

September 2011

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## Is prison a solution?

SPEECH HELD AT THE RAHOVA PENITENTIARY IN THE OPENING OF A DEBATE HAVING AS STARTING POINT A DOCUMENTARY FILM ON THE GERMAN SYSTEM OF PENITENTIARIES, SEPTEMBER 5TH, 2011

It is a great pleasure for me to welcome you to today's conference and documentary screening on behalf of the Rule of Law Program South East Europe of the Konrad-Adenauer-Stiftung.

Our foundation is a German non-profit NGO affiliated to the Christian Democratic movement, so we promote the Christian Democratic values freedom, solidarity and justice. And we promote the rule of law: democratic constitutions, protection of human and civil right, fair substantive and procedural law and an open, free and inclusive society that respects minorities.

Let me thank Mr Dorin Muresan and the Romanian National Prisons Administration as a whole for hosting us today and let me express my thanks to Ms Julia Gross, Deputy Ambassador of the Federal Republic of Germany for being with us today.

And let me express my thanks and my acknowledgement to Ms Dana Cenusă who has produced the documentary film on the German Penitentiary System that will be screened today. I have had several discussions with Ms Cenusă and I know she is both a competent and enthusiastic civil servant, qualities that are highly needed not only in your country.

I leave it up to your judgment whether Germany can serve as a model country. We know that we have deficits and shortcomings, and our penitentiary system is not uncontroversial in our own country. However, for experts like you it is always inte-

resting to study other countries systems´ and to draw conclusions.

When we talk about the rule of law we should never forget the penitentiary system. I say this as a former state legislator and spokesman on judicial policy of my parliamentary party. In this capacity I did not only discussed political issues in the legislature and its committees but I also spent considerable time in our prisons – only as a visitor of course, I was always allowed to check out. But I had the chance to study facilities, the administration of the law and I could talk to prison governors, staff and inmates. So please allow me to make a few points.

What should be done with those who break the law? This ostensibly simple question defies a simple answer. The different answers given remain a source of much dispute. My answer would be that the objective of a modern criminal justice system must be to try to change lawbreakers into law-abiders and this will not work if you don't try to rehabilitate them. But not everybody will agree.

In this context the seventies of the last century – and this is mentioned in the documentary- were a decade of change both in the United States of America and in many European countries, including my own, but in a totally different way.

Efforts to reform offenders had been made in the American correction system much earlier than in Europe. From the beginning of the twentieth century offender treatment

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reigned as the dominant correctional philosophy, lots of different correctional treatment programs were implemented. But the review of evaluation studies in the seventies gave legitimacy to the anti-treatment sentiments of the day. "Nothing works" was the title of an essay written by Robert Martinson. And a lot of politicians followed him. On 18th January 1989 the abandonment of rehabilitations in corrections was confirmed by the U.S. Supreme Court. In *Mistretta vs. United States* the Court upheld federal "sentencing guidelines" which remove rehabilitation from serious consideration when sentencing offenders. Rehabilitation was considered as an unattainable goal for most cases.

If the seventies can be called a decade of frustration in the US they can be called a decade of enthusiasm in countries like Germany. The Federal Constitutional Court had urged Parliament to pass a law on the penitentiary system and this happened in 1976. It followed the rehabilitative ideal, prisons should no longer be places where offenders were merely warehoused or suffered their just deserts but as section 1 of the aforementioned act provides "imprisonment shall enable the inmate to live a life in social responsibility without committing any further crime in the future." At the last constitutional reform the responsibility for the penitentiary system was completely transferred to the laender so that we will have sixteen different laws in the future. None of the laws passed by the state legislators has abandoned this provision although some of them now emphasize that imprisonment primarily serves to protect society from further crime. Well, I think that if you have prisons that inmates cannot escape from –and in Germany we have invested millions in security for example in electronic surveillance- society will be protected from further crime as long as the inmate is imprisoned anyway. But 99,9 % of all inmates will one day be released. If by then due to conditions during their imprisonment they will be even more aggressive and thus more dangerous they put an even bigger risk to society and the price that society will pay for that will be further crime and further victims of crime. So if you

enable prisoners successfully to live as law-abiders in the future that is the best you can do for the protection of society as a whole.

So the big question is: Are we successful? It depends on how high your expectations are. If you expect that nobody who has been imprisoned ever commits a crime again or that we have a constantly sinking crime rate you will be disappointed. But this would be totally unrealistic. A society without crime does not exist and there are many factors that influence the development of the crime rate. How are the facts? In Germany two thirds of those who have committed a crime and have got caught never commit a crime again. Of those who have been imprisoned about 56 % come into conflict with the law again. That doesn't seem too impressive but you have to keep in mind that Germany has a low prison population: 91 out of 100,000 inhabitants are incarcerated. More than in Denmark and Sweden where the figures are 61 and 64 but significantly less than in your country (164), the Czech Republic (185) or Poland (234), and incomparable with the US where 751 out of 100,000 inhabitants are imprisoned. In the documentary film the fact will be mentioned that sentences became tougher in the nineties and the prison population grew, which is true and can be explained with the help of statistics. If I do it I do it reluctantly because I know that if the noun is "lies" the comparative is "blunt lies" and the superlative is "statistics". In Germany the statistics published by the Ministries of the Interior comprise crimes reported to the police. We know that a lot of criminal acts never get officially registered. On the other hand not every crime reported to the police is considered a crime by the prosecution or the court. If you now compare the crime rates of 1987 and 2010 you see no significant change. In 1987 7,265 crimes per 100,000 inhabitants were registered compared to 7,253 in 2010. But in the early and mid nineties we had a rise of up to 8,336. Moreover crimes committed in public space which included violence (except murder and manslaughter) rose and the media –and I think they reflected a general mood- accused the courts of being too soft on crime and that sentences no longer met

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the sense of justice of the population nor the degree of wrongfulness and this did have an impact on the courts.

If I mentioned the murder rate which was 1.6 per 100,000 in 1987 I would like to draw your attention to the fact that it was 0,8 in 2009. But this is a fact that you won't find in certain tabloids.

I do not wish to overlook a special challenge. About 78 % of juvenile offenders who were imprisoned commit another crime after being released and this is a special challenge. It would, however, be a mistake that all those who commit a crime at the age of 17 or 19 are at the beginning of a life long criminal career. This is true only for a minority. The majority of juvenile offenders become lawabiding citizens when they have reached a certain age. The minority, however, is a serious problem because some of them commit crimes with ruthless violence.

Overall crime statistic comparisons are difficult to conduct as the definition of crimes significant enough to be published in annual reports varies across countries. In Germany in fact also petty crime is part of official crime statistics. I mentioned the different approach pursued by the US and I don't want to leave unmentioned that according to the FBI America's crime rate in 2009 was roughly the same as in 1968 and the murder rate at its lowest level since 1964, which with 5,4 per 100,000 inhabitants is still more than five times as high as in Germany. And the US system is expensive, the country having the highest incarceration rate in the world with a population of 307 million and 2,2 million people being imprisoned compared to Germany with a population of 82 million people and slightly more than 75,000 prisoners. In fact the US has 5 % of the world's population but 25 % of the world's incarcerated population.

I would like to make a few more points on several aspects that are mentioned in the documentary film, the financial situation of the German penitentiary system, public esteem of those who work in the prison system, relations between local communities and prisons, drug and interethnic problems

but I think it makes sense that we watch the film first and then we all have the chance to make our interventions.

Thank you very much for being with us today and thank you very much for listening.