

# PRISONS IN ENGLAND AND GERMANY

a comparative  
study of the  
two systems

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## Introduction

'We strive to be the best prison service in the world - let's see whether we can learn anything from Germany' - the Head of Training said to me at Newbold Revel Prison Service College at the beginning of 1994. This comment was to set the scene for a challenging week in April 1994, when 14 German prison Governors and Secretaries of State of the Ministry of Justice from the Northern Federal State of Lower Saxony (Niedersachsen) visited some English prisons to learn about the officers' and governors' training at Newbold Revel.

I was to act as interpreter and together with the staff at Newbold Revel organiser of the party's stay and visit to four prisons; Holloway women's prison, Long Lartin, Glen Parva, Grendon and the newly privatised local prison Blakenhurst. From an interpreter's point of view, this was not an easy task, since one cannot just simply 'translate' word for word, but I had to know the two sometimes quite different criminal justice and prison systems in order to summarise and paraphrase long speeches and explanations which were taking part throughout the week of the German officials' stay.

## Prejudices on both sides

The German delegation arrived with a number of preconceptions about the English prisons system. Firstly, I had to explain that the system was not a 'British' one, but that my explanation of the prison and criminal justice system had to be confined to 'England and Wales'.

Secondly, the Germans were expecting to find the majority of English prisons in the Victorian condition that John Howard had written about, literature with

which most of the German Governors were familiar. They expected to find 'slopping out' and inhumane conditions. What they discovered were four modern or newly refurbished institutions. Not that the German conditions are 'hotel-like'.

Over the past two years as part of my prison research, I have visited a number of prisons in both East and West Germany. Some major differences exist for remand prisoners in both systems.

Third and lastly, the biggest prejudice on behalf of the German officials lay in the training of prison officers and the educational background of the governor. Most German governors are lawyers and many have been state prosecutors (Staatsanwalt) in their previous work. Upon entering each English prison the German delegation took great trouble in finding out what the 'educational' background of each governor and indeed each prison officer was. They were in for some surprises.

The German penal system is aware of the shortcomings of dealing with remand prisoners correctly. There has been an attempt in Germany since the early 1950s to formulate a special prison code for remand prisoners (Untersuchungshaftgesetz), the latest draft was published in 1982, but the German Ministry of Justice is not, as yet, prepared to change the rules.

Furthermore, one might suspect that German lawyers wish to draw out the legal proceedings, since their client is 'only' experiencing the deprivation of liberty, yet he has the civil rights equal to any other citizen. I expected to find German remand prisoners' accommodation more 'comfortable' than the ones I have seen in England and Wales. I expected to find the German institutions giving their remands more rights to privacy, association, assembly, the right to consult a legal expert and

possibly conjugal rights. This was, sadly, not the case in all of the German institutions visited whether in the old West or new East German Lander.

### **The Prison Visits**

Entering prison is a trying process especially with a delegation of 14 German officials. To be able to make this visit possible involved endless communications to the German Ministry of Justice which is the governing body not as in England, where it is the Prison Service Agency. Since the German prison service is as it is in the USA - based on the Federal State idea, obtaining access to prisons in Germany is easier and the governors have greater autonomy with regards to decision making, once the relevant Ministry of Justice of each State has approved the project. This is not the case with regards to the English system. The idea of an official visit to English prisons was dreamt up by two German governors from Lower Saxony together with an area manager at Prison Service Headquarters in Cleland House eight months previously and it took a great deal of persuasion to make the visit to the various prisons possible. Once governors had been cajoled into accepting the idea, each prison put on an extremely interesting day's visit and a rather good lunch which always impresses a German stomach - therein lies the destruction of another myth: the English have no decent food to eat.

In each prison we were given an extensive guided tour around and were free to visit cells and talk to inmates. After the 'guided tour' the governor usually held a meeting where the German delegation was able to speak with governors and specialist staff at length. The days at Grendon and Glen Parva were the most fascinating for the German delegation, not only because a governor from a therapeutic prison in Bad Gandersheim and one from the large North German Youth Custody and Remand Centre in Hamlin (Hameln) were present and could draw direct comparisons and indeed many similarities between the two systems but also because everybody was able to learn the most from these two establishments.

### **Young Offenders**

At Glen Parva the most startling revelation was the newly introduced Bullying

Unit. It took me some time to translate the word 'bully' into German since this term in itself does not exist - it had to either be interpreted as a type of tyrant or remain 'Der Bully' which fast entered the German prison terminology for that week and, maybe, for the future. It rather appealed to the German nature that here the 'nasty boys' were segregated to undergo a severely ostracised regime for a short time with cleaning the cell until one could 'touch all walls and the floors with white gloves', laying out the kit to perfection and not being able to sit or lie on the bed all day. After Germany's recent historic past and the obsession with humane treatment in prisons according to the European Convention of Human Rights, the German governors could not believe what they were seeing. But, as they had to admit, this type of short-sharp-shock treatment does seem to work.

Equally successful is the special unit for vulnerable inmates which gives these youngsters a chance to develop into drug and alcohol free individuals without being bullied. At the end of the week the German delegation recommended that one ought to seriously look at these two regimes, particularly for the young offenders.

### **Therapeutic Communities**

At Grendon, the delegation could not believe, especially after having seen the most technically advanced security system at Long Lartin, that with so little security there had been no escape since 1962. The Governor of the therapeutic prison in Bad Gandersheim, an establishment slightly smaller than Grendon treating men and women inmates, noted many similarities between the two establishments. It was remarkable when both Grendon and Bad Gandersheim Governors compared notes they found to their amazement that their therapy programmes with long term criminals with a severe criminal record were very similar.

The therapeutic community groups consisted of eight inmates and a team of about seven specialists and officers: the groups would equally meet three times a week and the therapy would last at least 18 months in each establishment. Statistically, evidence was similar too with approximately 33 per cent of recidivism after therapy if the term of at least 18 months had been successfully completed. The only difference being that Grendon had measured this

success rate over two and Bad Gandersheim over five years. The results were surprisingly similar. Both Governors welcomed a future exchange in person, of personnel and of ideas.

From an interpreter's point of view, the most challenging days were equally the visits to Grendon, Glen Parva and Blakenhurst, where my knowledge and vocabulary of the systems were severely put to the test. Starting with Grendon, where the German group was divided into two groups of seven, one for the morning and one for the afternoon, so as not to overpower inmates and staff who are having such visits thrust upon them almost daily - as one inmate put it 'we're going to charge soon, you know, miss, we sometimes feel like animals in a zoo.' However, they by no means behaved like animals when I was asked to lead a therapeutic group of eight lifers, all in the system for murder, with seven of my German visitors for about one hour of 'frank discussion'. Whilst I had warned my German delegation that they can expect equally frank questions from the inmates who are encouraged as part of their therapy to be inquisitive as well as 'tell all' to the visitors, it came as quite a shock to the German system when they too were asked intriguing and sometimes personal questions which they were expected to answer. A translator's nightmare presented itself with regional accents from Glasgow, Manchester and Belfast together with subjects who weren't used to being interrupted in their stream of consciousness by having their soul searching experiences translated into German. The experience was a moving and memorable one for me and all the participants from both sides when some forthright and often rather blunt queries were being put.

### **Skills Training**

The Glen Parva experience proved interesting, not only from the bullying and vulnerable prisoners aspect, but also with regards to the meaningful employment and training undertaken with NVQ Training in areas such as carpentry, painting and decorating and machine tool setting. Germany has a high degree of vocational training for young people, but to see this in practice here in a prison of all places when the regard for vocational training in England is not so high as on the continent was a pleasant surprise, particularly since the pre-

requisite to a German prison officer's entering the profession is an apprenticeship in a trade such as those taught at Glen Parva.

The German delegation was impressed with the sophisticated machinery and the level taught in what seemed to them an impossible 18 week's course only. This underlined the German preconception that a craftsman can only be fully qualified after at least three years of apprenticeship training. It was explained to them by a training officer at Glen Parva that this used to be true of the English work ethic but that due to the recession the training of such skills had to be cut, and that the employers would look more favourably on shorter skills training.

### **Working with the Community**

A further idea which impressed the Germans was the involvement of prisoners with the community which hardly exists in Germany. Holloway and Glen Parva both demonstrated that the inmates could work with disabled or disadvantaged people who would usually visit the prison and its sports facilities once a week. Glen Parva demonstrated some good ideas and practices regarding placing youngsters who would be considered for parole on a work placement in the community such as a sports centre, or in the case of Holloway in a local hairdresser's or tailor's.

A frank discussion evolved with the Governors and staff of Glen Parva and Blakenhurst when the subject of privatisation or 'Market Testing' arose. Glen Parva's Governor put it succinctly when challenged 'we need to see this challenge as a positive step to change old fashioned set-in ideas to be more competitive even in the prison service.'

### **Modern Prisons**

The Blakenhurst experience left the Germans marvelling, since the head of the German Prison Service of lower Saxony - 'Mr President', stated that 'personal freedom is something very valuable and it must be the prerogative of the State alone to take this freedom away - the German Prison System will never be privatised'.

Germany simply does not have a single new prison such as Blakenhurst and the four other newly opened prisons since 1992. The most 'modern' prison in my research sample is the bunker like eleven-storey high 'parking deck' as the Germans

call it, of Frankfurt Preungesheim Remand Prison built in the mid 70s with the German RAF and Baader Mainhoff terrorists in mind. There had been a glimmer of hope last year when the first new prison to be opened on 1 April 1993 in Weiterstadt near Frankfurt, to relieve the overcrowded and inhumane conditions for the Frankfurt remand centre. The day before the opening ceremony, the JVA (Justizvollzugsanstalt - official name for German prison) Weiterstadt was blown up by German terrorists.

### **Legal differences and similarities for remand prisoners in England and Germany**

The British legal procedures are accusatorial, which means that the main part of starting the proceedings, giving evidence and establishing the truth, are played by the parties themselves. The judge merely acts as an independent, objective observer who himself does not participate in the investigations, whereas in Germany under the inquisitorial system, the judge plays a fairly important role in the conduct of the proceedings and in establishing the truth. There are thus important differences as to the respective roles of powers of the judge, the police and the prosecutor<sup>1</sup>.

Since 1968 the English Courts only distinguish between arrestable and non-arrestable offences; offences are moreover divided into summary offences, triable before a Magistrates' Court, and indictable offences which are triable before the Crown Court, before a judge and jury. Certain offences may be tried either way, depending on the election by the prosecution or defence. This possibility does not exist within the inquisitorial system.

It surprised the German Lawyer cum Prison Governor that 'laymen' are used in the remand procedures as in the case of Magistrates' Courts in England, a lay-judge would not exist in the German system. In the Federal Republic of Germany (FRG) the Public Prosecutor (Staatsanwalt) has an overall responsibility for pre-trial proceedings, the examining judge controls, and is in turn controlled by the

'Staatsanwalt' who gives advice on bail or remand proceedings.

The Court may order the suspect to be lodged in a Bail Hostel. Under English law, there are no special provisions for compensation in the case of unlawful arrest or detention, but the general right to damages exists, but the victim must prove unlawful arrest or damages.

In the FRG the provisions relating to detention on remand (Untersuchungshaft) can be found in the Code of Criminal Procedure (Strafprozeßordnung) first promulgated in 1877 and frequently amended since<sup>2</sup>. This special clause in article 119<sup>3</sup> specifies the fact that remand prisoners are not allowed to be kept in the same cell as convicted prisoners and that, if at all possible, the remand prisoner ought to be kept completely separate from the rest of the convicted prison population. Compensation in case of unlawful detention is dealt with by a special Act<sup>4</sup> which modifies the legislation existing since 1904; the daily compensation in Germany for unlawful arrest only amounts to a minimal sum of DM10. per day (approx £4.) The German Prison Act ('Strafvollzugsordnung') of 1977 provides an example of how the ethos rights have been used in legislation. At the beginning of this piece of legislation a number of basic principles are listed; these allow for changes in wider society to be translated into prison rules, hence the principle, 'life in prison shall be assimilated to life outside prison as much as possible'<sup>5</sup>. If the prisoner feels that his rights have been violated the Act provides for him to seek extensive judicial review of his complaint.

### **Overcrowding**

In principle, the judge can only imply the deprivation of liberty. Equally, the total maximum period spent on remand (before the judge's intervention) is legally fixed in Germany, ie, one year unless there is the danger of recidivism. A statement by the Rt. Hon. John Patten, MP, a Minister of State at the Home Office on 11 September 1989 to the 1989 International Half-Way house Association: 'The remand prison population has grown strikingly over the last decade. In

1. cf. Grosz, McNulty, Duffy. Pre-trial detention in Western Europe. In: ICJ Review No 23. December 1979.

2. Latest version used is the 'Strafprozeßordnung' (StPO) of 7 April 1987.

3. cf. § 119, 1-6, StPO Vollzug der Untersuchungshaft.

4. cf. 'Gesetz über die Entschädigung für Strafverfolgungsmaßnahmen', 8 March 1971.

5. The German Prison Act 1977 ('Strafvollzugsordnung') Section 3 § 1.

1979 it stood at around 6,100 whereas now, despite some recent improvements, it stands at about 10,700. This means that about a fifth of the prison population is made up of unconvicted and unsentenced prisoners. Not only has this growth contributed significantly to the overcrowding in local prisons, but at times there has been substantial and even more unwelcome overspill into police cells.

This has placed an intolerable burden on the police, and provided totally unsuitable accommodation for defendants - all at a great expense for the taxpayer ... Bail decisions are a matter for the Courts and there will inevitably be many cases where bail has to be refused for good and proper reasons. On the other hand, people should be remanded in custody only when this is absolutely necessary and for the shortest possible time.'

In England this period is not laid down by law (in Scotland it is a maximum of 110 days from committal).

### **Remand Prisons in England and Germany**

There are currently 160 remand institutions for adult men and women in Germany all with similar overcrowding problems. Whilst the numbers of male adults on remand in German prisons in March 1985 was 13,047, the number of remands had gone down to 11,961 by March 1988. This led to a wave of the German Government closing down a number of prisons and remand institutions<sup>6</sup>. However, due to the unification of Germany, crime as measured by the criminal statistics of persons imprisoned has increased. The average daily remand population in March 1990 was 13,047 male adults on remand and this number had increased by March 1991 to 14,258. This underlines the problem of continued over-crowding in German prisons and was evident in all the institutions I had visited, namely Berlin Moabit, Chemnitz (ex-Karl Marx Stadt), Bremen, Frankfurt, Munich and Oldenburg. Frankfurt thus remains a prison with a CNA of 739 having had an average population of between 750 and 800 since 1992 for adult male remand prisoners.

The Woolf Report suggests that remand prisoners should be accommodated

in conditions 'which reflect the prisoner's remand status', ie, innocent unless and until proven guilty. Furthermore, 'They must reflect too the reasons for which the remand has been granted under the Bail Act 1976'<sup>7</sup>. To emphasise the importance of these matters the Woolf/Tumim inquiry recommended that there should be a separate 'Statement of Purpose', setting out the Prison Service's responsibilities relating to remand prisoners, ie, that remands should be accommodated, treated and managed separately from convicted prisoners and that the remand prisoner should spend his/her time in a constructive manner, for example, working or furthering his/her education, and that contact with employment, family and community should remain intact.

German prisoners take the remand status very seriously indeed when it comes to segregating remands from convicted prisoners. The legal grounds for committing a person on remand are exactly the same in England as in Germany, yet the interpretation of the Prison Rules are quite different in each system. Whilst in England the fear of absconding and re-offending whilst on bail seem to take precedence, whereas the German system is obsessed with the 'interfering with witnesses' concept. So much so that if there were any accomplices or partners in the same crime in one prison, for example, JVA Bremen or JVA Frankfurt remand prisons they could not take part in any activities for fear of meeting or 'interfering' with each other.

Thus, the German delegation was shocked to find out that with remands in the English prisons some accomplices 'even murderers' were accommodated in the same cell, would share activities with convicted inmates, were allowed telephone calls and uncensored letters. Indeed, the HMP phone card became quite a novel collectors' item, and officers had to scurry around in each of the prisons visited to obtain as many used phone cards for the German governors as possible. One entrepreneurial governor will, in fact, contact the 'Deutsche Telecom' to suggest this idea. What is there to gain from the German segregation of remand inmates? Why do the English prisons have a Rule 43 unit and the German prisons integrate the vulnerable prisoners in the usual daily routine?

6. Statistics taken from the Federal German Ministry of Justice. 'Bundesministerium für Justiz', 30 January 1992, Bonn.

7. cf. Woolf Report, para 1.206.

## Conclusion

### *Treatment and Regimes in the English System - Are there lessons to be learned for the German Criminal Justice System?*

'Imprisonment is by the deprivation of liberty a punishment in itself. The conditions of imprisonment and the prison regimes shall not, therefore, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in this'<sup>8</sup>.

The emphasis of the European Prison Rules 64-70 is on the principal objectives of the treatment and training regimes as regards the underlying duties of prison managements and the needs of prisoners. They provide the main lines of an approach to policy and regime design that are to confront the problems of reconciling the conflicts between the functions of prisons as instruments of social control and the demands of training for individual release. Each prison ought to provide a wide ranging programme of training and/or educational opportunities relevant to the circumstances of outside life, bearing in mind, of course, the prisoner's own sentence and circumstances and the resources of the establishment. Thus, the contact between prisoners and prison staff ought to be enhanced and encouraged, to lead to a smooth and natural re-socialisation at the end of sentence.

These can take the form of spiritual support or guidance groups, education, physical education, the development of social skills groups, counselling or other recreational activities. Within the regimes, prisoners will thus be given the opportunities to participate in activities which will encourage their sense of responsibility, self-reliance and to stimulate their interest in their own treatment. 'The preparation of prisoners for release should begin as soon as possible after reception in a penal institution'<sup>9</sup>. Foreign nationals must be included in this scheme to alleviate feelings of isolation.

Whilst some of the German visitors had heard of the above European guidelines they were rather impressed to find that in all the institutions visited they found some kind of activities programme and it was noted that for inmates and staff alike, physical

education and weekly training took precedence. The European prison Rules and thus new prison regimes in England and to a lesser extent in Germany have recognised that physical education and a whole range of sporting and recreational activities in modern prison regimes have become a major activity of high importance to the general health and wellbeing of prisoners and staff.

It has also proved to be of particular value to prison managements in the large and overcrowded establishments at times of pressure and in reducing tension and providing healthy and positive outlets when other resources are constrained. Together with work, training and formal education, this has become the basic design of any prison regime. Some institutions show impressive programmes in connection with new programmes of staff training. There is large scope for community co-operation either outside or within the institution which the Germans will take on board as part of their regimes which are as yet too wound up in legal and prison rules procedures to adopt a more pragmatic approach as witnessed in the English prisons. PE and a wide-ranging programme of recreation ought to form a major part of modern prison life.

Staff involved with these developments were seen to be given encouragement and promotional incentives to enhance their professional abilities and status to cope with the increasingly sophisticated equipment and demands of their population.

The German prison management, according to the Head of the Prison Service, should see these programmes as an integral part of the overall philosophy of the treatment regimes. He agreed with the statement that activities ought not to be carried out in isolation, they should complement the regime: 'thus a properly organised programme of physical education, sport and other recreational activity should be arranged within the framework and objectives of the treatment and training regime. To this end, installations and equipment should be provided'<sup>10</sup>. ■

8. cf. European Prison Rule 64 (1987).

9. cf. European Prison Rule 70.1 (1987).

10. cf. European Prison Rule 84 (1987).