Need for security concerning serious offences - High punishments or measures of reform and prevention

Focus on the German measure of placement in preventive detention compared with the Anglo-Saxon approach

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Outline

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I. Introduction

There is nearly no week in which one cannot read about serious offences in the newspapers. During the last years, the publication about facts and backgrounds of murders and murderers or sexual offences has grown, and the public interest goes along with this. People demand security and prevention systems and the government also states this as an aim of its governance[1], and besides police presence, private security services or a education giving children advice to protect themselves as practical means to achieve that, the law provides for the theoretical basis to set up punishments or other measures in order to prevent offenders from committing such a crime or to punish them. The parliaments react to this public demand by developing new laws concerning the consequences for serious offences and the prevention of those crimes[2].

This discussion paper will deal with criminal sanctions and their purpose and theoretical background combined with the question of alternatives to punishments with a focus on persistent serious offences. Under German law there are measures of reform and prevention provided by the Criminal Code which can be seen as alternatives to and/or means accompanying punishments. In the following, the dogmatic background of punishments as well as the specific measure of placement in preventive detention in Germany shall be pointed out and compared with the Anglo-Saxon way of punishing persistent offenders and securing society.

- "Legal punishment… never can be inflicted on a criminal *just* as an instrument to achieve some other good for the criminal himself or for civil society… for a man may never be used just as a means to the end of another…"[3]

Reading this statement from Kant, the question of moral entitlement to punish offenders in order to do something good for others, should also be considered.

II. Purpose of punishments and measures of prevention

First of all, the task of criminal law is referred to as the protection of society[4]. Punishments as parts of the criminal law have different functions, there are the following purposes often mentioned[5]:

- retribution
- incapacitation in order to protect the society from that offender (specific prevention)
- deterrence in order to protect the social order (general prevention)
- treatment of the offender, including rehabilitation and intimidation (reform and prevention).

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[1] The German Chancellor Gerhard Schröder supported the idea of detaining serious offenders in Bild am Sonntag, 08.07.2001, p. 1 (The "BILD ZEITUNG" is the most popular yellow press newspaper in Germany).

[2] As an example for Germany see the Gesetz zur Bekämpfung von Sexualdelikten und anderen gefährlichen Straftaten, 26th of January, 1998, BGBl I 1998, pp. 160 ff.

[3] Immanuel Kant, cited in van den Haag, Punishing Criminals, p. 181.

[4] Jescheck/Weigend, p. 2.

[5] Van den Haag, Punishing Criminals, pp. 51 ff.

Consequently, two main issues can be pointed out that come along with the purpose of criminal law and punishments: prevention and retribution. According to this, two approaches can be distinguished: the utilitarian approach and the retributive approach.

The utilitarian approach was introduced by Jeremy Bentham and has its roots in the conviction that not revenge and retrospective retribution are the basis of punishment but the prevention of more evil.[6] According to Bentham, a punishment is justified if it can have positive effects of prevention, and this is the case if the punished offender is responsible for a criminal offence.[7]

The retributive approach does rather refer to punishing than to prevention. This approach denies punishments in cases of mentally ill persons who commit crimes because they were not aware of their wrong-doing and are already punished by their illness and therefore the well-being of those individuals should prevail over the rights of the society[8].

1. German approach

Some aspects of purposes of punishment have already been set up by famous German philosophers in former centuries, e.g. Hegel. According to him, the central point of punishment is to ensure justice – punishment is thus a manifestation of the law –, therefore the amount of punishment should be defined with respect to the committed crime.[9] During the centuries, the purpose of punishments has developed from a system of retribution to a more preventive legal thinking.

Today, the purposes of criminal sanctions are laid down in the German Code of the Penal System. In Section 2 the purpose of the punishment of imprisonment is defined. It is said that the offender shall, during the imprisonment, become able to live a life without offences after the deprivation of liberty. As a second purpose the imprisonment shall also serve for the protection of the public. The purpose of the placement in preventive detention as a measure of prevention is set out in Section 129 of that Act. It is quite similar to Section 2. But here, the focus lies on the protection of the public and only secondarily on the improvement of the offender for a re-integration into the society after the detention. However, both provisions are expressing preventive aims of specific and general prevention rather than aims of revenge and retribution, although retribution is still recognized as purpose of punishments[10].

Thus, imprisonment and preventive detention have the same aims, namely to prevent the offender from committing another crime and to protect the public so that it is hard to distinguish them in this respect.[11] Nevertheless, there is a significant difference between the two sanctions as to their purposes. While the punishments, still as retaliatory measures, have

[6] Wolf, Verhütung oder Vergeltung, p. 38.
[7] Wolf, Verhütung oder Vergeltung, p. 43.
[8] Wolf, Verhütung oder Vergeltung, pp. 52 f.
[9] Hoffmann, Vergeltung und Generalprävention, p. 98.
[10] Retribution is always mentioned as one of the purposes of punishments in text books and can be followed from Section 46 of the German Criminal Code.
[11] Jescheck/Weigend, p. 84.

their focus in punishing and reforming the offender, the measures of reform and prevention rather aim at the protection of the public from that specific and dangerous offender.

To sum up, under German law, punishment means the compensation of a committed offence by ordering a punishment that refers to the gravity of the act which expresses a public disapproval, accompanied by reform treatment of the perpetrator, whereas a measure of reform and prevention serves the protection of the public and of the offender from the risk of another offence.[12] In general one can say, German punishments still reflect retribution, but the emphasis in the German system of sanctions lies on the utilitarian approach.

2. Anglo-Saxon approach

As to the purpose of sanctions, the Anglo-Saxon approach does not differ much from the German one. The aims of the Criminal Justice System in the United Kingdom were once described by the Home Office as

- "Reduction in crime, […] and in the fear of crime; and maintenance of public safety"
- "Delivery of justice through effective […] trial and sentencing, and through support for victims"
- "Effective execution of the sentences of the courts so as to reduce re-offending and protect the public."[13]

From the foregoing it can be concluded that the protection of the public and prevention of crimes is the most significant aim of sentencing in the Anglo-Saxon approach. As to "professional" criminals, the tendency is that the more significant and dangerous the crimes of a persistent offender are, the more the most important purpose of sanctions changes from punishing the offender to protecting the public.

III. Available sanctions

1. German measure of placement in preventive detention

In Germany, offenders of serious crimes, such as murder, robbery or sexual offences, have to expect punishments up to life imprisonment if they are found guilty. Moreover, German courts have the possibility to order a placement in preventive detention, independent of the imposed imprisonment, under certain conditions. This measure of reform and prevention was introduced to the German system in 1933, but the concept was already developed in 1882 against so-called "Gewohnheitsverbrecher" (persistent petty offenders) by Franz von Liszt[14].

By the German Act for the fight against sexual offences and other dangerous criminal offences[15] the placement in preventive detention got a new importance in 1998 as its formal requirements have been loosened, especially for offenders of sexual crimes.

[12] Jescheck/Weigend, p. 13.
[13] Ashworth, Sentencing and Criminal Justice, pp. 59 f.
[14] Weber/Reindl, NK 2001, p. 16.
[15] Op. cit. (2).

a) Systematic place: measure of reform and prevention vs. punishments

The German approach of criminal sanctions is a "double track" system. The German Criminal Code, in Chapter Three, Title One, provides for types of punishments and in Title Six for different measures of reform and prevention. These measures are not a sub-category of punishments. Thus, the aim of those measures is not to punish the offender for an act he has committed but to protect the public from this offender, therefore Section 62 of the German Criminal Code ties the measure of reform and prevention on the "significance of the acts committed by, or expected to be committed by the perpetrator" and the "degree of danger he poses". The measure of placement in preventive detention can therefore be set up by a court without connection to the punishment being imposed.

b) Practical enforcement: placement in preventive detention vs. imprisonment

Both imprisonment and preventive detention are measures that deprive the offender of liberty. In general it is hard to find many differences between them[16]; the German Code of the Penal System does not say much about this either. The placement in preventive detention is in some aspects less severe, e.g. the detained person can have his/her own clothes if there is no security reason against this.[17] Furthermore it is easier to care for the rehabilitation of the specific persons than in a prison, so the persons in preventive detention can get more appropriate medical and pedagogical treatment.[18] Also from the perspective of the detained person, both sanctions do not differ too much: The measure of reform and prevention will also be considered as a kind of punishment by the sanctioned person.[19]

c) Importance in the German convictions: statistics

While 80% of the sanctions are punishments, the measures of reform and prevention play only a minor role of 20% of the sanctions imposed by German courts[20]. The measure of placement in preventive detention is the most severe measure of reform and prevention. It is no everyday-tool of German judges. It is only ordered around 40 times per year[21] while there are more than 8000 imprisonments of more than two years in the same time.[22] Altogether there are around 200 persons living in a placement of preventive detention in Germany.[23] The reason for these small numbers is that Section 66 of the German Criminal Court has high requirements for imposing a placement in preventive detention on an offender.[24]

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[16] Jescheck/Weigend, p. 87.

[17] Section 132 of the German Code of the Penal System, to be compared with Section 20 for imprisonment.

[18] Jescheck/Weigend, p. 83.

[19] Arthur Kaufmann, cited in Jung, Was ist Strafe, p. 35.

[20] Bussmann, Strafvollzugsrecht, p. 10.

[21] After the „Gesetz zur Bekämpfung von Sexualdelikten und anderen gefährlichen Straftaten" there were 61 new orders in 1998, see Weber/Reindl, NK 2001, p. 17.

[22] Kinzig, NStZ 1998, p. 14.

[23] Weber/Reindl, NK 2001, p. 17.

[24] See part IV.

Although the formal requirements are often fulfilled, the placement is not ordered because the material requirements cannot be proved.[25]

2. Available sentences in the United Kingdom

The English system nowadays is a "one track" system. It only provides for different sanctions of punishment. For this discussion, imprisonment and community sentences are the most important punishments. For serious offences, especially when they are committed persistently, the sanction would be an imprisonment. The community sentence of combination order can also be imposed on persistent offenders, but only for those crimes which are not serious enough to justify imprisonment[26]. So nowadays there is no such thing as a placement in preventive detention to be ordered by a court apart from a punishment.

a) Approaches to punishing persistence

After a system where judges had much discretion to pass long sentences on persistent serious criminals, the Prevention of Crime Act provided for a sentence of preventive detention in addition to the normal sentence of a crime in 1908. That system was very similar to the recent German approach. But judges did not use it too often, and a new form of preventive detention was introduced by the Criminal Justice Act 1948. This detention should be imposed instead of a punishing sentence, but after 15 years this measure was also not used anymore. Later on, the Criminal Justice Act 1967 allowed for extended sentences for persistent offenders, but similar to the years before, the judges were not able to handle this sentence as legislation was not very clear in setting up the conditions.[27]

Nowadays, three theoretical approaches to punishing persistence can be distinguished:[28]

- Flat-rate sentencing

  A sentence only refers to the act which was committed itself and not to prior records. Those who support this approach reason it by the doctrine not to punish one act twice. In practice, this flat-rate sentencing is only used for minor wrongdoings such as illegal parking of cars.

- The cumulative principle

  The basic idea of this principle is that sentences should become more severe if the act has already been committed previously in order to prevent persistence. The criticism against this approach is that it is also used to punish minor offenders and that it is in those cases unfair to punish them again by a higher conviction.

- Progressive loss of mitigation

  This system is situated in between the foregoing two approaches. The theoretical background behind aims at giving first offenders a "second chance". Therefore they should get a reduction of punishments but persistent offenders should lose this mitigation.

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[25] Kinzig, NStZ 1998, p. 14.

[26] Ashworth, Sentencing and Criminal Justice, p. 5.

[27] Ashworth, Sentencing and Criminal Justice, pp. 160 f.

[28] Ashworth, Sentencing and Criminal Justice, pp. 162 ff.

b) Criminal Justice Acts

The Criminal Justice Act 1991 set a sign in favour of the mitigation approach by prohibiting to take previous records into account when sentencing a new offence but admitting having regard to mitigating factors.[29] There was criticism against that section, in saying that it would be unjust to punish a first offender in the same way as an offender who committed the same crime already five times and did not learn from previous convictions. Therefore the Criminal Justice Act 1993 substituted the 1991 provision by:

- "In considering the seriousness of an offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences."

Nevertheless, although the new version sounds to favour the cumulative principle, it only permits to use prior records as indication for the current offence but not as aggravation reason for the sentence.[30] Therefore, it is not too clear which approach the courts have to follow. In addition, Section 2 of the Criminal Justice Act 1991 only allows extended sentences in cases of sexual or violent offences. The courts often ignore this by imposing longer sentences also on persistent offenders of minor crimes.[31]

With the Crime (Sentences) Act 1997 the "three strikes" approach which was invented in the US found its way into the English legal system. This approach provides for a minimum punishment for offenders committing their third serious crime.

c) Life imprisonment

In very serious cases, the English courts can impose a life imprisonment. The criteria were set out in the *Hodgson* case of 1967[32]:

- gravity of the current offence
- dangerousness of the offender to commit crimes in the future
- dangerousness of the crimes for the public.

As offences for which a life imprisonment can be ordered, serious violent crimes and sexual offences have been developed by case law.

IV. Conditions for punishment and measures of reform and prevention

Due to the fact that this paper concentrates on persistent offenders of serious crimes, the following report focuses on the requirements to sanction serious offences.

1. Principle of guilt

During history, the principle of guilt has been developed as the link between the offence and punishments. It is the non-performance of the behaviour expected from an ordinary citizen

[29] Section 28 and 29 of that Act.
[30] Ashworth, Sentencing and Criminal Justice, pp. 170 f.
[31] Ashworth, Sentencing and Criminal Justice, p. 176.
[32] Hodgson (1967) 52 Cr App R 113.

that should be sanctioned, therefore a punishment is up to today always connected to the guilt of the perpetrator.[33]

In Germany, the principle of guilt is recognized as inherent in the constitution, without guilt there can be no punishment:[34] *nulla poena sine culpa*. Following Section 46 of the German Criminal Code, "the guilt of the perpetrator is the foundation for determining punishment." Therefore the punishments can only be sentenced by a court if the offender was capable to recognize that he was doing something wrong. In contrary, measures of reform and prevention do not require guilt because they are connected to the perpetrator's dangerousness and not to his/her guilt. This is why German courts can also order a placement in preventive detention if the offender was in a status of incapacity.

Besides the fact that a sentence under English law considers objectively the gravity of the act committed, there is also the condition of culpability that plays the subjective role within criminal liability. That means that the offender must have had the choice or awareness of what he was doing.[35] Without proven guilt English courts cannot order a punishment.

2. Persistent commitment of serious offences

The principle *ne bis in idem* prohibits a double punishment for the same act. Under German law this is applied restrictively with regard to punishments. The sentence for a punishment such as imprisonment is therefore not permitted to take previous convictions into account. It is only the current crime and its circumstances, like intent, planning, gravity and guilt, that constitutes the basis for the punishment. Nevertheless the German courts can react to the fact of the threat that is caused by a persistent offender to the society. For the serious offences the courts have the means of the placement in preventive detention to handle persistence. Section 66 of the Criminal Code demands as formal conditions several severe previous crimes during the last five years before the commitment of the current offence, in particular the preventive detention can be ordered at the third serious offence and since 1998 concerning sexual and violence offences already at the first lapse back into crime.

Also in English law, an extended sentence can only be granted on the basis of previous records. As in German law, previous offences are not taken into account if they were committed quite a long time ago followed by a conviction-free gap. Moreover, the courts do also consider the seriousness of previous offences and give a greater significance to offences similar to the crime in issue.[36] But there is no such strict and well-defined statute as in German law. In the English case law it is mostly in the hands of the courts to decide over loss of mitigation, employment of the "three strikes" approach or ordering a life sentence.

[33] Hoffmann, Vergeltung und Generalprävention, pp. 132 f.
[34] Jescheck/Weigend, p. 23.
[35] Ashworth, Sentencing and Criminal Justice, p. 124.
[36] Ashworth, Sentencing and Criminal Justice, pp. 172 ff.

3. Dangerousness of the offender

In addition to the formal requirements Section 66 of the German Criminal Code requires material conditions for ordering a placement in preventive detention. Experts must attest that the perpetrator has a "proclivity to commit serious crimes" and "presents a danger to the general public". This condition is mostly the reason why the placement in preventive detention is not used very often because it is very hard to predict future offences of a criminal. Finally, the German system, in Section 62 of the Criminal Code, demands the measure of reform and prevention to be proportionate.

The English case law also refers to the dangerousness of the offender when imposing high sentences in order to protect the public. In Section 1 (2) (b) and Section 2 (2) (b) of the Criminal Justice Act 1991 the legislator linked the permission of exceptional sentences with the purpose to "protect the public from serious harm". But as very serious offences are relatively rare, it is quite difficult to predict them. Therefore the condition of dangerousness is often very vague and hard to determine.

There is no definition of dangerousness, but in the *Fawcett* case of 1995[37] the court enumerated some aspects which should be considered to determine dangerousness:

- "Some factors will naturally assume prominence, such as the irrationality of the behaviour, the selection of vulnerable persons, or a particular class of person or target, unexplained severe violence, unusual obsession or delusions, or any inability on the part of the offender to appreciate the consequences of his or her actions. Lack of remorse or unwillingness to accept medical treatment would be a relevant consideration. At the end of the process, the judge must be satisfied, to the criminal standards of proof, that the sentence is indeed necessary to protect the public from serious harm of the offender."

V. Conclusions - Reflection on different legal approaches

The question, which approach is most effective and legally justified in order to prevent serious offences, has to compare the aforementioned aspects of punishments and measures of reform and prevention. This traditional discussion takes up the question whether the courts should refer to the guilt or to the dangerousness of the offender.[38]

From the foregoing description of the German and Anglo-Saxon approaches it can be concluded that the means of handling persistence are theoretically very different but in practice the objectives and results are quite similar. Nevertheless, there are special factual situations were the courts in both countries will come to diverging sentences. For example, if the offender of a serious offence is mentally ill or suffers from another defect which excludes guilt and persistently commits serious crimes that are a threat for the public, he can be sent to preventive detention in Germany but cannot be detained in the UK. Although the German legal system as well as the English case law first of all have prevention in mind when ordering sanctions for persistent offences, the German system is more open to justify

[37] Fawcett (1995) 16 Cr App R (S) 55.
[38] Jung, Was ist Strafe, p. 33.

detention by taking up the dangerousness of the perpetrator while the English approach is reduced to react to the guilt of an offender having committed a crime.

1. German approach

The "double track" approach takes into account that the legal system has two purposes: retribution and reform on the one hand and prevention of threats on the other hand. In order to serve both purposes, the German system provides for two different kinds of sanctions and can therefore distinguish between punishment for committed crimes and detention to prevent further crimes. In contrast, the Anglo-Saxon system utilizes only punishments and is, as mentioned, not able to detain the dangerous person without having committed a crime in a culpable mind. The question which arises is whether the right of the public to be protected from dangerous offenders can prevail over the rights of an individual to be assumed innocent before a crime is proven and not to be punished for more than his/her committed offences. Coming back to Kant[39] it has to be reflected whether the German measure of placement in preventive detention and with it the deprivation of liberty of a person who is predicted to commit serious offences in the future can be used as an instrument to protect other persons. In literature there are different views about the justification of that German measure.

The representatives in favour of the placement in preventive detention focus on the role of freedom in a society. Following them, in the balance between the right of the offender not to be punished higher than for his/her committed crime and the protection of the public, one has to take into account that the constitutionally guaranteed liberty is a liberty that is combined with the security of the society[40]. Therefore it is justified to order measures of reform and prevention, even without guilt or in addition to an imprisonment, if the offender is dangerous for the society. The controversial measure of placement in preventive detention is accepted by German law because there is no more human means to protect the public from those offenders, and the courts are using this measure only in very severe cases as *ultima ratio*.[41]

The counter arguments against that view refer to constitutional principles and human rights as well as problems of practical estimation of dangerousness. Those representatives take the fact that the placement in preventive detention does not refer to committed crimes but aims at preventing future crimes as a starting point. Therefore they see several difficulties in its justification. Firstly, it is quite hard to predict the probability of a new offence by the offender in question. Secondly, the term of dangerousness is difficult to define, which can lead to different results by different courts. Thirdly, offenders who expect a placement in preventive detention are often not medically and socially treated during their imprisonment so that this time of reform is useless.[42] Moreover, the placement in preventive detention is also considered to violate the German Constitution and the European Convention on Human Rights. The vagueness of the term "proclivity" in Section 66 of the German Criminal Code,

[39] See in Part I.

[40] See Art. 2 I of the German Constitution.

[41] Jescheck/Weigend, p. 86.

[42] Weber/Reindl, NK 2001, pp. 17 f.

the undefined duration of the placement and the link to not yet committed acts infringe the "Bestimmtheitsgebot" (precept of certainty) in Art. 103 II of the German Constitution and Art. 7 I ECHR. The fact that there are no real practical differences between imprisonment and placement in preventive detention is a violation of the principle of the prohibition of double punishments in Art. 103 III of the German Constitution and Art. 4 I ECHR. Moreover, when a placement in preventive detention is ordered in Germany, the sanctioned person does not know from the beginning when he will be in liberty again which leads to uncertainty about the deprivation of his/her liberty. Not to know how long the detention will last and denying the presumption of innocence is seen as an infringement of Art. 104 I 2 of the German Constitution and Art. 3 ECHR.[43]

The Council of Europe also occupied itself with those points in an recommendation on sentencing[44] in 1993. It pointed out:

- C 2. The major aggravating and mitigating factors should be clarified in law or legal practice.
- D 1. Previous convictions should not, at any stage in the criminal justice system, be used mechanically as a factor working against the defendant.
- D 2. Although it may be justifiable to take account of the offender's previous criminal record within the declared rationales for sentencing, the sentence should be kept in proportion to the seriousness of the current offence(s).
- D 3. The effect of previous convictions should depend on the particular characteristics of the offender's prior criminal record. Thus, any effect of previous criminality should be reduced or nullified where:

  a. there has been a significant period free of criminality prior to the present offence

  b. the present offence is minor, or the previous offences were minor [...].

Comparing the German measure of placement in preventive detention with those principles on sentencing, it can be said that the German law follows those principles because it is not ordered by formal circumstances alone ("mechanically") but only if there is an expert opinion on the dangerousness of the offender, the principle of proportionality is included in the German Criminal Code, there is a clause that excludes previous convictions from taking them into account after a certain time and the formal conditions do only refer to very serious crimes. The German legislator has restricted that measure as much as possible seeing the problem of deprivation of liberty on the basis of a future prognosis and the courts may only use it as *ultima ratio*.

With regard to the public security and the government's task to protect the social order and health and life of its citizens it seems to be justified to use the placement in preventive detention as measure of crime prevention. There is no other means obvious to ensure that the detained offender will not commit other crimes in the future. Nevertheless, it stays uncertain whether he/she would really have acted violently again if he was not deprived of

[43] Argumentation of Weber/Reindl, NK 2001, p. 19.

[44] Recommendation no. r (92) 17 concerning consistency in sentencing, 19 October 1992.

his/her liberty. So: Is it really just to impose a sentence higher than proportionate for the current crime committed by the offender on that person? Does the right of the public to be protected prevail over his/her rights (being presumed free from harmful intentions, no double punishment)?

2. Anglo-Saxon approach

The Anglo-Saxon system of (extended) punishments for persistent offenders is also criticised a lot. One problem here is a theoretical one because the English courts – by taking into account previous acts for a current sentence – infringe the principle *ne bis in idem*. The other problem is a more practical one and concerns the fact that English courts tend to apply the extended sentences even to petty persistent offenders.[45]

In 1981 the criminological aspects of the Anglo-Saxon approach were examined by the Floud Report. It pointed out that the prediction measures are quite uncertain but that new measures of crime prevention are not necessary. The only thing it proposed was to transfer the distinction between ordinary and exceptional punishments made by the courts also to legislation.[46] This expert commission judged the Anglo-Saxon system as sufficient.

3. Final conclusions

Taking all the arguments into account, it can be concluded that the argument that the serious offender's liberty is no overall-liberty but connected with the rights of others is an argument that justifies restrictions of his/her rights: If an offender chooses for a violation of social and legal behaviour with guilt there is no need of protecting his/her rights towards the rights of the public. Consequently, measures to "punish" persistence in order to protect the public should be allowed, but under restrictive conditions, such as those laid down by the Council of Europe. Nevertheless, the arguments against the German measure of preventive detention are weighing high. Concerning the group of guilty offenders, both legal systems come to the same result (preventive detention or extended sentence). The only difference occurs in the group of offenders who act without guilt. Here, they were not aware of breaking rules of social behaviour so that this argument is not appropriate. The prediction rates of dangerousness are very low and one never knows for sure whether the specific offender is really so dangerous that he has to be deprived of his/her liberty. That is why, in my view, the German way is not necessary to cope with this group and hereby to violate constitutional principles and I would rather prefer specific psychological treatment of those persons instead of long detention.

[45] Op. cit. (31)

[46] Ashworth, Sentencing and Criminal Justice, pp. 180 ff.