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**Human rights in the prison system.**

**Situation, legislation, prevention**

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## Title slide

Dear colleges, dear students,

I am pleased that in this intensive course I do not teach only scientific writing in Criminology. Now have the chance for a lecture on a very basic topic: Human rights in the prison system. I speak about a topic which is very important for me, for you, for the prison system in our countries, but above all for the prisoners.

## Quotes

At the first sight, the topic unites contradictory terms: "Human rights" on the one side and "prison" on the other side. In reality this is like fire and water.

With some quotes I start our topic.

That prisoners have or could have human rights, Heinrich Wagnitz recognized this, already in the year 1791. He was a vicar in the prison of Halle in Germany. In an old fashioned German language he remarked: **"People are everywhere attentive to human rights, and certainly once upon a time even prisoners are involved and princes, who have not done that before, pay tribute to prisoners to their paternal care."** With this hope Wagnitz jumped over two hundred years of the history of human rights.

Another quote more recently: **"If you want to recognize the state of a country, you must go in its prisons."** This is attributed to Nelson Mandela in South Africa who suffered many years in prison. But this sentence is also attributed to Leo Tolstoy or Winston Churchill. I come back to this quote at the end of my

lecture as there are also other places where you can see the real state of a country.

**"Penal law is applicable constitutional law"**, said my dear teacher Professor Günter Dürig in the University of Tübingen when I was a student. He interested me for human rights and made me a human rights guardian. I would like to do the same with you in the next forty minutes of my lecture. He researched his whole life on human dignity and human rights. He found a good definition, when human dignity is violated. I will present this later.

From the Bible, Matthew chapter twenty-five, verse forty-three, we can learn that the visit of prisoners means mercy: **"I've been sick and in prison and you did not visit me. ...I say to you: What you not have done one of these least, you have not done also to me."** Translated into law and into the present time, that means to stand up for the human rights of prisoners. In that regard, the theme is basically and ethically significant.

Who deals with human rights of prisoners, is "running around with the Constitution under his arm", is called a "softener" or even a "poisoner of the own house". That threatens always when uncomfortable topics are addressed. You may hold against with this: **"Mishandle harms not only the victim, but lowers also the persons who act or arrange violations and harms the authorities themselves"**.

By the way, in the following I focus the human rights of prisoners. I cannot discuss the human rights of their **family members**, especially the children of prisoners. In Baden-Württemberg we have a good project for children of prisoners, They, not the

prisoners, have the right for care and protection of their relations to the prisoner. Moreover, I cannot discuss the human rights of the **victims** of prisoners. I only mention that we had an interesting project in Baden-Württemberg with victim-offender-compensation in prison evaluated by Dr. Kilchling and the Max-Planck-Institut in Freiburg. Last but not least I mention that also the **members of the staff** in prison have human rights: security, honour, respect from the prisoners and good pay by the state.

### **Human dignity**

Human dignity is – in short - the respect of the personality of another human being. As I mentioned already, my academic teacher Günter Dürig did not find a positive **definition** of human dignity, but he argued from injury of human rights. Sometimes it is easier to define a term from the opposite side. These terms are called “antonyms”. “War” is easier to define than “peace” and “disease” easier than “health”. According to the **object formula** of Günter Dürig, it is strictly forbidden for a state to make persons to its objects.

The German philosopher **Peter Schaber** expresses human dignity in a different, but also in an interesting way. For him, human dignity is injured, if the person is so much humiliated that he cannot pay respect for himself. I was astonished about this definition when I found it. You can choose which definition suits you best.

**Who has dignity?** No doubt, human beings have dignity. It is controversial whether animals, plants or inanimate parts of creation have “dignity” or something like dignity. We can discuss this.

**Where does dignity come from?** An approach from natural law says we have human dignity because we are human beings. This answer is not very convincing. Others claim that human dignity is attributed to us by other persons, by the state or by society. That sounds good. But it also means, if human dignity can be attributed to human beings by other people or the state or society, they can withdraw dignity. Therefore, it convinces me much more, that dignity comes from God. According to the Christian understanding, we are images of God.

### **Human rights violations**

Now, I would like to explain, what human rights are and what they are not. I will do it with three examples.

First exemple: If person A intentionally kills person B, this is manslaughter or murder, but it is taken still **no** violation of human rights as the state is outside. This is a private conflict between person A and person B.

Second example: If person A, as a member of the national secret service, kills the person B intentionally of political reasons, this is manslaughter or murder **and** a violation of human rights, as the state is involved.

Third example: The same applies if the person A intentionally kills the person B and the state, however, does nothing against this, what would be possible for him. This case is also a manslaughter **and** a violation of human rights.

You can learn from this that human rights are relevant in the relationship between state and citizen and not between private

persons. The violation of human rights violations goes out from the state and on the other side the state has to protect the human rights of their citizens.

### **Human rights as a "Dowry"**

Human rights are those rights which derive from the **dignity** of man and constitution. They are **essential, inalienable and indivisible**.

They are to people, regardless of **where** they live and **how** they live. That's why "criminals" and prisoners also have human rights. And they are **global rights**. This is a common and nearly undoubted opinion. But let me doubt this. Once, a black colleague from Africa in Max-Planck-Institute in Freiburg argued that the human rights are created in the western world, especially in North America and Europe. The differences have to do with the relationship of the individual and society. We, in the western world, see the individual in the center of life. In Africa and Asia society and neighbourhood are more central.

### **Human rights in the justice system**

In the catalogue of human rights, the prohibition of torture in criminal proceedings and for the prison system is particularly significant.

In the **narrow sense**, torture is violence against a suspect person to bring him to a confession.

In a **broader sense**, torture is any violence against an accused person or a prisoner.

In prison, the subjection to cruel, inhuman or degrading treatment is especially forbidden. Article 5 of the Common Declaration of Human Rights and article 3 of the European Convention for the

Protection of Human rights and Fundamental Freedoms are relevant. **"No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."**

In 1987, the Committee of Ministers of the Council of Europe created an independent Commission against investigate torture allegations and for the protection of prisoners. Initially, the anti-torture commission was blocked in Germany. I did not agree with this. Either we have a good law enforcement and no torture in the prison system, weu need not to fear the commission. But if we have torture or cruel, inhuman or degrading treatment or punishment, then we have to change the prison system. For the first time, the anti-torture commission visited law enforcement institutions in Germany in the year 1991. By the selection of the visited prisons the commission showed, that she has a good feeling for sensitive law enforcement areas. According to the comprehensive report, the Commission was satisfied with the conditions in the visited prisons. This is a positive result. Critical comments in the report address the conditions of solitary confinement in certain facilities. Due to its preventive orientation, the Commission gave recommendations which reach far into the organization of the prison.

### **Needs pyramid**

Now, I would like to present you in the following a hierarchy of human rights.

I got the idea by the American psychologist Abraham Maslow, who created a famous pyramid of needs. You can google them and receive very different figures. In the lower part you see the so-

called deficit needs. These are basic human needs, such as eating, drinking, sleeping and sex for the preservation of the human species. Over this comes the wish of all people to live in security. The lower part is completed with the needs of love and belonging.

The upper part includes respect, self-fulfillment and transcendence. This last need Maslow has discovered only at the end of his research.

I would like to know from you if you miss something. Maslow researched in the 20<sup>th</sup> century. Perhaps you miss the basic need of access to the internet and mobile phone. I think that life changes very much from the real world to the virtual world. By the way, this is also true for crime and for criminology. But we should discuss this another time.

### **Human rights pyramid**

Now I have allowed myself to replace the needs with human rights. I found a number of other alienations on the internet anyway. I think the alienation for the human rights in prison is useful and memorable. If this is allowed, you must decide.

I will still come back to this human rights hierarchy and cover them specifically for the prison system.

### **Legal basis of human rights**

The legal basis for human rights are the Universal Declaration of Human Rights of the United Nations dating back to the year 1948 and the European Convention for the Protection of human rights



and fundamental freedoms of 1950 and 1953. The European Convention on human rights applies in Germany as a national law. Even more: The relevant fundamental rights in our constitution must be considered in the light of the European Convention of on human rights and laid out in this light.

In addition to this we have a catalogue of fundamental rights in the basic law for the Federal Republic of Germany from 1949.

Other fundamental rights are in the constitutions of the countries, for example the Constitution of Baden-Württemberg from the 1953.

## **Human rights guardians I**

It is not only important, that there are human rights, but that there are also people and institutions, who pay attention to the human rights as guardians.

In a democratic constitutional state with a separation of power, it is the **legislature**, which must ensure, that its laws and other legal standards correspond to the human rights. This applies to the parliaments as a whole, but also for its committees.

Since the **administration** is bound by law, all the persons in the government and each officer in the administration should be a “natural” guardian of human rights. As a result, the human rights of citizens could be protected best by them. This applies also and in particular for the prison system.

In addition, there are human rights guardians for specific target groups, e.g. for migrants, disabled people and soldiers. They are also important. It is good and a sign for a functioning state, that

the rights of migrants, disabled persons or soldiers are protected by these special human rights guardians. Nevertheless, the protection of human rights is a task for **all** civil servants.

Since human rights have a legal quality, it is particularly clear that **justice system** looks on the respect for human rights. Every judge, no matter in which court, undertakes the examination of human rights. Especially important human rights monitors are of course the judges in the constitutional courts and supreme courts. Over them is not the “blue sky”. Because we have the European Court of human rights in Strasbourg. Every man and every woman in Europa has access to this court, even prisoners in Russia.

## **Human rights guardians II**

This slide indicates particular supervisory bodies for the protection of human rights in Germany, in particular the International Commission against Torture (CPT), the federal office for the prevention of torture, established in the year 2008, and the national committee for the prevention of torture, established in 2009.

For the protection of human rights the **non-governmental organizations** ("NGOs") are important, such as Amnesty International, Human Rights Watch or the International Society for Human Rights.

This also applies to the **press and to the public**. Many human rights violations have been uncovered by them. And I suppose that many violations of human rights are prevented by their existence.

## **Human rights issues**

The question arises, what are human rights in prison and when are they protected. Already, the **definition** is not easy. Under human rights we understand elementary legal goods, as **life, physical integrity, sexual self-determination, faith and freedom of conscience and the honor of prisoners**. Human dignity is violated, if the prisoner is an object in the prison system. This can be done through **torture, humiliation and branding**. The injury may be **cruel and harsh penalties**. Human dignity is also injured, when the state does not anything against violence among prisoners in the subculture of the prison.

Article 1 of the German constitution is located that the state has to respect and to protect human dignity. The German law applies to anyone who has sovereign power: the supervisory authorities of the prisons and the authorities in prisons even. Especially those should go ahead in the center lines due to their education based on the law and their specific responsibilities for a legitimate law enforcement. Other employees, for example social workers, can draw attention to the protection of human rights of prisoners and become guardians of the human rights movement. Here, you will be most successful, if you do not complain, discredit or oppose, but warn, recall and advertise for the idea of human rights.

In Germany, the prisoners make also use of their legal possibilities, according to some practitioners they use it too much. But that is not my opinion.

Not everything what could be criticized in the prisons, violates the human dignity of prisoners. If the officer does not knock not on the door, before entering the cell of a prisoner, you should not argue

with human dignity, but understand that a bid of courtesy. In other words: Human **dignity** must be "**acted not as a small coin**".

An open question to many citizens is: "**Have convicted criminals human dignity and human rights?**" In Germany, it took until the year 1972, that the Federal Constitutional Court gave up the doctrine of the special relationship of prisoners and prison. Since then, full protection of fundamental rights to the prisoners are the legal basis of treatment in prison. As the dignity of man is untouchable, **offenders and prisoners have human dignity**. So even sex offenders, child abusers, terrorists, murderers and other offenders, whose crimes arouse disgust, have human dignity. This is easily to demand in an academic context, but it is very hard to follow this line in the everyday practice.

In addition, the question arises according to the **scale for human rights in prison**. Must we assume **optimal conditions** as required by science or jurisprudence? Is it an **average value or minimal rights** of prisoners that must be guaranteed in any country, especially without regard for cost? Here, you get a **legal problem**. As you know, the conditions in European prisons are different. What scale should use the European Court of human rights in its case law: the conditions in highly developed European countries, an average over all states or minimum rights which must guarantee every country? This can lead to strange results. Prisoners in some countries would receive better conditions than outside. The legal position of prisoners in higher developed countries could worsen if you lower the scale. I think that we still need different national standards in Europe but we should try to come to an overall standard.

## **Perpetrators, victims and situations of violations in the prison**

I come to **human rights violators in prison**. Especially the staff can be a danger for the human rights of prisoners. Staff may be, who directly has to do with prisoners. But even “backdoor” violators are possible, in the direction of the prison or in the **supervisory authority** if they order or tolerate violations of human rights of prisoners. Fundamental legal interests of prisoners may be injured but also by **fellow prisoners**, if they act on behalf of, or with the approval of the staff. In the former so-called German Democratic Republic, prisoners disciplined inmates brutally with arrangement and reward by the staff. As far as inmates violate other prisoners, it is a duty of the state to protect the prisoners from such attacks. In German prisons, the human rights of prisoners are much more at risk by inmates but by the staff. This concerns mainly attacks from organized prisoners, especially prisoners of the German-Russian origin.

This leads to the question, **which prisoners are at risk** for violations of human rights. Because all prisoners under restrictions of freedom live in a total institution, **in principle all** prisoners are at risk. But there are more vulnerable **prisoners** if they have more risk factors in addition to the captivity: **somatic sick and addicted prisoners, mentally ill and disturbed prisoners, young prisoners, old and infirm prisoners, female prisoners, foreign prisoners with language problems and minorities, e.g. homosexual prisoners**. Prisoners with particularly serious or despicable crimes in the eyes of fellow prisoners must be added. **Perpetrators of child sexual abuse** in the subculture of the prison are at the bottom and are particularly at risk.

What **types of detention** are critical under the view of human rights violations? It is the same as for the prisoners. In **principle**, human rights violations can occur **in all types of detention**. But also here we must differ. Closed prisons are a specific danger for human rights violations. I have to mention **pre-trial detention** and **long-stay prisons**. Especially problematic is the accommodation in a psychiatric hospital. There, personality-impaired and mentally ill offenders are housed and are restricted in their legal remedies.

There are also **times** in which violations of human rights occur very easily, especially all the times where employees are located in majority against prisoners. Someone said that a poor staffing in prisons is the best protection against human rights violations by employees. The **night**, the **weekend** and the **leisure time** of prisoners are related to assaults by prisoners on inmates.

### **Human rights pyramid in the prison system**

I've presented already Maslow's need hierarchy and my general human pyramid on two slides. On this slide I cut the pyramid specifically on the prison system.

Below you can watch again the **basic needs** of trapped people, above this security, especially **security** against attacks from other prisoners and against violence by officials.

Over this, I placed the legal remedies of the prisoners, because it is not only important to have human rights, you must be able to enforce them. That the protection of rights of prisoners not in statutory remedies may exhaust, but that the courts and law enforcement agencies must ensure effective protection by their actual behavior, this has ruled the Federal Constitutional Court in

Germany. In another case, it was against the German constitution (Art. 19 Abs. 4 GG), that the court did not immediately decide on the urgent request of the prisoner. This decision strengthens the legal protection of the prisoners.

### **Case groups for human rights violations in the prison system**

Let me now present on the basis of **case groups**, where violations of human rights are adopted. If the following remarks seem too positive, so this is not because I am working in the prison system. I'm far away to see the conditions in the German penal system by "pink glasses".

**Torture**, that means severe physical pain which causes serious and cruel suffering, mainly to obtain information or confessions, as well as cruelty to others. This is the hardest violation of human rights. Torture to obtain a confession relates less to the prison system as rather the criminal proceedings. It is characteristic that torture in Germany has been discussed here recently on the basis of the untypical Daschner-case. Remember: the Frankfurt Police leader Daschner had threatened torture to the kidnapper of a young boy, because he assumed, the victim would still be alive, and he could deliver the victim. Even, if you see an absolute ban on torture, one must admit that the decision is not easy here, because the human rights of the accused stand against the human rights of the victim's life.

**Physical abuse by law enforcement officials** are not a structural problem in the German penal system. But each case would one too much. In Baden-Württemberg, there has been a case in the 1970s, where several law enforcement officers have assassinated

a prisoner. In my time, there has been a case years ago, where officials have disciplined sick prisoners with wet towels. This was also sanctioned. Sometimes prisoners write and say, that officials in direct coercion use too much violence. These situations are difficult to enlighten.

More in the direction of **neglect** it is, if prisoners would be fed inadequately. In Germany, the food is compiled according to the regulations of the German Society for Nutrition. The food is sufficient in terms of volume. Bad food can easily lead to uprisings among the prisoners. Each prison director knows that a good food is important for the climate in the prison. The problem is the taste of the food. That is like any catering and has nothing to do with violations of human rights.

The **medical care** of prisoners is another area where violations of human rights could mean poor or neglected treatment. In Germany, the prisoners have the right to medical treatment as any legally insured citizen. This equivalence principle has constitutional status and is an important pillar of our culture in law enforcement. I lead the supervision of the medical service in the Baden-Württemberg penal system. So, I know how sacrificially the doctors and nurses look after their detained patients.

So, I'm going over to the **accommodation of the prisoners** and another area critical on human rights of prisoners. The **compulsory community** with other people, but also **isolation** from other people may be a violation of human rights in prison. A decision of a court in Germany (OLG Hamm) was groundbreaking in the year 1963. The court declared that the community accommodation of three prisoners in a one man cell to be



inadmissible. Later, the Constitutional Court of the countries has asked minimum standards or limitations on accommodation. Her some cases:

- the community accommodation in a solitary confinement room or in a small community detention room with limited possibilities for movement and without sufficient air in closed detention room doors;
- Compulsion to ongoing live together with other people, without retreat, with a long-running accommodation in a community cell during the day, particularly in closed prisons;
- the lack of a wall of shame for optical separating the toilet from the rest of the cell;
- constant darkness or constant bright lights in a secure detention room or in a holding cell;
- not sufficient floor area or height to standing upright and walking,
- Internal bars, which give the impression of cages;
- Window shutter in a detention room without view of the sky;
- common showers in a narrow shared shower room, where the touching of naked bodies cannot be avoided,
- from the floor constantly visible cell spies;
- an interior covered with wire mesh or steel nets;
- repeated contamination of the detention area within a short time with material from a clogged drain pipe.

The accommodation **precautions** against escape may be degrading. Some prison of the former so-called German Democratic Republic had dog run facilities, automatic rifles and fences under electric voltage.

I mention two current problems in Germany. One is the **overcrowding of prisons**, the other one violations of the right to **housing in a solitary confinement room**. So civil courts in Germany have convicted the states for damages due to inadequate accommodation.

Another case group of human rights violations in prisons are **stigma and humiliation**. That would be the case, about pink shirts and pants, or the obligation to wear stigmatizing prison clothes. It must be proved whether always and everywhere the **privacy** of prisoners is adequately protected. The cell spy was already mentioned. Further violations would be: lack of space for the own things, containing images of family members, a ban on wearing a wedding ring, a degrading form of address, the insight into the diary without or against the will of the prisoner.

Practically not yet investigated is the question whether **treatment and educational measures** may violate human rights. Not every aim justifies all means. and not everything that is used, is effective. Today, one would have to consider treatment measures which change behavior and break the identity of a prisoner. So, I mention "**boot camps**" as an alternative to the usual prison with military drill in the United States, senseless work and a humiliating exercise program. In the boot camps the prisoners should learn that they have failed with their lifestyle. Realizing this, she should change her life. Even if they have the choice to opt this in order to shorten the sentence or to serve it not in the subculture of a "normal" prison the border to violate human rights is exceeded.

In Germany, one must examine whether certain **forms of treatment aimed at a fundamental change of personality**

correspond to the human rights of prisoners in all aspects. Psychoanalysis, which discloses the unconsciousness is a significant intervention, mainly under the pressure of the prison. At least, it would be necessary to consider such treatment by an independent ethics committee, generally and in every single case.

Another question concerns the **effectiveness of treatment**. If the state treats prisoners or educates them so they commit no crimes in the future, then the treatment and the education measures must be effective or at least promising positive effects. The effectiveness of treatment and education in the prison system is empirically very bad evaluated.

In the German law, the **enforcement or educational goal** focuses on rehabilitation and integration. Treatment measures should correspond to the human image of the basic law which strengthen the prisoners in their self-esteem, help him to succeed in the everyday life, integrate them into the world of work and profession and give them social responsibility. Social training, meaningful work, education, training and advice on life issues, victim-offender compensation, preparation of release into society and follow-up measures are the building blocks of an enforcement within the human rights of prisoners.

The **work of prisoners** and their **remuneration** is one measure of the treatment. The legal **obligation of prisoners to work** is an expressed exception from the constitutional prohibition on forced labor. In the last years, some German states gave this obligation up. I agree with this as we do not need this obligation. Most of the prisoners want to work as they need money. I agree too that

education and work are very important for a positive legal prognose. But for this we do not need a legal obligation to work.

Anyway, the remuneration system in the prison system must not degrade the prisoners. The Federal Constitutional Court has contributed with a decision in 1998, that the prisoners are paid reasonably, in accordance with human rights standards. The question is now, what that means in Euro and Cent by hour of work in the prison. In Germany we have minimum standards for payment of workers. This minimum pay is 8,84 Euro in 2017. But you cannot transfer this directly on work in prisons as the prisoners have accommodation and other achievements for free. And they are not so productive as workers outside prison. So, it is difficult to say what is according to human rights.

### **Crime prevention (3 levels)**

Now, I want to go over to the protection of human rights in the prison system. First of all, I want to introduce a **system** of preventive measures for the human rights of prisoners, and of **reactions** to human rights violations. This system comes from **crime prevention**. There, you know it perhaps, we differ primary, secondary and tertiary prevention. This system has proven itself in the **classic crime prevention**. This is applicable as **violations of human rights** represent mostly **criminal acts**.

### **Crime prevention (Wulf)**

Because the last stage is mixed with quite different measures, I suggest a **five-step system**. The first two steps are the same as in the three steps model.

The third stage now is differed in three stages. Working with criminal endangered persons, working with persons who were already delinquent, but are able and motivated to find to a life without criminal behavior and finally to protect the society from untreatable offenders. Here you can talk about "prevention through repression".

### **Prevention model for correctional services**

The prevention model that I propose for the prison system, follows the five stage model of crime prevention. In detail, I'll describe all five levels in the following slides.

On the first level, it comes not to violations of human rights by avoiding imprisonment and instead of alternative sanctions.

The second stage prevents violations of human rights in the prison system If it works according to the human rights of prisoners.

The third stage increases the risk of exposure of human rights violations and human rights violators.

A culture of human rights in the prison system is built on the fourth tier, especially a culture of seeing.

Finally, human rights violations should be prosecuted consistently. This is a task for the disciplinary law and criminal law.

### **Prevention as a buffer against human rights violations**

But before, on this slide you see that prevention is a good buffer against human rights violations. Good conditions in the prison system prevents human rights abuses on prisoners. That is the

reason why the Commission against torture does not look only for violations of human rights in prison but for the common conditions in the prison.

### **Alternative/community sanctions**

The European rules on community sanctions and measures from the year 1991 contain a number of alternative and community sanctions. In our context it is important that human rights violations can be avoided if the prison sentence is prevented. Of course, even alternative sanctions can violate the human rights of accused or convicted persons. But in community sanctions you do not have the subculture of the prison. The following alternative sanctions are at hand:

- suspended sentence to probation,
- fine,
- non-profit services,
- victim-offender compensation,
- place reference, place bids, electronic monitoring,
- treatment instructions, anti-violence training, care instructions, social group work, social training,
- leisure penalty, driving bans.

According to lack of time I can only mention them in my lecture.

### **Law enforcement according to human rights of prisoners**

In the context of **primary prevention**, good **conditions** must be created in the prison system under which the respect for human rights can be expected. These measures improve the situation of prisoners, but also that of the staff. Because **well selected, well**

**trained and well paid and a not corrupt staff** protects against violations of human rights. Who has a good salary that is paid every month on time, is far less corrupt than an employee who cannot provide for himself and his family. As regards on the prisoner side, in literature a concise program is proposed (see Neubacher in NStZ 2008, 361): **avoid overcrowded accommodation ensure good accomodation, improve prison climate and employ prisoners**. A way out of the overcrowding is to build more places or prisoners. Another possibility – but politically sensitive - is to enforce only as many penalties as there are places in the prisons.

### **Increase the risk of discovery**

Violations of human rights can be avoided if the offender must fear the discovery his **violation**. First, this is the challenge for the director of the prison and to the supervisory authority. The **judicial protection of rights** by the courts play an important role to increase the risk of discovery. In parallel, the prisoners have the opportunity to get a **parliamentary control**. So, each prisoner has the right to petition. In addition, it is possible for them to turn the **public** with help of his family, with volunteers, his defender, non governmental organisations and last but not least the press.

### **Promote human rights culture in prisons**

Whether the prison system respects the human rights of prisoners, that depends on the **image of man** by those who are working in the prison system. The constitution can pretend such a view of mankind to a certain extent. So, it makes quite a significant difference whether the constitution sees a prisoners as delinquent

citizens (so the constitution in Germany now), a "folk pest" (the former Nazi opinion in Germany) "a counter-revolutionar" (so the jargon in the German Democratic Republic) or an "enemy" of the state. A very experienced prison director once said: "Essential for of good prison director is to see all inmates, even the weakest and the most difficult, as human beings and not to degrade them to the object of a cool distanced management". This means in other words, never make them a mere number in the prison or an only object of the state.

The task to protect the human rights of prisoners means a change of sign in the prison system. Actually, the prison system has many tasks, security for the citizen, reintegration for the inmates, low costs for the government, no special events like flight or suicide for the minister of justice. Protection of the human rights means ensuring the "minima" of prisoners. This task stands above all the other tasks. In other words: Only if the prison system is successful to guarantee the human rights of prisoners it can start to realize the other goals.

If the prison system would to pay more attention to the human rights of prisoners, it would develop into what it should be: only withdrawal of movement. Remaining elements of body and honor sanctions cannot be denied in closed prison. The only function of a prison which leads to restrictions of freedom is not new. But this idea promotes a rational handling with prisoners.

### **Punish violations of human rights consistently**

Human rights violations must be pursued consistently. This applies in particular to human rights violations committed directly by the



staff of the correctional system. Because of time, I can only mention this and cannot discuss it in detail.

## **Human rights violations in total institutions**

**Human rights in the penal system are one part of a larger topic.** In all **total institutions** human rights are at risk. A total institution exists when persons have personal power over other persons. The greater the power and the larger the vulnerability of the persons in the total institutions, the more important it is to prevent human rights violations and to guarantee human dignity. The accommodation makes vulnerable and often persons in total institutions are not able to care for their human rights due to personal disorders. Beside prisons the **military** with its hierarchy is a total institution. Especially young Russian soldiers have to suffer a lot. In Germany, we have an ombudsman for the military who looks for the human rights of the soldiers. Let me point out that even **hospitals** are among the total institutions. Cost pressure and crisis situations are a challenge for the human rights of patients. This is true especially for hospitals and **hospices**, in which people die. The vulnerability also applies to **old people** in homes and domestic care. Maltreatment of old people, the taboo subject of sexual assault on elderly and neglect of the elderly care patients is always current in the demographic change. It may shock you when I finally include the **family** in the circle of total institutions. The family can be a heaven, but also the hell for **children**. Child abuse, sexual abuse of children and child neglect must be addressed. All together, you must expand the sentence of Mandela with which I started: **"If you wish to see the condition of a state, you have to go in the families, in the homes for**

**children, in the barracks, in psychiatric hospitals, clinics and in its prisons."**

### **Human rights culture as societal task**

What we need is a human rights culture in our society. I think we are on the way but there is still very much to do. To get sympathy for the human rights of prisoners it is necessary that the citizens have less fear of crime. If they feel fear of crime they will be against the human rights of prisoners. Another task of criminal policy is that the rights of victims are protected. Only if the citizens see that victims are protected and have the chance for compensation they have sympathy with the human rights of prisoners. There are many interesting connections.

But what we need most are guardians of human rights everywhere: in the police, in the prosecution authorities, in the courts and in the prison system. And even in science we need guardians of human rights. What can they do and what must they do? In research they can work on standards for human rights in total institutions. They can train human rights with students and with officials in the prisons. And they can look for the human rights in commissions and as ombudspersons.

My lecture today was an attempt of training human rights with motivated students in the Balkan. So I wish, that you become guardians of human rights, wherever you work and whatever you do.

Thank you very much for your listening.