concentration on accommodation, debt advisory service and support with social subsidies offices). It will be one the main tasks to consolidate TM for adult releasees.

The situation in the Laender is different: during the last four/five years public funded projects had been charged to perform innovative models. Traditionally the prison regime set the focus on differentiated treatment programmes. The social service's capacity was absorbed by fulfilling personal development plans to the disadvantage of release planning and after care. Since a few years the attention is drawn to the time after imprisonment (Matt, Eduard: Übergangsmanagement. Zur Konzeption einer systematischen Wiedereingliederungsstrategie von (Ex-)Strafgefangenen und Straffälligen, in: Neue Kriminalpolitik 1/2010, pp.34).

The high rate of recidivism of young (male) offenders (about 70 %) was an obvious indication for politics and prison administration to consider about remedies for better social integration. In the following we outline a project in Hesse and try to define some elements of good-practice.

Transition Management in Hesse

It may be observed that prisoners who often arrive in a fairly desolate state (neglect of themselves, addictions, etc.) make considerable progress both in physical and psychological terms thanks to the rigidly structured daily routines. However, the progress made is at serious risk, if society cannot offer comparable structures after their release from prison

(release shock). Transition managers help avoid this very risk through timely and sufficiently preparing the offenders for the reality outside.

In March 2005 the *Labour Market Integration for Young Releasees* (ArJuS) project run by the Vocational Advanced Training Organisation of the Federation of German Trade Unions (bfw) was launched in the Ministry of Justice/Hesse.

Bfw is a charity company associated to the Federal Trade Union founded 1953. It is one of the leading training provider with 25 offices and about 300 educational establishments. It offers upgrading training for employees and career planning, skill development for work seeking persons, managerial knowledge for companies and preparatory courses for disadvantaged people. ArJus is its first project in the penal system.

<http://www.bfw.de/Startseite.4.0.html>

Three young offenders' institutions (two for male, one for female offenders) are involved in the project, they are responsible for all young prisoners all over Hesse; the duration on average is between 12 – 14 months. The three facilities employ one professional transition manager each. So far, the ArJuS project focussed on the following areas:

- First of all, the transition managers provide support during imprisonment to complement and enhance conventional release preparations. Early on, they help plan vocational careers and develop made-to-measure transition plans.
- The main focus, however, is on offering support after the release from prison. The ArJuS project remains a point of contact for the releasees for about six months. If need be, another transition manager who is based closer to where the releasees live may take over.
- Integration efforts may be successful if there is an external network of supporting organisations. Contacts to the respective working groups, 'opt-out' municipalities, governmental labour agencies, interplant training centres, providers of (advanced) vocational training, co-operations with Chambers and probation service centres proved to be particularly valuable.
- Another focus is accumulating and passing on specific knowledge on the frequently changing regulatory framework and areas of responsibility and their direct impact on the day-to-day work with recently released persons (Klein, Lutz/ Weillbacher; Lutwin: Zielgruppenorientiertes Übergangsmangement im hessischen Justizvollzug, in: Forum Strafvollzug 58 (2009), H. 2, S. 67-71).

Mentoring

The need for individual after care all over Hesse exceeds the capacity of the transition managers, therefore ArJus implemented a mentoring programme on a honorary basis. This programme is an outstanding feature of youth offender TM. 2005 a first group was prepared for their job during a series of workshops. One result of the workshops was e.g. a flow chart detailing how to integrate the mentors into the youth prisons. Organisationally, the mentoring project is part of the Verein Holzstraße e.V. Workshops are held every six months to give new mentors the opportunity to familiarise themselves with their future jobs.

The mentors main focus is to accompany the re-entry into the education system and/or a vocational training. At the time about 30 mentors are involved. In some cases the support runs over a period of two or three years.

The Foerderverein founded 2004, is registred as a charity in Wiesbaden. Actually it has 18 members. The objective is to promote and organize education offers to male juvenile prisoners in the prison Wiesbaden. Since 2005 the Foerderverein is partner of the ArJuS-project. It is responsible for organizing workshops for the mentors.

From 2007-2010 it carried out a project “Theatre in Prison – Detainees against Right Wing Extremism”. The Foerderverein is member of a network of supporting organizations in education, labour market and social affairs due to the transition management concept.

www.foerderverein-jva-holzstrasse.de

Results: Some figures demonstrate ArJuS’ efforts.

ArJuS: selected results from 2005 – 2009 in three young offenders’ institutions/Hesse (because of change in project design 2010 the result was not reported to the statistic)

Activities	Number of clients
assignment of prisoners to ArJuS by social services	847
Release planning and after care: single case consultancy	575
Releasees with continuos after care	100
Releasees accompanied by mentors	44
registered cases of assignment to jobs, vocational training, preparatory classes	185

The above mentioned TM project finished 2010; this is usual for a project. At this time the Ministry changed the TM concept. For the purpose to realize the new Youth Penal System Act/Hesse some social workers had been charged with TM. This implies a shift from an external organisation to an internal work base. Whereas ArJus both had a certain distance to prison structures and a relatively autonomy regarding networking, the new concept of TM has to be accepted by the social services. At the moment there is no assessment of the TM’s effectiveness. Some doubts are justified about transferring tested procedures and integrated objectives to an internal TM-model.

Elements of good practice

There are some elements which can be identified as good praxis. We mention the following points with regard to our experience with ArJuS:

- Acceptance of TM as a substantive task of the prison system (this point seems not always as clear as it should be)
- Defining the different roles of prison staff (i.e. social workers) and transition managers
- Defining a detailed procedure to communicate the clients’ needs (flow chart and check lists)
- Agreement about the coverage and intensity of TM-activities
- Continuing education and follow up-workshops for stakeholders (social workers, mentors, managers;) with internal/externals experts (important for reflecting experiences, communication with other professionals, strategy planning etc)
- Adequate resources for consultancy, release planning, out-door accompany of clients, conflict solving etc. networking (this point becomes crucially if TM is a part-time job for

social workers)

- Mentoring as an instrument of long-term accompany (based on a trustful mentor-client-relationship; the duration of mentoring can be prolonged according to the needs)